

has been TRICARE policy for years in conformance with the peer review organization program in section 199.15.

In summary, under new TRICARE contracts, requests for consultation appointment services will not be subjected to medical necessity preauthorization though other health care services may continue to require preauthorization. TRICARE contractors may determine which other categories of health care services (procedures, nonemergent admissions) will require medical necessity preauthorization in accordance with their best business practices.

Regulatory Procedure

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of \$100 million or more, or 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 significant impact on a substantial number of small entities.

This rule is not a significant regulatory action under E.O. 12866 that could potentially add more than \$100 million in estimated annual costs for DoD. This rule does not require a regulatory flexibility analysis as the policy action was taken by Congress and the rule merely puts it into effect. The policy of the Regulatory Flexibility Act that agencies adequately evaluate all potential options for an action does not apply when Congress has already dictated the action.

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511).

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. This is because there is no discretion being exercised. The NDAA-02 (Pub. L. 107-107) mandated elimination of the NAS for maternity care entirely, and for inpatient care unless it met very restrictive criteria, and there is no discretion on the effective data. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical, and contrary to the public interest.

Public comments are invited. All comments will be carefully considered.

A discussion of the major issues received by public comments will be included with the issuance of the final rule.

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; and 10 U.S.C. Chapter 55.

■ 2. Section 199.2(b) is amended by revising the definition for “Preauthorization,” by removing the definition for “Specialized Treatment Service Facility,” and by adding the definitions for “Consultation appointment” and “Medically or psychologically necessary preauthorization” and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

* * * * *

Consultation appointment. An appointment for evaluation of medical symptoms resulting in a plan for management which may include elements of further evaluation, treatment and follow-up evaluation. Such an appointment does not include surgical intervention or other invasive diagnostic or therapeutic procedures beyond the level of very simply office procedures, or basic laboratory work but rather provides the beneficiary with an authoritative opinion.

* * * * *

Medically or psychologically necessary preauthorization: A pre (or prior) authorization for payment for medical/surgical or psychological services based upon criteria that are generally accepted by qualified professionals to be reasonable for diagnosis and treatment of an illness, injury, pregnancy, and mental disorder.

* * * * *

Preauthorization. A decision issued in writing, or electronically by the Director, TRICARE Management Activity, or a designee, that TRICARE benefits are payable for certain services that a beneficiary has not yet received. The term prior authorization is commonly substituted for preauthorization and has the same meaning.

* * * * *

■ 3. Section 199.4 is amended by revising paragraphs (a)(9) and (a)(9)(i)(B), by removing paragraph (a)(9)(i)(C), by revising paragraph (a)(9)(iv), by adding a new paragraph (a)(9)(vii), by removing and reserving paragraph (a)(10), and by revising paragraphs (e)(16)(i) and (e)(16)(ii) to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(9) Nonavailability Statements within a 40-mile catchment area. In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required inpatient mental health care can be provided through a Uniformed Service facility. If the required care cannot be provided, the hospital commander, or a designee, will issue a Nonavailability Statement (NAS) (DD Form 1251). Except for emergencies, as NAS should be issued before inpatient mental health care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary’s rights to benefits under CHAMPUS/TRICARE.

(i) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with nonemergency hospital inpatient mental health care if such services are available at a military treatment facility (MTF) located within a 40-mile radius of the residence of the beneficiary, except that a NAS is not required for services otherwise available at an MTF located within a 40-mile radius of the beneficiary’s residence when another insurance plan or program provides the beneficiary’s primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * *

(iv) Nonavailability Statement (DD Form 1251) must be filed with applicable claim. When a claim is submitted for TRICARE benefits that includes services for which an NAS was issued, a valid NAS authorization must be on the DoD required system.

* * * * *

(vii) With the exception of maternity services, the Assistant Secretary of Defense for Health Affairs (ASD(HA)) may require an NAS prior to TRICARE cost-sharing for additional services from civilian sources if such services are to be provided to a beneficiary who lives within a 40-mile catchment area of an