

**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 199.5 is amended by adding paragraph (c)(8)(iv) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(8) \* \* \*

(iv) *Applied Behavior Analysis (ABA) for ECHO-registered beneficiaries with an Autism Spectrum Disorder.* Applied Behavior Analysis (ABA) is an “Other service” as that term is used in 10 U.S.C. 1079(e), that may be reimbursed to an applied behavior analysis authorized provider to address the effects of an Autism Spectrum Disorder. Reimbursement for ABA services will be as determined by the Director, TRICARE Management Activity.

(A) Services provided by this paragraph are subject to the requirements of paragraph (d)(10) of this section.

(B) Definition of specific terms used in this paragraph and Section 199.6 of this part.

(1) *Applied Behavior Analysis (ABA) Authorized Provider.* An individual, a corporation, a foundation, or a public entity meeting the requirements of § 199.6(e)(2)(iv) of this part who or that provides ABA services to ECHO-registered beneficiaries diagnosed with an Autism Spectrum Disorder.

(2) *Applied Behavior Analysis (ABA) Services.* Such non-medical services determined by the Director, TMA to be appropriate to reduce the disabling effects of ASD for ECHO-registered beneficiaries, which may include, but are not limited to: conducting the initial and ongoing Functional Behavioral Assessments and Analysis; developing and revising as necessary the Behavior Plan that details the ABA intervention services and methods to be used; supervising or directing ABA Tutor(s); training the beneficiary’s primary caregivers to reinforce the interventions detailed in the Behavior Plan; and periodically reporting the beneficiary’s progress to the primary caregivers.

(3) *Applied Behavior Analysis (ABA) Supervisor.* An individual Applied Behavior Analysis (ABA) Authorized Provider who provides ABA Services through the supervision and direction of ABA Tutors. Only individuals who are Applied Behavior Analysis (ABA) Authorized Providers may act as Supervisors. Corporations, foundations

or public entities may not act as ABA Supervisors.

(4) *Applied Behavior Analysis (ABA) Tutor.* An individual who renders one-on-one ABA interventions to a TRICARE beneficiary diagnosed with an Autism Spectrum Disorder. ABA Tutors are not considered an “Authorized Provider” (refer to § 199.2 of this part) or an “Authorized Applied Behavior Analysis (ABA) Provider” and are not eligible for direct reimbursement by TRICARE.

(5) *Autism Spectrum Disorders.* The Pervasive Development Disorders listed in the *Diagnostic and Statistical Manual of Mental Disorders*, [DSM–IV–TR (fourth edition, text revision), 2000], or a superseding current edition of the DSM, specifically, “Autistic Disorder”, “Rett’s Disorder”, Childhood Disintegrative Disorder”, “Asperger’s Disorder”, and “Pervasive Development Disorder Not Otherwise Specified (including Atypical Autism)” *Applied Behavior Analysis (ABA) Authorized Provider.*

\* \* \* \* \*

3. Section 199.6 is amended by adding paragraphs (e)(2)(iv) through (e)(2)(iv)(D) in to read as follows:

**§ 199.6 TRICARE-Authorized Providers.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iv) *ECHO Applied Behavior Analysis (ABA) Authorized Provider.*

(A) The following are authorized providers of Applied Behavior Analysis (ABA) services authorized by § 199.5(c)(8)(iv) of this part to address the effects of a diagnosed Autism Spectrum Disorder (ASD):

(1) Psychiatrists, clinical psychologists, certified psychiatric nurse specialists, and clinical social workers who provide ABA services within the scope of their license as an individual professional provider.

(2) Individuals who meet all ABA-related applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which ABA services are rendered.

(3) Where such licensing or regulatory requirements referenced in paragraph (e)(2)(iv)(A)(2) of this section do not exist, an individual who maintains current certification by the Behavior Analyst Certification Board (BACB).

(4) A corporation, foundation, or public entity that renders ABA services and that meets all applicable licensing or other regulatory requirements of the state, county, municipality, or other political jurisdiction in which ABA services are rendered.

(B) All providers under paragraph (e)(2)(iv)(A) of this section shall maintain a current Participation Agreement with the Director, TRICARE Management Activity.

(C) Reimbursement for ABA Services may be made to the following:

(1) ABA Authorized Providers under paragraphs (e)(2)(iv)(A)(1) through (3) of this section for ABA Services provided by themselves directly to ECHO-registered beneficiaries or for the ABA Services rendered by ABA Tutors under their supervision and direction.

(2) ABA Authorized Providers under paragraph (e)(2)(iv)(A)(4) of this section for ABA Services provided to ECHO-registered beneficiaries when rendered in accordance with the requirements of this Section by individuals employed by or under contract with an ABA Authorized Provider described in paragraph (e)(2)(iv)(A)(4) of this section.

**Note:** Tutors shall meet all requirements established by the Director, TRICARE Management Activity. Tutors are not “ECHO Applied Behavior Analysis (ABA) Authorized Providers” and are not eligible for direct TRICARE reimbursement for ABA services they render.

(D) TRICARE reimbursement for ABA services shall be the TRICARE allowed amount as determined by the Director, TRICARE Management Activity.

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Dated: December 23, 2011.

