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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2016-0015]

RIN 0960-AH92

Evidence from Excluded Medical Sources of Evidence

AGENCY: Social Security Administration.

ACTION: Final Rules.

SUMMARY: In accordance with section 812 of the Bipartisan Budget Act of 2015 (BBA section 812), these rules explain how we will address evidence furnished by medical sources that meet one of BBA section 812's exclusionary categories (excluded medical sources of evidence) as described below. Under these new rules, we will not consider evidence furnished by an excluded medical source of evidence unless we find good cause to do so. We identify five circumstances in which we may find good cause. In these rules, we also require excluded medical sources of evidence to notify us of their excluded status under section 223(d)(5)(C)(i) of the Social Security Act (Act), as amended, in writing each time they furnish evidence to us that relates to a claim for initial or continuing benefits under titles II or XVI of the Act. These rules will allow us to fulfill obligations that we have under BBA section 812.

DATES: These final rules will be effective on November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy,

Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 597-1632. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213, or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at www.socialsecurity.gov.

SUPPLEMENTARY INFORMATION:

On June 10, 2016, we published a notice of proposed rulemaking (NPRM) in which we proposed to implement BBA section 812 by adding new sections to our rules that would explain when we would not consider evidence from an excluded medical source of evidence under section 223(d)(5)(C)(i) of the Act, as amended.¹ We also identified five circumstances in which we proposed to find good cause to consider evidence that would otherwise be excluded. In addition, we proposed to require that excluded medical sources of evidence notify us of their excluded status under section 223(d)(5)(C)(i) of the Act, as amended, in writing, each time they furnish evidence to us in relation to a claim for initial or continuing benefits under titles II or XVI of the Act. We are adopting these proposed rules as final rules.

Congress enacted the BBA on November 2, 2015.² BBA section 812 amended section 223(d)(5) of the Act, 42 U.S.C. 423(d)(5), by adding a new paragraph "C." Under this provision, when we make a disability determination or decision or when we conduct a continuing disability review (CDR) under titles II or XVI of the Act, we cannot consider evidence furnished by certain medical sources unless we have good cause.³

¹ Pub. L. 114-74, sec. 812, 129 Stat. 584, 602; 81 FR 37557.

² Pub. L. 114-74, 129 Stat. 584.

³ Pub. L. 114-74, sec. 812, 129 Stat. 584, 602. The exclusion of evidence under BBA section 812 does not constitute an exclusion of a medical source from Social Security programs under section 1136 of the Act,

Under these new rules, we may find good cause to consider evidence furnished by an excluded medical source of evidence in the following five situations:

- the evidence furnished by the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;
- the evidence furnished by the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;
- the evidence furnished by the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty (CMP), assessment, or both, for submitting false evidence under section 1129 of the Act;
- the sole basis for the medical source's exclusion under section 223(d)(5)(C)(i) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services (HHS' OIG) granted a waiver of the section 1128 exclusion; or
- the evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

We may find good cause to consider evidence furnished by an excluded medical source of evidence in any of these five enumerated situations when we make a disability

determination or decision or when we conduct a CDR.

As we stated in our NPRM, our long-term solution to the administration of BBA section 812 is to implement automated evidence matching within our case processing system(s) to identify excludable evidence. As part of our efforts to comply with BBA section 812's implementation deadline of November 2, 2016, we will require that excluded medical sources of evidence inform us in writing of the facts or event(s) triggering BBA section 812 each time they submit evidence to us that relates to a claim for initial or continuing benefits under titles II or XVI of the Act.

Regarding the content of the written statement, excluded medical sources of evidence will be required to include a heading that states,

WRITTEN STATEMENT REGARDING SECTION
223(d)(5)(C) OF THE SOCIAL SECURITY ACT – DO
NOT REMOVE.

Immediately following this heading, sources will also need to include their name, title, and the applicable event(s) that triggered the application of BBA section 812. Sources convicted of a felony under section 208 or 1632 of the Act will also need to provide the date of their felony conviction. Similarly, sources that have been imposed with a CMP, an assessment, or both for submitting false evidence under section 1129 of the Act will need to provide the date of the final imposition of the CMP, assessment, or both. Sources that cannot participate in any Federal health care program under section 1128 of the Act will need to include the basis for the exclusion, its effective date and anticipated length, and whether HHS' OIG waived it.

