Social Security Disability Benefits Reform Act of 1984: Legislative History and Summary of Provisions

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This article describes the legislative history of the Social Security Disability Benefits Reform Act of 1984 (Public Law 98-460), and contains a summary of the provisions in the new law. Major provisions include: standards for continuing disability reviews (CDR's) of disability insurance (DI) beneficiaries and supplemental security income (SSI) recipients who get payments based on disability or blindness; the right of a DI beneficiary or an SSI recipient to have payments continued during appeal of a CDR decision to an administrative law judge that disability or blindness has ceased; and suspension of CDR's of mentally impaired persons until the evaluation criteria for mental impairments are revised. The new law was enacted in response to problems that arose as a result of the implementation by the Social Security Administration (SSA) of a provision in the 1980 disability amendments that required periodic CDR's. In enacting the new law, Congress intended to assure more accurate, consistent, and uniform disability decisions at all levels and equitable and humane treatment not only to beneficiaries who must undergo CDR's but also to new applicants for DI benefits or SSI payments based on disability or blindness.

On October 9, 1984, President Reagan signed into law H.R. 3755 (Public Law 98-460), the Social Security Disability Benefits Reform Act of 1984. The President's signing statement noted: "This legislation, which has been formulated with the support of the Administration and passed by unanimous vote in both Houses of Congress, should restore order, uniformity, and consensus in the disability program. It maintains our commitment to treat disabled American citizens fairly and humanely while fulfilling our obligation to the Congress and the American taxpayers to administer the disability program effectively."

The first section of this article summarizes the provisions of P.L. 98-460; the second section discusses the background (the enactment and implementation of and reaction to the 1980 periodic review provision); the third section describes legislative activities during the 97th Congress (1981-82); the fourth section describes legislative activities and Administration initiatives during the 98th Congress, First Session (1983); and the fifth section describes legislative activities and Administration initiatives during the 98th Congress, Second Session (1984).

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Summary of Provisions of Public Law 98-460

Standard of Review for Termination of Disability Benefits and Periods of Disability (Section 2)

Permits the Secretary of Health and Human Services (HHS) to terminate a beneficiary's entitlement to social security disability insurance (DI) or supplemental security income (SSI) disabled or blind benefits (hereafter referred to as SSI disability benefits), or Medicare benefits based on the disability of an individual, or to deter-

mine that a period of disability has ended on the basis that the impairment has ceased, no longer exists, or is not disabling, only if there is substantial evidence of at least one of the following:

(1) That the individual has medically improved (other than improvement not related to his or her ability to work) and is now able to engage in substantial gainful activity (SGA);

(2) That (except for SSI recipients eligible under section 1619) new medical evidence and a new assessment of the individual's residual functional capacity (RFC) demonstrate that, although the individual has not improved medically, (a) he or she has benefited from advances in medical or vocational therapy or technology, related to the ability to work, and is now able to perform SGA, or (b) he or she has undergone vocational therapy, related to the ability to work, and is now able to perform SGA;

(3) That, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment is not as disabling as it was considered to be at the time of the most recent previous disability determination and that therefore the individual is able to engage in SGA; or

(4) That, as demonstrated on the basis of evidence on the record at the time of any previous determination or newly obtained evidence relating to that determination, an earlier determination was in error.

Regardless of the new standard, benefits can be terminated if the prior determination was fraudulently obtained or if the beneficiary is engaging in SGA, cannot be located, or fails, without good cause, to cooperate in the continuing disability review (CDR) or to follow prescribed treatment that would be expected to restore his or her ability to engage in SGA.

Provides that any determination under this standard should be made neutrally—without initial inference of the presence or absence of disability—on the basis of all evidence (both past and new) available in the case file concerning the individual's past or current condition. Applies similar provisions, modified to rely on the concept of ability to perform gainful activity, to widows, widowers, and surviving divorced spouses.

Regulations for the standard of review are required to be in place within 6 months after enactment. The standard of review applies automatically only when: a determination is made by the Secretary on or after enactment; a final decision of the Secretary has not been made as of the date of enactment and a request for further administrative review is timely and properly made; a request for judicial review was pending on September 19, 1984, involving either individual litigants or class action members identified by name in the pending action on that date; or an individual has made or makes a timely request for judicial review of a final decision of the Secretary made within 60 days before enactment.

Courts are required to remand the judicial review cases described above to the Secretary for redetermination under the new standard only if the court actions raise a medical improvement question.

Courts are also required to remand cases of individuals whose impairments were found not to exist, to have ceased, or not to be disabling and who are members of a class action relating to medical improvement certified on or before September 19, 1984, and pending on that date, but who were not identified by name. The new standard of review does not apply automatically to these cases; these individuals must be notified by the Secretary by certified mail that they may request a review of their case under the new standard within 120 days of the receipt of the notice.

Any individual whose case is remanded by the court (providing he or she requests timely review, if the individual is an unidentified member of a class) may elect to have benefits continued beginning with the month of election and ending as provided in section 7, except that payment will be made at least until the time of an initial redetermination. If the new determination is a finding of disability, retroactive benefits will be paid beginning with the month of the most recent termination of benefits.

No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement, or a period of disability, made by the Secretary prior to September 19, 1984.

New determinations under this provision may be appealed in accordance with appeal rights under the present law and regulations.

The provision is intended to promote administration of the DI and SSI disability programs in a uniform manner nationwide by making explicit to the State agencies administering the programs the standards to be applied in determining continuing eligibility for benefits—the standards as set forth in national policy by Congress. The provision also represents a response to broad-based concerns that the continuing disability review requirements of the 1980 amendments resulted in unforeseen hardships to beneficiaries whose benefits were terminated even though their conditions may have been unchanged from the time they were awarded benefits. Additionally, however, the provision is intended to avoid unnecessary program expenditures by assuring that benefits can be terminated when such action is warranted.

The conference report notes that the agreement reached was an attempt "to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligi-

bility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review . . . could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls."

Evaluation of Pain (Section 3)

Provides a temporary statutory standard (through December 31, 1986) for using subjective and objective evidence in evaluating cases involving pain or other symptoms. This standard reflects the current policy of the Social Security Administration (SSA) for evaluating symptoms, including pain.

Also requires the Secretary to appoint a Commission on the Evaluation of Pain to conduct a study, in consultation with the National Academy of Sciences, concerning the evaluation of pain in determining whether or not a person is disabled under the Social Security Act. The commission must include at least 12 members from the fields of medicine, law, and disability program administration. The Secretary must submit the results of the study and any recommendations to the House Committee on Ways and Means and the Senate Committee on Finance by December 31, 1985.

The study is intended to address concerns about the use of evidence of pain, particularly subjective evidence, in making disability determinations. The interim statutory standard is to assure that SSA's current policy for evaluating pain is adhered to until the study report can be completed and evaluated; some courts have used their own standards in evaluating pain.

Multiple Impairments (Section 4)

Requires the Secretary, in determining whether a person's impairment or impairments are of such medical severity as to prevent SGA, to consider the combined effect of all impairments without regard to whether any one impairment, if considered separately, would be severe. If the combined effect of multiple impairments is determined to be severe, the combined effect will be considered throughout the sequential evaluation process. Effective for determinations made on or after December 1, 1984.

The conferees stated that they did not intend to eliminate or impair the sequential evaluation process under which a determination may be made that a person is not disabled if the impairment or combination of impairments is not severe without considering vocational factors. However, the conferees requested that the results of the planned HHS reevaluation of the criteria for nonsevere impairments (announced by Secretary Margaret M. Heckler on June 7, 1983, as part of a package of disability reform proposals) be reported to the House Committee on Ways and Means and the Senate Committee on Finance.

Moratorium on Mental Impairment Reviews (Section 5)

Delays periodic review of mentally impaired individuals until criteria for evaluating mental disorders are revised to realistically evaluate the ability of a mentally impaired person to engage in SGA in a competitive workplace. Requires the revised criteria to be published in regulations within 120 days after enactment. (A notice of proposed rulemaking was published on February 4, 1985.) The delay applies to DI or SSI mental impairment cases on which an initial CDR decision was not made before the date of enactment and to those cases where an initial decision was made before the date of enactment but a timely appeal was pending on or after June 7, 1983. The delay does not apply to CDR's involving medical diaries or where fraud was involved in the previous determination or the individual is engaging in SGA (except for individuals eligible for SSI benefits under section 1619).

Initial disability determinations on applications involving mental impairments (and reconsideration or hearing decisions on such determinations) can be made; however, any unfavorable decisions made after enactment must be reviewed as soon as possible after the regulations are published. If a new decision under the revised criteria is favorable, it will take effect as of the time of the earlier determination.

Unfavorable determinations of disability or continuing disability not pending on or after June 7, 1983, are not required to be reviewed under the revised criteria. However, any individual with a mental impairment who received an unfavorable initial or continuing eligibility determination between March 1, 1981, and enactment and who reapplies for benefits within 1 year after enactment will be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the earlier determination.

The provision reflects the concern of Congress that some claims involving mental impairments were not adjudicated properly in the last few years and that the criteria for evaluating mental impairments require updating to make them consistent with present-day diagnosis, treatment, and evaluation of mental impairments.

Notice of Reconsideration, Prereview Notice, and Demonstration Projects (Section 6)

Requires the Secretary to notify a DI or SSI disability beneficiary whose case is selected for periodic review as

to the nature of the review, the possibility that the review could result in the termination of benefits, and the right to provide medical evidence to be used in the review.

Also requires the Secretary to implement demonstration projects in at least five States in which an opportunity for a personal appearance by the beneficiary before a DI or SSI disability cessation decision will be substituted for the reconsideration evidentiary hearing that is now applicable when DI benefits are terminated for medical reasons. If the initial decision is unfavorable (whether or not the claimant chose to make a personal appearance), the claim may be appealed to an administrative law judge (ALJ).

Similarly, requires the Secretary to implement in at least five States demonstration projects in which the opportunity for a personal appearance will be provided to an applicant for DI or SSI disability benefits before any initial disability determination is made. Effective as soon as practicable after enactment.

Requires the Secretary to report about those projects, including any recommendations, to the House Committee on Ways and Means and the Senate Committee on Finance by December 31, 1986.

The demonstration projects will test whether a face-to-face meeting between the claimant and the decisionmaker at the initial stage in the adjudicative process will permit a better evaluation of the claimant's condition and simplify and expedite the decisionmaking process.

Continuation of Benefits During Appeal Process (Section 7)

Extends the temporary provision (in P.L. 97-455, as amended by P.L. 98-118) for DI benefit continuation up to the time of ALJ decision to disability cessation determinations made prior to January 1, 1988. Benefits can begin with the first month after January 1983 for which such benefits are not otherwise payable and a timely request for administrative review or hearing is pending. Benefits cannot be continued for months after June 1988. (Retains provisions of P.L. 97-455 on the month benefit continuation ends, overpayments, and waiver consideration.)

Permanently provides that SSI disability recipients whose impairments are determined to have ceased, not to have existed, or to be no longer disabling may elect benefit continuation up to the time of the ALJ decision. Benefits can begin with the first month beginning after the date of enactment for which benefits are not otherwise payable (and a timely request for review or hearing is pending) and end with the earlier of the month preceding the month in which either (1) a decision is made after hearing or (2) no request for review or hearing is pending. Provides that if the final decision of the Secretary is that the individual is not disabled, any benefits paid under benefit continuation are overpayments. If the Secretary determines that the appeal was made in good faith, the overpaid benefits will be subject to waiver consideration. Before enactment of this provision, SSI payments were continued through the ALJ hearing—based on a Supreme Court decision, **Goldberg** v. **Kelley**, which held that the benefits of a welfare recipient cannot be terminated without providing the opportunity for an evidentiary hearing. The provision is effective upon enactment.

Also, requires the Secretary to conduct a study on the effect of this provision on the social security trust funds and on the rate of appeals to the ALJ level and to report the results of this study to the House Committee on Ways and Means and the Senate Committee on Finance by July 1, 1986.

The intent of the provision is to prevent undue hardship to beneficiaries who, on appeal, are found to be still disabled. The DI provision is temporary because other reforms in this bill should improve the quality and accuracy of determinations made at adjudicatory levels below the ALJ level, enhance the uniformity of decisions at different levels of appeal, and reduce the number of appeals and the rate of reversals by ALJ's.

Qualifications of Medical Professionals Evaluating Mental Impairments (Section 8)

Requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the case review and any residual functional capacity assessment, if evidence indicates the existence of a mental impairment, before determining that an individual is not disabled. Effective for initial DI or SSI determinations made after 60 days after the date of enactment.

Conference report language states that if the Secretary cannot assure adequate compensation to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services. The purpose of the provision is to have qualified medical specialists evaluate mental impairment cases to help to assure accurate decisions.

Consultative Examinations and Medical Evidence (Section 9)

Requires the Secretary to prescribe, within 6 months after enactment, regulations covering: (1) standards for deciding when a consultative examination (CE) should be obtained, (2) standards for the type of referral to be made, and (3) monitoring procedures for the CE's and the referral process.

Also requires the Secretary to make every reasonable effort to obtain evidence from a treating physician

before evaluating medical evidence obtained on a consultative basis. Requires that a complete medical history, covering at least the last 12 months, be developed before determining that an individual is not disabled. Requires that all evidence available in an individual's case record be considered in making a disability determination. These medical evidence provisions are effective on enactment.

Requiring that the standards for CE's be included in regulations is intended to provide greater direction on the use of CE's by State agencies. Requiring that reasonable efforts be made to obtain evidence from a treating physician is intended to underscore the importance of such evidence, since the treating physician is likely to be the medical professional most able to provide a detailed, longitudinal picture of the individual's medical condition.

Uniform Standards (Section 10)

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under the Administrative Procedure Act (APA) rulemaking procedure, which will be binding at all levels of adjudication. (The APA rulemaking procedures generally require a notice of proposed rulemaking to be published in the **Federal Register**, allowing an opportunity for public comment before final publication.) Effective on enactment. The conferees' report urges, but does not require, that all social security and SSI regulations relating to benefits be published under APA notice and comment rulemaking procedures.

The provision is intended to ensure public participation in the disability policymaking process (although HHS now voluntarily complies with the APA rulemaking process) and uniform decisionmaking at all levels of the disability adjudication process. The provision is not intended to preclude nonregulatory issuances (such as the **Social Security Rulings** and the **Program Operations Manual System** (POMS)).

Payment of Costs of Rehabilitation Services (Section 11)

Provides two additional circumstances under which States will be reimbursed for vocational rehabilitation (VR) services provided to DI beneficiaries and disabled or blind SSI recipients. Reimbursement will be provided in the case of beneficiaries or recipients: (1) who medically recover but continue to receive disability benefits or payments because they are participating in a VR program that increases the probability that they will be permanently removed from the disability rolls, or (2) who refuse, without good cause, to continue to accept VR services or fail to cooperate and thus preclude successful rehabilitation. Reimbursement in these two situations will not be contingent on the beneficiary performing SGA for at least 9 months. However, the costs of VR services provided to a beneficiary or recipient after he or she engages in SGA for 9 months or after his or her entitlement to disability benefits or payments ends, whichever is earlier, will not be reimbursed.

For a VR agency to be paid under the first of the above two circumstances, the beneficiary or recipient must have received payment, based on continued participation in a VR program, in or after November 1984. Under the second circumstance, the beneficiary or recipient must, without good cause, have refused to continue to participate in a VR program or failed to cooperate in such a manner as to preclude successful rehabilitation in a month after October 1984.

The conference report states that reimbursement should be made in cases in which the beneficiary or recipient refuses to continue to participate or to cooperate in a VR program only when his or her benefits or payments are stopped because of such refusal. By removing certain restrictions on reimbursement, the provision is intended to assure providers of VR services that they will be reimbursed.

Advisory Council Study (Section 12)

Requires the next Advisory Council on Social Security to study and make recommendations on the medical and vocational aspects of disability, using task forces of experts where appropriate. Studies must include: (1) alternative approaches to evaluating the ability to work of SSI applicants and recipients, the feasibility of providing work evaluation stipends to those applicants and recipients, screening criteria for work evaluation referrals, and criteria for rehabilitation services referral under the SSI program; (2) the effectiveness of VR programs for DI beneficiaries and SSI recipients; and (3) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases. The Council must be appointed prior to June 1, 1985. The reporting date for the Council, as provided in current law, is no later than January 1, 1987. The provision will assure that further study is made of several important aspects of the disability programs.

Qualifying Experience for Appointment of Certain Staff Attorneys to ALJ Positions (Section 13)

Requires the Secretary to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance, within 120 days of enactment,

on actions taken by the Secretary to establish positions to enable SSA staff attorneys to acquire sufficient qualifying experience to compete for ALJ positions. The conference report states that it is critical to ensure that staff attorneys can qualify for ALJ positions in order to ensure the continued availability of qualified attorneys and ALJ's.

SSI Benefits for Individuals Who Perform SGA Despite Severe Medical Impairment (Section 14)

Extends through June 30, 1987, the temporary authority in section 1619 of the Social Security Act that continues SSI payments and Medicaid for disabled recipients who engage in SGA despite their severe impairments. The temporary authority expired on December 31, 1983, and this provision is retroactive to that date. Also, requires the Secretaries of HHS and Education to establish training programs with respect to section 1619 provisions for staff personnel in SSA district offices and State VR agencies and to disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

The original section 1619 temporary authority was enacted as part of the 1980 disability amendments in order to gather information on whether or not that provision would lessen the work disincentives for an SSI disabled recipient who would otherwise risk the loss of SSI and Medicaid when work efforts and earnings were increased despite the disability. The intent of continuing the authority through June 1987 is to collect additional data on the effects of the provision.

Frequency of Continuing Eligibility Reviews (Section 15)

Requires that the Secretary promulgate regulations within 6 months after enactment that establish the standards to be used in determining the frequency of periodic eligibility reviews. Until final regulations are issued, no individual's eligibility may be reviewed more than once under periodic review.

The intent of the provision is to clarify, through regulations, the criteria to be used in scheduling CDR's in situations where the beneficiary has recently been found eligible for benefits after lengthy administrative appeals, or the individual has been classified administratively as being permanently disabled, or the individual's case is diaried and he is expected to recover in less than 3 years.

Determination and Monitoring of Need for Representative Payee (Section 16)

Requires the Secretary to: (1) evaluate the qualifications of prospective representative payees either before or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than either the entitled individual or his parent or spouse living in the same household, and (3) periodically verify that parent and spouse payees who have been living in the same household as the beneficiary continue to do so. The conference agreement directs the Secretary to establish procedures under which large lump-sum payments will not ordinarily be paid to new representative payees until the required investigation of their suitability has been completed.

Permits the Secretary to establish a separate accounting system for State institutions that serve as payees for the mentally ill and mentally retarded, and exempts from accounting Federal institutions that serve as payees. The conference agreement clarifies that all State institutions subject to onsite review are to be audited at least once every 3 years; current practice is to audit only a sample of the institutions in each State.

Also, increases the penalties for misuse of benefits by representative payees and prohibits certifying as payee any individual convicted of a felony under either title II or title XVI. Requires the Secretary to report to Congress about implementation of this provision within 9 months of enactment and annually on the number and disposition of cases of misused funds and, when feasible, other appropriate information. Effective on enactment; for penalties, effective with respect to violations occurring on or after enactment.

The purpose of the provision is to protect beneficiaries with representative payees by requiring payees who are not close relatives or who do not live with the beneficiaries to account annually for the use made of the benefits. Additionally, requiring that spouse and parent payees verify custody, rather than account, avoids unnecessary intrusion in private family affairs.

Measures to Improve Compliance With Federal Law (Section 17)

Requires the Secretary to assume the functions of a State Disability Determination Service (DDS) within 6 months of finding that the State is substantially failing to follow Federal law and agency guidelines in making disability determinations. Such a finding would have to be made within 16 weeks of the time that the State's failure to comply first came to the attention of the Secretary. If the Secretary assumes the functions of a DDS, the Secretary would be authorized to exceed Federal personnel ceilings and waive hiring restrictions, and be required to assure, to the extent feasible, in conjunction with the Secretary of Labor, statutory protections of DDS employees not hired by the Secretary of HHS. The conference report directs the Secretary to give preference to hiring qualified DDS employees in the event that

the Secretary must assume the functions of a DDS. Effective on enactment and expires on December 31, 1987. The purpose is to provide a means to assure that the Secretary takes prompt and effective action to maintain uniform, national administration of the disability programs in the event of a State failing to make determinations in a manner consistent with law and regulations.

Separability (Section 18)

Provides that the constitutional invalidity of any provision of the bill does not affect the other provisions of the bill.

Nonacquiescence: Statement of Managers

Although P.L. 98-460 contains no provision dealing with the issue of SSA nonacquiescence with certain court decisions, the conferees included a statement on this subject in the conference report.

Currently, when a case is appealed to the courts, SSA abides by all final judgments with respect to individuals named and classes certified in an action, unless and until the judgments are reversed on appeal or a stay is entered. However, SSA does not apply a court decision to nonlitigants when it is contrary to the Secretary's interpretation of the law and regulations. One reason for this policy is that it would be impossible to administer the nationwide social security program in a uniform manner if conflicting court decisions had to be applied in different jurisdictions.

In the conference report, first, the conferees stated that the absence of a provision is not to be interpreted as approval of nonacquiescence as a general policy. They noted that by refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to relitigate the same issue over and over in the circuit, at substantial expense to both beneficiaries and the Federal Government. The conferees urged that the policy of nonacquiescence be followed only where the Adminstration intends to take the steps necessary to have the issue reviewed by the Supreme Court. Alternatively, the Administration could seek a legislative remedy from the Congress. The conferees also said that the legal and constitutional issues raised by nonacquiescence can only be settled by the Supreme Court and urged the Administration to seek a resolution of this issue.

Background: Enactment, Implementation, and Reaction to 1980 Periodic Review Provision

Enactment

The last major enacted disability legislation was the Social Security Disability Amendments of 1980 (P.L. 96-265), which was signed into law by President Carter on June 9, 1980.[1]

The provisions of the 1980 amendments reflected a number of concerns of the Congress and the Executive Branch that related primarily to the rapid growth in the DI benefit rolls in the early 1970's. The President's signing statement described the legislation as "a balanced package, with amendments to strengthen the integrity of the disability programs, increase equity among beneficiaries, offer greater assistance to those who are trying to work, and improve administration."

One provision—section 311—was aimed at improving program administration by assuring that only those who meet the definition of disability in the law continued to receive benefits. Section 311 requires that, beginning in January 1982, the Secretary of HHS review the status of all nonpermanently disabled DI beneficiaries every 3 years. The Secretary is required to review the status of permanently disabled beneficiaries at such times as the Secretary considers appropriate.

Before enactment of this provision, SSA had reviewed only a small percentage of disability cases (about 150,000 a year). It had reviewed only cases in which: (1) at the time of the initial determination, it was expected that the beneficiary's medical condition would improve; (2) the beneficiary's earnings record indicated work activity; or (3) a beneficiary voluntarily reported work activity or medical improvement. The previous review process failed to identify other cases where the beneficiary had medically improved as well as cases in which the initial determination of disability was incorrect or those in which the impairment might no longer be considered disabling because of medical advances.

Implementation of Periodic Review

In March 1981, SSA began implementing the periodic reviews, 9 months before implementation was required by the 1980 disability amendments. (It already had the authority under pre-1980 law to review the continuing disability status of beneficiaries.) A major reason for the decision to begin the reviews in March 1981 was a draft report by the General Accounting Office (GAO) indicating that as many as 1 in 5 workers on the disability rolls might be ineligible for benefits and that the payment of benefits to ineligible persons might be costing the social security disability insurance trust fund $2 billion per year. The draft GAO report urged SSA to redirect all available resources toward removing ineligible individuals from the DI benefit rolls. Studies by SSA also had indicated that a significant number of beneficiaries on the rolls did not meet the legal definition of disability.

[1] See "Social Security Disability Amendments of 1980: Legislative History and Summary of Provisions," **Social Security Bulletin**, April 1981, pages 14-31.

Another reason for accelerating the reviews was to ease the administrative burden. If SSA had started the reviews in January 1982, the State agencies would have had to do about 500,000 periodic reviews in fiscal year 1982 in addition to regular reviews. Instead, by starting in March 1981, there were 18 months in which to spread the first year periodic review workload, thus ameliorating its impact on the State agencies.

It was also decided by SSA that implementation of the periodic review process would be more effective if the cases selected for review were those of beneficiaries most likely not to be disabled. Therefore, SSA developed a case selection system based on specific profiles using such characteristics as current age of the beneficiary, date of entitlement, total amount of benefits paid, numbers and kinds of auxiliary beneficiaries, and age of the beneficiary when he or she first claimed benefits.

Reaction

Shortly after implementation, periodic review began to be criticized by the public and Congress. The major reasons for the adverse reaction were the great increase in the number of cases subjected to CDR's; the large number of persons dropped from the DI rolls, many of whom had been on the rolls for a number of years and had not expected their cases to be reviewed; and the public attention given to a number of cases in which beneficiaries were erroneously dropped from the rolls. The public criticism of the harsh effects of periodic review was heightened by the fact that more than half of those removed from the rolls were reinstated upon appeal. Advocacy groups for the disabled raised questions about SSA's termination policies and procedures and petitioned Congress for legislative relief.

One result of the widespread concern about the DI program was that a large number of congressional hearings were held. The Administration was asked to testify at an unusually large number of them—including field hearings and hearings by committees other than the House Committee on Ways and Means and the Senate Committee on Finance, which have general jurisdiction over legislation relating to the social security program. In all, 27 hearings were held: 14 in Washington, D.C., and 13 throughout the country. (See appendix A for a list of hearings.)

Later, concerns about the disability process were raised by the Federal courts and the States. The major issues related to: requiring medical improvement before benefits could be terminated, the criteria for disability decisions in mental impairment cases, and SSA's policy of nonacquiescence in certain court decisions. (See appendix B for a summary of major litigation and appendix C for a chronology of major State actions relating to the DI program.)

The events that led to enactment of the 1984 disability legislation were also unusual. Because many of the criticisms of the CDR program involved administrative policies, a great many administrative changes were made beginning in 1982 to deal with these criticisms. Thus, the disability legislation as finally enacted reflects, in part, the evolution of the CDR administrative process since 1981.

Activities During the 97th Congress (1981-82)

Subcommittee on Social Security, House Committee on Ways and Means

On April 9, 1981, Representative J.J. Pickle (D., TX), Chairman of the Subcommittee on Social Security of the House Committee on Ways and Means, introduced H.R. 3207, which was primarily intended to address social security financing problems. However, the bill included five provisions related to making social security disability determinations: (1) including in the law an explicit statement of SSA's policy on pain; (2) requiring own-motion review of a specific percentage of ALJ disability awards (the 1980 disability amendments provision sponsored by Senator Bellmon required no specific percentage to be reviewed); (3) providing that disability determination guidelines in the regulations, the **Social Security Rulings**, and the POMS would apply at all levels of the adjudicative process; (4) automatically increasing the SGA and trial-work monthly dollar amounts; and (5) authorizing trust fund monies to pay for certain medical education and establishing a permanent Advisory Council on the Medical Aspects of Disability. The provisions did not relate to problems with the CDR process since these had not yet become evident.

On July 24, 1981, during the subcommittee markup of H.R. 3207, the subcommittee approved all the abovementioned disability provisions, but the bill was never reported out of the subcommittee. However, on November 4, Representative Pickle and Representative Barber B. Conable, Jr. (R., NY), the ranking minority member of the Ways and Means Committee, offered an amendment in the committee to H.R. 4331 (a bill relating to the restoration of the minimum benefit). The amendment included the five disability provisions previously approved by the subcommittee. Also included in the amendment was a provision to eliminate, in 1983 and thereafter, the requirement that SSA do a 65-percent preeffectuation review of State agency allowances. (The 1980 amendments had required SSA to review, before effectuating payment of benefits, 15 percent of all favorable determinations in fiscal year 1981, 35 percent in fiscal year 1982, and 65 percent in 1983 and there-

after.) The amendment was not adopted by the committee. No further action was taken in 1981 on the disability provisions by either the subcommittee or the full committee.

