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DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR Part 199

DOD-2013-HA-0053

RIN 0720-AB59

TRICARE Program; Clarification of Benefit Coverage of Durable Equipment and Ordering or Prescribing Durable Equipment; Clarification of Benefit Coverage of Assistive Technology Devices under the Extended Care Health Option Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes several amendments to the TRICARE regulation. Specifically, the proposed rule revises the definitions of durable equipment (DE) and durable medical equipment (DME) to better conform the language in the regulation to the statute and implementing the statutory requirements will not change current policies. This rule also adds a definition of assistive technology (AT) devices for purposes of benefit coverage under the TRICARE Extended Care Health Option (ECHO) Program and removes the restriction under the TRICARE Basic Program that limits ordering or prescribing of DME to only a physician, to allow certain other authorized individual professional providers acting within the scope of their licensure to order or prescribe DME.

Finally, the proposed rule incorporates a policy clarification relating to luxury, deluxe, or immaterial features of equipment or devices. Namely, TRICARE cannot reimburse for the luxury, deluxe, or immaterial features of equipment or devices.

However, the TRICARE Management Activity (TMA) can reimburse for the base or basic equipment or device that meet the beneficiary's needs. Beneficiaries may pay the provider for the luxury, deluxe, or immaterial features themselves, if they desire their equipment or device to have these "extra features."

DATES: Comments must be received on or before [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

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://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones (303) 676-3401.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

1. Purpose of Regulatory Actions

a. Need for Regulatory Actions

(1) Benefit Coverage for DE, DME and Assistive Technology (AT) Devices. The National Defense Authorization Act for Fiscal Year 2002 revised the coverage of DE under TRICARE. Those revisions resulted in final amendments to the TRICARE regulation regarding the TRICARE Basic Program, effective December 13, 2004, as published in the Federal Register on October 12, 2004 (69 FR 60547), and regarding the TRICARE Extended Health Care Option (ECHO) Program, effective September 20, 2004, as published in the Federal Register on August 20, 2004 (69 FR 51559). The original implementing regulations made a potentially confusing technical distinction between “DE” and “DME”; that is, “DE” was defined as an item that did not qualify as “DME” that otherwise might be available under the TRICARE ECHO Program. This proposed rule provides clarification by correcting the definitions and adding a definition of assistive technology (AT) devices, which conforms to existing policy covering devices not otherwise qualifying as durable equipment.

(2) Ordering and Prescribing DE and DME. The current regulation in §199.4 (d) (3) (ii) (A) (1) does not allow coverage of DME ordered by a TRICARE-authorized individual professional provider of care, with the exception of a doctor of medicine (MD) or a doctor of osteopathy (DO), even though it is permitted by his or her licensure. Specifically, paragraph (d) (3) (ii) (A) (1) states, “Subject to the exceptions in paragraph (d)(3)(ii)(C) of this same section, only DME which is ordered by a physician for the specific use of the beneficiary shall be covered.” Paragraph (d) (1) also states that only a physician can order DME. This restriction causes two problems:

- Certain other TRICARE authorized individual professional providers such as doctors of podiatric medicine (DPMs), doctors of optometry (ODs), doctors of dental surgery (DDSs) and doctors of dental medicine (DMDs), certified nurse midwives (CNMs), certified nurse practitioners (CNPs), certified registered nurse anesthetists (CRNAs), and clinical nurse specialists (CNSs) cannot prescribe DME, even when acting within the scope of their licensure.

- Beneficiaries cannot fill a prescription for DME prescribed by other non-physician professional providers, even when they act as a primary care provider, such as a certified nurse practitioner.

State governments generally regulate the licensure and practice of specific types of health care professionals, and DoD limits TRICARE benefit 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 DME. After assessing the information available, DoD has determined that it is unnecessarily restrictive not to cover DE (including DME) merely because it is ordered by a non-physician. Therefore, the regulation is being amended to allow TRICARE coverage of DE, except for cardiorespiratory monitors, when ordered by a physician or when ordered by any otherwise authorized non-physician allied health care professional, namely, CNMs, CNPs, CRNAs, and CNSs, and certain other authorized individual professional providers, namely DPMs, ODs, DDSs, and DMDs, when acting within the scope of their state license or certificate.

b. Legal Authority for the Regulatory Action

This regulation is proposed under the authorities of 10 U.S.C. section 1073, which authorizes the Secretary of Defense to administer the medical and dental benefits provided in chapter 55 of title 10, United States Code.

The DoD is authorized to provide DE under 10 U.S.C. section 1077(a)(12), which benefit is further defined in 10 U.S.C section 1077(f)(1) and (2). Although section 1077 defines benefits to be provided in the military treatment facilities (MTFs), these benefits are incorporated by reference for the benefits provided by healthcare providers in the private sector to active duty family members and retirees and their dependents through sections 1079 and 1086 respectively. DoD is also authorized to provide a program, generally referred to as ECHO, for dependents of active duty members, who have a qualifying condition under section 1079(d) through (f). The ECHO Program may include DE not otherwise available under the TRICARE Basic Program and AT devices to assist in the reduction of the disabling effects of a qualifying condition.

The DoD is also authorized to cost share, under section 1079 (a) (13) and the 32 CFR part 199, any service or supply that is medically or psychologically necessary to prevent, diagnose or treat a mental or physical illness, injury, or bodily malfunction. The statute identifies specific categories of individual professional providers who may make the diagnosis and recommend the treatment. Section 199.6 (c) (1) (iii) requires TRICARE-authorized individual professional providers to provide medical service and care within the scope of their licensure and training consistent with the state practice act, or within the scope of the test, which was the basis for the individual's certification by the state where the individual renders the service. Paragraph (2) (i) of this same section specifies

that an individual must be currently licensed to render professional health care services in each state in which the individual renders services to CHAMPUS beneficiaries. Such license is required when a specific state provides, but does not require, license for a specific category of individual professional providers. Under section 199.2(b) of this part, other allied health professionals are also defined as “individual professional providers of care other than physicians, dentists, or extramedical individual providers.”

Section 199.2 (b) requires, as part of the definition of “appropriate medical care” that a TRICARE authorized individual professional provider rendering medical care be qualified to perform such medical services because of his or her training and education and is licensed or certified by the state where the service is rendered or by an appropriate national organization, or otherwise meets CHAMPUS standards.

2. Summary of Major Provisions of the Regulatory Action

In this rule, the proposed regulatory language more appropriately conforms to that of the statutory language, which identifies “DME” as a subset of “DE” for purposes of the TRICARE Basic Program. Further, the proposed rule amends the TRICARE regulation on DE to better conform the language in the regulation to the TRICARE statute and clarifies that the policies applicable to DME (e.g., exclusion of luxury features and pricing methods) have been and are applicable to DE.

DoD’s interpretation of the statute and regulation has been, and continues to be, that all DE authorized under the TRICARE Basic Program must be determined to be medically necessary in the treatment of an illness, injury or bodily malfunction before the equipment can be cost shared by TRICARE. Therefore, this technical revision does not change current policies for coverage of DE.

To clarify that the TRICARE ECHO Program includes coverage of AT devices, which do not otherwise qualify as DE, this proposed rule contains a definition and specific criteria for coverage of AT devices for individuals qualified to receive benefits under the ECHO Program.

The proposed rule provides that if a beneficiary wishes to obtain an item of DE that has deluxe, luxury, or immaterial features, the beneficiary shall be responsible for the difference between the price of the item and the TRICARE allowable cost for an otherwise authorized item of DE without such features.

Finally, this proposed rule emphasizes that certain other authorized individual professional providers who are listed in this rule, who are legally authorized to practice by a state, and when they are practicing within the scope of the license permitted by the state licensing authorities, may prescribe or order DE under the TRICARE Program.

3. Summary of Costs and Benefits

This proposed rule is not anticipated to have an annual effect on the economy of \$100 million or more, making it a substantive, non-significant rule under the Executive Order and the Congressional Review Act.

The technical revisions for coverage of DE do not change current policies. DoD's interpretation of the statute and regulation has been, and will continue to be, that all equipment authorized under the TRICARE Basic Program must be determined to be medically necessary in the treatment of an illness, injury or bodily malfunction before the equipment can be cost shared by TRICARE. The proposed amendment to remove the restriction that limits ordering or prescribing of DME to only a MD or DO is not expected to increase the amount of DE and DME prescribed because other providers are currently

writing prescriptions—it only changes who prescribes it. However, DoD anticipates that there may be a marginal increase in administrative cost to accommodate changes to definitions. More importantly, this change will have no impact on beneficiaries eligible for DE.

II. Explanation for Proposed Provisions

Overview

DoD is amending 32 CFR part 199 to specify the following:

§199.2 (Definitions)

- “**Duplicate Equipment.**” AT devices are subject to the definition of duplicate equipment.
- “**Durable Equipment (DE).**” To clarify that DE may be a covered benefit under the TRICARE Basic Program, consistent with 10 U.S.C. 1079 (a) (5) and 10 U.S.C. 1077(a)(12) and (f), DoD is revising the definition of DE as “(1) a medically necessary item, which can withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; and, (3) is generally not useful to an individual in the absence of an illness or injury.” It includes DME, wheelchairs, iron lungs, and hospital beds.
- “**Durable Medical Equipment (DME).**” Consistent with 10 U.S.C. 1079(a)(5) and 10 U.S.C. 1077 (a) (12) and (f), DoD is revising the definition of DME as “DE, which is medically appropriate to (1) improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the beneficiary’s function or condition; or, (2) maximize the beneficiary’s function consistent with the beneficiary’s physiological or medical needs.”

- **“Assistive Technology (AT) Devices.”** AT devices do not treat an underlying injury, illness or disease, or their symptoms. However, to clarify that the TRICARE ECHO Program includes coverage of AT devices, which do not otherwise qualify as DE, DoD is adding a definition of AT devices as “equipment that generally helps overcome or remove a disability and is used to increase, maintain, or improve the functional capabilities of an individual. AT devices may include non-medical devices but do not include any structural alterations (e.g., wheelchair ramps or alterations to street curbs) or service animals (e.g., Seeing Eye dogs, hearing/handicapped assistance animals, etc.). AT devices are authorized only under coverage criteria to assist in the reduction of the disabling effects of a qualifying condition for individuals eligible to receive benefits under the ECHO program as provided in Section 199.5.”

§199.4 (Basic Program Benefits)

DoD clarifies the following for purposes of benefit coverage of DE under the TRICARE Basic Program:

- DE is an authorized benefit when medically necessary for the treatment of a covered illness or injury.
- Authorized DE is a benefit when ordered by certain authorized individual professional providers listed in 199.6(c) of this Part for the specific use of the beneficiary and the equipment provides the medically appropriate level of performance and quality for the beneficiary’s condition.
- Unless otherwise excluded under the regulation, items authorized coverage as DE include (1) DME (including a cardiorespiratory monitor under certain conditions), (2) wheelchairs when medically appropriate to provide basic mobility, (3) iron lungs, and (4)

hospital beds. An electric wheelchair or a TRICARE-approved alternative to an electric wheelchair may be used in lieu of a manual wheelchair when it is medically indicated and appropriate for the individual patient.

- An item that provides a medically appropriate level of performance or quality for the beneficiary's condition does not include luxury, deluxe, or immaterial items. Only the base or basic model of equipment shall be covered, unless any customization of the equipment owned by the beneficiary, or an accessory or item of supply for any DE is essential for (1) achieving therapeutic benefit for the beneficiary; (2) making the equipment serviceable; or (3) otherwise assuring the proper functioning of the equipment. If a beneficiary wishes to obtain an item of DE that has deluxe, luxury, or immaterial features, the beneficiary shall be responsible for the difference between the price of the item and the TRICARE allowable cost for an otherwise authorized item of DE without such features.

- DE, which otherwise qualifies as a benefit, is excluded from coverage if (1) the beneficiary is a patient in a type of facility that ordinarily provides the same type of DE item to its patients at no additional charge in the usual course of providing its services; or (2) DE is available to the beneficiary from a Uniformed Services Medical Treatment Facility.

- DE may be provided on a rental or purchase basis and coverage will be based on the price most advantageous to the government under established procedures.

- Repairs of DE damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen DE, are excluded from Basic Program benefits.

- Repairs of deluxe, luxury or immaterial features of DE are excluded from Basic Program benefits.

§199.5 (TRICARE Extended Care Health Option (ECHO))

DoD clarifies the following for purposes of benefit coverage of DE and AT devices under the ECHO Program:

- An AT device is authorized under certain coverage criteria when necessary to assist in the reduction of the disabling effects of a qualifying condition of the ECHO eligible beneficiary. For beneficiaries eligible for an individual education plan (IEP), AT devices that are recommended as part of the IEP may be covered.

- For those beneficiaries who cease to meet the eligibility requirements for an IEP, AT devices under TRICARE ECHO Program must:

- Be preauthorized;
- Be prescribed by a TRICARE authorized provider;
- Assist in the reduction of the disabling effects of the qualifying ECHO condition; and
- Be an item or educational learning device normally included in an IEP.

Further, the item must not be otherwise covered as a prosthetic, augmentative communication device, or a benefit under the TRICARE Basic Program. The implementing instructions for this provision will be outlined in the TRICARE Policy Manual. As with all aspects of this proposed rule, DoD invites the public's comments on our approach regarding AT devices for those beneficiaries who cease to be eligible for an IEP.

- Repairs of DE or AT devices damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen DE or AT devices, are excluded from ECHO coverage.
- Repairs of deluxe, luxury or immaterial features of DE or AT devices are excluded from ECHO coverage.
- Wheelchairs may exceed the basic mobility limitation when needed to mitigate the effects of the ECHO qualifying condition of the beneficiary.
- DE may be provided on a rental or purchase basis and coverage will be based on the price most advantageous to the government under the same procedures established for pricing DE under the TRICARE Basic Program.

This amendment is published for proposed rulemaking at the same time it is coordinated within the DoD, with the Department of Health and Human Services, and with other interested agencies so consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

III. Response to Comments

Because of the large number of public comments generally received on Federal Register documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** specified section of this preamble, and when we proceed with a subsequent document, we will respond to the major comments in the preamble to that document. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Regulatory Procedure

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been determined that this proposed rule is not a significant regulatory action.

This rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Pub.L. 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Set forth in the proposed rule

are minor revisions to the existing regulation. The DoD does not anticipate a significant impact on the Program.

Pub.L. 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that this proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Act of 1995.

Executive Order 13132, Federalism

It has been certified that this proposed rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, and Military personnel.

Accordingly, 32 CFR Part 199 is amended to read 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, paragraph (b) is amended by adding the definition of “Assistive Technology Devices” and revising the definitions of “Duplicate Equipment,” “Durable Equipment,” and “Durable Medical Equipment” to read as follows:

§199.2 Definitions.

* * * * *

(b) * * *

Assistive technology devices. Equipment that generally does not treat an underlying injury, illness, disease or their symptoms. Assistive technology devices are authorized only under the Extended Care Health Option (ECHO). Assistive technology devices help an ECHO beneficiary overcome or remove a disability and are used to increase, maintain, or improve the functional capabilities of an individual. Assistive technology devices may include non-medical devices but do not include any structural alterations (e.g., permanent structure of wheelchair ramps or alterations to street curbs) service animals (e.g., Seeing Eye dogs, hearing/handicapped assistance animals, etc.) or specialized equipment and devices whose primary purpose is to enable the individual to engage in sports or recreational events. Assistive technology devices are authorized only under coverage criteria determined by the Director, TRICARE Management Activity to assist in the reduction of the disabling effects of a qualifying condition for individuals eligible to receive benefits under the ECHO program, as provided in section 199.5.

* * * * *

Duplicate equipment. An item of durable equipment, durable medical equipment, or assistive technology items, as defined in this section that serves the same purpose that is served by an item of durable equipment, durable medical equipment, or assistive technology item previously cost-shared by TRICARE. For example, various models of stationary oxygen concentrators with no essential functional differences are considered duplicate equipment, whereas stationary and portable oxygen concentrators are not

considered duplicates of each other because the latter is intended to provide the user with mobility not afforded by the former. Also, a manual wheelchair and an electric wheelchair, both of which otherwise meet the definition of durable equipment or durable medical equipment, would not be considered duplicates of each other if each is found to provide an appropriate level of mobility. For the purpose of this Part, durable equipment, durable medical equipment, or assistive technology items that are essential to provide a fail-safe in-home life support system or that replaces in like kind an item of equipment that is not serviceable due to normal wear, accidental damage, a change in the beneficiary's condition, or has been declared adulterated by the U.S. FDA, or is being or has been recalled by the manufacturer is not considered duplicate equipment.

Durable equipment. Equipment that –

- (1) Is a medically necessary item, which can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose; and
- (3) Is generally not useful to an individual in the absence of an illness or injury.

It includes durable medical equipment as defined in 199.2 of this part, wheelchairs, iron lungs, and hospital beds. It does not include equipment (including wheel chairs) used or designed primarily for use in sports or recreational activities.

Durable medical equipment. Durable equipment that is medically appropriate to –

- (1) Improve, restore, or maintain the function of a malformed, diseased, or injured body part or can otherwise minimize or prevent the deterioration of the beneficiary's function or condition; or
- (2) Maximize the beneficiary's function consistent with the beneficiary's physiological or medical needs.

* * * * *

3. Section 199.4 is amended by revising paragraphs (a)(1)(i), (d)(1), (d)(3)(ii), and (g)(43) to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(1)(i) Scope of benefits. Subject to all applicable definitions, conditions, limitations, or exclusions specified in this part, the CHAMPUS Basic Program will cost share medically necessary services and supplies required in the diagnosis and treatment of illness or injury, including maternity care and well-baby care. Benefits include specified medical services and supplies provided to eligible beneficiaries from authorized civilian sources such as hospitals, other authorized institutional providers, physicians, other authorized individual professional providers, and professional ambulance services, prescription drugs, authorized medical supplies, and rental or purchase of durable equipment.

* * * * *

(d) Other benefits-- (1) General. Benefits may be extended for the allowable charge of those other covered services and supplies described in paragraph (d) of this section, which are provided in accordance with good medical practice and established standards of quality by those other authorized providers described in Sec. 199.6 of this Regulation. Such benefits are subject to all applicable definitions, conditions, limitations, or exclusions as otherwise may be set forth in this or other chapters of this Regulation. To be considered for benefits under paragraph (d) of this section, the described services or supplies must be prescribed and ordered by a physician. Other authorized individual

professional providers acting within their scope of licensure may also prescribe and order these services and supplies unless otherwise specified in paragraph (d) of this section.

* * * * *

(3) * * *

(ii) Durable equipment--(A) Scope of benefit. (1) Durable equipment, which is for the specific use of the beneficiary and is ordered by an authorized individual professional provider listed in 199.6 (c) of this Part, acting within his or her scope of licensure shall be covered if the durable equipment meets the definition in section 199.2 and –

(i) Provides the medically appropriate level of performance and quality for the medical condition present and

(ii) Is not otherwise excluded by this Regulation.

(2) Items that may be provided to a beneficiary as durable equipment include:

(i) Durable medical equipment as defined in section 199.2;

(ii) Wheelchairs. A wheelchair, which is medically appropriate to provide basic mobility, including reasonable additional costs for medically appropriate modifications to accommodate a particular physiological or medical need, may be covered as durable equipment. An electric wheelchair, or TRICARE approved alternative to an electric wheelchair (e.g., scooter) may be provided in lieu of a manual wheelchair when it is medically indicated and appropriate to provide basic mobility. Luxury or deluxe wheelchairs, as described in paragraph (3) below, include features beyond those required for basic mobility of a particular beneficiary are not authorized.

(iii) Iron lungs.

(iv) Hospital beds.

(v) Cardiorespiratory monitors under conditions specified in paragraph (d)(3)(ii)(B) of this section.

