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Part V

**Department of
Health and Human
Services**

Social Security Administration

**Disability Insurance and Supplemental
Security Income; Determinations of
Disability**

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**
Social Security Administration
20 CFR Parts 404 and 416
**Disability Insurance and Supplemental
Security Income; Determinations of
Disability**

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These regulations for administering the disability determination function implement section 304 of Pub. L. 96-265 (the "Social Security Disability Amendments of 1980") which amends section 211 of the Social Security Act.

The disability determination function was previously carried out by the States and the Federal Government under negotiated agreements between the Social Security Administration (SSA) and States. The law provides that, effective June 1, 1981, disability determinations will be made by the State agencies in compliance with regulations containing performance standards and other administrative requirements and procedures relating to the disability determination function. States have the option of turning the function over to the Federal Government if they do not wish to make disability determinations and the Federal Government has the authority to partially or wholly assume the disability determination function of any State that does not meet the prescribed minimum performance standards.

These regulations specify the responsibilities of the Secretary and the States in administering the disability program. They prescribe standards for accuracy of performance and processing time that State agencies must meet in making disability determinations, and provide the administrative requirements and procedures SSA and the State agencies will follow in carrying out the disability determination function. Provisions are included specifying how SSA or a State may terminate the State agency's performance of this function.

The primary purpose of these regulations is to improve the quality of State agency performance in following our adjudicative criteria and to improve the timeliness of disability determinations. These regulations will afford the States maximum practicable management flexibility in meeting objectives.

These regulations do not meet the criteria for a major rule, as defined in Executive Order 12291.

DATE: These regulations will be effective June 1, 1981.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or William J. Ziegler, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7337 or 301-594-7415.

SUPPLEMENTARY INFORMATION: In order to obtain the public's views and comments before proceeding with these amendments, we published proposed rules for making disability determinations along with a Notice of Proposed Rulemaking in the Federal Register on January 16, 1981 (46 FR 4584). Interested persons, organizations, government agencies, and groups were invited to submit data, views, or arguments pertaining to the proposed amendments within a period of 60 days from the date of publication of the notice. We have carefully considered all the comments we received during the comment period. We have answered the issues raised in these comments later in the preamble.

**Federal-State Structure Before Public
Law 96-265**

The disability programs under title II and title XVI of the Social Security Act (The Act) were previously administered under a Federal-State mechanism having its origins in the disability freeze provisions of the 1954 Amendments to the Act. At that time, Congress specified that determinations of disability should be made by State agencies under agreement with the Secretary. Wherever possible the State rehabilitation agency was to be the contracting agency to encourage rehabilitation contacts by disabled persons and to take advantage of the medical and vocational expertise of those agencies.

Negotiated agreements were previously in effect for 54 State agencies for making disability determinations for claimants applying for disability benefits under title II and title XVI of the Act. The agreements covered all the States plus the District of Columbia, Puerto Rico, and Guam; in South Carolina there were separate agencies for the blind and the disabled.

Under these agreements the State agencies, on behalf of the Secretary of Health and Human Services, made determinations of disability on the basis of standards and guides issued by SSA. SSA paid 100 percent of the costs incurred by the States in performing this function. The State agency function included obtaining medical and vocational evidence from the applicant and his or her medical treatment

sources, and where necessary, arranging for one or more examinations of the applicant by specialists. Each determination of disability was made by a team consisting of a disability examiner and a physician on the State agency staff.

Section 221(a) of the Act provided that the determination of whether a person was disabled, and when a disability began and ended, would be made by a State agency under an agreement between the State and the Secretary and that, for purposes of the Act, determinations by the State are determinations of the Secretary. Section 1633(a) of the Act authorized the Secretary to make the same arrangements for title XVI purposes. Section 221(c) provided that the Secretary, on his own motion, could reverse the State's determination that a person was disabled, or could determine that a disability began later or ended earlier than the State had determined. In other important respects, the Act generally limited the Secretary's authority to make disability determinations. By precluding the Secretary from reaching a more favorable finding on a disability issue in reviewed cases, it gave the State what amounted to final authority in many cases for determining which applicants were disabled and, consequently, to a large extent how the SSA program was administered.

In 1976, the General Accounting Office (GAO) studied the effectiveness of SSA's management of the disability determination process in State agencies. GAO issued a report criticizing the quality and uniformity of the disability determination process. GAO recommended that SSA adopt a stronger and more active management role and that SSA revise the Federal-State agreements to clearly define the responsibilities of each party consistent with a uniform disability determination process. Papers prepared by the staff of the Subcommittee on Social Security for the use of the Committee on Ways and Means also recommended stronger Federal control.

The Federal-State model agreement was therefore revised. The revised model agreement reflected SSA's intentions to administer the program through standards, to take a lead role in assuring uniform training of State agency personnel, and to deal with those State practices that over the years had become impediments to effective administration.

SSA tried to get all the States to enter into the new agreement during the summer and fall of 1978, but

considerable resistance was encountered. The revisions in the agreement were viewed by various State officials and organizations as interfering with traditional State prerogatives to manage their own affairs. This concern is reflected in the fact that only 21 of 54 State agencies signed the new agreement.

Public Law 96-265—Section 304

General

Congress amended the Act to increase the Secretary's ability to influence State performance. The Secretary is required to establish, by regulation, whatever standards of performance and administrative requirements and procedures he considers necessary for the States to follow to insure effective and uniform administration of the SSA disability programs. Section 221(a), amended by Pub. L. 96-265, provides that beginning June 1981, disability determinations will be made by the State unless it notifies the Secretary, in writing, of its wishes to no longer make the determinations, and if the Secretary has not found that the State has failed to make determinations consistent with standards to be prescribed by the Secretary. Section 221(c) authorizes the Secretary to review State determinations and, based on the review, to make findings as to whether a person is or is not disabled and, if disabled, whether the disability began on an earlier or later date or ended on an earlier or later date than that determined by the State.

The amendments also provide that a State which wishes to discontinue making disability determinations or is found to be failing to make disability determinations as prescribed by standards, must continue to make the determinations for at least 180 more days. The Secretary is required to make the disability determinations thereafter. The Secretary is further required to develop and initiate a plan for the partial or complete assumption of a State's disability determination function if such a step becomes necessary. The plan must provide for the continuation of the disability determination function and for the protection of any affected State employees. The Secretary must give preference to capable State employees in filling appropriate employment positions, and may not assume a State's function until the State has made a fair and equitable arrangement to protect the rights of displaced State personnel (with some limited exceptions) not hired by the Secretary. (The Secretary of Labor will determine if this has been done.) The

Secretary is directed to advise the Congress of any amendments of Federal law and regulations needed to carry out the plan. A report containing the plan was submitted to Congress on November 20, 1980.

The amendment also place responsibility upon the Secretary to provide for the continued effective operation of the disability program in the event of the non-participation of one or more States. This is to be done with only limited time to prepare for the State's non-participation and the need to assure protection of the employment rights of the displaced State personnel before the Secretary can assume the State's function.

Specific Provisions of the Law Subject to Regulations

Public Law 96-265 eliminates the system of negotiated agreements between the Secretary and the States and requires the Secretary to establish, through regulations, the procedures and performance standards for the State disability determination function in whatever detail appears appropriate.

The law gives the Secretary broad discretion to determine, for example, what matters to regulate, in how much detail to regulate them, and whether to regulate or to issue "other written guidelines." The Secretary may regulate such matters as:

- The administrative structure and the relationship between various units of the State agency;
- The physical location of, and relationship among, agency staff units and other organizations performing tasks for the State agency;
- Standards for the availability to applicants and beneficiaries of facilities for making disability determinations;
- State agency performance criteria, including the rate of accuracy of decisions and the time periods within which determinations must be made;
- The procedures for and the scope of review by the Secretary and, as he finds appropriate, by the State, of its performance in individual cases and classes of cases;
- Rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function;
- Fiscal control procedures that the State agency may be required to adopt; and
- The submission of reports and other data, in such form and at such time as the Secretary may require, concerning the State agency's activities relating to the disability determination function.

Congressional Concerns

In its deliberation during the development of Pub. L. 96-265, Congress was aware of the problems in the existing Federal-State structure.

It felt that significant improvement in Federal management and control was necessary and that the amendments would strengthen the Federal role in how disability determinations are made in the State agencies.

Congress recognized the possibility that under Pub. L. 96-265 some States may decide not to participate under the program, or that the Secretary may determine that a State is not complying with the regulatory requirements promulgated under this legislation. It was concerned that there be adequate procedures to establish Federal administration if State administration ended for either reason. Two issues were of particular concern: the potential disruption of the ongoing determination process which could create hardship for disability applicants, and the positions of the State employees involved.

Congress concluded that the Department did not appear to have any extensive planning for Federal assumption of the State agencies' functions. Therefore, to stimulate planning for such a contingency, Pub. L. 96-265 required that the Secretary submit to Congress a detailed plan of how the Secretary expects to assume the functions and operations of a State disability determination function should it become necessary. The plan is to assume the uninterrupted operation of the disability determination process, including the utilization of the best-qualified personnel to carry out this function. Congress also required that the Department give a preference in hiring to the best-qualified State employees so that they would not be substantially disadvantaged in transferring to Federal employment, in the event that a State quits or is terminated for poor performance. A report containing the detailed plan was submitted to Congress on November 20, 1980.

Basic Considerations for Assuming State Functions

If a State chooses to stop making disability determinations, or if the Secretary finds it necessary to assume the function because a State fails to meet the standards, several legislated requirements and responsibilities will govern the Secretary's action.

A. Requirements

Public Law 96-265 imposes four conditions on the Secretary's

assumption of the disability determination function. These are:

1. The Secretary must assume the disability determination function no earlier than 180 days after a finding that the State is substantially failing to make disability determinations consistent with the statute and regulations or after receipt of a State's notice of its intentions to stop making disability determinations;

2. The Secretary's assumption must be made without any interruption in services to the residents of the State;

3. The Secretary must, in filling appropriate employment positions, give hiring preference to State agency employees (with some very limited exceptions) who are capable of performing duties in the disability determination process for the Secretary; and

4. The Secretary may not assume a State's function until after the Secretary of Labor has determined that the State has made fair and equitable arrangements under applicable law to protect the interests of those State agency employees who will be displaced from their employment on account of the Secretary's assumption and who will not be hired by the Secretary.

B. Responsibilities

When the Secretary has determined that a State agency's function must be terminated or when a State decides to stop making disability determinations, the Secretary of HHS, the State, and the Secretary of Labor must fulfill certain responsibilities.

1. The Secretary of HHS's responsibilities are to:

a. Begin making disability determinations no sooner than 180 days after notice that a State agency's disability determination function will end;

b. Develop and initiate procedures to give hiring preference to State agency employees who are capable of performing duties in the disability determination process; and

c. Insure that the Secretary of Labor has determined that the State has made fair and equitable arrangements for any State agency employees who will be displaced by the assumption and who will not be hired by the Secretary.

2. The terminating State's responsibilities are to:

a. Continue making disability determinations for not less than 180 days after a termination notice, or until the Secretary has fulfilled his responsibilities; and

b. Make fair and equitable arrangements to protect the interests of State agency employees who will not be

hired by SSA. Employees' interests must be protected in accordance with applicable Federal, State, and local statutes.

3. The Secretary of Labor's responsibility is to determine that the State has made fair and equitable arrangements for protecting State personnel.

State Involvement in Development of the Regulations

In January 1980, SSA convened a two-day work group meeting of SSA central and regional office and State personnel to give us their views on developing the performance standards required by the disability bill. This work group developed some tentative guides for such performance standards.

During the summer of 1980, SSA invited to the headquarters in Baltimore, all of the Disability Determination Services (DDS) administrators, and in a series of four meetings, plans for issuing regulations under Pub. L. 96-265 were discussed. These were meetings in which the DDS administrators had an opportunity to comment on the general direction of our plans and to offer specific suggestions for the scope of the regulations. The reactions of these State administrators were considered in developing the regulations, and a number of significant changes resulted from their recommendations.

Our Basic Implementation Approach

It is our intention to use these regulations and the statutory authority derived from Pub. L. 96-265 to improve the overall administration and delivery of the disability program. We will accomplish these improvements by:

1. Setting a targeted level of performance that we will work toward;

2. Creating a system of intermediate goals to serve as stepping stones to progress towards our targeted level of performance;

3. Establishing a threshold level clearly defining the lowest level of acceptable performance by a State agency;

4. Setting forth those actions that we will take to make sure unacceptable performance does not continue; and,

5. Establishing administrative requirements that will provide the States with management flexibility, establishing the framework for the Federal-State partnership, and at the same time, allow us to retain our program stewardship responsibilities.

The regulations use standards as the means to improve the disability determination process.

We will specify the outcome expected. We will carefully monitor the States'

disability determination process in terms of performance accuracy and processing time. The States will have control over management of their operation as long as performance is adequate under the standards which we set.

If a State's performance becomes unacceptable, these regulations provide for Federal involvement in the State's activities in making disability determinations for the purpose of improving the State's performance. We have a responsibility under the law for seeing that the disability programs are efficiently and equitably administered. If, even after our assistance, a State's performance is not adequate, we will take action to take over the disability program from the State.

While we are using regulations to establish national standards for performance accuracy and processing time, we will also be considering establishing standards for cost and other factors including incentives and disincentives. We will continue to assure the fiscal integrity of the States' operations through the budget process. Individual State budgets, including the goals they are expected to achieve, will continue to be negotiated on the regional level and in the manner we require. The objective of negotiations will be to determine a level of funding within available resources that will be perceived by Federal and State officials as sufficient to meet standards and stated goals. The negotiated budget is an integral part of the decision of setting goals. States will be expected to meet standards and goals within the negotiated budget.

The Target Level

We have developed target levels for State agency combined title II and title XVI initial accuracy, title II initial processing time, and title XVI processing time. The values selected for the target levels represent a difficult challenge but are designed to reflect what we believe to be a level of performance and service delivery that we should constantly strive to attain.

Intermediate Goals for State Performance Between the Target and Threshold Levels

We will establish intermediate performance goals between the threshold standards and the target standards in order to assure continued movement toward our targeted level of performance. We see these goals as essential to improving the overall performance of State agencies. This will therefore be an area of continuing

concern to us. After negotiating with each State agency, our regional offices will annually establish a new set of individual State agency goals to help them move from current levels of performance to target levels. Failure to meet these intermediate goals will not be cause for considering a State to be substantially failing to comply with the regulations. However, such failure will be a matter of concern to us. It may result in our urging the State to take corrective action and accept our offer of technical and management assistance.

The Threshold Levels

We are also establishing threshold levels for State agency performance accuracy and processing time. These are minimum acceptable levels for combined title II and title XVI initial performance accuracy, title II initial processing time, and title XVI initial processing time. We established the threshold levels for processing time and performance accuracy by using the national mean and applying a measurement of one standard deviation from the mean. (A standard deviation is a mathematical way of measuring the variability of items around an average.) Data from the fiscal year ending September 30, 1979 was used to establish the levels. Falling below these threshold levels will be unacceptable and will mandate appropriate action on our part to improve the situation. These actions are set forth in §§ 404.1650 and 416.1050. We will reexamine the threshold levels annually, but we will not make changes or modifications automatically. Instead, any decision to adjust the prevailing threshold standards will be made based on current State performance, procedural changes, systems modifications and resources.

In making any changes in the threshold levels we will continue to use the mean and standard deviation approach. In §§ 404.1640 through 404.1650 and in §§ 416.1040 through 416.1050, we explain how the threshold standards are used by us in evaluating State performance.

Determining Performance Accuracy

"Performance accuracy" refers to the reliability of State agency adjudication. In determining a national standard for State agency performance accuracy for purposes of section 304, we consider not only whether disability decisions are right or wrong for payment, but also whether the claims have all the desired evidence and whether all factors contributing to a sound decision were considered. Accordingly, the percentage of cases that can be processed without

being returned to the State agency for further development or for correction of decisions based on evidence in the file represents the State agency's performance accuracy rate. The State agency's original decision is not changed in the majority of cases that are returned for additional development.

Errors in performance accuracy identified by the quality assurance system should not be interpreted as exclusively reflecting decisions that either incorrectly deny or award benefit payments. Since the quality assurance system measures factors that have the potential for impacting decisions as well as the correctness of the decisions, the rate of incorrect decisions is significantly lower than what is reflected in the standards cited in these regulations. Nevertheless, we believe we must measure accuracy using a higher standard than correct decisions.

Our most current data indicates that with a national level of performance accuracy of about 93 percent the rate of correct decisions is approximately 97 percent. Since decisional accuracy is tied to performance accuracy, the system we are establishing, to use goals and standards to improve performance, will also improve decisional accuracy. We estimate that our target level of 97 percent performance accuracy will yield a decisional accuracy rate of 99 percent.

Performance Accuracy Threshold Level

The national performance accuracy threshold level was established using fiscal year 1979 State-by-State title II and title XVI performance accuracy rates for disability determinations at the initial (first) level of adjudication. These data were obtained from the Disability Quality Assurance System. A combined Title II and title XVI national mean and standard deviation were calculated together. Separate calculations were not made for each title as they were for processing time. The national mean was formulated using the individual State agency fiscal year 1979 performance accuracy rates. The title II initial performance accuracy rates and the title XVI initial performance accuracy rates were statistically weighted by workload size for each individual State agency. A national mean was then computed for combined title II and title XVI initial performance accuracy. The combined title II and title XVI initial performance accuracy national mean for fiscal year 1979 resulted in a rate of 92.5 percent. The standard deviation was calculated and resulted in a rate of 1.9 percent.

The threshold level for State agency performance accuracy has been established at one standard deviation below the national combined title II and

title XVI initial performance accuracy mean. This threshold level was set after considering historical trends in State agency performance accuracy, past performance, and statistical theory. In addition, the selection of the threshold level was dependent upon our staffing and fiscal capacities for providing necessary technical and management assistance to State agencies whose performance is likely to fall below the threshold levels. Applying the one standard deviation measurement to the fiscal year 1979 national combined title II and title XVI performance accuracy mean, the threshold is 90.6 percent for combined title II and title XVI initial performance accuracy.

Determining Processing Time

State agency processing time for title II initial disability claims is the average number of days from the time the State agency receives the claim until the determination is put into the Social Security Administration Case Control System (SSACCS). Saturdays, Sundays, and holidays are counted.

State agency processing time for title XVI initial disability claims is the average number of days from release of the claim by the social security district office to the State agency until the determination by the State agency is put into the Supplemental Security Income Case Control System (SSICCS). Saturdays, Sundays and holidays are counted.

Determining Processing Time Threshold Levels

Processing time threshold levels were formulated using fiscal year 1979 State-by-State title II and title XVI mean processing time data for disability determinations at the initial (first) level of adjudication. These data were obtained from the Social Security Administration Case Control System (SSACCS) for title II and the Supplemental Security Income Control System (SSICCS) for title XVI. National means and standard deviations were calculated separately for title II and title XVI from these data. The national means were calculated using two steps.

First, the fiscal year 1979 mean processing time was established for each State agency by taking the average of the 12 monthly State agency processing time means. Then, the average of the individual State agency means was calculated to produce the national mean. This two-step process was applied separately to title II data and on title XVI data and resulted in the following national means:

Title II initial processing time—43.2 days.

Title XVI initial processing time—54.3 days.

The standard deviations for initial title II and title XVI fiscal year 1979 processing time data were calculated using established statistical techniques and resulted in the following:

Title II initial processing time—6.3 days.

Title XVI initial processing time—7.6 days.

The threshold levels for State agency processing time have been set at 1 standard deviation above the fiscal year 1979 national mean processing time. This decision was based on past State agency processing time, historical trends in State agency processing time, and statistical theory. In addition to mathematical and statistical considerations, the 1 standard deviation level was established based on our fiscal and staffing capabilities for providing necessary technical and management assistance to State agencies whose performance is likely to fall below the threshold levels. Applying the 1 standard deviation measurement to the fiscal year 1979 national processing time means, the thresholds are as follows:

Title II initial processing time—49.5 days.

Title XVI initial processing time—57.9 days.

The title XVI processing time threshold was reduced by 4 days to account for a computer systems modification which was activated in May 1979. This change stopped the measurement of State agency processing time when a State agency presumptive disability determination was put into SSICCS, rather than when the final decision was made. (A finding of presumptive disability is made before obtaining the evidence needed for a final determination when there is a high degree of probability of disability on the basis of the evidence available at the time.) After extensive study, it was determined that this modification lowered State agency title XVI initial mean processing time by 4 days on the average.

Target Levels and Intermediate Goals

Target levels represent the highest level of performance and service delivery presently achievable. They will, by their very nature, challenge nearly all agencies to improve. Each year each State is expected to make progress toward the target. The extent of progress will be negotiated annually on the regional level as part of the State agency budget process.

Other than the annually negotiated goal, there is no time frame for meeting the target. States will always be constrained by workloads, availability and competency of staff, and available money.

Technical and Management Assistance

We will do ongoing monitoring to evaluate State agency performance of combined title II and title XVI initial performance accuracy, of title II initial processing time, and title XVI initial processing time. The monitoring will allow us to determine whether a State agency needs technical and management assistance. A State agency will be provided mandatory assistance if it fails to meet two of three established threshold levels (one being accuracy) for two consecutive quarters. Failure to meet any one of the threshold levels for 2 consecutive quarters may result in mandatory technical and management assistance.

A State agency will be offered optional technical and management assistance when (1) our regular monitoring reveals State agency performance has significantly declined although not so low as to require mandatory assistance or (2) the State agency is failing to meet intermediate goals. We will offer optional assistance at our discretion based on our available resources. The technical and management assistance we will give a State agency is explained in §§ 404.1661 and 416.1061.

Substantial Failure

If a State agency substantially fails to make disability determinations consistent with the Secretary's regulations and other written guidelines, Pub. L. 96-265 requires the Secretary (after giving the State notice and an opportunity for a hearing) to make the disability determinations.

Our approach will be to closely monitor and evaluate State agency performance of title II and title XVI performance accuracy, title II processing time, and title XVI processing time. If a State agency is falling below 2 of the 3 threshold levels (one of which must be accuracy) for 2 consecutive quarters, we will provide technical and management assistance to the State agency for up to 12 months. After the assistance period, the State agency will have a 3-month adjustment period. After the adjustment period, if the State agency again falls below 2 of the 3 threshold levels (one being accuracy) in 2 consecutive quarters, during the next 12 months, we will notify the State that the State agency is in danger of being found to be in substantial failure and give the State

an opportunity for a hearing. If it is found that the State substantially failed to comply with the regulations and written guidelines, the Secretary must take over the disability determination function. We are considering expanding the concept of "substantial failure" to include compliance with standards other than those relating to accuracy and processing time. We explain "substantial failure" in more detail in §§ 404.1670 through 404.1675 and in §§ 416.1070 through 416.1075.

Right to Hearing

We will notify a State that we are proposing to terminate its performance of the disability determination function if it is substantially failing to make disability determinations consistent with our regulations. The State will have an opportunity for a hearing before any termination. The hearing will be conducted as described in §§ 404.1680 through 404.1683 and in §§ 416.1080 through 416.1083.

Administrative Requirements and Procedures

Basically, our implementation approach is to specify certain performance results and let the States perform through their best management procedures with minimum Federal involvement as long as their performance is acceptable.

Accordingly, we are regulating administrative areas only to the extent necessary to insure effective stewardship of the disability program. This is a significant shift in our administrative relationship with the States under the agreements. We explain administrative requirements and procedures in §§ 404.1620 through 404.1633 and in §§ 416.1020 through 416.1033. Specifically, here is what we are proposing to do, and not do, in the regulations with respect to the various administrative areas that have to be addressed.

Adjudication

The State will make disability determinations in initial, reconsideration, and continuing eligibility cases under the various provisions of the Act.

A State disability examiner and medical consultant team will make these determinations. However, we do not propose regulating the types of positions to be established beyond the adjudication team.

In making determinations, the State will use our forms and procedures and adhere to the policies we may require to insure uniform and effective

administration of the disability program throughout the United States.

However, we are not proposing to regulate the internal case flow procedures except where they appear to contribute to unacceptable performance by a State.

Organization

The State will be expected to provide an organizational structure, sufficient qualified personnel, medical consultative services, and a quality assurance function that will result in timely processing and accurate decisionmaking of disability claims. We will not impose requirements, either through regulations or other directives, for a specific organizational structure unless State performance approaches unacceptable levels. We also do not propose to regulate the place in the State hierarchy of the State agency, or the relation of the State agency to other components in State government. The State will be responsible for producing an accurate and timely disability decision.

Personnel

In general, the State will be responsible for establishing positions, recruitment, selection, tenure, compensation, and staff development policies. The State will insure an acceptable level of competency of all employees through selection, ongoing training and staff development. However, we will provide technical training materials. We will become further involved only when State performance approaches unacceptable levels, or where the State requires complex instructional or training materials or the capacity of the State to deliver adequate training is in doubt. The State will make personnel available to attend meetings or conferences as may be necessary for furthering the purpose of the disability programs. The State must comply with equal employment opportunity directives in making disability determinations as specified in executive orders or the Code of Federal Regulations.

To the extent that Federal funding is available, the State will contribute to the processing of disability claims by avoiding, to the extent feasible and permissible under State law, personnel freezes, restrictions against overtime work, or other curtailment of facilities or activities.

Facilities

To the extent that Federal funding is available, the State will provide space, equipment, supplies and other services as will contribute to the timely and

accurate processing of disability claims. The State will determine the locations where disability determinations are to be made. However, the State will provide the Secretary with access to the premises for the purpose of inspecting the work and activities required by these regulations. We will always give the State reasonable notice of the times of our visits.

Medical and Other Purchased Services

The State will determine the rates of payment to be used in arranging for medical or other examinations necessary to make determinations of disability. These rates should be designed to aid in the procurement of needed services but may not exceed the highest rate paid by Federal or other agencies in the State for the same or a similar type of service. The State will maintain documentation to support the rates of payment it uses.

Records and Reports

The State will furnish schedules, financial and cost reports, and other reports relating to the administration of the disability program that we may require. Records relating to the work being performed under these regulations will be retained by the State for a period of time specified by us. We will have access to these records for purposes of monitoring, research and development, and audit.

Research and Demonstration Projects

We will request State participation in federally funded research and demonstration projects to assess the effectiveness of the disability program and to ascertain the effect of program policy changes. Where we determine that participation is necessary for the project to be complete, e.g., to provide national uniformity in a claims process, State participation will be mandatory.

Fiscal

We will provide the State with funds in advance or by way of reimbursement for necessary costs incurred by the State in making disability determinations under these regulations. The State will submit estimates of anticipated costs for the periods, and at the time and in the manner we may request. After considering all pertinent information, we will notify the State of the amount which will be made available to it for the period, as well as what anticipated costs are being approved. The State will not incur or make expenditures for the period for items which we do not approve, or in excess of the amount we certify as available.

After the close of a period for which funds have been certified to the State, the State will submit a certified report of its actual expenditures. We will inform the State by audit whether expenditures were necessary and proper under standards in effect at the time expenditures were made or incurred. The standards may be found in subpart 1-15.7 of part 1-15 of the Federal Procurement Regulations (41 CFR 1-15.7) and in the Disability Insurance section of the Program Operations Manual System (POMS).

Any monies we pay to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United States.

Considerations in Developing Standards

Performance Standards

Our primary considerations are related to fostering improvement in the adjudication process. In developing performance threshold levels, we took a middle of the road approach. We considered setting the threshold higher, but rejected it as imposing an unrealistic demand on States in the beginning stages of our changed relationship with the States. We also considered setting the threshold low, but dropped the option as doing little more than reinforcing the status quo. Our middle of the road approach will mean providing technical and management assistance to possibly 13 States with 2 of them likely to be in substantial failure.

Administrative Standards

Again our approach is moderate. We have elected to regulate only to the extent necessary to insure the Secretary's responsible stewardship and foster effective and uniform administration of the program. The proposed regulations on travel, training, access, records and reports, fiscal, and research and demonstration projects are examples in point.

We decided not to regulate specifically in more areas as inconsistent with our objective of giving the States management flexibility. On the other hand, we opted against regulating less specifically as failing to carry out our statutory mandate to assure effective and uniform administration of the disability insurance program throughout the United States.

Public Comments

We published proposed rules for making determinations of disability along with a Notice of Proposed Rulemaking in the Federal Register on

January 16, 1981 (46 FR 4584). We asked interested persons, organizations, government agencies, and other groups to give us their views, data, arguments, and evaluations within a period of 60 days. The comment period closed on March 17, 1981.

In the preamble of the Notice of Proposed Rulemaking (46 FR 4589), we invited comments from the State administrators and State employees now involved in the disability programs, employee unions, law and legal service groups, the disabled population and the organizations which represent them, and the public at large. As part of our outreach efforts, we mailed copies of the proposed rules to national organizations and asked them to give us their comments. Our mailing list included the State agency administrators of the 54 State agencies responsible for making title II and title XVI disability determinations, State agency directors responsible for overseeing the activities of the disability determination services (DDS) in the various State agencies, and the Council of State Administrators of Vocational Rehabilitation. In addition, copies were mailed for comment to national organizations representative of disabled persons, their advocates, and service providers as well as to law and legal service organizations.

We received comments from twelve individual State administrators and from the National Association of Disability Examiners on behalf of its members. These are the people directly affected by the proposed regulations.

We received no comments from disabled persons individually or organizations that represent them exclusively. We did receive comments from two national legal organizations, including a subcommittee of the American Bar Association, and legal services groups in seven States who represent the disabled among their clientele.

Overall, State agency administrators and disability examiners support our proposed approach. State agency administrators commented: "SSA's general philosophy of requiring a high level of performance from State agencies while not substantially interfering with State management function is sound", "this approach should offer the best opportunity for improving the uniformity and timeliness of adjudication while preserving the State/Federal partnership", and "the proposed rules are a positive step in the right direction." On the other hand, the State agency administrators urged that the regulations recognize the need for a State-run quality assurance system, questioned the data we would be using

to measure State performance, and voiced fears that neither the State nor the Federal Government would provide the resources they needed to meet the proposed performance objectives. The professional association of disability examiners commended us "on an excellent effort to write regulations administering the disability determination function" and, further, "in practically all instances, we do not have any disagreements with the proposed regulations." They did request, however, that the professionalism of the disability examiner be recognized in the regulations. They also expressed concern that employees not be disadvantaged in the event of a Federal assumption of the disability determination function. Further, they urged that the regulations demand more of the State in assuring a working environment of adequate staff and facilities conducive to delivery of a high level of service to the claimants.

The two national legal organizations and the legal services groups, while supporting our intentions, have misgivings about whether our regulations will in fact improve the quality of the decision making process. Quoting the experience of their members in representing disabled claimants, these groups cite the high reversal rate upon appeal as indication of poor development and decision making by the State agencies. They question the quality of the medical evidence purchased by the State, the perceived reluctance of the State to develop the claim fully, and delays in claims processing. They see our proposed performance standards as unresponsive to these problems.

Because Pub. L. 96-265 requires the publication of final regulations in the *Federal Register* by June 1, 1981, we had to limit our consideration to comments which were received by March 17, 1981, the date the comment period closed. However, all the comments which we received after that date, as well as any additional comments which we may later receive, will be carefully evaluated for the purpose of considering possible future revisions in these regulations. Any future revisions we make of a substantive nature will be published in the *Federal Register* with another Notice of Proposed Rulemaking with another opportunity for the public to comment.

In drafting these regulations we had certain objectives in mind:

To improve disability determinations so as to pay benefits only to people properly entitled.

To improve the timeliness of disability determinations.

To improve the management of the disability program both at the State and Federal levels.

To avoid, where possible, increasing administrative complexity and costs.

To preserve the basic Federal/State relationship.

These objectives also guided us as we evaluated the comments received from the public. Some of the comments were not germane to these particular regulations. These comments are not addressed in the preamble. Other comments are condensed, summarized or paraphrased. However, we have responded to each of the issues raised in comments that are germane to these regulations. Of the comments that were germane, some involved hard choices between competing objectives.

For ease of comprehension and for perspective, we have grouped comments according to the issues raised. The issues and our responses are presented in the order in which the regulations are organized.

General Provisions

Issues

Four writers suggested revising the basic responsibilities for SSA and the State. One said there appears to be an imbalance of responsibilities, with the State having the greater responsibility. The same writer said that many of the requirements are vague and ambiguous and should be clarified, especially the State's responsibility for providing adequate facilities and qualified staff. One commenter said that the regulations should contain an absolute requirement that we consult with States before we issue any regulations or guidelines. A writer said that the regulations should provide that SSA should not arbitrarily increase its review of a particular State agency. Another writer said that the responsibility for States to treat all applicants equally and courteously should be deleted because it is subject to broad interpretations and opens the door for litigation against State agency personnel.

Response

Since the purpose of these regulations is to provide rules by which States will carry out the disability determination function, it is necessary that the States be advised of these responsibilities and what is expected of them. We have purposely avoided defining in great detail the administrative requirements and responsibilities of State agencies. Our objective is to specify the outcome we expect to achieve by setting

performance accuracy and processing time standards.

We believe that as long as State agencies meet these standards, we do not need to define State agency administrative responsibilities in detail. This we feel can best be left to each individual State agency.

We have not deleted the State responsibility to treat all applicants and beneficiaries equally and courteously. We believe we have the obligation to give fair and equal treatment and courteous service to the public, and States must share in this with us.

Except in some very limited circumstances, we do not issue regulations without giving the public and State agencies an opportunity to comment before the regulations become final. We will always endeavor to discuss significant changes in guidelines with State agencies and to get their advice before issuing the guidelines. However, in some situations, it may be impractical or impossible to consult first with the State agencies. In these situations, we will generally request State agency comments as soon as possible after the guidelines are issued. A determination that there is a need to increase our review of any particular State agency will be based on its performance and will be carried out only to the extent necessary to fulfill our responsibilities under these regulations.

Responsibilities for Performing the Disability Determination Function

Issues

One commenter said that State agencies should assist applicants with their applications and consolidate eligibility determinations for all related benefits such as those available under titles XIX and XX. This commenter said that application forms should be changed so that persons applying for SSI should not have to file separate forms for Medicaid. Another commenter said there should be a procedure that allows the claimant or his or her representative to have a voice in selecting the physician to be used where additional medical examinations are required in the development of evidence for a claim. This commenter also said that State agencies should be required to share all medical evidence contained in a claim with the claimant's representative and provide opportunity for the representative's comments before a determination is made on the disability question.

Two writers said that these regulations should contain a provision, such as is now contained in the agreements between SSA and the State

agencies, that the State agencies shall not assume any responsibility for defending in court any determination made under these regulations.

Response

We have not adopted the recommendation that State agencies should consolidate eligibility determinations for other benefits. This is clearly beyond the role cut out for State agencies making disability determinations under titles II and XVI. However, our district offices do perform a referral service and provide basic information to claimants on related benefits and eligibility requirements for other programs as well as the location of offices for those programs. The district office also alerts State welfare agencies about claimants found eligible for SSI benefits and provides some limited information about the claimant. This helps the State determine who may be eligible for Medicaid and other State administered benefits. The district office notifies claimants who are not found eligible for SSI payments that they may still qualify for Medicaid and where they should apply. While State welfare agencies may adopt some of our decisions, for their program purposes, it is not feasible at this time to combine application forms for SSI and Medicaid. One difficulty is that Medicaid is administered by the States based on their own eligibility requirements.

We also have not adopted the suggestion that these regulations require State agencies to use examining physicians selected by claimants or their representatives whenever additional medical examinations are required. We believe that our present written guidelines are adequate to assure the most objective evaluation of the claimant's condition that is practicable. These guidelines now provide that an examination should be purchased from a physician who in the State agency's judgment is qualified and has agreed to perform these examinations. If the claimant objects, the state agency will attempt to comply with his or her wishes and attempt to schedule the examination with another physician that is acceptable to the State agency and the claimant.

We have not adopted the suggestion that a State agency should be required to share all the medical evidence with a claimant's representative before a disability determination is made since the writer's concern is accommodated by other regulations. Regulations (§§ 404.1710 and 416.1510) provide that a claimant's representative has the right to examine all the evidence the State agency has obtained, to submit any

additional evidence and to comment on the evidence. The State agency considers all the evidence and any comments made on the evidence in determining whether the claimant is disabled or blind.

We have changed §§ 404.1615 and 416.1015 of the regulations to show that the State agency is not responsible for defending in court determinations made, or any procedures for making determinations, under these regulations.

Administrative Responsibilities and Requirements

Issues

One commenter stated that SSA should specify in the regulations where within the organization of the State government the disability function should be located and how it is related to other entities within the State government. Another commenter stated we should impose organizational requirements on a State only if the State's performance falls below threshold levels. Several commenters indicated that the regulations should require States to have a quality assurance system. Some went on to indicate that the regulations should mandate the system, the staffing, and the funding for this function.

One commenter felt we should specify the minimum qualifications for disability examiners to enhance their professional standing. Several commenters stated that a person qualified to interpret and evaluate medical reports should be referred to as "disability examiner," "professional nonmedical disability examiner," or "professional disability examiner." One commenter stated we should establish minimum qualifications for State agency vocational experts similar to those described in the Bureau (now "Office") of Hearings and Appeals manual and establish standards for their use. One commenter stated the term "medical consultant" in our regulations should be changed to "qualified consultant" to recognize that nonmedical consultants, including psychologists, who are licensed or certified under State laws are qualified to make certain types of disability determinations.

One commenter indicated that many of the requirements imposed on the States relating to adequate facilities and qualified staff are vague and ambiguous and should be clarified. A commenter stated SSA should be continually involved in workshops and seminars for examiners, medical consultants, and technicians, not just when a State's performance approaches an

unacceptable level. Another said that State participation in research and development projects should be mandatory only when all States need to be involved in the project to provide national uniformity in the claims process. Another commenter stated that participation in research and development projects should be negotiated with the States, taking into consideration their workload and other problems.

Response

Our basic objective is to regulate only to the extent necessary to assure effective and uniform administration of the disability program throughout the United States. That objective can be met by specifying the results we wish the States to achieve instead of imposing a lot of rules on the States. As long as the States are able to achieve these results, they should be free to control the management of their operations, including organizational level, status, types, and number of staff and staff qualifications. Specific organizational requirements should be imposed on States only when they require the technical and management assistance described in these regulations. We have clarified the requirements accordingly. We agree that requiring the States to provide a quality assurance (QA) functions will contribute to effective and uniform administration of the disability program nationally. We therefore have revised §§ 404.1603(c)(2), 404.1620(a), 416.1003(c)(3) and 416.1020(a) to add a quality assurance function as a State responsibility. We did not, however, prescribe the internal design of the QA function or its staffing and funding since that would be counter to our basic objective.

The same is true for establishing minimum qualifications for disability examiners and for State agency vocational specialists in the regulations. We agree to use the term "disability examiner" and we have changed §§ 404.1615 and 416.1015 accordingly. We agree that licensed or certified psychologists may be qualified to determine the nature and severity of mental impairments. We considered permitting psychologists to serve as reviewers in the same manner as licensed physicians. However, because of the limited number of cases where the issues are clearly restricted to mental impairments, the use of psychologists as members of the State agency's review team would not be administratively feasible.

We will not prescribe what constitutes adequate facilities and qualified staff for any State so long as

the State's performance meets the standards we set within the fiscal resources we provide after negotiations with the States. This is in keeping with our objective to regulate only to the extent necessary.

The regulations do not need to be revised to permit us to offer workshops or seminars for disability examiners, disability technicians, and medical consultants on a continual basis.

In conducting research and development projects SSA needs the flexibility to select the study design and prescribe the States it wishes to participate so that the most efficient and cost-effective studies can be undertaken. We will consider workload status and the unique problems of a State in selecting States to participate but cannot guarantee that any specific State will not be included in the project. We will also consider providing needed assistance where we agree mandated participation may jeopardize the State's ability to meet threshold levels or negotiated goals.

Medical Development and Evaluation

Issues

Several writers commented on matters relating to medical policy, the payment for travel expenses to medical examinations, and physician fees. One commenter questioned the absence of regulations requiring the State to document all aspects of a person's disability. Other commenters felt that certain travel expenses of claimants should be covered in these regulations; that the State's obligations concerning their medical and travel expense requirements, including notification of claimants of the availability of funds and the mechanisms for payment, should be spelled out; that the State should maintain records to support the rates of payment it uses for each service; and the State budget estimates should include anticipated costs for each service to be purchased and an estimate of the amount (e.g., hours) of service it would purchase. Another writer recommended that we require States to establish rates of compensation sufficient to attract the active participation of competent and accomplished professional personnel, both salaried staff physicians and consultants.

One writer wants us to clarify when SSA can obtain evidence from claimants or special arrangement sources "adequately" and more "readily" than the State agency. Another writer believed "or" should be changed to "and" in §§ 404.1614(a) and 416.1014(a) so as to avoid the impression that the

State is restricted in collecting evidence for disability determinations to either the claimant or other sources but not both.

Several commenters recommended that we institute some procedure for assessing the performance of consulting physicians. One said we should impose a quality control on these physicians along the same lines as the performance accuracy standards for State agencies in these regulations. These commenters felt that there are physicians who devote an inordinate amount of their practice to performing consultative examinations for the State agencies and who submit reports that do not reflect the claimants' true medical conditions.

Response

The medical documentation requirements are fully covered in other regulations (Subpart P of Part 404 and Subpart I of Part 416 of this Chapter) and in written guidelines. Regulations covering claimants' travel expenses are being developed. Meanwhile States do have written guidelines relating to payment for travel expenses including notifying claimants that they may be reimbursed and how they are to obtain reimbursement.

Payment rates are established for each medical service. Generally, these rates are comparable to rates paid by other government and private users of similar medical services and are adjusted as necessary. Detailed budget estimates for each service are not required to determine State funding needs for purchasing medical services and would be administratively burdensome. The States set their rates according to the costs of medical services in the State and in conformance with State law and regulations governing expenditures for these services. If a particular provider's services are unsatisfactory, the use of that provider is discontinued. Overall, this system has worked successfully and State-set rates are generally adequate to ensure the participation of sufficient numbers of competent professional personnel.

In some instances, we can obtain "adequate" evidence more "readily" than a State. This usually occurs when an SSA district office has an ongoing working relationship with a medical source or when a claimant wishes to submit evidence directly to SSA when he or she files a claim. This permits more timely disability decisions, lowers costs, and improves the overall disability process. The work "or" has not been changed to "and" in §§ 404.1614(a) and 416.1014(a) because

an "either-or" choice is not intended. The State agency may secure evidence from any source it considers appropriate.

We do not believe the performance of consulting physicians requires regulation by us. Our experience clearly indicates that overall the State agencies are maintaining effective relationships with the State medical community. We have been getting objective evaluations from consulting physicians. Further, State agencies overall are effectively monitoring the quality of the consultative examinations purchased by them. If commenters have evidence of improper medical consultant practices they should submit this evidence to the State agency.

Target and Threshold Levels of Performance

Issues

Several commenters said that a standard for processing time was as important as accuracy as a measure of State performance. Other commenters raised questions about how we established the target and threshold levels of the performance standards. One stated that setting the threshold levels at one standard deviation from the national mean for accuracy and processing time would condone mediocrity and continuing to use one standard deviation from the mean when threshold levels are adjusted perpetuates that mediocrity. On the other hand, another commenter criticized using the mean and standard deviation to adjust the threshold levels annually because he believed 16 percent of the States would always fall more than one standard deviation below the mean. Using fiscal year 1979 data as the base year to establish the levels was questioned because it does not take into account significant program changes since that time and because 16 percent of the States will not meet the threshold levels even if the States are able to maintain the performance levels attained in 1979.

Two writers said that these regulations do not motivate the States to meet the target levels. One suggested that incentives be established to encourage States to meet or exceed performance standards. The other suggested establishing a time frame for meeting the target levels. Another writer said that a legislative change would be needed to adjust the threshold and target levels and the writer suggested that the regulations allow for an annual review of the proposed performance levels by State and Federal components. Another commenter noted that the

regulations do not require that the threshold levels be strictly complied with and suggested we apply a "substantial performance" concept to performance standards. Use of the term "drive" on page 4586 of the preamble to the proposed rules was objected to because of the implication that the States want or need to be driven toward continued improvement.

