

eliminates the requirement for TRICARE Standard beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain a nonavailability statement (NAS) or preauthorization from an MTF before receiving inpatient care (other than mental health services) or maternity care from a civilian provider in order that TRICARE will cost-share for such services. Further, this section eliminates the NAS requirement for specialized treatment services (STSs) for TRICARE Standard beneficiaries who live outside the 200-mile radius of a designated STS facility. This rule portrays the Department's decision to eliminate the STS program entirely. Finally, Section 728 of NDAA-01 requires that prior authorization before referral to a specialty care provider that is part of the contractor network be eliminated under any new TRICARE contract. The Department is publishing this rule as an interim final rule with comment period as an exception to our standard practice of soliciting public comments prior to issuance in order to implement the statutory requirements. Public comments, however, are invited and will be considered for possible revisions to this rule.

DATES: This rule is effective: December 28, 2003.

Comment Date: Written comments will be accepted until September 29, 2003.

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

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, TRICARE Management Activity, telephone (303) 676-3801.

SUPPLEMENTARY INFORMATION:

I. Elimination of Nonavailability Statement Requirement and Specialized Treatment Service Program

The National Defense Authorization Act for Fiscal Year 2002 (NDAA-02) was signed into law on December 28, 2001. Section 735 of NDAA-02 amends Section 721 of the NDAA-01 with respect to the nonavailability statement (NAS) elimination requirements and eliminates the requirement for non-enrolled TRICARE beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain an NAS or preauthorization from an MTF before receiving nonemergent inpatient or obstetrical (inpatient or outpatient) services from a civilian provider in order that TRICARE will cost-share for such services. A non-enrolled TRICARE beneficiary is a

beneficiary who has not enrolled in TRICARE Prime, but who has chosen to use the TRICARE Standard and TRICARE Extra options. Section 735 retains MTF NAS authority for inpatient mental health services within the usual 40-mile catchment area. The section establishes that the NAS elimination requirements are to take effect on the earlier of the date the health care services are provided under new TRICARE contracts or the date that is two years after the date of the enactment of NDAA-02. As the health care services under new TRICARE contracts will not be available until after March 2004, the NAS requirements will be eliminated for admissions occurring on or after December 28, 2003, which is the date that is two years after the date of enactment of NDAA-02. For obstetrical care, the NAS requirement will be eliminated for maternity episodes wherein the first prenatal visit occurs on or after December 28, 2003. An NAS is required when the first prenatal visit occurs before December 28, 2003, by 10 U.S.C. 1080(b). The NAS for inpatient mental health care will continue to be required.

With the exception of maternity care, Section 735 of NDAA-02 gives the Secretary of DoD the authority to waive the NAS elimination requirements if: (a) Significant costs would be avoided by performing specific procedures at the affected military treatment facility (MTF); (b) a specific procedure must be provided at the affected MTF to ensure the proficiency levels of the practitioners at the facility; or (c) the lack of NAS data would significantly interfere with TRICARE contract administration. When this waiver authority will be exercised, the Department will notify the affected beneficiaries by publishing a notice in the **Federal Register** and notify the Congress.

Section 735 of NDAA-02 furthermore eliminates the multi-regional and national NAS requirement for specialized treatment services (STSs) for TRICARE Standard beneficiaries who live outside the 200-mile radius of a STS facility. STS facilities are those designated facilities with regional, multi-regional or national catchment areas which provide complex medical and surgical services as currently provided in 32 CFR 199.4(a)(10). Since the Department has decided to terminate the STS program no later than June 1, 2003, all regional, multi-regional, and national NAS requirements for STSs will be eliminated before that date. The rationale behind the termination of the STS program is that this program was

not based upon nationally developed consensus or evidenced-based criteria for clinical quality (there were none at the inception of this program) and had not consistently demonstrated cost-benefit to the government. In addition, the NAS requirement for STSs has placed an unreasonable burden on our beneficiaries who have had to travel extended distances to the STS facilities. This would provide for enhanced continuity of care for TRICARE Standard beneficiaries who generally receive most medical and surgical services from civilian providers of their choice. This rule gives notice of the Department's decision to terminate the STS program entirely no later than June 1, 2003.

II. Elimination of Prior Authorization Before Referrals to Specialty Care Providers

This rule will implement Section 728 of the National Defense Authorization Act for Fiscal Year 2001 (NDAA-01) (Pub. L. 106-398) which was enacted on October 30, 2000. Section 728 requires that prior authorization (or more precisely, preauthorization as defined in 32 CFR 199.2(b)) before referral to a specialty care provider that is part of the network be eliminated as part of any new TRICARE contracts entered into by the Department of Defense after the date of the enactment of the Act. This means that medical necessity preauthorization will not be required when primary care or specialty care providers refer TRICARE Prime patients for consultation appointment services, which are provided within the contractors' network of providers. Only TRICARE Prime patients require preauthorization for obtaining consultation appointment services. TRICARE Prime beneficiaries are required to use network providers if available. This rule removes the requirement to obtain a medical necessity determination when the consultation services are provided within the contractor's network. Section 728 of NDAA-01 does not eliminate the requirement for medical necessity preauthorizations for specific procedures or other health care services which specialty providers may recommend for beneficiaries as a result of the original consultation appointment or the need for preauthorization referral to non-network providers. For example, a consultation might result in a recommendation for a high cost surgical procedure on a nonemergent basis. The specialist's intent to perform this procedure may still be subjected to medical necessity preauthorization based upon utilization review criteria as