Medicaid, CHAMPUS is always the primary payer.

(3) *TRICARE and Workers' Compensation*. TRICARE benefits are not payable for a work-related illness or injury that is covered under a workers' compensation program. Pursuant to paragraph (c)(2) of this section, however, the Director, TRICARE Management Activity, or a designee, may authorize payment of a claim involving a work-related illness or injury covered under a workers' compensation program in advance of adjudication and payment of the workers' compensation claim and then recover, under §199.12, the TRICARE costs of health care incurred on behalf of the covered beneficiary.

(4) *Extended Care Health Option (ECHO)*. For those services or supplies that require use of public facilities, an ECHO eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, TRICARE Management Activity or designee to be available and adequate to meet a disability related need for which an ECHO benefit was requested. Benefits eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of ECHO benefits.

(5) *Primary payer*. The requirements of paragraph (d)(4) of this section notwithstanding, TRICARE is primary payer for services and items that are provided in accordance with the Individualized Family Service Plan as required by Part C of the Individuals with Disabilities Education Act and that are medically or psychologically necessary and otherwise allowable under the TRICARE Basic Program or the Extended Care Health Option.

(e) *Implementing instructions*. The Director, OCHAMPUS, or a designee, shall issue such instructions, procedures, or guidelines, as necessary, to implement the intent of this section.

[51 FR 24008, July 1, 1986, as amended at 62 FR 35097, June 30, 1997; 62 FR 54384, Oct. 20, 1997; 63 FR 59232, Nov. 3, 1998; 64 FR 46141, Aug. 24, 1999; 66 FR 40607, Aug. 3, 2001; 67 FR 18827, Apr. 17, 2002; 68 FR 6618, Feb. 10, 2003; 68 FR 23032, Apr. 30, 2003; 68 FR 32361, May 30, 2003; 69 FR 51569, Aug. 20, 2004]

§199.9 Administrative remedies for fraud, abuse, and conflict of interest.

(a) *General*. (1) This section sets forth provisions for invoking administrative remedies under CHAMPUS in situations involving fraud, abuse, or conflict of interest. The remedies impact institutional providers, professional providers, and beneficiaries (including parents, guardians, or other representatives of beneficiaries), and cover situations involving criminal fraud, civil fraud, administrative determinations of conflicts of interest or dual compensation, and administrative determinations of fraud or abuse. The administrative actions, remedies, and procedures may differ based upon whether the initial findings were made by a court of law, another agency, or the Director, OCHAMPUS (or designee).

(2) This section also sets forth provisions for invoking administrative remedies in situations requiring administrative action to enforce provisions of law, regulation, and policy in the administration of CHAMPUS and to ensure quality of care for CHAMPUS beneficiaries. Examples of such situations may include a case in which it is discovered that a provider fails to meet requirements under this part to be an authorized CHAMPUS provider; a case in which the provider ceases to be qualified as a CHAMPUS provider because of suspension or revocation of the provider's license by a local licensing authority; or a case in which a provider meets the minimum requirements under this part but, nonetheless, it is determined that it is in the best interest of the CHAMPUS or CHAMPUS beneficiaries that the provider should not be an authorized CHAMPUS provider.

(3) The administrative remedies set forth in this section are in addition to, and not in lieu of, any other remedies

or sanctions authorized by law or regulation. For example, administrative action under this section may be taken in a particular case even if the same case will be or has been processed under the administrative procedures established by the Department of Defense to implement the Program Fraud Civil Remedies Act.

(4) Providers seeking payment from the Federal Government through programs such as CHAMPUS have a duty to familiarize themselves with, and comply with, the program requirements.

(5) CHAMPUS contractors and peer review organizations have a responsibility to apply provisions of this regulation in the discharge of their duties, and to report all known situations involving fraud, abuse, or conflict of interest. Failure to report known situations involving fraud, abuse, or conflict of interest will result in the withholding of administrative payments or other contractual remedies as determined by the Director, OCHAMPUS, or a designee.

(b) *Abuse.* The term ''abuse'' generally describes incidents and practices which may directly or indirectly cause financial loss to the Government under CHAMPUS or to CHAMPUS beneficiaries. For the definition of abuse, see §199.2 of this part. The type of abuse to which CHAMPUS is most vulnerable is the CHAMPUS claim involving the overutilization of medical and health care services. To avoid abuse situations, providers have certain obligations to provide services and supplies under CHAMPUS which are: Furnished at the appropriate level and only when and to the extent medically necessary as determined under the provisions of this part; of a quality that meets professionally recognized standards of health care; and, supported by adequate medical documentation as may reasonably be required under this part by the Director, OCHAMPUS, or a designee, to evidence the medical necessity and quality of services furnished, as well as the appropriateness of the level of care. A provider's failure to comply with these obligations can result in sanctions being imposed by the Director, OCHAMPUS, or a designee, under this section. Even when administrative remedies are not initiated under this section, abuse situations under CHAMPUS are a sufficient basis for denying all or any part of CHAMPUS cost-sharing of individual claims. The types of abuse or possible abuse situations under CHAMPUS include, but are not limited, to the following:

(1) A pattern of waiver of beneficiary (patient) cost-share or deductible.

NOTE: In a case of a legitimate bad debt write-off of patient cost-share or deductible, the provider's record should include documentation as to what efforts were made to collect the debt, when the debt was written off, why the debt was written off, and the amount of the debt written off.

(2) Improper billing practices. Examples include, charging CHAMPUS beneficiaries rates for services and supplies that are in excess of those charges routinely charged by the provider to the general public, commercial health insurance carriers, or other federal health benefit entitlement programs for the same or similar services. (This includes dual fee schedules—one for CHAMPUS beneficiaries and one for other patients or third-party payers. This also includes billing other third-party payers the same as CHAMPUS is billed but accepting less than the billed amount as reimbursement. However, a formal discount arrangement such as through a preferred provider organization, may not necessarily constitute an improper billing practice.)

(3) A pattern of claims for services which are not medically necessary or, if medically necessary, not to the extent rendered. For example, a battery of diagnostic tests are given when, based on the diagnosis, fewer tests were needed.

(4) Care of inferior quality. For example, consistently furnishing medical or mental health services that do not meet accepted standards of care.

(5) Failure to maintain adequate medical or financial records.

(6) Refusal to furnish or allow the Government (for example, OCHAMPUS) or Government contractors access to records related to CHAMPUS claims.

(7) Billing substantially in excess of customary or reasonable charges unless it is determined by OCHAMPUS that the excess charges are justified by

unusual circumstances or medical complications requiring additional time, effort, or expense in localities when it is accepted medical practice to make an extra charge in such cases.

(8) Unauthorized use of the term ''Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)'' in private business. While the use of the term ''CHAMPUS'' is not prohibited by federal statute, misrepresentation or deception by use of the term ''CHAMPUS'' to imply an official connection with the Government or to defraud CHAMPUS beneficiaries may be a violation of federal statute. Regardless of whether the actual use of the term ''CHAMPUS'' may be actionable under federal statute, the unauthorized or deceptive use of the term ''CHAMPUS'' in private business will be considered abuse for purposes of this Section.

(c) *Fraud*. For the definition of fraud, see §199.2 of this part. Examples of situations which, for the purpose of this part, are presumed to be fraud include, but are not limited to:

(1) Submitting CHAMPUS claims (including billings by providers when the claim is submitted by the beneficiary) for services, supplies, or equipment not furnished to, or used by, CHAMPUS beneficiaries. For example, billing or claiming services when the provider was on call (other than an authorized standby charge) and did not provide any specific medical care to the beneficiary; providing services to an ineligible person and billing or submitting a claim for the services in the name of an eligible CHAMPUS beneficiary; billing or submitting a CHAMPUS claim for an office visit for a missed appointment; or billing or submitting a CHAMPUS claim for individual psychotherapy when a medical visit was the only service provided.

(2) Billing or submitting a CHAMPUS claim for costs for noncovered or nonchargeable services, supplies, or equipment disguised as covered items. Some examples are: (i) Billings or CHAMPUS claims for services which would be covered except for the frequency or duration of the services, such as billing or submitting a claim for two one-hour psychotherapy sessions furnished on separate days when the actual service furnished was a two-hour therapy session on a single day, (ii) spreading the billing or claims for services over a time period that reduces the apparent frequency to a level that may be cost-shared by CHAMPUS, (iii) charging to CHAMPUS, directly or indirectly, costs not incurred or not reasonably allowable to the services billed or claimed under CHAMPUS, for example, costs attributable to nonprogram activities, other enterprises, or the personal expenses of principals, or (iv) billing or submitting claim on a fee-for-service basis when in fact a personal service to a specific patient was not performed and the service rendered is part of the overall management of, for example, the laboratory or x-ray department.

(3) Breach of a provider participation agreement which results in the beneficiary (including parent, guardian, or other representative) being billed for amounts which exceed the CHAMPUS-determined allowable charge or cost.

(4) Billings or CHAMPUS claims for supplies or equipment which are clearly unsuitable for the patient's needs or are so lacking in quality or sufficiency for the purpose as to be virtually worthless.

(5) Billings or CHAMPUS claims which involve flagrant and persistent overutilization of services without proper regard for results, the patient's ailments, condition, medical needs, or the physician's orders.

(6) Misrepresentations of dates, frequency, duration, or description of services rendered, or of the identity of the recipient of the services or the individual who rendered the services.

(7) Submitting falsified or altered CHAMPUS claims or medical or mental health patient records which misrepresent the type, frequency, or duration of services or supplies or misrepresent the name(s) of the individual(s) who provided the services or supplies.

(8) Duplicate billings or CHAMPUS claims. This includes billing or submitting CHAMPUS claims more than once for the same services, billing or submitting claims both to CHAMPUS and the beneficiary for the same services, or billing or submitting claims both to CHAMPUS and other third-parties

(such as other health insurance or government agencies) for the same services, without making full disclosure of material facts or immediate, voluntary repayment or notification to CHAMPUS upon receipt of payments which combined exceed the CHAMPUS-determined allowable charge of the services involved.

(9) Misrepresentation by a provider of his or her credentials or concealing information or business practices which bear on the provider's qualifications for authorized CHAMPUS provider status. For example, a provider representing that he or she has a qualifying doctorate in clinical psychology when the degree is not from a regionally accredited university.

(10) Reciprocal billing. Billing or claiming services which were furnished by another provider or furnished by the billing provider in a capacity other than as billed or claimed. For example, practices such as the following: (i) One provider performing services for another provider and the latter bills as though he had actually performed the services (e.g., a weekend fill-in); (ii) providing service as an institutional employee and billing as a professional provider for the services; (iii) billing for professional services when the services were provided by another individual who was an institutional employee; (iv) billing for professional services at a higher provider profile than would be paid for the person actually furnishing the services, (for example, bills reflecting that an M.D. or Ph.D. performed the services when services were actually furnished by a licensed social worker, psychiatric nurse, or marriage and family counselor); or (v) an authorized provider billing for services which were actually furnished by an unauthorized or sanctioned provider.

(11) Submitting CHAMPUS claims at a rate higher than a rate established between CHAMPUS and the provider, if such a rate has been established. For example, billing or claiming a rate in excess of the provider's most favored rate limitation specified in a residential treatment center agreement.

(12) Arrangements by providers with employees, independent contractors, suppliers, or others which appear to be designed primarily to overcharge the CHAMPUS through various means (such as commissions, fee-splitting, and kickbacks) used to divert or conceal improper or unnecessary costs or profits.

(13) Agreements or arrangements between the supplier and recipient (recipient could be either a provider or beneficiary, including the parent, guardian, or other representative of the beneficiary) that result in billings or claims which include unnecessary costs or charges to CHAMPUS.

(d) *Conflict of Interest*. (1) Conflict of interest includes any situation where an active duty member of the Uniformed Services (including a reserve member while on active duty, active duty for training, or inactive duty training) or civilian employee of the United States Government, through an official federal position has the apparent or actual opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to himself/herself or others with some potential for personal gain or the appearance of impropriety. Although individuals under contract to the Uniformed Services are not considered ''employees,'' such individuals are subject to conflict of interest provisions by express terms of their contracts and, for purposes of this part, may be considered to be involved in conflict of interest situations as a result of their contract positions. In any situation involving potential conflict of interest of a Uniformed Service employee, the Director, OCHAMPUS, or a designee, may refer the case to the Uniformed Service concerned for appropriate review and action. If such a referral is made, a report of the results of findings and action taken shall be made to the Director, OCHAMPUS, by the Uniformed Service having jurisdiction within 90 days of receiving the referral.

(2) CHAMPUS cost-sharing shall be denied on any claim where a conflict of interest situation is found to exist. This denial of cost-sharing applies whether the claim is submitted by the individual who provided the care, the institutional provider in which the care was furnished, or the beneficiary.

(e) *Dual Compensation*. (1) Federal law (5 U.S.C. 5536) prohibits active duty

members of the Uniformed Services or employees (including part-time or intermittent) appointed in the civil service of the United States Government from receiving additional compensation from the Government above their normal pay and allowances. This prohibition applies to CHAMPUS payments for care furnished to CHAMPUS beneficiaries by active duty members of the Uniformed Services or civilian employees of the Government.

(2) CHAMPUS cost-sharing of a claim shall be denied where the services or supplies were provided by an active duty member of the Uniformed Services or a civilian employee of the Government. This denial of CHAMPUS payment applies whether the claim for reimbursement is filed by the individual who provided the care, the institutional provider in which the care was furnished, or by the beneficiary.

NOTE: Physicians of the National Health Service Corps (NHSC) may be assigned to areas where there is a shortage of medical providers. Although these physicians would be prohibited from accepting CHAMPUS payments as individuals if they are employees of the United States Government, the private organizations to which they may be assigned may be eligible for payment, as determined by the Director, OCHAMPUS, or a designee.