On March 3, 1982, Representative Pickle and Representative Bill Archer (R., TX), the ranking minority member of the subcommittee, introduced H.R. 5700, the Disability Amendments of 1982. In introducing the bill, Representative Pickle indicated that he and many subcommittee members were concerned about what appeared to be precipitous terminations of benefits of individuals who had been on the disability rolls for some time, the need for some special adjustments and allowances for these individuals, and the disparity of adjudicative standards used by the State agencies and the ALJ's. The bill included the following provisions:

(1) **Continued payment of DI benefits during appeal**—would allow a DI beneficiary whose benefits were terminated on medical grounds to elect to have benefits continued through the reconsideration level of appeal.

(2) **Adjustment benefits**—would provide through 1984 an additional 4 months of benefits in cases of medical termination for individuals who had been on the DI rolls at least 36 months.

(3) **Benefit payments not to be treated as overpayments**—would provide that any benefits paid before the month a DI beneficiary was notified that his or her benefits were being terminated on medical grounds would not be considered overpayments unless the termination was delayed due to the beneficiary's willful neglect to report his or her medical condition. This provision was intended to protect the beneficiary against large overpayments on the grounds that it was not his or her fault that SSA had failed to review the beneficiary's continuing eligibility in the past.

(4) **Closing of the record on applications involving determinations of disability**—
   (a) Would close the record for purposes of introducing evidence after the reconsideration level of appeal. If the claimant who appealed beyond the reconsideration level had additional evidence concerning the impairment considered at reconsideration, the case would be remanded to the State agency for additional review. (If the evidence related to a new impairment or a worsening of the original impairment after reconsideration, the claimant would have to file a new claim for DI benefits.) This provision was intended to strengthen reconsideration, which many claimants and their attorneys considered a rubber-stamp process. The provision would place full responsibility for documenting cases on the State agencies and would enable ALJ's to decide cases on the record.
   (b) Would lengthen the time in which a DI claimant could request a reconsideration from 60 days to 6 months. This provision was also intended to make reconsideration more meaningful. Chairman Pickle said that within the 6-month period the case could become more developed and evidence might be presented showing a changed medical condition.
   (c) Would provide a face-to-face evidentiary hearing at reconsideration (through SSA employees if the State agency wished) for DI medical termination cases beginning in January 1984. This provision was intended to make the reconsideration level of appeal more meaningful and to extend the due process hearing requirement for the termination of SSI disability benefits to DI beneficiaries.

(5) **Own-motion review**—would require the Secretary to conduct an own-motion review of 15 percent of ALJ allowances in fiscal year 1982 and 35 percent thereafter.

(6) **Additional insured-status requirement**—would require that for a worker to be insured for DI benefits, the worker must have 8 quarters of coverage (QC's) in the 24-quarter period before the onset of disability. This requirement would be in addition to the present requirement that the worker be fully insured and have 20 QC's in the 40-quarter period before disability. This provision was intended to provide a better measure than the 20/40 test of whether a disabled person left the workforce because of his or her disability rather than for some other reason.

(7) **Establishment of Social Security Court**—would establish a Social Security Court to replace the existing Federal district court review of social security claims. This provision was intended to address the problems of: (a) inconsistent judicial precedents that sometimes led HHS to issue social security rulings of nonacquiescence in the decisions; and (b) growing backlogs of disability cases in the already overburdened Federal courts.

(8) **Attorney fees**—
   (a) Would prohibit social security trust fund expenditures for the fixing of attorney fees for representation of claimants before the Secretary of HHS and the certification from the social security claimant's past-due benefits of payments to an attorney for representing the claimant before the Secretary or a court. This provision was introduced for study only; the Administration had included the provision as appropriations language in the fiscal year 1983 budget in order to permit SSA to devote more resources to reducing heavy hearing and postadjudicative workloads and claims processing times and to largely eliminate Federal involvement in private contracts between claimants and their representatives.
   (b) Would exempt social security administrative adjudications and court cases from the provisions of the Equal Access to Justice Act (EAJA). (The EAJA legislation provides that the Federal Government will pay legal costs of adversary administrative actions or judicial proceedings to a party who prevails against the Government, unless the Government's position was substantially justified.)

(9) **Prohibition against interim benefits**—would emphasize that the Social Security Act does not permit SSA to pay benefits before a final determination of entitlement is made. Some courts had established time limits for the adjudication of social security cases and had ordered SSA to pay benefits if the limits were not met.

(10) **Amendments relating to the reduction of DI benefits to offset other related payments**—would make minor and technical changes in the workers' compensation offset and public benefit offset provisions.

(11) **Payment for medical examinations in making disability determinations**—would require provider reimbursement payments for purchased CE's to be determined under the reimbursement principles used in the Medicare program. Would remove States from any payment involvement; payment would be made by a private SSA "carrier" selected through competitive bidding. This provision was intended to ensure that the fees for CE's would keep pace with increases in fees for comparable services so that State agencies would be able to maintain adequate sources of CE's and would not have to rely on volume providers for CE's.

(12) **Payment of costs of rehabilitation services from trust funds; experiments and demonstration projects**—

(a) Would establish a new VR program in fiscal years 1983-84 to provide evaluation and placement services for beneficiaries whose benefits were terminated on medical grounds.

(b) Would provide additional reimbursement from social security trust funds to States and other public or private sources for the cost of evaluation services provided to DI beneficiaries and the cost of VR services provided to a social security DI beneficiary who refused VR or failed to cooperate and thus precluded successful rehabilitation. Also, would permit SSA to continue to use State VR services or to contract with private or other public agencies.

(c) Would require the Secretary to undertake in five States within 18 months of enactment at least 10 experiments designed to demonstrate how best to use public or private agencies to provide VR services to disabled beneficiaries.

This provision was intended to "revitalize" the program of using social security trust fund monies for VR services.

(13) **Evaluation of pain**—would provide an explicit statement in the law of SSA's policy on pain—that is, a claimant's testimony as to pain and other symptoms would not alone permit a finding of disability unless medical signs and findings established by medically acceptable clinical or laboratory diagnostic techniques showed a medical condition that could reasonably be expected to produce the pain or other symptoms. The provision was intended to remove a chronic problem: that State agencies, ALJ's and Federal courts use different standards for evaluating pain.

(14) **Guidelines for disability determinations**—would provide that the regulations, the **Social Security Rulings**, and the adjudicative standards in part 4 of the POMS, which govern the adjudication of disability cases by the State agencies, would apply to all levels of adjudication of disability determinations. The provision was intended to promote uniformity in decisionmaking by assuring that State agencies and ALJ's use the same standards.

(15) **Substantial gainful activity and trial work**—would make the monthly SGA level (the amount of earnings from work that is considered to show that a DI beneficiary is able to perform SGA and is therefore not disabled—$300 in 1981) the same as the monthly equivalent of the earnings test exempt amount for people younger than age 65 (the amount of earnings a nondisabled social security beneficiary can earn from work without losing any benefits—$340 in 1981) and provide that the SGA level would be automatically adjusted, as is the earnings test amount, to keep up with increases in wages. Also, would similarly automatically increase the monthly amount of earnings that causes a month to be counted under the 9-month trial work provision for DI beneficiaries ($75 in 1981). The intent of the provision was to ensure that both these amounts were kept up-to-date with wage increases. Under present law, the Secretary of HHS has the authority to set the SGA and trial work period levels; the levels had not been increased since January 1980 and January 1979, respectively.

(16) **Medical school courses and continuing education in disability**—would authorize social security trust fund monies to: (a) pay the cost of courses in medical schools to provide instruction to medical students in evaluating medical impairments; (b) pay for the continuing education of physicians participating in the disability determination process; and (c) establish an Advisory Council on the Medical Aspects of Disability to give the Secretary of HHS advice on medical and certain other aspects of the disability determination process and to oversee the education referred to in (a) and (b) above. This provision was intended to improve the quality of medical evidence used in disability claims and enhance the evaluation of disability.

On March 16 and 17, 1982, the subcommittee held hearings on H.R. 5700. In his testimony, Social Security Commissioner John A. Svahn said that SSA had been moving aggressively to find administrative solutions to problems with the DI program. He described various administrative initiatives: (1) no longer determining that a person had medically recovered in the past and must repay benefits when the delay in the determination was SSA's fault; (2) expanding the use of **Social Security Rulings** to assure uniform application of disability standards at all levels of adjudication; (3) doing sample reviews of initial denials (as well as allowances) on a preeffectuation basis; (4) expanding the ALJ corps and

support staff to reduce the hearings backlog and speed up case processing; and (5) increasing productivity in hearings offices by efficient use of resources.

Commissioner Svahn said that while some legislative changes were desirable, he would not at that point take a position either on the individual provisions of H.R. 5700 or on the bill as a whole. However, he stated that the bill addressed serious problems in the DI program and offered some constructive approaches to dealing with those problems.

Other witnesses said that since more than two-thirds of those whose benefits were terminated later returned to the DI rolls, the CDR process created unnecessary hardship for beneficiaries. They also said that the medical evidence used to make decisions was inadequate, and that the disability criteria used in mental impairment cases were not related to employability. Most of the testimony from advocacy groups for the disabled and attorneys who represented the disabled generally supported the provisions of H.R. 5700 that revised the CDR process, but more far-reaching reforms were urged.

Testimony also generally opposed the provisions closing the record at reconsideration (because most claimants do not secure representation until after reconsideration), applying the POMS to ALJ's (because the witnesses believed that State agencies, not ALJ's, were making incorrect decisions), changing the attorney fee provisions (because the witnesses feared that claimants for DI benefits would be less likely to be able to secure the services of an attorney if the fee were not withheld from past-due benefits), and exempting social security cases from the EAJA (because the witnesses believed that often SSA's position was not substantially justified). Many witnesses opposed any tightening of the insured-status requirements.

On March 23, 24, and 25, 1982, the subcommittee marked up H.R. 5700 and made the following major changes: (1) would not close the record after reconsideration if there was good cause for the evidence not having been submitted; (2) required the Secretary to ensure that uniform disability standards are used at all adjudicative levels; and (3) modified the own-motion review provision to require a 15-percent review of favorable ALJ decisions in fiscal year 1982 and a 25-percent review for fiscal years 1983–86, plus a 10-percent review of all State agency decisions in the same period with five-sixths of the cases reviewed to be allowances. Two amendments by Representative James M. Shannon (D., MA) were adopted: (1) requiring that experience as a GS-12 staff attorney in SSA's Office of Hearings and Appeals count toward qualifying as an ALJ; and (2) stating in law that the APA applies to ALJ decisions. Dropped from the bill were provisions relating to the Social Security Court, attorney fees, the EAJA, medical courses and continuing education on disability, reimbursement for CE's, and disability insured status. H.R. 5700 was reported to the full Committee on Ways and Means on April 1, 1982.

On April 28, 1982, HHS Secretary Richard S. Schweiker and Commissioner Svahn announced that "The Reagan Administration wishes to be fair to people whose cases are being reviewed, and to prevent financial hardship for persons who appeal their removal from the disability rolls during the time their appeals are pending . . . We support the provision in H.R. 5700 . . . permitting beneficiaries to continue receiving payments during the first level of the appeal process. We agree, too, with the section of the legislation allowing face-to-face contact during the initial appeals process to help assure that decisions on appeals are made correctly."

House Committee on Ways and Means

On April 28, 1982, the committee began to mark up H.R. 5700 and made decisions on every provision of the bill except the one closing the record at reconsideration. After the committee completed this action, Representative Pickle introduced a new disability bill, H.R. 6181, which contained the provisions of H.R. 5700 as modified by the committee to make certain provisions applicable to the SSI program and to make minor and technical changes in the workers' compensation offset and the public disability offset.

At Representative Pickle's request, the committee deferred consideration of H.R. 6181 until he could reach agreement with the members on the closed record provision. On May 19, the committee again took up H.R. 6181 and approved an amendment offered by Representative Pickle that would close the record at reconsideration only in cases where the claimant had been offered a face-to-face evidentiary hearing reconsideration, require the evidentiary hearing to be reasonably accessible to the claimant, and permit States to begin to hold the hearings before the 1984 effective date, if they so elected. An amendment offered by Representative Harold Ford (D., TN) to drop the closed record provision was narrowly defeated. At the request of the Committee on the Judiciary, which wanted to consider it, the committee dropped the provision relating to counting SSA staff attorney experience toward qualifying as an ALJ.

The committee then ordered H.R. 6181 favorably reported to the full House. Representative Dan Rostenkowski (D., IL), Chairman of the Committee on Ways and Means, said that he would request the Committee on Rules to provide that H.R. 6181 be considered on the House floor under a modified closed rule, with only an amendment to delete the closed record provision being in order. In mid-July, the Committee on Ways and Means withdrew H.R. 6181 from consideration by the

Rules Committee because of serious disagreements in the House over the closed rule.

Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs

On May 25, 1982, the subcommittee held an oversight hearing to consider the problems with the CDR process. In his testimony, Paul B. Simmons, Deputy Commissioner of Social Security, detailed the steps SSA was taking to improve the disability process. In addition to the SSA initiatives described by Commissioner Svahn at the March 16 hearing, Mr. Simmons noted that SSA was: (1) classifying more beneficiaries as permanently disabled so that they are exempt from the 3-year CDR process; (2) requiring State agencies to furnish more detailed explanations of decisions to terminate benefits; (3) improving decisionmaking by physicians employed by SSA and the State agencies through special training; (4) requiring that State agencies attempt to get all medical evidence of record for the previous 12 months; and (5) doubling the number of quality reviews of cases of benefit termination and studying terminations to determine which kinds are especially error-prone.

Several witnesses at the hearing testified in favor of a medical improvement standard. Many statements were submitted for the record by advocacy groups for the disabled, attorneys, and representatives of mental health groups. In general, the statements: criticized SSA's CDR procedures (especially inadequate development of medical evidence and failure to take into account allegations of pain and vocational factors); said SSA was emphasizing State agency speed over accuracy; and highlighted the special difficulties of the mentally ill under the paper review process and SSA's overly stringent standards for the mentally ill to qualify for benefits. Many of these statements opposed the provisions in H.R. 6181 closing the record at reconsideration and applying the POMS to ALJ's.

Gregory J. Ahart, Director, Human Resources Division, General Accounting Office (GAO), submitted a statement for the record identifying problems with the CDR process. Mr. Ahart stated that many of those losing benefits had been on the rolls for years, still have severe impairments and have experienced little or no medical improvement. He said the primary reason for this situation was that CDR cases were being adjudicated as if they were new disability claims with no presumptive effect given to the previous finding of disability or to the length of time the individual had been receiving benefits. In many cases, benefits had been awarded years ago under a more liberal, less objective evaluation process, but the CDR decision was being made under more stringent guidelines in a tougher adjudicative climate.

Mr. Ahart noted that SSA had used a medical improvement standard from 1969 until 1976 and that several court decisions suggested that some form of such a standard be used. He said that Congress should state whether a medical improvement standard should be used and how CDR cases should be dealt with where there is no medical improvement but the initial award was clearly erroneous or the case was reviewed under changed eligibility criteria.

On June 24, 1982, Subcommittee Chairman William S. Cohen (R., ME) and Senator Carl Levin (D., MI) introduced S. 2674 to reform the CDR process by: (1) requiring the Secretary to show before terminating DI benefits that the beneficiary had medically improved or was working, or that the earlier decision was based on fraud or clear error; (2) including SSA's policy on evaluating pain in the law; (3) requiring State agency face-to-face interviews at the initial level of review with beneficiaries whose benefits were likely to be terminated; (4) eliminating reconsideration in medical cessation cases; (5) allowing a disability beneficiary to elect continued benefits through the ALJ appeals level in medical cessation cases, subject to overpayment recovery if the cessation was upheld; and (6) imposing uniform standards on all disability decisionmakers with the standards being published under the APA public notice and comment requirements.

On July 13, 1982, Senators Cohen and Levin introduced S. 2725, which permitted continuation of benefits during appeal to the ALJ level and directed the Secretary to modify the 3-year periodic review process as necessary to ensure that sufficient staff and time were available to conduct high quality reviews. The two Senators stated that they intended to offer the legislation as a floor amendment at the earliest opportunity in order to provide immediate relief to beneficiaries and to give Congress enough time to consider the more comprehensive measures in S. 2674.

Senate Committee on Finance

On August 18, 1982, the committee met to hear testimony on the CDR process and to assess the overall operation of the disability determination process since the 1980 amendments. Deputy Commissioner Simmons reviewed the many administrative actions that had been taken over the last several months: doubling the number of reviews of unfavorable State agency decisions; requiring that State agencies review all medical evidence available during the past year; developing plans for face-to-face evidentiary hearings at reconsideration; considering providing a face-to-face interview in the district office at the beginning of each CDR; broadening the definition of permanently disabled, which was expected to exempt an additional 165,000 beneficiaries from the CDR process during the next

fiscal year; and exercising a selective moratorium in August and September 1982 on sending CDR cases to States with unusually large backlogs. He reiterated that the Administration supported most of the provisions of H.R. 6181.

Representatives of the Pennsylvania, Minnesota, and New York State agencies testified about their problems with large CDR caseloads and about the adverse effects on beneficiaries when benefits are terminated abruptly. All these witnesses mentioned the large proportion of mentally ill beneficiaries who were found no longer disabled. Many advocacy groups submitted testimony for the record generally supporting legislation to: slow down CDR's; impose a medical improvement standard; publish uniform disability standards subject to the APA rulemaking requirements; pay benefits through the ALJ level; require better development of medical evidence; and require regulation of the CE process.

The Administration had indicated that it could not accept some of the more far-reaching and costly provisions of H.R. 6181 and had expressed a willingness to work with the committee toward acceptable compromises. One area that was particularly difficult related to the development of a medical improvement standard that would assure that individuals who continued to be disabled would not have their benefits terminated, and, at the same time, permit termination of benefits to persons who were not disabled. It did not prove possible in the fall of 1982 to develop a mutually satisfactory solution to this problem. Therefore, on September 28, 1982, the Senate Committee on Finance marked up S. 2942, introduced by Senator Cohen and 19 cosponsors on September 22, 1982, which provided for continued benefit payments throughout the administrative appeals process and allowed the Secretary to slow down the periodic review process. By voice vote, the committee modified S. 2942 to permit continued payment through the ALJ decision on a temporary basis only and to permit slowdown of periodic review on a State-by-State basis. Two provisions were added to require the Secretary to: (1) obtain all relevant medical evidence for the past 12 months before making a CDR termination decision and (2) make semiannual reports to the Congress on the results of CDR's.

Senator Robert Dole (R., KS), Chairman of the committee, asked that S. 2942 as marked up by the committee be added to a House-passed bill, H.R. 7093, which concerned taxes in the Virgin Islands. Thus, H.R. 7093, with an amendment containing the provisions of S. 2942, was reported by the committee on October 1, 1982.

Senate Action

Under a Senate floor amendment offered by Senator Dole and 29 cosponsors, the continued payment provision in H.R. 7093 was modified and a provision was added to require the Secretary, when making a CDR determination, to consider all evidence in an individual's case record relating to the impairment and to discuss the evidence in the denial notice if the decision was unfavorable. On December 3, the Senate passed H.R. 7093 by a vote of 70 to 4.

Subcommittee on Social Security, House Committee on Ways and Means

On December 8, 1982, the subcommittee held an oversight hearing concerning Administration initiatives to improve the CDR process. Deputy Commissioner Simmons outlined the steps SSA was taking to improve the CDR process. Mr. Simmons expressed the Administration's support for continuing payment of DI benefits through reconsideration; closing the record at the reconsideration level; and requiring a face-to-face evidentiary hearing at the reconsideration level of appeal.

Action in Both Houses—Enactment of H.R. 7093 (P.L. 97-455)

On December 14, 1982, the House amended H.R. 7093 as passed by the Senate and passed it by unanimous consent. The House deleted the Senate provision relating to consideration of medical evidence in CDR cases and added an amendment requiring the Secretary to provide an opportunity for a face-to-face hearing at reconsideration in disability cessation cases. A House-Senate Conference Committee met on December 21, 1982, and resolved differences between the House- and Senate-passed versions of H.R. 7093. The bill as agreed to by the conferees was identical to the House-passed bill, except for modifications in the pension offset provision. On December 21, 1982, the House passed H.R. 7093 as agreed to in conference by a vote of 259 to 0 and the Senate agreed to the bill by voice vote.

On January 12, 1983, President Reagan signed H.R. 7093 (P.L. 97-455). He said "This bill enhances the quality and fairness of the social security disability insurance system. It also helps us to maintain the integrity of the disability rolls while protecting the legitimate rights of both beneficiaries and contributors . . . . Over the past year-and-a-half, the Department of Health and Human Services has improved the administrative processes for determining who should receive disability benefits. . . . With the signing of this bill today, I am pleased to add some useful statutory changes to the administrative initiatives that have already been taken." The disability-related provisions of the law follow:

(1) **Continued payment of benefits**—Permits, on a temporary basis, a DI beneficiary to elect to have

benefits and Medicare coverage continued up to the ALJ decision. The continued benefits would be treated as overpayments and subject to the waiver requirements of present law. This would be effective for benefits beginning January 1983 with respect to termination decisions made by State agencies between enactment and October 1983, but the last month for which payment could be continued would be June 1984. (Cases pending a reconsideration or an ALJ decision would also be covered by this provision, although retroactive payments would not be authorized.)

(2) **Evidentiary hearing at reconsideration**—Requires the Secretary to provide the opportunity for a face-to-face evidentiary hearing during reconsideration of any DI cessation decision. The reconsideration could be made by HHS or by the State agency that made the finding that disability ceased. The provision would be effective with respect to reconsiderations requested on or after a date to be specified by the Secretary, but no later than January 1, 1984.
Requires the Secretary to take steps necessary to assure public understanding of the importance Congress attaches to the face-to-face reconsiderations discussed above—including advising beneficiaries of the procedures during the reconsideration, of their opportunity to introduce evidence and to be represented by counsel at the reconsideration, and of the importance of submitting all evidence at the reconsideration level.

(3) **CDR case flow to State agencies**—Permits the Secretary of HHS to reduce, on a State-by-State basis, the flow of periodic review cases sent to State agencies, if appropriate, based on State workloads and staffing requirements, even if this means that the initial periodic review of the rolls cannot be completed within 3 years.

(4) **CDR reports to Congress**—Requires the Secretary to make semiannual reports to the Senate Committee on Finance and the House Committee on Ways and Means about the results of CDR's, including the number of such investigations that result in termination of benefits, the number of terminations appealed to the reconsideration or hearing levels or both, and the number of reversals on those appeals.

Activities During the First Session, 98th Congress, 1983

Senate Action

During the first few months of 1983, in both the House and Senate several bills were introduced to reform the disability process or to impose a moratorium on CDR's. The most comprehensive and significant was S. 476, the Disability Amendments of 1983, introduced by Senators Cohen and Levin on February 15, 1983. The provisions were:

(1) **Termination of benefits based on medical improvement**—would provide that DI benefits could not be terminated because disability had ceased unless the Secretary made a finding that the individual was significantly more able to engage in SGA because of medical improvement or advances in medical or vocational therapy or technology. This medical improvement standard would not apply if the most recent past disability decision was clearly erroneous under the standards in effect at the time or new or improved diagnostic techniques or evaluations demonstrated that the impairment was not as disabling as it was considered at the time of the most recent past disability decision.

(2) **Evaluation of pain**—would provide an explicit statement in law of SSA's current policy on pain.

(3) **Pretermination notice and right to personal appearance**—would eliminate reconsideration in disability determination cases. Instead, if the disability determination was unfavorable, the State agency would make a preliminary unfavorable decision and send the individual a statement of the case, which would include the right to request a review (including the right to a personal appearance) within 30 days. Also, would require the Secretary to initiate each CDR by notifying the individual of the nature of the review and of the fact that it could result in termination of benefits.

(4) **Payment of disability benefits during appeal**—would make permanent the provision permitting an individual to elect to have benefits continued up until the month before the hearing decision.

(5) **Case development and medical evidence**—similar to the medical evidence requirement in section 9 of P.L. 98-460.

(6) **Uniform standards for disability determinations**—similar to section 10 of P.L. 98-460.

(7) **Termination date for disability benefits**—would provide that benefits in medical cessation cases would terminate as under present law or, if later, in the month in which a pretermination review decision was made or in the month the period for requesting such a review expired.

(8) **Mandatory appeal by Secretary of certain court decisions**—would provide that if a U.S. Court of Appeals decision required HHS to carry out a policy different from the usual HHS policy, the Secretary would have to either acquiesce and apply the policy generally or request review by the Supreme Court.

Senate Special Committee on Aging

On April 7 and 8, 1983, the committee held oversight hearings on CDR's in cases involving mental impairments. Deputy Commissioner Simmons testified that SSA was exploring the need for reexamination of the criteria for evaluating mental impairments contained in the Listing of Impairments in the regulations. He said that SSA representatives and representatives of the American Psychiatric Association had agreed to set up a blue-ribbon panel to review the listings.

Mr. Simmons cited other steps taken by SSA to improve the disability process, particularly in mental impairment cases, including: (1) issuance of instructions

emphasizing the need for longitudinal development in mental impairment cases; (2) testing the usefulness of a second CE in such cases; (3) meeting with mental health advocacy groups and State agency personnel to obtain their input on the program; (4) expansion of the definition of permanent impairments; and (5) implementation of the initial face-to-face interview in CDR cases.

Peter J. McGough, Associate Director, Human Resources Division, GAO, said that agency's survey of the CDR process in cases of mental impairments revealed the following weaknesses:

- State agencies were using an overly restrictive interpretation of the criteria to meet the Listing of Impairments for mental impairments, resulting principally from narrow assessments of an individual's daily activities. State agencies' conclusions that individuals did not meet the listings were based on very brief descriptions of only rudimentary daily activities, such as watching television and fixing basic meals.
- Residual functional capacity (RFC) and vocational characteristics were not appropriately considered. When a mentally impaired person did not meet the medical listings, SSA's policy guidance to the State agencies resulted in a virtual presumption that the individual had the RFC to do basic work activities or unskilled work and therefore the chance of a younger individual being determined disabled was extremely slim.
- State agencies were not developing the full medical history in mental impairment cases and were ordering CE's before securing existing medical evidence.
- Because the mental impairment disability decision is highly complex, a qualified psychiatrist or psychologist should be involved; however, neither the State agencies nor SSA had adequate resources to meet this need.

Other witnesses, including several State officials, criticized SSA's procedures for dealing with the mentally ill. Several beneficiaries told of hardships stemming from benefit terminations.

On April 26, 1983, Senator John Heinz, Chairman of the Special Committee on Aging, and 22 cosponsors introduced S. 1144, which provided for:

(1) **Revision of regulatory criteria relating to mental impairments**—similar to section 5 of P.L. 98-460 except, the moratorium would not apply to CDR's being appealed (although these would have to be redetermined under the revised criteria) and the Secretary would have to appoint a panel of mental health experts to recommend revisions in the regulations.

(2) **Evaluation by psychiatrist or psychologist in mental impairment cases**—similar to section 8 of P.L. 98-460, except there was no provision that the Secretary need only make every reasonable effort—the qualified psychiatrist or psychologist would have to participate in every case.

House Action

In May 1983, several bills were introduced in the House to reform the CDR process or to place a moratorium on CDR's. The most comprehensive bill was H.R. 2987, the Social Security Disability Benefits Reform Act of 1983, which was introduced by Representatives Shannon and Fortney H. Stark (D., CA) on May 11, 1983. The bill included the following provisions:

(1) **Standard of review**—Would require the Secretary to show by clear and convincing evidence that one or more of the following conditions was met before a beneficiary's entitlement could be terminated on the basis that the disability no longer existed: (a) a significant improvement in the beneficiary's condition; (b) in the absence of improvement, demonstration that the beneficiary was able to perform SGA due to advances in medical or vocational therapy or technology; (c) clear error or fraud involved in the previous determination of entitlement; or (d) performance of SGA by the beneficiary.

(2) **Evaluation of pain**—would provide that subjective evidence of pain or other symptoms could lead to a finding of disability, even when medical findings failed to fully corroborate the pain or symptoms.

(3) **Multiple impairments**—would require the Secretary, in making disability determinations, to consider the combined effect of all of an individual's impairments, regardless of whether or not each impairment, considered separately, was so severe that the person was unable to engage in SGA.

(4) **Moratorium on mental impairment reviews**—same as S. 1144.

(5) **Disability determination review procedure; pretermination notice; right to personal appearance**—same as S. 476.

(6) **Continuation of benefits during appeal**—would permanently provide for the right of a beneficiary appealing a medical cessation decision to elect benefit continuation through the level of the final decision of the Secretary (Appeals Council).

(7) **Qualifications of DDS medical professionals**—would require a physician who was qualified in the appropriate specialty to complete the medical portion of any applicable sequential evaluation and RFC assessment before a disability determination could be made. Also would require a qualified psychiatrist or psychologist to complete the medical portion of any applicable evaluation and assessment in the case of determinations relating to mental impairments.

(8) **Regulatory standards for CE's**—would require the Secretary to issue detailed regulations setting forth: (a) standards to be used by disability adjudicators in determining when a claimant should be referred for a CE; (b) standards for the type of referral to be made; (c) standards to ensure that those performing CE's were professionals qualified in the appropriate specialty; and (d) mechanisms for monitoring the referral process and the quality of CE's.

(9) **Case development and medical evidence**—would require SSA to: (a) consider the complete medical and vocational history, including all evidence from past evaluations, when reviewing a beneficiary's eligibility for benefits; (b) develop a complete medical history covering the 12 months before the review; and (c) exert every reasonable effort to obtain information from the treating physician before ordering a CE.

(10) **Uniform standards**—would apply the APA requirements of public notice and comment before publication of a final rule to the social security program. Moreover, only published rules promulgated pursuant to the APA would be binding at all levels of decisionmaking in DI cases.

(11) **Continued benefits for persons in VR programs**—would repeal the provision that permits SSI payments to be continued only if the Commissioner determines that the individual's completion of an approved VR program would increase the likelihood that the person would be permanently removed from the DI benefit rolls. The SSI payments would be continued as long as the individual was participating in an approved VR program.

(12) **Advisory Council on Medical Aspects of Disability**—would provide for a permanent 20-member advisory council on disability. Members would be appointed by the Secretary for 4-year terms and would be designees of specified professional organizations and organizations representing the disabled, prominent individuals in hospital and health fields, and State agency administrators, staff physicians, or providers of CE's.

Functions of the council would include: evaluating the process of acquiring medical evidence and establishment of standards governing the purchase of CE's; advising the Secretary on the level of documentation needed to adjudicate claims and on standards for determining RFC; making recommendations for revision of the Listing of Impairments; developing instructional courses for use in schools of medicine and osteopathy in the evaluation of medical impairments to determine eligibility for DI benefits; studying the feasibility of making DI awards on a time-limited basis and based on the rehabilitation potential of given conditions; and providing advice to the Secretary on general disability policy. The council would be required to report biannually to the Congress on council activities.

(13) **Qualifying experience for appointment of certain staff attorneys to ALJ positions**—would require the Secretary to establish within 6 months a sufficient number of positions (at GS-13 and GS-14 levels) to enable Office of Hearings and Appeals staff attorneys to advance to successively higher positions to achieve the experience necessary to qualify for ALJ positions.

(14) **Evaluation of ability to work**—would require that a determination of whether or not a person could engage in substantial gainful work be based on a realistic evaluation of the person's remaining capacity to meet the demands of competitive work on a substantial basis. Also, would require the Secretary to consider the individual's past work successes and failures and evidence of relevant functional limitations contained in a medical history or physician's report or obtained from a vocational or other nonmedical source. Would require a work evaluation before a person with a severe mental impairment could be found not to be disabled.

(15) **Consideration given noncompetitive work**—would provide that an individual working in a sheltered work setting or other noncompetitive work environment could not be regarded, solely on the basis of that work, as having demonstrated an ability to engage in SGA.

(16) **Assistance with reviews of continuing eligibility**—would require the Secretary or the State agency to ascertain through personal contact if an individual whose disability was based, in whole or in part, on a mental impairment required assistance in complying with instructions for a CDR. If assistance was needed or requested, the Secretary would have to provide it or refer the person to an agency or organization that could do so.

(17) **Accessibility and reimbursement requirement for hearings**—would require SSA to hold any hearings at a location and in a building reasonably accessible to the disabled applicant. Would also require SSA to reimburse the applicant, in advance if necessary, for the expenses of obtaining and presenting necessary medical evidence, costs of travel, attendants, and witnesses, if evidence of financial need was presented.

(18) **Payment for CE's**—would require the Secretary to establish payment rates for CE's that were consistent with the Medicare Part B rate for comparable physician services.

(19) **Compliance with certain court orders**—would provide that if a U.S. Court of Appeals rendered a case decision that required HHS to carry out a policy different from the usual HHS policy, the Secretary would either have to acquiesce and apply the policy generally or request review by the Supreme Court. If the Supreme Court did not accept review, the decision of the circuit court would apply only in the States within the circuit until the Supreme Court eventually ruled on the issue involved and reached a different or contrary result.

(20) **Continued assistance for potential concurrent beneficiaries**—would require the Secretary to mail notices to all title II beneficiaries informing them of the availability of SSI payments and of assistance, upon request, in the completion of claims and the establishment of eligibility for benefits.

(21) **Trial work**—would provide that: (a) periods of work by a disabled individual would be counted towards the 9-month trial work period only if performed in the 15 months immediately preceding the month in which SSA began a review of the individual's disability; (b) periods of work shorter than 3 consecutive months would not count towards the trial work period; and (c) SSA could not terminate benefits based on a beneficiary's completion of a trial work period unless the beneficiary was still working at the time of the termination decision and had been working for the previous 6 consecutive months.

Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs

On June 8, 1983, the subcommittee held a hearing to examine the role of the ALJ in the disability program. Chairman Cohen summarized the issues to be addressed: (1) the decisional independence of SSA's ALJ's and the effect, if any, of Bellmon own-motion review on that independence; (2) the incorporation of the POMS into the **Social Security Rulings**; and (3) SSA's practice of nonacquiescence in certain decisions of lower Federal courts. Senator Cohen also said that legislation might be necessary to correct what appeared to be an inappropriate attempt by SSA to interfere with the independence of its ALJ's.

Louis B. Hays, Associate Commissioner for Hearings and Appeals, and Acting Deputy to the Deputy Commissioner for Programs and Policy, SSA, testified that SSA had never improperly exerted pressure on ALJ's to deny claims, nor had the agency ever established any production goals or quotas for ALJ's. He said that SSA's implementation of the Bellmon review of ALJ decisions was never intended to threaten the decisional independence of ALJ's, but rather was designed to improve the quality and consistency of ALJ decisions. Mr. Hays said that SSA initially chose to review only favorable decisions of ALJ's with high allowance rates because early Bellmon review data showed that ALJ's with high allowance rates had a greater likelihood of error than ALJ's with lower allowance rates. He emphasized that once SSA had data on ALJ error rates under the Bellmon review, the allowance rate became irrelevant and errors were the only consideration in placing ALJ's on review or removing them from review.

Associate Commissioner Hays added that the publication of certain disability policy statements as **Social Security Rulings** was in response to the lack of uniform guidelines for decisionmaking among the various levels of adjudication. He also stated that SSA does not acquiesce in certain decisions of the lower Federal courts so that the agency can continue to administer the social security program nationwide in a uniform and consistent manner.

In October 1983, the subcommittee published a report of its findings from the hearing. The principal finding was that SSA was pressuring its ALJ's to reduce their disability allowance rates and was doing so by several means, including targeting only allowance decisions and high allowance ALJ's for review and the use of minimum production quotas and productivity goals.

Administration Initiatives

On June 7, 1983, Secretary Margaret M. Heckler announced a package of major reforms in the CDR process to make sure the DI program was as fair and compassionate as possible. She said that the reforms responded to the concerns of members of Congress, medical and mental health professional groups, State agencies, and beneficiaries. The reforms were:

(1) Expanding by 200,000 the number of beneficiaries exempted from the CDR process (by classifying additional individuals as permanently disabled), bringing the total so exempted to 37 percent of the disabled workers on the benefit rolls, thus easing the workload of the State agencies and giving them more time to review each case.
(2) Temporarily exempting from review two-thirds of all mental impairment cases (those involving functional psychotic disorders), until SSA and outside experts had thoroughly reviewed the standards in this area. Once acceptable standards were adopted, SSA would re-review those cases in which benefits were terminated under existing standards.
(3) Selecting CDR cases for review on a more random basis (instead of using a profile), which should sharply reduce the number of initial decisions to stop benefits as well as the growing backlog of cases under appeal, thus freeing staff resources for closer review of the most difficult cases.
(4) Proposing legislation to remove the built-in bias against beneficiaries that forces SSA to review two-thirds of State agency decisions to allow benefits but does not mandate a review of decisions to deny benefits.
(5) Proposing legislation to make permanent the payment of benefits through the first opportunity for a face-to-face hearing to individuals appealing a decision to terminate benefits.
(6) Ordering SSA to accelerate its top-to-bottom review, in consultation with appropriate outside experts and the States, of disability policies and procedures. The areas under study included updating eligibility criteria involving all medical and mental impairment cases, reexamining the issue of whether or not an acceptable medical improvement standard could be developed, and reviewing the issue of whether or not an improved standard of "nonsevere impairment" could be developed to better ensure that a marginally disabled person was accorded a review of his or her age, education, and work history before any decision was made.

Senate Action

On June 16, 1983, the Senate passed (by a vote of 64–33) H.R. 3069, a supplemental appropriations bill, which included a Senate floor amendment offered by Senator Heinz on June 15, 1983, that was essentially the same as S. 1144. In introducing his amendment, Senator Heinz said that he welcomed the moratorium on the reviews of the mentally disabled announced by Secretary Heckler on June 7, but that the moratorium did not go far enough because it excluded persons with nonpsy-

chotic disabilities and had not indicated any willingness to revise the criteria used to assess RFC in mental impairment cases.

On June 20, 1983, Chairman Pickle wrote to Chairman Jamie L. Whitten (D., MS) of the House Committee on Appropriations urging the conferees on H.R. 3069 to strike the Heinz amendment from the bill because it would bypass the Committee on Ways and Means, which had the clear authorizing responsibility in this area, and because it undermined the efforts of the Social Security Subcommittee to develop comprehensive legislation to reform the entire disability adjudicative process. On July 20, 1983, the conferees on H.R. 3069 dropped the disability provisions.

On June 29, 1983, Senator Levin submitted an amendment to S. 476 intended to be proposed by him and Senator Cohen. The amendment was to clarify and improve the bill and also added a new provision. The new provision would require the Secretary, in determining whether an individual's impairment(s) was so severe that he or she was unable to engage in SGA, to consider the combined effect of all impairments, without regard to whether or not any individual impairment was of such severity.

House Select Committee on Aging

On June 20, 1983, the committee held a hearing on the problems encountered by States in administering the DI program and on the impact of CDR terminations. In opening the hearing, Chairman Edward Roybal (D., CA) said the hearing would focus on four major concerns: (1) the effect of CDR's on beneficiaries; (2) the States' discontent with SSA's operating guidelines; (3) the fact that SSA's implementation of CDR's went beyond congressional intent; and (4) the June 7 initiatives announced by Secretary Heckler.

Deputy Commissioner Simmons cited SSA's efforts to change the disability review process from a paper-oriented to a people-oriented one and summarized Secretary Heckler's June 7 initiatives. He noted that some States had experienced considerable problems in processing the cases and consequently had large backlogs (for example, due to insufficient staffing as a result of State hiring freezes). He said that SSA was closely monitoring the situation in these States and had taken many steps to ease the workloads, including adjusting the flow of cases to States to ensure each State agency's ability to produce consistent and high quality CDR determinations.

Subcommittee on Social Security, House Committee on Ways and Means

On June 30, 1983, the subcommittee held a hearing on the DI program. In his opening statement, Chairman Pickle said that Congress must strengthen its role in setting policy for the program, and that he hoped the subcommittee would be able to draft legislation and move it through the House before the August recess. Deputy Commissioner Simmons testified that the Administration did not favor a legislative moratorium on periodic review of all mental impairment cases because it was unnecessary, that publication of the **Social Security Rulings** in the **Federal Register** was inappropriate because the rulings merely explain what is contained in the regulations, and that the burden of proof to show continuing eligibility is properly with the beneficiary.

On July 15, 25, 28, and August 3, the subcommittee marked up the disability reform proposals developed by subcommittee staff, largely based on H.R. 2987. Upon completion of the markup, the bill was introduced on August 3 by Representative Pickle as H.R. 3755. The bill included the following provisions:

(1) **Standard of review for termination of disability benefits**—would provide that the Secretary could terminate a beneficiary's entitlement to DI benefits on the basis that the disability no longer existed only if there was substantial evidence that: (a) due to medical improvement the individual now was able to engage in SGA; (b) new medical evidence and a new assessment of the individual's RFC demonstrated that, although he or she had not improved medically, the individual was able to perform SGA due to advances in medical or vocational therapy or technology; or (c) because of new or improved diagnostic techniques or evaluations, the individual's impairment was not as disabling as it was considered to be at the time of the most recent earlier disability determination, so that he or she now was able to engage in SGA. Regardless of these standards, DI benefits could be terminated if the beneficiary was engaging in SGA, or if evidence on the face of the record showed that the earlier determination of disability was clearly erroneous or fraudulently obtained.

(2) **Study concerning evaluation of pain**—would require the Secretary to study, in conjunction with the National Academy of Sciences, the issue of using subjective evidence of pain in determining disability.

(3) **Multiple impairments**—would require the Secretary in determining whether an individual's impairment(s) was so severe that he or she was unable to engage in SGA to consider the combined effect of all impairments, without regard to whether or not any individual impairment was of such severity.

(4) **Moratorium on mental impairment reviews**—similar to section 5 of P.L. 98-460, except that in making the revisions the Secretary would have to consult with the advisory council established under another provision of H.R. 3755 and the regulations would have to be published by April 1, 1984.

(5) **Review procedure governing disability determinations affecting continued entitlement to DI benefits; demonstration projects relating to re-**

view of denials of DI benefit applications—would eliminate reconsideration in medical cessation cases effective January 1, 1985, and instead provide that in these cases the State agency would send the beneficiary a preliminary notice of a cessation determination. The beneficiary would then have 30 days to request a review (including a face-to-face hearing) before a formal cessation determination was made. Would also require the Secretary to conduct demonstration projects on using the same procedure in initial disability cases. The projects would have to be conducted in at least five States and a report to the Congress made by April 1, 1985.

(6) **Continuation of benefits during appeal**—would make permanent the temporary provision in P.L. 97-455 that DI benefits be continued up to the ALJ decision. Would also require the Secretary to report to Congress by July 1986 on the impact of this provision on the rate of appeals to ALJ's and on the financing of the DI program.

(7) **Qualifications of medical professionals evaluating mental impairments**—similar to section 8 of P.L. 98-460, except there was no provision that the Secretary need only make every reasonable effort—the psychiatrist or psychologist would have to participate in every case.

(8) **Regulatory standards for CE's**—similar to section 9 of P.L. 98-460, except no deadline for publication of the regulations.

(9) **Administrative procedure and uniform standards**—similar to section 10 of P.L. 98-460, except would apply to all title II benefit programs.

(10) **Benefits for individuals participating in VR programs**—similar to section 11 of P.L. 98-460.

(11) **Advisory Council on Medical Aspects of Disability**—would create a 10-member Advisory Council on the Medical Aspects of Disability to be appointed by the Secretary within 30 days of enactment and to terminate December 31, 1985. The council would be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio*. It would provide to the Secretary advice and recommendations on DI policies, standards, and procedures. The council recommendations would be conveyed to Congress in an expanded SSA annual report.

(12) **Qualifying experience for appointment of certain staff attorneys to ALJ positions**—would require the Secretary to establish, within 180 days of enactment, a sufficient number of attorney advisor positions in HHS at the GS-13 and GS-14 levels to enable SSA's Office of Hearing and Appeals staff attorneys to advance to successively higher positions to achieve the experience necessary to qualify for ALJ positions. Within 90 days of enactment, the Secretary would also be required to submit an interim report to the Committees on Ways and Means and on Finance about the progress in meeting these requirements and within 6 months, a final report setting forth the manner and extent of compliance with the requirements.

(13) **Compliance with certain court orders**—would require the Secretary either to recommend appeal or to acquiesce in the decisions of the circuit courts of appeal and to apply them to at least all beneficiaries whose appeals were within the jurisdiction of the circuit court, until or unless the decision was overruled by the Supreme Court.

(14) **Effective date**—the provisions would apply to disability determinations pending in HHS or in court on the date of enactment, except as otherwise provided in respective sections.

Subcommittee on Public Assistance and Unemployment, House Committee on Ways and Means

On August 3, 1983, the subcommittee held a hearing to discuss the SSI disability proposals in H.R. 3074, introduced by Representative Stark and 16 cosponsors on May 19, 1983. The H.R. 3074 provisions were:

(1) **Revision of regulatory criteria relating to mental impairments**—essentially the same as H.R. 3755, but applicable to SSI recipients.

(2) **Continued payment, on a permanent basis, of SSI disability benefits through the ALJ hearing level.**

(3) **Requirement for evaluation by psychiatrist or psychologist**—essentially the same as H.R. 3755, but applicable to SSI recipients.

(4) **SSI benefits for individuals who perform SGA despite severe medical impairments**—similar to section 14 of P.L. 98-460, except that extension would have been permanent.

(5) **Requirement of specific annual authorizations of funds for reviews involving disabilities based on mental impairment under the SSI program.**

(6) **Assistance to disabled individuals in complying with requirements and procedures under the SSI program.**

House Committee on Ways and Means

On September 20, 1983 the committee began its mark-up of H.R. 3755 and took the following actions:

(1) **Medical improvement standard**—agreed to an amendment by Representative William M. Thomas (R., CA) permitting SSA to secure evidence needed to reconstruct a case when no evidence was in the beneficiary's file. Also agreed to an amendment by Representative Andy Jacobs, Jr. (D., IN) permitting termination of DI benefits, in the absence of medical improvement, if any vocational therapy resulted in a beneficiary's ability to engage in SGA.

Rejected by a vote of 21 to 12 an amendment by Representative Archer that would obviate the need to show medical improvement in cases in which the beneficiary could do the work he or she was doing before he or she became disabled. Representative Bill Gradison (R., OH) stated that the Archer amendment involved such a significant policy issue that it should be debated by the full House. Chairman Rostenkowski agreed to ask the Rules Committee for a modified closed

rule permitting consideration of the amendment (with one-half hour of debate) on the House floor.

(2) **Study on pain**—adopted an amendment by Representative Thomas that the study also consider the question of how a person could prevent, reduce, or cope with pain. Also agreed to an amendment by Representative Pickle to delay the report on the study from January 1, 1985, to April 1, 1985.

(3) **Moratorium**—agreed to an amendment by Representative Thomas to require that the regulations establishing revised criteria and listings for mental impairments be published no later than 9 months following enactment (rather than by April 1, 1984).

(4) **Face-to-face hearing on termination determinations**—rejected by voice vote an amendment by Representative Thomas to repeal the provision in P.L. 97-455 requiring evidentiary hearings in reconsiderations of DI benefit terminations effective December 31, 1983, since H.R. 3755 would eliminate the reconsideration level of appeal in disability cessation cases just 1 year later.

(5) **Qualifications of medical professionals evaluating mental impairments**—rejected an amendment by Representative Thomas that would have permitted a qualified mental heath professional, such as a psychiatric social worker, to complete the medical portion of the disability case review and to make the assessment of the RFC in an unfavorable determination involving a mental impairment.

(6) **Advisory Council on Medical Aspects of Disability**—agreed to an amendment by Representative Thomas to allow the Secretary 60 days after enactment (rather than 30 days) to appoint the members of the Advisory Council on the Medical Aspects of Disability.

The committee adopted without amendment the following provisions—multiple impairments, continuation of benefits during appeal, regulations pertaining to CE's, administrative procedure and uniform standards, compliance with certain court orders, reimbursement for VR services, staff attorneys, and effective date. The committee added an amendment to H.R. 3929 (an unemployment compensation bill) to extend the provision of continued benefits through the ALJ decision for 45 days so that it would apply to all cessation decisions made before November 16, 1983. (The provision in P.L. 97-455 applied only to determinations made prior to October 1, 1983.)

Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means

On September 22, 1983, the subcommittee marked up H.R. 3755 and ordered it favorably reported to the Committee on Ways and Means. The markup entailed making most of the DI program provisions in H.R. 3755 applicable to the SSI program.

The subcommittee also mentioned, in its report to the committee, two other proposals that were discussed but not finally decided by the subcommittee. One was Chairman Harold Ford's (D., TN) amendment to permanently provide SSI payments to individuals who perform SGA despite severe medical impairments and the second was an amendment by Representative Robert T. Matsui (D., CA) to the provision in H.R. 3755 establishing an advisory council. The amendment would require the council to look into: (1) the development of alternative approaches to work evaluations of SSI applicants; (2) a review of SSA's policies related to work evaluations; (3) establishing new criteria for assessing SSI applicants' potential for VR services; and (4) determining the feasibility of providing work evaluation stipends for certain SSI recipients.

House Committee on Ways and Means

On September 27, the committee completed markup of H.R. 3755 and ordered the bill reported to the House. The committee agreed that several amendments by Representative Ford, on behalf of the Subcommittee on Public Assistance and Unemployment Compensation, would be offered as committee amendments on the House floor, including: (1) making the provisions of H.R. 3755 applicable to the SSI program; (2) extending the provisions of section 1619 through June 30, 1986; and (3) requiring the advisory council to study several SSI issues (essentially the amendment offered by Representative Matsui on September 22, 1983).

Action in Both Houses—Enactment of H.R. 4101 (P.L. 98-118)

By this time, it was clear that no major comprehensive DI legislation would be enacted before October when the continued payment provision would no longer apply to new continuing disability review decisions, and Congress took action to extend the provision. On September 22, 1983, the Senate Committee on Finance objected to an amendment to H.R. 3959, a supplemental appropriations bill, which would have extended the continued payment provision by 6 months.

On September 29, 1983, H.R. 3929, a supplemental unemployment compensation bill with an amendment providing a 45-day extension for continuing benefits up to the ALJ decision, was passed by the House. On the same day Senators Cohen and Levin and 38 cosponsors offered a Senate floor amendment to S. 1887, a supplemental unemployment compensation bill, that would have extended the continued payment provision by 2 months. Senator Cohen said that a 60-day extension would give the Congress time to enact comprehensive disability reform legislation before adjournment. Senator Dole said that he preferred a 6-month extension but

offered a 90-day extension as a compromise. The amendment to S. 1887 was so modified and agreed to by the Senate.

On September 30, 1983, the Senate passed (by vote of 89-0) H.R. 3929, after amending it to extend the continued payment provision for 90 days. House and Senate conferees of H.R. 3929 then tentatively agreed to a 67-day extension (applicable to determinations made prior to December 7, 1983). The last possible month of continued payment would be June 1984. The compromise provision was added to H.R. 4101, another supplemental unemployment compensation bill, which was passed by both the House and Senate on October 6, 1983, and signed by President Reagan on October 11, 1983 (P.L. 98-118).

House Action

On October 20, 1983, the House Committee on Ways and Means agreed to include the provisions of H.R. 3755 in an omnibus tax bill that was introduced by Representatives Rostenkowski and Conable that day (H.R. 4170, The Tax Reform Act of 1983). The disability provisions were under title IX of H.R. 4170. On October 21, 1983, the committee reported H.R. 4170 with the three amendments that the committee had previously agreed could be offered on the House floor as committee amendments.

On November 17, 1983, the House voted 214 to 204 not to consider H.R. 4170. The defeat was on a vote on the rule for floor consideration of a bill and related primarily to the handling of the major tax provisions.

Senate Action

On November 17, 1983, Senators Cohen and Levin and 26 cosponsors offered an amendment with disability reform provisions to H.R. 3959, a fiscal year 1984 supplemental appropriations bill. Senator Levin, in his introductory remarks, characterized the provisions as a trimmed-down version of S. 476 resulting from months of work with members of the Senate Finance Committee. He said that the provisions would cost about a billion dollars less over 5 years than Representative Pickle's bill (the disability provisions in H.R. 4170). He said prompt enactment of the provisions was urgent because about 30 States were either stopping CDR's entirely or following rules other than the rules of SSA. The provisions were:

(1) **Standard of review for termination of disability benefits**—same as the provision in H.R. 4170, except that benefits could also be terminated if the individual could do his or her previous work.
(2) **Evaluation of pain**—incorporated the provisions of S. 476 (as amended on June 29, 1983) and H.R. 4170.
(3) **Multiple impairments**—same as the provisions in S. 476 and H.R. 4170.
(4) **Moratorium on mental impairment reviews**—same as the provision in H.R. 4170.
(5) **Personal appearance demonstration projects**—would require demonstration projects on providing pretermination face-to-face interviews by State agencies in disability cessation cases in lieu of face-to-face, evidentiary hearings at reconsideration. A report would be due to Congress on April 1, 1985.
(6) **Pretermination notice**—same as the provision in S. 476.
(7) **Continuation of benefits during appeal**—would extend the temporary provision to disability cessation determinations made prior to January 1, 1986; payments could be made only through June 1986. The report requirement would be the same as H.R. 4170.
(8) **Qualifications of medical professionals evaluating mental impairments**—same as the provision in H.R. 4170.
(9) **Uniform standards for disability determinations**—same as the provision in S. 476.
(10) **Case development and medical evidence**—same as the provision in S. 476.
(11) **Payment of costs of rehabilitation services**—same as the provision in H.R. 4170.
(12) **Advisory Council on Medical Aspects of Disability**—same as the provision in H.R. 4170.
(13) **SSI benefits for individuals who perform SGA despite severe medical impairment**—same as the provision in H.R. 4170.
(14) **Response by Secretary to court decisions**—would require SSA to notify Congress and print in the **Federal Register** an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the circuit courts. Would state that nothing in the provision should be interpreted as sanctioning nonacquiescence with circuit court decisions.
(15) **Effective date**—same as the effective date in H.R. 4170.

Both Senator Dole and Senator Russell B. Long (D., LA), ranking minority member of the Finance Committee, opposed the amendment on the grounds that the Finance Committee should have time to consider the provisions. Senator Dole also said that the Senate should extend the continued payment provision (due to expire on December 6, 1983). The Senate voted, 49 to 46, to table the amendment.

On November 18, 1983, the Senate passed (80-0) H.R. 3391, a House-passed trade adjustment bill, to which the Senate had attached an amendment offered by Senators Dole and Long and 11 cosponsors to: provide a 6-month extension of the continued payment provision and a 3-year extension of the section 1619 provision permitting SSI payments and Medicaid benefits for severely disabled individuals who work.

House Action

On November 18, 1983, the House considered H.R. 3391 as passed by the Senate. Representative Shannon

proposed that the House concur with the section 1619 provision added by the Senate but not with the continued payment extension, which he said could be dealt with when the Congress returned next year. Representative William E. Dannemeyer (R., CA) objected to Representative Shannon's request and the Congress adjourned without taking further action on the bill.

