

*Defense Services Proposed to be Sold:*  
See Attached Annex

(viii) *Date Report Delivered to Congress: December 4, 2020*

\* As defined in Section 47(6) of the Arms Export Control Act.

#### **POLICY JUSTIFICATION**

##### *Government of Australia—155mm Ammunition and Accessories*

The Government of Australia has requested to buy M825A1 155mm White Phosphorous projectile munitions, M782 Multi-Option Fuze for Artillery, M762A1 electronic-timed fuzes, M231 and M232A2 propelling charges, percussion primers, technical publications and books, technical data for operational maintenance, technical assistance and services, and other related elements of logistics and program support. The total estimated program cost is \$132.2 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region.

This purchase will enable effective training and extend the Australian Defence Force's (ADF) capability to conduct combined operations. The ADF already has these rounds in service, and is trained and equipped to use them. Australia will not have any difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be determined at a later date. The material could potentially be sourced from a combination of DoD stocks and new procurement. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–78

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M825A1 is a 155mm artillery projectile which utilizes a payload of

white phosphorous impregnated felt to produce a smoke screen at a target location. The Government of Australia has stated their commitment to use these rounds exclusively for its intended purpose, which is to provide signaling and to obscure enemy visibility on the battlefield.

2. The M782 Multi-Option Fuze for Artillery (MOFA). The M782 is a selectable multi-option fuze that provides height of burst capability to artillery rounds. The M782 is a sensitive military technology and has been approved for release to the Government of Australia.

3. Also included in this case are propelling charges and other fuzes that enable the effective use of the M825A1 end item. While these technologies are controlled military hardware they do not represent a significant technology transfer risk.

4. The highest level of classified information associated with the sale of this equipment is SECRET.

5. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Australia.

[FR Doc. 2020–28633 Filed 12–28–20; 8:45 am]

**BILLING CODE 5001–06–P**

#### **DEPARTMENT OF DEFENSE**

##### **TRICARE; Proposed Rates for Reimbursing Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Parenteral and Enteral Nutrition (PEN) Items Not on the Medicare DMEPOS and PEN Fee Schedule**

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice is to advise interested parties of a Military Health

System reimbursement change to certain DMEPOS and PEN items not included in Medicare's fee schedule. For these items, the Defense Health Agency (DHA) will create a TRICARE-specific fee schedule based on similar payment rules, to the extent practicable, as Medicare's DMEPOS and PEN fee schedule. A TRICARE-specific fee schedule will allow DHA to control costs, reduce beneficiary out-of-pocket expenses, discourage potential fraud and abuse, and prevent excessive TRICARE reimbursement rates when compared to state Medicaid programs and private health insurance. Under this change, TRICARE will align its reimbursement of certain DMEPOS and PEN items with similar reimbursement rules established under Medicare's DMEPOS and PEN fee schedule to the extent practicable, without incorporating any reimbursement rules associated with Medicare's Competitive Bidding Program (CBP).

DHA is soliciting comments on the proposed rates (located on the DHA website below) and other alternative payment options for reimbursing DMEPOS and PEN items without Medicare pricing. The comment period will end 30 days after the publication of this notice. DHA will receive and consider comments, but will not issue responses to comments unless such comments drive a substantive change to the methodology outlined in paragraphs A through C below, in which case a new notice will be published in the **Federal Register**.

**DATES:** The comment period will end on January 28, 2021. This change will be effective July 1, 2021.

**ADDRESSES:** Defense Health Agency, TRICARE, Medical Benefits and Reimbursement Section, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jahanbakhsh Badshah, Medical Benefits and Reimbursement Section, TRICARE, telephone (303) 676–3881. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE Managed Care Support Contractor in whose jurisdiction a claim would be filed.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Currently under TRICARE, DMEPOS and PEN items without Medicare pricing are reimbursed at the lower of the state prevailing charge or the billed charge. The state prevailing charge is calculated annually by TRICARE contractors on a statewide basis, using the 80th percentile of all qualified billed

charges on actual claims paid for a given service or item, during the 12-month period ending June 30th of the previous year. This method is problematic in that it can lead to the generation of very high-fee schedule amounts without validation that these amounts are realistic and equitable relative to the cost of furnishing the item. Recent Department of Defense Office of Inspector General (DoD OIG) reports, as well as internal DHA analysis, have identified patterns of excessive billed charges for DMEPOS and PEN items. If the billed charges are abusive and excessive, this rolls into the calculation for state prevailing amounts. Setting payment rates too high creates incentives for higher volume, financially burdens beneficiaries whose cost-sharing is based on a percentage of the allowable amount, and encourages fraud and abuse.

