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 | INFORMATIONAL LETTER |  
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TRANSMITTAL: 95 INF-17

TO: Commissioners of  
 Social Services

DIVISION: Economic  
 Security

DATE: May 16, 1995

SUBJECT: Changes to SSDI and SSI Rules for Drug/Alcohol  
 Abusers (P.L. 103-296)

SUGGESTED

DISTRIBUTION: Income Maintenance Directors  
 Food Stamp Directors  
 Medicaid Directors  
 Social Services Directors  
 Employment Coordinators  
 Staff Development Coordinators

CONTACT PERSON: Call 1 (800) 343-8859, ask for:  
 Public Assistance: Charles Giambalvo, extension 4-9327  
 (AV1810)  
 Food Stamps: County Representative, extension 3-0332  
 Adult Services: Contact Your Adult Services  
 Representative at (518) 432-2980  
 Medical Assistance: Wendy Butz, extension 4-9141  
 (AW7420)  
 Fiscal Operations: Regions 1-4 - Roland Levie,  
 extension 4-7598 (FMS001)  
 Region 5 - Marvin Gold at  
 (212) 383-1733 (OFM270)

ATTACHMENTS: Attachment A - SSA Program Circular - not available  
 on-line  
 Attachment B - Interim Final Regulations on SSA  
 Changes for DA&A Clients - not  
 available on-line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			PL 103-296	FSSB XII-G-10	95 LCM-9 95 LCM-22

I. BACKGROUND

On August 15, 1994, the President signed Public Law (P.L.) 103-296, the Social Security Independence and Program Improvements Act of 1994. This law establishes the Social Security Administration as a separate agency, and creates special requirements and limitations on Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) for individuals disabled based on a finding that drug addiction and/or alcoholism (DA&A) is a contributing factor material to the finding of disability. (See attached Interim Federal Regulation 404.1535 for an explanation of the term "material to the finding of disability").

These requirements became effective March 1, 1995. Some of the changes have been described previously in 95 LCM 9 and 22.

The attached SSA Program Circular and related regulations, released February 10, 1995, describe all of the changes initiated by P.L. 103-296 that pertain to DA&A clients. The provisions established by the Act will likely have significant impacts on local district operations. Key provisions are outlined below.

II. REPRESENTATIVE PAYEES

P.L.103-296 requires all Title II (SSDI) and Title XVI (SSI) clients identified as DA&A to receive benefit payments through a representative payee. A new list of preferred providers of representative payee services became effective on December 1, 1994. The list includes the following:

- a community-based nonprofit social service agency licensed or bonded by the State;
- a Federal, State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;
- a State or local government agency with fiduciary responsibilities; or
- a designee of an agency (other than a Federal agency) referred to in the three preceding bullets.

While local districts have always been required to provide representative payee services to eligible clients as part of their Protective Services for Adults (PSA) responsibilities, two major factors have changed. First, social services districts (SSDs) have become a preferred provider over a family member or other

individual. Second, the number of clients likely to require this service will probably increase significantly. Currently, there are no reliable estimates available regarding the number of clients who will need representative payees. SSDs should be aware that, if a DA&A client is not eligible for PSA, representative payee services may be provided at local option under other Title XX services categories.

Although friends and relatives are not on the preferred list of representative payees, the SSA is authorized to approve these individuals as payees. In those situations in which a local district can locate a qualified friend, relative or other responsible person to act as a representative payee for a DA&A client, the district may request the SSA to appoint this person as the client's payee. Districts also may request the SSA to initially contact family members, friends or other responsible persons about service as a DA&A beneficiary's representative payee in order to reduce the number of referrals to the local district. Requesting the SSA to contact and to certify family members, friends and other responsible individuals as representative payees, would be consistent with state law and regulation (which require districts to function as the representative payee for PSA clients when no one else is available and capable of acting in this capacity). We do not know how receptive SSA offices would be to these requests. Districts which encounter difficulties in getting their local SSA office to certify family members, friends or other responsible persons as representative payees should advise their adult services representative so the Department may initiate discussions with the SSA on this matter.

The legislation is quite clear that SSDI and SSI beneficiaries who are alcoholic or drug addicted will not receive their benefit checks without a qualified representative payee appointed. SSA will stop payment to SSDI and SSI recipients who do not have a representative payee. The payments will remain stopped until an appropriate representative payee is found. To assure continued benefits to clients and to reduce the impact of these new requirements, districts should encourage their local SSA office to contact other preferred providers about acting as the representative payee for the DA&A beneficiaries these providers are serving.

SSA will assist RSDI/SSI applicants/recipients to find representative payees. If the client and SSA cannot find another representative payee SSA will contact the appropriate SSD and ask them to be the SSDI/SSI applicant's/recipient's representative payee.

A. Charging of Fees

Qualified organizations, such as a SSD, may collect fees of the lesser of 10% of the monthly payment or \$50 per month, in exchange for providing payee services. It is important for SSDs to note that these fees are deducted directly from the client's benefit check.

A SSD must notify the appropriate SSA Field Office if the SSD wants to collect a fee for providing representative payee services. SSDs should contact the SSA Office they usually deal with to obtain information about how to notify SSA that the SSD wants to collect a fee.

B. Treatment of Fees

Regardless of whether a fee is paid or not, this money must be budgeted in determining eligibility for any HR supplementation.

The monthly fee collected by an authorized payee (as long as the payee is either a community based, non-profit social services agency that is licensed by the State or is a SSD) is excluded as food stamp income. The fee is also excluded from calculating eligibility for Energy Assistance.

