

program administrators and others commented that no universally accepted tool existed to measure individuals' progress in substance abuse treatment. Due to the lack of a universally acceptable tool to measure progress, other commenters were of the view that treatment professionals should evaluate whether progress is made according to very general rules set out by SSA. A few commenters provided suggestions for some of the elements in the measurement of progress, including abstinence from alcohol and drug use, a reduction in the use of emergency medical services, an increase in educational or vocational rehabilitation activities, and avoidance of criminal activity.

#### **Evaluating Compliance With Treatment**

The commenters favored general rather than specific rules governing compliance with the treatment requirements. Several commenters were of the view that compliance means that an individual follows his or her individual treatment plan. Accordingly, the treatment professional is in the best position to evaluate compliance. One legal services organization was concerned that SSA retain the ultimate responsibility for determining compliance. One aspect of compliance is the issue of requiring alcohol and drug testing. A few commenters recommended that SSA mandate drug tests for beneficiaries in treatment. Several commenters, including one of the large national organizations of State administrators, advised against mandatory drug testing. In their view, the need for and frequency of drug testing should be determined by the treatment professional in accordance with an individualized treatment plan. Concern was expressed about the cost of mandatory drug testing and inaccuracies inherent in drug testing results.

#### **Good Cause for Failure to Comply With Treatment**

Many commenters supported an expansive list of factors that would be considered "good cause" for noncompliance with the treatment requirements, such as medical problems, lack of transportation, or personal or family tragedies. Some commenters thought that the treatment provider was in the best position to evaluate if the client had "good cause" for noncompliance. A minority of commenters supported a very restrictive definition because of their concern that "good cause" factors could be manipulated by individuals in treatment.

#### **Costs and Benefits**

Few commenters provided information on the potential costs and benefits of the provisions. Commenters provided a range of estimated costs for drug testing expenses.

#### **Other Comments**

Many commenters expressed concerns regarding a number of operational issues which are not the subject of these regulations. Although these concerns are not regulatory issues, they have been considered carefully in the development of our operating procedures.

#### **Explanation of Revisions**

These interim final regulations amend §§ 404.315, 404.316, 404.321, 404.332, 404.335, 404.337, 404.350, 404.352, 404.402, 404.902, 416.202, 416.213, 416.262, 416.265, 416.535, 416.542, 416.558, 416.601, 416.610, 416.935, 416.936, 416.937, 416.938, 416.939, 416.1123, 416.1326, 416.1331, 416.1335, 416.1402 and 416.1725 and create new §§ 404.470, 404.480, 404.1535, 404.1536, 404.1537, 404.1538, 404.1539, 404.1540, 404.1541, 416.544, 416.940 and 416.941 to reflect the statutory changes.

Section 404.315 is revised to add a new paragraph explaining the prohibition against reentitlement to disability benefits based on DAA after receiving 36 months of disability benefits on the basis of that impairment.

Sections 404.316 and 404.321 have been amended to include an explanation of the 36-month benefit limit and the termination of benefits for 12 consecutive months of noncompliance in cases in which drug addiction or alcoholism is a contributing factor material to the determination of disability.

Section 404.332 is revised to state that, if the insured person is disabled based on DAA and benefits terminate because of noncompliance with treatment or because of the 36-month benefit limit, benefits to the spouse will continue, provided the insured person remains disabled.

Section 404.335 provides that, if benefits to a widow(er) who is disabled based on DAA are terminated after 36 months of benefits, that person cannot become entitled again to widow(er)'s benefits if drug addiction or alcoholism is a contributing factor material to the later determination of disability.

Section 404.337 explains that, if the widow(er)'s entitlement to benefits is based on DAA, benefits will terminate after 12 consecutive months of suspension for noncompliance with

treatment or, unless otherwise disabled without regard to drug addiction or alcoholism, after having received 36 months of payment.

Section 404.350 is revised to state that, if the entitlement of a disabled child age 18 or over whose disability was based on DAA terminates because of the 36-month benefit limit, the child may not be entitled again to benefits based on a disability if drug addiction or alcoholism is a contributing factor material to the later determination of disability.

Section 404.352 states that, if the disability of a disabled child age 18 or over is based on DAA and his or her benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, those benefits will terminate with the month following the 12-month period of suspension. Likewise, if, after receiving 36 months of benefits based on DAA, the child would not otherwise be disabled without regard to drug addiction or alcoholism, benefits based on disability will be terminated with the month following the 36th month of payment. If the disabled child is receiving benefits on the record of a wage earner whose disability was based on DAA and benefits to the wage earner end because of noncompliance with treatment or 36 months of benefits have been paid, benefits to the child will continue, provided the insured person would have remained entitled to benefits but for the operation of this provision.

Section 404.402 is revised to include nonpayments because of drug addiction or alcoholism in the list of deductions, reductions, and adjustment events which are considered before computing any applicable reduction for the family maximum.

Sections 404.470 and 416.1725 explain the nonpayment ramifications for beneficiaries disabled based on DAA who fail to comply with the rules regarding available treatment for drug addiction or alcoholism. Benefits will be suspended beginning with the first month after we notify the individual of a determination of noncompliance with the treatment requirements. Benefits will be terminated after 12 consecutive months of suspension for noncompliance.

Sections 404.480 and 416.544 explain that past-due benefits must be paid in installments. Accrued unpaid benefits must be paid in installments so that the total monthly payment including the installment generally does not exceed two times the monthly benefit amount. These sections also explain the exception to the limitation if the