

legally required for this temporary scheduling order. Therefore, I hereby order that this paragraph (the first full paragraph in the right column on page 71637), as well as the "Regulatory Flexibility Act" heading that precedes it, be stricken.

DEA also inadvertently included in its Notice of Intent a certification relating to the Congressional Review Act. The Congressional Review Act only applies to "final" rules. Accordingly, inclusion of the paragraph relating to the Congressional Review Act in the Notice of Intent was premature. Therefore, I hereby order that this paragraph (the fifth paragraph in the right column on page 71637 and continued on the top of page 71638), as well as the "Congressional Review Act" heading that precedes it, also be stricken.

Dated: January 7, 2011.

**Michele M. Leonhart,**  
Administrator.

[FR Doc. 2011-683 Filed 1-10-11; 4:15 pm]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DoD-2010-HA-0113; RIN 0720-AB46]

### TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2010; Enhancement of Transitional Dental Care for Members of the Reserve Component on Active Duty for More Than 30 Days in Support of a Contingency Operation

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department is publishing this proposed rule to implement section 703 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10). Specifically, that legislation amends the transitional health care dental benefits for Reserve Component members on active duty for more than 30 days in support of a contingency operation. The legislation entitles these Reserve Component members to dental care in the same manner as a member of the uniformed services on active duty for more than 30 days, thus providing care to the Reserve member in both military dental treatment facilities and authorized private sector dental care. This proposed rule does not eliminate any medical or dental care that is currently covered as transitional health care for the member. However the member's

dependents are not entitled to this enhanced benefit.

At present, the transitional health care dental benefits for Reserve Component members includes space available care in military dental treatment facilities and eligibility for the TRICARE Dental Program (TDP). The implementation of section 703 of NDAA for FY10 will enhance the dental benefit to include space required care in military dental treatment facilities; military dental treatment facility referred care to the private sector; and authorized remote dental care in the private sector during the 180 day transitional health care period. Both dental treatment facility referred care and remote care will be administered by TRICARE's Active Duty Dental Program (ADDP). TDP eligibility will begin after the transitional health care period ends.

Reserve Component family members are also eligible for the TRICARE Dental Program (TDP). These family members pay 100% of the premiums while their sponsor is in Reserve status. If their sponsor is activated for more than 30 days, the TDP enrolled Reserve Component family members obtain the same benefits as any other TDP enrolled active duty family members with the Government subsidizing 60 percent of the premium cost for enrolled active duty family members. This change in status and subsidy occurs automatically. Upon the sponsor's deactivation, the family members automatically revert to Reserve Component family member TDP status and pay 100% of the TDP premium cost. With the proposed rule, there is no change to status or eligibility for family members.

**DATES:** Written comments received at the address indicated below by March 14, 2011 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any

personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** CAPT Robert H. Mitton, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681-0039.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Currently, Reserve Component members who separate from active duty after serving for more than 30 days in support of a contingency operation are entitled to dental care under the transitional assistance medical program in the same manner as a dependent. This consists of only space-available dental care in a military dental treatment facility and is very limited.

This proposed rule amends the transitional health care dental benefit for Reserve Component members who were on active duty for more than 30 days in support of a contingency operation by providing those members' dental care the same as that for a member of the uniformed services on active duty for more than 30 days. This enhanced benefit does not apply to members' dependents.

As mentioned, the transitional health care dental benefits for Reserve Component members include space available care in military dental treatment facilities. Additionally, Reserve Component members are eligible for the TRICARE Dental Program (TDP). The TDP provides comprehensive dental care insurance and requires premium and cost-share payments but includes an annual maximum per enrollee per contract year for non-orthodontic services. This means that the total payments for covered dental services (except orthodontic services) for each enrolled member will not exceed the annual maximum amount in any contract year. The Government subsidizes 60 percent of the premium cost for enrolled Reserve Component members. If activated for more than 30 days in support of a contingency operation, a TDP enrolled Reserve Component member is automatically disenrolled from the TDP and automatically re-enrolled upon deactivation.

