Talking Points for Treating Physician Notice of Proposed Rulemaking

The proposed rules will not increase accuracy or timeliness of decisions: These rules will not lead to more accurate decisions. They will not decrease processing time, either. If anything, they will lead to more appeals, more remands, and more delays. The process of training adjudicators on this complex new regulation and adapting SSA systems to comply with it will be difficult, time-consuming, and expensive.

These rules make decisions less transparent: SSA should continue requiring disability determinations to explain the rationale for how a decision was made. The provisions in this proposed rule that remove the responsibility of adjudicators to explain how they weigh certain evidence and prior administrative decisions, for example, is likely to increase appeals and court remands. Courts will not be able to determine whether “substantial evidence” supports a decision if SSA’s adjudicators are not required to adequately explain how they arrived at their decisions.

My organization urges SSA not to move forward with this NPRM. If the agency does so, it should alter many of the proposed provisions. Specifically:

Acceptable Medical Sources (20 CFR §404.1502(a) and § 416.902(a)): My organization strongly supports SSA’s proposal to add audiologists and licensed advance practice registered nurses (APRNs) to the list of “acceptable medical sources.” However, my organization urges for more expansion, including specifically naming nurse practitioners and adding chiropractors, physical therapists, physician assistants (PAs), and licensed clinical social workers (LCSWs), based on the reality of who in the current healthcare workforce provides treatment.

Decisions by other governmental agencies and nongovernmental entities (20 CFR § 404.1504 and § 416.920b): My organization opposes SSA’s proposed revisions to how decisions by other governmental agencies and nongovernmental entities are considered. SSA should require adjudicators to articulate whether and to what extent decisions from other agencies and entities, as well as the medical opinions and prior administrative medical findings that underlie such decisions, are considered.

How SSA Considers Evidence (20 CFR § 404.1520c and §416.920c): Many changes in the NPRM are premised on the idea that individuals no longer have relationships with treating sources. My organization disagrees with this premise. As SSA recognizes when proposing expanding “acceptable medical sources,” treating sources are not (and truly never were) all physicians. My organization supports the current rule, which requires adjudicators to give treating source opinions from acceptable medical sources controlling weight in most circumstances; when such opinions are not given controlling weight, the adjudicator must explain why not. My organization also supports giving additional weight to opinions from acceptable medical sources than from those who perform a single examination or a review of a paper file, even in situations where controlling weight may not be appropriate. The inability of some SSA adjudicators to adequately explain how they weighed conflicting evidence does not justify treating all evidence equally, but rather argues for better training and supervision of adjudicators.

My organization urges SSA to:

Withdraw elimination of treating physician rule: SSA should withdraw the proposals to eliminate the treating source rule. The agency should continue to give controlling weight (or additional weight, depending on the situation) to evidence received from a treating acceptable medical source.
Continue to give additional weight to treating sources: It is the position of my organization that the relationship a claimant has with a treating source should qualify that source’s opinion for additional weight compared to the opinion of an individual who performs a single examination or reviews a claimant’s paper file.

Retain the current framework for weighing evidence: Should SSA move forward with eliminating controlling weight for treating sources, my organization urges that the agency retain the rest of the current framework for giving treating sources additional weight and adopt the suggestions contained in these comments.

Expand acceptable medical sources: My organization fully supports expanding the list of acceptable medical sources but urges SSA to go further than proposed by specifically naming nurse practitioners and including PAs, LCSWs, physical therapist, and chiropractors as well.