(3) The prohibition against dual compensation does not apply to individuals under contract to the Uniformed Services or the Government.

(f) *Administrative Remedies*. Administrative remedies available under CHAMPUS in this section are set forth below.

(1) *Provider exclusion or suspension*. The Director, OCHAMPUS, or a designee, shall have the authority to exclude or suspend an otherwise authorized CHAMPUS provider from the program based on any criminal conviction or civil judgment involving fraud by the provider; fraud or abuse under CHAMPUS by the provider; exclusion or suspension of the provider by another agency of the Federal Government, a state, or local licensing authority; participation in a conflict of interest situation by the provider; or, when it is in the best interests of the program or CHAMPUS beneficiaries to exclude or suspend a provider under CHAMPUS. In all cases, the exclusion or suspension of a provider shall be effective 15 calendar days from the date on the written initial determination issued under paragraph (h)(2) of this section.

(i) *Criminal conviction or civil judgment involving fraud by a provider*—(A) *Criminal conviction involving CHAMPUS fraud*. A provider convicted by a Federal, state, foreign, or other court of competent jurisdiction of a crime involving CHAMPUS fraud, whether the crime is a felony or misdemeanor, shall be excluded or suspended from CHAMPUS for a period of time as determined by the Director, OCHAMPUS, or a designee. The CHAMPUS exclusion or suspension applies whether or not the provider, as a result of the conviction, receives probation or the sentence is suspended or deferred, and whether or not the conviction or sentence is under appeal.

NOTE: Under the above paragraph (f)(1)(i)(A) of this section, an entity may be excluded or suspended from CHAMPUS whenever the entity is found to have a person, convicted of a crime involving CHAMPUS fraud, who has a direct or indirect ownership or control interest (see § 199.2) of 5 percent or more in the entity, or is an officer, director, agent or managing employee of the entity. The entity will have an opportunity to provide evidence to show that the ownership or control relationship has ceased. While an entity will not be excluded or suspended from CHAMPUS for employing a provider who has been sanctioned under this Section, the entity will be denied CHAMPUS payment for any services furnished by the sanctioned employee. As an authorized CHAMPUS provider, the entity is responsible for ensuring that all CHAMPUS claims involve services furnished to CHAMPUS beneficiaries by employees who meet all requirements under CHAMPUS for provider status.

(B) *Criminal conviction involving fraud of other Federal programs*. Any provider convicted by a Federal, state, or other court of competent jurisdiction of a crime involving another Federal health care or benefit program (such as plans administered under titles XVIII and XIX of the Social Security Act, Federal Workmen's Compensation, and the Federal Employees Program (FEP) for employee health insurance), whether the crime is a felony or misdemeanor, shall be excluded from CHAMPUS for a period of time as determined by the Director, OCHAMPUS, or a designee. The

CHAMPUS exclusion or suspension applies whether or not the provider, as a result of the conviction, receives probation or the sentence is suspended or deferred, and whether or not the conviction or sentence is under appeal.

(C) *Criminal conviction involving fraud of non-Federal programs.* Any provider convicted by a Federal, state, foreign, or other court of competent jurisdiction of a crime involving any non-Federal health benefit program or private insurance involving health benefits may be excluded or suspended from CHAMPUS for a period of time as determined by the Director, OCHAMPUS, or a designee.

(D) *Civil fraud involving CHAMPUS.* If a judgment involving civil fraud has been entered (whether or not it is appealed) against a provider in a civil action involving CHAMPUS benefits (whether or not other Federal programs are involved), the provider shall be excluded or suspended from CHAMPUS for a period determined by the Director, OCHAMPUS, or a designee.

(E) *Civil fraud involving other programs.* If a judgment involving civil fraud has been entered against a provider (whether or not it has been appealed) in a civil action involving other public or private health care programs or health insurance, the provider may be excluded or suspended for a period of time determined by the Director, OCHAMPUS, or a designee.

(ii) *Administrative determination of fraud or abuse under CHAMPUS.* If the Director, OCHAMPUS, or a designee, determines that a provider has committed fraud or abuse as defined in this part, the provider shall be excluded or suspended from CHAMPUS for a period of time determined by the Director, OCHAMPUS, or designee.

(iii) *Administrative determination that the provider has been excluded or suspended by another agency of the Federal Government, a state, or local licensing authority.* Any provider who is excluded or suspended by any other Federal health care program (for example, Medicare), shall be excluded or suspended under CHAMPUS. A provider who has his/her credentials revoked through a Veterans Administration or Military Department credentials review process and who is excluded, suspended, terminated, retired, or separated, shall also be excluded or suspended under CHAMPUS. The period of time of exclusion or suspension shall be determined by the Director, OCHAMPUS, or a designee, pursuant to paragraph (g) of this section.

(iv) *Administrative determination that the provider has participated in a conflict of interest situation.* The Director, OCHAMPUS, or a designee, may exclude or suspend any provider who has knowingly been involved in a conflict of interest situation under CHAMPUS. The period of time of exclusion or suspension shall be determined by the Director, OCHAMPUS, or a designee, pursuant to paragraph (g) of this section. For purposes of this administrative determination, it will be presumed that a CHAMPUS provider knowingly participated in a conflict of interest situation if the provider employs, in the treatment of a CHAMPUS beneficiary (resulting in a CHAMPUS claim), any medical personnel who are active duty members of the Uniformed Services or civilian employees of the Government. The burden of proof to rebut this presumption rests with the CHAMPUS provider. Two exceptions will be recognized to the presumption that a conflict of interest exists. First, indirect CHAMPUS payments may be made to private organizations to which physicians of the National Health Service Corps (NHSC) are assigned. Second, any off-duty Government medical personnel employed in an emergency room of an acute care hospital will be presumed not to have had the opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries; therefore, CHAMPUS payments may be made to the employing hospital *provided* the medical care was not furnished directly by the off-duty Government medical personnel in violation of dual compensation provisions.

(v) *Administrative determination that it is in the best interests of the CHAMPUS or CHAMPUS beneficiaries to exclude or suspend a provider*—(A) *Unethical or improper practices or unprofessional conduct.* (*1*) In most instances, unethical or improper practices or unprofessional conduct by a provider will be program

abuse and subject the provider to exclusion or suspension for abuse. However, in some cases such practices and conduct may provide an independent basis for exclusion or suspension of the provider by the Director, OCHAMPUS, or a designee.

(*2*) Such exclusions or suspensions may be based on findings or recommendations of state licensure boards, boards of quality assurance, other regulatory agencies, state medical societies, peer review organizations, or other professional associations.