Administration Action

Because the continued payment provision was expiring on December 7, 1983, SSA, in December 1983, instructed State agencies, effective for CDR decisions made on or after December 7, 1983, to continue processing CDR's to the point of determining if a cessation notice was appropriate but not to prepare or release a cessation notice.

Activities During the Second Session, 98th Congress, 1984

Senate Committee on Finance

On January 25, 1984, the committee held a hearing on the DI program. Martha A. McSteen, Acting Commissioner of Social Security, testified that the Administration opposed enactment of disability legislation because the administrative and legislative reforms already accomplished made further legislative reforms unnecessary. She stated that the high costs of the disability provisions of H.R. 4170—about $6 billion in the first 5 years—were unacceptable, especially because the safety margins of the old-age, survivors, and disability insurance trust funds were now relatively small. She reiterated Administration support for congressional action to authorize continued benefit payment through the first evidentiary hearing in the appeals process. She noted that the provision to continue payment up to the ALJ decision had expired on December 6 and that, as a result, SSA had temporarily directed States to hold termination notices but the States would be directed to resume processing terminations beginning in February. Mrs. McSteen then discussed the Administration's reasons for opposing a number of legislative proposals concerning the DI program.

Carolyn Kuhl, Deputy Assistant Attorney General, Department of Justice, stated that the Department of Justice supported the policy of nonacquiescence and opposed legislation to curtail its use.

Representatives of advocacy groups for the disabled testified in favor of comprehensive disability legislation such as H.R. 4170. Governor Bill Clinton of Arkansas, speaking on behalf of the National Governors Association, recommended enactment of legislation to: make permanent benefit continuation through the ALJ appeal in CDR terminations; mandate a medical improvement standard; provide for pretermination evidentiary hearings; impose a moratorium on mental impairment reviews; require SSA to acquiesce in circuit court decisions; and publicly promulgate DI policies.

House Action

On February 2, 1984, in floor action on H.R. 3391, the House agreed to the section 1619 amendment, struck the amendment extending continued payment, passed the bill, and returned it to the Senate for further consideration.

House Select Committee on Aging

On February 28, 1984, the committee held a hearing during which testimony was given by representatives of State governments, members of Congress, and the legal services community. The hearing focused on: (1) the reaction of the States to January 24 letters from Secretary Heckler directing States to resume processing CDR cessations; (2) rulings of Federal courts striking down SSA's DI policies; and (3) the program costs of various court decisions and State moratoria on processing cessations. Representative Roybal, chairman of the committee, said he intended to recommend a nationwide moratorium on the CDR process either through authorizing legislation or the appropriations process.

House Action

On March 5, 1984, the House Committee on Ways and Means reported H.R. 4170. On March 7, the House Committee on Rules agreed to a modified closed rule for floor consideration of H.R. 4170, which provided for a committee amendment in the nature of a substitute deleting from H.R. 4170 the disability provisions (title IX). On March 14, the House Committee on Ways and Means reported to the House H.R. 3755 with amendments conforming the bill to the former title IX of H.R. 4170. On March 27, the House passed H.R. 3755 by a vote of 410–1.

Senate Action

On March 15, 1984, Senator Levin submitted an amendment intended to be proposed by him to S. 476. The amendment differed from the amendment to H.R. 3959 offered by Senators Levin and Cohen on November 17, 1983, as follows:

(1) **Standard of review for termination of disability benefits**—would omit the past work exception to the medical improvement standard.
(2) **Continuation of benefits during appeal**—would extend the continued payment provision to decisions made before June 1, 1986, rather than be-

fore January 1, 1986, and make the last month of continued payment January 1987, rather than June 1986. Also, would omit the requirement that the Secretary report on the effects on the trust funds and on the rates of appeal to ALJ's of continued payment.

(3) **Case development and medical evidence**—would provide that a complete medical history of at least the last 12 months would have to be obtained only in unfavorable disability determination cases.

(4) **Advisory Council on Medical Aspects of Disability**—would extend the life of the Council through 1986 rather than through 1985.

(5) **SSI benefits for individuals who perform SGA despite severe medical impairment**—similar to section 14 of P.L. 98-460.

(6) **Frequency of continuing eligibility reviews**—similar to section 15 of P.L. 98-460.

(7) **Secretarial review of ALJ determinations**—would repeal the provision in the 1980 amendments requiring the Secretary to institute a program of reviewing ALJ decisions (the Bellmon amendment).

On April 12, 1984, Senators Levin, Cohen, Dole, Long, Heinz, Daniel Patrick Moynihan (D., NY), and John H. Chafee (R., RI) had a colloquy on the Senate floor during which Senators Cohen and Levin agreed not to offer their disability reform package as an amendment to H.R. 2163, a Federal boat safety bill that contained the deficit reduction proposals of the Senate Committee on Finance. In return, Senator Dole agreed that the Senate Committee on Finance would mark up S. 476 and report it to the full Senate by May 7. Senator Dole noted that Senator Howard H. Baker, Jr. (R., TN), the majority leader, had agreed that the bill would be scheduled for floor action during May.

Administration Action

On April 13, 1984, Secretary Heckler announced that she was imposing a nationwide moratorium on periodic CDR's until DI program legislation could be enacted and effectively implemented. The Secretary said, "Although we have made important progress in reforming the review process within Social Security, the confusion of differing court orders and State actions persists. The disability program cannot serve those who need its help when its policies are splintered and divided. For that reason, we must suspend the process and work together with Congress to regain order and consensus in the disability program." The moratorium also applied to cases properly pending at all levels of administrative review; in these cases, SSA would rescind cessation decisions and restore benefits to prevent such beneficiaries from losing benefits after June 1984, when the continued payment provision expired.

At the time the moratorium went into effect, 26 States were processing CDR's as required by SSA, 2 States were processing medical reexams only, 9 States were processing CDR's under court-ordered medical improvement standards, 7 States were not processing CDR's because of State agency or gubernatorial actions, 7 States were not processing CDR's because of court orders, and 2 States were not processing CDR's pending court orders. (These numbers include the District of Columbia, Guam, and Puerto Rico.) (See appendix C for a chronology of State actions concerning the processing of CDR's.)

Senate Committee on Finance

On May 15 and 16, the committee marked up a DI reform bill offered by Chairman Dole as an amendment in substitute for S. 476, and voted 18-0 to report the bill on May 16. The provisions of the bill were:

(1) **Medical improvement**—would provide that DI benefits could be terminated if the beneficiary could perform SGA, unless the beneficiary could show that the condition was the same as or worse than at the time of the earlier determination. If the beneficiary could show that he or she had not medically improved, the DI benefits could be terminated only if the Secretary could show that one of the following occurred and if the beneficiary was determined to be able to perform SGA: (a) the individual had benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicated that his or her impairment(s) was not as disabling as believed at the time of the earlier determination; (c) the earlier determination was fraudulently obtained; or (d) there was substantial reason to believe that the earlier determination was erroneous. If the beneficiary had not medically improved and none of the foregoing conditions was met, DI benefits would have to be continued whether or not the individual would have been found to be able to perform SGA.

Such benefits would also be terminated if the beneficiary was engaging in SGA, could not be located, or failed, without good cause, to cooperate in the CDR or to follow prescribed treatment that could be expected to restore the ability to work.

The new standard would apply to future CDR's and to all individuals who currently had claims properly pending in the administrative appeals process. The CDR cases properly pending in the courts on May 16, 1984, would be remanded to the Secretary for review under the new standard. The individuals would not have had to request the review if they were individual litigants, members of class actions identified by name, or had completed the administrative appeals process during the period between March 15, 1984, and 60 days after enactment. The case of an unnamed member of a class action certified before May 16, 1984, who had completed the administrative appeals process on or after a

date 60 days before the filing of the court action would also be remanded to the Secretary but would not automatically receive a review under the medical improvement standard. The Secretary would have to notify such an individual that he or she had 60 days within which to request a review under the new standard. If a timely request was not made, no further administrative or judicial review of the case would occur. Cases of unnamed members of class actions other than those described above would not be remanded and would not be subject to any further administrative or judicial review. If, on review, a person was found to be disabled under the medical improvement standard, full retroactive benefits would be paid.

An individual whose case was remanded by a court (providing the request for review was received timely if the individual was an unidentified member of a class) could elect to have benefits continued beginning with the month of election. Regulations implementing the provision would have to be issued no later than 6 months after enactment and the provision would sunset on December 31, 1987.

(2) **Evaluation of pain**—similar to section 3 of P.L. 98-460, except the statutory standard would sunset on December 31, 1987, the commission would not be required to consult with the National Academy of Sciences, and the report to the Congress would be due December 31, 1986.

(3) **Multiple impairments**—same as the provision in H.R. 4170, except would clarify that the requirement would apply to the determination of whether or not an individual had a combination of impairments that was medically severe without regard to age, education, or work experience.

(4) **Moratorium on mental impairment reviews**—similar to section 5 of P.L. 98-460, except it would require publication of regulations within 90 days after enactment and the reapplication provision would apply to persons who received unfavorable determinations after June 7, 1983.

(5) **Modification of reconsideration prereview notice**—similar to section 6 of P.L. 98-460, except the demonstration projects would be done in periodic review cases only and the report to Congress would be due by April 1, 1986.

(6) **Continuation of payments during appeal**—would extend the temporary provision to include payment up to the ALJ decision when the disability cessation determination was made prior to June 1, 1986; payments could be made only through January 1987.

(7) **Qualifications of medical professionals**—similar to section 8 of P.L. 98-460, except it would be effective on enactment.

(8) **Consultative exams; medical evidence**—same as the provision in S. 476.

(9) **Uniform standards**—same as section 10 of P.L. 98-460.

(10) **Vocational rehabilitation**—similar to section 11 of P.L. 98-460, except it would not pay for services to those who failed to cooperate or who refused to continue participation in VR, and it would not apply to the SSI program.

(11) **Advisory Council**—similar to section 12 of P.L. 98-460.

(12) **Special benefits for individuals who perform SGA despite severe medical impairment**—same as section 14 of P.L. 98-460.

(13) **Frequency of periodic reviews**—same as section 15 of P.L. 98-460.

(14) **Monitoring of representative payees**—same as section 16 of P.L. 98-460, except the report to Congress would be due within 6 months of enactment.

(15) **Measures to improve compliance with Federal law**—same as section 17 of P.L. 98-460, except there was no provision requiring the Secretary to waive any applicable personnel ceilings and to give preference to State employees.

(16) **Nonacquiescence in court orders**—would require the Secretary to notify Congress and publish in the **Federal Register** (within 90 days after the decision date, or on the last date available for appeal, whichever is later) a statement of the Secretary's decision to acquiesce or not acquiesce in circuit court decisions affecting the Social Security Act or SSA regulations, and the reasons in support of the Secretary's decision. In cases in which the Secretary acquiesced, the reporting requirement would apply only to significant decisions. Would also state that nothing in the section should be interpreted as sanctioning nonacquiescence with circuit court decisions.

(17) **Fail safe**—would require the Secretary to adjust DI benefit increases to prevent the DI trust fund balance from going below a defined threshold. Would require the Secretary to notify the Congress by July 1 in any year in which the amount of the DI trust fund for the second following year was projected to decline to less than 20 percent of the year's benefits. Would provide that, if Congress took no action, the Secretary would have to scale back, as necessary to keep the fund balance above 20 percent, (a) the next cost-of-living increase for DI beneficiaries, and, if further necessary, (b) the benefit formula used to determine benefit levels for persons newly disabled in the following year.

Action in Both Houses—Enactment of H.R. 3755 (P.L. 98-460)

On May 22, 1984, the Senate passed (96-0) H.R. 3755 after substituting for the House-passed version the language of S. 476 as reported by the Committee on Finance.

A House-Senate Conference Committee met on July 26 and tentatively agreed on all but seven provisions of the bill (the most controversial items). The provisions agreed to were:

(1) **Moratorium on mental impairment reviews**—adopted the House provision but required publication of revised criteria for evaluating mental impairments within 120 days of enactment.

(2) **Qualification of medical professionals evaluating mental impairments**—adopted the Senate provision but changed the effective date to 60 days after enactment.

(3) **Standards for consultative examinations and medical evidence**—adopted the House provision with respect to standards for CE's. Adopted and amended the Senate provision with regard to obtaining medical evidence from treating physicians.

(4) **Uniform standards**—adopted the Senate provision and conference report language.

(5) **Payment of costs of rehabilitation services**—adopted the House provision but made technical amendments and changed the effective date.

(6) **Advisory Council study**—adopted the Senate provision but included in the law details of the issues to be studied.

(7) **Qualifying experience for appointment of certain staff attorneys to ALJ positions**—replaced the House provision with a requirement that the Secretary report to the Congress within 120 days on the actions taken by the Secretary to establish positions to enable staff attorneys to gain the qualifying experience.

(8) **SSI benefits for individuals who perform SGA despite severe medical impairment**—adopted the Senate provision.

(9) **Frequency of continuing eligibility reviews**—adopted the Senate provision.

(10) **Determination and monitoring of need for representative payee**—adopted Senate provision but required a report to Congress within 270 days after enactment.

(11) **Measures to improve compliance with Federal law**—adopted the Senate provision but required the Secretary to waive any applicable personnel ceilings and other restrictions in carrying out the provisions and to give preference to hiring State employees if the Secretary assumed the functions of a State agency.

From July 26 until September 14, no formal meetings of the conferees occurred although several compromise offers were exchanged informally. On September 18, the conferees reached agreement on the remaining provisions:

(1) **Standard of review of termination of DI benefits and periods of disability**—adopted House provision but: (a) removed the causal links between all but one of the conditions for termination and the ability of the person to engage in SGA and related the conditions to the individual's ability to work; (b) substituted for the House language on error the requirement that substantial evidence shows previous error; (c) allowed termination of benefits where the person was engaging in SGA (except where he or she was eligible under the section 1619 provision), could not be located, or failed without good cause to cooperate in the review or to follow prescribed treatment which would be expected to restore the ability to engage in SGA; (d) substituted for the House language on the Secretary obtaining additional medical reports, the requirement that any CDR should be made on the basis of all evidence available on the individual's past or current condition as presented by the individual or secured by the Secretary; (e) added the requirement that any CDR should be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the claimant has previously been determined to be disabled; and (f) added the requirement that the regulations must be promulgated within 6 months of enactment.

