

Issued in Renton, Washington, on June 19, 2014.

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[FR Doc. 2014-16781 Filed 7-16-14; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9664]

RIN 1545-BF80

#### Section 67 Limitations on Estates or Trusts; Change of Effective Date

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

**ACTION:** Final regulations; amendment.

**SUMMARY:** This document amends final regulations (TD 9664) that were published in the **Federal Register** on May 9, 2014. The final regulations provide guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a) of the Internal Revenue Code.

**DATES:** *Effective Date:* This amendment to the final regulations published on May 9, 2014 (79 FR 90), is effective on July 17, 2014.

*Applicability Date:* For date of applicability, see § 1.67-4(d).

**FOR FURTHER INFORMATION CONTACT:** Jennifer N. Keeney, (202) 317-6850 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are the subject of these amendments are under section 67 of the Internal Revenue Code. The final regulations (TD 9664) were published in the **Federal Register** on Friday, May 9, 2014 (79 FR 90). The final regulations applied to taxable years beginning on or after May 9, 2014.

##### Need for Amendment

The Treasury Department and the IRS received a comment raising concerns about the effective/applicability date of the regulations. As issued, the final regulations apply to taxable years beginning on or after May 9, 2014. Therefore, fiduciaries of existing trusts and calendar-year estates would implement the rules beginning January 1, 2015. However, the rules would apply immediately to any non-grantor trust

created after May 8, 2014, the estate of any decedent who dies after May 8, 2014, and any existing fiscal-year estate with a taxable year beginning after May 8, 2014. The commentator stated that the effective/applicability date in the regulations does not give fiduciaries of these trusts and estates sufficient time to implement the changes that are necessary to comply with the regulations. Specifically, the commentator is concerned about allowing fiduciaries sufficient time to design and implement the necessary program changes to determine the portion of a bundled fee that is attributable to costs that are subject to the 2-percent floor versus costs that are not subject to the 2-percent floor. In response to these comments, this document amends § 1.67-4(d) of the Final Regulations so that the regulations apply to taxable years beginning on or after January 1, 2015.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** In § 1.67-4, paragraph (d) is revised to read as follows:

#### § 1.67-4 Costs paid or incurred by estates or non-grantor trusts.

\* \* \* \* \*

(d) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2014.

**Martin V. Franks,**

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

[FR Doc. 2014-16834 Filed 7-16-14; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD-2011-HA-0134]

RIN 0720-AB55

#### TRICARE Certified Mental Health Counselors

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is publishing this final rule to implement the TRICARE Certified Mental Health Counselor (TCMHC) provider type as a qualified mental health provider authorized to independently diagnose and treat TRICARE beneficiaries and receive reimbursement for services. Additionally, we are extending the time frame that was mentioned in the Interim Final Rule for meeting certain education, examination, and supervised clinical practice criteria to be considered for authorization as a TCMHC. The time frame has been changed from prior to January 1, 2015, to prior to January 1, 2017. One final set of criteria shall apply for the authorization of the TCMHC beginning January 1, 2017. The supervised mental health counselor (SMHC) provider type, while previously proposed to be terminated under TRICARE, is now continued indefinitely as an extramedical individual provider practicing mental health counseling under the supervision of a TRICARE-authorized physician.

**DATES:** *Effective Date:* This rule is effective August 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dr. Patricia Moseley, Defense Health Agency, Clinical Support Division, Behavioral Health Branch, 703-681-0064.

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. Purpose of the Final Rule

###### 1. The Need for the Regulatory Action

The purpose of this final rule is to prescribe regulations that will allow licensed or certified mental health counselors to be able to independently provide care to TRICARE beneficiaries and receive payment for those services. The final rule incorporates the recommendations of the Institute of Medicine (IOM) 2010 report for the independent practice of mental health counselors (MHCs) under TRICARE, including specific education, licensure,

examination, and supervised clinical practice experience requirements in order to become a TRICARE authorized independent provider. This final rule also provides for the continued authorization of Supervised Mental Health Counselors (SMHCs) as TRICARE authorized providers when practicing under physician referral and supervision. This important change to the interim final rule, will maintain continuity of care for those beneficiaries who are receiving services from SMHCs under the current system and will help to ensure a continued robust, quality provider pool for TRICARE beneficiaries to access when seeking medically necessary and appropriate mental health counseling services. Authorization of TCMHCs and SMHCs is part of a comprehensive quality-management system implemented by TRICARE for all mental health professionals.

## 2. Legal Authority for the Regulatory Action

The legal authority for this Final Rule is Section 724 of the National Defense Authorization Act (NDAA) for Fiscal Year 2011, Public Law 111–383, which required the Department of Defense to prescribe regulations to establish the criteria that would allow licensed or certified mental health counselors to be able to independently provide care to TRICARE beneficiaries and receive payment for those services.

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

#### 1. Designation of “TRICARE Certified Mental Health Counselor (TCMHC)” as an Allied Health Professional Under TRICARE

This final rule establishes a new category of individual professional providers of medical care under the TRICARE program entitled TRICARE Certified Mental Health Counselors (TCMHC).

#### 2. Under Basic Program Benefits, Services of TCMHCs and SMHCs Are Extended to Beneficiaries

Under this final rule, beneficiaries are able to choose the services of either a TCMHC who independently provides diagnostic and therapeutic services or a Supervised Mental Health Counselor (SMHC) who is authorized to provide mental health counseling pursuant to physician referral and ongoing supervision of the beneficiary’s care. This final rule rescinds the expiration date published in the IFR for phase-out the SMHC provider type. The rule also adds appropriate definitions in 32 CFR 199.2 for SMHCs and TCMHCs.

#### 3. The Transition Period Is Extended to December 31, 2016, for a MHC To Meet the Currently Recognized Quality Standards Required for Independent Practice

The date of the transition period established in the IFR is extended in the final rule and is changed accordingly throughout this rule. TCMHCs who are authorized during the transition period are not required to be reauthorized under the new criteria after January 1, 2017. Additionally, MHCs who meet all certification requirements prior to the end of the transition period can apply for TRICARE authorization at any time after the transition period. Such authorization will be based on the certification requirements met prior to the end of the transition period. Providers who do not meet all of the certification requirements prior to the expiration of the transition period will be required to meet the quality standards recommended by the IOM and adopted by TRICARE, including possession of a master’s or higher-level degree from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) accredited mental health counseling program of education and training as well as having passed the National Clinical Mental Health Counseling Examination (NCMHCE).

#### 4. Expansion of Providers Authorized To Supervise the Post-Master’s Clinical Practice for Authorization as a TCMHC

This final rule modifies the criteria in the IFR to permit supervision of a prospective TCMHC’s post-master’s clinical practice experience. Supervision is no longer restricted to a mental health counselor licensed for independent practice in mental health counseling in the jurisdiction where practicing but may be gained from multiple, licensed independent mental health professionals, similar to industry standards.

### C. Costs and Benefits

This rule is not anticipated to have an annual effect on the economy of \$100 million or more; therefore, it is not an economically significant rule under Executive Order 12866 and the Congressional Review Act. All services and supplies 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 care can be cost shared by TRICARE. For this reason, DoD anticipates that TRICARE will have a marginal increase in cost associated with increased access to

authorized mental health counselors within the TRICARE basic program.

## II. Discussion of Final Rule

### A. Background

1. The Conference Report (House Report 109–360) to the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006, requested the Department of Defense to report on actions taken to improve the efficiency and effectiveness of procedures to facilitate physician referral and supervision of MHCs. The report included a description of “best practices” employed throughout the military health system (MHS) to ensure access to services provided by MHCs under the TRICARE program. The report concluded that there remained significant variability among the states in training programs and requirements for licensure as a MHC. The report stated that while there is evidence that the extent of training variability decreased over time, it continued to be evident that professional counselors licensed to practice had quite varying exposure to classroom education and supervised clinical experiences in the assessment and treatment of persons with mental disorders.

2. Section 717 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 111–181, directed the Secretary of Defense to conduct an independent study of the credentials, preparation, and training of individuals practicing as licensed MHCs and to make recommendations for permitting licensed MHCs to practice independently under the TRICARE program. In this study, the Institute of Medicine (IOM) of the National Academies of Science recommended allowing licensed MHCs who meet certain requirements for training, education, experience, certification, and licensure to practice independently under the TRICARE program. This final rule implements changes to 32 CFR Part 199 largely based on those recommendations.

3. Section 724 of the National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383, required the Department of Defense to prescribe regulations that establish the criteria for the independent practice of mental health counselors, as previously studied by the IOM in accordance with Section 717 of FY 2008 NDAA. As a result, the published Interim Final Rule—TRICARE: Certified Mental Health Counselors (76 **Federal Register** 80741–80744) requested 60 days of public comment from December 27, 2011 until February 27, 2012. In this final rule,

these criteria allow licensed or certified TCMHCs to independently provide care to TRICARE beneficiaries and receive payment for those services as do other allied health professionals listed in 32 CFR 199.6(c)(3)(iii).

*B. Certification Criteria for TRICARE Certified Mental Health Counselor (TCMHC) Independent Practice Under TRICARE*

This final rule establishes certification criteria largely consistent with the recommendations of the Institute of Medicine (IOM) 2010 study, "Provision of Mental Health Counseling Services under TRICARE," (<http://www.iom.edu/Reports/2010/Provision-of-Mental-Health-Counseling-Services-Under-TRICARE.aspx>). The IOM recommendations specify that the independent practice of MHCs in TRICARE should occur under certain circumstances, to include:

A master's or higher level degree in counseling from a program in mental health counseling or clinical mental health counseling that is accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); a state license in mental health counseling at the 'clinical' or the higher or highest level available in states that have tiered licensing schemes; the passage of the National Clinical Mental Health Counseling Examination; and a well-defined scope of practice for practitioners (p. 10).

TRICARE adopts the quality standards recommended by the IOM. We understand the availability of CACREP accredited clinical mental health counseling training programs and the use of the NCMHCE examination as quality standards are not yet widespread in the field. To support this health care provider transition, the new quality standards for the independent practice of TCMHCs will not fully replace existing criteria, including regional accreditation of institution programs and passage of the National Counselor Exam (NCE), until January 1, 2017. While the IFR set an expiration date for authorization of SMHCs to coincide with the end of the transition period, this final rule specifies that TRICARE will continue authorization of SMHCs indefinitely to preserve access to care for our beneficiaries during and after the transition period. This will preserve patient access to an experienced and well-trained mental health professional provider group. At the same time, this final rule is designed to encourage greater participation of qualified MHCs to become independent TCMHCs and thus improve access to quality mental health treatment for our beneficiaries.

*C. Additional Revisions to the Regulations*

In reviewing the interim final rule, we realized that we inadvertently failed to update several other provisions of the regulation that reference "mental health counselors" to account for the expansion of provider types in this field and the different rules that apply to each. Consequently, in this final rule, we have deleted the definition of "mental health counselor" from 32 CFR 199.2 and replaced it with definitions of "Supervised Mental Health Counselor" and "TRICARE Certified Mental Health Counselor." We have also revised 32 CFR 199.7(e)(3) to clearly indicate that claims for reimbursement for services of supervised mental health counselors must include certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician. There is no similar requirement for TCMHCs as they are authorized to practice independently

**III. Public Comments**

The Interim Final Rule: TRICARE—Certified Mental Health Counselors was published in the **Federal Register** (76 FR 80741–80744) on December 27, 2011, for a 60-day public comment period. We received 404 public comments. Following is a summary of the public comments and our responses.

*Comment:* A few commenters suggested a change from the title of Certified Mental Health Counselor (CMHC) as was the proposed title published in the Interim Final Rule, because the acronym, CMHC, is very similar to the National Board for Certified Counselor's (NBCC) title for Certified Clinical Mental Health Counselor (CCMHC).

*Response:* We agree and believe it is necessary to distinguish the titles to prevent confusion. Consequently, the final rule will use the title, TRICARE Certified Mental Health Counselor (TCMHC).

*Comment:* Many commenters recommended independent provider status for qualified MHCs. Some commenters requested continuation of a physician referral and supervision as a condition of authorization.

*Response:* TRICARE appreciates the skills and professional experience of the MHCs seeking independent status and recognizes the depth of expertise represented by the current SMHC provider pool. With this final rule, TRICARE maintains a robust selection of extramedical provider types for beneficiaries, plus beneficiaries may

now choose to receive medically necessary and appropriate care from a TCMHC without physician referral and supervision. Under the final rule, the criteria provider category of an SMHC will remain indefinitely.

*Comment:* Multiple national organizations and individuals expressed concern about the time required to obtain counseling degrees, licensure, and supervised clinical practice hours and to prepare for the NCMHCE. These commenters requested additional time for current counseling graduate students to complete their degrees, gain supervised clinical practice hours, and pass national examinations in order to become authorized for independent practice under TRICARE.

*Response:* We recognize that the combined education and examination criteria for authorization as a TCMHC may present a higher bar to the field of mental health counseling in some states. Consequently, the transition period has been extended until January 1, 2017, and this date is modified throughout the final rule. The final rule balances the implementation of quality standards for MHCs with beneficiary access to their services. This four year period allows completion of counseling degrees, supervised clinical practice hours, and licensure under the existing quality standards. MHCs who meet all of the criteria for TCMHCs prior to end of the transition period may apply for certification after the transition period, and this certification will be based on the criteria (c)(3)(iii)(N)(2). This extension also allows time for experienced MHCs and currently practicing SMHCs to pass the National Clinical Mental Health Counseling Examination (NCMHCE). This change aims to ensure the availability of well-qualified, independent providers for our beneficiaries.

*Comment:* Some commenters suggested that any professional mental health discipline or state licensed professional counselors should be able to supervise the clinical practice of the MHC for TRICARE authorization as a TCMHC. A few commenters recommend supervisors use standards other than those of the American Mental Health Counselor Association (AMHCA) standards.

*Response:* We appreciate these suggestions and have amended the Final Rule at 32 CFR 199.6(c)(3)(iii)(N)(1)(iii) and (2)(iii) to expand the types of providers authorized to supervise the post-master's clinical practice for certification as a TCMHC. Supervision is no longer restricted to mental health counselors licensed for independent practice but may be gained from

multiple, licensed independent mental health professionals, including psychiatrists, clinical psychologists, certified clinical social workers, and certified psychiatric nurse specialists who are licensed for independent practice in the jurisdiction where practicing and who are practicing within the scope of their licenses. SMHCs and pastoral counselors, who require physician referral and supervision, as well as marriage and family therapists, do not meet the qualification criteria as supervisors for MHCs seeking authorization as TCMHCs. The final rule addresses supervised clinical practice that is provided in a manner consistent with the AMHCA guidelines specific to the knowledge, skills, and practice of mental health counseling. The Department of Defense has elected to adopt these standards, consistent with the IOM's recommendation, as the AMHCA is the recognized national or professional association that sets the standards for the profession.

*Comment:* Many commenters request that the licensed professional counselors (LPCs) be allowed to practice independently under TRICARE, for example, psychotherapists; school, career, substance abuse, and rehabilitation counselors; expressive arts therapists; and counseling psychologists and licensed psychological associates.

*Response:* We appreciate these comments from individuals and professional organizations. We are aware that states allow specialty counseling areas to practice under the title of "licensed professional counselor" or similar titles and that educational requirements vary from state to state. The 2006 MHS Report to Congress and the 2010 IOM report noted that the great majority of the states do not require that a LPC graduate from a mental health specialty counseling program in order to be licensed to assess and treat persons with mental disorders. This final rule responds to the statutory requirement for the Department to prescribe criteria for the independent practice of licensed and certified mental health counselors. Thus, in the final rule TCMHCs are required to have specified education and training in order to diagnose and treat mental health conditions as individual professional providers of care. This final rule, however, also maintains SMHCs as a category of authorized TRICARE providers. Consequently, individuals, including some of those specifically identified by the commenters, who possess either a master's degree in mental health counseling or an allied

mental health field and meet all other SMHC criteria, may also serve as TRICARE authorized providers with physician referral and ongoing supervision.

*Comment:* Several commenters recommend that TRICARE use a state license for authorization as a TCMHC. One commenter recommended that a state license alone should be sufficient as Medicaid and private insurance companies consider them sufficient for the practice of MHCs. Another commenter raised concerns that the criteria for authorizing TCMHCs will result in "separate regulations for the credentialing of mental health counselors" for Medicaid, Medicare, and TRICARE.

*Response:* We appreciate these comments, but have determined that the final rule will adhere to the IOM (2010) recommendations that incorporate a set of four criteria (licensure, education, certification via examination, and clinical supervision), not the state license alone, for the independent practice of MHCs under TRICARE. The IOM Report discusses at greater length both independent and supervised practice under other federal programs. We would note that Medicare does not recognize licensed professional counselors as independent providers, so they are not directly reimbursed through the program.

*Comment:* Some commenters asked whether TRICARE requires professional certification of a MHC.

*Response:* Yes. Reference to professional licensure and certification was unintentionally omitted from the interim final rule. We appreciate the comment and have corrected this inadvertent exclusion for the final rule by adding relevant provisions at 32 CFR 199.6(c)(3)(iii)(N)(1)(iv) and (2)(iv). Consistent with TRICARE requirements, professional certification is required when a jurisdiction does not issue a professional license [32 CFR 199.6(c)(2)(ii)]. Currently, all states (but not all territories) issue professional licensure for MHCs. In 1993, professional certification by the National Academy of Certified Mental Health Counselors of the American Mental Health Counselors Association was placed in the National Board for Certified Counselors' credentialing process. Thus the professional certification of Certified Clinical Mental Health Counselor is now required for authorization as a TCMHC or SMHC in those jurisdictions that do not issue a professional license.

*Comment:* Multiple commenters proposed the acceptance of their own states' or territories' licensing criteria for

the number of hours of post-master's supervised clinical practice experience for the TCMHC.

*Response:* As recognized by the IOM, state requirements and practices can vary considerably. The requirements for all TRICARE authorized providers are set forth by federal regulation, specifically 32 CFR 199.6, including professional licensure, certification, and any specific education, training, and experience necessary to promote the delivery of services by fully qualified individuals. By establishing uniform standards, TRICARE seeks to provide high quality behavioral health care delivered by well-trained clinicians. No compelling comments were submitted to change the final rule requirement for TCMHCs related to the hours of supervised clinical practice.

*Comment:* A few commenters ask whether a master's degree from an accredited on-line mental health or clinical mental health program met the criteria for independent practice under TRICARE.

*Response:* The final rule makes no distinction between how a degree is earned, whether via distance learning or otherwise, as long as the provider has obtained a master's or higher-level degree from an appropriately accredited mental health counseling program of education and training. We would note, however, at the present time that CACREP and other regional accrediting bodies accredit very few institutions' programs that provide distance learning for mental health counseling.

*Comment:* A few commenters recommended that the National Counselor Examination (NCE) should be the "key to eligibility," not program accreditation. A few commenters expressed that either the NCE or the NCMHCE should be the accepted criteria for certification. Other commenters expressed appreciation that passage of the NCMHCE with graduation from a non-CACREP accredited program in mental health counseling is part of the eligibility criteria.

*Response:* We appreciate these comments. TRICARE accepted the specific recommendations of the IOM for the independent practice of MHCs, to include accredited education as well as examination criteria. To ensure the availability of TCMHCs who meet these quality standards during the transition period, this final rule pairs the examinations with the education criteria. After the transition period, only the more rigorous examination of clinical knowledge of patient care, the NCMHCE, is accepted for authorization as a TCMHC.

*Comment:* A few commenters suggest that TRICARE certify graduates from all universities that the federal government approves and allocates federal education funds. Other commenters ask whether graduates of the Rehabilitation Services of America (RSA) educational programs are allowed to practice independently under TRICARE, since their scholarship program provides federal funding for grants.

*Response:* The final rule makes no distinction as to which universities and educational programs receive federal funding. Appropriately accredited programs of education and training for clinical mental health counselors, will satisfy the educational requirements applicable to TCMHCs and SMHCs regardless of whether or not federal funding has been provided. Conversely, federal funding of programs that do not meet the specified educational and accreditation criteria will not serve to waive the applicable requirements. Additionally, we understand that the RSA oversees competitive grant programs designed to ensure that skilled personnel are available to service the rehabilitation needs of individuals with disabilities and that many discretionary grants are provided for master's degrees in rehabilitation counseling (<http://www2.ed.gov/students/college/aid/rehab/carcouns.html>). Congress requested that the DoD prescribe criteria for the authorization of MHCs to practice independently under TRICARE. The Department does not intend to broaden the scope of this final rule to rehabilitation counselors who do not meet the criteria specified in the regulation for TCMHCs or SMHCs.

*Comment:* Numerous commenters recommended a grandfathering clause to exempt a practicing MHC from meeting the criteria of the final rule. Others suggested the acceptance of each state's license as the criteria for grandfathering. Some commenters specifically recommended grandfathering MHCs who have two to five years of supervised experience serving the military.

*Response:* We believe the changes that have been made to the final rule to permit the continued practice of SMHCs under existing eligibility criteria, as well as the extension of the transition period for a MHC to meet the current quality standards, adequately address these comments while still ensuring the provision of high quality mental health care for beneficiaries, regardless of their location. Specifically, the transition period allows MHCs the time to meet the quality standards for independent practice and allows for the implementation of uniform criteria that

are not gained by grandfathering. TRICARE recognizes that many mental health counselors and current SMHCs have graduated prior to the establishment of either the CACREP accreditation for mental health counseling programs or the National Board of Certified Counselor's national examination for clinical mental health counselors. This final rule seeks to balance the implementation of quality standards for mental health counselors with beneficiary access to those services.

#### IV. Regulatory Impact Analysis

##### Overall Impact

The Department has examined the impact of this final rule as required by Executive Orders (EOs) 12866 (September 1993, Regulatory Planning and Review) and 13563 (January 18, 2011, Improving Regulation and Regulatory Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and the Congressional Review Act [5 U.S.C. 804(2)].

1. 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, reducing costs, harmonizing rules, and promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). We estimate that this rulemaking is not “economically significant” as measured by the \$100 million threshold and, hence, is not a major rule under the Congressional Review Act or the E.O.s.

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

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

3. Public Law 96–354, “Regulatory Flexibility Act” (RFA), Title 5, U.S.C., Sec. 601

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This 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 rule is not subject to the requirements of the RFA.

4. Public Law 104–4, Sec. 202, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$140 million. This final rule will not mandate any requirements for state, local, or tribal governments or the private sector.

5. Public Law 96–511, “Paperwork Reduction Act” (Title 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. 3502–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized. TRICARE authorized and non-network providers will be coding and filing claims in the same manner as they currently are with TRICARE.

