DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[0720–AA35]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Nonavailability Statement Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises certain requirements and procedures for the TRICARE Program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this rule include priority for access to care in military treatment facilities and requirements for payment of enrollment fees. This rule also includes provisions revising the requirement that certain beneficiaries obtain a non-availability statement from a military treatment facility commander prior to receiving certain health care services from civilian providers.

EFFECTIVE DATE: This rule is effective March 26, 1998.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Congressional Action

Section 712 of the National Defense Authorization Act for Fiscal Year 1996 revised 10 U.S.C. 1097(c), regarding the role of military medical treatment facilities in managed care initiatives, including TRICARE. Prior to the revision, section 1097(c) read in part, ''However, the Secretary may, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section.'' The Authorization Act provision replaced ''may'' with ''shall'', which has the effect of directing access priority for TRICARE Prime enrollees over persons not enrolled.

Another statutory provision relating to access priority is 10 U.S.C. 1076(a), which establishes a special priority for survivors of sponsors who died on active duty: they are given the same priority as family members of active duty members. This special access priority is not time-limited, as is the special one-year cost sharing protection given to this category under 10 U.S.C. 1079.

The National Defense Authorization Act of FY 1997, section 734 amended 10 U.S.C. 1080 to establish certain exceptions to requirements for nonavailability statements in connection with payment of claims for civilian health care services. First, the Act eliminates authority for nonavailability statements for outpatient services; NASs have been required for a limited number of outpatient procedures over the past several years. Second, the Act eliminates authority for NAS requirements for enrollees in managed care plans, which has the effect of eliminating NAS requirements for TRICARE Prime enrollees. Finally, the Act gives the Secretary authority to waive NAS requirements based on an evaluation of the effectiveness of NAS in optimizing use of military facilities.

The National Defense Authorization Act of FY 1996, section 713 requires that enrollees in TRICARE Prime be permitted to pay applicable enrollment fees on a quarterly basis, and prohibits imposition of an administrative fee related to the quarterly payment option.

B. Public Comments

The proposed rule was published in the **Federal Register** on April 7, 1997 (62 FR 16510). We received no public comments.

II. Provisions of the Rule

A. Access Priority (Revisions to § 199.17(d)).

1. Provisions of the Proposed Rule

This paragraph explains that in Regions where TRICARE is implemented, the order of access priority for services in military treatment facilities is as follows: (1) Active duty service members; (2) family members of active duty service members enrolled in TRICARE Prime; (3) retirees, their family members and survivors enrolled in TRICARE Prime; (4) family members of active duty service members who are not enrolled in TRICARE Prime; and (5) all others based on current access priorities. For purposes of access priority, but not for cost sharing, survivors of sponsors who died on active duty are to be given the same priority as family members of active duty service members. This means that if they are enrolled in TRICARE Prime, they have the same access priority as family members of active duty service members who are enrolled in TRICARE Prime, or if not enrolled in TRICARE Prime, they have the same access priority for military treatment facility care as family members of active duty service members who are not enrolled in TRICARE Prime.

The proposed rule also includes a provision explaining that enrollment status does not affect access priority for some groups and circumstances. This provision would allow the commander of a military medical treatment facility to designate for access priority certain individuals, for specific episodes of health care treatment. Such individuals may include Secretarial designees, active duty family members from outside the MTF's service area, foreign military and their family members authorized care through international agreements, DoD civilians with authorizing conditions, individuals on the Temporary Disability Retired List, and Reserve and National Guard members. Additional exceptions may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is needed to provide a clinical case mix to support graduate medical education programs, upon approval by the Assistant Secretary of Defense (Health Affairs).

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule. Minor revisions emphasize that survivors of sponsors who died on active duty have the same access priority as active duty family members. Access priority for TRICARE Prime enrollees is not limited to military facilities near their residence, but includes access priority when they are traveling (although they are still required to access nonemergency care through their primary care manager, pursuant to § 199.17(o)).

B. Enrollment Fees (Revisions to §§ 199.17(o) and 199.18(c))

1. Provisions of the Proposed Rule

These revisions would eliminate the requirement for a TRICARE Prime enrollee to pay an additional maintenance fee of $5.00 per installment for those TRICARE Prime enrollees who elect to pay their annual enrollment fee on a quarterly basis. Additionally, these revisions would permit waiver of enrollment fee

collection for retirees, their family members, and survivors who are eligible for Medicare on the basis of disability. This group is eligible for TRICARE/CHAMPUS as a secondary payor if they are enrolled in Part B of Medicare, and pay the applicable monthly premium.

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Nonavailability Statements (Revisions to § 199.4(a))

1. Provisions of the Proposed Rule

Revisions of this section modify our existing requirements for beneficiaries to obtain nonavailability statements (NASs). The requirement for beneficiaries to obtain an NAS for selected outpatient procedures is eliminated. Beneficiaries who choose to obtain outpatient care, including ambulatory surgery, from civilian sources remain subject to current TRICARE/CHAMPUS cost sharing rules, but the requirement that the beneficiary obtain an NAS prior to TRICARE/CHAMPUS sharing in the civilian health care costs has been removed.

The requirement for beneficiaries enrolled in TRICARE Prime to obtain an NAS for inpatient care is also eliminated. TRICARE was designed so that the military treatment facility is the first source of specialty care, with TRICARE Prime enrollees having access priority before non-enrolled beneficiaries. In general, TRICARE Prime enrollees obtain care from civilian network providers only when the military treatment facility cannot provide the care because it does not have the capability, or because the enrollee cannot be seen within time frames required by TRICARE Prime access standards. Since the Health Care Finder must authorize all non-emergency specialty care obtained from civilian sources, the NAS requirement for this category of beneficiary is redundant.

Lastly, the revisions would eliminate the requirement that a non-enrolled beneficiary must obtain an NAS for inpatient hospital maternity care before TRICARE/CHAMPUS shares in any costs for related outpatient maternity care. Some diagnostic tests, procedures, or consultations from civilian sources may be required during a course of maternity care and this allows TRICARE/CHAMPUS to share in the costs of the civilian care without requiring the beneficiary to obtain all maternity related care in a civilian setting.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule. It should be noted that requirements of § 199.15 related to preauthorization of services continue to apply. A key difference is that the responsibility for compliance, and penalties for noncompliance with the requirements of § 199.15 fall on providers of care rather than on beneficiaries.

D. Revisions to the Uniform HMO Benefit (Revisions to § 199.18(d))

1. Provisions of the Proposed Rule

We are contemplating minor changes in the copayment structure of the Uniform HMO Benefit, which is used in TRICARE Prime. The proposed rule included two revisions, which would eliminate copayments for preventive services and for ancillary services. Current provisions include copayments for ancillary services unless they are provided as part of an office visit. This has resulted in multiple copayments in cases where beneficiaries are sent to multiple sites for diagnostic testing pursuant to a visit, which we regard as unfair.

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

E. TRICARE Prime Catastrophic Cap (Revisions to § 199.18(f))

1. Provisions of the Proposed Rule

The proposed rule included a provision regarding the inapplicability of the TRICARE Prime annual catastrophic cap to out-of-pocket costs incurred under the TRICARE Prime point-of-service option. This is at § 199.18(f)(2).

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

F. Preemption of State Laws (Revisions to § 199.17(a))

1. Provisions of the Proposed Rule

The proposed rule contained a restatement of current policy, at § 199.17(a)(7), recording DoD interpretation of two statutory provisions preempting State and local laws in connection with TRICARE contracts.

2. Provisions of the Final Rule

The final rule is similar to the proposed rule. The provision has been expanded to also record DoD's interpretation of these statutes in relation to State or local laws imposing premium taxes on health insurance carriers or health maintenance organizations.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or 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 is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This rule will impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1985 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by revising the definition of nonavailability statement to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Nonavailability statement. A certification by a commander (or a designee) of a Uniformed Services medical treatment facility, recorded on DEERS, generally for the reason that the needed medical care being requested by a non-TRICARE Prime enrolled beneficiary cannot be provided at the facility concerned because the necessary resources are not available in the time frame needed.

* * * * *

3. Section 199.4 is amended by removing paragraphs (a)(9)(i)(C) and (a)(9)(v)(B) and the note following paragraph (a)(9)(vi), by redesignating paragraph (a)(9)(i)(D) as paragraph (a)(9)(i)(C) and paragraph (a)(9)(v)(A) as paragraph (a)(9)(v), and by revising

paragraphs (a)(9) introductory text, (a)(9)(i)(B), and (a)(9)(ii) and by adding new paragraph (a)(10)(vi)(E) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) *Nonavailability statements within a 40-mile catchment area.* In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required inpatient medical care can be provided through a Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with nonemergency inpatient hospital care if such services are available at a facility of the Uniformed Services located within a 40 mile radius of the residence of the beneficiary, except that an NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * *

(ii) *Beneficiary responsibility.* A CHAMPUS beneficiary who is not enrolled in TRICARE Prime is responsible for securing information whether or not he or she resides in a geographic area that requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the Offices of the Army, Navy, and Air Force Surgeons General; or a representative of the TRICARE managed care support contractor's staff, or the Director, OCHAMPUS.

* * * * *

(10) * * *

(vi) * * *

(E) The beneficiary is enrolled in TRICARE Prime.

* * * * *

3. Section 199.17 is amended by adding paragraph (a)(7) and revising paragraphs (d)(1) and (o)(3) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(a) * * *

(7) *Preemption of State laws.* (i) Pursuant to 10 U.S.C. 1103 and section 8025 (fourth proviso) of the Department of Defense Appropriations Act, 1994, the Department of Defense has determined that in the administration of 10 U.S.C. chapter 55, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States.

(ii) Based on the determination set forth in paragraph (a)(7)(i) of this section, any State or local law relating to health insurance, prepaid health plans, or other health care delivery or financing methods is preempted and does not apply in connection with TRICARE regional contracts. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE regional contracts. (However, the Department of Defense may by contract establish legal obligations of the part of TRICARE contractors to conform with requirements similar or identical to requirements of State or local laws or regulations).

(iii) The preemption of State and local laws set forth in paragraph (a)(7)(ii) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of the statutes identified in paragraph (a)(7)(i) of this section. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

* * * * *

(d) * * *

(1) *Military treatment facility (MTF) care.*—(i) *In general.* All participants in Prime are eligible to receive care in military treatment facilities. Participants in Prime will be given priority for such care over other beneficiaries. Among the following beneficiary groups, access priority for care in military treatment facilities where TRICARE is implemented as follows:

(A) Active duty service members;

(B) Active duty service members' dependents and survivors of service members who died on active duty, who are enrolled in TRICARE Prime;

(C) Retirees, their dependents and survivors, who are enrolled in TRICARE Prime;

(D) Active duty service members' dependents and survivors of service members who died on active duty, who are not enrolled in TRICARE Prime; and

(E) Retirees, their dependents and survivors who are not enrolled in TRICARE Prime. For purposes of this paragraph (d)(1), survivors of members who died while on active duty are considered as among dependents of active duty service members.

(ii) *Special provisions.* Enrollment in Prime does not affect access priority for care in military treatment facilities for several miscellaneous beneficiary groups and special circumstances. Those include Secretarial designees, NATO and other foreign military personnel and dependents authorized care through international agreements, civilian employees under workers' compensation programs or under safety programs, members on the Temporary Disability Retired List (for statutorily required periodic medical examinations), members of the reserve components not on active duty (for covered medical services), military prisoners, active duty dependents unable to enroll in Prime and temporarily away from place of residence, and others as designated by the Assistant Secretary of Defense (Health Affairs). Additional exceptions to the normal Prime enrollment access priority rules may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is necessary to provide an adequate clinical case mix to support graduate medical education programs or

readiness-related medical skills sustainment activities, to the extent approved by the ASD(HA).

* * * * *

(o) * * *

(3) *Quarterly installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in quarterly installments, each equal to one-fourth of the total amount. For any beneficiary paying his or her enrollment fee in quarterly installments, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, OCHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year. If enrollment in TRICARE Prime is terminated for failure to make a required installment payment, services received after the due date of the installment payment will be cost shared under TRICARE Extra.

* * * * *

4. Section 199.18 is amended by revising paragraphs (d)(2)(i) and (f), and by adding paragraph (c)(3), to read as follows:

§ 199.18 Uniform HMO benefit.