(B) *In any other case in which the Director, OCHAMPUS (or designee), determines that exclusion or suspension of a provider is in the best interests of CHAMPUS or CHAMPUS beneficiaries.* The Director, OCHAMPUS, or a designee, may exclude or suspend any provider if it is determined that the authorization of that particular provider under CHAMPUS poses an unreasonable potential for fraud, abuse, or professional misconduct. Any documented misconduct by the provider reflecting on the business or professional competence or integrity of the provider may be considered. Situations in which the Director, OCHAMPUS, or a designee, may take administrative action under this Section to protect CHAMPUS or CHAMPUS beneficiaries include, but are not limited to, a case in which it is determined that a provider poses an unreasonable potential cost to the Government to monitor the provider for fraud or abuse and to avoid the issuance of erroneous payments; or that the provider poses an unreasonable potential harm to the financial or health status of CHAMPUS beneficiaries; or that the provider poses any other unreasonable threat to the interests of CHAMPUS or CHAMPUS beneficiaries. One example of such circumstances involves a provider who, for his/her entire practice or for most of his/her practice, provides or bills for treatment that is not a CHAMPUS benefit, resulting in CHAMPUS frequently and repeatedly denying claims as noncovered services. This may occur when a professional provider furnishes sex therapy (a therapy which may be recognized by the provider's licensing authority but which is excluded from CHAMPUS coverage) and repeatedly submits CHAMPUS claims for the services.

(2) *Provider termination.* The Director, OCHAMPUS, or a designee, shall terminate the provider status of any provider determined not to meet the qualifications established by this part to be an authorized CHAMPUS provider.

(i) *Effective date of termination.* Except as provided in paragraph (g)(2)(ii) of this section, the termination shall be retroactive to the date on which the provider did not meet the requirements of this part.

(A) The retroactive effective date of termination shall not be limited due to the passage of time, erroneous payment of claims, or any other events which may be cited as a basis for CHAMPUS recognition of the provider notwithstanding the fact that the provider does not meet program qualifications. Unless specific provision is made in this part to ''grandfather'' or authorize a provider who does not otherwise meet the qualifications established by this part, all unqualified providers shall be terminated.

(B) Any claims cost-shared or paid under CHAMPUS for services or supplies furnished by the provider on or after the effective date of termination, even when the effective date is retroactive, shall be deemed an erroneous payment unless specific exception is provided in this part. All erroneous payments are subject to collection under § 199.11 of this part.

(C) If an institution is terminated as an authorized CHAMPUS provider, the institution shall immediately give written notice of the termination to any CHAMPUS beneficiary (or their parent, guardian, or other representative) admitted to, or receiving care at, the institution on or after the effective date of the termination. In addition, when an institution is terminated with an effective date of termination after the date of the initial determination terminating the provider, any beneficiary admitted to the institution prior to the effective date of termination (or their parent, guardian, or other representative) shall be notified

by the Director, OCHAMPUS, or a designee, by certified mail of the termination, and that CHAMPUS cost-sharing of the beneficiary's care in the institution will cease as of the effective date of the termination. However, any beneficiary admitted to the institution prior to any grace period extended to the institution under paragraph (f)(2)(ii)(A) of this section shall be advised that, if the beneficiary's care otherwise qualifies for CHAMPUS coverage, CHAMPUS cost-sharing of the care in the institution will continue in order to provide a reasonable period of transition of care; however the transitional period of CHAMPUS cost-sharing shall not exceed the last day of the month following the month in which the institution's status as a CHAMPUS provider is terminated. (This authorized CHAMPUS cost-sharing of the inpatient care received during the transition period is an exception to the general rule that CHAMPUS payment for care furnished after the effective date of termination of the provider's status shall be deemed to be an erroneous payment.) If a major violation under paragraph (f)(2)(ii)(B) of this section is involved, in order to ensure immediate action is taken to transfer beneficiaries to an approved provider, CHAMPUS cost-sharing shall not be authorized after the effective date of termination of the provider's status.

(ii) *Institutions not in compliance with CHAMPUS standards.* If it is determined that an institution is not in compliance with one or more of the standards applicable to its specific category of institution under this part, the Director, OCHAMPUS, or a designee, shall take immediate steps to bring about compliance or terminate the status of the provider as an authorized CHAMPUS provider.

(A) *Minor violations.* An institution determined to be in violation of one or more of the standards shall be advised by certified mail of the nature of the discrepancy or discrepancies and will be given a grace period of 30 days to effect appropriate corrections. The grace period may be extended at the discretion of the Director, OCHAMPUS, or a designee, but in no event shall the extension exceed 90 days.

(*1*) CHAMPUS will not cost-share a claim for any beneficiary admitted during the grace period.

(*2*) Any beneficiary admitted to the institution prior to the grace period (or the beneficiary's parent, guardian, or other representative) will be notified by the Director, OCHAMPUS, or a designee, in writing, of the minor violations and the grace period granted the institution to correct the violations. The beneficiary will also be advised that, if the beneficiary's care otherwise meets all requirements for CHAMPUS coverage, CHAMPUS cost-sharing will continue during the grace period.

(*3*) If the institution submits written notice before the end of the grace period that corrective action has been taken *and* if the Director, OCHAMPUS, or a designee, determines that the corrective action has eliminated the minor violations, the provider will be advised that the institution is restored to full status as an authorized CHAMPUS provider as of 12:01 a.m. on the day written notice of correction was received by the Director, OCHAMPUS, or a designee, or the day on which acceptable corrective action was completed in the judgment of the Director, OCHAMPUS, or a designee. Any beneficiary admitted to the institution prior to the grace period will be notified by the Director, OCHAMPUS, or a designee, of the corrective action and that the provider continues to be an authorized CHAMPUS provider. CHAMPUS cost-sharing for any beneficiary admitted to the institution during the grace period shall be allowed only for care received after 12:01 a.m. on the day written notice of correction was received by the Director, OCHAMPUS, or a designee, or the day on which acceptable corrective action was completed in the judgment of the Director, OCHAMPUS, or a designee.

(*4*) If the institution has failed to give notification in writing before the end of the grace period that corrective action has been completed *or,* in the judgment of the Director, OCHAMPUS, or a designee, the institution has not completed acceptable corrective action during the grace period, the Director, OCHAMPUS, or a designee, may initiate action to terminate the provider as an authorized CHAMPUS provider.

(B) *Major violations*. If the Director, OCHAMPUS, or a designee, determines that an institution is in violation of standards detrimental to life, safety, or health, or substantially in violation of approved treatment programs, immediate action shall be taken to terminate the institution as an authorized CHAMPUS provider. The institution shall be notified by telegram, certified mail, or express mail of the termination under this subparagraph, effective on receipt of the notice. The notice shall include a brief statement of the nature of violations resulting in the termination and advise the institution that an initial determination formalizing the administrative action of termination will be issued pursuant to paragraph (h)(3)(ii) of this section within 15 days.

(3) *Beneficiary sanctions*. (i) With entitlement to CHAMPUS benefits based on public law, an eligible beneficiary will not be suspended or excluded from CHAMPUS. However, the Director, OCHAMPUS, or a designee, may take action deemed appropriate and reasonable to protect the Government from those beneficiaries (including sponsors, parents, guardians, or representatives of beneficiaries) who have submitted false claims.

