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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

[Regulations No. 16]

RIN 0960-AE61

#### Reduction in Supplemental Security Income (SSI) Payable to Institutionalized Children Whose Medical Costs Are Covered by Private Insurance

**AGENCY:** Social Security Administration.

**ACTION:** Interim final rules with request for comments.

**SUMMARY:** These regulations implement an amendment to section 1611(e)(1)(B) of the Social Security Act (the Act) made by section 214 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 214 extends applicability of the reduced SSI benefit rate (currently \$30.00 per month) to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider. With these rule changes, children with private health insurance coverage will be treated the same as children with Medicaid coverage in terms of the amount of benefits for which they are eligible. While the major impact of these regulations will be to reduce benefits for those children described above, some children residing in public institutions, which receive private health insurance payments and which currently do not receive any SSI benefits on their behalf, will become eligible for SSI benefits up to \$30 per month.

**DATES:** These interim final rules are effective beginning January 8, 1997. To be sure that your comments are considered, we must receive them no later than March 10, 1997.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966-2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration,

3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 1611(e)(1)(A) of the Act generally precludes eligibility for SSI benefits when a claimant is a resident of a public institution throughout a month. Section 1611(e)(1)(B) provided an exception to that bar. Under that section, payments could be made at the reduced Federal benefit rate to individuals in institutions "receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX \* \* \*." This language was implemented through regulations to mean that individuals in institutions would receive only the reduced benefit amount when "Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of" the claimant's care (§ 416.211(b)).

Section 214 of Public Law 104-193, effective for benefits beginning with the month of December 1996, amends section 1611(e)(1)(B) of the Act by extending applicability of the reduced SSI benefit rate to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider (hereinafter referred to as private health insurance). Prior to the enactment of section 214, children under the age of 18 in private institutions with private health insurance generally could be eligible for a full SSI payment. Section 214 now restricts the SSI payment for such children to the Federal reduced benefit rate. Also, as is noted above, prior to this legislation, individuals in public institutions not receiving substantial Medicaid payments on their behalf generally were ineligible for SSI. However, as a result of this legislation, children under age 18 in public institutions receiving private health insurance on their behalf now are

eligible for SSI payments at the reduced Federal benefit amount.

Section 214 could be interpreted as requiring application of the reduced benefit amount where *any* amount of private health insurance payments is being made on behalf of an institutionalized child for the cost of the child's care in the institution. However, if the private health insurance is not paying for a significant amount of the cost of care, we believe that application of the reduced SSI payment would be at odds with the intent of the SSI program to help provide for the basic needs of the child for food, clothing, and shelter.

Moreover, the legislative history indicates that "[c]hildren in medical institutions whose medical costs are covered by private insurance would be treated the same as children whose bills are currently paid by Medicaid (that is, their monthly SSI cash benefit would be reduced to \$30 per month)." H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 333 (1996). In addition, the legislative history references children whose costs are "covered," not children for whom any private insurance payments are being made. Since Congress used the same phrase, "receiving payments," in referring to cases where Medicaid is paying towards the cost of care and to cases where private health insurance is paying towards the cost of care, we believe that the extent of the medical coverage which would reduce the SSI payment to \$30 should be the same. Therefore, we have decided that the more equitable approach is to apply the reduced benefit amount to children under age 18 with private health insurance when it pays a substantial part (more than 50 percent) of the cost of their care in the institution. Similarly, since Congress apparently wanted to treat all children with significant medical coverage in the same manner, we also have decided that the reduced benefit amount will apply in those cases where children under age 18 are in medical care facilities receiving a combination of Medicaid and private health insurance payments which combined pay a substantial part (more than 50 percent) of the cost of their care.

#### Regulatory Changes

Section 416.211 explains the general prohibition against SSI eligibility for residents of public institutions, as well as the statutory exceptions to that prohibition. We have revised § 416.211(b) to include a reference to private health insurance as a factor in applying the exception that permits SSI payments at a reduced rate for certain individuals in medical care facilities. The introductory text of paragraph (b)

refers to § 416.414, where the reduced benefits are described and the requirements are explained more thoroughly.

