March 17, 2025

Office of Management and Budget
Attn: Desk Officer for SSA
Social Security Administration
Office of External Affairs
Attn: Reports Clearance Staff

Re: Docket No. SSA-2024-0056

To Whom It May Concern:

Thank you for the opportunity to comment on the Temporary Final Rule (TFR) concerning Further Extension of the Flexibility In Evaluating "Close Proximity of Time" To Evaluate Ongoing Changes in Healthcare published at 90 Fed. Reg. 5582-5590 (Jan. 17, 2025). We laud SSAs decision to extend the flexibility in the "close proximity of time" standard through May 11, 2029. This extension will be useful to many SSDI and SSI disability applicants.

This comment is submitted on behalf of the Consortium for Constituents with Disabilities (CCD), Social Security Task Force (SSTF). CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. Our Social Security Task Force focuses on disability policy issues in the Title II Social Security Disability Income (SSDI) program and the Title XVI Supplemental Security Income (SSI) program. The SSI and Title II income supports, along with the related Medicaid and Medicare benefits, are the means of survival for millions of people with severe disabilities. They rely on SSA to adjudicate their applications promptly and fairly for disability benefits and to handle many other government functions that are critical to their well-being.

I. CCD SSTF Recommends Making the "Close Extension of Time" Extension to Twelve Months Permanent

While we are thankful for the agency's decision to further extend the 12-month "close proximity of time" window when considering musculoskeletal listings, we encourage the agency to go one step further and make this TFR permanent. The post-COVID realities of the American healthcare system simply do not support the possibility of showing all needed evidence within a 4-month

window.[1] Requiring disability claimants to attempt to meet this tight schedule under specified musculoskeletal listings[2] will preclude findings of disability based on the listings for many claimants, not because their impairments do not satisfy the musculoskeletal listings, but because of the difficulty of obtaining all required medical findings within a four-month period.[3] Thus the agency will have to, unnecessarily, expend additional resources developing the claim through steps 4 and 5 of the sequential evaluation process.

The agency's original 4-month period assumed that all disability applicants are able to successfully schedule and receive medical care and testing without interruption or delay. SSA noted that "we concluded that the consecutive 4-month was consistent with the timeframe medical providers were trained to use for scheduling their patients, the general standard of care, and the frequency of healthcare visits by individuals with musculoskeletal conditions."[4] Unfortunately, research has shown that American healthcare is not meeting the "general standard of care" on which the agency relied.[5] Current trends in healthcare delivery make this best-case consecutive 4-month timeframe nearly impossible to meet for most disability applicants.

For example, Listing 1.15 (Disorders of the skeletal spine resulting in compromise of a nerve root(s)) requires claimants to demonstrate signs, symptoms, imaging, and physical limitations. As noted below, a claimant with spinal symptoms such as pain, paresthesia, or muscle fatigue will not likely be able to attend a medical appointment for weeks after the symptoms occur. While a doctor might document signs such as muscle weakness, decreased sensation, or decreased deep tendon reflexes at the first appointment, it is more likely that the doctor will prescribe first-line treatment including painkillers, exercise, or warm compresses or refer the patient to a specialist or physical therapy. It is unlikely that a doctor would order electrodiagnostic testing or other ways of documenting signs on an initial visit. Thus, obtaining the evidence to show signs, symptoms, imaging, and physical limitations takes multiple medical appointments—which requires the process of scheduling those appointments.

Disability applicants face delays in scheduling appointments, particularly for specialist care. A recent study from ECG Management Consultants found that just getting through to a doctor's office by phone was not easy. In a secret shopper study, ECG researchers found that 45% of callers were told to leave a message, but did not receive return calls, 31% placed callers on hold for more than five minutes, and 11% did not answer the call.[6] The study also found that the average wait time for all specialties and metro areas was 38 days from scheduling to being seen. The study, which looked at scheduling delays in metropolitan statistical areas (MSAs) also noted that "if significantly populated MSAs have access challenges, smaller cities and rural areas may be experiencing even more troubling access trends."

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[1] AAMC. (2024). The Complexities of Physician Supply and Demand: Projections From 2021 to 2036. https://www.aamc.org/media/75231/download?attachment

[2] Listings 1.15, 1.16, 1.17, 1.18, 1.20C, 1.20D, 1.22, 1.23 in Appendix 1 and Listings 101.15, 101.16, 101.17, 101.18, 101.20C, 101.20D, 101.22, and 101.23.

[3] The Commonwealth Fund. (2024). Mirror, Mirror 2024: A Portrait of the Failing U.S. Health System. https://www.commonwealthfund.org/publications/fund-reports/2024/sep/mirror-mirror-2024

[4] 90 Fed. Reg. at 5583.

[5] Association of Health Care Journalists. (2024). In the U.S., wait times to see a doctor can be agonizingly long. https://healthjournalism.org/blog/2024/08/in-the-u-s-wait-times-to-see-a-doctor-can-be-agonizingly-long/

[6] ECG Management Consultants. (2023). The Waiting Game: New-Patient Appointment Access for US Physicians [White Paper]. https://www.ecgmc.com/insights/whitepaper/the-waiting-game-new-patient-appointment-access-for-us-physicians

In addition, many disability applicants, particularly those on Medicare and Medicaid, still rely on telehealth appointments after the public health emergency for some of their medical care due to lack of medical transportation, scheduling issues, and other reasons.[7] As the TFR noted, telehealth examinations cannot provide all the medical findings required under the musculoskeletal listings.[8]

There are also delays in getting prior authorization from health insurers for imaging including MRIs. Prior authorization adds extra administrative burden and delays patient care. Those on Medicaid and those who are uninsured will have great difficulty obtaining electrodiagnostic testing or other scans to document musculoskeletal impairments.[9]

Finally, increasing numbers of people are unable to access healthcare on a routine basis due to loss of Medicaid or private insurance coverage. The "unwinding" of continuous Medicaid coverage has led to an increase in the number of uninsured people, including those who are seeking disability benefits.[10] Possible cuts in Medicaid pending in Congress will increase the number of uninsured people.[11] For example, work requirements for Medicaid eligibility, if adopted, will create red tape for Medicaid recipients and lead to loss of coverage. Likewise, should enhanced marketplace subsidies expire in 2025, many insured through the Marketplace will lose healthcare coverage. As a result, many people with pressing medical issues, including musculoskeletal impairments, routinely delay or go without medical care.

Indeed, commentary in the TFR paint a dismal picture of healthcare access moving forward based on a number of factors, including lack of access to care due to staffing shortages, inadequate or no healthcare coverage, high deductibles and copayments, leading to postponed or going without needed medical care particularly for low-income people.[12] While this picture could improve by May 11, 2029, it seems far more likely that we will continue to see this combination of factors that makes meeting the consecutive 4-month "close proximity of time" standard nearly impossible for most disability applicants.

II. Conclusion

For the reasons stated above, we urge SSA to adopt a permanent 12-month period for "close proximity of time" assessments for musculoskeletal listings.

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[7] ASPE. (2023). Updated National Survey Trends in Telehealth Utilization and Modality (2021-2022). https://aspe.hhs.gov/sites/default/files/documents/7d6b4989431f4c70144f209622975116/household-pulse-survey-telehealth-covid-ib.pdf

[8] 90 Fed. Reg. at 5586.

[9] Radiology Business. (2024). Patients on Medicaid wait longer to complete outpatient MRI exams. https://radiologybusiness.com/topics/healthcare-management/medical-practice-management/patients-medicaid-wait-longer-complete-outpatient-mri-exams

[10] KFF. (2023). 10 Things to Know About the Unwinding of the Medicaid Continuous Enrollment Provision. https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-the-unwinding-of-the-medicaid-continuous-enrollment-provision/

[11] Center on Budget and Policy Priorities. 2025 Budget Stakes: Millions Could Lose Health Coverage or See Costs Rise. https://www.cbpp.org/research/health/2025-budget-stakes-millions-could-lose-health-coverage-or-see-costs-rise

[12] 90 Fed. Reg. at 5584-5588.

Respectfully,

CCD-SSTF Co-chairs
Darcy Milburn, the ARC
Jen Burdick, Community Legal Services of Philadelphia
Jennifer Cronenberg, NOSSCR
Tracey Gronniger, Justice in Aging