

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

[DoD 6010.8-R]

RIN 0720-AA39

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revisions to the Eligibility Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the comprehensive CHAMPUS regulation pertaining to basic CHAMPUS benefits in accordance with several statutory changes. This proposed rule: sets forth the requirements for reinstatement of CHAMPUS eligibility for beneficiaries under age 65 who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability or end-stage renal disease (ESRD); establishes new classes of CHAMPUS eligibles; establishes the Transitional Assistance Management Program which provides transitional health care for members (and their dependents) who served on active duty in support of a contingency operation and for members (and their dependents) who are involuntarily separated from active duty; allows former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy; and makes minor technical revisions to the double coverage provisions. This proposed rule also adds a new category of eligible beneficiary under the Continued Health Care Benefit Program.

DATES: Comments must be received by February 23, 1998.

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

FOR FURTHER INFORMATION CONTACT:

Stephen E. Isaacson, Program Development Branch, OCHAMPUS, telephone (303) 361-1172.

SUPPLEMENTARY INFORMATION:**I. Eligibility Requirements**

This proposed rule adds or revises a number of eligibility provisions. Following is a brief summary of the classes of beneficiaries affected by this proposed rule. Generally, each class is eligible for CHAMPUS as a result of the change, and we have included the other salient points regarding each, but the reader should refer to the subsequent discussion for details regarding the specific conditions and requirements for each class.

CHAMPUS/Medicare dual eligibles.

- Must be under age 65, eligible for Medicare due to disability or end-stage renal disease, and enrolled in Medicare Part B.

- Applies to all categories of CHAMPUS beneficiaries except dependents of active-duty members.

- Effective October 1, 1991.

Dependents of a person who dies of an injury, illness, or disease incurred on the way to or from training with a duration of 30 days or less.

- Retiree cost-sharing.

- Effective November 14, 1986.

Victims of abuse.

- By a member who was discharged or dismissed as a result of a court-martial conviction for the abuse.

- Eligibility limited to one year from member's separation.

- Coverage limited to treatment of conditions resulting from abuse.

- Effective November 14, 1986.

- By a member of former member who loses eligibility to retired pay as a result of the abuse.

- Effective October 23, 1992.

Students who become incapable of self-support.

- Must be full-time student.

- The incapacitating condition must occur between the ages of 21 and 23.

- Effective October 23, 1992.

Dependents of an active duty member who dies while on active duty.

- These individuals have always been eligible for CHAMPUS with retiree cost-sharing.

- The most recent change provides that all care is to be cost-shared as active duty.

- Special cost-sharing is limited to one year.

- Effective October 1, 1993.

- For dependents of active-duty members who die while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing

conditions is to be cost-shared as active duty.

Dependents placed in the custody of a member or former member by a court or a recognized placement agency.

- Effective July 1, 1994, if placed by a court.

- Effective October 5, 1994, if placed by a recognized placement agency.

- This category of beneficiary is also added to the Continued Health Care Benefit Program effective October 5, 1994.

Transitional Assistance Management Program (TAMP)

- Claims for all individuals eligible under TAMP are cost-shared as active-duty dependents.

- Members released from active duty in connection with contingency operations.

- Eligible up to thirty (30) days.

- Effective April 6, 1991.

- Members involuntarily separated with less than six (6) years of service.

- Eligible up to sixty (60) days.

- Effective October 1, 1990.

- Members involuntarily separated with six (6) or more years of service.

- Eligible up to 120 days.

- Effective October 1, 1990.

II. Reinstatement of CHAMPUS Eligibility for Certain Medicare Beneficiaries

A. Regulation Amendment

The regulation is being amended to implement a series of laws enacted to reinstate CHAMPUS eligibility for certain individuals who, under previous laws, would have lost their CHAMPUS eligibility due to their eligibility for Medicare. This section briefly describes the amendment. A discussion of the legislative enactments will then follow, providing further explanation of the amendment and the various interim actions taken for implementation.

The amendment provides that CHAMPUS eligibility will be reinstated for beneficiaries:

1. Under age 65;

2. Who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability (as defined in 42 U.S.C. 426(b)(2)) or as a result of end stage renal disease (ESRD) (as defined in 42 U.S.C. 426-1(a)); and,

3. Who are enrolled in the supplementary medical insurance program under Medicare Part B.

Under this amendment, CHAMPUS eligibility will be reinstated effective upon the date the individual meets all three requirements cited above *except* that eligibility cannot be reinstated for care received prior to October 1, 1991.

Initially, a special coordination of benefits procedure was established by

law under which CHAMPUS benefits were paid for care received by these reinstated eligible beneficiaries. Under that special procedure, Medicare benefits would have to be paid first; then CHAMPUS, generally, would pay only the amount of the remaining bill which exceeded the beneficiaries; CHAMPUS deductible, copayment, and balance billing charge. Therefore, the beneficiary usually had to pay a portion of the bill even if the amount remaining after Medicare payment did not exceed the payment CHAMPUS would have made if the patient had not been eligible for Medicare.

However, under the most recent legislation, the special coordination of benefits procedure has been suspended and the normal coordination of benefits procedure used by CHAMPUS has been authorized for reinstated eligible beneficiaries. Under that procedure, after Medicare benefits have been paid, CHAMPUS, generally, will pay the amount of the remaining bill up to the amount CHAMPUS would have paid if the patient had not been eligible for Medicare. Because some claims were processed under the special coordination of benefits procedure prior to enactment of this recent legislation, the regulation amendment permits beneficiaries to resubmit such claims for reprocessing and payment under the normal coordination of benefits procedure.

Use of the normal coordination of benefits procedure was first authorized by the Department of Defense Appropriations Act for FY 1993. It was repeated in subsequent appropriations acts and was incorporated into the CHAMPUS law by the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337).

B. Background

Both section 704 of the National Defense Authorization Act for fiscal years 1992 and 1993 (P.L. 102-190) and section 8097 of the Department of Defense Appropriations Act, 1993 (P.L. 102-172) contained provisions which reinstate CHAMPUS eligibility for certain individuals who would otherwise have lost their CHAMPUS eligibility. As the Senate Armed Services Committee report stated, "Under current law, a CHAMPUS beneficiary who is classified as fully disabled for two years under Social Security standards automatically becomes eligible for Medicare and loses CHAMPUS eligibility. This provision would authorize CHAMPUS to be a secondary payer to Medicare * * *." This action, according to the report, "provides a needed, equitable safety net

to CHAMPUS beneficiaries who currently lose their CHAMPUS coverage through no fault of their own before the normal point of conversion to Medicare at age 65."

The goal of this provision was to limit the out-of-pocket expenses of these individuals. By restoring CHAMPUS eligibility for these individuals, the coordination of benefits process will ensure that the Medicare payment is at least as much as the CHAMPUS payment would have been in the absence of Medicare, and, if it is not, CHAMPUS will pay the difference. Individuals will benefit, not only in cases where the CHAMPUS cost-share or deductible is less than Medicare's, but by being included in the more generous CHAMPUS coverage of certain services, notably prescription drugs and mental health services. For example, Medicare does not cover prescription drugs, but CHAMPUS does.

These laws set forth special procedures for determining CHAMPUS payment in these dual eligibility cases, and these were distinct from the normal coordination of benefits procedures followed by CHAMPUS in double coverage situations. These procedures are explained in greater detail in Section D of this Section II. In addition, the laws established two effective dates depending upon the beneficiary class, and they limited application of these provisions to certain beneficiary classes. Specifically, only those beneficiaries whose eligibility for Medicare was based on disability were able to have their CHAMPUS eligibility restored, while those beneficiaries whose Medicare eligibility was based on end-stage renal disease (ESRD) were not affected by those provision and remained ineligible for CHAMPUS.

