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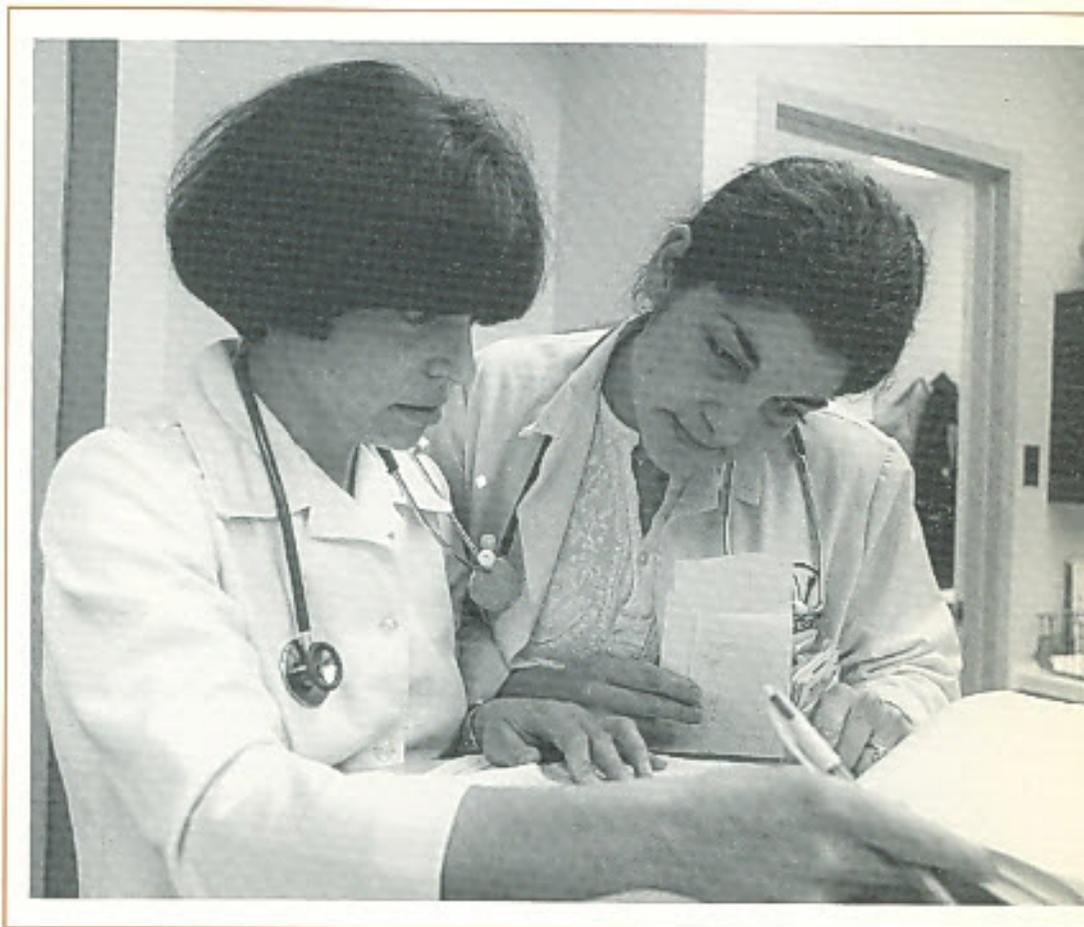
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Implementation of Drug Addiction and Alcoholism Provisions in Disability Cases

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I. Introduction

Recent legislation imposed new restrictions on payment of social security disability (Title II) and supplemental security income (SSI) disability benefits based on drug addiction and alcoholism (DAA). /1/ These restrictions include a 36-month payment limitation, suspension for noncompliance, a treatment requirement, referral and monitoring, limits on payment of retroactive benefits, and a requirement that benefits be paid through a representative payee. /2/ The general effective date for these provisions was February 10, 1995, affecting benefits payable for March 1995.

