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Submission of Federal Rules Under the Congressional Review Act

☐ President of the Senate ☑ Speaker of the House of Representatives ☐ GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency: Department of Defense

2. Subdivision or Office: Office of the Secretary

3. Rule Title

Changes included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA-03)

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable) 0720-AA85

5. Major Rule ○ Non-major Rule ●

6. Final Rule ○ Other ● _____

7. With respect to this rule, did your agency solicit public comments? Yes ● No ○ N/A ○

8. Priority of Regulation (fill in one)

● Economically Significant; or Significant; or Substantive, Nonsignificant

○ Routine and Frequent or Informational/Administrative/Other *(Do not complete the other side of this form if filled in above.)*

9. Effective Date (if applicable) Immediately

10. Is a concise Summary of the Rule provided? Yes ○ No ●

Submitted by: _____ (signature)

Name: L.M. BYNUM, Alternate OSD Federal Register Liaison Officer, DoD 8/12/03

Title: _____

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	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	○	○	●
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	○	○	●
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	○	○	●
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	○	○	●
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	○	○	●
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	○	○	●
F. Did you discuss any of the following in the preamble to the rule?			
• E.O. 13132, Federalism	○	○	●
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	○	○	●
• E.O. 12866, Regulatory Planning and Review	●	○	○
• E.O. 12988, Civil Justice Reform	○	○	●
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	○	○	●
• Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

0720-AA85

CONCISE GENERAL STATEMENT
IN ACCORDANCE WITH
SECTION 801 OF PUBLIC LAW 104-121

This interim final rule implements several sections of the National Defense Authorization Act for Fiscal Year 2003. Specifically, section 701 eliminates the requirement for TRICARE preauthorization of inpatient mental health care for Medicare-eligible beneficiaries where Medicare is primary payer and has already authorized the care. Section 703 expands eligibility in the TRICARE Dental Program for dependents of deceased members. Section 705 authorizes that Medicare certification of individual professional providers will be considered sufficient documentation to also certify authorized individual professional providers under TRICARE.

DEPARTMENT OF DEFENSE **Billing Code 5001-08**

Office of the Secretary

32 CFR Part 199

RIN 0720-AA85

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA-03)

AGENCY: Office of the Secretary, DoD

ACTION: Interim Final Rule

SUMMARY: This interim final rule contains several provisions found in the NDAA-03, Pub. L. 107-314, signed on December 2, 2002. Specifically this rule addresses: (1) eliminating the requirement for TRICARE preauthorization of inpatient mental health care for Medicare-eligible beneficiaries where Medicare is primary payer and has already authorized the care; (2) using Medicare certification of individual professional providers as sufficient documentation to also certify individual professional providers under TRICARE ; and, (3) expanding the TRICARE Dental Program (TDP) eligibility for dependents of deceased members. Public comments are invited and will be considered for possible revisions to the final rule.

DATES: Written comments will be accepted until [insert 60 days from the date of publication in the Federal Register]. **EFFECTIVE DATE(S)**: This rule is effective immediately. The effective date for the elimination of preauthorization for inpatient mental health care is October 1, 2003. The effective date for using Medicare certification of providers is for any TRICARE contract entered into on or after December 2, 2002. The effective date for expansion of the TDP is December 2, 2002.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066.

FOR FURTHER INFORMATION CONTACT:

Ann N. Fazzini, (303) 676-3803 (The sections of this rule regarding elimination of mental health preauthorization and Medicare providers as TRICARE providers) or Major Shannon Lynch, (303) 676-3496 (The section of this rule regarding the TRICARE Dental Program). Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Elimination of Mental Health Pre-Authorization.

Section 701 of the NDAA-03 eliminates the preauthorization requirement for inpatient mental health where Medicare is primary payer and has already authorized the care. Currently, in situations where a Medicare beneficiary, who is also TRICARE eligible, receives inpatient mental health care, TRICARE applies its rules for preauthorization even though TRICARE is not the primary payer. The language found in Section 701 of the NDAA-03 changes the way we currently operate. Once this change is implemented, Medicare beneficiaries who are also TRICARE eligible, will follow Medicare's rules until their Medicare benefit is exhausted. Once the Medicare benefit is exhausted, TRICARE's rules regarding preauthorization will apply. We expect implementation of this change will reduce providers' administrative burden as they will no longer have to obtain a preauthorization from TRICARE until the beneficiary's Medicare benefit is exhausted. It will also reduce the burden on our contractors as they will be required to obtain preauthorization only after the patient's Medicare benefits are exhausted.

Additionally, Section 701 of the NDAA-03 continues our current policy that pre-authorization is not required in the case of an emergency.

