

4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA-2006-0103]

RIN 0960-AF99

Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities.

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our regulations to reflect two provisions of the Balanced Budget Act of 1997 that affect the payment of benefits under title XVI of the Social Security Act (the Act). One of the provisions extended temporary institutionalization benefits to children receiving SSI benefits who enter private medical treatment facilities and who otherwise would be ineligible for temporary institutionalization benefits because of private insurance coverage. The other provision replaced obsolete terminology in the Act that referred to particular kinds of medical facilities and substituted a broader, more descriptive term.

DATES: These final rules are effective (insert date 30 days after date of publication in the FEDERAL REGISTER).

FOR FURTHER INFORMATION CONTACT: Curt Dobbs, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7963, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-

800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the Federal Register at <http://www.gpoaccess.gov/fr/index.html>.

Background

The basic purpose of the SSI program is to ensure a minimum level of income to individuals who are age 65 or older, or blind or disabled, and who have limited income and resources. The Balanced Budget Act of 1997 (Public Law 105-33), enacted August 5, 1997, contained two provisions that affected the payment of SSI benefits to certain SSI beneficiaries who are institutionalized. One of the provisions extended temporary institutionalization benefits to children who enter private medical treatment facilities and who otherwise would be subject to a reduced benefit because of private insurance coverage. The other provision removed obsolete terminology in the Act that referred to particular categories of inpatient medical facilities and substituted the broader, more descriptive term “medical treatment facility.” This change in terminology permits us to correct an unintended inequity in the amount of SSI benefits that were payable to certain children under the obsolete terminology.

Extending Temporary Institutionalization Benefits to Children Under Age 18 in Private Institutions

Residents of public institutions generally are ineligible to receive SSI payments. However, there are some exceptions to this general rule. One exception in section 1611(e)(1)(B) of the Act provides that residents of medical treatment facilities (which we define as a facility licensed or otherwise approved by a Federal, State, or local government to provide inpatient medical care and services) may be eligible for SSI if Medicaid pays a substantial part (more than 50 percent) of the cost of the beneficiary's care. In such cases, SSI payments to the resident of the medical treatment facility are limited to a maximum of \$30 a month.

Another exception in section 1611(e)(1)(G) of the Act allows payment of full SSI benefits for up to 3 full months after entering a public facility if a physician certifies that the recipient's stay in the facility is likely not to exceed 3 months and we determine the recipient needs to continue to maintain and provide for the expenses of the home to which he or she may return. These benefits are referred to as "temporary institutionalization benefits."

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), enacted August 22, 1996, amended section 1611(e)(1)(B) of the Act to allow children under age 18 who are in medical treatment facilities and who have private health insurance to receive the reduced SSI payment (\$30). However, Public Law 104-193 did not amend the statutory provision on temporary institutionalization to extend such benefits to

children with private health insurance. Consequently, children who were temporarily in private medical facilities could not be eligible for 3 months of full benefits if private health insurance, or a combination of Medicaid and private health insurance, paid more than 50 percent of the cost of their care. Payments to these children were limited to the reduced benefit amount of no more than \$30 a month beginning with their first full month of institutionalization.

Section 5522(c) of Public Law 105-33 revised section 1611(e)(1)(G) of the Act to correct this omission. Prior to this revision, section 1611(e)(1)(G) specified that the recipient must be an inmate of either a public institution whose primary purpose is to provide medical or psychiatric care, or a hospital, extended care facility, nursing home, or intermediate care facility that receives payments under a State plan approved under title XIX. As a result of Public Law 105-33, and subject to SSI eligibility and benefit computation rules, those children in private medical facilities for whom private health insurance, or a combination of Medicaid and private health insurance was paying more than 50 percent of the cost of care, now can be eligible for continuation of their full SSI benefits for up to 3 months under section 1611(e)(1)(G) of the Act. For example, when a child who is receiving SSI while living at home goes into a medical treatment facility, and private insurance through the parent's employment pays for more than 50 percent of the cost of care, the child can continue to receive SSI benefits during a temporary institutionalization of up to 3 months. Providing SSI benefits during a temporary period of institutionalization is designed to enable SSI beneficiaries (adult or child) to provide for the expenses of the home where they live and to reduce the risk of losing their place of residence due to a sudden loss of SSI benefits during a temporary period of institutionalization.