* * * * *

(c) * * *

(3) *Waiver of enrollment fee for certain beneficiaries.* The Assistant Secretary of Defense (Health Affairs) may waive the enrollment fee requirements of this section for beneficiaries described in 10 U.S.C. 1086(d)(2) (i.e., those who are eligible for Medicare on the basis of disability or end stage renal disease and who maintain enrollment in Part B of Medicare).

* * * * *

(d) * * *

(2) * * *

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: dependents of active duty members in pay grades E–1 through E–4; dependents of active duty members in pay grades of E–5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies to family health services, home health care visits, eye examinations, and immunizations. It does not apply to ancillary health services or to preventive health services described in paragraph (b)(2) of this section, or to maternity services under § 199.4(e)(16).

* * * * *

(f) *Limit on out-of-pocket costs under the uniform HMO benefit.* (1) Total out-of-pocket costs per family of dependents of active duty members under the Uniform HMO Benefit may not exceed $1,000 during the one-year enrollment period. Total out-of-pocket costs per family of retired members, dependents of retired members and survivors under the Uniform HMO Benefit may not exceed $3,000 during the one-year enrollment period. For this purpose, out-of-pocket costs means all payments required of beneficiaries under paragraphs (c), (d), and (e) of this section. In any case in which a family reaches this limit, all remaining payments that would have been required of the beneficiary under paragraphs (c), (d), and (e) of this section will be made by the program in which the Uniform HMO Benefit is in effect.

(2) The limits established by paragraph (f)(1) of this section do not apply to out-of-pocket costs incurred pursuant to paragraph (m)(1)(i) or (m)(2)(i) of § 199.17 under the point-of-service option of TRICARE Prime.

* * * * *

Dated: February 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4545 Filed 2–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC47

Cape Cod National Seashore; Off-Road Vehicle Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising the current regulation for off-road vehicle (ORV) use at Cape Cod National Seashore. Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, new and unrelated measures have impacted the off-road vehicle corridor identified in the amended plan. These measures have resulted from the necessity to protect the federally listed threatened piping plover (*Charadrius melodus*). Because of a lack of flexibility in the Amended 1985 Plan, there has been an inability to adapt it to changing natural resource concerns.

The piping plover became a federally listed threatened species in 1986. In 1995 there were 83 pair of plovers nesting on the beaches of Cape Cod National Seashore. Thirty-three pair were within the eight and one-half miles of the ORV corridor. During the Fourth of July weekend (a period of peak use for ORV's) in 1994, eight-tenths of a mile of the ORV corridor was open. In 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, it is expected that the birds will continue to nest here. Thus, Cape Cod National Seashore hopes to develop a more flexible and effective regulation governing ORV use that will accommodate the NPS's responsibilities for managing natural resources.

DATE: This rule becomes effective on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Telephone 508–349–3785, ext. 203.

SUPPLEMENTARY INFORMATION:

Background

The mission of the NPS is to preserve and protect park resources while at the same time allowing for the enjoyment of these same resources in a manner that will leave them unimpaired for future generations. In September 1995, Cape Cod National Seashore convened a committee to negotiate a rulemaking (per the Federal Advisory Commission Act (FACA), 5 U.S.C. App. II Sec. 9(c), and the Negotiated Rulemaking Act, 5 U.S.C. 561), to resolve an ongoing contentious issue of ORV use on Seashore beaches, while at the same time providing optimum protection for the piping plover (*Charadrius melodus*) in compliance with the Endangered Species Act of 1973, as amended, and other Seashore resources.

The 1981 ORV Management Plan was challenged in U.S. District Court. However, the plan, as amended in 1985 (50 FR 31181), was upheld by the District Court in 1988 and the U.S. Court of Appeals in 1989. The District Court found that ORV use at Cape Cod National Seashore is not inappropriate; that the 1985 Plan minimized user conflicts; that the NPS had provided other recreational users adequate use of the Seashore; that the NPS had properly surveyed the sentiments of Seashore users; and that ORV use, as managed by the NPS, does not adversely affect the Seashore's values or its ecology.

The 1985 regulation that established an 8.5 mile ORV corridor on the 40 miles of outer beach within the Seashore would have provided a satisfactory solution except that since