Response

Because the thrust of the legislation which these regulations reflect is the enhancement of the accuracy and consistency of disability determinations, we believe we must emphasize improved accuracy over processing time as the more important objective of the performance standards. The quality or accuracy of the determinations is the primary thrust of the legislation. We believe that our concern with accuracy directly reflects Congressional direction to improve the quality of determinations and ensure that claimants throughout the nation will be judged under the same uniform standards and procedures. Nevertheless, we are very much concerned with improving processing time. Much of our effort will be in working with the States to achieve better processing time without sacrificing the accuracy of the decisions.

We established the threshold levels for accuracy and processing time using a national mean and standard deviation approach for two reasons. First, the mean is a level of performance that experience shows the "average" State to be capable of attaining. Second, we believe one standard deviation below the means as a measure of a *minimum* level of acceptable performance is reasonable. Performance below one standard deviation level cannot be tolerated and will cause Federal involvement in the form of technical and management assistance, and if performance does not improve after assistance, a finding of substantial failure. These are serious and potentially expensive measures. In keeping with our objectives to avoid increasing administrative costs and preserve the Federal-State structure, we will take these steps only when necessary. Moreover, the regulations provide intermediate performance goals to ensure progress toward target level performance. We clarified §§ 404.1641 and 416.1041 of the regulations to point out that these goals are established by the SSA regional commissioner after negotiation with each State. Failure to meet these intermediate goals is not a cause for considering the State to be substantially failing to comply with the performance standards. However,

failure to meet these goals may result in the offer of technical and management assistance.

We will reexamine the threshold levels annually and we will use the mean and standard deviation approach. However, the regulations do not bind us to use this specific approach or to apply a measurement of one standard deviation or any other standard deviation measurement.

There are 3 separate threshold levels of performance and the performance measurement period is for 2 consecutive calendar quarters. Even if we use the one standard deviation measure to adjust the threshold in future years, it does not mean that 16 percent (or any other given percentage) of the States would always fall below 2 of the 3 threshold levels. While this could occur in any one quarter for any one of the 3 threshold levels, the great majority of the States will not fall below 2 of the 3 threshold levels for 2 consecutive calendar quarters. We compared State performance in fiscal year 1980 to fiscal year 1979 performance and found that the number and mix of States falling below the threshold levels is small and changes from quarter to quarter.

We used fiscal year 1979 as the base year because it was a relatively stable period in State disability program operations and at the time of the development of the standards was the most recent complete year. We recognize that no two years will ever be the same. For that reason, the regulations provide for reexamining the threshold levels annually. The threshold and target levels can be changed without legislation. However, if we change either of them we will revise the regulations through notice of proposed rulemaking. The public will be given an opportunity to comment on any future changes.

The Federal-State partnership has worked well. Many State agencies do an excellent job. States have shown, over the years, that they are self-motivated to do the best job they are capable of doing. With the clearer statement of performance goals that the regulations spell out, we expect they will do even better. It is unrealistic and impractical to establish a single date at this time by which all the States can be expected to reach the target levels of performance. There are 54 State agencies with different levels of performance that prevent them from reaching the target levels at the same time. We will work with the States to help them improve their performance, consistent with our available resources. We will help States improve by annually negotiating with

them and then establishing a new set of intermediate performance goals as part of the budget process. States will be expected to meet these goals within the negotiated budget.

Nevertheless, we recognize the value of establishing incentives for States to meet and exceed goals and standards. We are presently studying possible ways of providing incentives to the States.

The threshold levels must be strictly complied with. We cannot reach our objective of improving the disability determinations with a lesser standard like "substantial performance." We have reworded the preamble to remove the word "drive." We did not intend for it to be read as meaning we believe States want or need to be driven to improvement as pointed out by one commenter.

The Processing Time Standard

Issues

A number of commenters questioned the reason for different processing time standards for the title II and title XVI programs, mentioning that the requirements for the two programs are virtually the same so the same standard should apply to both. One commenter stated that the title XVI standards are less stringent than those imposed on States in the Medicaid program. Since the claimant characteristics are the same or similar for both programs, the writer recommended that the title XVI standards be raised to the same level as those for the Medicaid program. One commenter also said that the size of the title XVI population, fee schedules and State hiring and personnel practices vary among States and can impact on processing time.

Some commenters questioned using past experience to determine the processing time standards. One commenter mentioned that there is no correlation between the mean and how well a State could perform. Another writer wanted the standards to reflect, rather than target and threshold time, what the correct processing time should be. Others wanted the standard to reflect different processing times for different types of actions. Others wanted district office time included. One commenter suggested that only Federal holidays, but not State holidays, be used to compute processing time standards.

Two writers stated that the regulations should establish a maximum time level for processing each class of case (by impairment), but did not specify definite time frames. One commenter indicated that the Puerto

Rico agency does not handle title XVI cases and, therefore, cannot be measured against that performance standard.

Response

Although the requirements for developing and adjudicating title II and title XVI claims are the same, there is a notable difference between the two programs in claimant characteristics. A vital difference is that title XVI claimants often have limited medical records available.

As a result of this, the State must usually develop medical evidence either through the purchase of general examinations or a specialized consultative examination. This has the effect of increasing processing time for the title XVI disability cases. Although the Medicaid and title XVI claimant populations are similar, in many instances the documentation requirements for Medicaid are different than the requirements for the title II and title XVI disability programs. States are permitted to waive the established processing time standard in determinations of Medicaid eligibility whenever an examining physician delays a required action. In contrast, medical development time accounts for the majority of State agency processing time in title II and title XVI disability cases. There are no exclusions for applicant or physician delays in computing a State's processing time in the disability cases. Consequently, we could expect that Medicaid processing times would be lower than our proposed State agency standards.

Another reason for different standards for the title II and title XVI programs is that SSA uses two different computer systems the characteristics of which necessitate different methods to measure processing time for the two programs. (See §§ 404.1042 and 416.1042 for these different measurement systems.)

In developing the processing time standards, we explored the various alternatives available and selected past experience and the mean and standard deviation approach. Basing the standards on demonstrated performance and applying this statistical technique is a recognized and acceptable method to set standards. We did not set a "correct" processing time. Instead, we set a standard for the States to meet now and an additional standard that they would work to meet in the future. This is in line with our objective of improving the overall administration of the program. The factors of title XVI population size, fee schedules and State hiring and personnel practices affected

State performance in the 1979 base year and are built into the threshold standard. These same factors will continue to exist and be included in the mean processing time data.

We agree with those writers who cited the need to monitor overall processing time of disability claims, including district office time. However, the States should not be held accountable for district office processing time and we are therefore not changing these regulations, which provide standards for States, to include district office time. We also do not believe it is appropriate to set maximum time frames for individual impairments. We have no factual basis for making such differentiation; furthermore, even if we did, such differentiation would increase administrative burdens and program costs. Processing time reflects all the time a disability case resides in the State agency, including Saturdays, Sundays, and all holidays. Otherwise national uniformity in the measurement of State agency processing time could not be achieved.

Finally, since Puerto Rico does not handle title XVI cases, the title XVI processing time standard will not be applicable to that State agency. Puerto Rico's performance will be measured against the title II processing time standard (and the combined accuracy standard).

The Accuracy Standard

Issues

Several commenters requested that the performance standard for accuracy be clarified or expanded, pointing out that in their view the standard now only measures a State's ability to collect evidence or to prepare the case file for appeal or further decision. Some writers mentioned that the accuracy standard does not take into account underdevelopment of claims, interpretation of medical and vocational evidence, the ability to procure relevant evidence, or the ability to apply legal standards. One writer wanted the accuracy standard amended to reflect more reasonable goals since the commenter feels a single error could cause a State to fail to meet the standard.

A number of commenters wanted clarification of the relationship between performance and decisional accuracy. Some recommended that a threshold level be established for decisional accuracy as it now is for the target level.

A number of writers recommended that the high reversal rate at the hearings level be taken into account in

setting the accuracy standard since this is an indication of poor development and decision-making at the initial claims process. Several commenters wanted the regulations on accuracy to require the States to actively assist claimants to obtain evidence.

Response

The primary purpose of the accuracy standard is to achieve improvement in the initial claims process and to ensure that only properly entitled claimants receive disability benefits. Our approach to this standard is to specify outputs (i.e., performance accuracy) rather than to specify all the inputs that could go into the standard.

Our quality assurance system has been in place for some time and we are constantly monitoring and making improvements in it as needed. Data from this review system for fiscal year 1979 were used to establish the performance accuracy levels. Data from this ongoing quality review system will be used to measure State performance.

Our quality assurance system reviews the claims file to determine if it contains the desired evidence; if other factors that could affect a decision have been considered; and if the decision is correct. This review determines the reliability of a State's adjudication of disability claims. The accuracy standard measures such items as interpretation of medical and vocational evidence, procurement of relevant medical evidence, and application of legal standards. Other sections of the regulations require the States to follow written guidelines, and policies and procedures relating to the disability process. These sections give specific requirements for developing and interpreting evidence, applying legal requirements, and adjudicating disability claims. These same guidelines, policies, and procedures are the basis for the factors reviewed in our quality assurance process and are reflected in the accuracy standard.

Further, based on the evidence in the disability claims folder, the quality assurance system identifies the percentage of cases that can be processed without being returned to the State for further development of medical or vocational evidence or for correction of the decision. This percentage is called the State's performance accuracy rate. A separate percentage of cases with correct decisions is called the State's decisional accuracy rate. Decisional accuracy is included in the performance accuracy rate.

We think the State's ability to properly develop a claim is directly related to its ability to arrive at a correct

decision. A State could arrive at the right decision in a claim but have incomplete medical or vocational evidence in the folder or have followed incorrect policies and procedures in adjudicating the claim. If we do not return this case as a deficiency, the State could apply the same erroneous practices in other claims which may not be selected for quality assurance review and could make incorrect decisions.

The relationship between the development of a claim and the outcome of the decision makes it unnecessary to set a separate threshold level for decisional accuracy. A target level for decisional accuracy is provided only so the public can better understand the relationship between performance accuracy and decisional accuracy. Also, we wanted to emphasize that performance accuracy reflects more than a right or wrong decision. To set a threshold for decisional accuracy would overemphasize its importance in measuring a State's performance and could lead the States to take shortcuts in developing evidence needed to adjudicate a disability claim.

The commenter who thought a single error could cause a State to fail to meet the accuracy standard was concerned with the sizes of the samples reviewed in the quality assurance system. The likelihood of any State failing to meet the standard because of a single error is statistically possible but extremely remote.

We agree that there is a high reversal rate of denials at the hearings level; however, we do not agree that there is a correlation between this high reversal rate and a State's performance accuracy rate at the initial level. Experience (both special studies and the quality assurance reviews of initial allowances and denials and of hearings level cases) does not support this correlation. Instead, it shows that decisions reversed at the hearings level more often result from the claimant submitting additional medical evidence or the worsening of the claimant's condition. For these reasons, we did not consider the reversal rate at the hearings level in setting initial performance accuracy standards.

We do not agree with the commenters who want the regulations to state that States are required to actively assist claimants to obtain evidence for their claims. Other sections of the regulations require the States to follow SSA's guidelines, policies, and procedures. These sections specify both the claimant's and the State's responsibilities in developing evidence for a disability claim. These factors will

be reviewed through the quality assurance function.

Technical and Management Assistance Issues

Several commenters recommended stricter mandatory technical assistance requirements, a shortening of the technical assistance process, and an SSA assumption of a portion of the workload if a State is unable to meet the threshold levels. Another commenter recommended that SSA assist the State agencies in other ways that the States determine would promote the objectives of effective and uniform administration.

One commenter asked for a more detailed explanation of the meaning of mandatory and optional technical assistance. Another felt that some States would not provide the necessary personnel, equipment, and other resources needed to meet their responsibilities unless forced to do so. The same writer also felt that it would be unrealistic to expect the Federal Government to take over the functions of a State and thus there will be increased pressure on State agency administrators to do more with less.

Response

Our approach for providing technical and management assistance is designed to obtain a high level of performance while not substantially interfering with States' management functions. It gives a State the opportunity to improve its operation without undue interference while still providing for technical and management assistance. Strict requirements would not provide this flexibility. A shortening of the technical and management assistance time frames might not allow a State and SSA a sufficient amount of time to correct the State's problems and permit it to continue to participate in the disability program. One form of technical and management assistance would allow SSA to assume a portion of the State's workload until the State is able to meet the performance standards. Likewise, within the limits of our resources, we will provide assistance which a State determines it needs to promote the objectives of effective and uniform administration.

We are revising the regulations to show when we will provide assistance. (See §§ 404.1660 and 416.1060.)

The State's responsibilities to provide management, personnel, facilities, medical consultant services, and quality assurance are set forth in §§ 404.1603(c) and 416.1003(c) of these regulations. We will make every effort in the budget

process to insure that States have adequate funds to meet these responsibilities.

Substantial Failure in Meeting the Standards

Issues

One commenter stated that because of the consequences of finding a State agency in substantial failure, we should consider the State agency's performance on all the cases it handles, and not only on initial cases. This commenter said that other types of cases, especially reconsideration and continuing disability claims, account for up to one-fourth of the State agency's workload. Thus, it is possible that a State agency may be below the threshold based on its performance on initial claims only but could be above the threshold if all the State agency's work is considered. Another commenter said that, while the threshold levels appear reasonable, a State agency should not be threatened with substantial failure if it falls below a threshold because the volume of work the State agency receives exceeds our predictions of the work it would get. This commenter explained that the State agency's ability to prepare for work depends upon the accuracy of SSA predictions and if these predictions are too low, the State agency may be unable to meet the thresholds through no fault of its own.

Several commenters said that failure to meet the threshold for either performance accuracy or processing time should result in sanctions such as mandatory technical assistance and, if necessary, a finding of substantial failure. They said that a standard for processing time is as important as accuracy in measuring State performance. One writer said that since sanctions are imposed only if a State agency falls below two thresholds, one of which must be performance accuracy, we cannot compel a State agency to meet processing time standards. Another commenter said that since a State agency must fall below two thresholds before sanctions are imposed, a State agency may avoid the sanctions simply by making decisions faster to meet the processing time threshold at the expense of accuracy.

One writer said that the provisions for finding that a State agency had good cause for falling below the performance thresholds are too broad. This person also said that we should establish a mechanism for notifying State agencies when they can expect increased workloads.

Response

We agree that it is desirable to base a determination of whether a State agency is in substantial failure on the State agency's performance on all cases it handles. As soon as we can collect and study sufficient data, we may propose adding standards of performance for reconsideration and continuing disability cases to the regulations. Until then, we must measure a State agency's performance on the basis of the accuracy and timeliness of its initial disability determinations.

We have not adopted the suggestion that we find a State agency in substantial failure if it falls below one or both of the processing time thresholds. As we have noted, the thrust of the legislation which these provisions are intended to reflect is the enhancement of the accuracy and consistency of SSA's determinations with respect to disability. Hence, we consider that we are obliged to place more emphasis on accuracy than processing time to best achieve the statutory purpose. Even so, we are very concerned with processing time and we believe that all cases must be processed as quickly as practicable. However, we do not want any State agency, in order to meet a processing time standard to take short cuts that may keep it from properly developing the evidence and making the right decision in the claims it handles.

