

recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

#### *Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on April 23, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request

a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **IV. Procedural Determinations**

##### *Executive Order 12866—Regulatory Planning and Review*

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

##### *Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

##### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2018.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

[FR Doc. 2019-06826 Filed 4-5-19; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 199**

[Docket ID: DOD-2017-HA-0058]

**RIN 0720-AB71**

#### **TRICARE: Prescribing of Physical Therapy, Occupational Therapy, and Speech Therapy by Other Allied Health Professionals Acting Within the Scope of Their License**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) proposes an amendment to the TRICARE regulation. Specifically, this proposed rule will allow coverage of otherwise authorized physical therapy (PT), occupational therapy (OT), and speech therapy (ST) for TRICARE beneficiaries when such services are prescribed by an authorized TRICARE Allied Health Professional acting within the scope of their license.

**DATES:** Written comments received at the address indicated below by June 7, 2019 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- **Mail:** Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

**Instructions:** All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Amber Butterfield, Defense Health Agency, TRICARE Health Plan, Medical Benefits and Reimbursement Division, (303) 676-3565.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Executive Summary and Overview**

###### *A. Purpose of the Regulatory Action*

This proposed rule will permit coverage of services prescribed by TRICARE-authorized individual allied health professionals for PT, OT, and ST. The current language of Title 32 Code of Federal Regulations (CFR), § 199.4(c)(3)(x) states that PT, OT, and ST may be cost-shared when services are prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. In addition, 32 CFR 199.6(c)(3)(iii)(K)(2) currently states that the services of other individual paramedical providers, such as licensed registered PT, OT, and ST, can be considered for benefits on a fee-for-service basis only if the beneficiary

is referred by a physician, certified physician assistant, or certified nurse practitioner and a physician, certified physician assistant, or certified nurse practitioner provides continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers. As a result, otherwise authorized PT, OT, and ST services for TRICARE beneficiaries are not covered benefits when other Allied Health Professionals, such as Doctors of Podiatry, even when acting within their scope of license, prescribe the services.

State governments generally regulate the licensure and practice of health care professionals, and DoD limits TRICARE benefits coverage to services and supplies furnished by otherwise authorized TRICARE individual professional providers performing within the scope of their state licenses or certifications. State scope of practice laws vary with regard to the range of services, and some include the authority to prescribe PT, OT, and ST. After assessing the information available, DoD has determined that it is unnecessarily restrictive not to cover otherwise authorized PT, OT, and ST services for TRICARE beneficiaries merely because the services are ordered by a non-physician. Therefore, the regulation is being amended to allow TRICARE coverage of PT, OT, and ST services when ordered by other Allied Health Professionals who are TRICARE authorized providers and acting within the scope of their state license or certificate.

#### *B. Summary of the Major Provisions of the Proposed Rule*

This rule allows TRICARE coverage of otherwise authorized PT, OT, and ST services when prescribed by TRICARE authorized allied health professionals when the allied health professional is acting within the scope of his/her license.

#### *C. Expected Impact and Costs*

The primary impact of this rule will result in less time and expense spent by beneficiaries and referring providers to obtain necessary medical services and supplies. Almost 10,000 beneficiaries visited a primary care provider after seeking care from a podiatrist, but prior to PT services, in 2017. With an average copay/cost-share of \$24 across networks and TRICARE programs, this rule will conservatively save beneficiaries up to \$230,000 per year in cost-sharing and will conservatively save TRICARE \$1.1 million per year as a result of reduced visits to referring providers.

Once beneficiaries initiate an episode of care with an Other Allied Health Professional for a covered disease or condition, they need not return to their Primary Care Manager for an office visit to obtain an examination and referral for PT, OT, or ST services. Assuming two hours by appointment (appointment, travel, waiting room, exam room), beneficiaries will save approximately 20,000 hours each year by not having to visit their referring provider prior to seeking PT, OT, or ST services. Referring providers will also save time, approximately 2,200 hours (15 minutes for a podiatrist to consult with a referring provider regarding a PT prescription) each year, as a result of reduced coordination and paperwork.

The proposed amendment to cover PT, OT, and ST services, when prescribed by a TRICARE-authorized Allied Health Professionals acting within the scope of their license, is not expected to increase the amount of otherwise covered PT, OT, and ST services. This is because prescriptions for such services are currently being written by those providers authorized to do so under the TRICARE program or those providers are countersigning prescriptions from Allied Health Professionals, such as a podiatrist. The DoD does anticipate, however, that there may be a marginal increase in administrative costs to accommodate changes to our contractors' systems, although the overall result of this change will create an efficiency in the process.

This proposed rule does not create new costs to the government, because it falls under the Transfer Payment clause in accordance with OMB Circular A-4. As this rule proposes, TRICARE payments for physical, occupational or speech therapy services provided to military beneficiaries and prescribed by Other Allied Health Professionals, represents an "Insurance Payment" as described in OMB Circular A-4.

#### **II. Regulatory Procedures**

*Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. This proposed rule is not anticipated to have an annual effect on the economy of \$100M or more.

Accordingly, this rule has been reviewed by the Office of Management and Budget.

*Executive Order (E.O.) 13771, "Reducing Regulation and Controlling Regulatory Costs"*

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A-4, this proposed rule does not involve regulatory costs subject to E.O. 13771.

*Congressional Review Act, 5 U.S.C. 804(2)*

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100M or more or have certain other impacts.

This proposed rule is not a major rule under the Congressional Review Act.

*Public Law 96-354, "Regulatory Flexibility Act" (RFA), (5 U.S.C. 601)*

The Regulatory Flexibility Act (RFA) requires that each Federal agency analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This proposed rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, it is certified that this rule is not subject to the requirements of the RFA.

*Public Law 104-4, Sec. 202, "Unfunded Mandates Reform Act"*

Section 202 of the Unfunded Mandates Reform Act of 1995, requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in, any one year of \$100M, as of 1995 exchange rate, updated annually for inflation. That threshold level is

currently approximately \$140M. This proposed rule will not mandate any requirements for state, local, or tribal governments or the private sector.

*Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)*

This rulemaking does not contain a “collection of information” requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. chapter 35).

*Executive Order 13132, “Federalism”*

This proposed rule has been examined for its impact under Executive Order 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

#### 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 proposed to be 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 199.4 is amended by revising paragraph (c)(3)(x)(A) to read as follows:

##### § 199.4 Basic program benefits.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(x) \* \* \*

(A) The services are prescribed and monitored by a physician or other TRICARE authorized allied health professional acting within the scope of their license.

\* \* \* \* \*

- 3. Section 199.6 is amended by revising paragraph (c)(3)(iii)(K)(2) to read as follows:

##### § 199.6 TRICARE-authorized providers.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(K) \* \* \*

(2) The services of the following individual professional providers of

care, to be considered for benefits on a fee-for-service basis, may be provided only if the beneficiary is referred by a physician or other TRICARE authorized Allied Health Professional acting within the scope of their license and a physician or other TRICARE authorized Allied Health Professional acting within the scope of their license must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

\* \* \* \* \*

Dated: April 2, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–06795 Filed 4–5–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 493

[CMS–3355–N]

RIN 0938–AT55

#### Clinical Laboratory Improvement Amendments of 1988 (CLIA) Proficiency Testing Regulations Related to Analytes and Acceptable Performance; Extension of Comment Period

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS; Centers for Disease Control and Prevention (CDC), HHS.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the comment period for the notice of proposed rulemaking with comment entitled “Clinical Laboratory Improvement Amendments of 1988 (CLIA) Proficiency Testing Regulations Related to Analytes and Acceptable Performance” that appeared in the February 4, 2019 **Federal Register**. The comment period for the proposed rule, which would end on April 5, 2019, is extended 60 days.

**DATES:** The comment period for the proposed rule published February 4, 2019, at 84 FR 1536, is extended to 5 p.m., eastern daylight time, on June 4, 2019.

**ADDRESSES:** You may submit comments as outlined in the February 4, 2019

proposed rule (84 FR 1536). Please choose only one method listed.

#### FOR FURTHER INFORMATION CONTACT:

Sarah Bennett, CMS, (410) 786–3531; or Nancy Anderson, CDC, (404) 498–2741.

#### SUPPLEMENTARY INFORMATION:

In the “Clinical Laboratory Improvement Amendments of 1988 (CLIA) Proficiency Testing Regulations Related to Analytes and Acceptable Performance” proposed rule that appeared in the February 4, 2019 **Federal Register** (84 FR 1536), we solicited public comments on proposed changes to current proficiency testing (PT) analytes, including acceptance limits, in addition to technical changes to the PT referral regulations to more closely align them with the CLIA statute.

We received an inquiry from several PT programs regarding the 60-day comment period for the proposed rule. The commenters stated that providing all stakeholders additional time to review and comment would allow them to conduct a more comprehensive review in order to develop detailed responses to the technical aspects of this proposed rule given that it would represent the first comprehensive change to the PT regulations since the implementation of CLIA in 1992.

In order to maximize the opportunity for the public to provide meaningful input to CMS and CDC, we believe that it is important to allow additional time for the public to prepare comments on the proposed rule. In addition, we believe that granting an extension to the public comment period in this instance would further our overall objective to obtain public input on the potential changes related to PT that we are considering. Therefore, we are extending the comment period for the proposed rule for an additional 60 days.

Dated: March 29, 2019.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: April 1, 2019.

**Robert Redfield,**

*Director, Centers for Disease Control and Prevention and Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 2019–06819 Filed 4–4–19; 8:45 am]

**BILLING CODE 4120–01–P**