II. Medicare Provider Certification Applicable to TRICARE Individual Professional Providers.

Section 705 of the NDAA-03 provides that Medicare certification of individual professional providers shall be considered sufficient documentation to also certify authorized individual professional providers under TRICARE. When an individual professional provider has been certified by Medicare and meets one of the TRICARE individual professional provider categories, the Medicare certification shall be considered sufficient documentation to certify the provider under TRICARE.

Our contractors are currently in compliance with this provision. By accepting Medicare certification as sufficient documentation, TRICARE has reduced the administrative burden of separately applying for certification under two federal health care programs. While our contractors are currently in compliance with this provision this interim final rule is necessary to add the statutory language to our regulation.

Section 705 continues the current TRICARE policy of excluding providers who are sanctioned or who have program integrity violations under Medicare, TRICARE, or other Federal health programs. Such providers are specifically excluded as TRICARE providers.

III. TRICARE Dental Program.

Currently, eligibility in the TDP includes any such dependent of a member who died while on active duty for a period of more than 30 days or a member of the Ready Reserve if the dependent was enrolled on the date of the death of the member. The exception to this is that the term does not include the dependent after the end of the three-year period beginning on the date

of the member's death. Section 703 of the NDAA FY03 TRICARE changes eligibility in the TDP by including any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in dental benefits plan or is not enrolled in such a plan by reason of a discontinuance of a former enrollment due to transfer to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan. The exception remains that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.

IV. Regulatory Procedures

Section 801 of title 5, United States Code, and Executive Order 12866 requires 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.

The Regulatory Flexibility Act (RFA) requires that each Federal agency 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 is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E. O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). If, however, any program implemented under this rule causes such

a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

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 (a)(12)(ii)(A) and the first sentence in paragraph (b)(6)(iii)(A) and adding a new paragraph (a)(12)(ii)(E) to read as follows:

§ 199.4 Basic Program Benefits

(a) * * *

(12) * * *

(i) * * *

(ii) Preadmission authorization.

(A) This section generally requires preadmission authorization for all nonemergency inpatient mental health services and prompt continued stay authorization after emergency admissions with the exception noted in subparagraph (E) of this paragraph. It also requires preadmission authorization for all admissions to a partial hospitalization program, without exception, as the concept of an emergency admission does not pertain to a partial hospitalization level of care. Institutional services for which payment would otherwise be authorized, but which were

provided without compliance with preadmission authorization requirements, do not qualify for the same payment that would be provided if the preadmission requirements had been met.

* * * * *

(E) Preadmission authorization for inpatient mental health services is not required in the following cases:

(1) In the case of an emergency.

(2) In a case in which benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) subject to subparagraph (3) of this paragraph.

(3) In a case of inpatient mental health services in which subparagraph (2) of this paragraph applies, the Secretary shall require advance authorization for a continuation of the provision of such services after benefits cease to be payable for such services under such part A.

* * * * *

(b) * * *

(6) * * *

(iii) Preauthorization requirements.

(A) With the exception noted in paragraph (a)(12)(ii)(E) of this section, all non-emergency admissions to an acute inpatient hospital level of care must be authorized prior to the admission.

* * *

* * * * *

3. Section 199.6 is amended by adding a new paragraph (c)(2)(v) to read as follows:

§ 199.6 Authorized providers

* * * * *

(c) * * *

(2) * * *

(v) Subject to section 1079(a) of title 10, U.S.C., chapter 55, a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title 10 U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. That is, TRICARE shall accept Medicare certification of providers who have a like class of providers under TRICARE without further authorization unless that provider is under sanctions as stated herein. Providers without a like class (i.e., chiropractors) under TRICARE shall be denied.

* * * * *

4. Section 199.13 is amended revising paragraph (c)(3)(ii)(E)(2) to read as follows:

§ 199.13 TRICARE Dental Program (TDP).

(c) * * * * *

(3) * * * * *

(ii) * * * * *

(E) * * * * *

(2) Continuation of eligibility for dependents of service members who die while on active duty or while a member of the Selected Reserve or Individual Ready Reserve. Eligible dependents of active duty members while on active duty for a period of thirty-one (31) days or more and eligible dependents of Selected Reserve or Individual Ready Reserve members, as specified in

10 U.S.C. 10143 and 10144(b) respectively, if on the date of the death of the member, the dependent is enrolled the TDP, or if not enrolled by reason of a discontinuance of a former enrollment under subsections (c)(4)(ii), (c)(4)(iii) shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death. This three-year period of continued enrollment also applies to dependents of active duty members who died within the year prior to the beginning of the TDP while the dependents were enrolled in the TFMDP. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

* * * * * *

L. M. Bynum
Alternate OSD Federal Register Liaison Officer
Department of Defense
August 12, 2003