### **B. Description of the TRICARE DMEPOS and PEN Fee Schedule**

To control costs, reduce beneficiary out-of-pocket expenses, discourage potential fraud and abuse, and prevent excessive TRICARE reimbursement rates when compared to state Medicaid programs and private health insurance for equipment and supplies, DHA proposes to develop fee schedule amounts for certain DMEPOS and PEN items not identified on any Medicare fee schedules. This proposal falls under the authority of Title 32 Code of Federal Regulation (CFR) 199.14(j)(4), which allows the Director, DHA, subject to the approval of the Assistant Secretary of Defense for Health Affairs, to establish an alternative reimbursement method designed to produce reasonable control over health care costs. In response to recent DoD OIG audits of TRICARE's overpayment of services and items without established fee schedule amounts, DHA will develop a fee schedule for these DMEPOS and PEN items on a statewide basis and create national ceilings and floors, utilizing a methodology similar to Medicare's fee schedule reimbursement methodology. TRICARE's fee schedule will not include Medicare's CBP rules, which would require making adjustments based on bids submitted for certain items and localities. This would be impossible to incorporate, as TRICARE does not have a bidding program.

Using Medicare's DMEPOS and PEN payment rules established under 42 CFR part 414, subparts C and D, to the extent practicable, DHA will create a TRICARE fee schedule for certain DMEPOS and PEN items without Medicare pricing. Given the similar attributes of the two programs, the statutory requirement that

TRICARE reimbursement follow Medicare's methodology when practicable, and the fact that non-CBP payment rules are still used by Medicare for certain DMEPOS and PEN items, the adoption of these rules is appropriate for TRICARE reimbursement of DMEPOS and PEN items. Using a fee schedule is also consistent with the DoD OIG support of payment accuracy through the establishment of fee schedules. The resulting payment rates will be high enough to ensure beneficiary access to needed products and low enough to ensure sufficient provision of those products. DHA will also retain the flexibility to modify the payment rate for any procedure code when necessary to ensure access to care.

### **C. Methodology**

TRICARE fee schedule rates will be established for services or items provided on or after July 1, 2021, and will be updated annually (January 1) by the same annual update factor Medicare uses to update its DMEPOS fee schedule. The update factor is based on the percentage increase in the Consumer Price Index for all Urban Consumers for the 12-month period ending June 30 of the previous year adjusted by the change in the economy-wide productivity equal to the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity. Healthcare Common Procedure Coding System (HCPCS) codes classified as unlisted, miscellaneous, not otherwise classified (NOC), custom, deluxe, or currently on the TRICARE No Government Pay List or the Medicare DMEPOS and PEN fee schedule will not be included on the TRICARE fee schedule. Any code added to Medicare's fee schedule will also be removed from TRICARE's fee schedule. Quarterly updates will occur as necessary (April 1, July 1, and October 1) so codes may be added, removed, and have their rates modified mid-year. Unlisted, miscellaneous, and NOC codes will be defined using Medicare's HCPCS NOC Codes list published on the Centers for Medicare & Medicaid Services website at <https://www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html>.

Codes will be assigned to a category (e.g., surgical dressings and certain durable medical equipment, prosthetics and orthotics, parenteral and enteral, etc.) based on long description and if the item meets TRICARE's definition of DMEPOS and PEN as defined in regulation and policy.

TRICARE will establish national and statewide rates for existing and new

HCPCS codes defined as a DMEPOS and PEN code. The rate in each state will be calculated by (1) Establishing base years and minimum data requirements, (2) calculating national floors and ceilings, and (3) calculating the average billed amount of claims TRICARE paid in that state during each base year, subject to minimum data requirements and national floors and ceilings. The base year will vary for each code and will be defined as the first year (no earlier than 1994) with at least enough charge data nationwide during a 12-month period beginning on July 1 and ending on June 30. Minimum data will be defined as any code for which there were at least 50 paid claims nationwide during the base year period; if there were fewer than 50 paid claims each year since 1994, then TRICARE's current reimbursement methodology will apply. Given the large number of codes and the lack of historical data, repricing based on 1986–87 levels (similar to Medicare) is not administratively feasible for TRICARE's fee schedule. Although claims from that year are stored in DHA archives (claims are more readily available from 1994 and later), it would be difficult to extract the data and obtain proper documentation. Once the base year for a code has been established, a national ceiling and floor will be calculated using Medicare's methodology. For example, for surgical dressings and certain Durable Medical Equipment, the national ceiling will be equal to the median of all paid claims nationwide during the base period, and the national floor will be equal to 85 percent of the national ceiling. The state-wide fee schedule for states outside the continental United States (i.e., Alaska and Hawaii), as well as for United States territories and commonwealths, will not be subject to the ceilings and floors, in accordance with Medicare rules. When establishing the initial fee schedule amounts, the national floor and ceiling rates for any code cannot exceed the amount that would have been calculated using data during the 12-month period of July 1, 2019 through June 30, 2020. It is believed this will result in fee schedule amounts more reflective of reasonable charges for DMEPOS items. Therefore, the DHA is capping national floors and ceiling rates based on the most current base year period which is July 1, 2019 through June 30, 2020.

After establishing a national ceiling and floor for a given code, then the rate for the code can be calculated at the state level. To calculate a statewide rate using the average billed amount, there must be at least eight paid claims

(similar to state prevailing rates under the current TRICARE methodology) for a given code within that state during the base year. States without eight paid claims will be set at the national ceiling, unless stated otherwise in the TRICARE Reimbursement Manual or the TRICARE Policy Manual. The statewide rate must also fall within the national floor and ceiling. In states where the average billed amount of claims is lower than the national floor, then the statewide rate will be equivalent to the national floor. In states where the average billed amount of claims is higher than the national ceiling, then the statewide rate will be equivalent to the national ceiling. Rental items and equipment will be calculated based on 10 percent

of the fee schedule amount for a purchased item and used items and equipment will be calculated based on 75 percent of the fee schedule amount for a new item.

There will be several deviations to the above methodology. For PEN items and items involving splints, casts, and inter-ocular lenses, the fee schedule amounts will use a national rate (*i.e.* there will be no national floors or ceilings and no state-to-state variation), which will be equal to the mean, or average, charges of all paid claims nationwide during the base period (updated and trended forward by Medicare’s DMEPOS update factor). The base period for PEN items will use 2002 (or later) claims data, and 2013 or later claims data for splints,

casts, and inter-ocular lenses. DHA may also establish fee schedule amounts using a cross-walk method to establish statewide rates for items comparable to DMEPOS items with already established rates (this method is consistent with Medicare’s regulation to not pay more than a comparable item as identified in 42 CFR 405.502). For items removed from Medicare’s fee schedule, DHA will use the last known Medicare fee schedule rate and trend it forward to the present using Medicare’s annual DMEPOS update factor.

The following table provides a summary of methodologies for establishing rates in the TRICARE Fee Schedule:

Current methodology	Category	Methodology
Use the 80th percentile of all qualified billed charges within the state as the state prevailing rate. Pay the claim using the state prevailing rate or billed charges, whichever is lower.	Surgical Dressings and Certain DME.	Set national ceiling at median of all paid claims nationwide during base year. Set national floor at 85% of national ceiling. Calculate average billed charge for a state during base year. Trend forward the base year state average, floor, and ceiling using Medicare’s update factor. —If state average is within the national floor and ceiling, it becomes the state rate.
	Prosthetics and Orthotics, including Therapeutic Shoes and Inserts.	Set national ceiling and floor at 90% and 120% respectively of the nationwide average of claims paid during base year. Calculate average billed charge for a state during base year. Trend forward the base year state average, floor, and ceiling using Medicare’s update factor. —If state average is within the national floor and ceiling, it becomes the state rate.
	Parenteral and Enteral ...	Calculate average billed charge nationwide during base year and trend forward using Medicare’s update factor.
	Splints, Casts, and IOLs	The national average becomes the state rate for every state ( <i>i.e.</i> , no variation between states).
	Codes that require use of cross-walk method.	Use the same rate as a comparable code with an existing rate.
	Codes removed from Medicare’s fee schedule.	Use the last rate from on Medicare’s fee schedule and trend it upwards using Medicare’s update factor.
	Codes with fewer than 50 paid claims nationally each year since 1994.	There is an insufficient number of national claims to establish a ceiling and floor. Use current methodology for reimbursement, and code will not be added to the fee schedule.

DHA will be responsible for establishing and updating and the accurate calculation of TRICARE’s DMEPOS and PEN fee schedule prices. Proposed statewide rates are available for review on the DHA website at <https://health.mil/Military-Health-Topics/Business-Support/Rates-and-Reimbursement/Durable-Medical-Equipment-Prosthetics-Orthotics-and-Supplies>.

Dated: December 22, 2020.

**Aaron T. Siegel,**

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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**DEPARTMENT OF EDUCATION**

[Docket No. ED–2020–SCC–0162]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Educational Agency and Local Educational Agency—School Data Collection and Reporting Under ESEA, Title I, Part A**

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is

proposing an extension without changes of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before January 28, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection