

the sale of the residence, in a separate account.

\* \* \* \* \*

(9) *Sale of residence to grantor, grantor's spouse, or entity controlled by grantor or grantor's spouse.* The governing instrument must prohibit the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse during the retained term interest of the trust, or at any time after the retained term interest that the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse; however, a distribution (for no consideration) upon or after the expiration of the retained term interest to another grantor trust of the grantor or the grantor's spouse pursuant to the express terms of the trust will not be considered a sale or transfer to the grantor or the grantor's spouse if such other grantor trust prohibits the sale or transfer of the property to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. In the event the grantor dies prior to the expiration of the retained term interest, this paragraph (c)(9) does not apply to the distribution (for no consideration) of the residence to any person (including the grantor's estate) pursuant to the express terms of the trust or pursuant to the exercise of a power retained by the grantor under the terms of the trust. Further, this paragraph (c)(9) does not apply to an outright distribution (for no consideration) of the residence to the grantor's spouse after the expiration of the retained trust term pursuant to the express terms of the trust. For purposes of this paragraph (c)(9), a *grantor trust* is a trust treated as owned in whole or in part by the grantor or the grantor's spouse pursuant to sections 671 through 678, and *control* is defined in § 25.2701-2(b)(5)(ii) and (iii).

\* \* \* \* \*

**Par. 3.** Section 25.2702-7 is amended as follows:

1. The first sentence is revised.
2. A sentence is added at the end of the section.

The revision and addition read as follows:

**§ 25.2702-7 Effective dates.**

Except as provided in this section, §§ 25.2702-1 through 25.2702-6 apply as of January 28, 1992. \* \* \* The fourth through eighth sentences of § 25.2702-5(b)(1) and § 25.2702-5(c)(9) apply with

respect to trusts created after May 16, 1996.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 5.** In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(c) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
25.2702-5 .....	1545-1485
* * * * *	* * * * *

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

Approved: December 4, 1997.

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97-33356 Filed 12-22-97; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR 199**

[DoD 6010.8-R]

**RIN 0720-AA40**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the TRICARE Selected Reserve Dental Program (TSRDP) to provide dental care to members of the Selected Reserves of the Ready Reserve. The final rule details operation of the program.

**EFFECTIVE DATE:** This final rule is effective January 22, 1998.

**ADDRESSES:** Office of Health Services Financing, 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 Final Rule**

Implementation of the TRICARE Selected Reserve Dental Program (TSRDP) was directed by Congress in section 705 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, which amended title 10, United States Code, by adding section 1076b. This law directed the implementation of a dental program for members of the Selected Reserve of the Ready Reserve, providing for voluntary enrollment and premium sharing between DoD and the enrollee. Section 702 of the 1997 National Defense Authorization Act, Pub. L. 104-201 amended 10 U.S.C. 1076b, by revising the program's start date and also changing several operational requirements.

Included in the program are the 50 United States and the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. Enrollment in the TSRDP will be voluntary and accomplished via an enrollment application submitted to the 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. The costs of the program will be shared between the government and the enrollee. The premium payment shall be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs).

Dental coverage under the TSRDP will consist of basic dental care, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. Enrollees will be limited to an annual maximum of \$1,000 of paid allowable charges per year. Minor administrative changes have been made in the benefits plan section in order to correct outdated codes.

Under this final rule, where possible, Reservists 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. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Dental claims under the TSRDP will be paid at the lower of the billed charges or the Usual, Customary and Reasonable (UCR) level, in which the customary rate is calculated at the 85th percentile or higher of billed charges.

TSRDP eligible beneficiaries will obtain information concerning the program and the enrollment process from the dental contractor. In the event an issue arises regarding the level of dental care received or the quality of care, all appeals and grievances should first be directed to the contractor for resolution. Only those issues that cannot be amicably resolved by the contractor should be forwarded to the TRICARE Support Office for review.

This final 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. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of 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.

As directed in the enacting legislation, the Department of Defense utilized a full and open competition to obtain a dental contractor to provide dental insurance coverage.

## II. Public Comments

The interim final rule was published on May 16, 1997 (62 FR 26939). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits.* The commenter recommended expanding the benefits under the program to include periodontics.

*Response.* Under the law, 10 U.S.C. 1076b, the TRICARE Selected Reserve Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services and emergency oral examinations; periodontics was not included.

2. *Benefits.* We received a comment suggesting the addition of crowns as a benefit under the program.

*Response.* Under the law, 10 U.S.C. 1076b, the TRICARE Selected Reserve Dental Program shall provide benefits

for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services and emergency oral examinations. Crowns are not covered under the program as they are not considered to be a basic restorative service.

3. *Benefits.* Another comment we received pointed out that code 00130 had been changed to 00140.

*Response.* We concur with the comment and procedure code 00130 has been changed to 00140.

## III. 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.

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.

The 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).

## List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

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. Part 199 is amended by revising § 199.21 to read as follows:

### § 199.21 TRICARE Selected Reserve Dental Program (TSRDP).

(a) *Purpose.* The TSRDP is a premium based indemnity dental insurance coverage program that will be available to members of the Selected Reserve of the Ready Reserve. Dental coverage will be available only to members of the Selected Reserve, no family coverage will be offered. The TSRDP is authorized by 10 U.S.C. 1076b.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services, and emergency oral examinations.

(2) Premium costs for this coverage will be shared by the enrollee and the government.

(3) The program is applicable to authorized providers in the 50 United States and the District of Columbia, 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 TSRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13 of this part.

(5) The TSRDP 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) of this part are relevant to the administration of the TRICARE Selected Reserve Dental Program, the definitions contained in §§ 199.2 and 199.13(b) of this part shall apply to the TSRDP as they do to CHAMPUS and the Active Duty Dependents Dental Plan.

(d) *Eligibility and enrollment.* (1) *Eligibility.* Enrollment in the TRICARE Selected Reserve Dental Program is open to members of the Selected Reserve of the Ready Reserve.

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

(3) *Election of coverage.* Following this notification, interested Reservists may elect to enroll. In order to obtain dental coverage, written election by eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Selected Reserve Dental Program is voluntary and will be accomplished by submission of an application to the TSRDP 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 Selected Reserve Dental Program coverage is terminated on the last day of the month in which the member is discharged, transferred to the Individual Ready Reserve, Standby Reserve, or Retired Reserve, or ordered to active duty for a period of more than 30 days.

(e) *Premium sharing.* The Government and the enrollee will share in the monthly premium cost.

(f) *Premium payments.* The enrollee will be responsible for a monthly

premium payment 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).

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

(3) *Member's share of premiums.* The cost of the TSRDP monthly premium will be shared between the Government and the enrollee. Interested eligible Reservists may contact the dental contactor to obtain the enrollee premium cost. The member's share may not exceed \$25 per month.

(g) *Plan benefits.* (1) The TSRDP will provide basic dental coverage, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. The following is the TSRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) Diagnostic: Comprehensive oral evaluation (00150), and Periodic oral evaluation (00120), Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Bitewings-single film (00272); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Pulp Vitality Tests (00460).

(ii) Preventive: Prophylaxis-adult (limit-two per year) (01110); Tropical application of fluoride (excluding prophylaxis)-adult (01204).

(iii) Restorative: Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); 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); Pin retention-per tooth, in addition to restoration (02951).

(iv) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130); Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Surgical removal of residual tooth roots (cutting procedure) (07250).

(v) Emergency: Limited oral evaluation—problem focused (00140); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(2) Codes listed in paragraph (g)(1) of this section may be modified by the Director, OCHAMPUS, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(h) *Maximum annual cap.* TSRDP enrollees will be subject to a maximum \$1,000.00 of paid allowable charges per year.

(i) *Annual notification of rates.* TSRDP premiums will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed.

(j) *Authorized providers.* The TSRDP 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.

(k) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TSRDP contractor. For enrollees who do use this network, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TSRDP. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. The maximum payment allowable by the TSRDP (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).

(l) *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) of this part shall apply.

(m) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, 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. This determination is applicable to the dental services contracts that implement this section.

(2) Based on the determination set forth in paragraph (m)(1) of this section, 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 Selected Reserve 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 Selected Reserve Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Selected Reserve Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(3) The preemption of State and local laws set forth in paragraph (m)(2) 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 section 1103. 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 the 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).

(n) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and procedures for the administration of the TRICARE Selected Reserve Dental Program.

Dated: December 15, 1997.

**L.M. Bynum,**

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

[FR Doc. 97-33108 Filed 12-22-97; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR 199

[DoD 6010.8-R]

RIN 0720-AA44

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the TRICARE Retiree Dental Program (TRDP), a premium based indemnity dental insurance coverage program, that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries.

**EFFECTIVE DATE:** This final rule is effective January 22, 1998.

**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 Final 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 final rule also incorporates the minor changes in the National Defense Authorization Act for Fiscal Year 1998 which expand eligibility to retirees of the Public Health Service and the National Oceanic and Atmospheric Administration, and active duty survivors and their dependents. The law directs the implementation of a dental program for: (1) Members of the Uniformed Services 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 unmarried surviving spouse

and eligible child dependents of a deceased member who died while in status described in (1) or (2); the unmarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unmarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

Included in the program are the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. The final rule expands the coverage of the program to include all U.S. Territories. Enrollment in the program is voluntary and members enrolled in the dental plan will be responsible for paying the full cost of the premiums. Under the final rule, the initial enrollment period has been extended from 12 months to 24 months (similar to the Active Duty Dependents Dental Program) in order to reduce the risk of adverse selection. 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. Minor administrative changes have been made in the plan benefits section in order to correct outdated codes and to include codes that were inadvertently excluded from the list.

Under this rule, 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 and provider submission of claims and acceptance of contractor allowances and arrangements. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Under the final rule, the maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of the billed charges or the Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th 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). TRDP eligibles will obtain information concerning the

program and the application process from the contractor.

This final 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. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of 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.

##### **II. Public Comments**

The proposed rule was published on June 24, 1997 (62 FR 34032-34035). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits:* We received a comment that an error exists in the description of procedure code 00120, 00140, and 00150.

*Response:* We appreciate the comment and we have replaced "examination" with "evaluation" in the description of the procedure codes 00120, 00140, and 00150.

2. *Benefits:* The commenter pointed out an oversight in that two procedures, Amalgam-one surface, permanent (02140) and Amalgam (two-surface), permanent (02150) were not included in the benefits of the program.

*Response:* We concur with the comment and procedures codes 02140 and 02150 have been added under the restorative benefits under the program.

3. *Benefits:* Another comment we received pointed out that several periodontic (04261, 04262, 04268) codes are outdated and have been changed.

*Response:* We appreciate the comment. These periodontic codes have been changed in the final rule as follows: code 04261 has been replaced by Bone replacement graft-first site in quadrant (04263); code 04262 has been replaced by Bone replacement-each additional site in quadrant; code 04268 has been replaced by Guided tissue regeneration-resorbable barrier, per site, per tooth (04266) and Guided tissue