(ii) Pursuant to §199.11 of this part, the Director, OCHAMPUS, or a designee, may recover erroneous payments on claims involving fraud or false or misleading statements. Remedies for recovery of the erroneous payments include the use of offset against future CHAMPUS payments.

(iii) Under policies adopted by the Director, OCHAMPUS, or a designee, individuals who, based on reliable information, have previously submitted fraudulent or false CHAMPUS claims, may be required to comply with any procedures (e.g., partial or total prepayment audit or review, restriction to a designated primary care provider, etc.) which the Director, OCHAMPUS, or a designee, deems appropriate to ensure that their future medical care and CHAMPUS claims (including the medical care and CHAMPUS claims submitted by or for members of their family) are valid.

(g) *Period of exclusion, suspension, or termination*—(1) *Exclusions or suspensions*. Except as otherwise required by paragraph (g)(1)(i) of this section, the Director, OCHAMPUS, or a designee, shall determine the period of exclusion or suspension for a provider using the factors set forth in paragraph (g)(1)(ii) of this section.

(i) *Exclusion or suspension of a provider based on the provider's exclusion or suspension by another agency of the Federal Government, a state, or a local licensing authority*. If the administrative action under CHAMPUS is based *solely* on the provider's exclusion or suspension by another agency, state, or local licensing authority, the period of exclusion or suspension under CHAMPUS shall be for the same length of time of exclusion or suspension imposed by the other agency, state, or local licensing authority. The provider may request reinstatement as an authorized CHAMPUS provider if reinstatement is achieved under the other program prior to the end of the period of exclusion or suspension. If the administrative action under CHAMPUS is not based *solely* on the provider's exclusion or suspension by another agency, state, or local licensing authority, the minimum period of exclusion or suspension shall be for the same period of exclusion or suspension imposed by the other agency, state, or local licensing authority.

(ii) *Factors to be considered in determining the period of exclusion or suspension of providers under CHAMPUS*. In determining the period of exclusion or suspension of a provider, the Director, OCHAMPUS, or a designee, may consider any or all of the following:

(A) When the case concerns all or any part of the same issues which have been the subject of criminal conviction or civil judgment involving fraud by a provider:

(*1*) The period(s) of sentence, probation, and other sanction imposed by court order against the provider may be presumed reasonable and adopted as the administrative period of exclusion or suspension under CHAMPUS, unless aggravating or mitigating factors exist.

(*2*) If any aggravating factors exist, then cause exists for the Director, OCHAMPUS, or a designee, to consider the factors set forth in paragraph

(g)(1)(ii)(B) of this section, in imposing a period of administrative exclusion or suspension in excess of the period(s) of sentence, probation, and/or other sanctions imposed by court order. Examples of aggravating factors include, but are not limited to:

(*i*) An administrative determination by the Director, OCHAMPUS, or a designee, that the basis for administrative exclusion or suspension includes an act(s) of fraud or abuse under CHAMPUS in addition to, or unrelated to, an act(s) of fraud included in the court conviction or civil judgment.

(*ii*) The fraudulent act(s) involved in the criminal conviction or civil judgment, or similar acts, were committed over a significant period of time; that is, one year or more.

(*iii*) The act(s) of fraud or abuse had an adverse physical, mental, or financial impact on one or more CHAMPUS beneficiaries.

(*iv*) The loss or potential loss to CHAMPUS is over $5,000. The entire amount of loss or potential loss to CHAMPUS due to acts of fraud and abuse will be considered, in addition to the amount of loss involved in the court conviction or civil judgment, regardless of whether full or partial restitution has been made to CHAMPUS.

(*v*) The provider has a prior court record, criminal or civil, or administrative record or finding of fraud or abuse.

(*3*) If any mitigating factors exist, then cause may exist for the Director, OCHAMPUS, or a designee, to reduce a period of administrative exclusion or suspension from any period(s) imposed by court conviction or civil judgment. Only the existence of either of the following two factors may be considered in mitigation:

(*i*) The criminal conviction or civil judgment only involved three or fewer misdemeanor offenses, and the total of the estimated losses incurred (including any loss from act(s) not involved in the conviction or judgment) is less than $1,000, regardless of whether full or partial restitution has been made.

(*ii*) The criminal or civil court proceedings establish that the provider had a mental, emotional or physical condition, prior to or contemporaneous with the commission of the act(s), that reduced the provider's criminal or civil culpability.

(B) The Director, OCHAMPUS, or a designee, may consider the following factors in determining a reasonable period of exclusion or suspension of a provider under CHAMPUS:

(*1*) The nature of the claims and the circumstances under which they were presented;

(*2*) The degree of culpability;

(*3*) History of prior offenses (including whether claims were submitted while the provider was either excluded or suspended pursuant to prior administrative action);

(*4*) Number of claims involved;

(*5*) Dollar amount of claims involved;

(*6*) Whether, if a crime was involved, it was a felony or misdemeanor;

(*7*) If patients were injured financially, mentally, or physically; the number of patients; and the seriousness of the injury(ies);

(*8*) The previous record of the provider under CHAMPUS;

(*9*) Whether restitution has been made or arrangements for repayment accepted by the Government;

(*10*) Whether the provider has resolved the conflict of interest situations or implemented procedures acceptable to the Director, OCHAMPUS, or a designee, which will prevent conflict of interest in the future; and,

(*11*) Such other factors as may be deemed appropriate.

(2) *Terminations.* When a provider's status as an authorized CHAMPUS provider is ended, other than through exclusion or suspension, the termination is based on a finding that the provider does not meet the qualifications to be an authorized provider, as set forth in this part. Therefore, the period of termination in all cases will be indefinite and will end only after the provider has successfully met the established qualifications for authorized provider status under CHAMPUS and has been reinstated under CHAMPUS. Except as otherwise provided in this subparagraph, the following guidelines control the termination of authorized CHAMPUS provider status for a provider whose license to practice (or, in the case of an institutional provider, to operate) has

been temporarily or permanently suspended or revoked by the jurisdiction issuing the license.

(i) Termination of the provider under CHAMPUS shall continue even if the provider obtains a license to practice in a second jurisdiction during the period of suspension or revocation of the provider's license by the original licensing jurisdiction. A provider who has licenses to practice in two or more jurisdictions and has one or more license(s) suspended or revoked will also be terminated as a CHAMPUS provider.

(A) Professional providers shall remain terminated from the CHAMPUS until the jurisdiction(s) suspending or revoking the provider's license(s) to practice restores it or removes the impediment to restoration.

(B) Institutional providers shall remain terminated under CHAMPUS until their license is restored. In the event the facility is sold, transferred, or reorganized as a new legal entity, and a license issued under a new name or to a different legal entity, the new entity must submit an application to be an authorized CHAMPUS provider.

(ii) If the CHAMPUS provider status is terminated due to the loss of the provider's license, the effective date shall be retroactive to the date the provider lost the license; however, in the case of a professional provider who has licenses in two or more jurisdictions and submitted claims from a jurisdiction from which he/she had a valid license, the effective date of the termination will be 15 calendar days from the date of the written initial determination of termination for purposes of claims from the jurisdiction in which the provider still has a valid license.

