

supplies that are essential to provide therapeutic benefit, or to assure the proper functioning of the equipment or to make the equipment serviceable. Nonetheless, we are revising the current DME definition by adding the NDAA-02 language to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

## **II. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Reimbursement**

Section 707 of the NDAA-02, Pub. L. 107-107, changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods “may be” determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods “shall be” so determined. As a result, TRICARE proposes to adopt Medicare’s pricing of Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS). Under Medicare, DMEPOS prices are established by using fee schedules, reasonable charge or average wholesale pricing (AWP). Most payments of DME are based on a fee schedule. A standard fee is established for each DMEPOS item by state. Payment is calculated using either the fee schedule amount or the actual charge submitted on the claim, whichever is lower. The fee schedule allowances include the application of national floors and ceilings. Reasonable charge allowances by Medicare are stipulated by Medicare law and not left to the discretion of the Medicare carrier. Medicare law specifically states that the amount allowed by Medicare must be the lowest of: The actual charge, the suppliers customary charge or the 50th percentile of arrayed and weighted customary charges in the absence of a customary charge for the specific service rendered; the prevailing charge, the Inflation-Indexed Charge or the Lowest Charge Level.

## **III. Rehabilitative Therapy**

Section 704 of the NDAA-02, Pub. L. 107-107, authorizes providing rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. We interpret the term “rehabilitative therapies” to include physical therapy, speech therapy, and occupational therapy. We are adding a definition of rehabilitative therapy to our regulation and incorporating the NDAA-02 language found in section 704 into the definition. Physical, speech, and occupational therapies are currently covered by TRICARE to improve and/or restore function.

Additionally, current policies provide no restrictions on medically necessary and appropriate therapies—in other words, there is no dollar limit on the care nor is care restricted to a specific number of visits.

Section 701 of the NDAA-02, Pub. L. 107-107, provides a definition of custodial care as treatment or services regardless of who recommends such treatment of services or where such services are provided that (a) can be rendered safely and reasonably by a person who is not medically skilled; or (b) is or are designed mainly to help the patient with activities of daily living. The definition was revised by the interim final rule published in the **Federal Register**, 67 FR 40602, June 13, 2002.

We read the language in section 704 of the NDAA-02 in conjunction with the language in Section 701(c) of the NDAA-02 and conclude when TRICARE will cover rehabilitative therapies. That is, rehabilitative therapies shall be covered to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitative therapy must be medically necessary and appropriate, necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and not custodial care.

## **IV. Augmentative Communication Devices (ACD)/Speech Generating Device (SGD)**

Section 702 of the NDAA-02, Pub. L. 107-107, provides that an “augmentative communication device may be provided as a voice prosthesis” under TRICARE. We propose a policy that is in line with the policy developed by the Centers for Medicare and Medicaid Services (CMS). We further propose using the same terminology used by Medicare when referring to this type of device—CMS refers to “augmentative communication devices” as “speech generating devices”. In order to facilitate consistent terminology in the industry, we propose adopting the term “speech generating device (SGD)”. In proposing this policy, we have also taken into consideration recommendations provided to us by the American Speech-Language-Hearing Association in defining this benefit.

## **V. Hearing Aids**

Section 702 of the NDAA-02, Pub. L. 107-107, provides for coverage of a hearing aid if a family member of an active duty member has a “profound” hearing loss as determined under

standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries. There is no industry standard or industry definition of “profound” hearing loss so we have developed one for TRICARE purposes and welcome comments regarding our proposed definition.

The policy proposed in this rule enhances current TRICARE coverage of hearing aids by: (1) Offering a hearing aid benefit via the TRICARE Basic Program to family members of an active duty member when the family member has a “profound” hearing loss; (2) differentiating hearing thresholds for adults and children; and, (3) revising the hearing threshold levels currently in TRICARE policy.

## **VI. Prosthetics**

Section 702 of NDAA-02, Pub. L. 107-107, gives the Department the discretion to provide a prosthetic device that includes the following: (1) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning. (2) Services necessary to train the recipient of the device in the use of the device. (3) Repair of the device for normal wear and tear or damage. (4) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement. (5) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consult with the other Secretaries.

TRICARE currently offers benefits for the above criteria 1, 2, 3, and 5. Regarding criterion (4), TRICARE currently allows for replacement when required due to growth or change in the patient’s condition. Nonetheless, our policies will be revised to ensure consistency with the language found in section 702.

Regarding criterion 5, TRICARE has no specific provider requirements for a prosthetic practitioner to be qualified to customize the device. Rather, otherwise authorized providers currently provide prostheses and customization of prostheses. We are aware that CMS has established a Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The purpose of this committee is to advise CMS on developing a proposed rule that would establish payment provisions and