Under the proposed rule, a TDP enrolled Reserve Component member activated for more than 30 days is still automatically disenrolled from the TDP; however, the Reserve Component member will not be automatically re-enrolled upon deactivation because the member will be entitled to the same dental benefits as an active duty member. The Reserve Component

member will be TDP eligible and automatically re-enrolled in the TDP after the Transitional Health Care period is completed.

Reserve Component family members are also eligible for the TRICARE Dental Program (TDP). These family members pay 100% of the premiums while their sponsor is in Reserve status. If their sponsor is activated for more than 30 days, the TDP enrolled Reserve Component family members obtain the same benefits as any other TDP enrolled active duty family members with the Government subsidizing 60 percent of the premium cost for enrolled active duty family members. This change in status and subsidy occurs automatically. Upon the sponsor's deactivation, the family members automatically revert to Reserve Component family member TDP status and pay 100% of the TDP premium cost. With the proposed rule, there is no change to status or eligibility for family members.

## II. Regulatory Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically 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. The Regulatory Flexibility Act (RFA) requires that 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 is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this proposed rule is not subject to any of these requirements. This proposed rule would amend the Code of Federal Regulations to conform to the new statutory authority. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

This rule does not contain unfunded mandates. It 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.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511).

We have examined the impact(s) of the proposed rule under Executive Order 13132 and it does not have 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

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

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

### PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

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 199.3 is amended by revising paragraph (e)(3) to read as follows:

#### § 199.3 Eligibility.

\* \* \* \* \*

(e) \* \* \*  
(3) TAMP benefits under TRICARE begin on the day after the member is separated from active duty, and, if such separation occurred on or after November 6, 2003, end 180 days after such date. TRICARE benefits available to both the member and eligible family members are generally those available to family members of members of the uniformed services under this Part. However, during TAMP eligibility, a member of a Reserve Component as described in paragraph (e)(1)(ii) of this section, is entitled to dental care to which a member of the uniformed services on active duty for more than 30 days is entitled. Each branch of service will determine eligibility for its members and eligible family members and provide data to DEERS.

\* \* \* \* \*

3. § 199.13 is amended by revising paragraph (c)(3)(ii)(E)(1) to read as follows:

#### § 199.13 TRICARE Dental Program.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(E) \* \* \*

(1) Changes in status of active duty, Selected Reserve or Individual Ready

Reserve member. When the active duty, Selected Reserve or Individual Ready Reserve member is separated, discharged, retired, transferred to the Standby or Retired Reserve, his or her enrolled dependents and/or the enrolled Selected Reserve or Individual Ready Reserve member loses eligibility and enrollment as of 11:59 p.m. on the last day of the month in which the change in status takes place. When the Selected Reserve or Individual Ready Reserve member is ordered to active duty for a period of more than 30 days without a break in service, the member loses eligibility and is disenrolled, if previously enrolled; however, their enrolled dependents maintain their eligibility and previous enrollment subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract.

(i) Reserve component members separated from active duty in support of a contingency operation. When a member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is for more than 30 days, the member becomes eligible for Transitional Health Care pursuant to 10 U.S.C. 1145(a) and the member is entitled to dental care to which a member of the uniformed services on active duty for more than 30 days is entitled. Thus the member has no requirement for the TDP and is not eligible to purchase the TDP. Upon the termination of Transitional Health Care eligibility, the member regains TDP eligibility and is reenrolled, if previously enrolled.

(ii) Dependents of members separated from active duty in support of a contingency operation. Dependents of a member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active for more than 30 days maintain their eligibility and previous enrollment, subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract. During the member's Transitional Health Care eligibility, the dependents are considered family members of Reserve Component members.

(iii) Members separated from active duty and not covered by 10 U.S.C. 1145(a)(2)(B). When the previously enrolled active duty member is transferred back to the Selected Reserve or Individual Ready Reserve, other than pursuant to 10 U.S.C. 1145(2)(B), without a break in service, the member regains TDP eligibility and is reenrolled; however, enrolled dependents maintain

their eligibility and previous enrollment subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract.

(iv) Eligible dependents of an active duty, Selected Reserve or Individual Ready Reserve member serving a sentence of confinement in conjunction with a sentence of punitive discharge are still eligible for the TDP until such time as the active duty, Selected Reserve or Individual Ready Reserve member's discharge is executed.

\* \* \* \* \*

Dated: January 4, 2011.

**Patricia L. Toppings,**

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

[FR Doc. 2011-623 Filed 1-12-11; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD-2010-HA-0094; RIN 0720-AB42]

#### **TRICARE; Reimbursement for Travel for Specialty Care Under Exceptional Circumstances**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements section 634 of the National Defense Authorization Act for Fiscal Year 2010 which amends Section 1074i of title 10, United States Code, to permit reimbursement for reasonable travel expenses for active duty members of the uniformed Services and their dependents, and accompaniment, to a specialty care provider under such exceptional circumstances as the Secretary of Defense may proscribe. The Department of Defense through its military treatment facilities and its robust managed care program, TRICARE Prime, is able to fulfill the medical needs of the majority of its active duty members and their families. However, in some locations where active duty members and their families live due to the duty assignment of the member, the medical resources in the military treatment facilities and the managed care networks may not meet all of the specialty care needs of these members and their families within normal access standards. Reimbursement of reasonable travel expenses for required specialty care that is more than 100 miles from the primary care manager's office is currently a benefit under paragraph (a) of section 1074i, title 10, United States

Code for any covered beneficiary enrolled in the TRICARE Prime program, including the active duty members and their dependents. However this proposed rule extends a travel reimbursement for active duty members of the armed forces and their families who, because of an exceptional circumstance involving the duty assignment of the active duty member of the armed forces, are required to travel less than 100 miles but more than 60 minutes in drive time to access needed specialty care. This travel reimbursement benefit is limited to those active duty members and their dependents, and accompaniment, enrolled in Prime or TRICARE Prime Remote. The Director, TRICARE Management Activity, shall issue procedures and guidelines under which authorization for reimbursement of travel expenses will be issued after verification that the member, family member, and/or accompaniment, must travel less than 100 miles but more than 60 minutes drive time from the military treatment facility or their primary care manager's office to receive required specialty care.

**DATES:** Comments must be received on or before March 14, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

#### **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.

#### *Travel for Specialty Care*

Managed care support contractors are required to establish adequate networks throughout regions to complement military treatment facilities and support TRICARE Prime and Extra. However, there are many active duty members of the uniformed Services and their families who are required by the member's duty assignment to live in certain more remote areas where there are insufficient numbers or types of specialty or subspecialty providers to provide care within normal drive-time access standards notwithstanding the due diligence of the contractors in developing the network around the military treatment facilities or their diligence in finding network providers for those members or families enrolled in TRICARE Prime Remote. Under such exceptional circumstances as identified under procedures and guidelines issued by the Director, TRICARE Management Activity, reasonable travel expenses to obtain specialty care for which the enrollee has been referred may be reimbursed. The specific location or identity of these military treatment facilities and the specific TRICARE Prime Remote locations and the types of specialists or sub-specialists shall be determined in accordance with guidelines issued by the Assistant Secretary of Defense for Health Affairs. The guidelines shall include identity of the specific military treatment facility or TRICARE Prime Remote area, validation by either, or both, the facility commander and/or the Director of the TRICARE Regional Office that the specialty care provider or category of specialty care provider required to provide care to the active duty member and their dependents, are not available within a 60 minute drive time, but are available within 100 miles of the military treatment facility or primary care manager's office. The Director of the TRICARE Regional Office shall also verify that the Managed Care Support Contractor has used due diligence in attempting to enroll the needed specialists who do meet the drive time specialty care access standards, into the network. The Director, TRICARE Management Activity shall establish and make available a list of military treatment facilities and category of specialty providers for which these reasonable travel expenses shall be allowed. For members, and families, enrolled in TPR the Director shall ensure that adequate coordination of care and travel benefits is provided to