



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 411 and 416

[Docket No. SSA-2017-0071]

RIN 0960-AI24

Removal of Alternate Participant Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are removing from the Code of Federal Regulations (CFR) our “Alternate Participant Program” rules because they are obsolete. We are removing these rules in accordance with the requirements of Executive Order (E.O.) 13777.

DATES: *Effective Date:* [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Cara Caplan, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-966-0586. 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:

We are removing our Alternate Participant Program rules in accordance with E.O. 13777 (“Enforcing the Regulatory Reform Agenda”).¹ The E.O. requires agencies to identify rules that, among other things, are outdated or unnecessary, and repeal, replace, or modify them, consistent with applicable law. These rules, found in 20 CFR Chapter III Part 411, Subpart J, describe how the Alternate Participant Program was affected by the Ticket to Work and Self-Sufficiency Program (Ticket Program),² and procedures related to phasing it out.

Under the Social Security Act (Act), the Commissioner of Social Security is authorized to reimburse States for reasonable and necessary costs of vocational rehabilitation (VR) services furnished to certain disabled individuals under a State VR plan that meets specific requirements.³ If a State is unwilling to participate or does not have a plan meeting the specified requirements, we can enter into agreements or contracts with alternative VR service providers under the same conditions that apply to a State VR agency.⁴ In 1994, we created the Alternate Participant Program, which was intended to provide more VR service options to beneficiaries.⁵ These alternate VR service providers, referred to as “alternate participants,” could be organizations, institutions, individuals, or other public or private agencies.

¹ 82 FR 12285 (March 1, 2017)

² 66 FR 67369 (December 28, 2001)

³ Section 222(d)(1) of the Act, 42 U.S.C. 422(d)(1).

⁴ Section 222(d)(2) of the Act, 42 U.S.C. 422(d)(2).

⁵ 59 FR 11899 (March 15, 1994).

Our procedures changed when we published final rules implementing the Ticket Program⁶ in 2001. The Ticket Program, authorized by the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA),⁷ expanded the universe of service providers available to beneficiaries with disabilities who are seeking employment services, VR services, and other support services. Under the Ticket Program, beneficiaries have the option of obtaining services from providers known as employment networks (ENs). As we implemented the Ticket Program and began using ENs, we phased out the use of alternate participants, as authorized by section 101(d)(5) of the TWWIIA.⁸

Under current rules, we cannot pay an alternate participant for services provided after December 31, 2003. There are no outstanding Alternate Participant Program payments and no entity could become eligible for these payments in the future. Because we no longer use the Alternate Participant Program, the rules associated with that program are obsolete and no longer necessary. In alignment with this rule removal, we are also removing references to the program found in Subparts A and E of 20 CFR Part 411, sections in Subparts A and V of 20 CFR Part 404, and sections in Subpart A and V of 20 CFR Part 416.

REGULATORY PROCEDURES

⁶66 FR 67369 (December 28, 2001)

⁷ Pub. L. 106-170, 113 Stat. 1860.

⁸ Section 105(d)(5) of Pub. L. 106-170, 113 Stat. 1860, 1877.

Justification for Issuing a Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We find that there is good cause under 5 U.S.C. 553(b)(B) to issue this regulatory change as a final rule without prior notice or public comment. We find that prior notice and public comment are unnecessary because this final rule only removes from the CFR obsolete and unnecessary rules that do not affect any current beneficiaries.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of this rule provided for in 5 U.S.C. 553(d)(3). For the reasons stated above, we find it unnecessary to delay the effective date of the changes we are making in this final rule. Accordingly, we are making them effective upon publication.

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563. Thus, OMB did not review the final rule.

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

EO 13771

This regulation codifies legislative changes that already took place. Accordingly, the regulation does not have any financial impact on the public, and as such is an exempt regulatory action under E.O. 13771.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because there are no current participants of the Alternate Participant Program. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Social Security – Retirement Insurance; and 96.004, Social Security – Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 411

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

20 CFR Part 416

Administrative practice and procedure, Alcoholism, Drug abuse, Investigations, Medicaid, Penalties, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI), Travel and transportation expenses, Vocational rehabilitation.

Nancy A. Berryhill
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR parts 404, 411, and 416 as set forth below:

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

Subpart A—Introduction, General Provisions and Definitions

1. The authority citation for subpart A of part 404 continues to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 403, 405(a), 416(j), and 902(a)(5)) and 48 U.S.C. 1801.

2. Amend §404.1 by revising paragraph (v) to read as follows:

§404.1 Introduction

* * * * *

(v) Subpart V relates to payments to State vocational rehabilitative agencies for vocational rehabilitation services.

Subpart V—Payments for Vocational Rehabilitation Services

3. The authority citation for subpart V of part 404 continues to read as follows:

Authority: Secs. 205(a), 222, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 422, and 902(a)(5)).

4. Amend §404.2102 as follows:

- a. Remove and reserve paragraphs (c) and (j);
- b. Revise the introductory text and paragraphs (b), (d), (f), and (k).

The revisions read as follows:

§404.2102 Purpose and scope.

This subpart describes the rules under which the Commissioner will pay the State VR agencies for VR services. Payment will be provided for VR services provided on behalf of disabled individuals under one or more of the provisions discussed in §404.2101.

* * * * *

(b) Section 404.2104 explains how State VR agencies may participate in the payment program under this subpart.

(c) [Reserved]

(d) Sections 404.2108 through 404.2109 describe the requirements and conditions under which we will pay a State VR agency under this subpart.

* * * * *

(f) Section 404.2112 describes when payment will be made to a VR agency because an individual's disability benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls.

* * * * *

(j) [Reserved]

(k) Section 404.2119 describes how we will make payment to State VR agencies for rehabilitation services.

* * * * *

§404.2103 [Amended]

5. Amend §404.2103 by removing the definition of *Alternate participants*.

6. Amend §404.2104 as follows:

- a. Remove paragraphs (b)(3) and (f);
- b. Remove and reserve paragraph (e)(2); and
- c. Revise the heading of the section and paragraphs (a), (b)(2), (c)(2), and (e)(3).

The revisions read as follows:

§404.2104 Participation by State VR agencies.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended.

(b) * * *

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disability beneficiaries. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind disability beneficiaries in the State in accordance with paragraph (d) of this section. A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

* * * * *

(c) * * *

(2)(i) In order for the State to participate with respect to a disability beneficiary whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing or through electronic notification of its decision either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the fourth month following the month in which we referred the beneficiary to the State VR agency.

(ii) In any case in which a State VR agency notifies the appropriate Regional Commissioner (SSA) in writing within the stated time period under paragraph (c)(2)(i) of this section of its decision to place the beneficiary into an extended evaluation process, the State VR agency also must notify that Regional Commissioner in writing upon completion of the evaluation of its decision whether or not to accept the beneficiary as a client for VR services. If we receive a notice of a decision by the State VR agency to accept the beneficiary as a client for VR services following the completion of the extended evaluation, the State may continue to participate with respect to such beneficiary.

* * * * *

(e) * * *

(2) [Reserved]

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). A decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

* * * * *

§404.2106 [Removed and Reserved]

7. Remove and reserve §404.2106.

8. Amend §404.2108 by revising paragraphs (a), (d), and (f) to read as follows:

§404.2108 Requirements for payment.

(a) The State VR agency must file a claim for payment in each individual case within the time periods specified in §404.2116;

* * * * *

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, and must be services that are described in §404.2114;

* * * * *

(f) The State VR agency must maintain, and provide as we may require, adequate documentation of all services and costs for all disability beneficiaries with respect to whom a State VR agency could potentially request payment for services and costs under this subpart; and

* * * * *

9. Amend §404.2111 by revising the introductory text and paragraphs (b)(1)(i) and (b)(2) to read as follows:

§404.2111 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency may be paid for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider services described in §404.2114 that were initiated, coordinated or provided, including services before October 1, 1981.

* * * * *

(b) * * *

(1) * * *

(i) The individualized written rehabilitation program (IWRP) included medical services; and

* * * * *

(2) In some instances, the State VR agency will not have provided, initiated, or coordinated medical services. If this happens, payment for VR services may still be possible under paragraph (a) of this section if:

(i) The medical recovery was not expected by us; and

(ii) The individual's impairment is determined by us to be of such a nature that any medical services provided would not ordinarily have resulted in, or contributed to, the medical cessation.

10. Revise §404.2112 to read as follows:

§404.2112 Payment for VR services in a case where an individual continues to receive disability payments based on participation in an approved VR program.

Sections 404.1586(g), 404.316(c), 404.337(c), and 404.352(c) explain the criteria we will use in determining if an individual whose disability has ceased should continue to receive disability benefits from us because of his or her continued participation in a VR program. A VR agency can be paid for the cost of VR services provided to an individual if the individual was receiving benefits in a month or months, after October 1984, based on §404.316(c), §404.337(c), or §404.352(c). If this requirement is met, a VR agency can be paid for the costs of VR services provided within the period specified in §404.2115, subject to the other payment and administrative provisions of this subpart.

11. Amend §404.2114 by revising paragraphs (a) introductory text, (a)(2), and (b)(4) to read as follows:

§404.2114 Services for which payment may be made.

(a) *General.* Payment may be made for VR services provided by a State VR agency in accordance with title I of the Rehabilitation Act of 1973, as amended, subject to the limitations and conditions in this subpart. VR services for which payment may be made under this subpart include only those services described in paragraph (b) of this section which are—

* * * * *

(2) Provided by a State VR agency under an IWRP, but only if the services could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

(b)* * *

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, except that training or training services in institutions of higher education will be covered under this section only if maximum efforts have been made by the State VR agency to secure grant assistance in whole or in part from other sources;

* * * * *

12. Amend §404.2115 by revising paragraphs (a) introductory text and (b) to read as follows:

§404.2115 When services must have been provided.

(a) In order for the VR agency to be paid, the services must have been provided—

* * * * *

(b) If an individual who is entitled to disability benefits under this part also is or has been receiving disability or blindness benefits under part 416 of this chapter, the determination as to when services must have been provided may be made under this section or §416.2215 of this chapter, whichever is advantageous to the State VR agency that is participating in both VR programs.

13. Amend §404.2116 by revising the introductory text and paragraphs (b)(1) and (b)(2) to read as follows:

§404.2116 When claims for payment for VR services must be made (filing deadlines).

The State VR agency must file a claim for payment in each individual case within the following time periods:

* * * * *

(b)* * *

(1) If a written notice requesting that a claim be filed was sent to the State VR agency, a claim must be filed within 90 days following the month in which VR services end, or if later, within 90 days after receipt of the notice.

(2) If no written notice was sent to the State VR agency, a claim must be filed within 12 months after the month in which VR services end.

14. Amend §404.2117 by revising the introductory text and paragraphs (a), (b), (c)(1) introductory text, (c)(2), (d), and (e) to read as follows:

§404.2117 What costs will be paid.

In accordance with section 222(d) of the Social Security Act, the Commissioner will pay the State VR agency for the VR services described in §404.2114 which were provided during the period described in §404.2115 and which meet the criteria in §404.2111 or §404.2112, but subject to the following limitations:

(a) The cost must have been incurred by the State VR agency;

(b) The cost must not have been paid or be payable from some other source. For this purpose, State VR agencies will be required to seek payment or services from other sources in accordance with the “similar benefit” provisions under 34 CFR part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education.

(c)(1) The cost must be reasonable and necessary, in that it complies with the written cost-containment policies of the State VR agency. A cost which complies with these policies will be considered necessary only if the cost is for a VR service described in §404.2114. The State VR agency must maintain and use these cost-containment policies, including any reasonable and appropriate fee schedules, to govern the costs incurred for all VR services, including the rates of payment for all purchased services, for which payment will be requested under this subpart. For the purpose of this subpart, the written cost-containment policies must provide guidelines designed to ensure—

* * * * *

(2) The State VR agency shall submit to us before the end of the first calendar quarter of each year a written statement certifying that cost-containment policies are in effect and are adhered to in procuring and providing goods and services for which the State VR agency requests payment under this subpart. Such certification must be signed by the State's chief financial official or the head of the VR agency. Each certification must specify the basis upon which it is made, e.g., a recent audit by an authorized State, Federal or private auditor (or other independent compliance review) and the date of such audit (or compliance review). We may request the State VR agency to submit to us a copy(ies) of its specific written cost-containment policies and procedures (e.g., any guidelines and fee schedules for a given year) if we determine that such additional information is necessary to ensure compliance with the requirements of this subpart. The State VR agency must provide such information when requested by us.

(d) The total payment in each case, including any prior payments related to earlier continuous 9-month periods of SGA made under this subpart, must not be so high as to preclude a "net saving" to the trust funds (a "net saving" is the difference between the estimated saving to the trust funds, if disability benefits eventually terminate, and the total amount we pay to the State VR agency);

(e) Any payment to the State VR agency for either direct or indirect VR expenses must be consistent with the cost principles described in OMB Circular No. A-87, as revised;

* * * * *

§404.2118 [Removed and Reserved]

15. Remove and reserve §404.2118.

16. Revise §404.2119 to read as follows:

§404.2119 Method of payment.

Payment to the State VR agencies pursuant to this subpart will be made either by advancement of funds or by payment for services provided (with necessary adjustments for any overpayments and underpayments), as decided by the Commissioner.

17. Revise §404.2120 to read as follows:

§404.2120 Audits.

(a) *General.* The State shall 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 services and costs for which payment was requested or made under these regulations. These records shall be retained by the State for the periods of time specified for retention of records in the Federal Acquisition Regulations (48 CFR part 4, subpart 4.7).

(b) *Audit basis.* Auditing will be based on cost principles and written guidelines in effect at the time services were provided and costs were incurred. The State VR agency will be informed and given a full explanation of any questioned items. It will be given a reasonable time to explain questioned items. Any explanation furnished by the State VR

agency will be given full consideration before a final determination is made on questioned items in the audit report.

(c) *Appeal of audit determinations.* The appropriate SSA Regional Commissioner will notify the State VR agency in writing of his or her final determination on the audit report. If the State VR agency disagrees with that determination, it may request reconsideration in writing within 60 days after receiving the Regional Commissioner's notice of the determination. The Commissioner will make a determination and notify the State VR agency of that decision in writing, usually, no later than 45 days from the date of appeal. The decision by the Commissioner will be final and conclusive unless the State VR agency appeals that decision in writing in accordance with 45 CFR part 16 to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving it.

18. Amend §404.2121 by revising paragraphs (a), (b)(3), (c), and (d) to read as follows:

§404.2121 Validation reviews.

(a) *General.* We will conduct a validation review of a sample of the claims for payment filed by each State VR agency. We will conduct some of these reviews on a prepayment basis and some on a postpayment basis. We may review a specific claim, a sample of the claims, or all the claims filed by any State VR agency, if we determine that such review is necessary to ensure compliance with the requirements of this subpart. For each claim selected for review, the State VR agency must submit such records of the VR services and costs for which payment has been requested or made under this subpart, or copies of such records, as we may require to ensure that the services and costs meet the

requirements for payment. For claims for cases described in §404.2101(a), a clear explanation or existing documentation which demonstrates how the service contributed to the individual's performance of a continuous 9-month period of SGA must be provided. For claims for cases described in §404.2101(b) or (c), a clear explanation or existing documentation which demonstrates how the service was reasonably expected to motivate or assist the individual to return to or continue in SGA must be provided. If we find in any prepayment validation review, that the scope or content of the information is inadequate, we will request additional information and will withhold payment until adequate information has been provided. The State VR agency shall permit us (including duly authorized representatives) access to, and the right to examine, any records relating to such services and costs. Any review performed under this section will not be considered an audit for purposes of this subpart.

(b) * * *

(3) To assess the need for additional validation reviews or additional documentation requirements for any State VR agency to ensure compliance with the requirements under this subpart.

(c) *Determinations.* In any validation review, we will determine whether the VR services and costs meet the requirements for payment and determine the amount of payment. We will notify in writing the State VR agency of our determination. If we find in any postpayment validation review that more or less than the correct amount of payment was made for a claim, we will determine that an overpayment or underpayment has occurred and will notify the State VR agency that we will make the appropriate adjustment.

(d) *Appeals*. If the State VR agency disagrees with our determination under this section, it may appeal that determination in accordance with §404.2127. For purposes of this section, an appeal must be filed within 60 days after receiving the notice of our determination.

19. Revise §404.2122 to read as follows:

§404.2122 Confidentiality of information and records.

The State shall comply with the provisions for confidentiality of information, including the security of systems, and records requirements described in 20 CFR part 401 and pertinent written guidelines (see §404.2123).

20. Revise §404.2123 to read as follows:

§404.2123 Other Federal laws and regulations.

Each State VR agency shall comply with the provisions of other Federal laws and regulations that directly affect its responsibilities in carrying out the vocational rehabilitation function.

21. Amend §404.2127 by revising paragraphs (a) and (c) to read as follows:

§404.2127 Resolution of disputes.

(a) *Disputes on the amount to be paid*. The appropriate SSA official will notify the State VR agency in writing of his or her determination concerning the amount to be paid. If the State VR agency disagrees with that determination, the State VR agency may request reconsideration in writing within 60 days after receiving the notice of

determination. The Commissioner will make a determination and notify the State VR agency of that decision in writing, usually no later than 45 days from the date of the State VR agency's appeal. The decision by the Commissioner will be final and conclusive upon the State VR agency unless the State VR agency appeals that decision in writing in accordance with 45 CFR part 16 to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the Commissioner's decision.

