

Activity or designee may waive the requirement for a written authorization for rendered ECHO benefits that, except for the absence of the written authorization, would be allowable as an ECHO benefit.

(v) *Public facility use.*

(A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirement shall apply for beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of public facility non-availability or inadequacy is limited to \$2,500 per month per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

(B) The domicile of the beneficiary shall be the basis for the determination of public facility availability when the sponsor and beneficiary are separately domiciled due to the sponsor's move to a new permanent duty station or due to legal custody requirements.

(C) Written certification, in accordance with information requirements, formats, and procedures established by the Director, TRICARE Management Activity or designee that requested ECHO services or items cannot be obtained from public facilities because the services or items are not available and adequate, is a prerequisite for ECHO benefit payment for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate, transportation to and from such institutions and facilities.

(1) An administrator or designee of a public facility may make such certification for a beneficiary residing within the service area of that public facility.

(2) The Director, TRICARE Management Activity or designee may determine, on a case-by-case basis, that apparent public facility availability for a requested type of service or item cannot be substantiated for a specific beneficiary's request for ECHO benefits and therefore is not available.

(i) A case-specific determination shall be based upon a written statement by the beneficiary (or sponsor or guardian

acting on behalf of the beneficiary) which details the circumstances wherein a specific individual representing a specific public facility refused to provide a public facility use certification, and such other information as the Director, TRICARE Management Activity or designee determines to be material to the determination.

(ii) A case-specific determination of public facility availability by the Director, TRICARE Management Activity or designee is conclusive and is not appealable under section 199.10

(4) Repair or maintenance of beneficiary owned durable equipment and durable medical equipment is exempt from the public facility use requirements.

(5) The requirements of this paragraph (i)(4)(v) notwithstanding, no public facility use certification is required for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individual Family Services Plan and that are otherwise allowable under the ECHO.

(j) *Implementing instructions.* The Director, TRICARE Management Activity or designee shall issue TRICARE policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

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5. Section 199.6 is proposed to be amended by revising paragraphs (e)(1)(ii), (e)(2) and (e)(3) to read as follows:

§ 199.6 TRICARE—authorized providers.

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(e) *Extended Care Health Option Providers—*

(1) *General.* * * *

(ii) A Program for Persons with Disabilities (PFPWD) provider with TRICARE-authorized status on the effective date for the Extended Care Health Option (ECHO) Program shall be deemed to be a TRICARE-authorized provider until the expiration of all outstanding PFPWD benefit authorizations for services or items being rendered by the provider.

(2) *ECHO provider categories—*

(i) *ECHO inpatient care provider.* A provider of residential institutional care, which is otherwise an ECHO benefit shall be:

(A) A not-for-profit entity or a public facility and

(B) Located within a state; and

(C) Be certified as eligible for Medicaid payment in accordance with a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) as a Medicaid Nursing

Facility, or Intermediate Care Facility for the Mentally Retarded, or be a TRICARE-authorized institutional provider as defined in paragraph (b) of this section, or be approved by a state educational agency as a training institution.

(ii) *ECHO outpatient care provider.* A provider of ECHO outpatient, ambulatory, or in-home services shall be:

(A) A TRICARE-authorized provider of services as defined in this section; or

(B) An individual, corporation, foundation, or public entity that predominantly renders services of a type uniquely allowable as an ECHO benefit and not otherwise allowable as a benefit of section 199.4, that meets all applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which the ECHO service is rendered.

(iii) *ECHO vendor.* A provider of an allowable ECHO item, such as supplies or equipment, shall be deemed to be a TRICARE-authorized vendor for the provision of the specific item, supply or equipment when the vendor supplies such information as the Director, TRICARE Management Activity or designee determines necessary to adjudicate a specific claim.

(3) *ECHO provider exclusion or suspension.* A provider of ECHO services or items may be excluded or suspended for a pattern of discrimination on the basis of disability. Such exclusion or suspension shall be accomplished according to the provisions of section 199.9.

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6. Section 199.7 is proposed to be amended by revising paragraph (a)(2), to read as follows:

§ 199.7 Claims submission, review, and payment.

(a) *General.* * * *

(2) *Claim required.* No benefit may be extended under the Basic Program or Extended Care Health Option (ECHO) Program without submission of an appropriate, complete and properly executed claim form.

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7. Section 199.8 is proposed to be amended by revising paragraph (d)(4), to read as follows:

§ 199.8 Double coverage.

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(d) *Special considerations—(4) Extended Care Health Option (ECHO).* For those services or supplies that require use of public facilities, an ECHO eligible beneficiary (or sponsor or guardian acting on behalf of the