We do not believe that the good cause provisions for failing to meet the performance standards are too broad. These provisions ensure only that a State agency will not be found in substantial failure for reasons wholly beyond its control. For example, we routinely advise State agencies of their expected annual workloads and of any changes to these estimates as they occur. The State agency's budget is based on these estimates. If sudden and unanticipated changes make our estimates of a State agency's workload so inaccurate that it is unable to obtain and train adequate staff to meet the workload, we will consider whether this is a factor beyond its control and therefore good cause for not meeting the thresholds.

Hearings and Appeals

Issue

One writer asked that we allow for hearings to permit the State to discuss the differences between the State budget submittal and the budget amount we approve. This writer considered this "essential for sound fiscal management and planning for the State agency."

Response

Sections 404.1626 and 416.1026 require us to "provide funds to the State agency for the necessary cost of performing the disability determination function." The costs are negotiated with the State before they are approved or funds made available. The State has ample opportunity to justify its budget submittal during these negotiations. An additional opportunity to present these issues at a hearing would not seem to further the States' fiscal management and planning.

Assumption of Disability Determination Function

Issues

Several writers commented on potential personnel problems relating to the Federal assumption of a disability determination function. One said that we should set a deadline for the State to make fair and equitable arrangements for displaced State employees who are not hired by us because a State might deliberately fail to make acceptable arrangements for these employees to keep us from assuming its functions. Another commenter asked how we will determine which State employees are capable of performing the disability determination function for us. One writer said that we should further review the negative impact upon our ability to hire State employees because there is no provision in the law for a transfer of State benefits such as seniority, accrued sick and annual leave, and retirement benefits. One commenter said that under a Federal assumption, the State agency's administrator and deputy administrator would not be protected and would not obtain Federal employment. This person also said that a freeze on Federal hiring will preclude the Federal assumption of a State agency function.

One writer said that the regulations should contain a provision that assures that vocational rehabilitation referrals will continue to be made during and after a Federal assumption of the State agency function. Finally, one writer said that there should be a provision that requires us to meet the threshold level of performance if a State agency function is assumed by us.

Response

We do not believe that we need to put in the regulations a specific deadline by which a State agency must make suitable arrangements for its displaced employees before we can assume the State agency's functions. If it is found that we must assume a State agency's

functions, we will notify the Secretary of Labor that an assumption is in progress and that a determination is to be made that the State has made fair and equitable arrangements to protect the interests of displaced employees. If a State, for whatever reasons, does not make fair and equitable arrangements for displaced employees in a timely manner or if the Secretary of Labor cannot determine that proper arrangements have been made, we must accept applications for disability benefits and fully process those applications. This includes making the disability determinations and notifying the claimants of the decisions. We must do this to prevent disruption of services to a State's residents while an assumption of the State's functions is in progress. As required by law, we sent a report to Congress on how we expect to assume the functions and operations of a State agency. That report reflects the approach just described.

We have not yet established criteria for determining which State employees are capable of performing the disability determination function. We are considering State criteria. We must also consider basic and standard requirements which the U.S. Office of Personnel Management will set for each Federal disability determination service job position approved.

We do not yet know what the full effects upon a Federal assumption will be if State employees cannot transfer accrued benefits. We will study this further. Legislation, however, would be required for such benefits to be carried over to a Federal position. It is true that in filling positions under a Federal assumption, the law does not require us to give the State agency administrator and deputy administrator the hiring preference which we must give to other capable State agency employees. Instead it gives us a choice of whether they too should be given the hiring preference. We do not believe that a Federal hiring freeze will preclude a Federal assumption of the State agency's function. If we must assume a State agency's function while under a Federal hiring freeze, we will have to perform the function with existing SSA personnel.

The Social Security Act requires referral for vocational rehabilitation services. We therefore must continue this service. If we assume a State agency's functions, we will make every effort to achieve the highest practicable level of performance.

Additional Changes

Audits, Property and Confidentiality

We have revised §§ 404.1627 and 416.1027 to clarify that the purpose of an audit includes inspecting the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations as well as determining that funds were properly expended.

We have revised §§ 404.1628 and 416.1028 to establish what the disposition would be of a State agency's property and equipment if the State agency's relationship is terminated. The ownership and use of this property may be important if we are required to assume a State's function or we are notified that the State is terminating the relationship. Should assumption of the State's disability determination function become necessary or should the State end the relationship, ownership of all property and equipment acquired with SSA funds will transfer to SSA on the date the State is notified that we are assuming the disability determination function or we are notified that the State is terminating the relationship.

Systems Security

We have amended the language of §§ 404.1631 and 416.1031 which already address the issue of confidentiality of information and records to include the "security of systems" as an area where State agencies are required to adhere to Federal privacy rules.

Hearings and Appeals

According to the rules (45 CFR Part 16) of the Health and Human Services Departmental Grant Appeals Board, "a hearing may be requested within 30 days from the date notice is received rather than within 30 days from the date of the notice," as shown in our Notice of Proposed Rulemaking. Therefore, we have changed §§ 404.1627, 404.1680, 416.1027 and 416.1080 to conform with the Board's rules. Also, since the Board will only provide a hearing on final decisions, we have added language to §§ 404.1683 and 416.1083 to make it clear that a notice of "substantial failure" under §§ 404.1680 and 416.1080 will be considered a "final written decision" for purposes of Board review. We have also eliminated the terms "grantee," "grant" and "termination" in §§ 404.1683 and 416.1083, because under the Board's new procedures, these terms are no longer necessary. We have also added language to §§ 404.1694 and 416.1094 to make it clear that disputes concerning final accounting issues which cannot be resolved between the State and us will

be resolved in proceedings before the Grant Appeals Board.

We also revised §§ 404.1681 and 416.1081 to clarify that the Grant Appeals Board will not resolve disputes on matters other than substantial failure that relate to nonfiscal issues. All disputes on nonfiscal issues (i.e., audit determinations relating to management or administrative matters) may be appealed only to the Commissioner of Social Security. Since these nonfiscal matters are generally related to other disability program concerns and interests, we believe it is appropriate that nonfiscal disputes be ultimately decided by the Commissioner as the highest official of the Social Security Administration.

Conclusion

We believe these regulations carry out the intent of Congress, in enacting Pub. L. 96-265, that we improve our administration of the title II and title XVI disability benefits programs while preserving the basic Federal/State structure. Our objective is to place the right person in benefit status in a timely manner, wherever in the country he or she may be living, and to pay the proper amount of benefits as long as that person is entitled to benefits. In our opinion, the regulations foster these objectives by encouraging improvement in the quality of State agency performance which will contribute to assuring that claimants are accorded fair treatment and provided with correct and equitable decisions under uniform national standards. The regulations should help accomplish these goals without adding undue administrative burdens or costs to the adjudicative process.

While Pub. L. 96-265 requires that we issue regulations to implement section 304, our policy is that we should *not* over-regulate the States. We intend to give the States maximum control over the management of their operations in making disability determinations as long as performance is adequate under the standards which we have set. These regulations permit more Federal involvement in the State's activities only if a State's performance becomes unacceptable under the standards. Under these circumstances, our primary objective is not to interfere in the State's operation, but to help the State to improve its performance with the ultimate goal of withdrawing our assistance and allowing the State to resume its own management of the program. Under these regulations, we may take action to take over the disability program from the State only

after clearly establishing that the State has substantially failed to meet its commitment to properly administer the disability determination function in the State and after determining that the State cannot reasonably be expected to effectively carry out these functions in the future. We have the obligation under the law for seeing that the title II and title XVI disability programs are efficiently and equitably administered and intend to make every effort to meet this obligation within the structure of the existing Federal-State partnership.

We certify in accordance with the Regulatory Flexibility Act of 1980 that these regulations do not have an adverse impact on small entities because these rules affect only the States.

(Catalog of Federal Domestic Assistance, Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

Dated: April 22, 1981.

Herbert R. Doggette, Jr.,

Acting Commissioner of Social Security.

Approved: May 15, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Chapter III, Title 20 of the Code of Federal Regulations is amended as shown.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.1502 is revised to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—
"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

2. Section 404.1503 is revised to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

(a) *State agencies.* State agencies make disability and blindness

determinations for the Secretary for most persons living in the State. State agencies make these disability and blindness determinations under regulations containing performance standards and other administrative requirements relating to the disability and blindness determination function. States have the option of turning the function over to the Federal Government if they no longer want to make disability determinations. Also, the Secretary may take the function away from any State which has substantially failed to make disability and blindness determinations in accordance with these regulations. Subpart Q of this Part contains the rules the States must follow in making disability and blindness determinations.

(b) *Social Security Administration.*

The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any person living in a State which is not making for the Secretary any disability and blindness determinations or which is not making those determinations for the class of claimants to which that person belongs; and

(2) Any person living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

§§ 404.1601–404.1610 (Subpart Q) [Redesignated as §§ 404.2001–404.2010 (Subpart U)]

3. The headings and text of §§ 404.1601–404.1610 (Subpart Q) are redesignated as §§ 404.2001–404.2010 (Subpart U) respectively. The heading for Subpart U is "Representative Payee". (A proposed revision of present Subpart Q has been published in the Federal Register. These regulations will be redesignated when adopted as final).

4. A new Subpart Q is added to Part 404 to read as follows:

Subpart Q—Determinations of Disability

General Provisions

Sec.

404.1601 Purpose and scope.

404.1602 Definitions.

404.1603 Basic responsibilities for us and the State.

Responsibilities for Performing the Disability Determination Function

404.1610 How a State notifies us that it wishes to perform the disability determination function.

404.1611 How we notify a State whether it may perform the disability determination function.

404.1613 Disability determinations the State makes.

404.1614 Responsibilities for obtaining evidence to make disability determinations.

404.1615 Making disability determinations.

404.1618 Notifying claimants of the disability determination.

Administrative Responsibilities and Requirements

404.1620 Organization.

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404.1624 Medical and other purchased services.

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Performance Standards

404.1640 General.

404.1641 Standards of performance.

404.1642 Processing time standard.

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404.1644 How and when we determine whether the processing time standards are met.

404.1645 How and when we determine whether the performance accuracy standard is met.

404.1650 If a State agency is not meeting the standards.

Technical and Management Assistance

404.1660 When we will provide assistance.

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Substantial Failure

404.1670 General.

404.1671 Good cause for not meeting the established threshold levels.

404.1675 Finding of substantial failure.

Hearings and Appeals

- 404.1680 Notice of right to hearing on proposed finding of substantial failure.
 404.1681 Disputes on other matters.
 404.1682 Who conducts the hearings.
 404.1683 Hearings and appeals process.

Assumption of Disability Determination Function

- 404.1690 Assumption when we make a finding of substantial failure.
 404.1691 Assumption when State no longer wishes to perform the disability determination function.
 404.1692 Protection of State employees.
 404.1693 Limitation on State expenditures after notice.
 404.1694 Final accounting by the State.

Authority: Issued under secs. 205, 221 and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 66 Stat. 1081, as amended; 49 Stat. 647, as amended; 42 U.S.C. 405, 421 and 1302.

Subpart Q—Determinations of Disability**General Provisions****§ 404.1601 Purpose and scope.**

This subpart describes the standards of performance and administrative requirements and procedures for States making determinations of disability for the Secretary under title II of the Act. It also establishes the Secretary's responsibilities in carrying out the disability determination function.

(a) Sections 404.1601–404.1603 describe the purpose of the regulations and the meaning of terms frequently used in the regulations. They also briefly set forth the responsibilities of the Secretary and the States covered in detail in other sections.

(b) Sections 404.1610–404.1618 describe the Secretary's and the State's responsibilities in performing the disability determination function.

(c) Sections 404.1620–404.1633 describe the administrative responsibilities and requirements of the States. The corresponding role of the Secretary is also set out.

(d) Sections 404.1640–404.1650 describe the performance accuracy and processing time standards for measuring State agency performance.

(e) Sections 404.1660–404.1661 describe when and what kind of assistance the Secretary will provide State agencies to help them improve performance.

(f) Sections 404.1670–404.1675 describe the level of performance below which the Secretary will consider a State agency to be substantially failing to make disability determinations consistent with the regulations and other written guidelines and the resulting action the Secretary will take.

(g) Sections 404.1680–404.1683 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we propose to find that a State is in substantial failure.

(h) Sections 404.1690–404.1694 describe when and what action the Secretary will take and what action the State will be expected to take if the Secretary assumes the disability determination function from a State agency.

§ 404.1602 Definitions.

For purposes of this subpart:

"Act" means the Social Security Act, as amended.

"Class or classes of cases" means the categories into which disability claims are divided according to their characteristics.

"Determination of disability" or "disability determination" means one or more of the following decisions:

(a) Whether or not a person is under a disability;

(b) The date a person's disability began; or

(c) The date a person's disability ended.

"Disability" means "disability" or "blindness" as defined in sections 216(i) and 223 of the Act or as defined in title IV of the Federal Mine Safety and Health Act of 1977, as amended.

"Disability determination function" means making determinations as to disability and carrying out related administrative and other responsibilities.

"Disability program" means, as appropriate, the Federal programs for providing disability insurance benefits under title II of the Act and disability benefits under title IV of the Federal Mine Safety and Health Act of 1977, as amended.

"Initial" means the first level of disability adjudication.

"Other written guidelines" means the policies, procedures, guides, and operating instructions in the Disability Insurance section of the Program Operations Manual System that are not designated as advisory or discretionary.

"Regulations" means regulations in this subpart issued under §§ 205(a), 221 and 1102 of the Act, unless otherwise indicated.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's delegate.

"State" means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, or Guam. It includes the State agency.

"State agency" means that agency of a State which has been designated by

the State to carry out the disability determination function.

"We", "us," and "our" refers to the Social Security Administration (SSA) or the Secretary, as appropriate.

§ 404.1603 Basic responsibilities for us and the State.

(a) *General.* We will work with the State to provide and maintain an effective system for processing claims of those who apply for and who are receiving benefits under the disability program. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of the program except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* We will:

(1) Periodically review the regulations and other written guidelines to determine whether they insure effective and uniform administration of the disability program. To the extent feasible, we will consult with and take into consideration the experience of the States in issuing regulations and guidelines necessary to insure effective and uniform administration of the disability program;

(2) Provide training materials or in some instances conduct or specify training, see § 404.1622;

(3) Provide funds to the State agency for the necessary cost of performing the disability determination function, see § 404.1626;

(4) Monitor and evaluate the performance of the State agency under the established standards, see §§ 404.1644 and 404.1645; and

(5) Maintain liaison with the medical profession nationally and with national organizations and agencies whose interests or activities may affect the disability program.

(c) *Responsibilities of the State.* The State will:

(1) Provide management needed to insure that the State agency carries out the disability determination function so that disability determinations are made accurately and promptly;

(2) Provide an organizational structure, adequate facilities, qualified personnel, medical consultant services, and a quality assurance function (§§ 404.1620–404.1624);

(3) Furnish reports and records relating to the administration of the disability program (§ 404.1625);

(4) Submit budgets (§ 404.1626);

(5) Cooperate with audits (§ 404.1627);

(6) Insure that all applicants for and recipients of disability benefits are treated equally and courteously;

(7) Be responsible for property used for disability program purposes (§ 404.1628);

(8) Take part in the research and demonstration projects (§ 404.1629);

(9) Coordinate with other agencies (§ 404.1630);

(10) Safeguard the records created by the State in performing the disability determination function (§ 404.1631);

(11) Comply with other provisions of the Federal law and regulations that apply to the State in performing the disability determination function;

(12) Comply with other written guidelines (§ 404.1633);

(13) Maintain liaison with the medical profession and organizations that may facilitate performing the disability determination function; and

(14) Assist us in other ways that we determine may promote the objectives of effective and uniform administration.

Responsibilities for Performing the Disability Determination Function

§ 404.1610 How a State notifies us that it wishes to perform the disability determination function.

(a) *Deemed notice.* Any State that has in effect as of June 1, 1981, an agreement with us to make disability determinations will be deemed to have given us notice that it wishes to perform the disability determination function, in lieu of continuing the agreement in effect after June 1, 1981.

(b) *Written notice.* After June 1, 1981, a State not making disability determinations that wishes to perform the disability determination function under these regulations must notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State.

§ 404.1611 How we notify a State whether it may perform the disability determination function.

(a) If a State notifies us in writing that it wishes to perform the disability determination function, we will notify the State in writing whether or not it may perform the function. The State will begin performing the disability determination function beginning with the month we and the State agree upon.

(b) If we have previously found that a State agency has substantially failed to make disability determinations in accordance with the law or these regulations and other written guidelines

or if the State has previously notified us in writing that it does not wish to make disability determinations, the notice will advise the State whether the State agency may again make the disability determinations and, if so, the date and the conditions under which the State may again make them.

§ 404.1613 Disability determinations the State makes.

(a) *General rule.* A State agency will make determinations of disability with respect to all persons in the State except those individuals whose cases are in a class specifically excluded by our written guidelines. A determination of disability made by the State is the determination of the Secretary, except as described in § 404.1503(d)(1).

(b) *New classes of cases.* Where any new class or classes of cases arise requiring determinations of disability, we will determine the conditions under which a State may choose not to make the disability determinations. We will provide the State with the necessary funding to do the additional work.

(c) *Temporary transfer of classes of cases.* We will make disability determinations for classes of cases temporarily transferred to us by the State agency if the State agency asks us to do so and we agree. The State agency will make written arrangements with us which will specify the period of time and the class or classes of cases we will do.

§ 404.1614 Responsibilities for obtaining evidence to make disability determinations.

(a) The State agency will secure from the claimant, or other sources, any evidence it needs to make a disability determination.

(b) We will secure from the claimant or other special arrangement sources, any evidence we can obtain as adequately and more readily than the State agency. We will furnish the evidence to the State agency for use in making a disability determination.

(c) At our request, the State agency will obtain and furnish medical or other evidence and provide assistance as may be necessary for us to carry out our responsibilities—

(1) For making disability determinations in those classes of cases described in the written guidelines for which the State agency does not make the determination; or

(2) Under international agreements with respect to social security benefits payable under section 233 of the Act.

§ 404.1615 Making disability determinations.

(a) When making a disability determination, the State agency will

apply subpart P, Part 404 of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical consultant and a State agency disability examiner. The State agency disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 404.1572 of this part for what we mean by "substantial gainful activity".)

(d) The State agency will certify each determination of disability to us on forms we provide.

(e) The State agency will furnish us with all the evidence it considered in making its determination.

(f) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

§ 404.1618 Notifying claimants of the disability determination.

The State agency will prepare denial notices in accordance with subpart J of this Part whenever it makes a disability determination which is wholly or partly unfavorable to the claimant.

Administrative Responsibilities and Requirements

§ 404.1620 Organization.

(a) The State will provide the organizational structure, sufficient qualified personnel, medical consultant services, and a quality assurance function to insure disability determinations are made accurately and promptly. We may impose specific organizational requirements on the State, but only in the course of mandatory technical and management assistance as described in § 404.1660.

(b) The State is responsible for making accurate and prompt disability determinations.

§ 404.1621 Personnel.

(a) *Equal Employment Opportunity.* The State will comply with all applicable Federal statutes, executive orders and regulations concerned with equal employment opportunities.

(b) *Selection, tenure, and compensation.* The State agency will, except as may be inconsistent with paragraph (a) of this section, adhere to applicable State approved personnel

standards in the selection, tenure, and compensation of any individual employed in the disability program.

(c) *Travel.* The State will make personnel available to attend meetings or workshops as may be sponsored or approved by us for furthering the purposes of the disability program.

(d) *Restrictions.* Subject to appropriate Federal funding, the State will, to the best of its ability, facilitate the processing of disability claims by avoiding personnel freezes, restrictions against overtime work, or curtailment of facilities or activities.

§ 404.1622 Training.

The State will insure that all employees have an acceptable level of competence. We will provide training and other instructional materials to facilitate basic and advanced technical proficiency of disability staff in order to insure uniformity and effectiveness in the administration of the disability program. We will conduct or specify training, as appropriate, but only if:

(a) a State agency's performance approaches unacceptable levels; or

(b) the material required for the training is complex or the capacity of the State to deliver the training is in doubt and uniformity of the training is essential.

§ 404.1623 Facilities.

(a) *Space, equipment, supplies, and other services.* Subject to appropriate Federal funding, the State will provide adequate space, equipment, supplies, and other services to facilitate making accurate and prompt disability determinations.

(b) *Location of facilities.* Subject to appropriate Federal funding, the State will determine the location where the disability determination function is to be performed so that disability determinations are made accurately and promptly.

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed for the purposes of inspecting the work and activities required by the regulations and assuring compliance with pertinent Federal statutes and regulations. We will contact the State and give reasonable prior notice of the times and purposes of any visit.

§ 404.1624 Medical and other purchased services.

The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the

State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.

§ 404.1625 Records and reports.

(a) The State will establish and maintain the records and furnish the schedules, financial, cost, and other reports relating to the administration of the disability programs as we may require.

(b) The State will permit us and the Comptroller General of the United States (including duly authorized representatives) access to and the right to examine records relating to the work which the State performs under these regulations. These records will be retained by the State for the periods of time specified for retention of records in the Federal Procurement Regulations (41 CFR Parts 1-20).

§ 404.1626 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs mean direct as well as indirect costs as defined in title 41 CFR subpart 1-15.7 and in Federal Management Circular 74-4, as amended or superseded.

(b) The State will submit estimates of anticipated costs in the form of a budget at the time and in the manner we require.

(c) We will notify the State of the amount which will be made available to it as well as what anticipated costs are being approved.

(d) The State may not incur or make expenditures for items of cost not approved by us or in excess of the amount we make available to the State.

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its actual expenditures. We will give the State an audit report showing whether the expenditures were consistent with cost principles described in subpart 1-15.7 of part 1-15 of the Federal Procurement Regulations (41 CFR 1-15.7) and in written guidelines in effect at the time the expenditures were made or incurred.

(f) Any monies paid to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United States.

§ 404.1627 Audits.

As soon as practicable after the close of each budgetary period, or at other times as necessary, the books of account and records in each State pertaining to

the administration of the disability program under the Act will be audited by our Inspector General's office. These audits are conducted to determine whether the expenditures were made for the purposes intended and in amounts necessary for the proper and efficient administration of the disability program. Audits will also be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit.

(a) *Questioned items.* Expenditures of State agencies will be audited on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any questioned items. They will be given reasonable time to explain questioned items or expenditures. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on questioned items in the audit report.

(b) *State appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State of his or her determination on the audit report. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of that decision in writing no later than 45 days from the date of the State's appeal. The decision by the Commissioner will be final and conclusive upon the State unless the State appeals that decision in writing to the Department of Health and Human Services, Departmental Grant Appeals Board within 30 days after receiving the Commissioner's decision. See § 404.1683.

§ 404.1628 Property.

The State will have title to equipment purchased for disability program purposes. The State will be responsible for maintaining all property it acquires or which we furnish to it for performing the disability determination function. The State will identify the equipment by labeling and by inventory and will

credit the SSA account with the fair market value of disposed property.

In the event we assume the disability determination function from a State, ownership of all property and equipment acquired with SSA funds will be transferred to us effective on the date the State is notified that we are assuming the disability determination function or we are notified that the State is terminating the relationship.

§ 404.1629 Participation in research and demonstration projects.

We will invite State participation in federally funded research and demonstration projects to assess the effectiveness of the disability program and to ascertain the effect of program policy changes. Where we determine that State participation is necessary for the project to be complete, for example, to provide national uniformity in a claims process, State participation is mandatory.

§ 404.1630 Coordination with other agencies.

(a) The State will establish cooperative working relationships with other agencies concerned with serving the disabled and, insofar as practicable, use their services, facilities, and records to:

(1) Assist the State in developing evidence and making determinations of disability; and

(2) Insure that referral of disabled or blind persons for rehabilitation services will be carried out effectively.

(b) The State may pay these agencies for the services, facilities, or records they provide. The State will include these costs in its estimates of anticipated costs and reports of actual expenditures.

§ 404.1631 Confidentiality of information and records.

The State will comply with the confidentiality of information, including the security of systems, and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 404.1633).

§ 404.1632 Other Federal laws and regulations.

The State will comply with the provisions of other Federal laws and regulations that directly affect its responsibilities in carrying out the disability determination function; for example, Treasury Department regulations on letters of credit (31 CFR Part 205).

§ 404.1633 Policies and operating instructions.

(a) We will provide the State agency with written guidelines necessary for it to carry out its responsibilities in performing the disability determination function.

(b) The State agency making determinations of disability will comply with the written guidelines in the Disability Insurance section of the Program Operations Manual System. This manual will also include certain policies, procedures, guides and operating instructions designated as advisory or discretionary.

(c) A representative group of State agencies will be given an opportunity to participate in formulating disability program policies that have an effect on their role in carrying out the disability determination function. State agencies will also be given an opportunity to comment before changes are made in written guidelines unless delay in issuing a change may impair service to the public.

Performance Standards

§ 404.1640 General.

The following sections provide the procedures and guidelines we use to determine whether the State agency meets established national performance standards. We use these performance standards to help assure effective and uniform administration of our disability programs throughout the United States and to measure whether each State agency's performance of the disability determination function is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process. We measure the State agency performance in two areas—processing time and performance accuracy.

§ 404.1641 Standards of performance.

(a) *General.* The performance standards include both a target level of performance and a threshold level of performance for the State agency. The target level represents a level of performance that we and the States will work to attain in the future. The threshold level is the minimum acceptable level of performance. Performance below the threshold level will be the basis for the Secretary's taking from the State agency partial or complete responsibility for performing the disability determination function. Intermediate State agency goals are designed to help each State agency move from its current performance levels to the target levels.

(b) *The target level.* The target level is the optimum level of performance. There are three targets—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and one for title XVI initial processing time.

(c) *The threshold level.* The threshold level is the minimum acceptable level of performance. There are three thresholds—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and one for title XVI initial processing time.

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by SSA's regional commissioner after negotiation with each State agency. The intermediate goals are stepping stones designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional technical and management assistance depending on the availability of SSA resources.

§ 404.1642 Processing time standards.

(a) *General.* Title II processing time refers to the average number of days (including Saturday, Sunday and holidays) it takes a State agency to process an initial disability claim from the day it is received in the State agency until the day it is released by the State agency. Title XVI processing time refers to the average number of days (including Saturday, Sunday and holidays) from release of the initial disability claim by the SSA district office until systems input of the disability determination.

(b) *Target levels.* The processing time target levels are:

- (1) 37 days for title II initial claims.
- (2) 43 days for title XVI initial claims.

(c) *Threshold levels.* The processing time threshold levels are:

- (1) 49.5 days for title II initial claims.
- (2) 57.9 days for title XVI initial claims.

§ 404.1643 Performance accuracy standard.

(a) *General.* Performance accuracy refers to the percentage of cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency

adjudication. The definition of performance accuracy includes the measurement of factors that have a potential for affecting a decision, as well as the correctness of the decision. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is a performance error. Performance accuracy, therefore, is a higher standard than decisional accuracy. As a result, the percentage of correct decisions is significantly higher than what is reflected in the error rate established by SSA's quality assurance system.

(b) *Target level.* The State agency initial performance accuracy target level for combined title II and title XVI cases is 97 percent with a corresponding decision accuracy rate of 99 percent.

(c) *Intermediate Goals.* These goals will be established annually by SSA's regional commissioner after negotiation with the State and should be used as stepping stones to progress towards our targeted level of performance.

(d) *Threshold levels.* The State agency initial performance accuracy threshold level for combined title II and title XVI cases is 90.6 percent.

§ 404.1644 How and when we determine whether the processing time standards are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days (including Saturday, Sunday and holidays) from the time the case folder is received in the State agency until it is released to us by the State agency. For initial title XVI cases, we calculate a mean number of days (including Saturday, Sunday and holidays) from the release of the case folder by the social security district office until systems input of the disability determination.

(b) *Frequency of review.* Title II processing times and title XVI processing times are monitored separately on a quarterly basis. The determination as to whether or not the processing time thresholds have been met is made at the end of each quarter each year. Quarterly State-by-State mean processing times are compared with the threshold levels for both title II and title XVI.

§ 404.1645 How and when we determine whether the performance accuracy standard is met.

(a) *How we determine performance accuracy.* We determine a State agency's performance accuracy rate on the basis of decision and documentation

errors identified in our review of the sample cases.

(b) *Frequency of review.* Title II and title XVI initial performance accuracy are monitored together on a quarterly basis. The determinations as to whether the performance accuracy threshold has been met is made at the end of each quarter each year. Quarterly State-by-State combined initial performance accuracy rates are compared to the established threshold level.

§ 404.1650 If a State agency is not meeting the standards.

If a State agency falls below 2 of the 3 established threshold levels (one of which must be performance accuracy) for 2 or more consecutive quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification we will as soon as practicable provide the State agency appropriate technical and management assistance described in §§ 404.1660 and 404.1661 of these regulations for a period of up to 12 months.

Technical and Management Assistance

§ 404.1660 When we will provide assistance.

(a) *General.* We will maintain a regular monitoring program to evaluate State agency performance of combined title II and title XVI initial performance accuracy, title II initial processing time and title XVI initial processing time. This regular monitoring program will allow us to determine the type of technical and management assistance a State agency may need to improve its performance. In addition, the results of this monitoring will show whether we will give a State agency mandatory or optional technical and management assistance.

(b) *Mandatory assistance.* (1) We will provide a State agency technical and management assistance if it fails to meet two of three threshold levels (one being performance accuracy) for two consecutive quarters. These levels are—

(i) Combined title II and title XVI initial performance accuracy—90.6 percent

(ii) Title II initial processing time—49.5 days

(iii) Title XVI initial processing time—57.9 days

(2) Failure to meet any one of the threshold levels for two consecutive quarters may result in technical and management assistance being provided depending on available resources.

