AMERICAN LUNG ASSOCIATION.

National President and CEO
Harold P. Wimmer

January 31, 2020

The Honorable Andrew Saul
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Re: Notice of Proposed Rulemaking on Rules Regarding the Frequency and Notice of Continuing Disability Reviews, Docket No. SSA-2018-0026

Dear Commissioner Saul:

Thank you for the opportunity to provide feedback on the noticed of proposed rulemaking (NPRM) regarding the frequency and notice of continuing disability reviews.

The American Lung Association is the oldest voluntary public health association in the United States, currently representing the more than 37 million Americans living with lung diseases. The American Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease through research, education and advocacy.

Individuals living with lung cancer, lung transplants, COPD, asthma and other lung diseases may qualify for benefits under the Social Security Disability Insurance (SSDI) program and the Supplemental Security Income (SSI) program if the Social Security Administration (SSA) finds that they have a medically determinable impairment expected to last at least one year or result in death. After making initial determinations to provide benefits to individuals, the SSA performs continuing disability reviews for recipients somewhere between six months and seven years. The Lung Association appreciates that the SSA has not made changes to the current Medical Improvement Review Standard in the proposed rule but is concerned that the changes to the continuing disability review process lack evidence and could increase the burden of these reviews on patients with lung disease. The Lung Association therefore urges SSA to withdraw the proposed rule.

The continuing disability review process is already difficult for patients with lung disease. Patients may need to fill out lengthy paperwork, obtain supporting documentation, attend additional medical appointments and complete other administrative tasks. These reviews can be expensive, particularly if patients need to pay for copies of medical records, medical

Advocacy Office:
1331 Pennsylvania Avenue NW, Suite 1425 North
Washington, DC 20004-1710
Ph: 202-785-3355 F: 202-452-1805

Corporate Office:
55 West Wacker Drive, Suite 1150 | Chicago, IL 60601
Ph: 312-801-7630 F: 202-452-1805 info@Lung.org

appointments with providers to complete paperwork or legal representation for an appeal. The waiting process can also be extremely stressful, especially if individuals are in the middle of chemotherapy or other complex treatments. Increasing the frequency of continuing disability reviews will only increase the administrative, financial and emotional burdens on patients.

The NPRM lacks evidence to justify the changes proposed to the continuing disability review process. For example, the proposed rule would create a new category called Medical Improvement Likely for which individuals would go through a continuing disability review approximately every two years. The proposed rule does not provide medical evidence for including many conditions – such as lung cancer in the superior sulcus with multimodal therapy – in this category. The proposed rule also lacks medical evidence for including children at age 6 and 12, regardless of when these children had their most recent continuing disability review, or individuals approved for disability benefits at step 5, in this new category. The Lung Association is concerned that patients with certain types of lung cancer and other lung diseases could end up going through more frequent continuing disability reviews under this proposal without appropriate justification for these burdensome changes.

The SSA does claim that the new Medical Improvement Likely category will allow the agency to assess medical improvement "after some beneficiaries benefit from access to health care through Medicare or Medicaid to determine if they continue to be eligible for benefits." However, individuals who receive SSDI benefits face a five-month waiting period for SSDI, followed by a 24-month waiting period for Medicare. Thus, especially in states that have not expanded Medicaid, it is very unlikely that individuals will have gained access to healthcare during the two years before their review under the Medical Improvement Likely category. For individuals who have Medicaid coverage, covered treatments and services can vary greatly between state Medicaid programs, including access to innovative treatments for lung cancer and tobacco cessation treatment.[1] It is therefore unclear why SSA believes that it will see medical improvement based on access to healthcare for individuals under this new category.

The proposed rule also lacks necessary information to fully understand the impact of these changes on patients with lung disease. It is unclear what category many lung diseases fall under. For example, while *Supplementary Document: Impairment Placements in CDR Categories* includes lung cancer in the superior sulcus with multimodal therapy under the Medical Improvement Likely category, other types of lung cancer are not listed, nor is COPD. In the same document, asthma in children is listed under both the Medical Improvement Expected and Medical Improvement Likely categories. Additionally, it is unclear how SSA will determine the frequency of continuing medical reviews for patients with multiple health conditions. For example, many patients with lung cancer have other comorbidities such as COPD or cardiovascular disease. Patients with lung cancer may also develop other health conditions as a result of chemotherapy or other treatments, such as organ failure or neuropathy. Without a clear understanding of how often patients with different types of lung diseases will need to go through continuing disability reviews as a result of the proposed rule, it is impossible to fully comment on the impact of this rule on the patients we represent.

Finally, the SSA estimates that there will be an additional 2.6 million continuing disability reviews as a result of the proposed changes (which may be an underestimate) but does not provide any estimate of the number of individuals who could lose benefits. No rule should be finalized without a detailed estimate of how many people will lose benefits and a comment period allowing stakeholders to provide feedback on this estimate. Additionally, if people lost SSI or SSDI benefits as a result of more frequent reviews, this could impact their eligibility for and use of other benefits, such as Medicare or SNAP. These impacts on beneficiaries as well as federal and state spending must be considered as well.

While it is difficult to comment effectively because of the lack of information in the proposed rule, based on the limited evidence that the SSA provided, the Lung Association opposes the changes to the continuing disability review process and urges the SSA to withdraw the rule. Thank you for your consideration of our feedback.

Sincerely,

Harold P. Wimmer
National President and CEO

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[1] https://www.lung.org/our-initiatives/tobacco/reports-resources/state-tobacco-cessation-coverage/; https://www.lung.org/assets/documents/tobacco/medicaid-expansion-state.pdf