* * * * *

(c) *Disputes on determinations made by the Commissioner which affect a disability beneficiary's rights to benefits.* Determinations made by the Commissioner which affect an individual's right to benefits (e.g., determinations that disability benefits should be terminated, denied, suspended, continued or begun at a different date than alleged) cannot be appealed by a State VR agency. Because these determinations are an integral part of the disability benefits claims process, they can only be appealed by the beneficiary or applicant whose rights are affected or by his or her authorized representative. However, if an appeal of an unfavorable determination is made by the individual and is successful, the new determination would also apply for purposes of this subpart. While a VR agency cannot appeal a determination made by the Commissioner which affects a beneficiary's or applicant's rights, the VR agency can furnish any evidence it may have which would support a revision of a determination.

PART 411— THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

22. The authority citation for part 411 continues to read as follows:

Authority: Secs. 702(a)(5) and 1148 of the Social Security Act (42 U.S.C. 902(a)(5) and 1320b-19); sec. 101(b)-(e), Public Law 106-170, 113 Stat. 1860, 1873 (42 U.S.C. 1320b-19 note).

Subpart A— Introduction

§411.100 [Amended]

23. Amend §411.100 by removing paragraph (j).

24. Amend §411.115 by revising paragraph (f) to read as follows:

§411.115 Definitions of terms used in this part.

* * * * *

(f) *Employment plan* means an individual work plan described in paragraph (i) of this section, or an individualized plan for employment described in paragraph (j) of this section.

* * * * *

Subpart E— Employment Networks

§411.305 [Amended]

25. Amend §411.305 by removing and reserving paragraph (d)

Subpart J— [Removed]

26. Remove subpart J, consisting of §§411.700 through 411.730.

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

Subpart A—Introduction, General Provisions and Definitions

27. The authority citation for subpart A of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5) and 1601-1635 of the Social Security Act (42 U.S.C. 902(a)(5) and 1381-1383d); sec. 212, Pub. L. 93-66, 87 Stat. 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note).

28. Amend §416.101 by revising paragraph (v) to read as follows:

§416.101 Introduction.

* * * * *

(v) Subpart V of this part explains when payments are made to State vocational rehabilitation agencies for vocational rehabilitation services.

Subpart V— Payments for Vocational Rehabilitation Services

29. The authority citation for subpart V of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1615, 1631(d)(1) and (e), and 1633(a) of the Social Security Act (42 U.S.C. 902(a)(5), 1382d, 1383(d)(1) and (e), and 1383b(a)).

30. Amend §416.2201 introductory text to read as follows:

§416.2201 General.

In general, sections 1615(d) and (e) of the Social Security Act (the Act) authorize payment from the general fund for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled or blind individuals who are eligible for supplemental security income (SSI) benefits, special SSI eligibility status, or federally administered State supplementary payments. In this subpart, such benefits, status, or payments are referred to as disability or blindness benefits (see §416.2203). Subject to the provisions of this subpart, payment may be made for VR services provided an individual during a month(s) for which the individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or for which the individual's disability or blindness benefits are suspended (see §416.2215). Paragraphs (a) and (b) of this section describe the cases in which the State VR agencies can be paid for the VR services provided such an individual under this subpart. The purpose of sections 1615(d) and (e) of the Act is to make VR services more readily available to disabled or blind individuals and ensure that savings accrue to the general fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

* * * * *

31. Amend §416.2202 as follows:

- a. Remove and reserve paragraphs (c) and (j); and
- b. Revise the introductory text and paragraphs (b), (d), (f), and (k).

The revisions read as follows:

§416.2202 Purpose and scope.

This subpart describes the rules under which the Commissioner will pay the State VR agencies for VR services. Payment will be provided for VR services provided on behalf of disabled or blind individuals under one or more of the provisions discussed in §416.2201.

* * * * *

(b) Section 416.2204 explains how State VR agencies may participate in the payment program under this subpart.

(c) [Reserved]

(d) Sections 416.2208 through 416.2209 describe the requirements and conditions under which we will pay a State VR agency under this subpart.

* * * * *

(f) Section 416.2212 describes when payment will be made to a VR agency because an individual's disability or blindness benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls.