C. Claiming Fees for Representative Payees

When a social services district becomes a representative payee and collects a fee, the fee should be treated as a refund of administrative costs. The credit should be reported under object of expense 19, in the F-2 function of the DSS-923 (Schedule of Payments for Administrative Expenses other Than Salaries). The credit amounts should be direct charged on the Schedule D-2 (General services Administration), line 14; column 2 (Title XX services). For Adult Protective cases, the credit amounts should also be reported in Section 3, Part A, line 4 of the Schedule D-2 as directly identified Protective Adult. For districts exceeding their Title XX ceiling the refund will be applied to the State and local share of adult protective costs paid in excess of the federal ceiling.

For Adult Preventive cases the refund should be reported on Schedule D-2, Section 1, line 14, column 2. By using these claiming instructions, the districts that exceed the Title XX ceiling would retain the full value of the refund amounts.

III. MANDATORY TREATMENT AND SANCTIONS

P.L. 103-296 establishes the requirement that all DA&A clients participate in a treatment program. Clients will be referred to treatment and monitored by an independent "Referral and Monitoring Agency" (RMA), which will serve under contract to SSA. If no treatment is available, clients will be placed on a waiting list, and may receive benefits during this time period.

When a client is placed in a treatment program, the client must actively participate in treatment or be sanctioned. The federal legislation establishes a series of durational sanctions for noncompliance (See the SSA Program Circular attached to this INF).

Currently, clients who are under sanction from SSA may be eligible for HR if they return to treatment and they are not being sanctioned for non-cooperation with previous HR required out-patient treatment. If a person who was removed from SSDI or SSI because of non-cooperation with SSA's DA&A regulation applies for HR, a SSD must determine if the person had ever applied for or been in receipt of HR.

If the person never applied for or received HR, the application must be processed the same as every other initial application. However, the person must be receiving appropriate rehabilitation before the SSD can open the HR case.

If the applicant had applied for, or been in receipt of, HR before, the SSD must determine if the applicant's case was closed for non-cooperation with the HR drug/alcohol treatment requirements. If not, the SSD must process the case as noted in the paragraph above. If the client had been sanctioned, the SSD must determine if the HR sanction period has expired. If the sanction period has not expired, the HR case cannot be opened until the sanction expires and the applicant is in an appropriate treatment program.

It is important to note that clients who are sanctioned from receiving cash benefits are still entitled to Medical Assistance (see section VII below). These clients would also be entitled to food stamps but would have to qualify under normal certification requirements since they no longer can be considered categorically eligible.

#### IV. Time Limitations on SSDI/SSI Benefits

The new law requires that payments to DA&A clients be terminated after 36 months. Please note that the law does not state that the disability ends after 36 months; only the payment made as the result of the disability ceases. For SSI clients, the calculation of the 36 months begins from the first month that DA&A benefits are payable. Periods of sanction due to non-compliance with treatment requirements do not count toward the 36 month period. An individual will not be sanctioned if treatment is not available; but receipt of benefits during this period counts toward the 36 months.

For SSDI clients, the 36 month period begins with the first month of DA&A entitlement, if a treatment slot is available for the client. Sanction periods do not count toward the 36 month period. Unlike SSI, periods during which treatment is unavailable do not count toward the 36 month limit for SSDI clients.

If the only reason an individual does not receive an SSI benefit in a given month is a sanction for failure to comply with required treatment, that individual is treated for Medicaid purposes as having received SSI during that month. Note, however, that a person sanctioned by SSA for non-cooperation with the DA&A regulation for 12 consecutive months will be terminated from SSI. In such cases a separate MA-Only eligibility determination will have to be made.

When the individual's SSI case is closed due to the 36 month eligibility period, it is expected that SSDs will receive notice via the SDX. At that time, SSDs will have to make a separate determination of the person's eligibility for Medical Assistance.

V. INTERIM ASSISTANCE REIMBURSEMENT (IAR)

P.L. 103-296 institutes a number of changes in the IAR process. The Department issued Local Commissioner's Memorandums (95 LCM-9 and 95 LCM-22) regarding these changes.

VI. RETROACTIVE PAYMENTS

It should be noted that, in the past, clients eligible for SSI and SSDI usually received retroactive payments. These payments were given to the client in a lump-sum.

P.L. 103-296 prohibits these initial lump-sum payments to DA&A clients. In the future, the monthly retroactive payment to DA&A clients may not exceed two times the full monthly benefit payment for Title II; and two times the Federal benefit rate plus any State supplement (applicable for the preceding month) for Title XVI.

These double monthly payments are countable as food stamp income. If there is a change in policy, we will notify SSD's.

For Medical Assistance, the "double payments" are handled as follows:

- For SSDI the payment is considered income in the month received, and is excluded as countable resources for six months following the month of receipt.
- For SSI, retroactive SSI payments are never counted as income in the SSI program; therefore, it is irrelevant how the retroactive title XVI is paid. Again, as with all other title XVI retroactive payments, the title XVI installments are excluded from the resource calculations for the six month period following receipt of the payment.

VII. MEDICAL ASSISTANCE

Previous sections of this INF have indicated that individuals who have been sanctioned for noncompliance with treatment and those who have exhausted their 36 months of benefits may still be entitled to Medical Assistance. Details regarding how these clients will be identified to local districts, reviewed for continuation, and claimed for federal financial participation (FFP) will be forthcoming under separate cover.

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It should be noted that after the clients SSI 12 month sanction period or the end of the 36 month eligibility period, if otherwise eligible, the person is still eligible for FFP medical assistance. If the MA Eligibility Field on the SDX Interface Report is "P", the person will remain on medical assistance until this code is changed.

Updates to PA, MA and FS Source Books will be forthcoming.

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John C. Fredericks  
Division of Economic Security