



## SOCIAL SECURITY

The Commissioner

January 29, 2008

The Honorable Michael R. McNulty  
Chairman, Sub Committee on Social Security  
Committee on Ways and Means  
House of Representatives  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter dated December 20, 2007 concerning the October 29, 2007 Notice of Proposed Rulemaking (NPRM) regarding improvements to the hearings and appeals process for Social Security claimants.

In light of concerns expressed by the public and Members of Congress, we are suspending the rulemaking process for several of the provisions that have become controversial. We are also working on a formal rule terminating the remainder of the Disability Service Improvement process in the Boston Region and requesting comment on a limited series of issues. We expect to submit this rule to OMB for its review within the next week. Given the mounting expressions of concern, I decided to let you know of our intentions in advance of that notice.

We have been having frank and productive discussions with representatives of the disability community and are scheduling additional discussions. Our experience to date with the 5-day rule for submitting evidence to an Administrative Law Judge (ALJ) in New England has been, to the best of my knowledge, virtually problem-free from the perspective of our claimants. However, representatives have persuasively argued that, at least in some parts of the country, physicians and health care institutions cannot be relied upon to send medical records to SSA or to claimants within the 30 - 60 day time period provided to them under the Health Insurance Portability and Accountability Act (HIPAA).

In recognition of the legitimate concerns raised regarding the availability of medical records, I decided to delay the issuance of a final rule on the 5-day and closing the record on appeal proposals until we can find a way to deal with these concerns more effectively. I continue to believe that holding hearings without a complete medical record available to the ALJ is not in the best interest of either the claimant or SSA. I believe the proper response to this problem is not to have an endlessly open-ended process, but rather to insist, consistent with SSA's mission, that claimant representatives, physicians, and hospitals assist claimants by making these critical records available to SSA decision makers as soon as possible in the disability determination process. However, we accept that we need to do more work and consultation before proposing new regulations in this area.

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The notice being drafted asks a series of questions designed to obtain more information and advice about ways to ensure that evidence is received by SSA on a timely basis, not only to reduce waiting times, but also to ensure that each ALJ has the ability to review the record far enough in advance to protect the interests of our claimants at their hearings.

The problem of claimants being denied timely access to their medical records concerns me greatly, and I have already written to the American Medical Association and American Hospital Association reminding them of their obligations under HIPAA and asking for action. Congress has not looked closely at this issue in some time, and it is time it did so. The system will remain problematic for many claimants if they cannot present their full case to SSA on a timely basis.

There are provisions in the proposed regulation that received no negative comment and others that we believe will be non-controversial if we provide clarification or we correct drafting errors in response to comments received. We expect to be meeting with claimants' organizations in the next few weeks to identify provisions which have broad-based support. We would be pleased to brief you or our committees of jurisdiction on these discussions and on our plans so that there will be no surprises.

To sum up, we will take additional public comment on ways to improve the hearings and appeals process and will issue a new NPRM before making changes relating to submission of evidence. We intend to go forward with other provisions that have no significant opposition.

I trust this letter resolves your concerns. An identical letter has been sent to each of the Senators who signed your letter.

Sincerely,



Michael J. Astrue

Enclosures:

American Medical Association Letter  
American Hospital Association Letter

**SOCIAL SECURITY**

The Commissioner

January 23, 2008

Michael D. Maves, M.D.  
Executive Vice President and Chief Executive Officer  
American Medical Association  
515 North State Street  
Chicago, IL 60610

Dear Dr. Maves:

Through an ongoing rulemaking and through other sources, I am receiving numerous well-documented complaints that medical providers are denying disability claimants timely access to their own medical records which are needed to support Social Security claims. I have asked our Inspector General to examine and report on the extent of this problem.

An incomplete medical record too often impedes individuals who are entitled to disability benefits from receiving them on a timely basis or precludes them from receiving benefits altogether. The fact that the Social Security Act links Medicare and Medicaid coverage to an award of disability benefits exponentially compounds the damage being done to people who need assistance.

With just a few minor exceptions that relate primarily to prisoners, Social Security claimants have an absolute right to prompt access to their records under Federal law. Virtually every State has similar, and sometimes even stronger, laws. Nonetheless, the record is clear to me that many medical institutions and individual physicians are routinely denying these records to our claimants. These denials damage vulnerable people by creating an improper barrier to essential cash support and medical insurance. This result, of course, is unacceptable.

Please let me know if you agree with my assessment of this situation, and, if so, what steps you will take to address this injustice to disability claimants. In addition, as the Social Security Administration looks at administrative, regulatory, and legislative options for ensuring that claimants have timely access to their medical records, I would welcome any suggestions you may have for us.

I look forward to your prompt reply.

Sincerely,



Michael J. Astrue

cc:

Inspector General, Social Security Administration

**SOCIAL SECURITY**

The Commissioner  
January 23, 2008

Mr. Richard Umbdenstock  
President and Chief Executive Officer  
American Hospital Association  
325 7<sup>th</sup> Street, NW  
Washington, D.C. 20004

Dear Mr. Umbdenstock:

Through an ongoing rulemaking and through other sources, I am receiving numerous well-documented complaints that medical providers are denying disability claimants timely access to their own medical records which are needed to support Social Security claims. I have asked our Inspector General to examine and report on the extent of this problem.

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Sincerely,

Michael J. Astruc

cc:  
Inspector General, Social Security Administration