NOSSCR

National Organization of Social Security Claimants' Representatives

February 6, 2018

Nancy Berryhill, Acting Commissioner, SSA
Theresa Gruber, Deputy Commissioner, Hearings Operations
Rajive Mathur, Deputy Commissioner for Systems/ Chief Information Officer
6401 Security Blvd
Baltimore, MD 21235

By Email only

Dear Acting Commissioner Berryhill, Deputy Commissioner Gruber, and Deputy Commissioner Mathur,

RE: Request for Proposals on Document Identification Process (DIP) Software, Solicitation Number 28321318R00000022

I write on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR). NOSSCR members are attorneys and advocates who represent SSDI and SSI claimants throughout the adjudicative process. Since 1979, NOSSCR has provided continuing legal education to its thousands of members and public policy advocacy on behalf of its members and the people with disabilities they represent.

As an organization of claimants' representatives, NOSSCR deplores the lengthy hearings-level backlog over a million disability claimants must currently endure. Our organization has advocated for SSA to have adequate administrative funding, including funding dedicated to reducing the hearings backlog. We will continue to do so. However, NOSSCR opposes SSA's plans to purchase DIP software and encourage the agency to halt the procurement process.

There are many reasons a duplicate or apparent duplicate could appear in a file, and in many circumstances it would be inappropriate to remove or segregate it from other evidence. Duplicates often enter the file at the initial and reconsideration stages, due to state agencies developing the record simultaneously with claimants and representatives; the lack of electronic access to claims files at these stages compounds the issue. Duplicates can be submitted when different providers have the same information in their records: for example, primary care providers often receive test results or notes from the specialists to whom they refer patients. The records obtained from the primary care provider and the specialist may have certain pages repeated.

MAIN OFFICE
560 Sylvan Ave, Suite 2200 • Englewood Cliffs, NJ 07632 • P 201.567.4228 • F 201.567.1542 • nosscr@nosscr.org

GOVERNMENT AFFAIRS OFFICE
1025 Connecticut Ave, NW, Suite 709 • Washington, DC 20036 • P 202.457.7775 • F 202.457.7773

Lawyer Referral Service: 800.431.2804

www.nosscr.org

However, given SSA's regulations that use "the extent to which a medical source is familiar with the other information in your case record"[1] and "evidence showing a medical source has familiarity with the other evidence in the claim" [2] as factors in determining how much weight to give medical sources' opinions, it would be inappropriate to exclude the duplicate evidence in such a scenario. Doing so could result in the opinion of the primary care provider and/or the specialist being given the incorrect weight. Similarly, it is important to understand what information was in the file at the time an adjudicator, medical or psychological consultant, consultative examiner, or medical expert reached a conclusion. Removing or isolating evidence makes it more difficult to assure that opinions are given appropriate weight.

SSA's regulations instruct claimants and representatives that "[w]hen you submit evidence received from another source, you must submit that evidence in its entirety, unless you previously submitted the same evidence to us or we instruct you otherwise."[3] As the Federal Register notice upon publication of these regulations noted, "the commenters recommended we not require the submission of evidence that is already in the claim file, because that evidence can be costly for claimants to resubmit and time-consuming for our adjudicators to review." [4] However, the final rule did not follow this advice. The Federal Register notice's attempt at clarification, which defines "duplicative" evidence as "an exact duplicate of a document in the record, and not simply the substance of what is in the record"[5] still creates much confusion. For example, if an individual submits ten pages of medical evidence, and then receives the same ten pages numbered as pages 38-47 of a 200-page document, are the pages a duplicate that should be omitted, or is the addition of the page numbers enough to require submission? If a page of lab test results is marked as "initial" and another page, with the same figures, is marked as "final—verified" should they both be included as the change in label makes them not duplicates?

These are not idle concerns, especially as electronic health records make for increasingly repetitious reading. Many electronic records systems, such as those generated by the VA, include swathes of information from previous visits in their records for one appointment. This may make things easier for medical providers, who can read the notes from a single visit and understand the course of a patient's treatment, but the records submitted to SSA can be quite long and repetitive. Yet the records do not fall into SSA's definition of "duplicative."

The exemption from submitting evidence in its entirety "unless...we instruct you otherwise" is not currently helpful, because SSA has not issued sufficiently specific guidance about duplicates, much evidence is submitted before claims are assigned to adjudicators, different adjudicators have their own (often idiosyncratic and poorly communicated) preferences about what constitutes a duplicate, and claims may be reviewed by numerous adjudicators over the course of several years. A conscientious representative may submit repetitious evidence to a state agency, knowing that if the claim is not awarded, it may be reviewed by an Administrative Law Judge who would question why the evidence was not previously submitted.

NOSSCR has made numerous requests for SSA to issue additional guidance on the definition of a duplicate and how claimants, representatives, and adjudicators should handle them. Issuing

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[1] 20 C.F.R. 404.1527 and 416.927, applicable to claims filed before March 27, 2017.
[2] 20 C.F.R. 404.1520c and 416.920c, applicable to claims filed on or after March 27, 2017.
[3] 20 C.F.R. 404.1512 and 416.912.
[4] 80 Fed. Reg. 14834 (March 20, 2015).
[5] Id.

standardized guidance about duplicates, applicable to claims at all levels of appeal, would be a prudent step before deciding whether to spend $38.5 million on DIP software. Any contractor hired to provide DIP software will need to be trained in SSA's policy on what, precisely, is a duplicate and will have to adjust its software to SSA's specifications. If SSA can provide this information to a contractor, and the contractor can provide it to a computer program, then SSA should first make its policy public and see whether that reduces the number of unnecessary duplicates submitted to claims files. If issuing guidance about duplicates is successful, it could potentially not just save $38.5 million in DIP software acquisition costs, but also reduce the SSA staff time required to manage disability claims files (the contracting notice indicates that end users will be the ones to isolate documents DIP flags as duplicates) and reduce processing times in disability cases.

There are many reasons processing times have increased, and DIP will solve very few of them. The backlog in writing decisions after hearings, for example, will not be improved by DIP and may actually be made worse if staff who currently write decisions are reassigned to review documents DIP identifies as potential duplicates. By spending $38.5 million on DIP, SSA limits its ability to carry out other aspects of its Compassionate and REsponsive Service (CARES) plan for backlog reduction, such as prehearing conferences for unrepresented claimants and a National Adjudication Team that can prepare fully favorable on the record decisions for certain cases. Both of these initiatives have been suspended due to a lack of resources. There are other technological improvements, including iAppeals for requests for Appeals Council review, electronic access to case files at the state agency level, and enhancements to the equipment used for video and telephonic hearings, which could be accelerated if the $38.5 million planned for DIP were instead reallocated.

Given the high cost of DIP acquisition and the fact that it will not solve many of the issues leading to long processing times, SSA should end its current solicitation process and publicly issue guidance about duplicates through POMS and HALLEX, an SSR, an Administrative Message, or amended regulations. Money saved from cancelling or deferring DIP can be used for other aspects of the CARES plan.

If you would like to discuss these issues in greater detail with NOSSCR staff, please do not hesitate to contact me.

Sincerely,

Barbara Silverstone
Executive Director

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National Organization of Social Security Claimants' Representatives