(h) *Procedures for initiating and implementing the administrative remedies*—(1) *Temporary suspension of claims processing.* (i) In general, temporary suspension of claims processing may be invoked to protect the interests of the Government for a period reasonably necessary to complete investigation or appropriate criminal, civil, and administrative proceedings. The temporary suspension only delays the ultimate payment of otherwise appropriate claims. When claims processing involving a participating provider is temporarily suspended, the participation agreement remains in full force and the provider cannot repudiate the agreement because of the delay in the final disposition of the claim(s). Once it has been determined appropriate to end the temporary suspension of claims processing, CHAMPUS claims which were the subject of the suspension and which are otherwise determined to be in compliance with the requirements of law and regulation, will be processed to completion and payment *unless* such action is deemed inappropriate as a result of criminal, civil, or administrative remedies ultimately invoked in the case.

(ii) When adequate evidence exists to determine that a provider or beneficiary is submitting fraudulent or false claims or claims involving practices that may be fraud or abuse as defined by this part, the Director, OCHAMPUS, or a designee, may suspend CHAMPUS claims processing (in whole or in part) for claims submitted by the beneficiary or any CHAMPUS claims involving care furnished by the provider. The temporary suspension of claims processing for care furnished by a provider may be invoked against all such claims, whether or not the claims are submitted by the beneficiary or by the provider as a participating CHAMPUS provider. In cases involving a provider, notice of the suspension of claims processing may also be given to the beneficiary community either directly or indirectly through notice to appropriate military facilities, health benefit advisors, and the information or news media.

(A) Adequate evidence is any information sufficient to support the reasonable belief that a particular act or omission has occurred.

(B) Indictment or any other initiation of criminal charges, filing of a complaint for civil fraud, issuance of an administrative complaint under the Program Fraud Civil Remedies Act, or issuance of an initial determination under this part for submitting fraudulent or false claims or claims involving practices that may be fraud or abuse as defined by this part, shall constitute adequate evidence for invoking temporary suspension of claims processing.

(iii) The Director, OCHAMPUS, or a designee, may suspend CHAMPUS claims processing without first notifying the provider or beneficiary of the intent to suspend payments. Following a decision to invoke a temporary suspension, however, the Director, OCHAMPUS, or a designee, shall issue written notice advising the provider or beneficiary that:

(A) A temporary suspension of claims processing has been ordered and a statement of the basis of the decision to suspend payment. Unless the suspension is based on any of the actions set forth in paragraph (h)(1)(ii)(B) of this section, the notice shall describe the suspected acts or omissions in terms sufficient to place the provider or beneficiary on notice without disclosing the Government's evidence.

(B) Within 30 days (or, upon written request received by OCHAMPUS during the 30 days and for good cause shown, within 60 days) from the date of the notice, the provider or beneficiary may:

(*1*) Submit to the Director, OCHAMPUS, or a designee, in writing, information (including documentary evidence) and argument in opposition to the suspension, provided the additional specific information raises a genuine dispute over the material facts, or

(*2*) Submit a written request to present in person evidence or argument to the Director, OCHAMPUS, or a designee. All such presentations shall be made at the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) in Aurora, Colorado, at the provider's or beneficiary's own expense.

(C) Additional proceedings to determine disputed material facts may be conducted unless:

(*1*) The suspension is based on any of the actions set forth in paragraph (h)(1)(ii)(B) of this section, or,

(*2*) A determination is made, on the basis of the advice of the responsible Government official (e.g., an official of the Department of Justice, the designated Reviewing Official under the Program Fraud Civil Remedies Act, etc.), that the substantial interests of the Government in pending or contemplated legal or administrative proceedings based on the same facts as the suspension would be prejudiced.

(iv) If the beneficiary or provider submits, either in writing or in person, additional information or argument in opposition to the suspension, the Director, OCHAMPUS, or a designee, shall issue a suspending official's decision which modifies, terminates, or leaves in force the suspension of claims processing. However, a decision to terminate or modify the suspension shall be without prejudice to the subsequent imposition of suspension of claims processing, imposition of sanctions under this §199.9, the recovery of erroneous payments under §199.11 of this part, or any other administrative or legal action authorized by law or regulation. The suspending official's decision shall be in writing as follows:

(A) A written decision based on all the information in the administrative record, including any submission by the beneficiary or provider, shall be final in a case:

(*1*) Based on any of the actions set forth in paragraph (h)(1)(ii)(B) of this section,

(*2*) In which the beneficiary's or provider's submission does not raise a genuine dispute over material facts, or

(*3*) In which additional proceedings to determine disputed material facts have been denied on the basis of advice of a responsible Government official that the substantial interests of the Government in pending or contemplated legal or administrative proceedings would be prejudiced.

(B) In a case in which additional proceedings are necessary as to disputed material facts, the suspending official's decision shall advise the beneficiary or provider that the case has been referred for handling as a hearing under §199.10 of this part.

(v) A suspension of claims processing may be modified or terminated for reasons such as:

(A) Newly discovered evidence;

(B) Elimination of any of the causes for which the suspension was invoked; or

(C) Other reasons the Director, OCHAMPUS, or a designee, deems appropriate.

(vi) A suspension of claims processing shall be for a temporary period pending

the completion of investigation and any ensuing legal or administrative proceedings, unless sooner terminated by the Director, OCHAMPUS, or a designee, or as provided in this subparagraph.

(A) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless the Government official responsible for initiation of the legal or administrative action requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal or administrative proceedings have been initiated during that period.

(B) The Director, OCHAMPUS, or a designee, shall notify the Government official responsible for initiation of the legal or administrative action of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give the official an opportunity to request an extension.

(2) *Notice of proposed administrative sanction.* (i) A provider shall be notified in writing of the proposed action to exclude, suspend, or terminate the provider's status as an authorized CHAMPUS provider.

(A) The notice shall state which sanction will be taken and the effective date of that sanction as determined in accordance with the provisions of this part.

(B) The notice shall inform the provider of the situation(s), circumstance(s), or action(s) which form the basis for the proposed sanction and reference the paragraph of this part under which the administrative action is being taken.

(C) The notice will be sent to the provider's last known business or office address (or home address if there is no known business address.)

(D) The notice shall offer the provider an opportunity to respond within 30 days (or, upon written request received by OCHAMPUS during the 30 days and for good cause shown, within 60 days) from the date on the notice with either:

(*1*) Documentary evidence and written argument contesting the proposed action; or,

(*2*) A written request to present in person evidence or argument to the Director, OCHAMPUS, or a designee. All such presentations shall be made at the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) in Aurora, Colorado, at the provider's own expense.

(3) *Initial determination.* (i) If, after the provider has exhausted, or failed to comply with, the procedures specified in paragraph (h)(2) of this section, the Director, OCHAMPUS, or a designee, decides to invoke an administrative remedy of exclusion, suspension, or termination of a provider under CHAMPUS, written notice of the decision will be sent to the provider by certified mail. Except in those cases where the sanction has a retroactive effective date, the written notice shall be dated no later than 15 days before the decision becomes effective. For terminations under paragraph (f)(2)(ii)(B) of this section, the initial determination may be issued without first implementing or exhausting the procedures specified in paragraph (h)(2) of this section.

(ii) The initial determination shall include:

(A) A statement of the sanction being invoked;

(B) A statement of the effective date of the sanction;

(C) A statement of the facts, circumstances, or actions which form the basis for the sanction and a discussion of any information submitted by the provider relevant to the sanction;

(D) A statement of the factors considered in determining the period of sanction;

(E) The earliest date on which a request for reinstatement under CHAMPUS will be accepted;

(F) The requirements and procedures for reinstatement; and,

(G) Notice of the available hearing upon request of the sanctioned provider.

(4) *Reinstatement procedures*—(i) *Restitution.* (A) There is no entitlement under CHAMPUS for payment (cost-sharing) of any claim that involves either criminal or civil fraud as defined

by law, or fraud or abuse or conflict of interest as defined by this part. In addition, except as specifically provided in this part, there is no entitlement under CHAMPUS for payment (cost-sharing) of any claim for services or supplies furnished by a provider who does not meet the requirements to be an authorized CHAMPUS provider. In any of the situations described above, CHAMPUS payment shall be denied whether the claim is submitted by the provider as a participating claim or by the beneficiary for reimbursement. If an erroneous payment has been issued in any such case, collection of the payment will be processed under § 199.11 of this part.

(B) If the Government has made erroneous payments to a provider because of claims involving fraud, abuse, or conflicts of interest, restitution of the erroneous payments shall be made before a request for reinstatement as a CHAMPUS authorized provider will be considered. Without restitution or resolution of the debt under § 199.11 of this part, a provider shall not be reinstated as an authorized CHAMPUS provider. This is not an appealable issue under § 199.10 of this part.

(C) For purposes of authorization as a CHAMPUS provider, a provider who is excluded or suspended under this § 199.9 and who submits participating claims for services furnished on or after the effective date of the exclusion or suspension is considered to have forfeited or waived any right or entitlement to bill the beneficiary for the care involved in the claims. Similarly, because a provider is expected to know the CHAMPUS requirements for qualification as an authorized provider, any participating provider who fails to meet the qualification requirements for CHAMPUS is considered to have forfeited or waived any right or entitlement to bill the beneficiary for the care involved in the CHAMPUS claims. If, in either situation, the provider bills the beneficiary, restitution to the beneficiary may be required by the Director, OCHAMPUS, or a designee, as a condition for consideration of reinstatement as a CHAMPUS authorized provider.

(ii) *Terminated providers.* A terminated provider who subsequently achieves the minimum qualifications to be an authorized CHAMPUS provider or who has had his/her license reinstated or the impediment to reinstatement removed by the appropriate licensing jurisdiction may submit a written request for reinstatement under CHAMPUS to the Director, OCHAMPUS, or a designee. If restitution or proper reinstatement of license is not at issue, the Director, OCHAMPUS, or a designee, will process the request for reinstatement under the procedures established for initial requests for authorized CHAMPUS provider status.

(iii) *Providers (other than entities) excluded or suspended under CHAMPUS.* (A) A provider excluded or suspended from CHAMPUS (other than an entity excluded under § 199.9(f)(1)(i)) may seek reinstatement by submitting a written request to the Director, OCHAMPUS, or a designee, any time after the date specified in the notice of exclusion or suspension or any earlier date specified in an appeal decision issued in the provider's appeal under § 199.10 of this part. The request for reinstatement shall include:

(*1*) Documentation sufficient to establish the provider's qualifications under this part to be a CHAMPUS authorized provider;

(*2*) A statement from the provider setting forth the reasons why the provider should be reinstated, accompanied by written statements from professional associates, peer review bodies, and/or probation officers (if appropriate), attesting to their belief that the violations that led to exclusion or suspension will not be repeated.

(B) A provider entity excluded from CHAMPUS under § 199.9(f)(1)(i) may seek reinstatement by submitting a written request to the Director, OCHAMPUS, or a designee, with documentation sufficient to establish the provider's qualifications under this part to be a CHAMPUS authorized provider and either:

(*1*) Documentation showing the CHAMPUS reinstatement of the excluded individual provider whose conviction led to the CHAMPUS exclusion or suspension of the provider entity; *or*

(*2*) Documentation acceptable to the Director, OCHAMPUS, or a designee,

that shows that the individual whose conviction led to the entity's exclusion:

(*i*) Has reduced his or her ownership or control interest in the entity below 5 percent; or

(*ii*) Is no longer an officer, director, agent or managing employee of the entity; or

(*iii*) Continues to maintain a 5 percent or more ownership or control interest in such entity, and that the entity due to circumstances beyond its control, is unable to obtain a divestiture.

NOTE: Under paragraph (h)(4)(iii)(B)(*2*) of this section, the request for reinstatement may be submitted any time prior to the date specified in the notice of exclusion or suspension or an earlier date specified in the appeal decision issued under §199.10 of this part.

(iv) *Action on request for reinstatement.* In order to reinstate a provider as a CHAMPUS authorized provider, the Director, OCHAMPUS, or a designee, must determine that:

(A) The provider meets all requirements under this part to be an authorized CHAMPUS provider;

(B) No additional criminal, civil, or administrative action has been taken or is being considered which could subject the provider to exclusion, suspension, or termination under this section;

(C) In the case of a provider entity, verification has been made of the divestiture or termination of the owner, controlling party, officer, director, agent or managing employee whose conviction led to the entity's exclusion, *or* that the provider entity should be reinstated because the entity, due to circumstances beyond its control, cannot obtain a divestiture of the 5 percent or more ownership or controlling interest by the convicted party.

(v) *Notice of action on request for reinstatement*—(A) *Notice of approval of request.* If the Director, OCHAMPUS, or a designee, approves the request for reinstatement, he or she will:

(*1*) Give written notice to the sanctioned party specifying the date when the authorized provider status under CHAMPUS may resume; and

(*2*) Give notice to those agencies and groups that were originally notified, in accordance with §199.9(k), of the imposition of the sanction. General notice may also be given to beneficiaries and other parties as deemed appropriate by the Director, OCHAMPUS, or a designee.

(B) *Notice of denial of request.* If the Director, OCHAMPUS, or a designee, does not approve the request for reinstatement, written notice will be given to the provider. If established procedures for processing initial requests for authorized provider status are used to review the request for reinstatement, the established procedures may be used to provide the notice that the provider does not meet requirements of this part for such status. If the provider continues to be excluded, suspended, or terminated under the provisions of this section, the procedures set forth in this paragraph (h) may be followed in denying the provider's request for reinstatement.

