

authorized access, including submitting or accessing papers in an application that the person does not have authorization to access. Violations of the Legal Framework for Patent Electronic System, Trademark Verified *USPTO.gov* Account Agreement, Terms of Use for USPTO websites, or other applicable policies may lead to revocation of the user's *USPTO.gov* account, in addition to criminal, civil, and/or administrative action and penalties as previously described.<sup>86</sup>

Users should also be extremely careful when attempting to data mine information from USPTO databases. Using computer tools, including AI systems, in a manner that generates unusually high numbers of database accesses violates the Terms of Use for USPTO websites, and users using tools in this way will be denied access to USPTO servers without notice and could be subject to applicable state criminal and civil laws.<sup>87</sup> Instead, users should consider using the USPTO's bulk data products for permitted and appropriate data mining efforts.<sup>88</sup>

#### D. Confidentiality and National Security Considerations

Use of AI in practice before the USPTO can result in the inadvertent disclosure of client-sensitive or confidential information, including highly-sensitive technical information, to third parties. This can happen, for example, when aspects of an invention are input into AI systems to perform prior art searches or generate drafts of specification, claims, or responses to Office actions. AI systems may retain the information that is entered by users. This information can be used in a variety of ways by the owner of the AI system including using the data to further train its AI models or providing the data to third parties in breach of practitioners' confidentiality obligations to their clients under, *inter alia*, 37 CFR 11.106. If confidential information is used to train AI, that confidential information or some parts of it may filter into outputs from the AI system provided to others.

When practitioners rely on the services of a third party to develop a proprietary AI tool, store client data on third-party storage, or purchase a commercially available AI tool, practitioners must be especially vigilant to ensure that confidentiality of client data is maintained. Practitioners who

supervise the work of other practitioners and non-practitioner assistants must ensure that the practitioners and staff under their supervision comply with the USPTO Rules of Professional Conduct when relying on AI tools and/or AI-related third party services.<sup>89</sup>

Such disclosures can also implicate national security, export control, and foreign filing license issues.<sup>90</sup> Specifically, practitioners must be mindful of the possibility that AI tools may utilize servers located outside the United States, raising the likelihood that any data entered into such tools may be exported outside of the United States, potentially in violation of existing export administration and national security regulations or secrecy orders. Even if the servers are located within the United States, certain activities related to the use of AI systems hosted by these servers by non-U.S. persons may be deemed an export subject to these regulations.<sup>91</sup> Moreover, AI system developers or maintainers may suffer data breaches, further subjecting user data to disclosure risks. Therefore, before using these AI tools, it is imperative for practitioners to understand an AI tool's terms of use, privacy policies, and cybersecurity practices.

#### E. Fraud and Intentional Misconduct

The USPTO does not tolerate fraud or intentional misconduct in any manner in a proceeding before the Office or in connection with accessing USPTO IT systems. As explained above, all individuals associated with a proceeding before the USPTO have a duty of candor and good faith. The duty extends not only to the personal actions of these individuals, but also to the actions these individuals take with any automated tools, including AI tools. Additionally, the use of AI tools on USPTO websites for the "[u]nauthorized access, actions, use, modification, or disclosure of the data contained herein or in transit to/from [USPTO web systems] constitutes a violation of the Computer Fraud and Abuse Act."<sup>92</sup> The USPTO monitors network traffic to identify such behaviors. As previously discussed, violators are subject to criminal, civil, and/or administrative action and penalties.

<sup>89</sup> See 37 CFR 11.501–503.

<sup>90</sup> See, e.g., 37 CFR 5.11; Scope of Foreign Filing Licenses, 73 FR 42781 (July 23, 2008); Bureau of Industry and Security Online Training Room (available at [www.bis.doc.gov/index.php/online-training-room](http://www.bis.doc.gov/index.php/online-training-room)).

<sup>91</sup> See, e.g., 15 CFR 734.13.

<sup>92</sup> Terms of Use for USPTO websites.

#### IV. Conclusion

This guidance on the use of AI Before the Office is not meant to be exhaustive. Those appearing before the USPTO or accessing its systems are reminded to comply with the laws, regulations, precedent, and guidance in force at the time of their dealings with the USPTO.

**Katherine K. Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2024–07629 Filed 4–10–24; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Modification To Childbirth Support Services Covered Under the TRICARE Childbirth and Breastfeeding Support Demonstration

**AGENCY:** Department of Defense.

**ACTION:** Notice of demonstration modifications.

**SUMMARY:** The Director of the Defense Health Agency (DHA) is notifying the public of adjustments to the reimbursement and provider qualifications for childbirth support services under the Childbirth and Breastfeeding Support Demonstration (CBSD).

**DATES:** The Phase 2 changes will be fully implemented by January 1, 2025, with a transition period starting June 10, 2024. The two modifications to the certified labor doulas (CLD) certification requirement are effective April 11, 2024.

**FOR FURTHER INFORMATION CONTACT:** Erica Ferron, 303–676–3626, [erica.c.ferron.civ@health.mil](mailto:erica.c.ferron.civ@health.mil).

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Section 746 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year (FY) 2021 (NDAA FY 2021) directed the Secretary of Defense to establish a five-year demonstration project under TRICARE to evaluate the cost, quality of care, and impact on maternal and fetal outcomes of covering the services of doulas and lactation consultants or counselors not otherwise TRICARE-authorized, and to determine whether it would be appropriate to implement permanent coverage. Section 746 also required the Secretary to conduct a maternity survey.

This demonstration was implemented as the CBSD, with details announced in a **Federal Register** notice (FRN)

<sup>86</sup> *Id* at 28; Trademark Verified *USPTO.gov* Account Agreement at 7–8; Terms of Use for USPTO websites.

<sup>87</sup> Terms of Use for USPTO websites.

<sup>88</sup> Available at [www.uspto.gov/learning-and-resources/bulk-data-products](http://www.uspto.gov/learning-and-resources/bulk-data-products).

published by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) on October 29, 2021 (86 FR 60006). The FRN prescribed the qualifications for the three extra medical maternal health providers (CLDs, certified lactation consultants, and certified lactation counselors), the number and type of services to be reimbursed, and the reimbursement rates for the services. The demonstration began on January 1, 2022, in the United States under the two Managed Care Support Contractors (MCSCs), with overseas expansion planned for January 1, 2025. The ASD(HA) later delegated to the Director, DHA, the authority to modify requirements established in that FRN. The Director, DHA, announces such modifications in this FRN.

## B. Childbirth Support Services Phase 2 and Transition Period

This FRN announces a second iteration of certain components of childbirth support services under the CBSD. This new phase will include a new reimbursement methodology, new doula-specific codes, increased flexibility for antepartum and postpartum visits, and a new requirement for CLDs to be participating providers. Phase 2 will be fully implemented by January 1, 2025, with a transition period during which services will be reimbursed under the existing (Phase 1) requirements. Each component of the new phase and the transition are discussed in full in this notice.

### 1. Establishment of a Reimbursement Methodology for Childbirth Support Services

The first component of the new phase of childbirth support services announced in this FRN is the establishment of a reimbursement methodology that will replace the current reimbursement amounts. The methodology is as follows:

(1) TRICARE will identify state Medicaid rates for states reimbursing for doula services.

(2) TRICARE will identify an appropriate Medicaid-to-Medicare Fee Index for obstetrical services for each state reimbursing for Medicaid services.

(3) The state Medicaid rates will be multiplied by the Fee Index.

(4) A weighted average will be created based on the number of TRICARE reimbursed deliveries that occur in each state with a Medicaid program that reimburses for doula services. This weighted average will be the national reimbursement rate for CLDs under the CBSD.

Using this methodology, the DHA anticipates that the calendar year (CY) 2024 rate for antepartum and postpartum visits (60 minutes) will be approximately \$107.00 per visit and \$957.00 for continuous labor support. This national rate will then be adjusted by locality using the Medicare Geographic Adjustment Factor. The national rate will be recalculated annually based on Medicaid program rates and current Medicaid-to-Medicare fee indexes along with the CHAMPUS Maximum Allowable Charge (CMAC) update published each year by March 1 (available at <https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/TRICARE-Health-Plan/Rates-and-Reimbursement>). The new rates for CY 2024 will be published by the start of the transition for Phase 2. For CY 2024, the national rate for all covered childbirth support services will be about \$550.00 more per TRICARE beneficiary than under the current rates. Because this methodology is based on Medicaid rates, it may go up or down each year as new state Medicaid agencies bring doula services online or adjust their reimbursement amounts. The TRICARE rate is designed to be higher than the state Medicaid rates at the national level, though it may be lower in individual states with higher Medicaid reimbursement rates.

### 2. New Billing Codes

As part of Phase 2, the DHA intends to implement new, doula service-specific codes to replace the current general maternity and home health codes. The new codes, which will be announced in the TRICARE manuals, will be tied to the new reimbursement rates while the existing, Phase 1 codes, will remain linked to the Phase 1 rates until the transition is completed.

### 3. Increased Flexibility for Antepartum and Postpartum Visits

The third component of the Phase 2 changes is a modification to how antepartum and postpartum support visits will be billed and paid. Currently these visits are untimed, with six visits authorized. This FRN announces that the DHA is switching to timed visits, with visits billed per 15-minute increment, with each beneficiary allowed up to 24 15-minute increments (each 15-minute increment would be reimbursable at about \$26.75 in CY 2024). This will allow the beneficiary and their doula to select the most appropriate use of their visit allowance. For example, a beneficiary might choose a 90-minute initial antepartum visit (six increments), a two-and-a-half-hour initial postpartum visit (ten increments),

and two 60-minute postpartum visits (eight increments). The new billing codes, discussed above, will be billed per 15-minute increment for visits. The DHA will publish coding guidance for doulas in the implementing instructions in the TRICARE manuals found at [manuals.health.mil](https://www.health.mil).

### 4. Requirement for CLDs To Be Participating Providers

The final adjustment that DHA is making as part of Phase 2 is adding a requirement that all CLDs under the CBSD must be a participating provider under TRICARE. Under this requirement, CLDs will be required to file claims and to accept the TRICARE reimbursement rate as payment in full, as well as meet all other requirements as a TRICARE-participating provider.

### 5. Transition Period From Phase 1 to Phase 2

The changes above will be fully effective on January 1, 2025, with a transition period from June 10, 2024 until January 1, 2025. During the transition period, CLDs can opt to perform services under Phase 1 or Phase 2. CLDs who are non-participating will be eligible to continue to render services under the CBSD through the end of the transition period using Phase 1 common procedural terminology codes and billing rules, and to receive Phase 1 reimbursement rates. Similarly, during the transition, beneficiaries will be able to file for reimbursement for services received from non-participating providers under Phase 1 requirements. Non-participating providers will be ineligible for reimbursement of services rendered on or after January 1, 2025, even if the non-participating provider has entered into an agreement with a beneficiary, and/or their doula benefit has not yet been exhausted. For example, if a non-participating provider renders antepartum visits in late December 2024, those may be reimbursed; however, if the beneficiary experiences labor on January 2, 2025, the continuous labor support charges will be denied unless the provider becomes a participating provider.

CLDs who are already participating providers (network or non-network) when the transition period begins or who execute a participation agreement before the end of the transition period will be eligible to begin using the new codes and to receive the new reimbursement rates. This eligibility will begin either on the start of the transition period or the date the participation agreement is signed, whichever is later.

Any antepartum or postpartum visits performed under Phase 1 requirements will count as 4 15-minute increments against the beneficiary's 24 visit allowance under Phase 2.

*Example: A beneficiary received an initial antepartum visit prior to the start of the transition period, followed by another antepartum visit after the transition period began from a non-participating CLD. The beneficiary's CLD then signs a participation agreement, after which time the beneficiary gives birth. The initial two antepartum visits would be reimbursed under Phase 1 rules and would count as 8 15-minute increments against the beneficiary's 24 increment allowance (4 increments for each visit). The labor support would be reimbursed under Phase 2 rules. After delivery, the beneficiary would have 16 15-minute increments remaining to use in the postpartum period, in any configuration (e.g., one 4-hour visit, two 2-hour visits, four 1-hour visits).*

The DHA notes that it will take several months for the TRICARE's contractors to implement the new billing codes, during which time claims processing under Phase 2 may be delayed.

### C. Adjustments to CLD Certification Requirements

Separate from the Phase 2 changes discussed above, the Director is also announcing that one new certification body will be accepted for CLDs under the CBSD: the National Black Doula Association (NBDA). The DHA made this decision based on analysis of publicly available information for the approximately 47 certification and training bodies recognized by the state Medicaid programs (not already approved under the CBSD) using the criteria discussed in the FRN that published on October 29, 2021. The criteria we discussed in that FRN required that the bodies selected for inclusion had to have a time-limited certification and be well-established with a wide-ranging footprint (*i.e.*, national or international); included classroom training and workshops in labor physiology and other childbirth topics; required doulas to have completed at least two deliveries prior to certification; required evaluations from health care professionals for services provided during labor support or a comprehensive examination; and had an established scope of practice, code of ethics, code of conduct, or similar by which the doula is required to agree to abide.

The Director, DHA, also announces in this FRN that the certification

requirement for doulas practicing in a state with an active state-wide doula Medicaid benefit will be waived when that doula is actively enrolled in that state Medicaid program and provides evidence of such an enrollment (the doula must be practicing in the state in which they hold a Medicaid enrollment). To be eligible, the Medicaid program must be a state-wide program with requirements set by the state Medicaid agency. Medicaid programs of limited duration (pilot/demonstration programs) and programs where a contractor (for example, a managed care organization or accountable care organization) sets the provider requirements do not meet these criteria. All other TRICARE CLD requirements will continue to be in effect (age, education, experience, cardiopulmonary resuscitation certification, and possession of a national provider identification number). The various statewide programs have different and varying requirements, and so this demonstration is testing the impact of those programs on provider quality and availability. This may impact the DHA's provider requirements if a permanent benefit is established. The TRICARE program is a uniform benefit, but because this is a demonstration, we are allowing some variability between the states so that we can test the impact of these differences on provider quality, availability, and other outcomes.

### E. Cost

The modifications in this FRN are not anticipated to increase the overall cost of the CBSD above the \$51.16M for health care and administrative costs that were announced in the 2021 FRN.

Dated: April 8, 2024.

**Aaron T. Siegel,**

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

[FR Doc. 2024-07705 Filed 4-10-24; 8:45 am]

**BILLING CODE 6001-FR-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Department of the Navy Science and Technology Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Department of the Navy (DoN), Department of Defense (DoD).

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of

the Department of the Navy Science and Technology Board (DON S&T Board) will take place.

**DATES:** A closed meeting will be held on April 30 to May 1, 2024 from 8:00 a.m. to 5:00 p.m. Eastern Standard Time (EST). A closed meeting is required because the discussions will involve classified national security matters and technical processes.

**ADDRESSES:** The closed meeting will be held at the Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maria Proestou, Designated Federal Officer (DFO), Office of the Assistant Secretary of the Navy (Research, Development & Acquisition), Pentagon, Washington, DC 20350-1000, 703-692-8278, [donstb.fct@navy.mil](mailto:donstb.fct@navy.mil).

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of chapter 10 of title 5 U.S.C. (commonly known as the Federal Advisory Committee Act (FACA), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), title 41 Code of Federal Regulations (CFR) 102-3.140 and 102-3.150 and covered by 5 U.S.C. 552b(c) (1).

*Purpose of the Meeting:* The purpose of the meeting will be to brief Navy and Marine Corps operational leadership on opportunities to expand warfighting advantage through technologies that have the potential to disrupt the nature of warfighting. The Board members will conduct classified interviews with subject matter experts to support the Board's tasking. Leveraging information gathered, the Board will assess work in progress to develop practical recommendations in support of SECNAV tasking.

*Agenda:* On April 30 to May 1, 2024, the DON S&T Board will meet at the Pentagon to vote on recommendations for the Secretary of the Navy and have out-brief discussions with Department of the Navy and Marine Corps leadership. There will be classified discussions on strategy and relevant topics previously tasked by the Secretary of the Navy.

*Availability of Materials for the Meeting:* A copy of the agenda or any updates to the agenda for the meeting from April 30 to May 1, 2024, as well as supporting documents, can be found on the website: <https://www.facadatabase.gov>.

*Meeting Accessibility:* Pursuant to section 552b(c) (1) of 5 U.S.C., this meeting will be closed to the public. If there are any questions or concerns, please send them to [donstb.fct@navy.mil](mailto:donstb.fct@navy.mil) no later than, April 23, 2024.

*Written Statements:* Pursuant to 41 CFR 102-3.105 and 102-3.140, and