

(F) Written acknowledgment by the PSC and individual PSC personnel that:

(1) Potential civil and criminal liability exists under U.S. and local law or host nation Status of Forces Agreements for the use of weapons.<sup>12</sup>

(2) Proof of authorization to be armed must be carried by each PSC personnel.

(3) PSC personnel may possess only U.S.G.-issued and/or -approved weapons and ammunition for which they have been qualified according to paragraph (a)(1)(iii)(E) of this section.

(4) PSC personnel were briefed and understand limitations on the use of force.

(5) Authorization to possess weapons and ammunition may be revoked for non-compliance with established rules for the use of force.

(6) PSC personnel are prohibited from consuming alcoholic beverages or being under the influence of alcohol while armed.

(iv) Registration and identification in the Synchronized Predeployment and Operational Tracker (or its successor database) of armored vehicles, helicopters, and other vehicles operated by PSC personnel.

(v) Reporting alleged criminal activity or other incidents involving PSCs or PSC personnel by another company or any other person. All incidents involving the following shall be reported and documented:

(A) A weapon is discharged by an individual performing private security functions;

(B) An individual performing private security functions is killed or injured in the performance of their duties;

(C) A person other than an individual performing private security functions is killed or injured as a result of conduct by PSC personnel;

(D) Property is destroyed as a result of conduct by a PSC or PSC personnel;

(E) An individual performing private security functions has come under attack including in cases where a weapon is discharged against an individual performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(F) Active, non-lethal counter-measures (other than the discharge of a weapon) are employed by PSC personnel in response to a perceived immediate threat in an incident that could significantly affect U.S. objectives

with regard to the military mission or international relations.

(vi) The independent review and, if practicable, investigation of incidents reported pursuant to paragraphs (a)(1)(v)(A) through (a)(1)(v)(F) of this section and incidents of alleged misconduct by PSC personnel.

(vii) Identification of ultimate criminal jurisdiction and investigative responsibilities, where conduct of U.S.G.-funded PSCs or PSC personnel are in question, in accordance with applicable laws to include a recognition of investigative jurisdiction and coordination for joint investigations (i.e., other U.S.G. agencies, host nation, or third country agencies), where the conduct of PSCs and PSC personnel is in question.

(viii) A mechanism by which a commander of a combatant command may request an action by which PSC personnel who are non-compliant with contract requirements are removed from the designated operational area.

(ix) Interagency coordination of administrative penalties or removal, as appropriate, of non-DoD PSC personnel who fail to comply with the terms and conditions of their contract, as is applicable to this part.

(x) Implementation of the training requirements contained below in paragraph (a)(2)(ii) of this section.

(2) Specifically cover:

(i) Matters relating to authorized equipment, force protection, security, health, safety, and relations and interaction with locals in accordance with DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces."

(ii) Predeployment training requirements addressing, at a minimum, the identification of resources and assistance available to PSC personnel as well as country information and cultural training, and guidance on working with host country nationals and military personnel.

(iii) Rules for the use of force and graduated force procedures.

(iv) Requirements and procedures for direction, control and the maintenance of communications with regard to the movement and coordination of PSCs and PSC personnel, including specifying interoperability requirements. These include coordinating with the Chief of Mission, as necessary, private security operations outside secure bases and U.S. diplomatic properties to include movement control procedures for all contractors, including PSC personnel.

(b) *Availability of Guidance and Procedures.* The geographic Combatant Commander shall ensure the guidance

and procedures prescribed in paragraph (a) of this section are readily available and accessible by PSCs and their personnel (e.g., on a Web page and/or through contract terms), consistent with security considerations and requirements.

(c) *Subordinate Guidance and Procedures.* The Subordinate Commander, in consultation with the Chief of Mission, will issue guidance and procedures implementing the standing combatant command publications specified in paragraph (a) of this section, consistent with the situation and operating environment.

(d) *Consultation and Coordination.* The Chief of Mission and the geographic Combatant Commander/Subordinate Commander shall make every effort to consult and coordinate responses to common threats and common concerns related to oversight of the conduct of U.S.G.-funded PSC and their personnel. The Memorandum of Agreement between the Department of Defense and Department of State on U.S.G. Private Security Contractors<sup>13</sup> shall provide the framework for the development of guidance and procedures without regard to the specific locations identified therein.

