

**§ 1.355–8 Definition of predecessor and successor and limitations on gain recognition under section 355(e) and section 355(f).**

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- (h) \* \* \*  
 (8) \* \* \*  
 (ii) \* \* \*

(A) \* \* \* The Reflection of Basis Requirement is satisfied because that C stock had a basis prior to the Distribution that was determined in whole or in part by reference to the basis of Separated Property (Asset 1 and Asset 2, respectively), and was neither distributed in a distribution to which section 355(e) applied nor transferred in a transaction in which the gain on that C stock was recognized in full during the Plan Period prior to the Distribution.

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**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2020–05040 Filed 3–16–20; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9888]

RIN 1545–BN18

**Guidance Under Section 355(e) Regarding Predecessors, Successors, and Limitation on Gain Recognition; Guidance Under Section 355(f); Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains a correction to final regulations (TD 9888) that were published in the **Federal Register** on Wednesday, December 18, 2019. The final regulations provide guidance regarding the distribution by a distributing corporation of stock or securities of a controlled corporation without the recognition of income, gain, or loss.

**DATES:** This correction is effective on March 17, 2020. For dates of applicability, see § 1.355–8(i).

**FOR FURTHER INFORMATION CONTACT:** W. Reid Thompson, (202) 317–5024, or Richard K. Passales, (202) 317–5024 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9888) (84 FR 69308, Dec. 18, 2019) that are the subject of this correction are issued under section 355 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9888), contain an error that needs to be corrected.

**Correction of Publication**

Accordingly, the final regulations (TD 9888), that are the subject of FR Doc. 2019–27110, appearing on page 69308 in the **Federal Register** of Wednesday, December 18, 2019, are corrected as follows:

1. On page 69312, in the third column, the eighth line from the bottom of the first full paragraph, “8T(b)(2)(vi)(B)(2)” is corrected to read “8T(b)(2)(vi)”.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2020–05041 Filed 3–16–20; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

[Docket ID: DOD–2018–HA–0028]

RIN 0720–AB72

**TRICARE; Addition of Physical Therapist Assistants and Occupational Therapy Assistants as TRICARE-Authorized Providers**

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is publishing this final rule to add licensed or certified physical therapist assistants (PTAs) and occupational therapy assistants (OTAs) as TRICARE-authorized providers to engage in physical therapy or occupational therapy under the supervision of a TRICARE-authorized licensed registered physical therapist or occupational therapist in accordance with Medicare’s rules for supervision and qualification. This rule aligns TRICARE with Medicare’s policy, which permits PTAs or OTAs to provide physical or occupational therapy when supervised by a licensed registered physical therapist or occupational therapist.

**DATES:** This rule is effective April 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Erica Ferron, Defense Health Agency, Medical Benefits and Reimbursement Section, 303–676–3626 or *erica.c.ferron.civ@mail.mil*.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary and Overview**

*A. Purpose of the Final Rule*

This final rule implements section 721 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA–18), and advances two of the components of the Military Health System’s quadruple aim of improved readiness and better health. The TRICARE Basic benefit currently includes physical therapy (PT) and occupational therapy (OT) services rendered by TRICARE-authorized providers within the scope of their license when prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. Allowing licensed registered physical therapists and occupational therapists to include those services of qualified assistants performing under their supervision as covered services may increase access to PT and OT services, and increase beneficiary choice in provider selection. Adding coverage of services by authorized therapy assistants may increase access at the same time the Agency anticipates that an active and aging beneficiary population will increasingly use these services.

*B. Summary of the Major Provisions of the Final Rule*

The major provisions of the final rule are:

- The addition of licensed or certified PTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 Code of Federal Regulations (CFR) 484.115 or successor regulation). Services must be furnished under the supervision of a TRICARE-authorized licensed registered physical therapist.

- The addition of licensed or certified OTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 CFR 484.115 or successor regulation). Services must be furnished under the supervision of a TRICARE-authorized licensed registered occupational therapist.