**Aaron Siegel,**

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

[FR Doc. 2011–33384 Filed 12–28–11; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DOD–2011–HA–0085]

RIN 0720–AB54

**32 CFR Part 199****TRICARE; Removal of the Prohibition to Use Addictive Drugs in the Maintenance Treatment of Substance Dependence in TRICARE Beneficiaries**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes revisions to remove the exclusion of drug abuse maintenance programs and allow as part of a comprehensive treatment plan for an individual with substance dependence, the substitution of a therapeutic drug with addictive potential for a drug of addiction (e.g. the

substitution of methadone for heroin). The current regulation prohibits drug maintenance programs where one addictive substance is substituted for another. However, this prohibition of maintenance treatment of substance dependence utilizing a specific category of psychoactive agent is outdated and fails to recognize the accumulated medical evidence supporting certain maintenance programs as one component of the continuum of care necessary for the effective treatment of substance dependence. Current medical evidence shows that this is medically or psychologically necessary and integral to the safe and effective treatment of drug abuse as is generally required for all treatment benefits for inclusion in the TRICARE benefit.

**DATES:** Written comments received at the address indicated below by February 27, 2012 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:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301-1160.

*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:** CAPT Robert DeMartino, TRICARE Management Activity, Office of the Chief Medical Officer, telephone (703) 681-0070.

**SUPPLEMENTARY INFORMATION:**

Contingency operations involving DoD personnel are now in their tenth year. The advances in battlefield injury protection and medicine have drastically reduced the number of battlefield deaths and have returned our Service members home, injured, but prepared to recover. For many, pain related to injuries must be treated for many months and such long-term use of pain medications has put our Service members using those medicines at risk for dependence. This reality makes it ever more important to ensure that all safe and effective treatments for

substance dependence are available to our Service members.

The current TRICARE regulation prohibits drug maintenance programs where a therapeutic drug with addictive potential is substituted for a drug of addiction. However, medicine is constantly evolving including in the area of drug addiction treatments. In the past, there was not sufficient reliable evidence as that term is used in the TRICARE regulations at 32 CFR 199.4(g)(15), to establish that the substitution of one addictive drug for another was an effective part of a drug treatment program.

The changes proposed to the CFR will remove the specific prohibition on coverage of drug maintenance programs when one addictive drug is substituted for another, thereby allowing treatment regimens involving the substitution of one addictive drug for another when it is a medical necessity and appropriate for an individual beneficiary.

**Regulatory Procedures**

*Executive Order 12866 and Executive Order 13563*

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, distributive 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 rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

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

Section 202 of Public Law 104-4, “Unfunded Mandates Reform Act,” requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million in any one year. 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,

and thus this proposed rule is not subject to this requirement.

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

Public Law 96-354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

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

This rule 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”*

E.O. 13132, “Federalism,” requires that an impact analysis be performed to determine whether the rule has 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. It has been certified that this proposed rule does not have federalism implications, as set forth in E.O. 13132.

**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 (e)(11) introductory text, and removing and reserving paragraph (e)(11)(ii), to read as follows:

**§ 199.4 Basic program benefits. \* \* \***

\* \* \* \* \*

(e) \* \* \*

(11) *Drug abuse.* Under the Basic Program, benefits may be extended for medically necessary prescription drugs

required in the treatment of an illness or injury or in connection with maternity care (refer to paragraph (d) of this section). However, CHAMPUS benefits cannot be authorized to support or maintain an existing or potential drug abuse situation whether or not the drugs (under other circumstances) are eligible for benefit consideration and whether or not obtained by legal means. Drugs, including addictive drugs, prescribed to beneficiaries undergoing medically supervised treatment for a substance use disorder are not considered to be in support of, or to maintain, an existing or potential drug abuse situation and are allowed. The Director, TRICARE Management Activity may prescribe appropriate policies to implement this prescription drug benefit for those undergoing medically supervised treatment for a substance use disorder.

\* \* \* \* \*

(ii) [Reserved]

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Dated: December 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-33106 Filed 12-28-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2011-0029-201163; FRL-9613-1]

#### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina and South Carolina; Charlotte; Determination of Attainment by Applicable Attainment Date for the 1997 8-Hour Ozone Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine pursuant to the Clean Air Act (CAA), that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, ozone nonattainment area (hereafter referred to as "the bi-state Charlotte Area" or "the Area") has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) by its applicable attainment date of June 15, 2011. The determination of attainment was made by EPA on November 15, 2011, based on quality-assured and certified monitoring data for the 2008-2010 monitoring period. EPA is now

proposing to find that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by its applicable attainment date. EPA is proposing this action because it is consistent with the CAA and its implementing regulations.

**DATES:** Comments must be received on or before January 30, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0029, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: [benjamin.lynora@epa.gov](mailto:benjamin.lynora@epa.gov).

3. *Fax*: (404) 562-9019.

4. *Mail*: EPA-R04-OAR-2011-0029, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2011-0029." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this attainment determination, contact Mr. Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9043; email address: [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov). For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562-9029; email address: [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

#### SUPPLEMENTARY INFORMATION:

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What is the air quality in the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS for the 2008-2010 monitoring period?
- IV. What is the proposed action and what is the effect of this action?
- V. Statutory and Executive Order Reviews