Our reporting requirement will apply only to excluded medical sources of evidence that furnish evidence to us directly or indirectly through a representative,

claimant, or other individual or entity. Further, we will require that no individual or entity be permitted to remove an excluded medical source of evidence's written statement prior to submitting the source's evidence to us. We also reserve the right to request that excluded medical sources of evidence provide additional information or clarify any information they submit regarding the circumstances or events that trigger section 223(d)(5)(C)(i) of the Act, as amended. If excluded medical sources of evidence do not inform us of their excluded status, we may refer them to our Office of the Inspector General for any action it deems appropriate, including investigation and CMP pursuit.

Additional information and discussion can be found in the preamble to our NPRM.⁴

Public Comments and Discussion

On June 10, 2016, we published an NPRM in the Federal Register at 81 FR 37557 and provided a 60-day comment period. We received six timely submitted comments that addressed issues within the scope of our proposed rules. Below, we present all of the views received and address all of the relevant and significant issues raised by the commenters. We carefully considered the concerns expressed in these comments, but did not make any changes to our rules as a result of the comments.

Comment: One commenter expressed concern about our excluding evidence furnished by an excluded medical source of evidence relating to a claim for initial or continuing benefits under titles II or XVI of the Act. The commenter asserted that such a procedure is inconsistent with the rules of evidence of most states and the Federal courts.

⁴ 81 FR 37557

Specifically, the commenter stated that “[t]ypically, the question is not whether the opinion is admissible, but what weight should be given to each opinion.”

Response: Our disability determination procedures are governed by the Act and the rules we issue under the authority mandated in the Act, rather than the rules of evidence in State or Federal court.⁵ Section 223(d)(5)(C)(i) of the Act, as amended by BBA section 812, mandates that, absent good cause, we may not consider evidence furnished by certain sources of evidence. Our new rules identify the five situations where we may find good cause to consider evidence furnished by excluded medical sources of evidence. The rules we are adopting here are required by, and are consistent with, section 223(d)(5)(C)(i) of the Act.

Comment: One commenter generally approved of our rules, but sought clarification about whether we would impose sanctions against an excluded medical source of evidence prior to the source’s conviction.

Response: These rules do not impose sanctions on excludable medical sources of evidence prior to the source’s conviction or other excludable event. These rules, however, do not in any way limit our ability to seek to impose sanctions under other authority granted by the Act or our rules. As required by section 223(d)(5)(C)(i) of the Act, our new rules require us to exclude evidence furnished by excluded medical sources of evidence unless we find good cause to consider that evidence. They also require excluded medical sources of evidence to inform us in writing of their excluded status each time they submit evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act, prohibit any other individual or entity from removing that

⁵ Section 205 of the Act, 42 U.S.C. 405; 20 CFR 404.1501, et seq, 416.901, et seq. Under section 205(b)(1) of the Act, 42 U.S.C. 405(b)(1), the rules of evidence that apply in court proceedings do not apply to our determinations or decisions.

written statement prior to submitting the source's evidence to us, and permit us to seek clarification or additional information from the excluded medical source of evidence regarding that written statement. Additionally, nothing in these new rules affects our ability under sections 404.988(c)(1) and 416.1488(c) of our rules, 20 CFR 404.988(c)(1), 416.1488(c), to reopen at any time a determination or decision obtained by fraud or similar fault.

Comment: One commenter asked how we would handle evidence furnished by a medical source that later became an excluded medical source of evidence.

Response: Our good cause exceptions are relevant to this comment. We will consider evidence furnished by a medical source that later becomes an excluded medical source of evidence if that treatment occurred (1) before the source was convicted of a felony under sections 208 or 1632 of the Act, (2) outside the period the source was excluded from participating in any Federal health care program under section 1128 of the Act, or (3) before the source received a final decision imposing a CMP, assessment, or both, for submitting false evidence under section 1129 of the Act. If a medical source later becomes an excluded medical source of evidence and furnishes additional evidence to us, the source will be required to include a written statement of excluded status with the additional furnished evidence.

Comment: One commenter sought clarification about whether we would notify a claimant of our exclusion of evidence furnished by an excluded medical source of evidence where no good cause exception applied.

Response: We will use the appropriate determination or decisional notice to inform a claimant of our exclusion of evidence furnished by an excluded medical source

of evidence where no good cause exception applies.

