



Dear Commissioner O'Malley:

These comments are submitted by the undersigned members of the Social Security Task Force (SSTF) of the Consortium for Constituents (CCD) with Disabilities, the nation's largest coalition of national disability organizations.

I. While SSTF Applauds the Social Security Administration (SSA) for Seeking to Simplify the Medical Record Collection Process, We Have Concerns about the SSA-827 Proposal

The SSA-827 form represents an important balance of protecting claimant privacy by requiring explicit authorization for the SSA to solicit the medical, education, and employment history necessary to adjudicate disability claims. However, we agree with SSA that the current 827 process is overly cumbersome. Requiring a wet-signature or an authenticated e-signature to authorize record collection every 12 months, when initial claims take far longer than that, causes undue burden and unnecessary process delays. We are pleased SSA is seeking to make this form electronic, imbed it in the SSA disability application, and extend the expiration date.

CCD SSTF would enthusiastically endorse increasing the amount of time an SSA-827 permits SSA to request records to more closely align with the average processing times of a disability claim (ideally 36 months in keeping with processing times). Furthermore, we believe that allowing people to sign an SSA-827 release electronically is an important accessibility issue and are pleased SSA is seeking to make these changes.

II. Questions and Concerns: Disability Applicant Evidence Simplification Act. ("DAESA")

Although the SSTF whole-heartedly supports SSA-827 reform we have questions about the DAESA as written.

1. Scope of Time

Sec. 2. of the DAESA seems to imply that a one-time authorization, connected to applying for disability benefits, would permit SSA to collect evidence for a claimant through an initial claim, for continuing disability reviews, and for payment issues without any need for reauthorization. There is no indication that authorization ends or expires if a claimant is no longer in receipt of or applying for benefits. Moreover, if a claimant gives SSA authorization to collect evidence via the DAESA, there does not appear to be any limit on how far back SSA can request evidence. Is that understanding correct?

If so, SSTF has concerns that DAESA as written may be too broad. We are concerned it may be broader than reasonably expected by claimants and might allow SSA authority to capture more evidence than is necessary or relevant, which has potential to undermine SSA's goals.

We have the following questions:

- How would such a broad authorization to seek evidence for a claimant operate for a young adult, when the original authorizer was a parent or representative payee, with whom they are not/no longer aligned? Would there be any sort of point where SSA would be forced to re-seek authorization (maybe when the child turns 18 or the representative payee changes) for this release?
- What happens if someone stops receiving benefits (via termination or voluntarily) and does not seek to continue? Is there language in the DAESA, or in other policies that would prevent SSA from continuing to solicit evidence about them because they applied years ago? If so, for how long?
- Based on the terms of the DAESA, is SSA limited in how far back they can seek medical evidence, including records relating to sensitive issues (i.e., HIV status, abortion or IVF history) that pre-date the alleged disability onset?
- Is there any way for people to limit SSA's access to sensitive, outdated or irrelevant records?
- If SSA has no temporal limits in seeking records, is SSA prepared for how to efficiently adjudicate files with even more records?

Possible areas to explore regarding scope of time:

Has SSA considered amending the DAESA to make the proposed authorization time limited?

- If the goal is to prevent SSA from having to get reauthorization to seek evidence during one claim, perhaps the SSA-827's authorization could expire after a set number of months (ideally around 36 months) in keeping with national case processing times, or after the conclusion of the final disposition of the initial claim?
- To limit the collection of irrelevant and remote evidence, has SSA considered limiting the SSA-827's authorization to only allowing SSA to seek evidence no earlier than the alleged onset date? SSA could always seek earlier records, when appropriate, via separate authorization, which may prevent collection of irrelevant evidence.
- Has SSA considered allowing claimants to provide SSA authority to seek evidence via a SSA-827, that they can sign electronically, outside the initial application process? People who already receive disability benefits may want to give SSA authorization electronically to seek evidence during a continuing disability review, when it is less common for beneficiaries to have representation and assistance with collecting evidence.

- Has SSA considered allowing claimants to opt-in (via separate authorization) to auto-renew SSA's authority to seek evidence, if SSA determines it needs to provide claimants a more-time limited authorization?

2. Scope of evidence

Unlike the current SSA-827, the DAESA's terms purport to create an all-or-nothing proposition for claimants: either give SSA access broad authorization to collect many types of evidence (medical, education, employment etc) or nothing at all. If the SSA-827 is embedded in the application, those who are not comfortable providing broad authorization may feel like they cannot apply for critical disability benefits.

We have the following questions:

- The Program Operations Manual System (POMS) creates a process where claimants object to any part of the authorization for the SSA-827 by crossing through whatever they object to. POMS DI 11005.005(4)(b). If the SSA-827 is imbedded in the disability application, would there be a way for claimants who feel unable to consent to SSA's broad ability to seek evidence from a range of providers, including "others" in the community who may have knowledge of their disabling conditions, have another way to apply?
 - SSTF organization members have reported circumstances when potential claimants, particularly domestic violence victims, have significant concerns about giving SSA authority to reach out to "others" in their community, or send a request to a former educational institutions or employers, which may alert that third-party to a name change or other sensitive information.
- Does the DAESA limit by its terms, in any way, how much information SSA requests, regardless of how irrelevant? If the DAESA does not, is SSA subject to other policies or statutes that would limit the scope of their requests?
 - SSTF organizations are also concerned that SSA would be authorized to collect highly sensitive, but perhaps irrelevant medical records (i.e., HIV status, abortion and IVF records) for all disability claimants based on the terms of the DAESA. Is there anything to limit that?
- Has SSA considered or otherwise studied how much additional evidence it may receive under DAESA, if SSA's authorization is not limited in time or scope of evidence?
- Has SSA considered taking advantage of SSA-827 reform to give claimants the ability to select (maybe via check box) what evidence they are authorizing SSA to collect?
- How does the DAESA interact with SSA's proposal to get claimant payroll information via the Payroll Information Exchange ("PIE"), 89 FR 11773?
- Has SSA considered limiting the authorization provided by the SSA-827 proposal to only allow SSA to seek evidence identified by the claimant in the application?

3. Questions About "Prominent Notice and Disclosures"

Since informed consent is the touchstone of privacy concerns, we appreciate that the DAESA contemplates a prominent notice be provided to claimants about the implied authorization to seek evidence.

- Has SSA considered some plain language on privacy protections and data protection in the “prominent statement”? Particularly if this is an online form, it would be consistent with good privacy and data stewardship to inform people about how long the authorization lasts, how long SSA retains data after a claim and how that data will be stored and maintained.
- Does SSA have a data retention policy that applies to the records collected via disability claims?
- Does SSA have, or will it consider creating and informing people about a mechanism for asking SSA to return/destroy their data?
- Has SSA considered ensuring that this evidence is only available for disability and not fraud or if not, include a disclosure that this evidence could be used to investigate fraud?
- What policies are in place to prevent SSA from sharing these sensitive records, in addition to requiring a court order? Can SSA share them with other agencies?

Finally, if SSA does become a custodian with streamlined access to health records, are there policies in place to ensure those records are timely posted so claimants and representatives can see them?

Thank you for considering these questions. We would appreciate an opportunity to discuss them.

Respectfully,

Access Ready

American Association of Health and Disability

Community Legal Services of Philadelphia (CLS)

Huntington’s Disease Society of America

Justice in Aging

Lakeshore Foundation

Muscular Dystrophy Association

National Association of Disability Representatives (NADR)

National Committee to Preserve Social Security and Medicare

National Disability Institute

National Disability Rights Network (NDRN)

National Organization for Social Security Claimants Representatives (NOSSCR)

The ARC of the United States

United Spinal Association