In an attempt to rectify some of the inconsistencies above, further statutory changes were made for FY 1993. Section 705 of the National Defense Authorization Act for FY 1993 (P.L. 102-484, enacted October 23, 1992) and Section 9084 of the Department of Defense Appropriations Act, 1993 (P.L. 102-396, enacted October 6, 1992) contain provisions which affect these procedures. The Authorization Act extended the dual eligibility provisions to individuals with ESRD, although the Appropriations Act continued to recognize only disabled former members and their dependents as eligible for reinstatement of CHAMPUS eligibility. On the other hand, the Appropriations Act required use of normal coordination of benefits procedures for disabled former members and their dependents while the Authorization Act continued to require use of the special payment

procedures for all beneficiaries whose CHAMPUS eligibility was reinstated. The laws also changed the effective date of the provisions, making them retroactive to October 1, 1991, and eliminating the two effective dates. Lastly, the Appropriations Act contained a \$20 million limitation on the total CHAMPUS payments which could be made under some of the provisions. This limitation is further described in Section F. of this Section II.

Section 302 of the Supplemental Appropriations Act of 1993 (P.L. 103-50, enacted on July 2, 1993) made additional changes to eliminate some of the remaining inconsistencies. It restored CHAMPUS eligibility for individuals who would have lost their CHAMPUS eligibility due to Medicare eligibility based on ESRD, and thus brought the Appropriations Act into agreement with the Authorization Act with regard to the individuals affected. It also required that the normal coordination of benefits procedures be used for *all* beneficiaries whose CHAMPUS eligibility has been reinstated under these provisions and made this retroactive to October 1, 1991. This also affects the application of the \$20 million limitation on payments as described in Section F. below.

The limitation on payments was not included in the FY 1994 Appropriation Act, but the procedural differences from the authorization act continued. As of FY 1995 the differences were resolved by inclusion in the Authorization Act for FY 1995 language which specified use of normal double coverage procedures for these beneficiaries.

C. Eligibility

We are applying this provision to all individuals eligible for CHAMPUS under title 10, U.S.C., section 1086(c). Initially the Appropriations Acts (both P.L. 102-172 and P.L. 102-396) included only former members of the Uniformed Services (those who are entitled to retired or retainer pay or equivalent pay) and the dependents of such former members. However, the Authorization Acts (P.L. 102-190 and P.L. 102-484) and the Supplemental Appropriations Act of 1993 (as well as subsequent authorization and appropriations acts) included these beneficiaries as well as former spouses, dependents of deceased active duty members, and dependents of deceased former members.

In addition to meeting the requirements of title 10, U.S.C., section 1086(c), individuals also must meet the following requirements in order to have their CHAMPUS eligibility restored.

1. They must be under age 65, the age at which the beneficiary would normally be required to switch from CHAMPUS to Medicare coverage.

2. They would otherwise have lost their CHAMPUS eligibility due to eligibility for Medicare Part A as a result of disability as defined in 42 U.S.C. 426(b)(2) or ESRD as defined in 42 U.S.C. 426-1(a). Under the provisions of the 1992 Authorization and Appropriations Acts, only those individuals who are disabled may have their CHAMPUS eligibility restored. Individuals under age 65 who have lost their CHAMPUS eligibility based on entitlement to Medicare due to ESRD were excluded from both Acts. However, the Defense Authorization Act for 1993 and the Supplemental Appropriations Act of 1993 (and subsequent acts) included ESRD as a basis for reinstating CHAMPUS eligibility for all beneficiaries included in title 10, U.S.C. section 1086(c).

3. The individual must be enrolled in Part B of Medicare. If an individual who is enrolled in Part B subsequently disenrolls, CHAMPUS eligibility will end effective with the date of termination of Part B enrollment. Likewise, CHAMPUS eligibility cannot begin prior to enrollment in Part B of Medicare.

Any individual who meets these eligibility requirements must enroll under the Defense Enrollment Eligibility Reporting System (DEERS). Enrollment is available through the individual's Uniformed Service at the nearest military personnel office. As with all CHAMPUS eligibility, it is solely the individual's responsibility to enroll under DEERS, and, except as described in Section G. below, no attempt will be made by the Office of CHAMPUS (OCHAMPUS), by the CHAMPUS contractors, or by any other entity to identify or enroll eligible individuals. In enrolling under DEERS, the individual will be required to provide the necessary documentation of age, disability or ESRD, and Medicare enrollment in Parts A and B.

D. Coordination of Benefits

These provisions do not affect in any way the CHAMPUS benefits available. They only extend CHAMPUS eligibility to the affected individuals and provide for payment procedures for CHAMPUS as secondary payer to Medicare. These provisions also do not affect the statutory limitations regarding CHAMPUS' status as secondary payer to all other coverage except Medicaid and CHAMPUS supplemental plans. Therefore, before a claim is submitted to

CHAMPUS, it first must be submitted to all other coverages including Medicare supplemental plans.

The FY 1992 Authorization and Appropriations Acts required special payment procedures for all beneficiaries affected by this provision. These procedures were intended to ensure that a beneficiary's out-of-pocket expenses were no greater than they would have been if CHAMPUS were the primary payer. While this ensured that beneficiaries were not financially penalized for becoming eligible for Medicare due to disability, these procedures often resulted in less CHAMPUS payment (and a commensurate increase in beneficiary liability) than would have occurred under the normal coordination of benefits procedures. As a result of this, the FY 1993 Appropriations Act required normal coordination of benefits procedures to be used, but it only applied to claims for disabled former members and their dependents. The special payment procedures still were to be applied to former members and their dependents who are eligible for Medicare based on ESRD as well as to all affected dependents of deceased active duty members, dependents of deceased former members, and former spouses whether their eligibility for Medicare is based upon disability or ESRD. As a result of the Supplemental Appropriations Act of 1993 and subsequent authorization and appropriations acts, normal coordination of benefits procedures are to be applied to all beneficiaries whose CHAMPUS eligibility has been reinstated under these provisions.

Under normal coordination of benefits procedures, CHAMPUS will reimburse the difference between the billed amount (or the amount the provider is required to accept as full payment) and what the other insurance coverage paid, if that difference is less than what CHAMPUS would have paid in the absence of other coverage. In most cases, this results in no remaining out-of-pocket expense for the beneficiary.

Under the special payment procedures, CHAMPUS payment was limited to the amount by which the patient's Medicare deductible, cost-share, and appropriate balance billing costs exceed the patient's CHAMPUS deductible, cost-share, and balance billing costs. Since the CHAMPUS cost-share for these beneficiaries is often greater than the Medicare cost-share or deductible, in many cases this resulted in no CHAMPUS payment, and the beneficiary always had out-of-pocket expenses (unless the beneficiary also

was covered by a Medicare or CHAMPUS supplemental plan).

Even if CHAMPUS makes no payment it is still advantageous to the beneficiary for the claim to be submitted to CHAMPUS. On all such claims the CHAMPUS cost-sharing and deductible amounts which are paid by other health insurance, including Medicare, will be credited toward meeting the CHAMPUS deductible and the catastrophic cap. Only by submitting these claims to CHAMPUS can the deductible and catastrophic cap entries be made, and this can have a significant impact on CHAMPUS payments on subsequent claims, especially once the catastrophic cap has been met.

If the care received by a beneficiary is not a benefit under Medicare but is under CHAMPUS (e.g. prescription drugs), CHAMPUS will process the claim as a routine claim. If the care is a benefit under both Medicare and CHAMPUS, the procedures explained above will be followed.