Adopted the Senate provision dealing with benefit payments during remand and retroactive benefits. Their agreement on the effective date followed the House provision with regard to no 3-year sunset and followed the Senate provision otherwise except: (a) changed the date on which a judicial action had to be pending for an individual litigant or a named member of a class action from March 15, 1984, to September 19, 1984, and deleted the requirement that such cases be "properly pending;" (b) clarified that the pending judicial actions had to relate to medical improvement; (c) changed the date on which a class action had to be certified from May 16, 1984, to September 19, 1984, and deleted the requirement that an unnamed member of the class action had to have been notified of the Secretary's decision on or after a date 60 days before the filing of the court action; (d) added a new provision that no class in a class action relating to medical improvement may be certified after September 19, 1984, if the action seeks judicial review of a CDR decision made by the Secretary before September 19, 1984, and (e) provided that unnamed members of class actions whose cases were remanded to the Secretary would have 120 days (rather than 60 days) to request a review under the new standards.

(2) **Evaluation of pain**—adopted Senate provision but: (a) required the study to be done in consultation with the National Academy of Sciences and the report to be sent to Congress by December 31, 1985; (b) made the interim standard more accurately reflect the current SSA policy on pain; and (c) sunsetted the interim standard on January 1, 1987.

(3) **Multiple impairments**—substituted alternative language for the provisions in both bills. The new language provided that: (a) in determining whether an individual's impairment(s) was of a sufficient medical severity that such impairment(s) could be the basis of eligibility, the Secretary must consider the combined effect of all impairments without regard to whether any impairment considered separately would be of such severity; and (b) if the Secretary found a medically severe combination of impairments, the combined impact of the impairments would be considered throughout the disability determination process.

(4) **Notice of reconsideration, prereview notice, and demonstration projects**—adopted the Senate provision with regard to retaining the current reconsideration process and CDR demonstration

projects, but required the report to Congress on December 31, 1986, and a notice at the start of a CDR. Adopted the House provision with regard to demonstration projects in initial disability cases, but required the report to Congress on December 31, 1986.

(5) **Continuation of benefits during appeal**—adopted the House provision but: (a) extended the continued payment provision in DI cases to termination decisions made through December 1987 with benefits last payable for June 1988, and (b) permanently extended the continued payment provision to SSI cases.

(6) **Compliance with court orders**—deleted both the House and Senate provisions.

(7) **Fail-safe**—deleted provision.

On September 19, 1984, the House, by a vote of 402-0, and the Senate, by a vote of 99-0, approved the conference report on H.R. 3755; the President signed the bill into law (P.L. 98-460) on October 9, 1984.

Appendix A: Congressional Hearings on the Social Security and SSI Disability Programs (1982-84)

Washington, D.C.

House Committee on Ways and Means, Subcommittee on Social Security; March 16-17, 1982.

House Select Committee on Aging; May 21, 1982.

Senate Committee on Governmental Affairs, Subcommittee on Oversight of Governmental Management; May 25, 1982.

Senate Committee on Finance; August 18, 1982.

House Committee on Ways and Means, Subcommittee on Social Security; December 8, 1982.

Senate Special Committee on Aging; April 7-8, 1983.

Senate Committee on Governmental Affairs, Subcommittee on Oversight of Governmental Management; June 8, 1983.

House Select Committee on Aging; June 20, 1983.

House Committee on Ways and Means, Subcommittee on Social Security; June 30, 1983.

House Committee on Ways and Means, Subcommittee on Public Assistance and Unemployment; August 3, 1983.

Senate Committee on Finance; January 25, 1984.

House Select Committee on Aging; February 28, 1984.

Field Locations

House Select Committee on Aging, Subcommittee on Retirement Income and Employment; Hauppauge, N.Y., July 19, 1982.

Senate Special Committee on Aging and Senate Committee on Governmental Affairs, Subcommittee on Civil Service, Post Office, and General Services; Fort Smith, Ark., November 19, 1982.

House Select Committee on Aging; Charleston, W.Va., May 20, 1983.

House Committee on Ways and Means, Subcommittee on Public Assistance and Unemployment Compensation; Hayward, Calif., June 6, 1983.

House Select Committee on Aging, Subcommittee on Retirement Income and Employment; Burlington, Vt., July 22, 1983.

House Select Committee on Aging; Portsmouth, Va., September 12, 1983.

House Committee on Ways and Means, Subcommittee on Social Security, and Senate Special Committee on Aging:

—Chicago, Ill., February 16, 1984,
—Dallas, Tex., February 17, 1984,
—Boston, Mass., February 24, 1984, and
—Hot Springs, Ark., March 24, 1984.

House Committee on Ways and Means, Subcommittee on Social Security; Atlanta, Ga., March 23, 1984.

House Select Committee on Aging, Subcommittee on Health and Long-Term Care; Miami, Fla., April 30, 1984.

House Select Committee on Aging, Subcommittee on Retirement Income and Employment; Boston, Mass., May 31, 1984.

Appendix B: Summary of Major Litigation Relating to the Social Security and SSI Disability Programs (1982-84) [1]

Introduction

During the 1982-84 period, about 62,000 new disability cases were filed in Federal courts. The pending court caseload rose from about 22,000 at the end of fiscal year 1982 to almost 50,000 at the end of fiscal year 1984, as is shown in the tabulation that follows.

Fiscal year	New cases filed	Affirmations	Reversals	Dismissals	Pending, end of period
1982	11,632	4,068	1,081	388	21,707
1983	23,288	3,699	1,680	338	35,771
1984 [1]	27,322	2,320	4,216	377	49,824

[1] Preliminary data.

Summary of Litigation Issues

Medical improvement. Prior to the enactment of P.L. 98-460, the regulations provided that disability benefits were terminated when the definition of disability in the law was not met. However, most of the courts of ap-

[1] Includes title II, title XVI, and titles II/XVI concurrent disability cases for 1982 up to enactment of P.L. 98-460, which was signed by the President on October 9, 1984.

peals have ruled that SSA must apply some form of a medical improvement standard or apply a presumption of continuing disability before benefits could be terminated. Included among such rulings in 1982–84 were:

Second circuit	: **De Leon**	v. **Secretary**	(1984)
	Parente	v. **Heckler**	(1984)
Third circuit	: **Kuzmin**	v. **Schweiker**	(1983)
	Daring	v. **Heckler**	(1984)
Fourth circuit	: **Dotson**	v. **Schweiker**	(1983)
	Johnson	v. **Heckler**	(1984)
Fifth circuit	: **Babineaux**	v. **Secretary**	(1984)
	Buckley	v. **Heckler**	(1984)
Sixth circuit	: **Burnett**	v. **Secretary**	(1982)
	Haynes	v. **Secretary**	(1982)
	Gist	v. **Secretary**	(1984)
Eighth circuit	: **Lee**	v. **Heckler**	(1984)
	Rush	v. **Secretary**	(1984)
Ninth circuit	: **Iida**	v. **Heckler**	(1982)
	Lopez et al.	v. **Heckler**	(1982)
	Patti	v. **Schweiker**	(1982)
Tenth circuit	: **Byron**	v. **Heckler**	(1984)
Eleventh circuit	: **Simpson**	v. **Schweiker**	(1982)
	Vaughn	v. **Heckler**	(1984)

During 1982–84, there were 20 class-action cases, certified by Federal district courts, that involved medical improvement—18 involved State-wide classes and two involved circuit-wide classes.

Evaluation of pain. Before enactment of P.L. 98–460, the social security law did not state how symptoms, such as pain, were to be evaluated in determining disability. Regulations provide that allegations of pain must be considered, providing there are medical signs and findings that show the existence of a medical condition that can be reasonably expected to produce the pain. During the first half of 1984, three class-action decisions were issued that required SSA to evaluate allegations of pain regardless of whether or not the subjective complaints are supported by medical evidence. The decisions were:

Hyatt et al. v. **Heckler** (Western District of North Carolina)

Aldrich et al. v. **Heckler** (District of Vermont)

Polaski et al. v. **Heckler** (Eighth circuit)

Disability standards in mental impairment cases. In **Mental Health Association of Minnesota** v. **Heckler** (1983) the Eighth Circuit Court of Appeals (in a Chicago region-wide class action) ordered SSA to cease using a standard for evaluating the disabilities of mentally ill claimants that presumed that a person retained the capacity to perform unskilled work if he was under age 50 and had an impairment that did not meet the criteria for a mental impairment in the Listing of Impairments in the regulations. In August 1984, in **City of New York et al.** v. **Heckler** (1984) the Second Court of Appeals (in a State-wide class action) upheld the district court finding that SSA used an improper standard from 1978 through at least the early months of 1983 in evaluating the impairments of young workers with mental illnesses. A rehearing is pending.

SSA rulings of nonacquiescence. In **Lopez et al.** v. **Schweiker** (1984) the Ninth Circuit Court of Appeals (in a circuit-wide class action) affirmed the district court's preliminary injunction requiring SSA to follow the ninth circuit in two opinions—**Finnegan** v. **Mathews** and **Patti** v. **Schweiker.** In **Finnegan,** the circuit court had ruled that SSA could not terminate the benefits of an SSI disability recipient who had been grandfathered into the program from State disability rolls, unless SSA established that either the recipient's medical condition had materially improved or that there was clear and specific error in the original finding of disability. In **Patti,** the circuit court ruled that to terminate disability payments to a nongrandfathered SSI recipient, SSA must show improvement or other changes in the recipient's condition. In both **Finnegan** (SSR 82-10c) and in **Patti** (SSR-82-49c), SSA issued a ruling of nonacquiescence.

Medical-vocational factors regulations. The Supreme Court in **Heckler** v. **Campbell** (1983) unanimously upheld the validity of SSA's medical-vocational guidelines—the so-called "grid" regulations—used in evaluating claims for disability in which vocational factors must be considered. A second circuit decision in **Campbell** had required SSA, in lieu of using the grid regulations, to name suitable jobs, allegedly available under the guidelines, that a claimant could perform in the national economy. A claimant would then have an opportunity to show that he was incapable of performing those jobs.

Own-motion review of ALJ decisions. Several issues concerning the manner in which SSA implemented own-motion review were raised in **Association of Administrative Law Judges, Inc.** v. **Heckler et al.** On September 10, 1984, the District Court of the District of Columbia denied the plaintiff's request for injunctive relief. However, the court noted in its opinion that SSA's focus on

allowance rates in implementing the individual ALJ portion of the own-motion review created an atmosphere of tension and unfairness that violated the spirit of the APA. The court concluded that SSA had shifted its focus, obviating the need for any injunctive relief, and that the present system of selecting cases for review from a national sample was a more equitable and conciliatory means of accomplishing the same purpose and did not compromise ALJ independence by focusing excessively on allowance rates. A motion for reconsideration was pending as of September 20, 1984.

Appendix C: Chronology of Major State Actions Relating to the Social Security and SSI Disability Programs (1983–84)

Massachusetts. On March 8, 1983, Governor Dukakis ordered the Massachusetts State agency to ensure that the disability standards used in CDR cases were consistent with the First Circuit Court of Appeals standards set forth in **Miranda** v. **Secretary of HEW**, 514 F.2d 996 (1st Cir. 1975), which Massachusetts officials interpreted as requiring a medical improvement standard. On February 7, 1984, the Governor ordered the Massachusetts State agency to stop processing CDR terminations.

Arkansas. On July 14, 1983, Governor Clinton ordered the Arkansas State agency to follow the termination standards of the Eighth Circuit Court of Appeals in processing CDR's. On December 5, 1983, the Governor placed a moratorium on CDR terminations until the Congress took action on CDR problems.

New York. On July 22, 1983, New York State Social Services Commissioner Cesar Perales ordered the New York State agency to stop CDR terminations until the Federal Government established a medical improvement standard.

West Virginia. On August 12, 1983, Governor Rockefeller ordered the West Virginia State agency to develop, within 6 weeks, CDR policies and procedures consistent with Federal court decisions favorable to disability claimants. On September 26, the State agency stopped processing CDR terminations.

North Carolina. In early September 1983, Governor Hunt ordered the North Carolina State agency to stop processing CDR terminations (unless fraud was involved) until a medical improvement standard was adopted.

Alabama. On September 19, 1983, Governor Wallace ordered the Alabama State agency to stop processing CDR terminations.

Virginia. On September 28, 1983, Governor Robb ordered the Virginia State agency to stop processing CDR terminations.

Maryland. On October 4, 1983, the head of the parent agency informed Secretary Heckler that the Maryland State agency was holding CDR terminations.

Pennsylvania. In early October 1983, Governor Thornburgh ordered the Pennsylvania State agency to hold CDR terminations until a medical improvement standard was adopted.

Vermont. On October 7, 1983, Vermont Social Rehabilitation Services Commissioner John Burchard ordered the Vermont State agency to hold all CDR termination cases.

Ohio. On October 8, 1983, Governor Celeste ordered the Ohio State agency to hold CDR terminations for a period of 150 days and appointed a task force to review the CDR process and make recommendations to improve it.

New Jersey. On October 14, 1983, Governor Kean ordered the New Jersey State agency to hold CDR terminations.

New Mexico. Effective in late October 1983, Governor Anaya ordered the New Mexico State agency to hold CDR terminations.

Maine. In October 1983, Governor Brennan announced that the Maine State agency would stop processing CDR terminations immediately.

Michigan. In mid-November 1983, Governor Blanchard ordered the Michigan State agency to stop processing CDR terminations until reform legislation was enacted.

Illinois. In late December 1983, Governor Thompson ordered a moratorium on processing CDR terminations.

Idaho. On February 10, 1984, Governor Evans imposed a moratorium on CDR terminations until Congress acted on disability legislation.

Texas. In March 1984, Governor White advised the Texas State agency that if it started releasing CDR termination notices, he would impose a formal moratorium. Consequently, the Texas State agency did not process CDR terminations.