This summary provides information about the implementation of these provisions and is based on the regulations, /3/ the Program Operations Manual System (POMS), /4/ and the operating manual for the Office of Hearings and Appeals (HALLEX). /5/ Advocates should look to the POMS, rather than the regulations, for more detail about operating procedures.

As of this writing, Congress was considering legislation that would eliminate DAA as a basis for disability in the SSI program only. /6/ Final legislation was expected to be passed by Congress during the summer of 1995. Before relying on the SSI provisions in this column, advocates should make sure that they are up-to-date on the status and content of the legislation. /7/

II. Definitions

In order to understand how the DAA process operates, advocates should be familiar with the specific definitions of critical terms, including the following. /8/

Material. DAA is "material" when the claimant would not be found disabled if he or she were to stop using drugs or alcohol. /9/

Available treatment. Factors for treatment to be considered available include whether a vacancy in a treatment program exists; whether the location of the treatment program is accessible or suitable; whether transportation is available; whether the beneficiary's health is sufficient to permit travel; the beneficiary's capacity to understand and follow treatment; and whether treatment is prescribed for the beneficiary's drug addiction or alcoholism. /10/ A DAA beneficiary cannot be required to pay for treatment. /11/

Appropriate treatment. Treatment is appropriate "when it serves the needs of the individual in the least restrictive setting possible" consistent with the treatment plan. /12/

Approved institution or facility. An institution or facility, including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), is approved "when participation . . . is specifically prescribed as part of the individual's treatment plan." /13/ AA and NA are not, on their own, "treatment" but may be part of an overall treatment plan. /14/

Noncompliance months. The month or months after the month that the Social Security Administration (SSA) notifies the beneficiary that he or she has been determined by SSA not to be in compliance with the treatment requirements by failing to participate or make progress in treatment are noncompliance months. /15/

Sanction months. The requisite number of months benefits are suspended while the beneficiary is required to demonstrate and maintain compliance with appropriate treatment before benefits are resumed constitutes sanction months. They follow suspension for noncompliance. /16/

Referral and monitoring agencies: Agencies under contract to SSA in each state to provide services to DAA beneficiaries and to submit information to SSA are known as referral and monitoring agencies. /17/

Protest: A challenge to the DAA finding, outside of an appeal period, that can be filed at any time is a protest. /18/ It is handled as self-reported medical improvement and results in a full medical continuing disability review, discussed below.

III. Determining Whether Drug Addiction and Alcoholism Are Material to Disability

The determination of whether DAA is "material" to a claimant's disability is the key question in the process. /19/ DAA is material if the claimant would not be found disabled if drug or alcohol use stopped. /20/ In making the determination, adjudicators are required to:

- review the physical and mental limitations upon which the current disability determination is based;
- evaluate the mental and physical limitations that would remain if drug and alcohol use were to stop; and
- determine if any or all of the remaining limitations would be disabling.

If remaining limitations would be disabling, then DAA is not material. If remaining limitations would not be disabling, then DAA is material, and the DAA provisions apply. /21/

IV. The Initial Claims Process

When SSA takes an initial application, it documents the allegation of DAA and sends it to the state disability determination service to process the medical aspects of the case. /22/ Where benefits are allowed, the SSA district office explains the DAA provisions to the claimant at an interview; completes nonmedical development of the application, including representative payee development; sends a referral package to the referral and monitoring agency; establishes a "compliance history file"; /23/ and establishes an installment payments system and determines whether the exception for "risk of homelessness" applies.

A. Amounts Subject to Installments

Beneficiaries are generally allowed to receive no more than twice the regular monthly benefit. /24/ This usually amounts to the current month's benefit plus one month of retroactive benefits. /25/ There is no time limit for payment of retroactive benefits in installments, and terminated beneficiaries are entitled to receive any remaining retroactive benefits in installments. If the beneficiary dies, underpayments to survivors are not subject to the installment payment limitations. For SSI financial eligibility purposes, installment payments are treated as if paid in a lump sum, consistent with current procedures, and do not affect ongoing SSI eligibility. /26/

B. Exception for Homelessness or Risk of Homelessness

If the DAA beneficiary is homeless or at risk of homelessness, then the first installment payment may be increased by the amount needed to cover the beneficiary's housing debt. /27/ Information about the exception is included in the initial DAA determination notice and in the notice to the representative payee. The exception applies after the initial determination or after an amount subject to installment has accrued (e.g., following suspension for noncompliance).

Allowable housing debts to maintain shelter include mortgage payments (including property insurance), rent, real estate taxes, heating fuel, gas, electricity, water, sewer, and garbage removal. Allowable housing debts for those who are homeless include first month's rent, security deposits, and utility startup costs. Necessary documentation includes statements and evidence of costs. /28/

C. Interim Assistance Reimbursement

Since the recipient of SSI benefits based on DAA can no longer receive full lump-sum payments, interim assistance reimbursement to state agencies are handled differently. /29/ SSA district offices now make payments directly to the states for amounts that are due under interim assistance reimbursement agreements by using an automated onetime payment. When the payment is made to the agency, a notice is sent to the beneficiary.

D. Electing to Change to Other Benefits

Since the DAA requirements apply only to disability benefits, beneficiaries have the option to elect to terminate disability benefits /30/ in favor of other Title II benefits /31/ or another SSI eligibility category. Other benefits might include reduced retirement benefits before age 65 or reduced widow(er)'s insurance benefits. In addition, upon reaching age 65 beneficiaries may change their SSI category from "disabled" to "aged." /32/

E. Payments to Family Members

Family members continue to receive benefits after the Title II DAA beneficiary is suspended or terminated, /33/ "so long as the individual remains disabled." /34/ Family members' retroactive benefits are not subject to installment payments.

V. Appealing the Finding That Drug Addiction and Alcoholism Are Material to Disability

The determination that DAA is material to an individual's disability is an "initial determination," subject to the administrative and judicial appeals process. /35/ Once a DAA determination has been made, DAA restrictions apply pending appeal, and benefits are paid if the claimant is willing to comply with the treatment provisions and receive payment through a representative payee. /36/

On appeal, the decision may be affirmed, reversed to a finding that DAA is not material, or reversed to a finding that the claimant is not disabled. /37/ If on reconsideration the claimant is found "not disabled," the case is handled as a continuing disability review with relevant appeal rights. /38/

VI. "Protests" and Continuing Disability Reviews Involving Drug Addiction and Alcoholism

A protest is a challenge to the DAA finding outside of an appeal period and may be filed at any time. /39/ Typically, the beneficiary alleges that DAA is not material due to deterioration of other impairments or existence of new impairments or medical improvement. A protest results in a full medical continuing disability review. /40/

Other events may trigger a continuing disability review. These include the passage of a previously scheduled date for SSA review of the beneficiary's medical condition (i.e., medical diary date), successful completion of treatment as reported by the referral and monitoring agency, or the individual's return to work for substantial gainful activity. /41/

There are three possible outcomes of the continuing disability review: (1) a determination that disability continues and DAA is not material; (2) a determination that disability continues and DAA

is material; or (3) a determination that the claimant is no longer disabled. These outcomes are similar to those encountered in an "appeal" of the DAA determination.

DAA continuing disability reviews are developed in the same manner as other continuing disability reviews; the disability determination service is responsible for developing the evidence and determining whether DAA is material. Documentation for the continuing disability review includes information from current treating sources, documents describing current manifestations of DAA, and assessments of treatment and functional ability. The medical improvement standard applies and must be appropriately addressed in the decision.

Appeal rights are available in all DAA continuing disability reviews, including protests. Benefits pending appeal are paid if the appeal is timely filed, unless the 36-month time limit (described below) has expired. DAA restrictions apply pending appeal. /42/

VII. The Startup Process for Current Beneficiaries

A "startup process" applies to individuals receiving benefits on the basis of DAA prior to January 15, 1995. /43/ They were sent notices in February 1995 informing them of the new statutory restrictions, offering either the right to file an appeal or a protest. Protest rights were given to SSI recipients who were already computer-coded "DAA" and had a representative payee. All other startup cases were given appeal rights. /44/ As with the process for new claims, startup protests and appeals are not limited to DAA status and could result in three possible outcomes: (1) a determination that disability continues and DAA is still material; (2) a determination that disability continues but DAA is not material; and (3) a determination that disability has ceased. The main distinction between startup appeals and protests is that, in an appeal, representative payee development does not begin and there is no referral and monitoring agency referral until the reconsideration decision. /45/

VIII. The Treatment Requirement

A. Referral and Monitoring Agencies

Each state will have a referral and monitoring agency (RMA) responsible for identifying appropriate treatment placements for DAA beneficiaries, referring them to treatment, monitoring compliance and progress, and reporting any failure to comply with treatment or to achieve progress. /46/ After the SSA referral, the RMA will contact the individual for an evaluation. /47/ The RMA will contact the individual again when appropriate and available treatment is located. DAA beneficiaries are not required to locate treatment -- that is the RMA's responsibility. /48/

B. Monitoring Treatment Progress and Compliance

DAA beneficiaries are required to participate in treatment that is appropriate and available. /49/ The RMA will send information about progress and compliance with treatment to the district office. This information, based on reports from the treatment provider, is to include records of attendance and participation, reports of clinical testing, observational reports, and the RMA's assessment of noncompliance with treatment, if appropriate. /50/

SSA will consider this information in evaluating a beneficiary's compliance and progress with treatment. Examples of milestones for measuring progress include but are not limited to abstinence or reduction in use, consistent attendance and participation, improved social functioning and levels of gainful activity, participation in vocational rehabilitation, or avoidance of criminal activity. /51/

C. *Noncompliance with Treatment and Suspension*

1. Noncompliance

Benefits are suspended if the beneficiary fails to comply with the terms, conditions, and requirements of treatment that has been made available or if the beneficiary does not avail himself or herself of treatment after being notified that it is available. /52/

Noncompliance events, requiring an RMA report to SSA, include failure to respond to RMA contacts, failure to discuss treatment, refusal to undergo available and appropriate treatment, failure to report to a chosen treatment facility, failure to participate, failure to meet expected progress, cessation of participation, or failure, without good cause, to comply with terms of the program. /53/

While RMAs document possible noncompliance, it is emphasized that SSA, not the RMAs, makes the actual noncompliance determination. /54/ If SSA determines that the beneficiary has not complied, a suspension notice is issued and benefits are suspended in the month after the month of notification.

2. Good Cause for Noncompliance

If good cause for noncompliance exists, benefits are not suspended. Allegations of good cause may include:

-- religious objections to the treatment or facility;

-- assertions that treatment is unavailable because it is beyond reasonable commuting distance; /55/

-- assertions that the beneficiary could not comply due to medical issues, including "appropriateness" issues. This may result in a medical continuing disability review if the beneficiary alleges a change in his or her medical condition.

3. Sanction Months

Once SSA determines noncompliance, the DAA beneficiary must demonstrate compliance with treatment for a specified period of months (i.e., "sanction months") before payment resumes. /56/ The duration of sanction depends on the number of periods of noncompliance: /57/

-- First noncompliance: Two consecutive months of compliance.

-- Second noncompliance: Three consecutive months of compliance.

-- Third and subsequent noncompliance: Six consecutive months of compliance.