In all cases, claims must first be processed by Medicare, and it will be necessary for a Medicare explanation of benefits to be forwarded to the CHAMPUS claims processing contractor with the claim. The Medicare explanation of benefits must reflect the Medicare payment and the patient's Medicare deductible and cost-share.

This change will be applied on a claim by claim basis. In other words, if a beneficiary has an episode of care which involves an inpatient hospital stay and care by several professional providers, each claim submitted for the care will be processed independently, and there will be no attempt made to consolidate the claims.

The following examples are provided to demonstrate the normal CHAMPUS coordination of benefits procedures and the special procedures and the impact of each on CHAMPUS payments. Although the special procedures are no longer used, we are including them in the examples, since the laws required them to be used for a period of time and a large number of claims were processed using them.

1. EXAMPLE 1—NORMAL COORDINATION OF BENEFITS

Hospital bills for inpatient care	\$5,722.00
Medicare DRG-based amount ..	5,368.95
Medicare inpatient hospital deductible	652.00
Medicare payment	4,716.95
CHAMPUS DRG-based amount	4,949.59

1. EXAMPLE 1—NORMAL COORDINATION OF BENEFITS—Continued

CHAMPUS beneficiary cost-share	1,430.50
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¹ For claims paid under the CHAMPUS DRG-based payment system, the cost-share is the lesser of a per diem amount (\$360 for FY 1997) or 25 percent of the billed charge. For this example we assumed a length-of-stay of five days.

Step 1. Determine CHAMPUS payment in the absence of any other coverage. This amount is \$3,519.09.

Step 2. Subtract the Medicare primary payment from the CHAMPUS DRG-based amount. This leaves \$232.64.

Step 3. Subtract the Medicare primary payment from the hospital's charges (or the amount the hospital is obligated to accept as payment in full, if that is less than the charges). The hospital must accept the Medicare DRG-based amount as payment in full, so this step results in \$652.00.

Step 4. Subtract any applicable beneficiary cost-sharing amounts from the provider's charges (or the amount the hospital is obligated to accept as payment in full, if that is less than the charges). This results in \$4,043.95.

Step 5. CHAMPUS payment is the least of Steps 1 through 4. CHAMPUS pays \$232.64. The beneficiary's liability is zero, since the hospital has been paid the full CHAMPUS DRG-based amount, and it must accept this as payment in full.

2. EXAMPLE 2—SPECIAL PAYMENT PROCEDURES

Hospital bills for inpatient care	\$5,722.00
Patient liability under Medicare:	
Medicare DRG-based amount	5,368.95
Inpatient hospital Medicare deductible	652.00
Medicare pays	4,716.95
Patient liability under CHAMPUS:	
CHAMPUS DRG-based amount	4,949.59
Beneficiary cost-share	1,430.50

¹ For claims paid under the CHAMPUS DRG-based payment system, the cost-share is the lesser of a per diem amount (\$360 for FY 1997) or 25 percent of the billed charge. For this example we assumed a length-of-stay of five days.

Since the beneficiary's liability under Medicare is less than it is under CHAMPUS, CHAMPUS makes no payment.

There are several other ramifications which are pertinent here. Since the beneficiary is eligible for CHAMPUS, the claim must be submitted to CHAMPUS *before* the beneficiary can be billed for any amounts. CHAMPUS must

be billed if there is any remaining beneficiary liability after Medicare processes the claim—even if the provider is certain that no payment will be made by CHAMPUS. Any attempt to bill the beneficiary without first billing CHAMPUS can be considered a violation of the statutory-based participation requirement and can result in exclusion of the provider by CHAMPUS and possibly by Medicare. In the above example, once the claim is submitted to CHAMPUS, the CHAMPUS DRG-based allowance (\$4,949.59) becomes the full payment amount for the claim. Even though CHAMPUS makes no payment, the beneficiary liability is decreased from \$652 (the Medicare inpatient deductible) to \$232.64 (the difference between the CHAMPUS DRG-based allowance and the amount Medicare paid).

3. EXAMPLE 3.—NORMAL COORDINATION OF BENEFITS

Physician bills for surgery	\$1,200.00
Medicare allows	925.00
Medicare cost-share	185.00
Medicare payment	740.00
(Assumes the deductible has been met)	
CHAMPUS allows	975.00
CHAMPUS cost-share	243.75
(Assumes the deductible has been met)	

Step 1: Determine CHAMPUS payment in the absence of any other coverage. This amount is \$731.25.

Step 2: Subtract the primary payment from the billed charge. This results in \$460.00.

Step 3: CHAMPUS payment is the lesser of Steps 1 and 2. CHAMPUS pays \$460.00, and the beneficiary's liability is zero.

4. EXAMPLE 4.—SPECIAL PAYMENT PROCEDURES

Physician bills for surgery	\$1,200.00
Patient liability under Medicare:	
Medicare allows	925.00
Medicare cost-share	185.00
Medicare payment	740.00
(Assumes the deductible has been met)	
Patient liability under CHAMPUS:	
CHAMPUS allows	975.00
CHAMPUS cost-share	243.75
(Assumes the deductible has been met)	

Since the beneficiary's liability under Medicare is less than it is under CHAMPUS, CHAMPUS makes no payment, and the beneficiary's liability is \$185 if the provider participates or

\$460 if the provider does not participate.

5. EXAMPLE 5.—SPECIAL PAYMENT PROCEDURES

Mental illness outpatient care bill	\$450.00
(This is a benefit where Medicare pays only 50 percent of the allowed charges.)	
Patient liability under Medicare: 50% of allowed charges	225.00
(Assumes the full billed charge was allowed and the \$100 deductible has been met.)	
Patient liability under CHAMPUS: 25% of allowed charge	112.50
(Assumes the full billed charge was allowed and the \$150 deductible has been met)	

Since Medicare liability is greater than CHAMPUS liability, CHAMPUS pays the difference of \$112.50, and the beneficiary is liable for the remaining \$112.50.

E. Effective Date

According to the FY 1993 Authorization Act and subsequent authorization and appropriations acts, the effective date of this change is October 1, 1991. This effective date applies only if the individual lost CHAMPUS eligibility prior to the effective date. If CHAMPUS eligibility was lost after the effective date, CHAMPUS eligibility, and use of the payment procedures required by this change, will begin on the date the individual first meets the eligibility requirements in Section C. above. In this case, effective means that the individual's eligibility will begin on the effective date and claims will be processed accordingly.

The above effective date is changed from the effective date contained in the FY 1992 Authorization and Appropriation Acts. The procedures required by those acts were effective for former members and their dependents as of October 1, 1991, and for all other beneficiaries in title 10, U.S.C., section 1086(c) as of December 5, 1991.

As noted in Section C. above, it is the individual's responsibility to establish eligibility through DEERS in order to have claims processed by CHAMPUS. In many cases this will result in retroactive implementation of this change for claims for services incurred between the effective date and implementation of the change pursuant to the final rule for this change. In order to provide for some closure to this retroactive implementation, we propose that beneficiaries will be given 180 days

from the date of publication of the final rule to apply to DEERS for reinstatement of their eligibility. After that period, we will begin eligibility effective with the date of application to DEERS. In addition, these beneficiaries will have 180 days from the date of publication of the final rule to submit claims pursuant to their reinstated eligibility which are outside of the normal CHAMPUS claims filing deadlines.

F. Limitation on Total Payments

The FY 1993 Appropriations Act provided that "\$20,000,000 shall be available * * * to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, * * * for a former member of the uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act * * * solely on the grounds of physical disability: * * * ." We treated this as a maximum limitation on the amount that could be spent for these beneficiaries.

The Supplemental Appropriations Act of 1993 did not directly alter this provision. However, as a result of the changes made by the Supplemental Appropriations Act of 1993, the limitation applied to all beneficiaries "described by section 1086(c) of title 10, United States Code," and ESRD in addition to physical disability was included as a qualifying condition. As a result, all payments made for reinstated beneficiaries were subject to the limitation. This limit was not reached in FY 1993, and it was not included in subsequent appropriations acts.

III. Establishment of New Classes of CHAMPUS Eligibles

Several new classes of CHAMPUS eligibles have been added by changes to the Department of Defense Authorization Acts for recent years. These new classes are:

- Eligible spouses (including former spouses) or children of a reservist who died after September 30, 1985, from an injury or illness incurred or aggravated while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the reservist was to perform, or performed, such active duty, active duty for training, or inactive duty training. These beneficiaries are eligible for services or supplies provided on or after October 1, 1985, and were added by Section 652(c) of the Department of Defense Authorization Act, 1986 (P.L. 99-145).

- Eligible spouses (including former spouses) or children of a reservist who died from a disease incurred or aggravated after November 14, 1986, while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the reservist was to perform, or performed, such active duty, active duty for training, or inactive duty training. These beneficiaries are eligible for services or supplies provided on or after November 14, 1986, and were added by Section 604(a)(1) of the National Defense Authorization Act for Fiscal Year 1987 (P.L. 99-661).

- Eligible spouses (including former spouses) and children of a member who are victims of abuse by the member and the member receives a dishonorable or bad-conduct discharge or is dismissed from a Uniformed Service as a result of a court-martial conviction for abuse of the dependent, or was administratively discharged as a result of such an offense. Medical benefits are limited to treatment of injuries resulting from the abuse for one year from the date of the person's separation from the Uniformed Service. These beneficiaries are eligible for services or supplies provided on or after November 14, 1986, and were added by the National Defense Authorization Act for Fiscal Year 1987 (P.L. 99-661).

- Eligible spouses (including former spouses) and children who are victims of abuse by a member or former member of a Uniformed Service who, while a member and as a result of misconduct involving abuse of a dependent, has eligibility to receive retired pay on the basis of years of service terminated. These beneficiaries are eligible for services or supplies provided on or after October 23, 1992, and were added by Section 653 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484).

- Otherwise eligible dependent children who are not married and are incapable of self-support because of a mental or physical disability that occurred between the ages of twenty-one (21) and twenty-three (23) while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support. The incapacity must be continuous. If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity

unless the incapacity recurs and the beneficiary is under age twenty-one (21) or is under age twenty-three (23) and is enrolled as a full-time student. If the child was not incapacitated on his or her twenty-third (23rd) birthday, but becomes incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. These beneficiaries are eligible for services or supplies provided on or after October 23, 1992, and were added by Section 653 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484).

- Dependents of active-duty members who die while on active duty. These individuals were previously eligible, but now all care is to be cost-shared as active duty for one year. These special cost-sharing provisions apply to services or supplies provided on or after October 1, 1993. For dependents of activity-duty members who dies while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty. In both situations it is important to note that this provision does not preclude loss of eligibility during the one-year period as a result of any condition which routinely results in loss of CHAMPUS eligibility such as reaching age limits, remarriage, etc. These provisions were added by Section 707(c) of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337).

- Dependents who are placed in the custody of a member or former member by a court for a period of twelve (12) consecutive months or more. These beneficiaries are eligible for services or supplies provided on or after July 1, 1994, and were added by Section 701 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160).

- Dependents who are placed in the home of a member or former member by a placement agency which is recognized by the Secretary of Defense in anticipation of the legal adoption of the child. These beneficiaries are eligible for services or supplies provided on or after October 5, 1994, and were added by Section 701 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337).

IV. Transitional Assistance Management Program

Based upon the provision of the National Defense Authorization Act, FY 1991 (P.L. 101-510), the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (P.L. 102-25), and the National Defense Authorization Act, FY 1995, transitional health care benefits under CHAMPUS

have been authorized for certain service members and their families under limited circumstances. The categories affected include members and their dependents who served in connection with contingency operations and those members otherwise subject to involuntary separations from active duty. The program that implements these provisions is known as the Transitional Assistance Management Program (TAMP). All individuals eligible under TAMP will be subject to the same cost-sharing requirements applicable to dependents of active-duty members.

Under TAMP, members who are released from active duty in connection with contingency operations are eligible for CHAMPUS for up to thirty (30) days or until covered by an employer-sponsored health plan, whichever occurs first. The earliest effective date of eligibility for these beneficiaries is April 6, 1991.

Under TAMP, members who are involuntarily separated with less than six (6) years of active service are eligible for CHAMPUS for sixty (60) days. Members who are involuntarily separated with six (6) or more years of active service are eligible for CHAMPUS for 120 days. The TAMP provisions applicable to involuntary separations are effective for nine years beginning October 1, 1990.

TAMP also provided for extended CHAMPUS coverage for certain individuals on a premium basis. Previously, these individuals, upon losing CHAMPUS eligibility, were eligible to purchase temporary coverage under a plan arranged by the Department of Defense with Mutual of Omaha Insurance Company. This plan was known as Uniformed Services Voluntary Insurance Policy (USVIP). Section 4408 of P.L. 102-484 significantly revised this program. The program is now required to provide coverage with premiums and benefits comparable to the Federal Employees Health Benefits Program (FEHBP) and for 18 to 36 months depending on the eligibility category. The program is known as the Continued Health Care Benefit Program (CHCBP) and is described in detail in 32 CFR Part 199.20. Eligibility under the CHCBP is extended to certain members who are discharged or released from active duty, whether voluntarily, or involuntarily, under other than adverse condition, to certain former spouses of members or former members, and to certain children of a member or former member who otherwise would not meet the requirements for eligibility as a dependent. Although technically these

individuals are not CHAMPUS beneficiaries, this program is mentioned here because it will enable these individuals to purchase coverage similar to CHAMPUS. The program began October 1, 1994, and specific implementation procedures have been published.

V. Extension of Eligibility Period for Former Spouses Who Buy a Conversion Health Policy

Subsections 4407(b) and (c) of the National Defense Authorization Act for Fiscal Year 1993 amended Section 1086a of title 10 U.S.C. to allow otherwise eligible former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy. The previous limit on such extended CHAMPUS benefits was one year. This provision applied only to the USVIP policies, and the CHCBP does not have an exclusion for preexisting conditions. Since the USVIP expired on September 30, 1994, this two-year extension of CHAMPUS benefits was effective only until September 30, 1996. Therefore, we are not including any change to the regulation to incorporate this provision, since this provision has already expired.

VI. Eligibility Determinations

Although OCHAMPUS is tasked with publishing legislatively mandated eligibility changes to Title 10 U.S.C., determination of dependent eligibility for CHAMPUS is the primary responsibility of the Uniformed Services. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification. However, a determination by the Uniformed Services that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements of CFR Part 199 must be met. Disputes regarding eligibility as a dependent or dates of beginning eligibility for benefits under CHAMPUS can only be resolved by the appropriate Uniformed Service Secretary.

VII. Technical Revisions to the Double Coverage Provisions

We are also making several wording changes to Paragraph (a) of Section 199.8, Double Coverage, in order to make it conform to the latest version of 10 U.S.C. 1079(j)(1) as revised by Section 713, P.L. 102-190. These changes merely revise some of the wording and have no effect on the actual double coverage procedures

under CHAMPUS. We are making them at this time, since Section 199.8 is being revised by this rule.

VIII. Addition of New Category of Eligible Beneficiary Under the Continued Health Care Benefit Program (CHCBP)

Section 702 of the 1995 National Defense Authorization Act (P.L. 103-337) expanded the eligibility for health care coverage under the CHCBP to a fourth group of beneficiaries from the group originally authorized in the CHCBP Final Rule, published in the **Federal Register** on September 30, 1994, (59 FR 49817). Eligibility to enroll in the CHCBP has been expanded to now include unmarried persons placed in the legal custody of a member or former member as the result of a court order or by a placement agency recognized by the Secretary of Defense.

Health care coverage in the CHCBP is for a specific time period. For the new group of eligible beneficiaries—unmarried persons placed in the legal custody of a member or former member (age 21 if not in college or up to age 23 if in college)—coverage can be up to a total of 36 months. These individuals will have 60 days to enroll beginning the date they become eligible.

This change is effective October 5, 1994.

IX. Regulatory Procedures

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 proposed rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this proposed rule are minor revisions to the existing regulation. Since this proposed rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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. Section 199.2 is amended by adding new definitions for *Abused dependent*, *Deceased reservist*, *Deceased retiree*, *Former member*, *Member*, *Reservist* in alphabetical order, by removing the definition for *Deceased service member* and adding in alphabetical order a new definition for *Deceased member*, and by revising the definitions for *Child*, *Defense Enrollment Eligibility Reporting System (DEERS)*, *Dependent*, *Sponsor*, *Spouse*, *Widow* or *Widower* to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Abused dependent. An eligible spouse or child, who meets the criteria in § 199.3 of this part, of a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense, or of a member or former member who has had their entitlement to receive retired pay terminated because of misconduct involving physical or emotional abuse.

* * * * *

Child. An unmarried child of a member or former member, who meets the criteria (including age requirements) in § 199.3 of this part.

* * * * *

Deceased member. A person who, at the time of his or her death, was an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less.

Deceased reservist. A reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training and dies as a result of that specific injury, illness or disease.

Deceased retiree. A person who, at the time of his or her death, was entitled to retired or retainer pay or equivalent pay based on duty in a Uniformed Service. For purposes of this part, it also includes a person who died before attaining age 60 and at the time of his or her death:

(1) Would have been eligible for retired pay as a reservist but for the fact that he or she was not 60 years of age; and

(2) Had elected to participate in the Survivor Benefit Plan established under chapter 73 of title 10 U.S.C.

* * * * *

Defense Enrollment Eligibility Reporting System (DEERS). An automated system maintained by the Department of Defense for the purpose of:

- (1) Enrolling members, former members and their dependents; and
- (2) Verifying members', former members' and their dependents' eligibility for health care benefits in the direct care facilities and for CHAMPUS.

* * * * *

Dependent. Individuals whose relationship to the sponsor (including NATO members who are stationed in or passing through the United States on official business when authorized) leads to entitlement to benefits under this part. (See § 199.3 of this part for specific categories of dependents).

* * * * *

Former member. A retiree, deceased member, deceased retiree, or deceased reservist in certain circumstances (see § 199.3 of this part for additional information related to certain deceased reservists' dependents' eligibility). Under conditions specified under § 199.3 of this part, former member may also include a member of the Uniformed Services who has been discharged from active duty (or, in some cases, full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions and qualifies for CHAMPUS benefits under the Transitional Assistance Management Program or the Continued Health Care Benefits Program.

* * * * *

Member. A person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less. (For CHAMPUS cost-sharing purposes only, a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense is considered a member).

* * * * *

Reservist. A person who is under an active duty call or order to one of the Uniformed Services for a period of 30 days or less or is on inactive training.

* * * * *

Sponsor. A member or former member of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based. A sponsor also includes a person who, while a member of the Uniformed Services and after becoming eligible to be retired on the basis of years of service, has his or her eligibility to receive retired pay

terminated as a result of misconduct involving abuse of a spouse or dependent child. It also includes NATO members who are stationed in or passing through the United States on official business when authorized. It also includes individuals eligible for CHAMPUS under the Transitional Assistance Management Program.

Spouse. A lawful husband or wife, who meets the criteria in § 199.3 of this part, regardless of whether or not dependent upon the member or former member for his or her own support.

* * * * *

Widow or Widower. A person who was a spouse at the time of death of a member or former member and who has not remarried.

* * * * *

3. Section 199.3 is revised to read as follows:

§ 199.3 Eligibility.

(a) *General.* This section sets forth those persons who, by the provisions of 10 U.S.C. chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements, as set forth in other sections of this Part, must be met. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical treatment facility capable of providing the needed care is available. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification.

(b) *CHAMPUS eligibles*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniform Service.

(2) *Dependent.* Individuals whose relationship to the sponsor leads to entitlement to benefits. CHAMPUS eligible dependent include the following:

(i) *Spouse.* A lawful husband or wife of a member or former member. The spouse of a deceased member or retiree must not be remarried. A former spouse also may qualify for benefits as a dependent spouse. A former spouse is a spouse who was married to a military member, or former member, but whose marriage has been terminated by a final decree of divorce, dissolution or annulment. To be eligible for CHAMPUS benefits, a former spouse must meet the criteria described in paragraph (b)(2)(i)(A) through (b)(2)(i)(E) of this section and must qualify under

the group defined in paragraph (b)(2)(i)(F)(1) or (b)(2)(i)(F)(2):

- (A) Must be unmarried; and
- (B) Must not be covered by an employer-sponsored health plan; and
- (C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and
- (D) Must not be eligible for Part A of Title XVII of the Social Security Act (Medicare) except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section; and

(E) Must not be the dependent of a NATO member; and

(F) Must meet the requirements of paragraph (b)(2)(i)(F)(1) or (b)(2)(i)(F)(2) of this section:

(1) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E).

(i) If the date of the final decree of divorce, dissolution, or annulment was before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or after January 1, 1985.

(ii) If the date of the final decree of the divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(2) The former spouse must have been married to the same member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(i) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E).

(ii) If the date of the final decree of divorce, dissolution or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the decree of divorce, dissolution, or annulment until December 31, 1988, or for two years

from the date of the divorce, dissolution, or annulment, whichever is later.

(iii) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(ii) *Child.* A dependent child is an unmarried child of a member or former member who has not reached his or her twenty-first (21st) birthday, except an incapacitated adopted child meeting the requirements of paragraph (b)(2)(ii)(H)(2) of this section, and who bears one of the following relationships to a member or former member of one of the Uniformed Services:

- (A) A legitimate child; or
- (B) An adopted child whose adoption has been legally completed on or before the child's twenty-first (21st) birthday; or
- (C) A legitimate stepchild; or
- (D) An illegitimate child of a member or former member whose paternity/maternity has been determined judicially, and the member or former member directed to support the child; or
- (E) An illegitimate child of a member or former member whose paternity/maternity has not been determined judicially, who resides with or in the home provided by the member or former member, and is or continues to be dependent upon the member or former member for over one-half of his or her support, or who was so dependent on the former member at the time of the former member's death; or
- (F) An illegitimate child of a spouse of a member who resides with or in a home provided by the member and is, and continues to be dependent upon the member for over one-half of his or her support; or

(G) An illegitimate child of a spouse of a former member who resides with or in a home provided by a former member or the former member's spouse at the time of death of the former member, and is, or continues to be, or was, dependent upon the former member for more than one-half of his or her support at the time of death; or

(H) An individual who falls into one of following classes:

(1) *A student.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has passed his or her 21st birthday but has not passed his or her 23rd birthday, is dependent upon the member or former member for over 50 percent of his or her support or was

dependent upon the member or former member for over 50 percent of his or her support on the date of the member's or former member's death, and is pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C., Chapters 34 and 35.