Comment: Three commenters generally supported our rules, but they requested that we expand the scope of our fifth good cause exception, which permits us to consider laboratory findings about a physical impairment when there is no indication that the findings are unreliable. The commenters proposed that we expand the scope of this exception to include laboratory findings about a mental impairment and signs about physical or mental impairments.

Response: We are not adopting the requests that we expand the scope of our fifth good cause exception from laboratory findings about a physical impairment to laboratory findings about a physical or mental impairment and signs about a physical or mental impairment. We are not including signs in this exception because they require more subjective interpretation by an excluded medical source of evidence than do laboratory findings about physical impairments. Laboratory findings are based on the use of medically acceptable diagnostic techniques, including blood tests, biopsies, and x-rays. Signs, in contrast, are abnormalities that can be observed apart from a claimant's statements. They would include, for example, an excluded medical source of evidence's observation and report that a claimant walked with a limp, had decreased range of motion, or showed decreased strength. We believe that including these types of observations and reports in our fifth good cause exception would not be in keeping with section 223(d)(5)(C)(i) of the Act, as amended by BBA section 812. Generally, the events that trigger application of BBA section 812 (felony conviction under section 208 or 1632; exclusion under section 1128, or CMP for submitting false evidence under section 1129) can be viewed as implicating issues of honesty, integrity, and professional

conduct and competence. For example, medical sources that fall under section 223(d)(5)(C)(i) of the Act, as amended, include sources (1) convicted of a felony under section 208 or 1632 of the Act for making a false statement of material fact used to determine a claimant's right to a disability payment, (2) excluded from participating in any Federal health care program under section 1128(a)(3) of the Act based on a felony conviction related to health care fraud, and (3) imposed with a CMP for submitting false evidence to us. Thus, because signs rely more heavily on what the excluded medical source of evidence observes and reports than laboratory findings do, we believe it would be inappropriate to include them in our fifth good cause exception.

We also note that we are not entirely barring signs furnished by an excluded medical source of evidence. If such evidence meets one or more of the other enumerated good cause exceptions, we may consider that evidence.

For similar reasons, we also believe it would be inappropriate to add laboratory findings about a mental impairment to the fifth good cause exception. As we previously stated, we created a good cause exception for laboratory findings about a physical impairment because we believe such findings to be objective, reliable, and reproducible tests that require the least amount of subjective interpretation by a medical source. In contrast, our rules explain that standardized psychological tests consist of "standardized sets of tasks or questions designed to elicit a range of responses."⁶ As such, we believe these tests do not have the same level of reproducibility as laboratory findings about a physical impairment because they require more subjective interpretation by the excluded medical source of evidence. Specifically, the excluded medical source of evidence has to

⁶ 20 CFR part 404, subpart P, app. 1, section 12.00D.5.b.

ask the questions or direct the tasks, observe the responses, and accurately report those responses. Conversely, laboratory findings related to a physical impairment include tests such as blood tests, biopsies, and x-rays, which we believe to be more reproducible by medical sources not subject to section 223(d)(5)(C)(i) of the Act, as amended, because they require little subjective interpretation. Thus, similar to signs, because standardized psychological tests may depend, at least in part, on what the excluded medical source of evidence observes and reports than do laboratory findings about a physical impairment, we believe they are less reproducible and should not be included in our fifth good cause exception.

In addition, we disagree with the commenters' assertion that we would exclude a laboratory finding about a physical impairment in the evaluation of a mental impairment. Nothing in this good cause exception limits how or for what purpose we may consider evidence to which the exception applies. Absent any evidence of unreliability, we may use laboratory findings about a physical impairment as appropriate, including but not limited to, evaluating the severity of a claimant's mental impairment(s).

As is the case for signs, we are not entirely barring laboratory findings about a mental impairment furnished by an excluded medical source of evidence. If such evidence meets one or more of the other enumerated good cause exceptions, we may consider that evidence.

Finally, we note that even though we will be required to exclude evidence unless a good cause exception applies, section 223(d)(5)(C) of the Act, as amended by BBA section 812, does not limit our ability to purchase a consultative examination, if

appropriate under our rules.⁷

Comment: Three commenters asked us to clarify several points related to our rules. They first sought clarification that we would automatically apply good cause exceptions when circumstances dictated, and that a claimant or representative would not need to request that we apply an exception.

Response: We will automatically apply the good cause exceptions. In our rules, we specifically state in subsection (a) that we will not consider evidence furnished by an excluded medical source of evidence unless we find good cause. Likewise, in subsection (b), which sets forth the good cause exceptions, we again state that we may find good cause, and therefore apply the applicable exception.