The beneficiary is considered compliant following a sanction period on the basis of his or her own statement agreeing to be compliant. /58/

4. Termination After 12 Months of Suspension

After 12 consecutive months of suspension due to noncompliance and sanctions, benefits are terminated. /59/ The individual may reapply on the basis of DAA if the 36 months of payments (described below) have not yet been used. Title II benefits to family members may continue or can be awarded after the wage earner's benefits have been terminated, so long as the wage earner remains disabled. /60/

5. Appeals of Noncompliance Findings

For SSI and concurrent beneficiaries, benefits are paid pending appeal, that is, where good cause is alleged for noncompliance, if the appeal is filed within ten days (plus five days for mailing) of the notice date. /61/

For Title II beneficiaries, if the noncompliance finding is questioned within ten days (plus five days for mailing) of the "predetermination" notice, the district office will make a final decision and send a notice including appeal rights, at which time suspension begins. /62/ In Title II-only cases, benefits are not paid pending appeal of the noncompliance determination. /63/

For concurrent beneficiaries, SSI procedures (including benefits pending appeal) apply. /64/ If there is no response within ten days (plus five days for mailing), benefits are suspended in the month after the month of the notice.

IX. Computing the 36-Month Payment Limitation

Benefits based on DAA are payable for a total of 36 months. /65/ Six months before the end of the 36-month period, a notice is sent to the beneficiary regarding termination due to the limitation. /66/ The beneficiary may "protest" his or her DAA status at that time or at any other time.

There are several rules to note in computing the 36 months:

- The first possible month of the 36-month period is March 1995. /67/
- The first month can be no earlier than the month of entitlement. For Title II beneficiaries, this is the first month after the five-month waiting period. /68/
- If for any reason benefits are not due for a month, that month is not counted toward the 36-month limit. /69/
- Medicare and Medicaid /70/ continue beyond the 36-month limit "so long as disability continues" /71/ and the individual has not been terminated for noncompliance with treatment.

In Title II cases, cash benefits to family members continue "so long as the beneficiary remains disabled" /72/ after termination of cash benefits to the individual due to the 36-month limit. /73/

X. Case Processing at the Office of Hearings and Appeals Level

The Office of Hearings and Appeals must (1) identify when DAA is an issue; /74/ (2) notify the claimant in the hearing notice that, if the claimant is found disabled, the administrative law judge will determine whether DAA is material; and (3) accurately inform the claimant in the decision whether DAA is found to be material. /75/

For hearing requests pending on the Reform Act's effective date, February 11, 1995, beneficiaries must receive a 20-day notice that DAA is an issue. The 20-day notice can be waived. If it is not waived and less than 20 days remain, the hearing is to be rescheduled. /76/ If DAA is raised at the hearing for the first time, the 20-day notice still applies. It can be waived. If not waived, the claimant must be allowed an opportunity to submit additional information, and the hearing is to be adjourned and continued at a later date. /77/

The administrative law judge's decision must include a rationale and specific finding as to whether DAA is material. Standard language about the representative payee and treatment requirements must also be included. A decision finding that the claimant is disabled but that the DAA requirements apply is not considered "fully favorable" and is thus subject to appeal. /78/ If an appeal is filed from the administrative law judge's decision that DAA is material, the appeal is treated as contesting all or part of the substantive disability determination.

XI. Representative Payees

SSA is responsible for finding representative payees for DAA beneficiaries. This duty is not met by simply sending beneficiaries a list of organizations willing to act as representative payees. /79/ Under the statute, organizations or agencies are the preferred payees. /80/ SSA has established two lists of payees: (1) "preferred representative payees" (e.g., government agencies and nonprofit

organizations licensed by the state); and (2) "alternate sources" (e.g., legal guardians, treatment providers or RMAs, custodians, or other appropriate individuals). /81/ Generally, one of the agencies on the preferred list must be selected. /82/ A family member may be selected if "appropriate." /83/ If the preferred list is exhausted, SSA may look to the alternate list.

XII. Conclusion

The Social Security Administrative Reform Act dramatically changed the requirements for payment of social security and SSI disability benefits where drug addiction or alcoholism is a contributing factor material to the disability determination. The 1994 legislation, which was passed in response to criticisms of SSA's failure to monitor treatment and representative payment for this population, will probably not be Congress' last word on this subject, since pending legislation may eliminate drug or alcohol addiction entirely as a basis for disability in the SSI program. Until there is further change, advocates need to be informed about the process for payment and how best to represent their clients.

Footnotes

/1/ Social Security Administrative Reform Act of 1994, Pub. L. No. 103-296, 108 Stat. 1464 (1994).

/2/ For a discussion of the substantive provisions of the legislation, see Ethel Zelenske, *The Social Security Administrative Reform Act of 1994*, 28 *Clearinghouse Rev.* 897, 898 -- 902 (Dec. 1994).

/3/ The Social Security Administration (SSA) published interim final rules at 60 *Fed. Reg.* 8140 (Feb. 10, 1995). The regulations were effective March 1, 1995, but provided an opportunity to comment.

/4/ The provisions on social security disability (Title II) and supplemental security income (SSI) disability benefits based on drug addiction and alcoholism (DAA) are in Program Operations Manual System (POMS) Secs. DI 90001.001-90095.001 (Clearinghouse No. 50,705).

/5/ HALLEX is the commonly used acronym for the Hearings, Appeals, Litigation and Law Manual. Similar to the POMS at the initial and reconsideration levels, the HALLEX provides instructions, primarily on procedural issues, for Office of Hearings and Appeals staff. The DAA provisions are at HALLEX Sec. I-5-314, issued January 6, 1995 (Clearinghouse No. 50,715).

/6/ In March 1995, the House of Representatives passed H.R. 4, the Personal Responsibility Act of 1995. While H.R. 4 primarily addresses changes in the welfare system, it would alter SSI eligibility for three groups: children with disabilities, legal immigrants, and persons with drug or alcohol addiction. H.R. 4 would eliminate DAA as a basis for SSI eligibility, effective October 1995. H.R. 4 was referred to the Senate Finance Committee, which reported out a similar DAA provision on May 26, 1995, but amended the effective date. While the Senate Finance provision would apply to

new applicants the month after enactment, it would not apply to current recipients until January 1997. They would be notified of the eventual termination within 90 days of enactment and would be allowed to reapply within 120 days after enactment to determine if they were eligible on the basis of other impairments. SSA would be required to make a decision on the reapplications within one year after enactment, presumably before January 1997. If the full Senate passes the bill, a House-Senate conference committee will meet to reconcile the differences. Both houses will then vote on the conference bill. If passed, it will be sent to the President for enactment. Approximately 100,000 SSI recipients would be affected by this legislation, although SSA estimates that as many as 80 percent would be eligible for benefits on the basis of another impairment.

/7/ Materials will be available from the National Senior Citizens Law Center office in Washington, D.C.

/8/ See POMS Sec. DI 90001.005 for an extensive list of definitions.

/9/ 20 C.F.R. Secs. 404.1535(b)(1), 416.935(b)(1).

/10/ Id. Secs. 404.1539(e), 416.939(e).

/11/ Id. Secs. 404.1536(a), 416.936(a).

/12/ Id. Secs. 404.1537, 416.937.

/13/ Id. Secs. 404.1538, 416.938.

/14/ 60 Fed. Reg. 8141 (Feb. 10, 1995).

/15/ 20 C.F.R. Secs. 404.470, 416.1326(b).

/16/ Id. Secs. 404.470(b), 416.1326(c).

/17/ Id. Secs. 404.1541, 416.941.

/18/ POMS Sec. DI 90001.005-20.

/19/ The DAA provisions apply to an individual if drug addiction or alcoholism is a material factor contributing to the disability determination. 20 C.F.R. Secs. 404.315, 416.202(e).

/20/ Id. Secs. 404.1535(b), 416.935(b).

/21/ Id.

/22/ Case processing is outlined at POMS Sec. DI 90010.010.

/23/ The compliance history file is a computerized file that includes individual data on protest or reconsideration, notifications, undeliverable notices, identification and entitlement, referral and monitoring agency identification, and compliance/noncompliance with treatment requirements.

/24/ 20 C.F.R. Secs. 404.480, 416.544; POMS Sec. DI 90025.001.

/25/ No installment benefits are paid during suspension for noncompliance with treatment or sanction months. Benefits accrued during suspension are paid in installments.

/26/ 20 C.F.R. Sec. 416.1123(d). Each installment retains a six-month spend-down period. POMS Secs. DI 90010.035.B and 90025.005.B.4.

/27/ 20 C.F.R. Secs. 404.480(c), 416.544(c); POMS Sec. DI 90025.015. For concurrent benefits, the exception applies to the first title benefit, i.e., Title II or SSI, paid. If insufficient, the remainder will be paid by the other program's benefits.

/28/ POMS Sec. DI 90025.015.

/29/ Id. Sec. DI 90025.010.

/30/ According to the POMS, SSA may not "suggest" the change but may provide the opportunity to apply. Id. Sec. DI 90005.030.B.

/31/ Note that technical entitlement to Medicare continues even if nondisability benefits are elected. Id. Sec. DI 90005.030.

/32/ This change must be requested -- it does not happen automatically. For DAA-based SSI beneficiaries who are aged 65 or older, SSA's district offices receive an alert 60 days before the 36-month limit for benefits expires. The individual is contacted by mail or phone and notified of the right to change categories.

/33/ Where nonpayment affects the amounts payable to a family (e.g., disabled widow's benefits or childhood disability benefits), benefits are redistributed to the rest of the family under the family maximum computation.

/34/ A DAA beneficiary remains disabled until he or she is (1) found not disabled based on a medical continuing disability review; (2) dies; or (3) is converted to retirement (Title II) or aged (SSI) benefits. POMS Sec. DI 90001.005-21.

/35/ 20 C.F.R. Secs. 404.902(p), 416.1402(g). The process is described in POMS Secs. DI 90030.005 and 90030.010.

/36/ POMS Sec. DI 90030.001.

/37/ Id. Sec. DI 90030.005.C.2

/38/ Id. Sec. DI 90030.010.C.3.

/39/ Id. Secs. DI 90001.005 -- 20.

/40/ Id. Sec. DI 90035.001.

/41/ See id. Secs. DI 90035.001 -- 3 for a list of reasons for medical continuing disability reviews.

/42/ Id. Sec. DI 90005.015.C.4.

/43/ The startup process is fully described at POMS Sec. DI 90005.

/44/ The other startup cases are Title II-only and concurrent beneficiaries and SSI recipients with a blank "DAA" code.

/45/ In an appeal, representative payee development does not begin in startup cases. Title II and concurrent DAA beneficiaries have 95 days from the notice date to find a payee before suspension. In SSI cases, suspension occurs 65 days after the notice date if no representative payee is identified.

/46/ 20 C.F.R. Secs. 404.1541, 416.941.

/47/ When these provisions went into effect in 1995, RMAs were handling SSI and concurrent cases only, although some RMAs had already exceeded their numbers for 1995. RMAs are not in place for Title II-only cases, and those referrals will not be made until new RMA contracts are established in September 1995.

/48/ The RMAs' other responsibilities are described at POMS Sec. DI 90015.005.

/49/ 20 C.F.R. Secs. 404.1536(a), 416.936(a).

/50/ Id. Secs. 404.1540(a), 416.940(a).

/51/ Id. Secs. 404.1540(b), 416.940(b).

/52/ Id. Secs. 404.1536(a), 416.939(a).

/53/ POMS Sec. DI 90015.005.B.2.