Note to paragraph (b)(2)(ii)(H)(1): Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(2) *An incapacitated child.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has not attained the age of 21, and is incapable of self-support because of a mental or physical disability that:

(i) Existed before the child's twenty-first (21st) birthday; or

(ii) Occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education (see Note to paragraph (b)(2)(ii)(H)(2)), and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support; and

(iii) The incapacity is continuous. (If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity, unless the incapacity recurs and the beneficiary is under age 21, or is under age 23 and is enrolled as a full-time student under paragraph (b)(2)(ii)(H)(2)(ii) of this section. If the child was not incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. However, incapacitated children who marry and who subsequently become unmarried through divorce, annulment, or death of spouse, may be reinstated as long as they still meet all other requirements).

Note to paragraph (b)(2)(ii)(H)(2): An institution of higher learning is a college, university, or similar institution, including a technical or business school, offering post-

secondary level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate, or higher, degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also shall include a hospital offering educational programs at the post-secondary level regardless of whether the hospital grants a post-secondary degree. The term also shall include an educational institution that is not located in a State, that offers a course leading to a standard college degree, or the equivalent, and that is recognized as such by the Secretary of Education (or comparable official) of the country, or other jurisdiction, in which the institution is located (38 U.S.C. chapter 34, section 1661, and chapter 35, section 1701). Courses of education offered by institutions listed in the "Education Directory", "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(3) *A child of a deceased reservist.* A child, who is determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, of a reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training, and the reservist dies as a result of that specific injury, illness or disease.

(4) *A child placed in legal custody of a member or former member.* A child who is placed in legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child.

(iii) *Abused dependents.*—(A) *Categories of abused dependents.* An abused dependent may be either a spouse or a child. Eligibility for either class of abused dependent results from being either:

(1) The spouse (including a former spouse) or child of a member who has received a dishonorable or bad-conduct discharge, or dismissal from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result

of such an offense. Medical benefits are limited to care related to the physical or emotional abuse and for a period of 12 months following the member's separation from the Uniformed Service.

(2) The spouse (including a former spouse) or child of a member or former member who while a member and as a result of misconduct involving abuse of the spouse or child has eligibility to receive retired pay on the basis of years of service terminated.

(B) *Requirements for categories of abused dependents.* (1) *Abused spouse.* As long as the spouse is receiving payments from the Dod Military Retirement Fund under court order, the spouse is eligible for health care under the same conditions as any spouse of a retired member. The abused spouse must:

(i) Under paragraph (b)(2)(iii)(A)(1) of this section, be a lawful husband or wife or a former spouse of the member; or

(ii) Under paragraph (b)(2)(iii)(A)(2) of this section, be a lawful husband or wife or a former spouse of the member or former member, and the spouse is receiving payments from the Department of Defense Military Retirement Fund under 10 U.S.C. 1408(h) pursuant to a court order; and—

(A) Be a victim of the abuse; and

(B) Have been married to the member or former member at the time of the abuse; or

(C) Be the natural or adoptive parent of a dependent child of the member or former member who was the victim of the abuse.

(2) *Abused child.* The abused child must:

(i) Under paragraph (b)(2)(iii)(A)(1) of this section, be a dependent child of the member or former member.

(ii) Under paragraph (b)(2)(iii)(A)(2) of this section—

(A) Have been a member of the household where the abuse occurred; and

(B) Be an unmarried legitimate child, including an adopted child or stepchild of the member or former member; and

(C) Be under the age of 18; or

(D) Be incapable of self support because of a mental or physical incapacity that existed before becoming 18 years of age and be dependent on the member or former member for over one-half of his or her support; or

(E) If enrolled in a full-time course of study in an institution of higher learning recognized by the Secretary of Defense (for the purpose of 10 U.S.C. 1408(h)), be under 23 years of age and be dependent on the member or former member for over one-half of his or her support.

(iii) The dependent child is eligible for health care, regardless of whether

any court order exists, under the same conditions as any dependent of a retired member.

(3) *TAMP eligibles.* A former member, including his or her dependents, who is eligible under the provisions of the Transitional Assistance Management Program as described in paragraph (e) of this section.

(c) *Beginning dates of eligibility.* (1) Beginning dates of eligibility dependent on the class to which the individual belongs and the date the individual became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) Beginning dates of eligibility for each class of spouse (excluding spouses who are victims of abuse and eligible spouses of certain deceased reservists) are as follows:

(i) A spouse of a member for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program and benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), January 1, 1967;

(ii) A spouse of a former member:

(A) For medical benefits under the Basic Program, January 1, 1967;

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped);

(iii) A former spouse:

(A) For medical benefits under the Basic Program, dates of beginning eligibility are as indicated for each category of eligible former spouse identified in paragraph (b)(2)(i) of this section;

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(3) Beginning dates of eligibility for spouses who are victims of abuse (excluding spouses who are victims of abuse of certain deceased reservists) are as follows:

(i) An abused spouse meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse:

(A) For medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For medical and dental care for problems associated with the physical

or emotional abuse under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped) for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(ii) An abused spouse meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(4) Beginning dates of eligibility for spouses of certain deceased reservists, including spouses who are victims of abuse of certain deceased reservists, are as follows:

(i) A spouse meeting the requirements of paragraph (b)(2)(i) of this section, including an eligible former spouse:

(A) For benefits under the Basic Program, November 14, 1986.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(ii) An abused spouse of certain deceased reservists, meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse, for the limited benefits and period of eligibility described in paragraph (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, November 14, 1986.

(B) For benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), November 14, 1986.

(iii) An abused spouse of certain deceased reservists, including an eligible former spouse, meeting the requirements of paragraph (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(5) Beginning dates of eligibility for each class of dependent children, (excluding dependent children of certain deceased reservists, abused children and incapacitated children whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning), are as follows:

(i) Legitimate child, adopted child, or legitimate stepchild of a member, for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956.

(B) Outpatient medical benefits under the Basic Program, October 1, 1966.

(C) Inpatient medical benefits under the Basic Program and benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), January 1, 1967.

(ii) Legitimate child, adopted child or legitimate stepchild of former members:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(iii) Illegitimate child of a male or female member or former member whose paternity/maternity has been determined judicially and the member or former member has been directed to support the child, for:

(A) All benefits for which otherwise entitled, August 31, 1972.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to dependent children of members only, August 31, 1972.

(iv) Illegitimate child of:

(A) A male member or former member whose paternity has not been determined judicially;

(B) A female member or former member who resides with, or in a home provided by the member or former member, or who was residing in a home provided by the member or former member at the time of the member's or former member's death, and who is or continues to be dependent on the member for over one-half of his or her support, or was so dependent on the member or former member at the time of death;

(C) A spouse of a member or former member who resides with or in a home provided by the member or former member, or the parent who is the spouse of the member or former member or was the spouse of a member or former member at the time of death, and who is and continues to be dependent upon the member or former member for over one-half of his or her support, or was so dependent on the member or former member at the time of death; for:

(1) All benefits for which otherwise eligible, January 1, 1969.

(2) Program for Persons with Disabilities (formerly known as the Program for the handicapped) limited to dependent children of members only, January 1, 1969.