Comment: Second, the commenters asked us to explain how we would notify claimants and representatives about our exclusion of evidence furnished by an excluded medical source of evidence so that they could contest the exclusion.

Response: We will use the appropriate determination or decisional notice to inform a claimant and representative of our evaluation of evidence furnished by an excluded medical source of evidence. A claimant or representative may raise in a request for reconsideration, hearing before an administrative law judge, or Appeals Council review, an issue regarding our evaluation of this evidence.

Comment: Third, the commenters requested that we clarify that we would hold claimants and representatives harmless if they submitted evidence furnished by an excluded medical source of evidence that did not include the written statement required under our rules, even if it was later determined that such a statement should have been

⁷ 20 CFR 404.1519a, 404.1519b, 416.919a, 416.919b.

included.

Response: We generally agree with the commenters that we would not hold a claimant or representative responsible for submitting evidence furnished by an excluded medical source of evidence that did not include the written statement required under our rules, even if it was later determined that such a statement should have been included. We reiterate, however, that no individual or entity may remove the written statement required under our rules prior to submitting evidence furnished by an excluded medical source of evidence to us. We further make clear that should a claimant or representative violate this provision, we reserve the right to take any appropriate actions under any relevant statute, regulation, ruling, or procedural policy.

Comment: Two of the commenters asked that we create a public list of excluded medical sources of evidence that would also include treatment dates for each source that might be subject to a good cause exception. The commenters reasoned, “This will be of assistance to claimants who are deciding which providers to use or attempting to assess the viability of their claims.”

Response: We are not adopting the suggestion for several reasons. First, we are not the originating source of information about individuals or entities that are convicted of felonies under sections 208 or 1632 of the Act; excluded from participating in any Federal health care program under section 1128 of the Act; and subject to CMPs, assessments, or both, for submitting false evidence under section 1129 of the Act. BBA section 812 requires our OIG and HHS to transmit information to us related to excluded medical sources of evidence. Therefore, if we were to create such a list, there would be risk that we could not update it regularly or quickly enough to reflect additions or

removals as they happen. Further, even if a provider is an excluded medical source of evidence, we may consider evidence from that source under our fifth good cause exception – laboratory findings about a physical impairment where there is no indication of unreliability. Creating a list of excluded sources could prove disadvantageous to claimants because it would not include information pertaining to this fifth good cause exception, which depends on a particular type of evidence, not when the evidence is dated. Hence, we are not adopting this suggestion.

Comment: One commenter suggested that we add a sixth, catch-all, good cause exception to be used at our discretion.

Response: We are not adopting the commenter’s suggestion that we add a sixth, catch-all good cause exception to be used at our discretion. Section 223(d)(5)(C)(i) of the Act, as amended by BBA section 812, prohibits us from considering evidence furnished by an excluded medical source of evidence unless we find good cause to do so. We believe that a broad, catch-all exception would be inconsistent with section 223(d)(5)(C)(i) of the Act, as amended. Instead, we believe the five good cause exceptions that we have enumerated in our rules strike the appropriate balance between complying with section 223(d)(5)(C)(i) of the Act, as amended, and permitting claimants to prove that they are disabled under our rules.

Regulatory Procedures

Executive Order 12866, as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB has not reviewed them.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities. The only economic impact on small entities from these rules results from BBA section 812's requirement that we not consider evidence furnished by excluded medical sources of evidence. As described above and in our Paperwork Reduction Act statement, below, we will require excluded medical sources of evidence to provide us with a brief self-report containing basic information each time they furnish evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

On June 10, 2016, when SSA published an NPRM at 81 FR 37557 for the provisions we are now finalizing in this rule, we also solicited comment under the Paperwork Reduction Act for an associated Information Collection Request (ICR). In that solicitation, we asked for comment on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways

to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. We did not receive any public comments in response to this solicitation, and we are not making any changes to the ICR.

Accordingly, we are re-submitting the ICR to OMB, and are requesting approval for it under the Paperwork Reduction Act after publication of the Final Rule.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; and 96.004, Social Security – Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950-)

Subpart P—Determining Disability and Blindness

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)-(b) and (d)-(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)-(b) and (d)-(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Add § 404.1503b to read as follows:

§ 404.1503b Evidence from excluded medical sources of evidence.