(5) *Reversed or vacated convictions or civil judgments involving CHAMPUS fraud.* (i) If a CHAMPUS provider is excluded or suspended *solely* on the basis of a criminal conviction or civil judgment involving a CHAMPUS fraud and the conviction or judgment is reversed or vacated on appeal, CHAMPUS will void the exclusion of a provider. Such action will not preclude the initiation of additional independent administrative action under this section or any other administrative remedy based on the same facts or events which were the subject of the criminal conviction or civil judgment.

(ii) If an exclusion is voided under paragraph (h)(5)(i) of this section, CHAMPUS will make payment, either to the provider or the beneficiary (if the claim was not a participating claim) for otherwise authorized services under CHAMPUS that are furnished or performed during the period of exclusion.

(iii) CHAMPUS will also void the exclusion of any entity that was excluded under §199.9(f)(1)(i) based *solely* on an individual's conviction that has been reversed or vacated on appeal.

(iv) When CHAMPUS voids the exclusion of a provider or an entity, notice will be given to the agencies and others that were originally notified, in accordance with §199.9(k).

(i) *Evidence required for determinations to invoke administrative remedies*—(1) *General*. Any relevant evidence may be used by the Director, OCHAMPUS, or a designee, if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal courts.

(2) *Types of evidence*. The types of evidence which the Director, OCHAMPUS, or a designee, may rely on in reaching a determination to invoke administrative remedies under this section include but are not limited to the following:

(i) Results of audits conducted by or on behalf of the Government. Such audits can include the results of 100 percent review of claims and related records or a statistically valid sample audit of the claims or records. A statistical sampling shall constitute *prima facie* evidence of the number and amount of claims and the instances of fraud, abuse, or conflict of interest.

(ii) Reports, including sanction reports, from various sources including a peer review organization (PRO) for the area served by the provider; state or local licensing or certification authorities; peer or medical review consultants of the Government, including consultants for Government contractors; state or local professional societies; or other sources deemed appropriate by the Director, OCHAMPUS, or a designee.

(iii) Orders or documents issued by Federal, state, foreign, or other courts of competent jurisdiction which issue findings and/or criminal convictions or civil judgments involving the provider, and administrative rulings, findings, or determinations by any agency of the Federal Government, a state, or local licensing or certification authority regarding the provider's status with that agency or authority.

(j) *Suspending Administrative Action*. (1) All or any administrative action may be suspended by the Director, OCHAMPUS, or a designee, pending action in the case by the Department of Defense—Inspector General, Defense Criminal Investigative Service, or the Department of Justice (including the responsible United States Attorney). However, action by the Department of Defense—Inspector General or the Department of Justice, including investigation, criminal prosecution, or civil litigation, does not preclude administrative action by OCHAMPUS.

(2) The normal OCHAMPUS procedure is to suspend action on the administrative process pending an investigation by the Department of Defense—Inspector General or final disposition by the Department of Justice.

(3) Though OCHAMPUS administrative action is taken independently of any action by the Department of Defense-Inspector General or by the Department of Justice, once a case is forwarded to the Department of Defense-Inspector General or the Department of Justice for legal action (criminal or civil), administrative action may be held in abeyance.

(4) In some instances there may be dual jurisdiction between agencies; as in, for example, the joint regulations issued by the Department of Justice and the Government Accounting Office regarding debt collection.

(k) *Notice to Other Agencies*. (1) When CHAMPUS excludes, suspends, or terminates a provider, the Director, OCHAMPUS, or a designee, will notify other appropriate agencies (for example, the Department of Health and Human Services and the state licensing agency that issued the provider's license to practice) that the individual has been excluded, suspended, or terminated as an authorized provider under CHAMPUS. An exclusion, suspension, or termination action is considered a public record. Such notice can include the notices and determinations sent to the suspended provider and other public documents such as testimony given at a hearing or exhibits or depositions given in a lawsuit or hearing. Notice may also be given to Uniformed Services Military Treatment Facilities, Health Benefit Advisors, beneficiaries and sponsors, the news media, and institutional providers if inpatient care was involved.

(2) If CHAMPUS has temporarily suspended claims processing, notice of such action normally will be given to the affected provider and Uniformed

Services Medical Treatment Facilities, Health Benefits Advisors, beneficiaries, and sponsors. Notice may also be given to any information or news media and any other individual, professional provider, or institutional provider, as deemed appropriate. However, since a ''temporary suspension of claims processing'' is by definition not a final or formal agency action, the basis for the action generally will not be disclosed. It is noted that the basis for the action can be a result of questions arising from routine audits to investigation of possible criminal violations.

(l) *Compromise, Settlement, and Resolution Authority*. (1) In lieu of invoking any remedy provided by this Section, the Director, OCHAMPUS, or a designee, may elect to enter into an agreement with the provider intended to correct the situation within an established time period and subject to any remedies deemed appropriate by the Director, OCHAMPUS, or a designee.

(2) When it is in the best interest of CHAMPUS, the Director, OCHAMPUS, has the discretionary authority to waive an action or enter into compromise or settlement of administrative actions taken under this § 199.9.

(m) *Government-wide effect of exclusion or suspension from CHAMPUS*. As provided by section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, October 13 1994, and Executive Order 12549, ''Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs,'' February 18, 1986, any health care provider excluded or suspended from CHAMPUS under this section shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. Among the other programs for which this debarment, suspension, or exclusion shall operate are the Medicare and Medicaid programs. This debarment, suspension, or termination requirement is subject to limited exceptions in the regulations governing the respective Federal programs affected. (Note: Other regulations related to this government-wide exclusion or suspension authority are 32 CFR Part 25 and 45 CFR Part 76.)

[54 FR 25246, June 14, 1989, as amended at 63 FR 48445, Sept. 10, 1998]

§ 199.10 Appeal and hearing procedures.

(a) *General*. This Section sets forth the policies and procedures for appealing decisions made by OCHAMPUS, OCHAMPUSEUR, and CHAMPUS contractors adversely affecting the rights and liabilities of CHAMPUS beneficiaries, CHAMPUS participating providers, and providers denied the status of authorized provider under CHAMPUS. An appeal under CHAMPUS is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law or regulation.

(1) *Initial determination*—(i) *Notice of initial determination and right to appeal*. (A) OCHAMPUS, OCHAMPUSEUR, and CHAMPUS contractors shall mail notices of initial determinations to the affected provider or CHAMPUS beneficiary (or representative) at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the parent, guardian, or other representative, under established CHAMPUS procedures, constitutes notice to the beneficiary.

(B) CHAMPUS contractors and OCHAMPUSEUR shall notify a provider of an initial determination on a claim only if the provider participated in the claim. (See § 199.7 of this part.)

(C) CHAMPUS peer review organizations shall notify providers and fiscal intermediaries of a denial determination on a claim.

(D) Notice of an initial determination on a claim processed by a CHAMPUS contractor or OCHAMPUSEUR normally will be made on a CHAMPUS Explanation of Benefits (CEOB) form.

(E) Each notice of an initial determination on a request for benefit authorization, a request by a provider for approval as an authorized CHAMPUS provider, or a decision to disqualify or exclude a provider as an authorized provider under CHAMPUS shall state