/54/ Id. Sec. DI 90015.005.B.1.

/55/ However, if residential treatment is available, commuting distance is not a consideration. Id. Sec. DI 90020.045.A.3.

/56/ 20 C.F.R. Secs. 404.470(b), 416.1326(c); POMS Sec. DI 90020.025.

/57/ For SSI, only those months in which the individual is otherwise eligible count as sanction months. E.g., the suspension period could be lengthened due to suspension months based on the beneficiary's being over the resource limit. In addition, a list of reasons for suspension in both SSI and Title II cases that have priority over noncompliance and sanction months is set forth at POMS Sec. DI 90020.005.A.2.

/58/ POMS Sec. DI 90020.025.

/59/ 20 C.F.R. Secs. 404.470(c), 416.1335. Medicaid and Medicare continue during months of suspension. Upon termination of benefits, Medicare will terminate two months after the month of the termination notice, and Medicaid will terminate in the first month after the twelfth month of suspension for any reason.

/60/ See note 33, *supra*.

/61/ 20 C.F.R. Sec. 416.1336(b). POMS Sec. DI 90020.015-1 adopts the regular SSI provision in the regulation for payment pending appeal of a notice of intended action affecting payment status.

/62/ A predetermination notice advises the DAA beneficiary and representative payee of the noncompliance and proposed suspension and a final determination to be made if no new information is received within ten days. POMS Sec. DI 90020.015-2.

/63/ POMS Sec. DI 90020.015-2.

/64/ See POMS Sec. DI 90020.015-3.

/65/ 20 C.F.R. Secs. 404.321, 416.1331(d). The 36 months are computed differently for SSI and Title II beneficiaries. For SSI beneficiaries, the 36 months are months of eligibility, whether or not appropriate treatment is available. For Title II beneficiaries, only months for which there is appropriate treatment available count toward the 36-month limit. As a result, computation of the 36-month period differs on the basis of subsequent entitlement to either Title II or SSI benefits. If an individual is initially entitled to Title II benefits and is subsequently entitled to SSI, any Title II months counting toward the 36-month limitation (i.e., when treatment was available) also count toward the SSI 36-month limit. However, the opposite is not true. If an individual is initially entitled to SSI benefits, SSI months counting toward the 36-month limitation do not necessarily preclude entitlement to Title II benefits based on DAA. See POMS Sec. DI 90001.015.C.3.b.

/66/ POMS Sec. DI 90020.060.A.4.

/67/ 20 C.F.R. Secs. 404.321(d)(1)(i), 416.213(b)(1).

/68/ POMS Sec. DI 90020.060.A.1. See 20 C.F.R. Sec. 404.315(d).

/69/ POMS Secs. DI 90001.015.C.1, DI 90020.060.A.1.c.

/70/ Pub. L. No. 103-296 did not require Medicaid continuation in section 209(b) states.

/71/ See note 33, supra.

/72/ Id.

/73/ 20 C.F.R. Sec. 404.470(c).

/74/ DAA is an issue if: the claimant alleges disability due to DAA; if DAA is a primary or secondary diagnosis; or there is medical evidence of a DAA impairment.

/75/ HALLEX Sec. I-5-314 V.B.3.

/76/ Id. Sec. V.B.2.

/77/ Id. Sec. V.A.2.

/78/ Id. Sec. V.B.5.

/79/ POMS Sec. GN 00502.100. District offices are required to maintain a list of community payee sources.

/80/ Pub. L. No. 103-296, Secs. 201(a)(2)(A), 201(b)(2)(A), 108 Stat. 1492, 1500 (1994).

/81/ POMS Sec. DI 90040.001.B.2.

/82/ Id.

/83/ Id. A family member is "appropriate" if the family member demonstrates strong concern, is able and willing to exercise necessary supervision to prevent the use of funds to support the addiction, and is actively involved in the beneficiary's treatment program.