

**Effective Date**

(a) This airworthiness directive (AD) is effective September 22, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Corporation Model MD-90-30 airplanes, certificated in any category, as identified in Boeing Service Bulletin MD90-57-016, Revision 2, dated April 28, 2006.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Unsafe Condition**

(e) This AD results from reports of the retract cylinder support fitting for the main landing gear (MLG) failing during gear extension, and subsequently damaging the hydraulic system. The Federal Aviation Administration is issuing this AD to prevent corrosion and damage that could compromise the integrity of the retract cylinder support fitting for the MLG, which could adversely affect the airplane's safe landing.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

**Inspection and Corrective Actions**

(g) Before the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of this AD, whichever occurs later, do a general visual inspection of the retract cylinder support fitting for the MLG and the mating bore in the MLG trunnion fitting for corrosion, install bushings and bearings without cadmium plating in the bore, and do all applicable corrective actions, in accordance with Configuration 1 of the Accomplishment Instructions of Boeing Service Bulletin MD90-57-016, Revision 2, dated April 28, 2006. Do all applicable corrective actions before further flight.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or

opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(h) Doing a general visual inspection, installing bushings and bearings, and doing all applicable corrective actions is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD90-57-016, Revision 1, dated October 26, 2005.

(i) Doing a general visual inspection, installing bushings and bearings, and doing all applicable corrective actions is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD90-57-016, dated September 18, 2002, provided that before the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of this AD, whichever occurs later, electroless nickel fittings are installed, and bushings and bearings without cadmium plating in the bore are installed in accordance with the Accomplishment Instructions of any of the service bulletins listed in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

Document	Revision	Date	Incorporated by reference
Boeing Service Bulletin MD90-57-016 .....	1	October 26, 2005 ....	No.
Boeing Service Bulletin MD90-57-016 .....	2	April 28, 2006 .....	Yes.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5233; fax (562) 627-5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14

CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(k) You must use Boeing Service Bulletin MD90-57-016, Revision 2, dated April 28, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800-0019, Long Beach, California 90846-0001; telephone 206-544-5000, extension 2; fax 206-766-5683; e-mail [dse.boecom@boeing.com](mailto:dse.boecom@boeing.com); Internet <https://www.myboeingfleet.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go

to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on July 28, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010-19328 Filed 8-17-10; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

[Docket ID: DoD-2009-HA-0098]

**RIN 0720-AB36**

**TRICARE: Non-Physician Referrals for Physical Therapy, Occupational Therapy, and Speech Therapy**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is publishing this final rule to provide

TRICARE approval for authorizing certified physician assistants and certified nurse practitioners (non-physicians) to engage in referrals of beneficiaries to the Military Health System for physical therapy, occupational therapy, and speech therapy. Upon implementation of this provision, certified physician assistants, or certified nurse practitioners will be allowed to issue referrals to patients for physical therapy, occupational therapy, and speech therapy without having the patient see a physician. This rule will align TRICARE with Medicare's allowance of "non-physician providers" to provide, certify, or supervise therapy services.

**DATES:** *Effective Date:* This rule is effective September 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Glenn J. Corn, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3566. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

In the **Federal Register** of October 29, 2009, (74 FR 55794), the Office of the Secretary of Defense published for public comment a proposed rule that will permit services of an otherwise TRICARE-authorized individual paramedical provider, physical therapist (PT), occupational therapist (OT), and speech therapist (ST) to be paid on a fee-for-service basis if based on a referral from a certified physician assistant or certified nurse practitioner.

#### **II. Public Comments**

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (74 FR 55794) on October 29, 2009. We received three comments on the proposed rule.

One commenter expressed concern that allowing referrals directly from nurse practitioners or physician assistants will keep patients—or at least their records—from being seen by a physician, and by doing so, it could result in the misdiagnosis of an injury or illness resulting in the wrong treatment action being taken. We appreciate the comment. This rule allows referral from TRICARE-authorized certified nurse practitioners and certified physician assistants to TRICARE-authorized physical therapists, occupational therapists, and speech therapists. All providers are required to practice within the scope of their licensure and, should treatment

require referral to a higher level of professional medical provider, such as referrals or consultations are expected.