Dated: July 14, 2009.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD-2007-HA-0127; RIN 0720-AB18]

#### **TRICARE: Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Changes Included in the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; Authorization of Forensic Examinations**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 701 of the John Warner National Defense Authorization Act for FY 2007, Public Law 109-364. Section 701 amends Title 10 of the United States Code (U.S.C.), Chapter 55, Section 1079(a) by authorizing coverage for

<sup>13</sup> Available at [http://www.acq.osd.mil/log/PS/p\\_vault.html](http://www.acq.osd.mil/log/PS/p_vault.html).

<sup>12</sup> This requirement is specific to arming procedures. Such written acknowledgement should not be construed to limit civil and criminal liability to conduct arising from "the use of weapons." PSC personnel could be held criminally liable for any conduct that would constitute a federal offense (see MEJA, 18 USC 3261(a)).

forensic examinations following a sexual assault or domestic violence for eligible beneficiaries. This authorizes forensic examinations provided in civilian health care facilities (e.g., civilian rape crisis facilities) following sexual assault or domestic violence, which is consistent with the services that are authorized in Military Medical Treatment Facilities for all beneficiaries who are victims of sexual assault or domestic violence.

**DATES:** *Effective Dates:* This rule is effective August 17, 2009.

*Applicability date:* This amendment applies to services provided on or after October 17, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joy Saly, Office of Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676-3742. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of Final Rule Provisions**

This final rule implements section 701 of the John Warner National Defense Authorization Act for Fiscal Year 2007, which establishes coverage of contracted medical care with respect to forensic examinations following a sexual assault or domestic violence. TRICARE pays for and will continue to pay for all emergency room services delivered to a victim.

Prior to section 701, forensic examinations were not covered for beneficiaries in civilian health care facilities through TRICARE medical plan contracts because TRICARE, under 10 U.S.C. 1079(a)(13), may cost share only medically or psychologically necessary services or supplies. Forensic examinations are conducted primarily for preservation of evidence for use in any future criminal investigation and/or prosecution. However, there is a dual purpose for the examination process. One purpose is to address the needs of the justice system, which include: Obtaining a history of the assault; documenting examination findings; properly collecting, handling, and preserving evidence; interpreting and analyzing findings (post examination), and subsequently, presenting findings; and providing factual and expert opinion related to the examination and evidence collection. The other purpose is to address the medical needs of the individual disclosing the sexual assault or domestic violence, which include: Evaluating and treating injuries; conducting prompt examinations; providing support, crisis intervention, and advocacy; providing prophylaxis

against sexually transmitted diseases; assessing female patients for pregnancy risk and discussing treatment options, including reproductive health services; and providing follow-up care for medical and emotional needs.

Forensic examinations are paid for Active Duty members by using supplemental health care funds, which, under 10 U.S.C. 1074(c)(1), does not have the same requirement for medical or psychological necessity. All beneficiaries are covered if they are examined in a military treatment facility. The forensic examination became an issue when services were provided in a civilian health care facility. Although most States have laws that designate payment sources to cover the costs of forensic examinations for sexual assault victims (some States even prohibit billing victims), some beneficiaries who were victims of a sexual assault received a bill for the forensic examination. Many States have mechanisms in place that require civilian health care facilities to bill a State agency directly. Certain other States, to some degree, have mechanisms to minimize the possibility of invoicing the beneficiary. This final rule puts into place a mechanism that allows civilian health care facilities to invoice TRICARE for reimbursement of forensic examinations.

*Forensic Examination (Early Evidence Kits)*

A forensic examination uses an early evidence kit to collect and preserve the evidence. Early evidence kits (also known as rape kits) typically include: Forms for documentation of what is observed; tubes for blood samples; a urine sample container (for detecting drugs that may have been used to facilitate a sexual assault); cotton swabs for biological evidence collection; sterile water; sterile saline; glass slides; unwaxed dental floss; a wooden stick for fingernail scrapings; envelopes or boxes for individual evidence samples; labels for each item and paper bags for clothing collection; and a large sheet of paper for patient to undress over. The victim's clothing is collected for any external evidence and new clothes are provided. Forensic examinations can take up to 4 hours.

We believe that a large portion of the costs for forensic examinations are probably already being paid by TRICARE, as most services associated with the examination are covered under any circumstance; and if a claim from a health care facility is submitted with the appropriate procedure code, then the claim would then be paid. What was not being cost-shared were the examinations

to gather information for the justice system. In a civilian facility, the victim's private insurance should not be billed for the cost of the examination. Pursuant to the Federal Victims of Crime Act (VOCA), the primary payer is a Federal or federally funded program (such as Medicare, Medicaid, TRICARE or the Department of Veterans Affairs). A reimbursement request from a provider, under the VOCA, should only be submitted for a victim who is not covered by a Federal or federally funded program. This final rule amends the regulation to ensure that forensic examinations following sexual assault or domestic violence are specifically listed as a covered benefit under TRICARE. This rule applies to services provided on or after October 17, 2006, the effective date of the NDAA for FY 2007.

**II. Review of Public Comments**

We provided a 60-day comment period on the proposed rule which was published in the **Federal Register** on July 7, 2008 (73 FR 38348-38350). No comments were received.

**III. Regulatory Procedures**

*Executive Order 12866, "Regulatory Planning and Review"*

Executive Order 12866 requires a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on the national economy.

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

Public Law 96-354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601), requires each Federal agency to prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

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

This rule does not contain a "collection of information" requirement, and will not impose

additional information collection requirements on the public under Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

*Public Law 104-4, Section 202, "Unfunded Mandates Reform Act"*

Section 202 of Public Law 104-4, "Unfunded Mandates Reform Act," requires an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million in any one year. It has been certified that this final rule does not contain a federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Therefore, this final rule is not subject to this requirement.

*Executive Order 13132, "Federalism"*

Executive Order 13132, "Federalism," requires an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It has been certified that this final rule does not have federalism implications, as set forth in Executive Order 13132.

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

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

**PART 199—[AMENDED]**

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

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

- 2. Section 199.4 is amended by adding paragraph (e)(27) to read as follows:

**§ 199.4 Basic program benefit.**

\* \* \* \* \*

(e) \* \* \*

(27) TRICARE will cost share forensic examinations following a sexual assault or domestic violence. The forensic examination includes a history of the event and a complete physical and collection of forensic evidence, and medical and psychological follow-up care. The examination for sexual assault also includes, but is not limited to, a test kit to retrieve forensic evidence, testing for pregnancy, testing for sexually

transmitted disease and HIV, and medical services and supplies for prevention of sexually transmitted diseases, HIV, pregnancy, and counseling services.

\* \* \* \* \*

Dated: July 14, 2009.

**Patricia L. Toppings,**

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

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**[FWS-R7-SM-2008-0101; 70101-1335-0064L6]**

**Subsistence Management Regulations for Public Lands in Alaska; Makhnati Island Area**

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects 36 CFR 242.3 and 50 CFR 100.3 of the subsistence management regulations for public lands in Alaska, subpart A, Makhnati Island Area, which were published in the **Federal Register** of August 24, 2006. That rule, which became effective September 25, 2006, inadvertently omitted 190 acres of the Makhnati Island Area in the regulatory text.

**DATES:** This correction is effective July 17, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Calvin H. Casipit, Subsistence Program Leader, USDA—Forest Service, Alaska Region, (907) 586-7918.

**SUPPLEMENTARY INFORMATION:** On August 24, 2006, the Secretaries of Agriculture and the Interior published a final rule (71 FR 49997) that revised jurisdiction of the Federal Subsistence Management Program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, Alaska. That rule,

which became effective September 25, 2006, inadvertently omitted 190 acres of the Makhnati Island Area which was withdrawn for use by the Federal Government in Executive Order 8216 (July 25, 1939). Executive Order 8216 was not rescinded until after statehood, so the submerged land did not transfer to the State at statehood. Since this submerged land is not included in any other withdrawal, reservation, or administrative set aside, the marine submerged lands, including any filled lands owned by the United States, are under the administration of the Bureau of Land Management and are included within the jurisdiction of the Federal Subsistence Management Program.

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR part 242 and 50 CFR part 100.

**Administrative Procedure Act**

We find good cause to waive notice and comment on this correction, pursuant to 5 U.S.C. 533(b)(3)(B), and the 30-day delay in effective date, pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary because this correction is a minor, technical change in the description of the area already under Federal jurisdiction. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final rule and is effective upon publication.

**List of Subjects**

**36 CFR Part 242**

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

**50 CFR Part 100**

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

- Accordingly, we amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations as follows:

**PART —SUBSISTENCE  
MANAGEMENT REGULATIONS FOR  
PUBLIC LANDS IN ALASKA**

- 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

- 2. Amend § \_\_.3 by revising paragraph (b)(5) as follows: