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May 5, 2006

Jo Anne B. Barnhart
Commissioner, Social Security Administration
6401 Security Blvd.
Baltimore, MD 21235-0001

Dear Commissioner Barnhart,

As President of the New York State Public Employees Federation (PEF), representing 54,000 professionals in New York, including over 800 employees in the Division of Disability Determinations (DDD), I am writing to express PEF's concern over the impact of the Final Rule on the Administrative Review Process for Adjudicating Initial Disability Claims. We hope that by addressing these issues during implementation, the high quality of product and services that has long characterized New York's disability determinations process will continue well into the future.

The Final Rule has several elements that are potentially problematic in their lack of clarity. One such matter is the issue of standards for medical consultants. The interface between the State's consultants, the national network, and the Medical and Vocational Expert Unit is unclear, however it appears that in accordance with §404.1616, §405.10 and §405.805, both the network participants and the State medical and psychological experts will be required to "meet the Commissioner's qualification standards."

It is our understanding that these standards are currently under development in collaboration with the Institute of Medicine. The resulting standards will determine whether medical and psychological consultants currently employed by New York's DDD will be able to continue to provide the same exceptional level of services they currently offer.

A strict standard of Board certification with a narrow implementation time frame will create significant impediments to furthering the objective of improving the speed and quality of the disability determination process. It risks creating retention problems by imposing burdensome educational requirements on existing consultants who no longer have an active practice but who have extensive experience in disability determinations. It risks recruitment problems because Board certified physicians in select specialties are reimbursed in private practice at a much higher rate than is provided in the disability determinations process. The Social Security Administration (SSA) system will be faced with either a dearth of consultants or a substantial increase in cost in covering contract consultants' higher rates.

Furthermore, Board certification addresses only the medical qualifications of the consultant. It does not address the important regulatory aspects of the function of a medical consultant and the knowledge base necessary to perform this work. It focuses on diagnosis and treatment, not the evaluation of an injury or medical condition in terms of ability to work. It does not account for the knowledge of local health care systems necessary for disability determinations. The emphasis on specialization limits the ability of a single physician, in partnership with a disability examiner, to assess the impact of multiple impairments. It threatens to interfere with the practical and effective system of having a continuous, collaborative relationship between on-site examiners and consultants.

The Supplementary Information preceding the rule, as published in the Federal Register, includes a comment that appears on its face to contradict the SSA's objective of improving quality by raising standards. Under review is the IOM's recommendation for encouraging "the use of licensed medical personnel other than physicians or psychologists in appropriate cases, such as occupational therapists, physical therapists, registered nurses, and psychiatric social workers." We see no benefit in replacing trained experienced medical consultants with providers with lesser qualifications. While these disciplines are appropriate for, and excel in, the function of disability analyst, they should not be replacing qualified medical personnel to make medical determinations. PEF advocates maintaining the quality of services currently provided by state employed medical consultants without either imposing overly restrictive specialization standards or deprofessionalizing the decision making process.

While PEF favors a less restrictive standard than Board certification, at a minimum the standards should provide for the grandfathering in of current State employed medical consultants. The proposed one year implementation time frame is clearly impractical and would decimate the existing pool of consultants, severely impeding the DDD's ability to provide timely and fair determinations. State licensure has worked extremely well in New York as a qualifying standard, providing a consultant network of experienced physicians from a wide variety of specialties.

As you know, New York has an outstanding reputation for quality service and for being at the forefront of innovation, as demonstrated by the numerous citations and awards granted in recent years. DDD routinely assists other states in our region in claims processing. We appreciate the opportunity to share our insights in how to best maintain and improve the disability determinations process in New York and the region. I invite you to contact my office at extension 211 to continue this discussion.

Sincerely,



Roger E. Benson
President