*C. Costs and Benefits*

PT and OT services are covered benefits of the TRICARE program, authorized at 32 CFR 199.4. We estimate

that as a result of this rule, there will be a one-percent increase in the use of PT and OT services. The cost of increased utilization, along with first-year implementation costs of \$350,000, is estimated at \$20 million over five years.

The financial effect of this rule is not in the nature of economic costs or imposition of private expenditures to comply with Federal regulations. Rather, the rule involves fairly modest changes in federal health benefits payments. Consistent with OMB Circular A-4, such economic effects are considered “transfer payments” caused by Federal budget action, rather than regulatory benefits or costs that require additional analysis.

## II. Discussion of Final Rule

### A. Introduction and Background

Title 32 CFR 199.4(c)(3)(x) states that assessment and treatment services of a TRICARE-authorized physical therapist or occupational therapist may be cost-shared under certain conditions when prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. In addition, 32 CFR 199.6(c)(3)(iii)(K)(2) recognizes licensed registered physical therapists and occupational therapists as TRICARE-authorized providers when PT and OT services meet the conditions and are prescribed and monitored as described in the previous sentence. This rule extends coverage of PT and OT services, as required by NDAA-18, to include services provided by licensed or certified PTAs or OTAs operating under the supervision of a TRICARE-authorized licensed registered physical therapist or occupational therapist.

#### PTAs—Qualifications

PTAs typically hold an associate’s degree in PT and are licensed by the state in which they practice. This rule ties the qualifications of PTAs under the TRICARE program to Medicare’s requirements as codified at 42 CFR 484.115 (or successor regulation).

#### PTAs—Supervision Requirements

Under this rule, TRICARE’s supervision requirements match, to the extent practicable, Medicare’s. The Defense Health Agency (DHA) intends, in implementing instructions, to follow Medicare’s requirements as found within Medicare’s policy instructions. DHA will rely primarily on Medicare Benefit Policy Manual 100–02 Chapter 15, Covered Medical and Other Health Services, Sections 220 and 230, but will also refer to other related issuances and manuals, including facility-specific

chapters of the Medicare Benefit Policy Manual.

Direct supervision will be required in a private practice setting. The supervising physical therapist will be required to be in the office suite where the PTA is located and immediately available to furnish assistance and direction throughout the performance of the procedure. The supervising physical therapist will not be required to be in the room with the PTA while the procedure is performed.

General supervision will be required in all settings other than private practice. General supervision will require that procedures be performed by the PTA under the physical therapist’s overall direction and control, but the physical therapist’s presence will not be required during the performance of the procedure. Under general supervision, the training of the PTA who actually performs the procedure and maintenance of the necessary equipment and supplies will be the continuing responsibility of the physical therapist. Medicare’s supervision requirements vary further by setting and DHA intends, where appropriate, to follow these setting-specific requirements.

In cases where state or local supervision laws are more stringent, the DHA will require physical therapists and the PTAs they supervise to follow state or local laws. Services provided by PT aides or other personnel, even if under the supervision of a TRICARE-authorized licensed registered physical therapist or PTA, are not covered. Services provided by PTAs incident to services provided by physicians or other licensed or qualified providers other than physical therapists are not covered, as only physical therapists can supervise PTAs. If Medicare makes changes to its supervision requirements, the DHA will evaluate the changes and determine whether to make similar changes; any changes deemed appropriate shall be added to the implementing instructions.

#### PTAs—Reimbursement Requirements

TRICARE is required by statute (Title 10 United States Code (U.S.C.) chapter 55, § 1079(h)(1)) to reimburse like Medicare, to the extent practicable. PT services will continue to be reimbursed under existing TRICARE reimbursement methodology, including the CHAMPUS Maximum Allowable Charge (CMAC) methodology and applicable diagnosis-related groups, except that any Medicare reimbursement requirements specific to services provided by PTAs will also be adopted, when practicable. Services provided by a PTA above the skill-level

of a PTA shall not be reimbursed. This includes, but is not limited to, evaluations and re-evaluations. Services provided by a PTA beyond the scope permitted by state or local law shall not be reimbursed.