(3) Whether a prescribed item of durable equipment provides the medically appropriate level of performance and quality for the beneficiary's condition must be supported by adequate documentation. Luxury, deluxe, immaterial, or non-essential features, which increase the cost of the item relative to a similar item without those features, based on industry standards for a particular item at the time the equipment is prescribed or replaced for a beneficiary, are not authorized. Only the "base" or "basic" model of equipment (or more cost-effective alternative equipment) shall be covered, unless customization of the equipment, or any accessory or item of supply for any durable equipment, is essential, as determined by the Director (or designee), for—

- (i) Achieving therapeutic benefit for the patient;
- (ii) Making the equipment serviceable; or
- (iii) Otherwise assuring the proper functioning of the equipment.

* * * * *

(B) * * *

(C) Exclusions. Durable equipment, which is otherwise qualified as a benefit is excluded from coverage under the following circumstances:

(1) Durable equipment for a beneficiary who is a patient in a type of facility that ordinarily provides the same type of durable equipment item to its patients at no additional charge in the usual course of providing its services.

(2) Durable equipment, which is available to the beneficiary from a Uniformed Services Medical Treatment Facility.

(D) Basis for Reimbursement. (1) Durable equipment may be provided on a rental or purchase basis. Coverage of durable equipment will be based on the price most advantageous to the government taking into consideration the anticipated duration of the medically necessary need for the equipment and current price information for the type of item. The cost analysis must include comparison of the total price of the item as a monthly rental charge, a lease-purchase price, and a lump-sum purchase price and a provision for the time value of money at the rate determined by the U.S. Department of Treasury. If a beneficiary wishes to obtain an item of durable equipment with deluxe, luxury, immaterial or non-essential features, the beneficiary may agree to accept TRICARE coverage limited to the allowable amount that would have otherwise been authorized for a similar item without those features. In that case, the TRICARE coverage is based upon the allowable amount for the kind of durable equipment normally used to meet the intended purpose (i.e., the standard item least costly). The provider shall not hold the beneficiary liable for deluxe, luxury, immaterial, or non-essential features that cannot be considered in determining the TRICARE allowable costs. However, the beneficiary shall be held liable if the provider has a specific agreement in writing from the beneficiary (or his or her representative) accepting liability for the itemized difference in costs of the durable equipment with deluxe, luxury, or immaterial features and the TRICARE allowable costs for an otherwise authorized item without such features.

(2) In general, repairs of beneficiary owned durable equipment are covered when necessary to make the equipment serviceable and replacement of durable equipment is allowed when the durable equipment is not serviceable because of normal wear, accidental damage or when necessitated by a change in the beneficiary's condition.

However, repairs of durable equipment damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen durable equipment, are excluded from coverage. In addition, repairs of deluxe, luxury, or immaterial features of durable equipment are excluded from coverage.

* * * * *

(g) * * *

(43) Exercise/relaxation/comfort/sporting items or sporting devices. Exercise equipment, to include items primarily and customarily designed for use in sports or recreational activities, spas, whirlpools, hot tubs, swimming pools health club memberships or other such charges or items.

* * * * *

4. Section 199.5 is amended by revising paragraphs (c)(2), (c)(3), (c)(8)(ii), and (c)(8)(iii), (d)(3), (d)(7), (d)(7)(i), (d)(7)(iv), and (d)(8), (g)(2)(i), (g)(2)(ii), and adding new paragraphs (d)(7)(v) and (h)(4) to read as follows:

§ 199.5 TRICARE extended care health option (ECHO).

* * * * *

(c) * * *

(2) Medical, habilitative, rehabilitative services and supplies, durable equipment and assistive technology (AT) devices that assist in the reduction of the disabling effects of a qualifying condition. Benefits shall be provided in the beneficiary's home or other environment, as appropriate. An AT device may be covered only if it is recommended in a beneficiary's Individual Educational Program (IEP) or, if the beneficiary is not eligible for an IEP, the AT device is an item or educational learning device normally included in

an IEP and is preauthorized under ECHO as an integral component of the beneficiary's individual comprehensive health care services plan (including rehabilitation) as prescribed by a TRICARE authorized provider.

