

photographs, or videotapes on the grounds of confidentiality or privilege.

\* \* \* \* \*

4. Section 2200.207(a) is amended by revising the first sentence to read as follows:

**§ 2200.207 Pre-hearing conferences.**

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a)(1), the presiding Judge will order and conduct a pre-hearing conference. \* \* \*

\* \* \* \* \*

Dated: June 18, 1997.

**Earl R. Ohman, Jr.,**

*General Counsel.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DoD 6010.8-R]

RIN 0720-AA38

#### **Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Retiree Dental Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes the TRICARE Retiree Dental Program (TRDP) to provide dental care to military members entitled to retired pay and eligible family members and their dependents. The rule details operation of the program and seeks comments on our plan to implement the TRDP.

**DATES:** Comments must be received on or before July 24, 1997.

**ADDRESSES:** Office of Health Services Financing Policy, Department of Defense, Room 1B657 Pentagon, Washington, DC 20301-1200.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697-8975.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Overview of the Proposed Rule**

Implementation of the TRICARE Retiree Dental Program (TRDP) was directed by Congress in section 703 of the National Defense Authorization Act for Fiscal year 1997, Pub. L. 104-201, which amended title 10, United States Code, by adding section 1076c. This law directed the implementation of a dental program for: (1) Members of the Armed

Forces who are entitled to retired pay, (2) Members of the Retired Reserve under the age of 60, (3) Eligible dependents of (1) or (2) who are covered by the enrollment of the member, and (4) The unremarried surviving spouse and eligible child dependents of a deceased member who dies while in status described in (1) or (2), or the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity.

Included in the program are the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam and the U.S. Virgin Islands. Enrollment in the program is voluntary and members enrolled in the dental plan will be responsible for paying the full cost of the premiums. The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs). Dental coverage under the TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations.

Under this approach, where possible, members entitled to retired pay and eligible family members and their dependents may make use of participating dental providers in their areas and may benefit from reduced out-of-pocket costs and provider submission of claims and acceptance of contractor allowances and arrangements. TRDP eligibles will obtain information concerning the program and the application process from the contractor.

This proposed rule adopts the statutory preemption authority of 10 U.S.C., section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. We have made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. In addition, the enacting legislation for the TRICARE Retiree Dental Program directs the Department of Defense to implement this program by October 1, 1997. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed.

##### **II. Rulemaking 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.

Pursuant to the Paperwork Reduction Act of 1995, the reporting and recordkeeping of this proposed rule have been submitted to the OMB for review under 3507(d) of the Act.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed information collection and seeks public comment on the provision thereof. Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The collection of information is necessary to enroll military members entitled to retired pay and eligible dependents in the TRICARE Retiree Dental Program. The application will allow the Department of Defense to identify enrollment applicants, evaluate their eligibility for the enrollment, and determine other health insurance coverage which an applicant may have.

*Affected Public:* Eligible family members and their dependents.

*Annual Burden Hours:* 71,640.

*Number of Respondents:* 286,570.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 15 minutes.

*Frequency:* Once, at time of initial application.

Respondents are military members entitled to retired pay and eligible family members and their dependents who are seeking enrollment in the TRICARE Retiree Dental Program. The enrollment application will allow the Department to collect the information necessary to properly identify the program's applicants and to determine their eligibility for enrollment in the TRICARE Retiree Dental Program. In completing and signing a TRICARE Retiree Dental Program enrollment form, applicants will acknowledge that they understand the benefits offered under

the program and the rules they must follow to continue their participation in the program. Initial enrollment will be for a period of 12 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 715 17th Street NW., Washington, DC 20503, marked "Attention Desk Officer for Department of Defense." Copies should be sent to the Office of the Assistant Secretary of Defense (Health Affairs), 1B657 The Pentagon, Washington, DC 20301, ATTN: Cynthia Speight. When the Department of Defense promulgates the Final Rule, the Department will respond to comments by OMB or the public regarding the information collection provisions and recordkeeping requirements of the rule.

This is a proposed rule. The Department is making an exception to the normal 60 day public comment period due to the statutory requirement for implementation by October 1, 1997. Public comments are invited. All comments will be considered. A discussion of the major issues received by public comments will be included with issuance of the final rule, anticipated approximately 90 days after the end of the comment period.

#### List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

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. Part 199 is proposed to be amended by adding § 199.22, as follows:

#### § 199.22 TRICARE Retiree Dental Program (TRDP).

(a) *Purpose.* The TRDP is a premium based indemnity dental insurance coverage program that will be available to retired members of the Armed Forces, their dependents, and certain other beneficiaries, as specified in paragraph (d) of this section. The TRDP is authorized by 10 U.S.C. 1076c.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations, as specified in paragraph (f) of this section.

(2) Premium costs for this coverage will be paid by the enrollee.

(3) The program is applicable to authorized providers in the 50 United

States and the District of Columbia, Canada, Puerto Rico, Guam and the U.S. Virgin Islands.

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Health Affairs) or designee, the TRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13.

(5) The TRDP shall be administered through a contract.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) are relevant to the administration of the TRICARE Retiree Dental Program, the definitions contained in those sections shall apply to the TRDP as they do to CHAMPUS and the TRICARE active duty dependents dental plan.

(d) *Eligibility and enrollment.*—(1) *Eligibility.* Enrollment in the TRICARE Retiree Dental Program is open to:

(i) Members of the Armed Forces who are entitled to retired pay,

(ii) Members of the Retired Reserve under the age of 60,

(iii) Eligible dependents of paragraph (d)(1)(i) or (ii) of this section who are covered by the enrollment of the member, and

(iv) The unremarried surviving spouse and eligible child dependents of a deceased member who dies while in status described in paragraph (d)(1)(i) or (ii) of this section, or the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Retiree Dental Program.

(3) *Election of coverage.* Following this notification, interested members entitled to retired pay and eligible family members and their dependents may elect to enroll. In order to obtain dental coverage, written election by the eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Retiree Dental Program is voluntary and will be accomplished by submission of an application to the TRDP contractor. Initial enrollment shall be for a period of 12 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

(5) *Period of coverage.* TRICARE Retiree Dental Program coverage is terminated when the member's entitlement to retired pay is terminated, the member's status as a member of the Retired Reserve is terminated, a dependent child loses eligible child dependent status, or in the case of remarriage of the surviving spouse.

(6) *Continuation of dependents' enrollment upon death of enrollee.*

Coverage of a dependent in the TRDP under an enrollment of a member or surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. The Secretary may terminate coverage of the dependent when the premiums paid are no longer sufficient to cover continuation of the enrollment.

(e) *Premium payments.* Persons enrolled in the dental plan will be responsible for paying the full cost of the premiums in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs) or designee.

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee's disenrollment from the TRDP and subject to a lock-out period of 12 months. Following this period of time, persons eligible will be able to reenroll if they so choose.

(3) *Member's payment of premiums.* The cost of the TRDP monthly premium will be paid by the enrollee. Interested beneficiaries may contact the dental contractor/insurer to obtain the enrollee premium cost.

(f) *Plan benefits.* The TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. The following is the TRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) *Diagnostic:* Periodic oral examination (00120); Comprehensive oral examination (limited to one exam per year in the same dental office) (00150); Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Intraoral-occlusal film (00240); Bitewings-single film (00270); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Caries susceptibility tests, by report (00425); Pulp vitality tests (00460).

(ii) *Preventive:* Prophylaxis-adult (limit-once per year) (01110); Prophylaxis-child (01120); Topical application of fluoride (excluding

prophylaxis)-child (01203); Topical application of fluoride (excluding prophylaxis)-adult, by report, once per year (01204); Sealant-per tooth (01351); Space maintainer-fixed-unilateral (01510); Space maintainer-fixed-bilateral (01515); Space maintainer-removable-unilateral (01520); Space maintainer-removable-bilateral (01525); Recementation of space maintainer (01550).

(iii) Restorative: Amalgam-one surface, primary (02110); Amalgam-two surfaces, primary (02120); Amalgam-three surfaces, primary (02130); Amalgam-four or more surfaces, primary (02131); Amalgam-three surfaces, permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Recement inlay (02910); Recement crown (02920); Prefabricated stainless steel crown-primary tooth (02930); Prefabricated stainless steel crown-permanent tooth (02931); Prefabricated resin crown (02932); Prefabricated stainless steel crown with resin window (02933); Pin retention-per tooth, in addition to restoration (02951); Temporary crown (fractured tooth) (02970).

(iv) Endodontic: Pulp cap-indirect (excluding final restoration) (03120); Therapeutic pulpotomy (excluding final restoration) (03220); Anterior root canal (excluding final restoration) (03310); Bicuspid root canal (excluding final restoration) (03320); Molar root canal (Excluding final restoration) (03330); Retreatment-anterior, by report (03346); Retreatment-bicuspid, by report (03347); Retreatment-molar, by report (03348); Apexification/recalcification-initial visit (apical closure/calculific repair of perforations, root resorption, etc.) (03351); Apexification/recalcification-interim medication replacement (apical closure/calculific repair of perforations, root resorption, etc.) (03352); Apexification/recalcification-final visit (includes completed root canal therapy-apical closure/calculific repair of perforations, root resorption, etc.) (03353); Apicoectomy/Periradicular surgery-anterior (03410); Apicoectomy/Periradicular surgery-bicuspid (first root) (03421); Apicoectomy/Periradicular surgery-molar (first root) (03425); Apicoectomy/Periradicular surgery (each additional root) (03426); Retrograde filling-per root (03430); Root amputation-per root (03450); Hemisection (including any root removal), not including root canal therapy (03920).

(v) Periodontic: Gingivectomy or gingivoplasty—per quadrant (04210); Gingivectomy or gingivoplasty—per tooth (04211); Gingival curettage, surgical, per quadrant, by report (04220); Gingival flap procedure, including root planing—per quadrant (04240); Mucogingival surgery—per quadrant (04250); Osseous surgery (including flap entry and closure)—per quadrant (04260); Bone replacement graft—single site (including flap entry and closure) (04261); Bone replacement graft—multiple sites (including flap entry and closure) (04262); Guided tissue regeneration (includes the surgery and reentry) (04268); Pedicle soft tissue graft procedure (04270); Free soft tissue graft procedure (including donor site) (04271); Periodontal scaling and root planing—per quadrant (04341); Periodontal maintenance procedures (following active therapy) (04910); Unscheduled dressing change (by someone other than treating dentist) (04920).

(vi) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal—exposed roots (07130); Surgical removal or erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Removal of impacted tooth—soft tissue (07220); Removal of impacted tooth—partially bony (07230); Removal of impacted tooth—completely bony (07240); Surgical removal of residual tooth roots (cutting procedure) (07250); Oral antral fistula closure (07260); Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth and/or alveolus (07270); Surgical exposure of impacted or erupted tooth to aid eruption (07281); Biopsy of oral tissue—hard (07285); Biopsy of oral tissue—soft (07286); Surgical repositioning of teeth (07290); Alveoloplasty in conjunction with extractions—per quadrant (07310); Suture of recent small wounds up to 5 cm (07910); Complicated suture—up to 5 cm (07911); Complicated suture—greater than 5 cm (07912); Excision of pericoronal gingiva (07971).

(vii) Emergency: Emergency oral examination (00130); Palliative (emergency) treatment of dental pain—minor procedures (09110).

(viii) Drugs: Therapeutic drug injection, by report (09610); Other drugs and/or medications, by report (09630).

(ix) Postsurgical: Treatment of complications (post-surgical) unusual circumstances, by report (09930).

(g) *Maximum annual cap.* TRDP enrollees will be subject to a maximum cap of \$1,000.00 of paid allowable charges per enrollee per year, with the

exception of the diagnostic and preventive services.

(h) *Annual review of rates.* TRDP premiums will be determined as part of the competitive contracting process. The contractor will annually notify those eligible for TRDP of the premium rates.

(i) *Authorized providers.* The TRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(j) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TRDP contractor. For enrollees who do not use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP. Enrollees using non-network providers may be balance billed such an amount. The maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of:

(1) billed charges or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 85th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(k) *Appeal and hearing procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) shall apply.

(l) *Preemption of State laws.* Pursuant to 10 U.S.C., section 1103, any state or local law or regulation pertaining to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Retiree Dental Program contract. 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 Retiree Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Retiree Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(m) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and

procedures for the administration of the TRICARE Retiree Dental Program.

Dated: June 18, 1997.

**L.M. Bynum,**

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

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## **LIBRARY OF CONGRESS**

### **Copyright Office**

#### **37 CFR Chapter II**

[Docket No. RM 96-3A]

#### **Notice and Recordkeeping for Subscription Digital Transmissions**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office of the Library of Congress is requesting further comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works from subscription digital transmission services, and how records of such use shall be kept and made available to copyright owners. The Digital Performance Right in Sound Recordings Act of 1995 requires the Office to adopt the regulations. The Office is requesting this additional comment before issuing interim regulations.

**DATES:** Comments must be submitted on or before August 25, 1997.

**ADDRESSES:** An original and fifteen copies of the comments shall be delivered to: Office of the General Counsel, Copyright Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., or mailed to: Nanette Petruzzelli, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

**FOR FURTHER INFORMATION CONTACT:** Nanette Petruzzelli, Acting General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995. Public Law No. 104-39, 109 Stat. 336 (1995). The law gave to sound recording

copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission. 17 U.S.C. 106(6). Certain digital transmissions were exempted from the scope of the right, 17 U.S.C. 114(d)(1), while nonexempt digital subscription services were given the opportunity to qualify for a statutory license. 17 U.S.C. 114(d)(2).

Congress directed the Librarian of Congress to establish regulations under which copyright owners may receive reasonable notice of the use of their sound recordings under the statutory license, and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2).

#### **The Sec. 114 License for Nonexempt Subscription Transmissions**

A nonexempt digital subscription service transmission is subject to statutory licensing in accordance with 17 U.S.C. 114(f) if the transmission is not part of an interactive service, does not exceed the "sound recording performance complement," does not give an advance program schedule or prior announcement of titles to be performed, does not automatically cause the receiving device to switch from one program channel to another, and includes information encoded by authority of the copyright owner identifying the title, the featured artist, and related information. 17 U.S.C. 114(d)(2). The "sound recording performance complement" is defined as:

the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

(B) 4 different selections of sound recordings—

(i) by the same featured recording artist; or  
(ii) from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States, if no more than three such selections are transmitted consecutively: *Provided*, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

17 U.S.C. 114(j)(7).

Digital subscription transmission services that qualify for the statutory license may reach a voluntary agreement as to rates and terms with

sound recording copyright owners, or may petition the Librarian of Congress to convene a copyright arbitration royalty panel (CARP) to set rates and terms for those entities that have not reached voluntary agreement. 17 U.S.C. 114(f). On June 4, 1996, no voluntary agreement having been reached, the parties petitioned the Librarian to convene such a CARP. Rates and terms set by the CARP will apply to all subscription services not subject to voluntary agreement. 17 U.S.C. 114(f)(2)–(3). However, Congress also directed the Librarian of Congress to establish regulations by which copyright owners may receive reasonable notice of the use of their sound recordings under statutory license, and under which records of such use shall be kept and made available by the entities performing the sound recordings. 17 U.S.C. 114(f)(2). Anyone performing a sound recording publicly by means of a nonexempt subscription transmission under section 114(f) may do so without infringing the exclusive right of the sound recording copyright owner by complying with the notice requirements that the Librarian prescribes by regulation and by paying royalty fees in accordance with the law. 17 U.S.C. 114(f)(5).

#### **Rulemaking on Notice and Recordkeeping**

On May 13, 1996, the Copyright Office published a Notice of Proposed Rulemaking in the **Federal Register** requesting comments on the requirements by which copyright owners should receive reasonable notice of the use of their works from subscription digital transmission services and how records of such use should be kept and made available to copyright owners. The Office asked commentators to consider both the adequacy of the notice to sound recording copyright owners and the administrative burdens placed on the digital transmission services in providing notice and maintaining records of use. 61 FR 22004 (May 13, 1996).

The Office received a total of four comments and three reply comments, as well as one surreply and one comment to the surreply. Comments were submitted by the Recording Industry Association of America (RIAA); DMX, Inc. (DMX); Muzak; and Digital Cable Radio Associates/Music Choice (DCR) ("commenting parties"). The comments set forth a wide range of proposals for notice and records of use, with varying form and content requirements. The comments also included proposals concerning matters not addressed in the