(c) *Optional assistance.* We may offer a State agency technical and management assistance when regular monitoring reveals that performance has

significantly declined or that intermediate goals have not been met. We will offer this technical and management assistance at our discretion based on available resources.

§ 404.1661 What assistance we will provide.

We will initiate a program of technical and management assistance in order to improve performance in those State agencies where it has been determined that such help is necessary. This program will include any or all of the following—

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A fiscal and administrative management review (FAMR) to:

(1) Identify particular aspects of State agency operations which can receive immediate help and thus improve performance accuracy or processing time; and

(2) Develop a long-range plan based on the FAMR results to help the State agency prevent its performance from falling below the threshold levels in the future.

(c) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(d) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(e) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

Substantial Failure

§ 404.1670 General.

After a State agency falls below 2 of 3 established threshold levels, one being performance accuracy, for 2 consecutive quarters, and after the mandatory technical and management assistance period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below 2 of 3 threshold levels, one being performance accuracy, in 2 consecutive quarters during the next 12 months, we will notify the State that we propose to find the State agency to be in substantial failure and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially

failed to make disability determinations consistent with the regulations and other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with § 404.1690 and § 404.1692.

§ 404.1671 Good cause for not meeting the established threshold levels.

If we find that a State agency did not meet the threshold levels because of factors beyond its control, we will not find the State agency to be in substantial failure. Some of the factors we will consider are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function; or

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulation, or written guidelines, systems modifications or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

§ 404.1675 Finding of substantial failure.

A finding of substantial failure with respect to a State may not be made unless and until the State is afforded an opportunity for a hearing.

Hearings and Appeals

§ 404.1680 Notice of right to hearing on proposed finding of substantial failure.

If, following the mandatory technical and management assistance period and the 3-month adjustment period, a State agency again falls below 2 of 3 threshold levels (one being performance accuracy) in 2 consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find the State agency in substantial failure unless the State submits a written request for a hearing with the Health and Human Services Departmental Grant Appeals Board within 30 days after receiving the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met, and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found in substantial failure and we will implement our plans

to assume the disability determination function.

§ 404.1681 Disputes on other matters.

Disputes concerning fiscal issues will be resolved in proceedings before the Health and Human Services Departmental Grant Appeals Board if the issue cannot be resolved between us and the State. Disputes concerning nonfiscal issues will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 404.1627.)

§ 404.1682 Who conducts the hearings.

If a hearing is required, it will be conducted by the Health and Human Services Departmental Grant Appeals Board (the Board).

§ 404.1683 Hearings and appeals process.

The rules for hearings and appeals before the Board are provided in 45 CFR Part 16. A notice under § 404.1680 of this subpart will be considered a "final written decision" for purposes of Board review.

Assumption of Disability Determination Function

§ 404.1690 Assumption when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for performing the disability determination function from the State agency, whether the assumption will be partial or complete, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of § 404.1692.

§ 404.1691 Assumption when State no longer wishes to perform the disability determination function.

(a) *Notice to the Secretary.* If a State no longer wishes to perform the disability determination function, it will notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who gave the notice.

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at the time the notice referred to in paragraph (a) of this section is given for

not less than 180 days or, if later, until we have complied with the requirements of § 404.1692. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to do these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for performing the disability determination function.

§ 404.1692. Protection of State employees.

(a) *Hiring preference.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under § 404.1690 or § 404.1691, as appropriate. Except for the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent), we will give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling positions with us for which they are qualified. We may also give a preference in hiring to the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(b) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 404.1693 Limitation on State expenditures after notice.

The State agency may not, after it receives the notice referred to in § 404.1690, or gives the notice referred to in § 404.1691, make any new commitments to spend funds allocated to it for performing the disability determination function without the approval of the appropriate SSA regional commissioner. The State will make every effort to close out as soon as possible all existing commitments that relate to performing the disability determination function.

§ 404.1694 Final accounting by the State.

The State will submit its final claims to us as soon as possible, but in no event later than 1 year from the effective date of our assumption of the disability determination function unless we grant an extension of time. When the final claim(s) is submitted, a final accounting will be made by the State of any funds paid to the State under § 404.1626 which have not been spent or committed prior to the effective date of our assumption of the disability determination function. Disputes concerning final accounting issues which cannot be resolved between the State and us will be resolved in proceedings before the Grant Appeals Board as described in 45 CFR Part 16.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 416.902 is revised to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—
"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for or is receiving benefits based on disability or blindness.

2. Section 416.903 is revised to read as follows:

§ 416.903 Who makes disability and blindness determinations.

(a) *State agencies.* State agencies make disability and blindness determinations for the Secretary for most persons living in the State. State agencies make these disability and blindness determinations under regulations containing performance standards and other administrative requirements relating to the disability and blindness determination function. States have the option of turning the function over to the Federal Government if they no longer want to make disability determinations. Also, the Secretary may take the function away from any State which has substantially failed to make disability and blindness determinations in accordance with these regulations.

Subpart J of this Part contains the rules the States must follow in making disability and blindness determinations.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—
(1) Any person living in a State which is not making for the Secretary any disability and blindness determinations or which is not making those determinations for the class of claimants to which that person belongs; and
(2) Any person living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;
(2) The date your disability or blindness began; and
(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;
(2) Your disability or blindness began earlier or later than the date found by the State agency; and
(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

§§ 416.1001-416.1078 [Redesignated as §§416.1801-416.1878 (Subpart R)]

3. The section headings and the text of §§ 416.1001-416.1078 are redesignated as §§ 416.1801-416.1878 (Subpart R). The title of Subpart R is "Relationship".

4. A new Subpart J is added to Part 416 to read as follows:

Subpart J—Determinations of Disability General Provisions

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416.1001 Purpose and scope.
416.1002 Definitions.
416.1003 Basic responsibilities for us and the State.

Responsibilities for Performing the Disability Determination Function

416.1010 How a State notifies us that it wishes to perform the disability determination function.
416.1011 How we notify a State whether it may perform the disability determination function.
416.1013 Disability determinations the State makes.
416.1014 Responsibilities for obtaining evidence to make disability determinations.
416.1015 Making disability determinations.

Sec.
416.1018 Notifying claimants of the disability determination.

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416.1081 Disputes on other matters.
416.1082 Who conducts the hearings.
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416.1090 Assumption when we make a finding of substantial failure.
416.1091 Assumption when State no longer wishes to perform the disability determination function.
416.1092 Protection of State employees.
416.1093 Limitation on State expenditures after notice.
416.1094 Final accounting by the State.

Authority: Issued under secs. 1102, 1614, and 1631 of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1471, as amended by 88 Stat. 52; 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

Subpart J—Determinations of Disability

General Provisions

§ 416.1001 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making determinations of disability for the Secretary under title XVI of the Act. It also establishes the Secretary's responsibilities in carrying out the disability determination function.

(a) Sections 416.1001–416.1003 describe the purpose of the regulations and the meaning of terms frequently used in the regulations. They also briefly set forth the responsibilities of the Secretary and the States covered in detail in other sections.

(b) Sections 416.1010–416.1018 describe the Secretary's and the State's responsibilities in performing the disability determination function.

(c) Sections 416.1020–416.1033 describe the administrative responsibilities and requirements of the States. The corresponding role of the Secretary is also set out.

(d) Sections 416.1040–416.1050 describe the performance accuracy and processing time standards for measuring State agency performance.

(e) Sections 416.1060–416.1061 describe when and what kind of assistance the Secretary will provide State agencies to help them improve performance.

(f) Sections 416.1070–416.1075 describe the level of performance below which the Secretary will consider a State agency to be substantially failing to make disability determinations consistent with the regulations and other written guidelines and the resulting action the Secretary will take.

(g) Sections 416.1080–416.1083 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we propose to find that a State is in substantial failure.

(h) Sections 416.1090–416.1094 describe when and what action the Secretary will take and what action the State will be expected to take if the Secretary assumes the disability determination function from a State agency.

§ 416.1002 Definitions.

For purposes of this subpart: "Act" means the Social Security Act, as amended.

"Class or classes of cases" means the categories into which disability claims are divided according to their characteristics.

"Determination of disability" or "disability determination" means one or more of the following decisions:

(a) Whether or not a person is under a disability;

(b) The date a person's disability began; or

(c) The date a person's disability ended.

"Disability" means "disability" or "blindness" as defined in sections 1614(a) (2) and (3) of the Act.

"Disability determination function" means making determinations as to disability or blindness and carrying out related administrative and other responsibilities.

"Disability program" means the Federal program for providing supplemental security income benefits for the blind and disabled under title XVI of the Act, as amended.

"Initial" means the first level of disability or blindness adjudication.

"Other written guidelines" means the policies, procedures, guides, and operating instructions in the Disability Insurance section of the Program Operations Manual System that are not designated as advisory or discretionary.

"Regulations" means regulations in this subpart issued under §§ 1102, 1631(c) and 1633(a) of the Act, unless otherwise indicated.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's delegate.

"State" means any of the 50 States of the United States and the District of Columbia. It includes the State agency.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"We," "us," and "our" refers to the Social Security Administration (SSA) or the Secretary, as appropriate.

§ 416.1003 Basic responsibilities for us and the State.

(a) *General.* We will work with the State to provide and maintain an effective system for processing claims of those who apply for and who are receiving benefits under the disability program. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of the program except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* We will:

(1) Periodically review the regulations and other written guidelines to determine whether they insure effective and uniform administration of the disability program. To the extent

feasible, we will consult with and take into consideration the experience of the States in issuing regulations and guidelines necessary to insure effective and uniform administration of the disability program;

(2) Provide training materials or in some instances conduct or specify training (see § 416.1022);

(3) Provide funds to the State agency for the necessary cost of performing the disability determination function (see § 416.1026);

(4) Monitor and evaluate the performance of the State agency under the established standards (see §§ 416.1044 and 416.1045); and

(5) Maintain liaison with the medical profession nationally and with national organizations and agencies whose interests or activities may affect the disability program.

(c) *Responsibilities of the State.* The State will:

(1) Provide management needed to insure that the State agency carries out the disability determination function so that disability determinations are made accurately and promptly;

(2) Provide an organizational structure, adequate facilities, qualified personnel, medical consultant services, and a quality assurance function (§§ 416.1020–416.1024);

(3) Furnish reports and records relating to the administration of the disability program (§ 416.1025);

(4) Submit budgets (§ 416.1026);

(5) Cooperate with audits (§ 416.1027);

(6) Insure that all applicants for and recipients of disability benefits are treated equally and courteously;

(7) Be responsible for property used for disability program purposes (§ 416.1028);

(8) Take part in the research and demonstration projects (§ 416.1029);

(9) Coordinate with other agencies (§ 416.1030);

(10) Safeguard the records created by the State in performing the disability determination function (§ 416.1031);

(11) Comply with other provisions of the Federal law and regulations that apply to the State in performing the disability determination function;

(12) Comply with other written guidelines (§ 416.1033);

(13) Maintain liaison with the medical profession and organizations that may facilitate performing the disability determination function; and

(14) Assist us in other ways that we determine may promote the objectives of effective and uniform administration.

Responsibilities for Performing the Disability Determination Function

§ 416.1010 How a State notifies us that it wishes to perform the disability determination function.

(a) *Deemed notice.* Any State that has in effect as of June 1, 1981, an agreement with us to make disability determinations will be deemed to have given us notice that it wishes to perform the disability determination function, in lieu of continuing the agreement in effect after June 1, 1981.

(b) *Written notice.* After June 1, 1981, a State not making disability determinations that wishes to perform the disability determination function under these regulations must notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State.

§ 416.1011 How we notify a State whether it may perform the disability determination function.

(a) If a State notifies us in writing that it wishes to perform the disability determination function, we will notify the State in writing whether or not it may perform the function. The State will begin performing the disability determination function beginning with the month we and the State agree upon.

(b) If we have previously found that a State agency has substantially failed to make disability determinations in accordance with the law or these regulations and other written guidelines or if the State has previously notified us in writing that it does not wish to make disability determinations, the notice will advise the State whether the State agency may again make the disability determinations and, if so, the date and the conditions under which the State may again make them.

§ 416.1013 Disability determinations the State makes.

(a) *General rule.* A State agency will make determinations of disability with respect to all persons in the State except those individuals whose cases are in a class specifically excluded by our written guidelines. A determination of disability made by the State is the determination of the Secretary, except as described in § 416.903(d)(1).

(b) *New classes of cases.* Where any new class or classes of cases arise requiring determinations of disability, we will determine the conditions under which a State may choose not to make the disability determinations. We will

provide the State with the necessary funding to do the additional work.

(c) *Temporary transfer of classes of cases.* We will make disability determinations for classes of cases temporarily transferred to us by the State agency if the State agency asks us to do so and we agree. The State agency will make written arrangements with us which will specify the period of time and the class or classes of cases we will do.

§ 416.1014 Responsibilities for obtaining evidence to make disability determinations.

(a) The State agency will secure from the claimant, or other sources, any evidence it needs to make a disability determination.

(b) We will secure from the claimant or other special arrangement sources, any evidence we can obtain as adequately and more readily than the State agency. We will furnish the evidence to the State agency for use in making a disability determination.

(c) At our request, the State agency will obtain and furnish medical or other evidence and provide assistance as may be necessary for us to carry out our responsibility for making disability determinations in those classes of cases described in the written guidelines for which the State agency does not make the determination.

§ 416.1015 Making disability determinations.

(a) When making a disability determination, the State agency will apply subpart I, Part 416 of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical consultant and a State agency disability examiner. The State agency disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 416.1072 of this part for what we mean by "substantial gainful activity".)

(d) The State agency will certify each determination of disability to us on forms we provide.

(e) The State agency will furnish us with all the evidence it considered in making its determination.

(f) The State agency will not be responsible for defending in court any determination made, or any procedure

for making determinations, under these regulations.

§ 416.1018 Notifying claimant of the disability determination.

The State agency will prepare denial notices in accordance with subpart N of this Part whenever it makes a disability determination which is wholly or partly unfavorable to the claimant.

Administrative Responsibilities and Requirements

§ 416.1020 Organization.

(a) The State will provide the organizational structure, sufficient qualified personnel, medical consultant services, and a quality assurance function to insure disability determinations are made accurately and promptly. We may impose specific organizational requirements on the State, but only in the course of mandatory technical and management assistance as described in § 416.1060.

(b) The State is responsible for making accurate and prompt disability determinations.

§ 416.1021 Personnel.

(a) *Equal Employment Opportunity.* The State will comply with all applicable Federal statutes, executive orders and regulations concerned with equal employment opportunities.

(b) *Selection, tenure, and compensation.* The State agency will, except as may be inconsistent with paragraph (a) of this section, adhere to applicable State approved personnel standards in the selection, tenure, and compensation of any individual employed in the disability program.

(c) *Travel.* The State will make personnel available to attend meetings or workshops as may be sponsored or approved by us for furthering the purposes of the disability program.

(d) *Restrictions.* Subject to appropriate Federal funding, the State will, to the best of its ability, facilitate the processing of disability claims by avoiding personnel freezes, restrictions against overtime work, or curtailment of facilities or activities.

§ 416.1022 Training.

The State will insure that all employees have an acceptable level of competence. We will provide training and other instructional materials to facilitate basic and advanced technical proficiency of disability staff in order to insure uniformity and effectiveness in the administration of the disability program. We will conduct or specify training, as appropriate but only if:

(a) A State agency's performance approaches unacceptable levels or

(b) The material required for the training is complex or the capacity of the State to deliver the training is in doubt and uniformity of the training is essential.

§ 416.1023 Facilities.

(a) *Space, equipment, supplies, and other services.* Subject to appropriate Federal funding, the State will provide adequate space, equipment, supplies, and other services to facilitate making accurate and prompt disability determinations.

(b) *Location of facilities.* Subject to appropriate Federal funding, the State will determine the location where the disability determination function is to be performed so that disability determinations are made accurately and promptly.

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed for the purposes of inspecting the work and activities required by the regulations and assuring compliance with pertinent Federal statutes and regulations. We will contact the State and give reasonable prior notice of the times and purposes of any visit.

§ 416.1024 Medical and other purchased services.

The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.

§ 416.1025 Records and reports.

(a) The State will establish and maintain the records and furnish the schedules, financial, cost, and other reports relating to the administration of the disability programs as we may require.

(b) The State will permit us and the Comptroller General of the United States (including duly authorized representatives) access to and the right to examine records relating to the work which the State performs under these regulations. These records will be retained by the State for the periods of time specified for retention of records in the Federal Procurement Regulations (41 CFR parts 1-20).

§ 416.1026 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability

determinations under these regulations. Necessary costs mean direct as well as indirect costs as defined in title 41 CFR subpart 1-15.7 and in Federal Management Circular 74-4, as amended or superseded.

(b) The State will submit estimates of anticipated costs in the form of a budget at the time and in the manner we require.

(c) We will notify the State of the amount which will be made available to it as well as what anticipated costs are being approved.

(d) The State may not incur or make expenditures for items of cost not approved by us or in excess of the amount we make available to the State.

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its actual expenditures. We will give the State an audit report showing whether the expenditures were consistent with cost principles described in subpart 1-15.7 of part 1-15 of the Federal Procurement Regulations (41 CFR 1-15.7) and in written guidelines in effect at the time the expenditures were made or incurred.

(f) Any monies paid to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United States.

§ 416.1027 Audits.

As soon as practicable after the close of each budgetary period, or at other times as necessary, the books of account and records in each State pertaining to the administration of the disability program under the Act will be audited by our Inspector General's office. These audits are conducted to determine whether the expenditures were made for the purposes intended and in amounts necessary for the proper and efficient administration of the disability program. Audits also will be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit.

(a) *Questioned items.* Expenditures of State agencies will be audited on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any questioned items. They will be given reasonable time to explain questioned items or expenditures. Any explanation furnished by the State or State agency will be given full consideration before a final

determination is made on questioned items in the audit report.

(b) *State appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State of his or her determination on the audit report. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of that decision in writing no later than 45 days from the date of the State's appeal. The decision by the Commissioner will be final and conclusive upon the State unless the State appeals that decision in writing within 30 days of the date of the decision by the Commissioner to the Department of Health and Human Services Departmental Grant Appeals Board (the Board) within 30 days after receiving the Commissioner's decision. See § 416.1083.

§ 416.1028 Property.

The State will have title to equipment purchased for disability program purposes. The State will be responsible for maintaining all property it acquires or which we furnish to it for performing the disability determination function. The State will identify the equipment by labeling and by inventory and will credit the SSA account with the fair market value of disposed property. In the event we assume the disability determination function from a State, ownership of all property and equipment acquired with SSA funds will be transferred to us effective on the date the State is notified that we are assuming the disability determination function or we are notified that the State is terminating the relationship.

§ 416.1029 Participation in research and demonstration projects.

We will invite State participation in federally funded research and demonstration projects to assess the effectiveness of the disability program and to ascertain the effect of program policy changes. Where we determine that State participation is necessary for the project to be complete, for example, to provide national uniformity in a claims process, State participation is mandatory.

§ 416.1030 Coordination with other agencies.

(a) The State will establish cooperative working relationships with other agencies concerned with serving the disabled and, insofar as practicable, use their services, facilities, and records to:

(1) Assist the State in developing evidence and making determinations of disability; and

(2) Insure that referral of disabled or blind persons for rehabilitation services will be carried out effectively.

(b) The State may pay these agencies for the services, facilities, or records they provide. The State will include these costs in its estimates of anticipated costs and reports of actual expenditures.

§ 416.1031 Confidentiality of information and records.

The State will comply with the confidentiality of information, including the security of systems, and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 416.1033).

§ 416.1032 Other Federal laws and regulations.

The State will comply with the provisions of other Federal laws and regulations that directly affect its responsibilities in carrying out the disability determination function; for example, Treasury Department regulations on letters of credit (31 CFR Part 205).

§ 416.1033 Policies and operating instructions.

(a) We will provide the State agency with written guidelines necessary for it to carry out its responsibilities in performing the disability determination function.

(b) The State agency making determinations of disability will comply with the written guidelines in the Disability Insurance section of the Program Operations Manual System. This manual will also include certain policies, procedures, guides and operating instructions designated as advisory or discretionary.

(c) A representative group of State agencies will be given an opportunity to participate in formulating disability program policies that have an effect on their role in carrying out the disability determination function. State agencies will also be given an opportunity to comment before changes are made in written guidelines unless delay in issuing a change may impair service to the public.

Performance Standards**§ 416.1040 General.**

The following sections provide the procedures and guidelines we use to determine whether the State agency meets established national performance standards to help assure effective and uniform administration of our disability programs throughout the United States and to measure whether each State agency's performance of the disability determination function is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process. We measure the State agency performance in two areas—processing time and performance accuracy.

§ 416.1041 Standards of performance.

(a) *General.* The performance standards include both a target level of performance and a threshold level of performance for the State agency. The target level represents a level of performance that we and the States will work to attain in the future. The threshold level is the minimum acceptable level of performance. Performance below the threshold level will be the basis for the Secretary's taking from the State agency partial or complete responsibility for performing the disability determination function. Intermediate State agency goals are designed to help each State agency move from its current performance levels to the target levels.

(b) *The target level.* The target level is the optimum level of performance. There are three targets—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and one for title XVI initial processing time.

(c) *The threshold level.* The threshold level is the minimum acceptable level of performance. There are three thresholds—one for combined title II and title XVI initial performance accuracy, one for title II initial processing time, and one for title XVI initial processing time.

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by SSA's regional commissioner after negotiation with each State agency. The intermediate goals are stepping stones designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the

intermediate goals may result in consultation and an offer of optional technical and management assistance depending on the availability of SSA resources.

§ 416.1042 Processing time standards.

(a) *General.* Title II processing time refers to the average number of days (including Saturday, Sunday and holidays) it takes a State agency to process an initial disability claim from the day it is received in the State agency until the day it is released by the State agency. Title XVI processing time refers to the average number of days (including Saturday, Sunday and holidays) from release of the initial disability claim by the SSA district office until systems input of the disability determination.

(b) *Target levels.* The processing time target levels are:

(1) 37 days for title II initial claims.

(2) 43 days for title XVI initial claims.

(c) *Threshold levels.* The processing time threshold levels are:

(1) 49.5 days for title II initial claims.

(2) 57.9 days for title XVI initial claims.

§ 416.1043 Performance accuracy standard.

(a) *General.* Performance accuracy refers to the percentage of cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency adjudication. The definition of performance accuracy includes the measurement of factors that have a potential for affecting a decision, as well as the correctness of the decision. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is a performance error. Performance accuracy, therefore, is a higher standard than decisional accuracy. As a result, the percentage of correct decisions is significantly higher than what is reflected in the error rate established by SSA's quality assurance system.

(b) *Target level.* The State agency initial performance accuracy target level for combined title II and title XVI cases is 97 percent with a corresponding decision accuracy rate of 99 percent.

(c) *Intermediate goals.* These goals will be established annually by SSA's regional commissioner after negotiation with the State and should be used as stepping stones to progress towards our targeted level of performance.

(d) *Threshold levels.* The State agency initial performance accuracy threshold level for combined title II and title XVI cases is 90.6 percent.

§ 416.1044 How and when we determine whether the processing time standards are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days (including Saturday, Sunday and holidays) from the time the case folder is received in the State agency until it is released to us by the State agency. For initial title XVI cases, we calculate a mean number of days (including Saturday, Sunday and holidays) from the release of the case folder by the social security district office until systems input of the disability determination.

(b) *Frequency of review.* Title II processing times and title XVI processing times are monitored separately on a quarterly basis. The determination as to whether or not the processing time thresholds have been met is made at the end of each quarter each year. Quarterly State-by-State mean processing times are compared with the threshold levels for both title II and title XVI.

§ 416.1045 How and when we determine whether the performance accuracy standard is met.

(a) *How we determine performance accuracy.* We determine a State agency's performance accuracy rate on the basis of decision and documentation errors identified in our review of the sample cases.

(b) *Frequency of review.* Title II and title XVI initial performance accuracy are monitored together on a quarterly basis. The determinations as to whether the performance accuracy threshold has been met is made at the end of each quarter each year. Quarterly State-by-State combined initial performance accuracy rates are compared to the established threshold level.

§ 416.1050 If a State agency is not meeting the standards.

If a State agency falls below two of the three established threshold levels (one of which must be performance accuracy) for two or more consecutive quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification we will as soon as practicable provide the State agency appropriate technical and management assistance described in §§ 416.1060 and 416.1061 of these regulations for a period of up to 12 months.

Technical and Management Assistance

§ 416.1060 When we will provide assistance.

(a) *General.* We will maintain a regular monitoring program to evaluate State agency performance of combined title II and title XVI initial performance accuracy, title II initial processing time and title XVI initial processing time. This regular monitoring program will allow us to determine the type of technical and management assistance a State agency may need to improve its performance. In addition, the results of this monitoring will show whether we will give a State agency mandatory or optional technical and management assistance.

(b) *Mandatory assistance.* (1) We will provide a State agency technical and management assistance if it fails to meet two of three threshold levels (one being performance accuracy) for two consecutive quarters. These levels are—

(i) Combined title II and title XVI initial performance accuracy—90.6 percent.

(ii) Title II initial processing time—49.5 days.

(iii) Title XVI initial processing time—57.9 days.

(2) Failure to meet any one of the threshold levels for two consecutive quarters may result in technical and management assistance being provided depending on available resources.

(c) *Optional assistance.* We may offer a State agency technical and management assistance when regular monitoring reveals that performance has significantly declined or that intermediate goals have not been met. We will offer this technical and management assistance at our discretion based on available resources.

§ 416.1061 What assistance we will provide.

We will initiate a program of technical and management assistance in order to improve performance in those State agencies where it has been determined that such help is necessary. This program will include any or all of the following—

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A fiscal and administrative management review (FAMR) to:

(1) Identify particular aspects of State agency operations which can receive immediate help and thus improve performance accuracy or processing time; and

(2) Develop a long-range plan based on the FAMR results to help the State

agency prevent its performance from falling below the threshold levels in the future.

(c) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(d) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(e) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

Substantial Failure

§ 416.1070 General.

After a State agency falls below 2 of 3 established threshold levels, one being performance accuracy, for 2 consecutive quarters, and after the mandatory technical and management assistance period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below 2 of 3 threshold levels, one being performance accuracy, in 2 consecutive quarters during the next 12 months, we will notify the State that we propose to find the State agency to be in substantial failure and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make disability determinations consistent with the regulations and other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with § 416.1090 and § 416.1092

§ 416.1071 Good cause for not meeting the established threshold levels.

If we find that a State agency did not meet the threshold levels because of factors beyond its control, we will not find the State agency to be in substantial failure. Some of the factors we will consider are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function; or

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulation, or written guidelines, systems modifications or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

§ 416.1075 Finding of substantial failure.

A finding of substantial failure with respect to a State may not be made unless and until the State is afforded an opportunity for a hearing.

Hearings and Appeals

§ 416.1080 Notice of right to hearing on proposed finding of substantial failure.

If, following the mandatory technical and management assistance period and the 3-month adjustment period, a State agency again falls below 2 of 3 threshold levels (one being performance accuracy) in 2 consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find the State agency in substantial failure unless the State submits a written request for a hearing with the Health and Human Services Departmental Grant Appeals Board within 30 days after receiving the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met, and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found in substantial failure and we will implement our plans to assume the disability determination function.

§ 416.1081 Disputes on other matters.

Disputes concerning fiscal issues will be resolved in proceedings before the Health and Human Services Departmental Grant Appeals Board if the issue cannot be resolved between us and the State. Disputes concerning nonfiscal issues will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 416.1027.)

§ 416.1082 Who conducts the hearings.

If a hearing is required, it will be conducted by the Health and Human Services Departmental Grant Appeals Board (the Board).

§ 416.1083 Hearings and appeals process.

The rules for hearings and appeals before the Board are provided in 45 CFR Part 16. A notice under § 416.1080 of this subpart will be considered a "final

written decision" for purposes of Board review.

Assumption of Disability Determination Function

§ 416.1090 Assumption when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for performing the disability determination function from the State agency, whether the assumption will be partial or complete, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of § 416.1092.

§ 416.1091 Assumption when State no longer wishes to perform the disability determination function.

(a) *Notice to the Secretary.* If a State no longer wishes to perform the disability determination function, it will notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who gave the notice.

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at the time the notice referred to in paragraph (a) of this section is given for not less than 180 days or, if later, until we have complied with the requirements of § 416.1092. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to do these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for performing the disability determination function.

§ 416.1092 Protection of State employees.

(a) *Hiring preference.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under § 416.1090 or § 416.1091, as appropriate. Except for the State agency's administrator, deputy

administrator, or assistant administrator (or his equivalent), we will give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling positions with us for which they are qualified. We may also give a preference in hiring to the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(b) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 416.1093 Limitation on State expenditures after notice.

The State agency may not, after it receives the notice referred to in § 416.1090, or gives the notice referred to in § 416.1091, make any new commitments to spend funds allocated to it for performing the disability determination function without the approval of the appropriate SSA regional commissioner. The State will make every effort to close out as soon as possible all existing commitments that relate to performing the disability determination function.

§ 416.1094 Final accounting by the State.

The State will submit its final claims to us as soon as possible, but in no event later than 1 year from the effective date of our assumption of the disability determination function unless we grant an extension of time. When the final claim(s) is submitted, a final accounting will be made by the State of any funds paid to the State under § 416.1028 which have not been spent or committed prior to the effective date of our assumption of the disability determination function. Disputes concerning final accounting issues which cannot be resolved between the State and us will be resolved in proceedings before the Grant Appeals Board as described in 45 CFR Part 416.

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