documents prepared by both HHS and DEA.

Although the potency difference between BZP and amphetamine was discussed in the rules proposing and finalizing control of BZP as a part of the scientific background information, comparisons of potency differences are only one piece of background scientific data used to evaluate the abuse potential of drugs or other substances. In addition, potency itself is not one of the factors determinative of control. In fact, there are many examples of substances of varying potencies in each schedule, including stimulants and opiates previously scheduled under the CSA.

Even though the scheduling of BZP was finalized more than six years ago, DEA has been advised that in criminal proceedings, for sentencing purposes, courts have sought to ascertain: (1) The controlled substance, for which a sentencing guideline equivalency exists, that is the most closely analogous to BZP (which is d-amphetamine) and (2) the relative potency of BZP to that of the most analogous controlled substance. As indicated above, DEA has already published on the agency's Web site the correct figures regarding relative potency. This correction is being issued to provide such an official statement in the **Federal Register** for ease of reference by courts, litigants, and others who need the information for sentencing purposes.

This correction does not address the scheduling of 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) which was also placed into schedule I as a result of the above cited rulemakings.

Correction

Accordingly, the publication on Thursday, March 18, 2004, of the Final Rule [Docket No. DEA–247F], at 69 FR 12794 [FR Doc. 04–6110], is corrected in the preamble as follows:

On page 12795, in the first column, paragraph 4, sentences 4 and 5 are corrected to read as follows: "BZP is about 20 times less potent than amphetamine in producing these effects. However, in subjects with a history of amphetamine dependence, BZP was found to be about 10 times less potent than amphetamine."

Dated: July 26, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–19348 Filed 8–5–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2010–HA–0068]

RIN 0720–AB39

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Retired Reserve for Members of the Retired Reserve

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule establishes requirements and procedures for implementation of TRICARE Retired Reserve. This interim final rule addresses provisions of the National Defense Authorization Act for Fiscal Year 2010 (NDAA–10). The purpose of this interim final rule is to establish the TRICARE Retired Reserve program that implements section 705 of the NDAA–10. Section 705 allows members of the Retired Reserve who are qualified for non-regular retirement, but are not yet 60 years of age, to qualify to purchase medical coverage equivalent to the TRICARE Standard (and Extra) benefit unless that member is either enrolled in, or is eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code, as well as certain survivors. The amount of the premium that qualified members pay to purchase these benefits will represent the full cost as determined on an appropriate actuarial basis for coverage under the TRICARE Standard (and Extra) benefit including the cost of the program administration. There will be one premium for member-only coverage and a separate premium for member and family coverage. The rules and procedures otherwise outlined in Part 199 of 32 CFR relating to the operation and administration of the TRICARE Standard and Extra programs including the required cost-shares, deductibles and catastrophic caps for retired members and their dependents will apply to this program. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates.

DATES: This rule is effective August 6, 2010. Written comments received at the address indicated below by October 5, 2010 will be considered and addressed in the final rule.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jody Donehoo, TRICARE Management Activity, TRICARE Policy and Operations, telephone (703) 681–0039.

Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The purpose of this interim final rule is to establish the TRICARE Retired Reserve program that implements section 705 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA–10) (Pub. L. 111–84). Section 705 added new section 1076e to Title 10, United States Code. Section 1076e allows members of the Retired Reserve who are qualified for non-regular retirement, but are not yet 60 years of age, as well as certain survivors to qualify to purchase medical coverage equivalent to the TRICARE Standard (and Extra) benefit unless that member is either enrolled in, or eligible to enroll in, a health benefits plan under Chapter 89 of Title 5, United States Code.

II. Provisions of the Rule Regarding the TRICARE Retired Reserve Program

A. *Establishment of the TRICARE Retired Reserve Program* (paragraph 199.25(a)). This paragraph describes the nature, purpose, statutory basis, scope, and major features of TRICARE Retired Reserve, a premium-based medical coverage program that was made available for purchase worldwide by certain members of the Retired Reserve, their family members and their surviving family members. TRICARE Retired Reserve is authorized by 10 U.S.C. 1076e.

The major features of the program include making coverage available for purchase by any Retired Reserve member who is qualified for non-regular

retirement, but is not yet 60 years of age, unless that member is either enrolled in, or eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code, as well as certain survivors of Retired Reserve members as specified below. The amount of the premium that qualified members and qualified survivors pay is prescribed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) and determined using an appropriate actuarial basis. There is one premium for member-only coverage and a second premium for member and family coverage. Additionally, TRICARE rules outlined in Part 199 of Title 32 of the CFR relating to the TRICARE Standard and Extra programs apply unless otherwise specified. Certain special TRICARE programs are not part of TRICARE Retired Reserve including the Extended Health Care Option (ECHO) program and the Supplemental Health Care Program (*see* § 199.16) except when referred by a Military Treatment Facility (MTF) provider for incidental consults and the MTF provider maintains clinical control over the episode of care. The TRICARE Retiree Dental Program is already available independently for purchase by Retired Reserve members under 10 U.S.C. 1076c as implemented by 32 CFR 199.22.

Under TRICARE Retired Reserve, qualified members (or their qualified survivors) may purchase either the member-only type of coverage or the member and family type of coverage by submitting a completed request in the appropriate format along with an initial payment of the applicable premium at the time of enrollment. When their coverage becomes effective, TRICARE Retired Reserve beneficiaries receive the TRICARE Standard (and Extra) benefit. TRICARE Retired Reserve features the deductible and cost sharing provisions of the TRICARE Standard (and Extra) plan for retired members and dependents of retired members. Both the member and the member's covered family members are provided access priority for care in military treatment facilities on the same basis as retired members and their family members who are not enrolled in TRICARE Prime.

B. *Qualifications for TRICARE Retired Reserve coverage* (paragraph 199.25(b)). This paragraph defines the statutory conditions under which members of a Reserve component may qualify to purchase TRICARE Retired Reserve coverage. The Reserve components of the armed forces have the responsibility to determine and validate a member's qualifications to purchase TRICARE Retired Reserve coverage. The member's Service personnel office is responsible for keeping the Defense Enrollment Eligibility Reporting System (DEERS) current with eligibility data.

A member qualifies to purchase TRICARE Retired Reserve coverage if the member meets both of the following conditions:

(a) is a member of the Retired Reserve of a Reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of title 10, U.S.C., but is not age 60; and

(b) is not enrolled, or eligible to enroll, in a health benefits plan under chapter 89 of title 5 U.S.C.

If a qualified member of the Retired Reserve dies while in a period of TRICARE Retired Reserve coverage, the immediate family member(s) of such member shall remain qualified to continue existing or purchase new TRICARE Retired Reserve coverage until the date on which the deceased member of the Retired Reserve would have attained age 60 as long as they meet the definition of immediate family member specified below. This applies regardless of whether either member-only coverage or member and family coverage was in effect on the day of the TRICARE Retired Reserve member's death.

C. *TRICARE Retired Reserve premiums* (paragraph 199.25(c)). Members are charged premiums for coverage under TRICARE Retired Reserve that represent the full cost of providing the TRICARE Standard (and Extra) benefit under this program. The total annual premium amounts shall be determined by the ASD(HA) using an appropriate actuarial basis and are established and updated annually, on a calendar year basis, by the ASD(HA) for qualified members of the Retired Reserve for each of the two types of coverage, member-only coverage and member-and-family coverage. Premiums are to be paid monthly. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

A surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described herein will pay premium rates at the member-only rate if there is only one surviving family member to be covered by TRICARE Retired Reserve and at the member and family rate if there are two or more survivors to be covered.

