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Supplemental Security Income (SSI): Fraud Reduction Provisions in the Foster Care Independence Act of 1999 (P.L. 106-169)

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Summary

In 1997, the General Accounting Office (GAO) designated the Supplemental Security Income (SSI) program as a high-risk program due to its susceptibility to waste, fraud, abuse, and insufficient management. Since then, both the Social Security Administration (SSA) and Congress have acted to reduce fraud and abuse within the program. On December 14, 1999 the President signed into law the Foster Care Independence Act of 1999 (P.L. 106-169). The law contains numerous provisions designed to reduce SSI benefit overpayments and combat fraud. This report provides background information on the SSI program and summarizes the provisions in P.L. 106-169 related to SSI fraud reduction. This report will not be updated.

Background

The Supplemental Security Income (SSI) program is a federal program, administered by the Social Security Administration (SSA), that guarantees a minimum level of cash income to low-income aged, blind, or disabled individuals with low liquid assets. In September 1999, 6.6 million individuals received SSI benefits: 1.3 million were classified as aged, 5.3 million were either blind or disabled (865,000 of whom were children).

In calendar year 2000, the federal SSI guarantee is \$512/month for an individual and \$769/month for a couple. All but two states provide a supplementary payment; in 1999 it ranged from \$1.70-\$362/month for a person living independently. Federal SSI benefits are paid from federal general revenues and state supplements by state funds. In FY1998, total SSI benefit payments amounted to \$31.0 billion, of which 88% (\$27.4 billion) were federal payments and about 12% were state payments (\$3.6 billion). In addition, the federal administrative costs of the SSI program were \$2.3 billion.

For the first 20 years of its existence, program concerns about SSI centered around liberalizing the program: linking SSI benefits to the poverty level, promoting outreach efforts to potentially eligible individuals, and raising resource limits. However, in the mid-1990s a proliferation of newspaper articles and other media called attention to perceived program abuses: benefits being paid to drug and alcohol abusers, children who arguably needed discipline rather than a disability label, noncitizens, and prisoners.

In response to growing concerns about program abuse, Congress in 1996 eliminated SSI benefits to persons who were considered disabled primarily because of their drug addiction or alcoholism. It denied SSI to certain noncitizens who were not already on the rolls, made it more difficult for children with “less severe” impairments to receive SSI, and allowed SSA to provide incentive payments to correctional facilities that reported prisoners who received SSI. In 1997, the General Accounting Office (GAO) designated SSI as a high-risk program because of its susceptibility to waste, fraud, and abuse and insufficient management of the program.¹

In 1998, SSA and the SSA Inspector General reported that there were several management issues that needed to be addressed to assure the integrity of the SSI program. SSA’s 1998 report on management of the SSI program stated that the agency needed to increase continuing disability reviews and combat program fraud. In 1998, SSA developed an anti-fraud plan entitled “Zero Tolerance for Fraud.” The plan has three goals: (1) to change programs, systems and operations to reduce instances of fraud; (2) to identify and eliminate wasteful practices that erode public confidence; and (3) to vigorously prosecute individuals or groups whose actions undermine the integrity of SSA’s programs.²

Foster Care Independence Act of 1999 (P.L. 106-169)

During its 1st session, the 106th Congress enacted legislation aimed at reducing fraud and abuse within the SSI program. Title II of the Foster Care Independence Act of 1999 (P.L. 106-169), signed into law by the President on December 14, 1999, contains numerous provisions related to SSI fraud reduction and overpayment recovery. These provisions are summarized below.

Overpayments and Debt Collection

P.L. 106-169 amends the Social Security Act to make representative payees, individuals, who receive SSI payments on behalf of SSI recipients, liable for the repayment of Social Security benefit checks distributed after the recipient’s death. SSA will monitor these repayments using representative payees’ Social Security numbers. Beginning on December 14, 2000, SSA is authorized to recover up to 50% of lump sum SSI benefit payments made to individuals (or eligible spouses) who are themselves liable for the repayment of SSI benefits. The law also authorizes SSA to intercept federal and state payments owed to individuals, use debt collection agencies, and other techniques to collect overpayments.

¹ GAO Report HR-97-1, *High-Risk Series: An Overview*. February 1, 1997.

² Social Security Administration. Office of the Commissioner. *Management of the Supplemental Security Income Program: Today and in the Future*. October 8, 1998.

Treatment of Assets

P.L. 106-169 changes the way assets held in trusts are treated when determining SSI program eligibility and benefit amounts.³ Assets and income in irrevocable trusts may not be revoked or used by an individual for personal support and maintenance. These trusts, previously exempt from SSI resource limit calculations, will be counted toward the resource limit for program eligibility and used to determine benefit amounts.⁴ All trusts established after January 1, 2000 – regardless of the purpose of the trust, degree of trustee discretion, or restrictions on distribution – will be affected by the law. However, the Foster Care Independence Act allows the Commissioner of Social Security (the Commissioner) to waive the consideration of a trust if doing so would create an undue hardship for an individual. The criteria for undue hardship will be determined by the Commissioner.

Disposal of Resources

P.L. 106-169 also imposes new rules regarding resources disposed of at less than fair market value. Individuals or their spouses who dispose of resources at less than fair market value will be ineligible for SSI benefits from the “look-back” date (the date the individual applied for benefits or, if later, the date the individual disposed of resources for less than fair market value) for a length of time calculated by SSA.⁵ This ineligibility period may not exceed 36 months.

Certain resources are exempt from this provision: resources transferred to a trust, if the trust is considered a resource available to the individual; the transfer of a home to family members under certain conditions; the transfer of resources to a spouse for the spouse’s sole benefit; or the transfer of resources to an individual’s blind or disabled child (under age 65). Furthermore, a resource may be exempt if an individual proves to the Commissioner that he/she intended to dispose of the resource at fair market value; or that the resource was transferred for reasons other than to qualify for the SSI program; or if the Commissioner determines that denial of eligibility would cause an undue hardship.

Penalties for False or Misleading Statements

P.L. 106-169 contains provisions authorizing SSA to establish a new administrative process to determine whether individuals have fraudulently claimed benefits in cases considered too small to prosecute in court. The law provides for increasing penalties of 6, 12, and 24 months of ineligibility depending on the nature of the case. However, the imposition of these penalties will not impact an individual’s receipt of other assistance. The penalty procedure will apply only to false and misleading statements made after the date of the law’s enactment, December 14, 1999. The Commissioner is mandated to

³ A trust is defined by SSA as a legal arrangement involving property and ownership interests.

⁴ For more information on the treatment of income and resources, see CRS Fact Sheet RS20294, *SSI Income and Resource Limits: A Fact Sheet*, by Rachel Kelly.

⁵ The ineligibility period is determined by dividing the total value of the disposed resources by the maximum monthly benefit and the maximum applicable state supplementary payment.

develop regulations detailing the administrative process for imposing the penalties within 6 months.

Health care providers and attorneys convicted of fraud or administratively fined for fraud involving SSI eligibility determinations will be barred from participating in the SSI program for at least 5 years under P.L. 106-169. SSA will provide individuals with reasonable notice and opportunity for a hearing and judicial review. SSA will also notify the state agencies that employ such individuals and the state licensing agencies that license or certify them. Attorneys and health care providers are required to inform SSA of any past violations or convictions. The Commissioner or Inspector General of Social Security may waive the exclusion from involvement with the SSI program for an individual who is the only provider of services to a community and may terminate exclusions on a case-by-case basis.

Information Sharing Requirements

There are a number of provisions regarding information-sharing between federal and state agencies in P.L. 106-169. SSA is authorized to obtain financial records for SSI recipients to ensure that they meet SSI's resource restrictions and remain eligible for benefits.

States are required to provide the Commissioner with information for determining individuals' eligibility for Social Security and SSI benefit programs. State prisons are also required to provide inmate information to federal and federally-assisted benefit programs. To help reduce fraudulent benefit payments to prisoners of food stamps, veterans' benefits, unemployment benefits, and educational aid, SSA is required to share its prisoner database with other federal agencies and departments.

P.L. 106-169 directs SSA to conduct computer matches with Medicare and Medicaid data maintained by the Department of Health and Human Services specific to individuals who are residents of public institutions. Data obtained from these matches may be used as a substitute for a physician's certification that an individual's stay in an institution will be less than 3 months. The Commissioner and the Secretary of the Department of Health and Human Services will mutually determine the terms of the data matching.

Future Study and Reporting Requirements

P.L. 106-169 requires the Commissioner, in consultation with the SSA Inspector General and the Attorney General, to study and report to Congress on legislative and administrative reforms that would reduce or prevent SSI and Social Security disability fraud and overpayments. Furthermore, the Commissioner must include an itemized account of the amount of funds required by SSA to support efforts to combat fraud by applicants and beneficiaries in the SSA annual budget. This requirement is effective for annual budgets starting with the FY2000 budget.