

market for which the Secretary determines in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter) that such market has rules adequate to carry out the purposes of section 1256.

(b) *Effective/applicability date.* The rule of this section applies to taxable years ending on or after the date the final regulations are published in the **Federal Register**.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[Docket ID DOD-2011-HA-0059]

RIN 0720-AB52

#### **TRICARE; Elimination of the Non-Availability Statement (NAS) Requirement for Non-Emergency Inpatient Mental Health Care**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule eliminates the requirement that states a NAS is needed for non-emergency inpatient mental health care in order for a TRICARE Standard beneficiary's claim to be paid.

**DATES:** Comments must be received on or before November 15, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Hart, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction and Background**

Under TRICARE Prime (as provided in 32 CFR, section 199.17), the military medical treatment facility (MTF) has the right of first refusal for specialty services requested by a civilian provider, if the services are available at the MTF. If a TRICARE Prime beneficiary living near a MTF is referred for specialty care by a civilian provider and the service is available at the MTF, the MTF may decide to provide the care. If services are refused by the MTF, the referral will be allowed with a network provider. As a result, the issuance of NAS(s) has been eliminated and are only required for non-enrolled beneficiaries who live within the MTF catchment area for non-emergency inpatient mental health care. Currently, the number of NASs issued is negligible as most mental health admissions are emergency admissions. Requiring a NAS for a relative few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS. This proposed rule eliminates the requirement for a NAS for non-emergency inpatient mental health care in order for the TRICARE Standard beneficiary's claim to be paid.

##### **II. Regulatory Procedures**

*Executive Order 12866, "Regulatory Planning and Review"; Executive Order 13563, "Improving Regulation and Regulatory Review"; and Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any economically 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 proposed rule is not a significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this

proposed rule is not subject to any of these requirements.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511)*

This rule will not impose additional information collection requirements on the public.

*Executive Order 13132, "Federalism"*

We have examined the impacts of the rule under Executive Order 13132 and it does not have 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.

*Sec. 202, Public Law 104-4, "Unfunded Mandates Reform Act"*

This rule does not contain unfunded mandates. It 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.

#### **List of Subjects in 32 CFR Part 199**

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

Accordingly, 32 CFR 199.4 is proposed to be 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 removing and reserving paragraph (a)(9) as follows:

#### **§ 199.4 Basic program benefits.**

\* \* \* \* \*

(a) \* \* \*

(9) [RESERVED]

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Dated: August 24, 2011.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

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