A second commenter wanted to speak against the provision that a Doctor of Medicine and especially a Nurse Practitioner or Physician Assistant are qualified to provide oversight to a Doctor of Physical Therapy. The commenter further stated that physical therapists are certified under their respective states and their educational qualifications are equivalent to a graduate of a professional medicine degree program and exceed the education of both the nurse practitioner and physician assistant, who are health professionals and are qualified to provide referral, but not oversight of a physical therapy plan of care. We appreciate the comment and recognize the education and training of those who obtain a Doctor of Physical Therapy degree. However, at this time the Department is only expanding the categories of persons who can make referral to a physical therapist and is not contemplating a revocation of the requirement for oversight of these providers. The Department of Defense's position on this issue is consistent with Medicare's and its allowance of "non-physician providers" to provide, certify, or supervise therapy services.

The third commenter requests that TRICARE policy also allow for the referral of beneficiaries for licensed registered nurse services and audiology services by non-physician practitioners. We appreciate the comment. The proposed rule only proposed expanding referrals by certified nurse practitioners or certified physician assistants to TRICARE-authorized physical therapists, occupational therapists, and speech therapists. Under current TRICARE rules, referrals for licensed registered nurse services and audiologist services can only be made by a physician. At this time the Department of Defense is limiting the certified nurse practitioner and certified physician assistant referral services to physical therapy, occupational therapy, and speech therapy as outlined in the proposed rule. At this time the Department does not intend to expand this rule to include a referral for registered nurse services or audiology. At this time the Department feels the need for these services are best assessed by a physician.

#### **III. Regulatory Procedures**

*Executive Order 12866, "Regulatory Planning and Review"*

Section 801 of Title 5, United States Code (U.S.C.), and Executive Order

(E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

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

It has been certified that this 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 1 year.

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

The Regulatory Flexibility Act (RFA) requires each Federal agency to prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly affect a substantial number of small entities for purposes of the RFA.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

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). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

*Executive Order 13132, "Federalism"*

This rule has been examined for its impact under E.O. 13132 and 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 power 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 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, certified physician assistant or certified nurse practitioner.

\* \* \* \* \*

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

**§ 199.6 TRICARE-authorized providers.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(K) *Other individual paramedical providers.* (1) 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 for the treatment of a medically diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(i) Licensed registered nurses.

(ii) Audiologists.

(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, a certified physician assistant or certified nurse practitioner and a physician, a certified physician assistant, or certified nurse practitioner must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(i) Licensed registered physical therapist and occupational therapist.

(ii) Licensed registered speech therapists (speech pathologists).

\* \* \* \* \*

Dated: August 10, 2010.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

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**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

[Docket ID: DOD-2009-HA-0096]

RIN 0720-AB34

**TRICARE: Transitional Assistance Management Program (TAMP)**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is publishing this final rule to implement section 4 of the Hubbard Act and section 734 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. These Acts provide two new categories of beneficiaries for the Transitional Assistance Management Program (TAMP). Specifically, a member who receives a sole survivorship discharge and a member who is separated from Active Duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component are eligible for TAMP.

**DATES:** *Effective Date:* This rule is effective September 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Glenn J. Corn, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3566. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

**SUPPLEMENTARY INFORMATION:****I. Background**

In the **Federal Register** of November 27, 2009, (74 FR 62269), the Office of the Secretary of Defense published for public comment a proposed rule establishing two new eligibility categories under TAMP. The TAMP benefit provides continued TRICARE coverage for a period of 180 days. For those who qualify, the 180 day time frame begins upon the Active Duty member's separation.

**II. Explanation of Provisions**

Public Law 110-317 amended section 1145(a)(2) of title 10, U.S.C. by adding "a member who receives a sole survivorship discharge (as defined in section 1174(i) of this title)" as an additional category of TAMP eligible. The provision is effective August 29, 2008.

Public Law 110-471 amended section 1145(a)(2) of title 10, U.S.C. by adding "A member who is separated from Active Duty who agrees to become a

member of the Selected Reserve of the Ready Reserve of a reserve component." This provision is effective October 14, 2008.

This final rule establishes these two new eligibility categories under TAMP.

**III. Public Comments**

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (74 FR 62269) on November 27, 2009. No comments were received.

**IV. Regulatory Procedures**

*Executive Order 12866, "Regulatory Planning and Review"*

Section 801 of Title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule; however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

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

It has been certified that this 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.

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

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly affect a substantial number of small entities for purposes of the RFA.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

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). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

*Executive Order 13132, "Federalism"*

This rule has been examined for its impact under E.O. 13132 and does not contain policies that have federalism