(a) General. We will not consider evidence from the following medical sources excluded under section 223(d)(5)(C)(i) of the Social Security Act (Act), as amended, unless we find good cause under paragraph (b) of this section:

(1) Any medical source that has been convicted of a felony under section 208 or under section 1632 of the Act;

(2) Any medical source that has been excluded from participation in any Federal

health care program under section 1128 of the Act; or

(3) Any medical source that has received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act.

(b) Good cause. We may find good cause to consider evidence from an excluded medical source of evidence under section 223(d)(5)(C)(i) of the Act, as amended, if:

(1) The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;

(2) The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;

(3) The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act;

(4) The sole basis for the medical source's exclusion under section 223(d)(5)(C)(i) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or

(5) The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

(c) Reporting requirements for excluded medical sources of evidence. Excluded medical sources of evidence (as described in paragraph (a) of this section) must inform us in writing that they are excluded under section 223(d)(5)(C)(i) of the Act, as amended, each time they submit evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act. This reporting requirement applies to evidence that excluded medical sources of evidence submit to us either directly or through a representative, claimant, or other individual or entity.

(1) Excluded medical sources of evidence must provide a written statement, which contains the following information:

(i) A heading stating: “WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT – DO NOT REMOVE”

(ii) The name and title of the medical source;

(iii) The applicable excluding event(s) stated in paragraph (a)(1)-(a)(3) of this section;

(iv) The date of the medical source’s felony conviction under sections 208 or 1632 of the Act, if applicable;

(v) The date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence, under section 1129 of the Act, if applicable; and

(vi) The basis, effective date, anticipated length of the exclusion, and whether the Office of the Inspector General of the Department of Health and Human Services waived the exclusion, if the excluding event was the medical source’s exclusion from participation in any Federal health care program under section 1128 of the Act.

(2) The written statement provided by an excluded medical source of evidence

may not be removed by any individual or entity prior to submitting evidence to us.

(3) We may request that the excluded medical source of evidence provide us with additional information or clarify any information submitted that bears on the medical source's exclusion(s) under section 223(d)(5)(C)(i) of the Act, as amended.

PART 416-SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

4. Add § 416.903b to read as follows:

§ 416.903b Evidence from excluded medical sources of evidence.

(a) General. We will not consider evidence from the following medical sources excluded under section 223(d)(5)(C)(i) of the Social Security Act (Act), as amended, unless we find good cause under paragraph (b) of this section:

(1) Any medical source that has been convicted of a felony under section 208 or

under section 1632 of the Act;

(2) Any medical source that has been excluded from participation in any Federal health care program under section 1128 of the Act; or

(3) Any medical source that has received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act.

(b) Good cause. We may find good cause to consider evidence from an excluded medical source of evidence under section 223(d)(5)(C)(i) of the Act, as amended, if:

(1) The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;

(2) The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;

(3) The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act;

(4) The sole basis for the medical source's exclusion under section 223(d)(5)(C)(i) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or

(5) The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

(c) Reporting requirements for excluded medical sources of evidence. Excluded medical sources of evidence (as described in paragraph (a) of this section) must inform us in writing that they are excluded under section 223(d)(5)(C)(i) of the Act, as amended, each time they submit evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act. This reporting requirement applies to evidence that excluded medical sources of evidence submit to us either directly or through a representative, claimant, or other individual or entity.

(1) Excluded medical sources of evidence must provide a written statement, which contains the following information:

(i) A heading stating: “WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT – DO NOT REMOVE”

(ii) The name and title of the medical source;

(iii) The applicable excluding event(s) stated in paragraph (a)(1)-(a)(3) of this section;

(iv) The date of the medical source’s felony conviction under sections 208 or 1632 of the Act, if applicable;

(v) The date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence, under section 1129 of the Act, if applicable; and

(vi) The basis, effective date, anticipated length of the exclusion, and whether the Office of the Inspector General of the Department of Health and Human Services waived the exclusion, if the excluding event was the medical source’s exclusion from

participation in any Federal health care program under section 1128 of the Act.

(2) The written statement provided by an excluded medical source of evidence may not be removed by any individual or entity prior to submitting evidence to us.

(3) We may request that the excluded medical source of evidence provide us with additional information or clarify any information submitted that bears on the medical source's exclusion(s) under section 223(d)(5)(C)(i) of the Act, as amended.

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