

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

\* \* \* \* \*

V-8 [Amended]

From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA; Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, NE; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; Flag City, OH; Mansfield, OH; Briggs, OH; Bellaire, OH; INT Bellaire 107° and Grantsville, MD, 285° radials; Grantsville; Martinsburg, WV; to Washington, DC. The portion outside the United States has no upper limit.

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V-14 [Amended]

From Chisum, NM; Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Brickyard, IN; Muncie, IN; Flag City, OH; INT Flag City 079° and Dryer, OH, 240° radials; Dryer; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany; INT Albany 084° and Gardner, MA, 284° radials; Gardner; to Norwich, CT.

\* \* \* \* \*

V-38 [Amended]

From Moline, IL; INT Moline 082° and Peotone, IL, 281° radials; Peotone; Fort Wayne, IN; Flag City, OH; INT Flag City 131° and Appleton, OH, 312° radials; Appleton; Zanesville, OH; Parkersburg, WV; Elkins, WV; Gordonsville, VA; Richmond, VA; Harcum, VA; Cape Charles, VA.

\* \* \* \* \*

V-47 [Amended]

From Pine Bluff, AR; Gilmore, AR; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Nabb, IN; Cincinnati, OH; Rosewood, OH; Flag City, OH; to Waterville, OH.

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V-279 [Amended]

From INT Flag City, OH, 146° and Rosewood, OH, 083° radials; to Flag City; 7 miles wide (4 miles northeast and 3 miles southwest of the centerline) to Flag City.

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V-422 [Amended]

From INT Chicago O'Hare, IL, 127° and Chicago Heights, IL, 358° radials; Chicago Heights; INT Chicago Heights 117° and Knox, IN, 276° radials; Knox; Webster Lake, IN; INT Webster Lake 097° and Flag City, OH, 289° radials; to Flag City.

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Issued in Washington, DC, on July 27, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD-2009-HA-0095]

RIN 0720-AB33

TRICARE; Extended Care Health Option

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this final rule to implement the requirements enacted by Congress in Section 732 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 which changes the limit of the Government's share of providing certain benefits under the Extended Care Health Option (ECHO) from \$2,500 per month to \$36,000 per year, and for other non-legislated changes to the ECHO.

DATES: Effective Date: This rule is effective August 9, 2010 and applicable October 14, 2008, and all claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3520.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1079 of Title 10, United States Code (U.S.C.), as amended by Section 701(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2002 [Pub. L. 107-107], required the Department of Defense to establish a program of extended benefits for eligible dependents. That program, known as the Extended Care Health Option (ECHO), replaced the Program

for Persons with Disabilities (PFPWD) and was implemented on September 1, 2005. The primary purpose of the ECHO is to provide eligible beneficiaries with benefits that are not available through the TRICARE Basic Program. The term "eligible beneficiary" means an individual who is a dependent of an active duty service member (ADSM) or is a transitional survivor of a deceased ADSM and who has a qualifying condition. Qualifying conditions include moderate or severe mental retardation, serious physical disability, or an extraordinary physical or psychological condition. The benefits available through the ECHO are intended to assist in the reduction of the disabling effects of an ECHO qualifying condition.

Section 1079(e)(3) and (4) authorizes benefits, including training, rehabilitation, special education, assistive technology devices, institutional care in private, nonprofit, public, and State institutions and facilities and, if appropriate, transportation to and from such institutions and facilities in which the beneficiary is receiving institutional care.

Section 1079(f)(2) limited the Government's liability for benefits authorized by Section 1079(e)(3) and (4) to \$2,500 per month and required that the beneficiary's sponsor be liable for any amount of the monthly total cost for those benefits that exceeded the Government's limit. Section 1079(e) also authorized the extended benefits program to provide additional benefits including diagnostic services, inpatient and outpatient care, comprehensive home health care, respite care, and other services and supplies as determined appropriate by the Secretary. However, Section 1079(f) did not limit the Government's liability for those additional benefits. By final rule published in the Federal Register (FR) on August 20, 2004, (69 FR 51559) the Department established that those additional benefits accrued to the \$2,500 per month limit.

Section 732 of the Duncan Hunter NDAA for FY 2009 [Pub. L. 110-417] (NDAA 2009) changed the limit of the Government's liability for benefits authorized under Section 1079(e)(3) and (4) from \$2,500 per month to \$36,000 per year, prorated as determined by the Secretary. This rule does not prorate the annual limit of Government liability. Section 732 does not affect other benefits authorized under Section 1079(e).

This rule changes the Government's share of providing all benefits available through the Extended Care Health

Option from \$2,500 per month to \$36,000 per FY. This rule does not change the Government's liability for benefits provided by the ECHO Home Health Care (EHHC) benefit or the EHHC Respite Care benefit.

Additionally, Section 732 changed the sponsor's liability for costs exceeding the limit of the Government's liability from a per-month basis to a per-year basis; this rule includes that change.

The following additional changes contained in this rule are further discussed below: Deletes references to the PFPWD, eliminates allocating the allowable cost of durable equipment authorized for purchase through the ECHO, clarifies the monthly reimbursement for benefits received through the EHHC, and allows a waiver of the requirement to enroll in the sponsor's branch of Service Exceptional Family Member Program (EFMP) in order to register in the ECHO.

Active duty family members who have a qualifying condition are eligible to receive benefits through the ECHO. Qualifying conditions include moderate or severe mental retardation, a serious physical disability, or an extraordinary physical or psychological condition such that the beneficiary is homebound. Serious physical disabilities include those conditions that preclude an individual from the unaided performance of at least one major life activity such as breathing, cognition, hearing, seeing, and age-appropriate ability essential to bathing, dressing, eating, grooming, speaking, stair use, toilet use, transferring, and walking.

The ECHO, as the replacement for the PFPWD, has been fully implemented for several years; it is, therefore, appropriate to delete references in the regulations to the transition of the PFPWD to the ECHO.

Durable equipment, which is defined as a device or apparatus which does not qualify as "Durable Medical Equipment" under the TRICARE Basic Program but which is essential to the efficient arrest or reduction of the functional loss resulting from, or the disabling effects of an ECHO-qualifying condition, is eligible for TRICARE coverage through the ECHO. Paragraph (g)(2) within Sec. 199.5 provides for prorating the allowable amount for durable equipment over a calculated period of time. The method of proration resulted in the monthly benefit limit of \$2,500 being divided, at the ECHO-registered beneficiary's sponsor's discretion, at least equally between the allowable cost of purchasing ECHO-authorized durable equipment and the cost of other authorized ECHO benefits. As a result of Section 732 and the changes made in

this rule, the allowable expense for durable equipment accrues to the maximum FY Government limit of \$36,000. Therefore, proration of allowable durable equipment expense is no longer an appropriate option. As a result, the ECHO beneficiary's sponsor will have only one cost-share liability for each authorized item of durable equipment purchased through the ECHO.

The ECHO Home Health Care benefit is limited on a FY basis to the amount TRICARE would reimburse a Skilled Nursing Facility (SNF) if the beneficiary were a patient in the SNF. Paragraph (g)(4)(iii) of Sec. 199.5 limits the maximum monthly Government reimbursement for the EHHC, including EHHC respite care, to no more than one-twelfth of the annual maximum Government cost-share. Because the actual number of days in the month varies, the one-twelfth limit can be over or understated for a given month. This rule revises that requirement by taking into account the actual number of days in a month EHHC benefits are received.

As required by Section 1079(d)(1), eligible beneficiaries must register in the ECHO in order to receive ECHO benefits. Evidence of enrollment in the sponsor's branch of Service's EFMP is required in order to register in the ECHO. The Department recognizes there are circumstances when that requirement is not appropriate. This rule specifies when the EFMP enrollment requirement can be waived.

Except as specified herein, all other requirements of the ECHO remain as currently published.

## II. Public Comments

We provided a 60-day public comment period following publication of the proposed rule in the **Federal Register** (74 FR 44800) on August 30, 2009. No comments were received. However, following additional Department review, Section 199.5(g)(2)(ii) was revised further to clarify the sponsor's cost-share liability for benefits received under this section.

## III. Regulatory Procedures

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

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

economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

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

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

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

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

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

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

*Executive Order 13132, "Federalism"*

This rule has been examined for its impact under E.O. 13132 and 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 power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

## List of Subjects in 32 CFR Part 199

Extended benefits for disabled family members of active duty service members, health care, 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 199.5 is amended by:

- a. Removing paragraphs (b)(4), (g)(2)(ii) introductory text through (g)(2)(ii)(C)(2), and (g)(2)(ii)(E);

- b. Redesignating paragraph (g)(2)(ii)(D) as (g)(2)(ii); and
- c. Revising paragraphs (c)(6), (c)(7)(iii), (f)(3)(i), (g)(2)(i), newly redesignated paragraph (g)(2)(ii), (g)(4)(iii), (h)(2), (h)(3)(v)(A), and (j) to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

\* \* \* \* \*

(c) \* \* \*

(6) Transportation of an ECHO beneficiary receiving benefits under paragraph (c)(5), and a medical attendant when necessary to assure the beneficiary's safety, to or from a facility or institution to receive authorized ECHO services or items.

(7) \* \* \*

(iii) The Government's cost-share incurred for these services accrues to the fiscal year benefit limit of \$36,000.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) ECHO. The total Government share of the cost of all ECHO benefits, except ECHO Home Health Care (EHHC) and EHHC respite care, provided in a given fiscal year to a beneficiary, may not exceed \$36,000 after application of the allowable payment methodology.

\* \* \* \* \*

(g) \* \* \*

(2) Equipment. (i) The TRICARE allowable amount for durable equipment shall be calculated in the same manner as durable medical equipment allowable through Section 199.4, and accrues to the fiscal year benefit limit specified in paragraph (f)(3) of this section.

(ii) Cost-share. A cost-share, as provided by paragraph (f)(2) of this section, is required for each month in which equipment is purchased under this section. However, in no month shall a sponsor be required to pay more than one cost-share regardless of the number of benefits the sponsor's dependents received under this section.

\* \* \* \* \*

(4) \* \* \*

(iii) The maximum monthly Government reimbursement for EHHC, including EHHC respite care, will be based on the actual number of hours of EHHC services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section and adjusted according to the actual number of days in the month the services were provided.

(h) \* \* \*

(2) Registration. Active duty sponsors must register potential ECHO-eligible

beneficiaries through the Director, TRICARE Management Activity, or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity, or designee will determine ECHO eligibility and update the Defense Enrollment Eligibility Reporting System accordingly. Unless waived by the Director, TRICARE Management Activity or designee, sponsors must provide evidence of enrollment in the Exceptional Family Member Program provided by their branch of Service at the time they register their family member(s) for the ECHO.

(3) \* \* \*

(v) Public facility use. (A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirements shall apply to beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate for beneficiaries receiving institutional care, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of public facility non-availability or inadequacy is limited to \$36,000 per fiscal year per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

\* \* \* \* \*

(j) Effective date. All changes to this section are effective as of October 14, 2008, and claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

Dated: July 26, 2010.

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

[FR Doc. 2010-19312 Filed 8-6-10; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD-2009-HA-0097]

RIN 0720-AB35

TRICARE; Elimination of Voluntary Disenrollment Lock-Out

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule eliminates the 1 year lock out for non-Active Duty members who disenroll from TRICARE Prime before their annual enrollment renewal date.

DATES: Effective Date: September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Larkin, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681-0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The TRICARE benefit was directed by Congress in section 1097 of the National Defense Authorization Act for Fiscal Year 1995. For further information on TRICARE, the reader may refer to the final rule regarding TRICARE published in the Federal Register on October 5, 1995.

Administrative Change

When TRICARE Prime was implemented, it was envisioned that TRICARE Prime enrollees would transfer their enrollment when they moved to a new location. The reality is that some enrollees, such as college students, move several times a year. When TRICARE Prime is available at their new location, they transfer enrollment. However, TRICARE Prime might not be available at the gaining location, so they voluntarily disenroll in advance of their annual enrollment date. This automatically triggers a one year lock-out. This final rule eliminates the lock-out for active duty family members and allows TRICARE Prime enrollment when they relocate in an area that offers TRICARE Prime.

II. Public Comments

The proposed rule was published in the Federal Register on October 29, 2009, for a 60-day comment period. We received one comment and we thank the person for commenting.