(v) An adopted child, 21 years or older, with an incapacitating condition

that existed before the age of 21, who was adopted after the age of 21, who has been residing with a member or former member for at least 12 months prior to the date of the adoption and is, or continues to be, dependent upon the member or former member for over one-half of his or her support, or was so dependent upon the former member at the time of the former member's death; for:

(A) All benefits for which otherwise entitled, October 23, 1992.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to dependents of members only, October 23, 1992.

(6) Beginning dates of eligibility for children of certain deceased reservists who meet the requirements of paragraph (b)(2)(ii)(H)(3) of this section, excluding incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section, for:

(i) Benefits under the Basic program, November 14, 1986.

(ii) Not eligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(7) Beginning dates of eligibility for children who are victims of abuse who meet the requirements of paragraph (b)(2)(iii) of this section, including incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section for:

(i) Medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(ii) Medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped) for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(8) Beginning dates of eligibility for incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section, whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and, are or were at the time of the member's or former member's death, dependent on the member or former member for over one-half of their support for:

(i) All benefits for which otherwise entitled; October 23, 1992.

(ii) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, October 23, 1992.

(9) Beginning dates of eligibility for a child who meets the requirements of paragraph (b)(2)(ii)(H)(4) and:

(i) Has been placed in custody by a court:

(A) All benefits for which entitled, July 1, 1994.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, July 1, 1994.

(ii) Has been placed in custody by a recognizing adoption agency:

(A) All benefits for which entitled, October 5, 1994.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, October 5, 1994.

(10) Beginning dates of eligibility for a retiree for:

(i) Medical benefits under the Basic Program January 1, 1967.

(ii) Retirees and their dependents are not eligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(d) *Dual eligibility.* Dual eligibility occurs when a person is entitled to benefits from two sources. For example, when an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual eligibility, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility is terminated as of 12:01 a.m. on the day following the day the dual eligibility begins. However, any dependent children in a marriage of two active duty persons or of an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor. Should a spouse or dependent who has dual eligibility leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsors.

Note to paragraph (d): No CHAMPUS eligibility arises as the result of the marriage of two active duty members.

(e) *Eligibility under the Transitional Assistance Management Program (TAMP).* Transitional health care benefits under CHAMPUS are authorized for the applicable time period described as follows for:

(1) Up to thirty (30) days or until again covered by an employer-sponsored health plan, whichever occurs earlier, following release from active duty for:

(i) Activated Guard/Reserve and their dependents;

(ii) Involuntary stop-loss and their dependents; and

(iii) Voluntary stop-loss and their dependents; and

(iv) Members who accepted Voluntary Separation Incentives (VSI).

(2) Sixty (60) days for regular DoD military and their dependents when the sponsor is involuntarily separated with less than six years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990.

(3) One hundred twenty (120) days for regular military and their dependents when the sponsor is involuntarily separated with six or more years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990. Each branch of service will determine eligibility, including dates, for its members and their dependents and provide data to DEERS.

(f) *Changes in status which result in termination of CHAMPUS eligibility.* Changes in status which result in a loss of CHAMPUS eligibility as of 12:01 a.m. of the day following the day the event occurred, unless otherwise indicated, are as follows:

(1) *Changes in the status of a member.*

(i) When an active duty member's period of active duty ends, excluding retirement or death.

(ii) When an active duty member is placed on desertion status (eligibility is reinstated when the active duty member is removed from desertion status and returned to military control).

Note to paragraph (f)(1): A member serving a sentence of confinement in conjunction with a sentence of punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) *Changes in the status of a retiree.*

(i) When a retiree ceases to be entitled to retired, retainer, or equivalent pay for any reason, the retiree's dependents lose their eligibility unless the dependent is otherwise eligible (e.g., some former spouses, some dependents who are

victims of abuse and some incapacitated children as outlined in paragraph (b)(2)(ii)(H)(2) of this section).

(ii) A retiree also loses eligibility when no longer entitled to retired, retainer, or equivalent pay.

Note to paragraph (f)(2): A retiree who waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) *Changes in the status of a dependent.* (i) Divorce, except for certain classes of former spouses as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note to paragraph (f)(3)(i): An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) Annulment, except for certain classes of former spouse as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note to paragraph (f)(3)(ii): An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the annulment becomes final.

(iii) Adoption, except for adoptions occurring after the death of a member or former member.

(iv) Marriage of a child, except when the marriage is terminated by death, divorce, or annulment before the child is 21 or 23 if an incapacitated child as provided in paragraph (b)(2)(ii)(H)(2) of this section.

(v) Marriage of a widow or widower, except for the child of the widow or widower who was the stepchild of the deceased member or former member at the time of death. The stepchild continues CHAMPUS eligibility as other classes of dependent children.

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available).

(vii) Attainment of age 65, except for dependents of active duty member's and beneficiaries not eligible for Part A Medicare. CHAMPUS eligibility is lost at 12:01 a.m. on the last day of the month preceding the month of attainment of age 65.

Note to paragraph (f)(3)(vii): If the person is not eligible for Part A of Medicare, he or she must file a Social Security

Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals who lose their CHAMPUS eligibility because they have reached the age limitation or were eligible for Part A, Medicare cannot be reinstated under CHAMPUS. Additionally, individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act, retain eligibility under CHAMPUS (refer to § 199.8 of this part for additional information when a double coverage situation is involved).

(vii) *End stage renal disease.*

Medicare coverage begins with the third month after the month a course of maintenance dialysis begins, or with the first month of dialysis if the individual participates in a self-dialysis training program during the 3-month waiting period, or with the month in which a patient enters the hospital to prepare to receive a transplant (providing the transplant is performed within the following 2 months). If a transplant is delayed more than 2 months after the preparatory hospitalization, Medicare coverage will begin with the second month prior to the month of transplant. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease unless the following conditions have been met. CHAMPUS eligibility will continue if:

- (A) The individual is under 65 years old;
- (B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426-1(a);
- (C) The individual is enrolled in Part B of Medicare; and
- (D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Eligibility Enrollment System (DEERS).

(ix) *Individuals with certain disabilities.* Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person unless the following conditions have been met. CHAMPUS eligibility will continue if:

- (A) The individual is under 65 years old;
- (B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426(b)(2);
- (C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Eligibility Enrollment System (DEERS).

(x) Disabled students, that is children age 21 or 22, who are pursuing a full-time course of higher education and who, either during the school year or between semesters, suffer a disabling illness or injury with resultant inability to resume attendance at the institution remain eligible for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in a full time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility and may not qualify for eligibility under the requirements related to mental or physical incapacity as described in paragraph (b)(2)(ii)(H)(2) of this section.

(g) *Reinstatement of CHAMPUS eligibility.* Circumstances which result in reinstatement of CHAMPUS eligibility are as follows:

(1) *End stage renal disease.* Medicare coverage ceases for end stage renal disease patients with the 36th month after the month in which a successful kidney transplant takes place or with the 12th month after the month in which the course of maintenance dialysis ends. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(viii) of the section, at this point CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(2) *Disability.* Some disabilities are permanent, others temporary. Each case must be reviewed individually. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(ix) of this section, when disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(h) *Determination of eligibility status.* Determination of an individual's eligibility as a CHAMPUS beneficiary is the primary responsibility of the

Uniformed Service in which the member or former member is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsors the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the results of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(i) *Procedures for determination of eligibility.* Procedures for the determination of eligibility are prescribed within the Department of Defense Instruction 1000.13 available at local military facilities personnel offices.

(j) *CHAMPUS procedures for verification of eligibility.* (1) Eligibility for CHAMPUS benefits will be verified through the Defense Enrollment Eligibility Reporting System (DEERS) maintained by the Uniformed Services, except for abused dependents as set forth in paragraph (b)(2)(iii) of this section. It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action.