#### OTAs—Qualifications

OTAs typically hold an associate’s degree and are licensed by the state in which they practice. This rule ties the qualifications of OTAs under the TRICARE program to Medicare’s requirements as codified at 42 CFR 484.115 (or successor regulation).

#### OTAs—Supervision Requirements

Under this rule, TRICARE’s supervision requirements match, to the extent practicable, Medicare’s. The DHA intends, in implementing instructions, to follow Medicare’s requirements as found within the Medicare’s policy instructions. DHA will rely primarily on Medicare Benefit Policy Manual 100–02 Chapter 15, Covered Medical and Other Health Services, Sections 220 and 230, but will also refer to other related issuances and manuals including facility-specific chapters of the Medicare Benefit Policy Manual.

Direct supervision will be required in a private practice setting. The supervising occupational therapist will be required to be in the office suite where the OTA is located and immediately available to furnish assistance and direction throughout the performance of the procedure. The supervising occupational therapist will not be required to be in the room with the OTA while the procedure is performed.

General supervision will be required in all settings other than private practice. General supervision will require that procedures be performed by the OTA under the occupational therapist’s overall direction and control, but the occupational therapist’s presence will not be required during the performance of the procedure. Under general supervision, the training of the OTA who actually performs the procedure and maintenance of the necessary equipment and supplies will be the continuing responsibility of the occupational therapist. Medicare’s supervision requirements vary further by setting and DHA intends, where appropriate, to follow those setting-specific requirements.

In cases where state or local supervision laws are more stringent, the DHA will require occupational therapists and the OTAs they supervise to follow state or local laws. Services provided by OT aides or other personnel, even if under the supervision

of a TRICARE-authorized licensed registered occupational therapist or OTA, are not covered. Services provided by OTAs incident to services provided by physicians or other licensed or qualified providers other than occupational therapists are not covered, as only occupational therapists can supervise OTAs. If Medicare makes changes to its supervision requirements, the DHA will evaluate the changes and determine whether to make similar changes; any changes deemed appropriate shall be added to the implementing instructions.

#### OTAs—Reimbursement Requirements

TRICARE is required by statute (10 U.S.C. 55, § 1079(h)(1)) to reimburse like Medicare, to the extent practicable. OT services will continue to be reimbursed under existing TRICARE reimbursement methodology, including the CMAC and applicable diagnosis-related groups, except that any Medicare reimbursement requirements specific to services provided by OTAs will also be adopted, when practicable. Services provided by an OTA above the skill-level of an OTA shall not be reimbursed. This includes, but is not limited to, evaluations and re-evaluations. Services provided by an OTA beyond the scope permitted by state or local law shall not be reimbursed.

#### Updated Referral Definition

In order to fully implement section 721 of the NDAA for 2018, DHA is updating the definition of referrals to remove the limitation that only physicians can make referrals and to distinguish between necessary referrals for general benefit coverage and referrals required under TRICARE Prime for Prime enrollee care. All referral requirements are provided in the regulations and in the implementing instructions. No new referral authority is granted with this change; rather, it makes the referral definition consistent with existing referral authorities including that certified nurse practitioners and certified physician assistants can make referrals to licensed registered physical therapists and occupational therapists.

### III. Public Comments

The TRICARE proposed rule on the addition of PTAs and OTAs as TRICARE-authorized providers (83 FR 65323) was published on December 20, 2018, and provided a 60-day public comment period. As a result of publication of the proposed rule, DHA received 681 comments, most of which strongly supported adding PTAs and OTAs as authorized providers under

TRICARE. Following is a summary of the public comments and our responses.

#### 1. Provisions of the Proposed Rule

A. The proposed rule proposed to add licensed or certified PTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 Code of Federal Regulations (CFR) 484.4). Services were required to be furnished under the supervision of and billed by a licensed or certified TRICARE-authorized physical therapist.