Section 416.212 explains the two statutory provisions that permit continuation of full benefits in certain cases of medical confinement. Under section 1611(e)(1)(E) of the Act, as originally implemented, a recipient whose SSI eligibility is based on section 1619(a) or (b) of the Act for the month preceding the first full month of residence in (1) a public medical or psychiatric institution or (2) a public or private institution where Medicaid is paying more than 50 percent of the cost of care can remain eligible for an SSI benefit for up to 2 full months after entering the institution, if the recipient is allowed, under agreement with the medical institution, to retain any SSI benefits. Also, under 1611(e)(1)(G) of the Act, a recipient is eligible for continuation of full SSI benefits for up to 3 full months after entering certain medical or psychiatric institutions if a physician certifies, within certain time restrictions, that the recipient's stay in the facility is likely not to exceed 3 months and if the recipient needs to continue to maintain and provide for the expenses of the home to which he or she may return.

To include the provisions of section 214, we have revised § 416.212(a) to include children under age 18 whose benefits are reduced because of residence in a public or private institution where private health insurance, or a combination of Medicaid and private health insurance, is paying a substantial part (more than 50 percent) of the cost of their care. We have also revised § 416.212(b) to extend applicability of the continued benefits to children under age 18 whose SSI benefits otherwise would be reduced because of residence in a public institution where private health insurance, or a combination of Medicaid and private health insurance, is paying a substantial part (more than 50 percent) of the cost of care.

Section 1611(e)(1)(G) specifies that the recipient must be “\* \* \* an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or which is a hospital, extended care facility, nursing home, or intermediate care facility receiving payments \* \* \* under a State plan approved under title XIX \* \* \* .” Because Public Law 104-193 did not amend this section of the Act, SSI payments to children in *private* medical care facilities for whom private health insurance, or a combination of Medicaid and private health insurance,

is paying more than 50 percent of the cost of care, will be limited to the reduced benefit amount beginning with their first full month of institutionalization.

Section 416.414 explains that reduced benefits are payable where Medicaid paid more than 50 percent of the cost of care, or where Medicaid would have paid more than 50 percent of the cost of care but for the application of section 1917(c) of the Act due to a transfer of assets for less than fair market value. To include the provisions of section 214, we have revised § 416.414(a) to explain that for children under age 18, the reduced benefits also apply where private health insurance, or a combination of Medicaid and private health insurance is paying a substantial part (more than 50 percent) of the cost of care in the medical facility.

Section 416.1149 explains what is a temporary absence from a living arrangement and explains how we value in-kind support and maintenance (ISM) received by an eligible individual during a temporary absence. In general, during a temporary absence we continue to value ISM the same way that we did in the permanent residence. Currently, paragraph (a)(1) of § 416.1149 states that a temporary absence from the permanent living arrangement exists if the eligible individual (or eligible individual and eligible spouse) becomes a resident of a public or private medical care facility where over 50 percent of the cost of care is paid by Medicaid, and who is eligible for the continuation of benefits payable under § 416.212. During this temporary absence we continue to value the eligible individual's support and maintenance the same way that we did in the permanent living arrangement.

We are changing paragraph (a)(1) of § 416.1149 to conform to the changes we are making in § 416.212 and § 416.414. For purposes of determining ISM, we also will consider as temporarily absent from the permanent living arrangement a child under 18, who receives a reduced benefit because of residence in a public or private medical facility where private health insurance (or a combination of Medicaid and private health insurance) pays a substantial part (more than 50 percent) of the cost of care and who is eligible for the continuation of benefits under § 416.212. For such a child, during the temporary absence we continue to value the ISM the same way that we did in the permanent living arrangement.

The existing paragraph (c) of § 416.1149 describes an exception to the general rule for temporary absences described in paragraph (b). In paragraph

(c), an eligible individual is considered temporarily absent from the permanent living arrangement regardless of the length of stay, if he or she enters a medical care facility in which Medicaid pays over 50 percent of the cost of care, is eligible for a reduced payment under § 416.414, and is not eligible under § 416.212. In this situation, ISM is valued using the rules that apply to the permanent living arrangement for the month the individual enters the facility and the month the individual leaves the facility. No ISM is chargeable for the full months the individual is in the facility and receives a reduced payment under § 416.414.

We are changing paragraph (c) of § 416.1149 to conform to the changes we are making in § 416.212 and § 416.414. Thus, we will also consider as temporarily absent from the permanent living arrangement a child under 18, who is not eligible under § 416.212, and who receives a reduced payment under § 416.414 because of residence in a public or private medical facility where private health insurance (or a combination of Medicaid and private health insurance) pays a substantial part (more than 50 percent) of the cost of care. ISM will be valued for these children as it is for the eligible individuals described in the preceding paragraph.

We are also revising § 416.1165(i)(1) and § 416.1202(b)(2)(i) so that those rules conform with the revised rules in § 416.414. Section 416.1165 describes how we deem income to a child from the child's ineligible parent(s). Subsection (i) describes a situation when we do not deem income to a child. Paragraph (1) is revised so that it conforms with the revised rules in § 416.414.

Subsection 416.1202(b) describes how we deem resources to a child from the child's ineligible parent(s). Paragraph (b)(2) describes a situation when we do not deem resources to a child. Paragraph (b)(2)(i) is revised so that it conforms with the revised rules in § 416.414.

#### Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

#### Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by

section 102 of Public Law 103-296, the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these interim final rules, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the prior notice procedures.

Public Law 104-193 was signed into law on August 22, 1996. As noted above, section 214 of Public Law 104-193, which is the subject of these interim final rules, was made effective December 1, 1996. Moreover, section 215 requires the Commissioner to issue regulations necessary to carry out the amendments made by section 214 within 3 months after the date of enactment (i.e., by November 22, 1996). Accordingly, to issue these rules as an NPRM would have delayed issuance of final rules until well past the statutorily mandated deadlines.

In light of the above statutory deadlines, we believe that, under the APA, good cause exists for waiver of the prior notice procedures since issuance of proposed rules would be impracticable. While we are issuing these rules as interim final regulations, we are interested in receiving public comments regarding the substance of these interim rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, these regulations reflect and implement statutory provisions effective December 1, 1996 for which publication of implementing regulations is required by November 22, 1996. In order for these regulations to be effective as close as possible to the mandated dates, we find that it is in the public interest to make these rules effective upon publication.

#### *Executive Order 12866*

These interim final rules reflect and implement the provisions of section 214 of Public Law 104-193. The Office of Management and Budget (OMB) has reviewed these interim final rules and determined that they meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, we prepared and submitted to OMB, separately from these interim final rules, an assessment of the potential costs and

benefits of this regulatory action. This document also contains an analysis of alternative policies we considered and chose not to adopt. This assessment is available for review by members of the public.

#### *Regulatory Flexibility Act*

We certify that these interim final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

#### *Paperwork Reduction Act*

These interim final rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006—Supplemental Security Income.)

#### List of Subjects in 20 CFR Part 416:

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

Dated: December 6, 1996.

Shirley S. Chater,

*Commissioner of Social Security.*

For the reasons set out in the preamble, subparts B, D, K, and L of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

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

#### **Subpart B—[Amended]**

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93-66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99-643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.211 is amended by revising paragraph (b)(1) to read as follows:

#### **§ 416.211 You are a resident of a public institution.**

\* \* \* \* \*

(b) \* \* \*

(1)(i) You reside throughout a month in a public institution that is a medical care facility where Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of your care; you are a child under the age of 18 residing throughout a month in a public institution that is a medical care facility where a substantial part (more than 50 percent) of the cost of your care is paid under a health insurance policy issued by a private provider of such insurance; or, you are a child under the age of 18 residing throughout a month in a public institution that is a medical care facility where a substantial part (more than 50 percent) of the cost of your care is paid by a combination of Medicaid payments and payments made under a health insurance policy issued by a private provider of such insurance; or

(ii) You reside for part of a month in a public institution and the rest of the month in a public institution or private medical facility where Medicaid pays a substantial part (more than 50 percent) of the cost of your care; you are a child under the age of 18 residing for part of a month in a public institution and the rest of the month in a public institution or private medical facility where a substantial part (more than 50 percent) of the cost of your care is paid under a health insurance policy issued by a private provider of such insurance; or you are a child under the age of 18 residing for part of a month in a public institution and the rest of the month in a public institution or private medical facility where a substantial part (more than 50 percent) of the cost of your care is paid by a combination of Medicaid payments and payments made under a health insurance policy issued by a private provider; and

\* \* \* \* \*

3. Section 416.212 is amended by revising paragraphs (a) introductory text and (b)(1) introductory text to read as follows:

#### **§ 416.212 Continuation of full benefits in certain cases of medical confinement.**

(a) *Benefits payable under section 1611(e)(1)(E) of the Social Security Act.* Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(E) of the Social Security Act for up to 2 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays a substantial part (more than 50 percent) of the cost of your care or, if

you are a child under age 18, reduced because of residence in a public or private institution which receives payments under a health insurance policy issued by a private provider, or a combination of Medicaid and a health insurance policy issued by a private provider, pay a substantial part (more than 50 percent) of the cost of your care if—

\* \* \* \* \*

(b) *Benefits payable under section 1611(e)(1)(G) of the Social Security Act.* (1) Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(G) of the Social Security Act for up to 3 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays a substantial part (more than 50 percent) of the cost of your care or, if you are a child under age 18, reduced because of residence in a public institution which receives payments under a health insurance policy issued by a private provider, or a combination of Medicaid and a health insurance policy issued by a private provider, pay a substantial part (more than 50 percent) of the cost of your care if—

\* \* \* \* \*

**Subpart D—[Amended]**

4. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

5. Section 416.414 is amended by revising paragraph (a) to read as follows:

**§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.**

(a) *General rule.* Except where the § 416.212 provisions provide for payment of benefits at the rates specified under §§ 416.410 and 416.412, reduced SSI benefits are payable to persons and couples who are in medical care facilities where a substantial part (more than 50 percent) of the cost of their care is paid by a State plan under title XIX of the Social Security Act (Medicaid). This reduced SSI benefit rate applies to persons who are in medical care facilities where a substantial part (more than 50 percent) of the cost would have been paid by an approved Medicaid State plan but for the application of section 1917(c) of the

Social Security Act due to a transfer of assets for less than fair market value. This reduced SSI benefit rate also applies to children under age 18 who are in medical care facilities where a substantial part (more than 50 percent) of the cost of their care is paid by a health insurance policy issued by a private provider of such insurance, or where a substantial part (more than 50 percent) of the cost of their care is paid for by a combination of Medicaid payments and payments made under a health insurance policy issued by a private provider of such insurance. Persons and couples to whom these reduced benefits apply are—

(1) Those who are otherwise eligible and who are in the medical care facility throughout a month. (By *throughout a month* we mean that you are in the medical care facility as of the beginning of the month and stay the entire month. If you are in a medical care facility you will be considered to have continuously been staying there if you are transferred from one medical facility to another or if you are temporarily absent for a period of not more than 14 consecutive days.); and

(2) Those who reside for part of a month in a public institution and for the rest of the month are in a public or private medical care facility where Medicaid pays or would have paid (but for the application of section 1917(c) of the Act) a substantial part (more than 50 percent) of the cost of their care; and

(3) Children under age 18 who reside for part of a month in a public institution and for the rest of the month are in a public or private medical care facility where a substantial part (more than 50 percent) of the cost of their care is being paid under a health insurance policy issued by a private provider or by a combination of Medicaid and payments under a health insurance policy issued by a private provider.

\* \* \* \* \*

**Subpart K—[Amended]**

6. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

7. Section 416.1149 is amended by revising paragraph (a)(1) and the first sentence of paragraph (c)(1)(i) to read as follows:

**§ 416.1149 What is a temporary absence from your living arrangement.**

(a) \* \* \*

(1) Become a resident of a public institution, or a public or private medical care facility where you otherwise would be subject to the reduced benefit rate described in § 416.414, and you are eligible for the benefits payable under § 416.212; or

\* \* \* \* \*

(c) *Rules for temporary absence in certain circumstances.* (1)(i) If you enter a medical care facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. \* \* \*

\* \* \* \* \*

8. Section 416.1165 is amended by revising paragraph (i)(1) to read as follows:

**§ 416.1165 How we deem income to you from your ineligible parent(s).**

\* \* \* \* \*

(i) \* \* \*

(1) You previously received a reduced SSI benefit while a resident of a medical facility, as described in § 416.414;

\* \* \* \* \*

**Subpart L—[Amended]**

9. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

10. Section 416.1202 is amended by revising paragraph (b)(2)(i) to read as follows:

**§ 416.1202 Deeming of resources.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Previously received a reduced SSI benefit while a resident of a medical facility, as described in § 416.414;

\* \* \* \* \*

[FR Doc. 97-247 Filed 1-7-97; 8:45 am]