(2) Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) The Director, OCHAMPUS, shall issue guidelines as necessary to implement the provisions of this section.

4. Section 199.4 is amended by revising paragraphs (e)(5)(iii)(B), (f)(1), (f)(2) heading and introductory text, (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(3) heading and introductory text, (f)(3)(i), (f)(3)(iii), (f)(4) introductory text and (f)(4)(ii) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable

preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (See § 199.3 of this part for additional information on end stage renal disease.)

* * * * *

(f) * * *

(1) *General.* As stated in paragraph (a) of this section, the Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. To encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary or sponsor to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary or sponsor and CHAMPUS is more favorable for dependents of members than for other classes of beneficiaries.

(2) *Dependents of members of the Uniformed Services.* CHAMPUS beneficiary or sponsor liability set forth for dependents of members is as follows:

* * * * *

(ii) *Inpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for the payment of the first \$25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6 of this part), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

(iii) *Outpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for payment of 20 percent of the CHAMPUS-determined allowable cost or charge beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

(iv) *Ambulatory surgery.* Notwithstanding the above positions pertaining to outpatient cost-sharing, dependents of members of the Uniformed Services are responsible for payment of \$25 for surgical care that is

authorized and received while in an outpatient status and that has been designated in guidelines issued by the Director, OCHAMPUS, or a designee.

* * * * *

(3) *Former members and dependents of former members.* CHAMPUS beneficiary liability set forth for former members and dependents of former members is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided former members and dependents of former members is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E-5 or above (refer to paragraph (f)(2)(i) (A) or (B) of this section).

* * * * *

(iii) *Outpatient cost-sharing.* Former members and dependents of former members are responsible for payment of 25 percent of the CHAMPUS-determined allowable costs or charges beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(4) *Former spouses.* CHAMPUS beneficiary liability for former spouses eligible under the provisions set forth in § 199.3 of this part is as follows:

* * * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for payment of cost-sharing amounts the same as those required for former members and dependents of former members.

* * * * *

6. Section 199.8 is amended by revising paragraphs (a) and (d)(1) to read as follows.

§ 199.8 Double coverage.

(a) *Introduction.* (1) in enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

A benefit may not be paid under a plan [CHAMPUS] covered by this section in the case of a person enrolled in or covered by any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under the other plan, except in the case of a plan [Medicaid] administered under title 19 of the Social Security Act (42 U.S.C. 1396, *et seq.*)

(2) The provision in paragraph (a)(1) of this section is made applicable

specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

* * * * *

(d) * * *

(1) *CHAMPUS and Medicare.* Under certain circumstances a CHAMPUS beneficiary can also be eligible for Medicare. In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, "Hospital Insurance," of Medicare is involved, the Medicare "lifetime reserve" benefit must be used before CHAMPUS benefits may be used. The procedures to be followed for these circumstances are as follows.

(i) *Dependents of active duty members.* For dependents of active duty members, payment will be determined in accordance with paragraph (c) of this section.

(ii) *Medicare end stage renal disease beneficiaries.* In any case involving a Medicare end stage renal disease beneficiary as provided in § 199.3(f)(3)(viii), CHAMPUS secondary payments will be determined in accordance with paragraph (c) of this section.

(iii) *Medicare disabled beneficiaries.* In any case involving a Medicare disabled beneficiary as provided in § 199.3(f)(3)(ix), CHAMPUS payment is determined in accordance with paragraph (c) of this section.

* * * * *

7. Section 199.20 is amended by adding paragraph (d)(1)(iv) to read as follows.

§ 199.20 Continued Health Care Benefit Program (CHCBP).

* * * * *

(d) * * *

(1) * * *

(iv) An unmarried person who:

(A) Is placed in the legal custody of a member of former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child; and

(B) Either:

(1) Has not attained the age of 21 if not in school or age 23 if enrolled in a full time course of study at an institution of higher learning; or

(2) Is incapable of self-support because of a mental or physical incapacity which occurred while the

person was considered a dependent of the member or former member; and

(C) Is dependent on the member or former member for over one-half of the person's support; and

(D) Resides with the members or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and

(E) Is not a dependent of a member or former member as described in § 199.3 (b)(2).

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-33111 Filed 12-22-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 62 and 66

[USCG 97 3112, CGD 97-018]

RIN 2115-AF45

Merger of the Uniform State Waterways Marking System With the United States Aids to Navigation System

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a five year phased-in merger of the Uniform State Waterway Marking System with the United States Aids to Navigation System. This proposed merger would eliminate distinctions between these two systems and create safer, less confusing waterways.

DATES: Comments are requested by February 23, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG-97-3112], U.S. Department of Transportation, Room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366-9329 or Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267-0327.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages your participation in this rulemaking by the submission of written data, views, or arguments. Your comments should include your name and address, and identify this rulemaking [USCG-97-3112] and the specific section of this notice of proposed rulemaking to which each comment applies, along with the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. You may request a public hearing by submitting a request to the address under **ADDRESSES**. The request should include the reasons a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Uniform State Waterways Marking System (USWMS), 33 CFR 66.10, prescribes regulatory markers and aids to navigation that may mark navigable waters that the Commandant designates as state waters in accordance with 33 CFR 66.05-5. The USWMS may also mark the non-navigable internal waters of a state.

The United States Aids to Navigation System (USATONS), 33 CFR 62, prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. Navigable waters, defined by 33 CFR 2.02-25, include territorial seas and internal waters that have been or can be used for interstate commerce, either by themselves or in connection with other waterways.

Section 66.10-1(b), allows the use of USATONS on state and non-navigable

internal waters, and many states already use the USATONS instead of the USWMS.

In 1992, the National Association of State Boating Law Administrators (NASBLA) passed a resolution requesting that the Coast Guard:

1. Change the meaning of the red and white striped buoy from the USWMS meaning of obstruction to the USATONS meaning of safewater;
2. Change the black USWMS buoy to the green USATONS buoy, and
3. Use a phased-in implementation period for these changes.

NASBLA requested these changes because they believe the current USWMS markings, which are different from the USATONS markings, confuse boaters and could cause casualties.

In 1993, NASBLA's Law Enforcement & Uniform Boating Laws Committee conducted a survey concerning the differences between the USWMS and the USATONS. The survey focused on the red and white striped buoy and the green versus black buoy. Of the 42 states that responded to the survey, 11 states indicated that they use the red and white striped buoy as defined by the USWMS, 15 states indicated that they use the USWMS's black buoy, and 35 states indicated that the USWMS should reflect the same characteristics as the USATONS.

On December 29, 1995, the Coast Guard published an advanced notice of proposed rulemaking (CGD 94-091) (60 FR 67345) to gauge public opinion toward conforming the USWMS with the USATONS. On March 27, 1996, a notice of proposed rulemaking was published (61 FR 13472) that, among other things, proposed eliminating the USWMS. The Coast Guard received adverse comments from ten states. Many of the comments stated concerns that elimination of the USWMS would eliminate regulatory markers and would cause the states to bear the costs of purchasing aids and revising boating manuals. As a result of these comments, the Coast Guard removed the proposal to eliminate the USWMS from the final rule. The Coast Guard then contacted the NASBLA and each state that commented and discussed their concerns.

Apart from the two distinctions explained above, a Coast Guard comparison of the USWMS and the USATONS showed that almost all of the requirements of the USWMS are contained in the USATONS. The differences between the two systems are:

1. The USWMS has the additional requirement of orange bands on regulatory buoys;