(i) An AT device may be covered under ECHO only if it is not otherwise covered by TRICARE as durable equipment, a prosthetic, augmentation communication device, or other benefit under section 199.4 of this title.

(ii) An AT device may include an educational learning device directly related to the beneficiary's qualifying condition when recommended by an IEP and not otherwise provided by State or local government programs. If an individual is not eligible for an IEP, an educational learning device normally included in an IEP may be authorized as if directly related to the beneficiary's qualifying condition and prescribed by a TRICARE authorized provider as part of the beneficiary's individual comprehensive health care services plan.

(iii) Electronic learning devices may include the hardware and software as appropriate. The Director, TMA shall determine the types and (or) platforms of electronic devices and the replacement lifecycle of the hardware and its supporting software. All upgrades or replacements shall require a recommendation from the individual's IEP or the individual's comprehensive health care services plan.

(iv) Duplicative or redundant hardware platforms are not authorized.

Note: When one or more electronic platforms such as a desktop computer, laptop, notebook or tablet can perform the same functions in relation to the teaching or educational objective directly related to the qualifying condition, it is the intent of this provision to allow only one electronic platform that may be chosen by the beneficiary. Duplicative or redundant platforms are not allowed; however, a second platform may be obtained, if the individual's IEP recommends one platform such as a computer for the majority of the learning objectives, but there exists another objective, which cannot be performed on that

platform. In these limited circumstances, the beneficiary may submit a request with the above justification to the Director, TMA, who may authorize a second device.

(v) AT devices damaged through improper use of the device as well as lost or stolen devices may not be replaced until the device would next be eligible for a lifecycle replacement.

(vi) AT devices do not include equipment or devices whose primary purpose is to assist the individual to engage in sports or recreational activities.

* * * * *

(8) * * *

(ii) Equipment adaptation. The allowable equipment and an AT device purchase shall include such services and modifications to the equipment as necessary to make the equipment useable for a particular ECHO beneficiary.

(iii) Equipment maintenance. Reasonable repairs and maintenance of beneficiary owned or rented DE or AT devices provided by this section shall be allowed while a beneficiary is registered in the ECHO Program. Repairs of DE and/or AT devices damaged while using the item in a manner inconsistent with its common use, and replacement of lost or stolen DE and/or AT devices, are not authorized coverage as an ECHO benefit. In addition, repairs and maintenance of deluxe, luxury, or immaterial features of DE or AT devices are not authorized coverage as an ECHO benefit.

(d) * * *

(3) Structural alterations. Alterations to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment or AT devices to facilitate entrance or exit, are excluded.

* * * * *

(7) Equipment. Purchase or rental of DE and AT devices otherwise allowed by this section is excluded when:

(i) The beneficiary is a patient in an institution or facility that ordinarily provides the same type of equipment or AT devices to its patients at no additional charge in the usual course of providing services; or

(ii) * * *

(iii) * * *

(iv) The item is a duplicate DE or an AT device, as defined in section 199.2 of this title.

(v) The item (or charge for access to such item through health club membership or other activity) is exercise equipment including an item primarily and customarily designed for use in sports or recreational activities, spa, whirlpool, hot tub, swimming pool, an electronic device used to locate or monitor the location of a beneficiary, or other similar item or charge.

(8) Maintenance agreements. Maintenance agreements for beneficiary owned or rented equipment or AT device are excluded.

* * * * *

(g) * * *

(2) Equipment. (i) The TRICARE allowable amount for DE or AT devices shall be calculated in the same manner as DME allowable through section 199.4 of this title, and accrues to the fiscal year benefit limit specified in paragraph (f) (3) of this section.

(ii) Cost-share. A cost-share, as provided by paragraph (f) (2) of this section, is required for each month in which equipment or an AT device is purchased under this

section. However, in no month shall a sponsor be required to pay more than one cost-share regardless of the number of benefits the sponsor's dependents received under this section.

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(h) * * *

(4) Repair or maintenance of DE owned by the beneficiary or an AT device is exempt from the public facility-use certification requirements.

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Patricia L. Toppings
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