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Dated: July 17, 1997.

William K. Hubbard,Associate Commissioner for Policy
Coordination.

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DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199****[DoD 6010.8-R]****RIN 0720-AA36****Civilian Health and Medical Program of
the Uniformed Services (CHAMPUS);
Extension of the Active Duty
Dependents Dental Plan to Overseas
Areas****AGENCY:** Office of the Secretary, DoD.**ACTION:** Interim final rule with request
for comments.

SUMMARY: This interim final rule implements recently enacted statutory authority for the extension of the Active Duty Dependents Dental Plan to overseas areas. It provides for adjustments in the program in overseas areas. This rule details the implementation and operation of the program which will ensure access to dental care for family members accompanying their active sponsors while overseas.

DATES: This interim final rule is effective August 25, 1997. Comments may be submitted on or before September 23, 1997.

ADDRESSES: Forward comments to TRICARE Support Office (TSO)/Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development; Aurora, Colorado 80045-6900.

FOR FURTHER INFORMATION CONTACT: Mr. Gunther J. Zimmerman, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695-3331.

SUPPLEMENTARY INFORMATION:**1. Overview of the Interim Final Rule**

Military force reductions in Europe, the Middle East, and the Pacific have resulted in diminished medical services for many areas, particularly those where the active duty end strengths have fallen below levels which would support a military medical facility. Service members and their families, particularly those in remote areas, have experienced significant access problems in obtaining

dental services at military facilities.

This rule is based on section 703 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, which amended 10 U.S.C. 1076a. This law allows the Department to extend the Dependent's Dental Plan to overseas areas. Family members enrolled in the Dependent's Dental Plan will be allowed to receive dental care from host nation providers and have the dental claims processed by a dental contractor. Host nation providers who meet accepted dental practice standards will be identified by the local military dental treatment facility commander.

Enrolled family members overseas will be eligible to obtain the same basic dental benefits offered to enrollees in the Active Duty Dependents' Dental Plan (also referred to as the TRICARE Active Duty Family Member Dental Plan) in the Continental United States. The Continental United States is defined as the forty-eight contiguous states, as well as Alaska, Hawaii, Guam, Puerto Rico, the District of Columbia, the U.S. Virgin Islands and Canada. Overseas is defined as those countries not previously mentioned.

This interim final rule will allow dental claims to be paid on a "billed charge" basis. In order to participate, beneficiaries must be enrolled in the Family Member Dental Plan (FMDP). In order to have care from host nation dentists reimbursed under the FMDP, beneficiaries will be requested to be referred by a military dental treatment facility (DTF). This referral will be contingent upon the lack of availability of the applicable dental services in the DTF. Beneficiaries will receive evidence of preauthorization. Family members residing with their active duty sponsor in remote locations where there are no DTFs will not be required to obtain a Nonavailability Statement (NAS) to receive care. Countries will be considered remote locations for the purpose of NAS's when the Department does not have a significant presence and no fixed dental treatment facilities. Family members in these countries may obtain care from any host nation provider meeting accepted U.S. standards. The dental claims processor, upon receiving a claim without an attached authorization, will review the claim to determine if it is from a family member in a remote location. Following this verification, the claim will be processed under the ODP benefit plan.

Basic dental care encompasses diagnostic and preventive (exams, x-rays, cleanings, etc), sealants (for children under age 14), restorative (fillings, crowns, etc), endodontics (root canals, etc.), periodontics (gum surgery,

etc.), oral surgery (extractions, etc.), and prosthodontics (bridges, dentures, etc.). An annual cap (contract year—August 1 to July 31) of \$1,000 is applicable to basic dental care. Orthodontics is available, subject to the lifetime maximum of \$1,200 per member. In the event either of these maximum caps (annual dental or lifetime orthodontics) is insufficient to enable beneficiaries to obtain the required dental care, the responsible dental facility has the authority to issue a waiver on behalf of the beneficiary. This waiver review will be accomplished on a prospective basis, for dental care required due to extraordinary circumstances governing the cost of dental services in a particular geographic area.

All requests from DTFs to their Service Dental chiefs for waiver from the maximum caps will be handled in accordance with procedures established by the Service Dental Chiefs. Waiver requests should include the beneficiary's latest Explanation of Benefit (EOB) to indicate the beneficiary's current value of dental care applicable to the cap level; information on the proposed treatment; and information on the costs of dental care in the host nation compared to overall dental costs in the United States.

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 (FRA) 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, however, this rule has been reviewed by OMB.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

The Department is publishing this rule as an interim final rule in order to implement the program in a timely manner. Regulations involving military affairs are exempt from the notice and comment rulemaking procedures of the Administrative Procedures Act. Because this rule deals exclusively with a

program for active duty family members accompanying military personnel in overseas assignments, there is a heightened impact on the conduct of affairs peculiar to military functions of the government, and a significant reduced impact on the public. Based on this, it is appropriate, as an exception to our normal practice of providing an opportunity for prior public comment on all CHAMPUS regulations, to issue this rule as an interim final rule, with a subsequent opportunity for public comment. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the permanent final rule, anticipated approximately 90 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, Individuals with disabilities, 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 199.13 is amended by adding paragraph (i) to read as follows:

§ 199.13 Active duty dependents dental plan.

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(i) *Extension of the Active Duty Dependents' Dental Plan to areas outside the United States.* The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) may, under the authority of 10 U.S.C. 1076a(h), extend the Active Duty Dependents' Dental Plan to areas other than those areas specified in paragraph(a)(2)(i) of this section for the eligible dependents of members of the uniformed services accompanying the members on permanent assignment to duty in such areas. Action by the ASD(HA) to extend the program to any such area shall be announced through the publication of a notice in the **Federal Register**. In extending the program outside the United States, the ASD(HA) is authorized to establish program elements, methods of administration and payment rates to providers that are different from those in effect under this section in the United States to the extent the ASD(HA) determines necessary for the effective and efficient operation of the plan

outside the United States. One such difference is that in areas other than those areas specified in paragraph (a)(2)(i) of this section, services under the active duty dependents' dental plan must be preauthorized by a designated DOD official, who may deny preauthorization if the needed services are available in a dental treatment facility of the Department of Defense. Other differences may occur based on limitations in the availability and capabilities of that nation's civilian sector providers in certain areas. Another difference is that a waiver of the annual maximum coverage amount for non-orthodontic dental benefits or the lifetime maximum coverage amount for orthodontics is authorized based on extraordinary circumstances governing the cost of dental services in a particular geographic area. Otherwise, rules pertaining to services covered under the plan, beneficiary cost sharing and quality of care standards for providers shall be comparable to those in effect under this section in the United States. In addition, all provisions of 10 U.S.C. 1076a shall remain in effect.

Dated: July 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

RIN 0790-AG43

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Office of Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Interim final rule.

SUMMARY: This part implements section 657 of the National Defense Authorization Act for Fiscal Year 1997, which authorizes the Secretary of Defense to make payments to persons captured and incarcerated by the Democratic Republic of Vietnam. This part establishes policy and procedures concerning the payments to these persons.

DATES: This rule is effective May 15, 1997. Comments are requested on or before September 23, 1997.

ADDRESSES: Forward comments to: Directorate of Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C., 20301-4000.

FOR FURTHER INFORMATION CONTACT: Peter Ogloblin, or David Pronchick (703) 695-3176.

SUPPLEMENTARY INFORMATION: All comments received will be considered when preparing the final rule.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

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

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

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

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party. The specific exemption from the Paperwork Reduction Act is found in 5 CFR Part 1320. The information collection in this interim final rule is exempt from OMB approval under § 1320.4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act".

Public Law 104-4, "Unfunded Mandates Report Act of 1995 (UMRA)"

It has been determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

List of Subjects in 32 CFR Part 270

Military personnel, Payments, Vietnam.

Accordingly, 32 CFR part 270 is added to read as follows: