

requirements for providers of prostheses and custom-fabricated orthotics under the Medicare program. Once the Committee provides their findings, we will review them for consideration under the TRICARE program. In the meantime, we will continue to allow prostheses customization by otherwise authorized TRICARE providers.

This proposed rule also updates the definition of prosthetic device, and adds definitions for prosthetics and prosthetic supplies. This brings us in line with industry standards.

VII. Transitional Health Care

Section 736 of the NDAA-02, Pub. L. 107-107, makes permanent the authority for transitional health care benefits for certain members by deleting the expiration date that was in place for transitional health care benefits. Prior to Pub. L. 107-107, transitional health care benefits were to expire on December 31, 2001. Section 736 also extended coverage for either 60 or 120 days based on years of service to those eligible for transitional health care benefits. Further, it deleted coverage for dependents of those eligible for transitional coverage, but the Department of Defense created a demonstration project to include coverage for such dependents.

Section 706 of the National Defense Authorization Act for Fiscal Year 03 (NDAA-03) re-inserted transitional health care coverage benefits for dependents and deemed the provision to have been enacted as part of section 736 of the NDAA-02. Consequently, there is no need for this rule to include regulatory language addressing the removal of dependents from transitional health care coverage.

VIII. 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 199.2(b) is proposed to be amended by revising the definitions of “Durable medical equipment”, and “Prosthetic device (prosthesis)”, by adding definitions of “Augmentative Communication Device”, “Profound hearing loss”, “Prosthetic”, “Prosthetic supplies”, “Rehabilitative therapy”, and “Speech generating device” in alphabetical order to read as follows:

§ 199.2 Definitions.

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(b) * * *

Augmentative communication device. See *Speech generating device.*

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Durable medical equipment. Equipment for which the allowable charge is over \$100 and which:

- (1) Is medically necessary for the treatment of a covered illness or injury;
- (2) Improves, restores, or maintains the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition;
- (3) Can maximize the patient's function consistent with the patient's physiological or medical needs.
- (4) Is primarily and customarily designed and intended to serve a medical purpose rather than primarily for transportation, comfort, or convenience.

(5) Can withstand repeated use;

(6) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury or nondeluxe);

(7) Is other than spectacles, eyeglasses, contact lenses, or other optical devices, hearing aids (unless otherwise provided as a covered TRICARE benefit), or other communication devices (unless otherwise provided as a covered TRICARE benefit); and

(8) Is other than exercise equipment, spas, whirlpools, hot tubs, swimming pools or other such items.

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Profound hearing loss (adults). An “adult” (a spouse as defined in section 199.3(b) of this part of a member of the Uniformed Services on active duty for 30 days) with a hearing threshold of:

(1) 40 dB HL or greater in one or both ears when tested at 500, 1,000, 1,500, 2,000, 3,000 or 4,000Hz; or

(2) 26 dB HL or greater in one or both ears at any three or more of those frequencies; or

(3) A speech recognition score less than 94 percent.

Profound hearing loss (children). A “child” (an unmarried child of an active duty member who otherwise meets the criteria (including age requirements) in section 199.3 of this part) with a 26dB or greater hearing threshold level in one or both ears when tested in the frequency range at 500, 1,000, 2,000, 3,000, or 4,000 Hz.

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Prosthetic. Artificial legs, arms, and eyes.

Prosthetic device (prosthesis). Devices (other than a dental device) which replace all or part of an internal body organ (including contiguous tissue), or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ are covered when furnished on a physician's order. Examples of prosthetic devices include cardiac pacemakers, breast prostheses (including a surgical brassiere) for post mastectomy patients, maxillofacial devices and devices which replace all or part of the ear or nose.

Prosthetic supplies. Supplies that are necessary for the effective use of a prosthetic device.

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Rehabilitative therapy. Speech therapy, occupational therapy, and physical therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient and prescribed by a physician.

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Speech generating device. (1) Speech aids that provide an individual who has severe speech impairment with the ability to meet his functional speaking needs. Such devices are considered