

<DEPARTMENT> <OF> <DEFENSE>

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD-2009-HA-0098]

RIN 0720-AB36

TRICARE: Non-Physician Referrals for Physical Therapy, Occupational Therapy, and Speech Therapy

AGENCY: Office of the Secretary, **<Department> <of> <Defense>**.

ACTION: Final rule.

SUMMARY: The **<Department> <of> <Defense>** is publishing this final rule to provide TRICARE approval for authorizing certified physician assistants and certified **<nurse>** practitioners (non-physicians) to engage in referrals of beneficiaries to the Military Health System for physical therapy, occupational therapy, and speech therapy. Upon implementation of this provision, certified physician assistants, or certified **<nurse>** practitioners will be allowed to issue referrals to patients for physical therapy, occupational therapy, and speech therapy without having the patient see a physician. This rule will align TRICARE with Medicare's allowance of "non-physician providers" to provide, certify, or supervise therapy services.

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DATES: *Effective Date:* This rule is effective September 17, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn J. Corn, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3566. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 29, 2009, (74 FR 55794), the Office of the Secretary of Defense published for public comment a proposed rule that will permit services of an otherwise TRICARE-authorized individual paramedical provider, physical therapist (PT), occupational

therapist (OT), and speech therapist (ST) to be paid on a fee-for-service basis if based on a referral from a certified physician assistant or certified <nurse> practitioner.

II. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (74 FR 55794) on October 29, 2009. We received three comments on the proposed rule.

One commenter expressed concern that allowing referrals directly from <nurse> practitioners or physician assistants will keep patients—or at least their records—from being seen by a physician, and by doing so, it could result in the misdiagnosis of an injury or illness resulting in the wrong treatment action being taken. We appreciate the comment. This rule allows referral from TRICARE-authorized certified <nurse> practitioners and certified physician assistants to TRICARE-authorized physical therapists, occupational therapists, and speech therapists. All providers are required to practice within the scope of their licensure and, should treatment require referral to a higher level of professional medical provider, such referrals or consultations are expected.

A second commenter wanted to speak against the provision that a Doctor of Medicine and especially a <Nurse> Practitioner or Physician Assistant are qualified to provide oversight to a Doctor of Physical Therapy. The commenter further stated that physical therapists are certified under their respective states and their educational qualifications are equivalent to a graduate of a professional medicine degree program and exceed the education of both the <nurse> practitioner and physician assistant, who are health professionals and are qualified to provide referral, but not oversight of a physical therapy plan of care. We appreciate the comment and recognize the education and training of those who obtain a Doctor of Physical Therapy degree. However, at this time the Department is only expanding the categories of persons who can make referral to a physical therapist and is not contemplating a revocation of the requirement for oversight of these providers. The <Department> <of> <Defense>'s position on this issue is consistent with Medicare's and its allowance of "non-physician providers" to provide, certify, or supervise therapy services.

The third commenter requests that TRICARE policy also allow for the referral of beneficiaries for licensed registered <nurse> services and audiology services by non-physician practitioners. We appreciate the comment. The proposed rule only proposed expanding referrals by certified <nurse> practitioners or certified physician assistants to TRICARE-authorized physical therapists, occupational therapists, and speech therapists. Under current TRICARE rules, referrals for licensed registered <nurse> services and audiologist services can only be made by a physician. At this time the <Department> <of> <Defense> is limiting the certified <nurse> practitioner and certified physician assistant referral services to physical therapy, occupational therapy, and speech therapy as outlined in the proposed rule. At this time the Department does not intend to expand this rule to include a referral for registered <nurse> services or audiology. At this time the Department feels the need for these services are best assessed by a physician.

III. Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review”

Section 801 of Title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Section 202, Public Law 104-4, “Unfunded Mandates Reform Act”

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires each Federal agency to prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly affect a substantial number of small entities for purposes of the RFA.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

Executive Order 13132, “Federalism”

This rule has been examined for its impact under E.O. 13132 and does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

* Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

* 1. The authority citation for Part 199 continues to read as follows:

Authority:5 U.S.C. 301; 10 U.S.C. Chapter 55.

* 2. Section 199.4 is amended by revising paragraph (c)(3)(x)(A) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(x) * * *

(A) The services are prescribed and monitored by a physician, certified physician assistant or certified nurse practitioner.

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* 3. Section 199.6 is amended by revising paragraph (c)(3)(iii)(K) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(K) *Other individual paramedical providers.* (1) The services of the following individual professional providers of care to be considered for benefits on a fee-for-service basis may be provided only if the beneficiary is referred by a physician for the treatment of a medically diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(i) Licensed registered nurses.

(ii) Audiologists.

(2) The services of the following individual professional providers of care to be considered for benefits on a fee-for-service basis may be provided only if the beneficiary is referred by a physician, a certified physician assistant or certified <nurse> practitioner and a physician, a certified physician assistant, or certified <nurse> practitioner must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(i) Licensed registered physical therapist and occupational therapist.

(ii) Licensed registered speech therapists (speech pathologists).

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