6. Executive Order 13132, “Federalism”

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

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

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

Accordingly, 32 CFR part 199 is 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. In § 199.2, paragraph (b) is amended by removing the definition of “Mental health counselor” and adding the definitions of “Supervised mental health counselor” and “TRICARE certified mental health counselor” in alphabetical order to read as follows:

**§ 199.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Supervised mental health counselor.*

An extramedical individual provider who meets the requirements outlined in § 199.6.

\* \* \* \* \*

*TRICARE certified mental health counselor.* An allied health professional who meets the requirements outlined in § 199.6.

\* \* \* \* \*

■ 3. Section 199.4 is amended by revising paragraph (c)(3)(ix)(A) to read as follows:

**§ 199.4 Basic program benefits.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ix) \* \* \*

*(A) Covered diagnostic and*

*therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: Psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists, certified clinical social workers, certified marriage and family therapists, TRICARE certified mental health counselors, pastoral counselors under a physician's supervision and supervised mental health counselors under a physician's supervision. No payment will be made for any service listed in paragraph (c)(3)(ix)(A) of this section rendered by an individual who does not meet the criteria of § 199.6 for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

\* \* \* \* \*

■ 4. Section 199.6 is amended by revising paragraphs (c)(3)(iii)(N) and (c)(3)(iv)(C) to read as follows:

**§ 199.6 TRICARE—authorized providers.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(N) *TRICARE certified mental health counselor.* For the purposes of CHAMPUS, a TRICARE certified mental health counselor (TCMHC) must be licensed for independent practice in mental health counseling by the jurisdiction where practicing. In jurisdictions with two or more licenses allowing for differing scopes of independent practice, the licensed mental health counselor may only practice within the scope of the license he or she possesses. In addition, a TCMHC must meet the requirements of either paragraph (c)(3)(iii)(N)(1) or the requirements of paragraph (c)(3)(iii)(N)(2) of this section.

(1) The requirements of this paragraph are that the TCMHC:

(i) Must have passed the National Clinical Mental Health Counselor Examination (NCMHCE) or its successor as determined by the Director, TMA; and

(ii) Must possess a master's or higher-level degree from a mental health counseling program of education and training accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); and

(iii) Must have a minimum of two (2) years of post-master's degree supervised mental health counseling practice which includes a minimum of 3,000 hours of supervised clinical practice and 100 hours of face-to-face supervision. Supervision must be provided by mental health counselors at the highest level of state licensure, psychiatrists, clinical psychologists, certified clinical social workers, or certified psychiatric nurse specialists who are licensed for independent practice in the jurisdiction where practicing and who are practicing within the scope of their licenses. Supervised clinical practice must be received in a manner that is consistent with the guidelines regarding knowledge, skills, and practice standards for supervision of the American Mental Health Counselors Association; and

(iv) Is licensed or certified for independent practice in mental health counseling by the jurisdiction where practicing (see paragraph (c)(2)(ii) of this section for more specific information).

(2) The requirements of this paragraph are that the TCMHC, prior to January 1, 2017:

(i) Possess a master's or higher-level degree from a mental health counseling program of education and training accredited by CACREP and must have passed the National Counselor Examination (NCE); or

(ii) Possess a master's or higher-level degree from a mental health counseling program of education and training from either a CACREP or regionally accredited institution and have passed the NCMHCE; and

(iii) Must have a minimum of two (2) years of post-master's degree supervised mental health counseling practice which includes a minimum of 3,000 hours of supervised clinical practice and 100 hours of face-to-face supervision. Supervision must be provided by mental health counselors at the highest level of state licensure, psychiatrists, clinical psychologists, certified clinical social workers, or certified psychiatric nurse specialists who are licensed for independent practice in the jurisdiction where practicing and who are practicing within the scope of their licenses. Supervised clinical practice must be received in a manner that is consistent with the guidelines regarding knowledge, skills, and practice standards for supervision of the American Mental Health Counselors Association; and

(iv) Is licensed or certified for independent practice in mental health counseling by the jurisdiction where practicing (see paragraph (c)(2)(ii) of this section for more specific information).

(3) The Director, TRICARE Management Activity may amend or modify existing or specify additional certification requirements as needed to accommodate future practice and licensing standards and to ensure that all TCMHCs continue to meet educational, licensing, and clinical training requirements considered appropriate.

(iv) \* \* \*

(C) *Supervised mental health counselor.* For the purposes of TRICARE, a supervised mental health counselor is an individual who does not meet the requirements of a TRICARE certified mental health counselor in paragraph (c)(3)(iii)(N) of this section, but meets all of the following requirements and conditions of practice:

(1) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution; and

(2) Two years of post-masters experience which includes 3,000 hours of clinical work and 100 hours of face-to-face supervision; and

(3) Is licensed or certified to practice as a mental health counselor by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information); and

(4) May only be reimbursed when:

(i) The TRICARE beneficiary is referred for therapy by a physician; and

(ii) A physician is providing ongoing oversight and supervision of the therapy being provided; and

(iii) The mental health counselor certifies on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

\* \* \* \* \*

■ 5. Section 199.7 is amended by revising paragraphs (e)(3) to read as follows:

**§ 199.7 Claims submission, review, and payment.**

\* \* \* \* \*

(e) \* \* \*

(3) Claims involving the services of marriage and family counselors, pastoral counselors, and supervised mental health counselors. CHAMPUS requires that marriage and family counselors, pastoral counselors, and supervised mental health counselors make a written report to the referring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors, pastoral counselors, and supervised mental health counselors must include certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician.

\* \* \* \* \*

Dated: July 11, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014-16702 Filed 7-16-14; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2013-0848]

RIN 1625-AA09

**Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Venice, FL**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Hatchett Creek (US-41) Twin Bridges, Gulf Intracoastal Waterway mile 56.9, Venice, FL. Changing the operational schedule of the Hatchett Creek (US-41) Twin Bridges will allow the 8 hour, Sarasota Iron Man Triathlon to occur annually without being interrupted. This event is anticipated to be scheduled annually on the second Sunday of November, from 9 a.m. to 5 p.m.

**DATES:** This rule is effective August 18, 2014.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2013-0848]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Ms. Danielle Mauser, Seventh Coast Guard District, Bridge Branch, 305-415-6946, email [Danielle.L.Mauser2@uscg.mil](mailto:Danielle.L.Mauser2@uscg.mil). If you have questions about viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
§ Section Symbol  
U.S.C. United States Code

**A. Regulatory History and Information**

On November 21, 2013, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Venice, FL" in the **Federal Register** (78 FR 69803). No comments on the proposed rule were received. No public meeting was requested or held.

**B. Basis and Purpose**

The changes will have a minor impact on vessels transiting the Gulf Intracoastal Waterway in the vicinity of Venice, Florida, but will still meet the reasonable needs to navigation. This action will accommodate the Sarasota Iron Man Triathlon held annually on the second Sunday of November.

**C. Discussion of Comments, Changes and the Final Rule**

No comments were received. This rule will allow the Hatchett Creek Bridge to remain closed to navigation for eight hours for an annual event. This rule will revise paragraph (b) in 33 CFR 117.287 to include this eight hour closure for the second Sunday in November annually. The Hatchett Creek (US-41) Bridge provides a vertical clearance of 16 feet at mean high water in the closed position and a horizontal clearance of 90 feet. Vessels with a height of less than 16 feet may pass through the bridge at any time. The Gulf of Mexico is the only alternative route, and this route would be unacceptable for certain classes of vessels such as tugs and barges.

**D. Regulatory Analyses**

The rule was developed after considering numerous statutes and executive orders related to rulemaking. Below is a summary of the analysis based on the aforementioned statutes and executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. It does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule is not a significant regulatory action because it will only have a minor impact on vessels transiting the Gulf Intracoastal Waterway in the vicinity of Venice, Florida and it will still meet the reasonable needs of navigation.