* * * * *

(j) [Reserved]

(k) Section 416.2219 describes how we will make payment to State VR agencies for rehabilitation services.

* * * * *

§416.2203 [Amended]

32. Amend §416.2203 by removing the definition of *Alternate participants*.

33. Amend §416.2204 as follows:

- a. Remove paragraphs (b)(3) and (f);
- b. Remove and reserve paragraph (e)(2);
- c. Revise the heading of the section and paragraphs (a), (b)(2), (c)(2), and (e)(3).

The revisions read as follows:

§416.2204 Participation by State VR agencies.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended.

(b) * * *

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disabled or blind recipients. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind recipients in the State in accordance with paragraph (d) of this section. A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

* * * * *

(c) * * *

(2)(i) In order for the State to participate with respect to a disabled or blind recipient whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing or through electronic notification of its decision either to accept the recipient as a client for VR services or to place the recipient into an extended evaluation process. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the fourth month following the month in which we referred the recipient to the State VR agency.

(ii) In any case in which a State VR agency notifies the appropriate Regional Commissioner (SSA) in writing within the stated time period under paragraph (c)(2)(i) of this section of its decision to place the recipient into an extended evaluation process, the State VR agency also must notify that Regional Commissioner in writing upon completion of the evaluation of its decision whether or not to accept the recipient as a client for VR services. If we receive a notice of a decision by the State VR agency to accept the recipient as a client for VR services following the completion of the extended evaluation, the State may continue to participate with respect to such recipient.

* * * * *

(e) * * *

(2) [Reserved]

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section. A State that decides to resume participation under paragraph (c) of this section

must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). A decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

* * * * *

§416.2206 [Removed and Reserved]

34. Remove and reserve §416.2206.

35. Amend §416.2208 by revising paragraphs (a), (d), and (f) as follows:

§416.2208 Requirements for payment.

(a) The State VR agency must file a claim for payment in each individual case within the time periods specified in §416.2216;

* * * * *

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, and must be services that are described in §416.2214;

* * * * *

(f) The State VR agency must maintain, and provide as we may require, adequate documentation of all services and costs for all disabled or blind recipients with respect to

whom a State VR agency could potentially request payment for services and costs under this subpart; and

* * * * *

36. Amend §416.2211 by revising the introductory text and paragraphs (b)(1)(i), and (b)(2) to read as follows:

§416.2211 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency may be paid for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider services described in §416.2214 that were initiated, coordinated or provided, including services before October 1, 1981.

* * * * *

(b) * * *

(1) * * *

(i) The individualized written rehabilitation program (IWRP), included medical services; and

* * * * *

(2) In some instances, the State VR agency will not have provided, initiated, or coordinated medical services. If this happens, payment for VR services may still be possible under paragraph (a) of this section if:

(i) The medical recovery was not expected by us; and

(ii) The individual's impairment is determined by us to be of such a nature that any medical services provided would not ordinarily have resulted in, or contributed to, the medical cessation.

37. Revise §416.2212 to read as follows:

§416.2212 Payment for VR services in a case where an individual continues to receive disability or blindness benefits based on participation in an approved VR program.

Section 1631(a)(6) of the Act contains the criteria we will use in determining if an individual whose disability or blindness has ceased should continue to receive disability or blindness benefits because of his or her continued participation in an approved VR program. A VR agency can be paid for the cost of VR services provided to an individual if the individual was receiving benefits based on this provision in a month(s) after October 1984 or, in the case of a blindness recipient, in a month(s) after March 1988. If this requirement is met, a VR agency can be paid for the costs of VR services provided within the period specified in §416.2215, subject to the other payment and administrative provisions of this subpart.

38. Amend §416.2214 by revising paragraph (a) introductory text, (a)(2), and (b)(4) to read as follows:

§416.2214 Services for which payment may be made.

(a) *General.* Payment may be made for VR services provided by a State VR agency in accordance with title I of the Rehabilitation Act of 1973, as amended, subject to the limitations and conditions in this subpart. VR services for which payment may be made under this subpart include only those services described in paragraph (b) of this section which are—

* * * * *

(2) Provided by a State VR agency under an IWRP, but only if the services could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

(b)* * *

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, except that training or training services in institutions of higher education will be covered under this section only if maximum efforts have been made by the State VR agency to secure grant assistance in whole or in part from other sources;

* * * * *

39. Amend §416.2215 by revising paragraphs (a) introductory text and (b) to read as follows:

§416.2215 When services must have been provided.