Revised Terminology for Inpatient Providers

Section 5522(c) of Public Law 105-33 also replaced outdated terminology in section 1611(e)(1)(B) of the Act. Prior to this statutory change, section 1611(e)(1)(B) specified certain categories of inpatient providers used in the Medicaid program. In the early years of the SSI program, the terminology “hospital, extended care facility, nursing home, or intermediate care facility” provided a comprehensive list of all possible inpatient settings as defined by the Medicaid program. However, as Medicaid dropped or renamed some of those coverage categories and added new categories, the list in section 1611(e)(1)(B) became obsolete and was no longer used. As a result, prior to Public Law 105-33, children in certain kinds of inpatient facilities were subject to the reduced benefit amount of no more than \$30, while children in other kinds of Medicaid covered inpatient facilities could receive the full SSI benefit. For example, Medicaid created the new coverage category of Psychiatric Residential Treatment Facility (PRTF) for individuals under age 21. PRTFs can receive substantial Medicaid payments, including the room and board payment. Before Public Law 105-33 made this technical amendment, children residing in a PRTF received full SSI benefits because that kind of facility was not listed in section 1611(e)(1)(B) as a facility whose residents would be subject to the \$30 payment limit. For many PRTF residents, Medicaid was paying all of their expenses, and yet Public Law 104-193 required payment of the full SSI benefit rate. This situation created an inequity between those children and children in other kinds of Medicaid covered inpatient facilities. This change in terminology now allows for similarly situated children (i.e., children residing in medical treatment facilities where Medicaid is providing for more than 50 percent of the cost of their care) to be paid the same amount of SSI benefits.

Explanation of Changes

We are making the following changes to our rules to codify provisions of Public Law 105-33 that affect the payment of benefits under title XVI of the Act to individuals who are in institutions:

- We are revising §416.212(b)(1) by adding “or private” to the introductory text to reflect the provision that gives full temporary institutionalization benefits to children who enter private medical treatment facilities when Medicaid pays more than 50 percent of the cost of their care.
- We are revising §§416.201 and 416.414(c) to remove the definition for “medical care facility” and replace it with a new definition for “medical treatment facility.”
- We are amending §§416.201, 416.211(b) and (c)(5)(iv), 416.414(a), (b)(2) and (3)(i)-(ii), 416.571, 416.1149(a)(1) and (c)(1)(i)-(ii), 416.1165(g)(6) and (i)(1), 416.1167(a)(2), and 416.1202(b)(2)(i) by eliminating the obsolete terms “medical facility” and “medical care facility” and replacing them with the term “medical treatment facility.”
- We are amending §416.708(k) by eliminating the terms “hospital”, “skilled nursing facility”, and “intermediate care facility” and replacing them with the term “medical treatment facility.”

On March 26, 2007, we published proposed rules in the Federal Register at 72 FR 14053 and provided a 60-day comment period. We did not receive any comments. Therefore, we are publishing the text of the proposed rules unchanged in these final rules.

REGULATORY PROCEDURES

Executive Order 12866

The Office of Management and Budget (OMB) determined that the proposed rules on which these final rules are based, published on March 26, 2007 at 72 FR 14053, met the criteria for a significant regulatory action under Executive Order 12866, as amended. Therefore, they were subject to OMB review. We received no public comments on the proposed rules and are publishing these final rules exactly as proposed. For this reason, OMB determined that it did not need to review the final rules. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

In order to codify two provisions of the Balanced Budget Act of 1997, we are revising our regulations that affect the payment of benefits under title XVI of the Act . One of the provisions extended temporary institutionalization benefits to children who enter private medical treatment facilities and who otherwise would be subject to a reduced benefit because of private insurance coverage. The other provision replaced obsolete terminology in the Act that referred to particular kinds of medical facilities and substituted a broader, more descriptive term.

As a result, we are amending the terminology in §416.708 (k) by eliminating the terms “hospital”, “skilled nursing facility”, and “intermediate care facility” and replacing them with the term “medical treatment facility.” As outlined below, this section contains specific public reporting requirements that require clearance under the Paperwork Reduction Act of 1995. Respondents to this collection are SSI recipients who are admitted to, or discharged from, a medical treatment facility or other public or private institution.

| Title/Section & Collection Description | Annual number of respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|--|------------------------------|-----------------------|---------------------------------------|---------------------------------|
| What you Must Report §416.708(k) Admission to or discharge from: (1) A medical treatment facility, | 34,200 | 1 | 7 | 3,990 |

| | | | | |
|--|--|--|--|--|
| (2) A public institution, or; (3) A private institution. | | | | |
|--|--|--|--|--|

In the publication of the proposed rules on March 26, 2007, we solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We received no public comments in response to this solicitation.