B. The proposed rule proposed to add licensed or certified OTAs as TRICARE-authorized providers, operating under the same qualifications established by Medicare (42 CFR 484.4). Services were required to be furnished under the supervision of and billed by a licensed or certified TRICARE-authorized occupational therapist.

#### 2. Analysis of Major Public Comments

##### A. Terminology

*Comment 1:* We received many comments requesting DHA refer to assistants to physical therapists as physical therapist assistants, not physical therapy assistants.

*Response:* We concur with this comment and have revised the rule using of the term physical therapist assistants throughout. This term has been corrected throughout the preamble and in the one place in the regulatory text where it occurred (§ 199.6(c)(3)(iii)(K)(2)(i)).

*Comment 2:* Many commenters requested DHA remove the term “certified” in front of physical therapists.

*Response:* The rule has been revised to use licensed registered physical therapists throughout, consistent with language in the existing regulation. This edit does not appear in the regulatory text but has been corrected in the preamble of this final rule.

*Comment 3:* Many commenters were supportive of DHA using Medicare’s requirements for qualifications of PTAs and OTAs. Some commentators requested DHA revise the rule to correct the location of Medicare’s codification for PTA and OTA qualifications, which is 42 CFR 484.115, not § 484.4.

*Response:* The NDAA–18 mandated DHA follow Medicare’s qualifications for PTAs and OTAs as found in 42 CFR 484.4 or successor regulation. After passage of the NDAA, Medicare revised its regulations, resulting in a new citation for the qualifications of PTAs and OTAs. DHA has revised the rule and regulation to contain the new regulatory citation (§ 484.115), and has

added verbiage pointing to “or successor regulation” to avoid future concerns if Medicare revises its qualification regulations.

*Comment 4:* Two commenters noted that the Medicare Benefit Policy Manual Chapter cited in the proposed rule was incorrect. They requested this citation be updated to clarify that Medicare Benefit Policy Manual Chapter 15 Sections 220 and 230 would be followed.

*Response:* DHA acknowledges the error and has corrected the reference in the final rule. The Medicare Benefit Policy Manual Chapter DHA intends to reference in developing most of its implementing instructions on PTAs and OTAs is Medicare Benefit Policy Manual 100–02 Chapter 15, Covered Medical and Other Health Services, Sections 220 and 230. In some cases, the DHA will turn to other issuances or manuals for clarifying information, including facility-specific chapters of the Medicare Benefit Policy Manual. If Medicare revises, renumbers, or otherwise relocates its guidance on PTAs and OTAs, DHA will use the new policy information, where appropriate.

##### B. Supervision of PTAs and OTAs

*Comment 5:* Many commenters were supportive of matching TRICARE’s supervision requirements to Medicare’s. Many commenters requested DHA clarify whether direct supervision would require the supervising physical therapist or occupational therapist to be in the room with the PTA or OTA, or whether the supervising therapist would only be required to be in the office suite.

*Response:* DHA intends to use Medicare’s definition of direct supervision. That is, the physical therapist or occupational therapist will be required to be in the office suite where the PTA or OTA is located and immediately available to furnish assistance and direction throughout performance of the procedure. The supervising physical therapist or occupational therapist will not be required to be in the room with the PTA or OTA while the procedure is performed.

*Comment 6:* Some commenters requested DHA clarify the supervision requirements for specific types of facilities (e.g., rehabilitation settings).

*Response:* Providing specific supervision requirements for each facility type that provides PT or OT under the TRICARE program within this final rule could negate the DHA’s authority to promptly recognize by administrative policy, rather than the much longer CFR amendment process, changes to supervision requirements

when enacted by Medicare. The DHA intends to follow Medicare's supervision requirements to the extent practicable; those requirements are currently available at the Medicare Benefit Policy Manual 100-02 Chapter 15 sections 220 and 230, along with Medicare Benefit Policy Manuals for specific facilities types (home health agencies, combined outpatient rehabilitation facilities, etc.).

*Comment 7:* Some commenters disagreed with using Medicare's supervision requirements because Medicare requires direct supervision in private practice, while allowing general supervision in all other settings. These commenters requested DHA consider allowing all PTAs and/or OTAs to operate under general supervision. They argued that requiring direct supervision for private practice in rural areas would create long wait lists and otherwise impact patient care.

*Response:* The decision to match TRICARE's PTA and OTA supervision requirements to Medicare's was made so that providers operating under both programs would only have to follow one set of rules (to the extent practicable); additionally, Medicare's rules have been in place for many years and have the benefit of having been field-tested. It is simpler and more appropriate to follow Medicare's requirements. Should Medicare revise its supervision requirements for therapists in private practice (or other settings), the DHA will evaluate and revise its requirements in implementing instructions, where appropriate.

*Comment 8:* One commenter expressed concern over adding OTAs as authorized providers or reimbursing other than skilled practitioners. In particular, this commenter was concerned with giving assistants the ability to treat without direct supervision.

*Response:* In determining which providers to authorize to provide services to TRICARE beneficiaries, DHA weighs a number of factors, including the quality of care provided by the provider type and beneficiary access to needed care. In adopting Medicare's supervision and qualification requirements, beneficiaries will have increased access to care that has been quality tested through the many years of PTA and OTA authorization under Medicare. If, after implementation, the DHA becomes aware of issues with the quality of care provided by PTAs or OTAs, the DHA will have the regulatory flexibility to determine that it is no longer practicable to mirror Medicare's supervision requirements and make changes accordingly.

#### C. Scope of Practice of PTAs and OTAs

*Comment 9:* Two commenters expressed concern over the use of examples of services provided by PTAs and OTAs in the proposed rule, arguing that these examples could be seen as limiting the services of PTAs and OTAs. One commenter expressed concern over limiting OTAs to less complex and/or simpler tasks.

*Response:* The provided examples were not intended to be a comprehensive list of services provided by PTAs and OTAs. However, the DHA is sensitive to concerns about inadvertent limiting of the scope of practice of the providers under TRICARE and has removed reference to specific tasks performed by PTAs and OTAs. PTAs and OTAs will continue to be prohibited from performing services outside their scope of practice or license.

#### D. Billing and Reimbursement

*Comment 10:* Many commenters requested the DHA clarify when services should be billed under the supervising physical therapist or occupational therapist's national provider identification (ID) number, and when services should be billed under the facility or organization's provider ID number. One commenter supported requiring PTAs to be billed under the physical therapist's provider ID number.

*Response:* DHA's intention in stating within the rule that services of therapy assistants would be required to be billed under the supervising therapist was intended to apply to professional services and to indicate that therapy assistants could not bill under their own national provider ID number. In response to concerns raised by the commenters, DHA has removed reference to billing requirements under the final rule. Billing of therapy services will continue as they have under existing TRICARE policy and regulation, with the exception that professional services shall not be billed by a PTA or OTA under his or her own provider ID, but shall instead be billed under the provider ID of the supervising therapist.

*Comment 11:* One commenter requested DHA clarify that billing OTA services under the occupational therapist's provider ID does not mean that OTA services are included in the bill for the occupational therapist's services.

*Response:* DHA concurs that the existing regulatory language was confusing and has removed reference to therapy assistant services being included in the services of the supervising therapist. When a therapist

and therapy assistant separately provide services to a beneficiary (*i.e.*, not at the same time), those services are separately reimbursable if they would have otherwise been reimbursable should both therapy sessions have been provided by the therapist.

*Comment 12:* One commenter requested DHA reimburse PTAs at the same rate as physical therapists rather than using Medicare's reimbursement methodology.

*Response:* The DHA is required by statute (10 U.S.C. 1079(h)(1)) to reimburse like Medicare where practicable. It is practicable to follow Medicare reimbursement for these services. The final rule language has been edited to make clear TRICARE's statutory requirement and intent to follow Medicare's reimbursement methodologies.

#### E. Referral Definition

*Comment 13:* Several commenters requested clarification on changes to the referral definition. One commenter asked how it applied to non-physician practitioners (NPPs) and asked whether NPPs would now be able to make referrals and sign orders. One commenter asked if PTs and OTs would now be allowed to give referrals. One commenter requested DHA clarify the anticipated impact of updating the referral definition. One commenter expressed concern that the proposed language could be misinterpreted to require physician referrals in most cases and offered alternative language.

*Response:* The updated referral definition confers no new referral authority, but makes language consistent with existing regulatory restrictions regarding referrals. Historically, a physician was required to make all referrals under the TRICARE program. However, in recent years, changes to the regulation have been made to extend the right to make referrals to other provider types. Of note, certified nurse practitioners and certified physician assistants were given the right to refer patients to licensed registered physical therapists and occupational therapists, and licensed registered speech therapists. Prior to this final rule, the referral definition continued to limit referrals to physicians, which was not consistent with these previously approved changes.

The updated referral definition does not give physical therapists or occupational therapists the ability to make referrals, as they do not otherwise have referral authority under the regulations. The DHA does not expect updating the referral definition to have

any impact on the TRICARE Program itself, but will remove an existing inconsistency within the regulation. One commenter's proposal to change the language to "generally, when a referral is required to qualify health care as a covered benefit, a TRICARE-authorized provider may make such a referral as allowed within the scope of the provider's license" cannot be adopted as it does not comply with program requirements, and could be seen as authorizing providers to make referrals inconsistent with other restrictions within the program. A separate proposed rule (see 84 FR 13855) proposes to extend those providers which can refer to licensed registered physical therapists, occupational therapists, and speech therapists.

*Comment 14:* One comment expressed concern about DHA regulating who can make referrals, and argued this is an encroachment on clinical decisions and state licensure/practice acts.

*Response:* DHA's enacting statute permits only a specific list of providers to treat or diagnose injuries or illnesses under the TRICARE program (10 U.S.C. 1079(a)(12)). In order for providers beyond that list to perform services under TRICARE, one of the statutorily authorized providers must refer to the provider and oversee and manage the episode of care. Physical therapists and occupational therapists are not listed in 10 U.S.C. 1079(a)(12) and so can only provide care when referred to and managed by a physician, certified physician assistant, or certified nurse practitioner. Setting referral requirements falls within the authority Congress envisioned when it gave DHA the authority to create the TRICARE program.

*Comment 15:* One commenter requested DHA revisit the remaining regulations that require physician referrals and determine if those requirements were still appropriate.

*Response:* Revision of referral requirements beyond the limited revision to the referral definition is beyond the scope of this final rulemaking action.

#### F. Coverage of Other Assistants

*Comment 16:* One comment was received that requested DHA analyze potential coverage of other assistants.

*Response:* Consideration of assistants other than PTAs and OTAs is beyond the scope of this final rulemaking action.

#### 3. Provisions of the Final Rule

This final rule is consistent with the proposed rule. Clarifications have been

made to terminology and references, the definitions of direct and general supervision, and regarding DHA's intention to reimburse like Medicare, where practicable.

#### IV. Regulatory Impact

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

E.O.s 12866 and 13563 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). E.O. 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 non-significant rule under E.O. 12866 and has not 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 final rule does not involve regulatory costs subject to E.O. 13771.

*Congressional Review Act (5 U.S.C. 801, et seq.)*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

*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 or more (adjusted annually for inflation) in any one year. The current threshold is approximately \$140 million. We do not expect this final rule to result in any one-year expenditure that would meet or exceed this amount.

*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 final 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 final rule is not subject to the requirements of the RFA.

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

This final rule does not contain a "collection of information" requirement, and does 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 final rule does not have federalism implications, as set forth in E.O. 13132.

#### List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, 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 199.2 is amended by revising the definition of "referral."

#### § 199.2 Definitions.

\* \* \* \* \*

*Referral.* The act or an instance of referring a TRICARE beneficiary to another authorized provider to obtain necessary medical treatment. Generally, when a referral is required to qualify health care as a covered benefit, only a

TRICARE-authorized physician may make such a referral unless this regulation specifically allows another category of TRICARE-authorized provider to make a referral as allowed within the scope of the provider's license. In addition to referrals which may be required for certain health care to be a covered TRICARE benefit, the TRICARE Prime program under § 199.17 generally requires Prime enrollees to obtain a referral for care through a primary care manager (PCM) or other authorized care coordinator to avoid paying higher deductible and cost-sharing for otherwise covered TRICARE benefits.

\* \* \* \* \*

■ 3. Section 199.6 is amended by revising paragraph (c)(3)(iii)(K)(2)(i), redesignating paragraph (c)(3)(iii)(K)(2)(ii) as paragraph (c)(3)(iii)(K)(2)(iii), and adding a new paragraph (c)(3)(iii)(K)(2)(ii) to read as follows:

**§ 199.6 TRICARE-authorized providers.**

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(3) \* \* \*

(iii) \* \* \*

(K) \* \* \*

(2) \* \* \*

(i) Licensed registered physical therapist (PT), including a licensed or certified physical therapist assistant (PTA) performing under the supervision of a TRICARE-authorized PT. PTAs shall meet the qualifications specified by Medicare (42 CFR 484.115, or successor regulation) and the Director, DHA, shall issue policy adopting, to the extent practicable, Medicare's requirements for PTA supervision.

(ii) Licensed registered occupational therapist (OT), including a licensed or certified occupational therapy assistant (OTA) performing under the supervision of a TRICARE authorized OT. OTAs shall meet the qualifications specified by Medicare (42 CFR 484.115, or successor regulation) and the Director, DHA, shall issue policy adopting, to the extent practicable, Medicare's requirements for OTA supervision.

Dated: March 6, 2020.

**Aaron T. Siegel,**

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

[FR Doc. 2020-04957 Filed 3-16-20; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 329**

[Docket ID: DOD-2019-OS-0053]

**RIN 0790-AK73**

**National Guard Bureau Privacy Program**

**AGENCY:** National Guard Bureau, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DoD's regulation concerning the National Guard Bureau Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

**DATES:** This rule is effective on March 17, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Nikolaisen at 703-601-6884.

**SUPPLEMENTARY INFORMATION:** DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The NGB Privacy Act Program regulation at 32 CFR part 329, last updated on February 5, 2014 (79 FR 6809), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. To the extent that NGB internal guidance concerning the implementation of the Privacy Act within the NGB is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728-14811.

This rule is not significant under Executive Order (E.O.) 12866, "Regulatory Planning and Review." Therefore, E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs" does not apply.

**List of Subjects in 32 CFR Part 329**

Privacy.

**PART 329—[REMOVED]**

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 329 is removed.

Dated: March 9, 2020.

**Aaron T. Siegel,**

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

[FR Doc. 2020-05049 Filed 3-16-20; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2020-0052]

**Drawbridge Operation Regulation; Long Creek, Nassau, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary test deviation from the operating schedule that governs the Loop Parkway Bridge across Long Creek, mile 0.7 at Nassau, New York. This deviation will test a change to the drawbridge operation schedule to determine if the proposed operating schedule changes will meet the reasonable needs of maritime traffic and vehicular traffic. Coast Guard is seeking comments from the public about the impact to both train and vessel traffic generated by this change.

**DATES:**

*Effective date:* This deviation is effective without actual notice from March 17, 2020 through 11:59 p.m. on July 27, 2020. For purposes of enforcement actual notice will be used from 12:01 a.m. on January 30, 2020, until March 17, 2020.

*Comment date:* Comments and related material must reach the Coast Guard on or before April 16, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0052 using Federal e-Rulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the