(a) In order for the VR agency to be paid, the services must have been provided—

* * * * *

(b) If an individual who is receiving disability or blindness benefits under this part, or whose benefits under this part are suspended, also is entitled to disability benefits under part 404 of this chapter, the determination as to when services must have been provided may be made under this section or §404.2115 of this chapter, whichever is advantageous to the State VR agency that is participating in both VR programs.

40. Amend §416.2216 by revising the introductory text and paragraphs (b)(1) and (b)(2) to read as follows:

§416.2216 When claims for payment for VR services must be made (filing deadlines).

The State VR agency must file a claim for payment in each individual case within the following time periods:

* * * * *

(b) * * *

(1) If a written notice requesting that a claim be filed was sent to the State VR agency, a claim must be filed within 90 days following the month in which VR services end, or if later, within 90 days after receipt of the notice.

(2) If no written notice was sent to the State VR agency, a claim must be filed within 12 months after the month in which VR services end.

41. Amend §416.2217 by revising the introductory text and paragraphs (a), (b), (c)(1) introductory text, (c)(2), (d), and (e) as follows:

§416.2217 What costs will be paid.

In accordance with section 1615(d) and (e) of the Social Security Act, the Commissioner will pay the State VR agency for the VR services described in §416.2214 which were provided during the period described in §416.2215 and which meet the criteria in §416.2211 or §416.2212, but subject to the following limitations:

(a) The cost must have been incurred by the State VR agency;

(b) The cost must not have been paid or be payable from some other source. For this purpose, State VR agencies will be required to seek payment or services from other sources in accordance with the “similar benefit” provisions under 34 CFR part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education.

(c)(1) The cost must be reasonable and necessary, in that it complies with the written cost-containment policies of the State VR agency. A cost which complies with these policies will be considered necessary only if the cost is for a VR service described in §416.2214. The State VR agency must maintain and use these cost-containment policies, including any reasonable and appropriate fee schedules, to govern the costs incurred for all VR services, including the rates of payment for all purchased services, for which payment will be requested under this subpart. For the purpose of this subpart, the written cost-containment policies must provide guidelines designed to ensure—

* * * * *

(2) The State VR agency shall submit to us before the end of the first calendar quarter of each year a written statement certifying that cost-containment policies are in effect and are adhered to in procuring and providing goods and services for which the

State VR agency requests payment under this subpart. Such certification must be signed by the State's chief financial official or the head of the VR agency. Each certification must specify the basis upon which it is made, e.g., a recent audit by an authorized State, Federal or private auditor (or other independent compliance review) and the date of such audit (or compliance review). We may request the State VR agency to submit to us a copy(ies) of its specific written cost-containment policies and procedures (e.g., any guidelines and fee schedules for a given year), if we determine that such additional information is necessary to ensure compliance with the requirements of this subpart. The State VR agency shall provide such information when requested by us.

(d) The total payment in each case, including any prior payments related to earlier continuous 9-month periods of SGA made under this subpart, must not be so high as to preclude a "net saving" to the general funds (a "net saving" is the difference between the estimated savings to the general fund, if payments for disability or blindness remain reduced or eventually terminate, and the total amount we pay to the State VR agency);

(e) Any payment to the State VR agency for either direct or indirect VR expenses must be consistent with the cost principles described in OMB Circular No. A-87, as revised;

* * * * *

§416.2218 [Removed and Reserved]

42. Remove and reserve §416.2218.

43. Revise §416.2219 to read as follows:

§416.2219 Method of payment.

Payment to the State VR agencies pursuant to this subpart will be made either by advancement of funds or by payment for services provided (with necessary adjustments for any overpayments and underpayments), as decided by the Commissioner.

44. Revise §416.2220 to read as follows:

§416.2220 Audits.

(a) *General.* The State shall 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 services and costs for which payment was requested or made under these regulations. These records shall be retained by the State for the periods of time specified for retention of records in the Federal Acquisition Regulations (48 CFR part 4, subpart 4.7).

(b) *Audit basis.* Auditing will be based on cost principles and written guidelines in effect at the time services were provided and costs were incurred. The State VR agency will be informed and given a full explanation of any questioned items. They will be given a reasonable time to explain questioned items. Any explanation furnished by the State VR agency will be given full consideration before a final determination is made on questioned items in the audit report.

(c) *Appeal of audit determinations.* The appropriate SSA Regional Commissioner will notify the State VR agency in writing of his or her final determination on the audit report. If the State VR agency disagrees with that determination, it may request reconsideration in writing within 60 days after receiving the Regional Commissioner's notice of the determination. The Commissioner will make a determination and notify the

State VR agency of that decision in writing, usually, no later than 45 days from the date of the appeal. The decision by the Commissioner will be final and conclusive unless the State VR agency appeals that decision in writing in accordance with 45 CFR part 16 to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving it.

45. Amend §416.2221 by revising paragraphs (a), (b)(3), (c), and (d) to read as follows:

§416.2221 Validation reviews.

(a) *General.* We will conduct a validation review of a sample of the claims for payment filed by each State VR agency. We will conduct some of these reviews on a prepayment basis and some on a postpayment basis. We may review a specific claim, a sample of the claims, or all the claims filed by any State VR agency, if we determine that such review is necessary to ensure compliance with the requirements of this subpart. For each claim selected for review, the State VR agency must submit such records of the VR services and costs for which payment has been requested or made under this subpart, or copies of such records, as we may require to ensure that the services and costs meet the requirements for payment. For claims for cases described in §416.2201(a), a clear explanation or existing documentation which demonstrates how the service contributed to the individual's performance of a continuous 9-month period of SGA must be provided. For claims for cases described in §416.2201(b) or (c), a clear explanation or existing documentation which demonstrates how the service was reasonably expected to motivate or assist the individual to return to or continue in SGA must be provided. If we find in any prepayment validation review that the scope or content of the information is

inadequate, we will request additional information and will withhold payment until adequate information has been provided. The State VR agency shall permit us (including duly authorized representatives) access to, and the right to examine, any records relating to such services and costs. Any review performed under this section will not be considered an audit for purposes of this subpart.

(b) * * *

(3) To assess the need for additional validation reviews or additional documentation requirements for any State VR agency to ensure compliance with the requirements under this subpart.

(c) *Determinations.* In any validation review, we will determine whether the VR services and costs meet the requirements for payment and determine the amount of payment. We will notify in writing the State VR agency of our determination. If we find in any postpayment validation review that more or less than the correct amount of payment was made for a claim, we will determine that an overpayment or underpayment has occurred and will notify the State VR agency that we will make the appropriate adjustment.

(d) *Appeals.* If the State VR agency disagrees with our determination under this section, it may appeal that determination in accordance with §416.2227. For purposes of this section, an appeal must be filed within 60 days after receiving the notice of our determination.

46. Revise §416.2222 to read as follows:

§416.2222 Confidentiality of information and records.

The State shall comply with the provisions for confidentiality of information, including the security of systems, and records requirements described in 20 CFR part 401 and pertinent written guidelines (see §416.2223).

47. Revise §416.2223 to read as follows:

§416.2223 Other Federal laws and regulations.

Each State VR agency shall comply with the provisions of other Federal laws and regulations that directly affect its responsibilities in carrying out the vocational rehabilitation function.

48. Amend §416.2227 by revising paragraphs (a) and (c) to read as follows:

§416.2227 Resolution of disputes.

(a) *Disputes on the amount to be paid.* The appropriate SSA official will notify the State VR agency in writing of his or her determination concerning the amount to be paid. If the State VR agency disagrees with that determination, the State VR agency may request reconsideration in writing within 60 days after receiving the notice of determination. The Commissioner will make a determination and notify the State VR agency of that decision in writing, usually, no later than 45 days from the date of the State VR agency's appeal. The decision by the Commissioner will be final and conclusive upon the State VR agency unless the State VR agency appeals that decision in

writing in accordance with 45 CFR part 16 to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the Commissioner's decision.

* * * * *

(c) *Disputes on determinations made by the Commissioner which affect a disabled or blind beneficiary's rights to benefits.* Determinations made by the Commissioner which affect an individual's right to benefits (e.g., determinations that disability or blindness benefits should be terminated, denied, suspended, continued or begun at a different date than alleged) cannot be appealed by a State VR agency. Because these determinations are an integral part of the disability or blindness benefits claims process, they can only be appealed by the beneficiary or applicant whose rights are affected or by his or her authorized representative. However, if an appeal of an unfavorable determination is made by the individual and is successful, the new determination would also apply for purposes of this subpart. While a VR agency cannot appeal a determination made by the Commissioner which affects a beneficiary's or applicant's rights, the VR agency can furnish any evidence it may have which would support a revision of a determination.

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