On April 4, 2007, OMB filed comment in accordance with 5 CFR 1320.11 (c), requiring us to review public comments in response to the proposed rules and address any such comments in the preamble of the final rules. As a result, we have submitted a new clearance package for OMB review and approval.

These information collection requirements will not become effective until approved by OMB. When OMB has approved these information collection requirements, we will publish a notice in the Federal Register.

To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated:

Michael J. Astrue,
Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts B, D, E, G, K, and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

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

Subpart B--[Amended]

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93-66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99-643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.201 is amended by removing the definition of "Medical care facility" and adding a definition of "Medical treatment facility" in alphabetical order to read as follows:

§ 416.201 General definitions and terms used in this subpart.

* * * * *

Medical treatment facility means an institution or that part of an institution that is licensed or otherwise approved by a Federal, State, or local government to provide inpatient medical care and services.

* * * * *

§§416.201 and 416.211 [Amended]

3. In 20 CFR part 416, subpart B, remove the words “medical facility” and “medical care facility” each time they appear and add in their place the words “medical treatment facility” in the following places:

a. Section 416.201 in the definitions of “Medical care facility” and “Public emergency shelter for the homeless”; and

b. Section 416.211(b) and (c)(5)(iv).

4. Section 416.212 is amended by revising the introductory text in paragraph (b)(1) to read as follows:

§ 416.212 Continuation of full benefits in certain cases of medical confinement.

* * * * *

(b) * * *

(1) Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(G) of the Social Security Act for up to 3 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays a substantial part (more than 50 percent) of the cost of your care or, if you are a child under age 18, reduced because of residence in a public or private institution which receives payments under a health insurance policy issued by a private provider, or a combination of Medicaid and a health insurance policy issued by a private provider, pay a substantial part (more than 50 percent) of the cost of your care if--

* * * * *

Subpart D--[Amended]

5. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

6. Section 416.414 is amended by revising the section heading and paragraph (c) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical treatment facility.

* * * * *

(c) Definition. For purposes of this section, a medical treatment facility means an institution or that part of an institution that is licensed or otherwise approved by a Federal, State, or local government to provide inpatient medical care and services.

§416.414 [Amended]

7. In addition to the amendment set forth above, in 20 CFR part 416, subpart D, remove the words “medical facility” and “medical care facility” and add in their place the words “medical treatment facility” in §416.414(a), (b)(2) and (b)(3)(i) through (ii).

Subpart E--[Amended]

8. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)-(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b-17, 1381, 1381a, 1382(c) and (e), and 1383(a)-(d) and (g)); 31 U.S.C. 3720A.

§416.571 [Amended]

9. In 20 CFR part 416, subpart E, remove the words “medical facility” wherever they appear and add in their place the words “medical treatment facility” in §416.571.

Subpart G--[Amended]

10. The authority citation for subpart G of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note), sec. 202, Pub. L. 108-203, 118 Stat 509 (42 U.S.C. 902 note).

11. Section 416.708 is amended by revising paragraph (k) to read as follows:

§416.708 What you must report.

* * * * *

(k) Admission to or discharge from a medical treatment facility, public institution, or private institution. You must report to us your admission to or discharge from—

(1) A medical treatment facility; or

(2) A public institution (defined in §416.201); or

(3) A private institution. Private institution means an institution as defined in §416.201 which is not administered by or the responsibility of a governmental unit. _

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Subpart K--[Amended]

12. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383 and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

§§416.1149, 416.1165 and 416.1167 [Amended]

13. In 20 CFR part 416, subpart K, remove the words “medical facility” and “medical care facility” and add in their place the words “medical treatment facility” in the following places:

- a. Section 416.1149(a)(1) and (c)(1)(i) through (ii);
- b. Section 416.1165(g)(6) and (i)(1); and
- c. Section 416.1167(a)(2).

Subpart L--[Amended]

14. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631 and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383 and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

§416.1202 [Amended]

15. In 20 CFR part 416, subpart L, remove the words “medical facility” and “medical care facility” and add in their place the words “medical treatment facility” in §416.1202(b)(2)(i).