The appropriate actuarial basis used for calculating premium rates shall be one that most closely approximates the actual cost of providing care to the same demographic population as those enrolled in TRICARE Retired Reserve as determined by the ASD(HA). TRICARE Retired Reserve premiums shall be based on the actual costs of providing benefits to TRICARE Retired Reserve members and their family members during the preceding years if the population of Retired Reserve members enrolled in TRICARE Retired Reserve is large enough during those preceding years to be considered actuarially appropriate. Until such time that actual costs from those preceding years become available, TRICARE Retired Reserve premiums shall be based on the actual costs during the preceding calendar years for providing benefits to the population of retired members and their family members in the same age categories as the Retired Reserve population in order to make the underlying group actuarially appropriate.

An adjustment may be applied to cover overhead costs for administration of the program by the government. Additionally, premium adjustments may be made to cover the prospective costs of any significant program changes or any actual experience in the costs of administering the TRICARE Retired Reserve program.

A surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described herein will pay premium rates at the member-only rate if there is only one surviving family member to be covered by TRICARE Retired Reserve and at the member and family rate if there are two or more survivors to be covered.

For the portion of calendar year 2010 during which the program is in effect, the monthly premium for member-only coverage will be $388.31/month (annual premium $4,659.72/year), and the monthly premium for member and family coverage will be $976.41/month (annual premium $11,716.92/year). The 2010 premiums are based on the actual costs during calendar years 2007 and 2008 for providing benefits to the population of retired members and their family members in the same age categories as the Retired Reserve population in order to make the underlying group actuarially appropriate. The historical costs were trended forward to 2010 and a two-percent adjustment was applied to cover overhead costs for administration of the program by the government.

For calendar year 2011, the monthly premium for member-only coverage will be $408.01/month (annual premium $4,896.12/year), and the monthly premium for member and family coverage will be $1,020.05/month (annual premium $12,240.60/year). The 2011 premiums are based on the actual costs during calendar years 2008 and

2009 for providing benefits to the population of retired members and their family members in the same age categories as the Retired Reserve population in order to make the underlying group actuarially appropriate. The historical costs were trended forward to 2011 and a two-percent adjustment was applied to cover overhead costs for administration of the program by the government.

D. *Procedures* (paragraph 199.25(d)). The Director, TRICARE Management Activity (TMA), may establish procedures for the following:

—*Purchasing Coverage.* Procedures may be established for a qualified member, including surviving family members, to purchase one of two types of coverage: Member-only coverage or member-and-family coverage. Immediate family members of the Retired Reserve member may be included in such family coverage. To purchase either type of TRICARE Retired Reserve coverage, Retired Reserve members or their survivors qualified as above must complete and submit a request in the appropriate format, along with an initial payment of the applicable premium required above.

—*Continuation Coverage.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage with an effective date immediately following the date of termination of coverage under another TRICARE program.

—*Qualifying Life Event.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage on the occasion of a qualifying life event that changes the immediate family composition (*e.g.,* birth, death, adoption, divorce, etc.). The effective date for TRICARE Retired Reserve coverage will coincide with the day of the qualifying life event. It is the responsibility of the member to provide personnel officials with the necessary evidence required to substantiate the change in immediate family composition. Personnel officials will update DEERS in the usual manner. Appropriate action will be taken upon receipt of the completed request in the appropriate format along with an initial payment of the applicable premium in accordance with established procedures.

—*Open Enrollment.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage at any time. The effective date of coverage will coincide with the first day of a month.

—*Survivor coverage under TRICARE Retired Reserve.* Procedures may be established for a surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described above to continue existing or to purchase new TRICARE Retired Reserve coverage. Procedures similar to those for qualifying life events may be established for a qualified surviving family member to purchase new or continuing coverage with an effective date coinciding with the day of the member's death. Procedures similar to those for open enrollment may be established for a qualified surviving family member to purchase new coverage at any time with an effective date coinciding with the first day of a month.

—*Changing type of coverage.* Procedures may be established for TRICARE Retired Reserve members or qualified survivors to request to change type of coverage during open enrollment or on the occasion of a qualifying life event that changes immediate family composition as described above by submitting a completed request in the appropriate format.

—*Termination.* Termination of coverage for the member will result in termination of coverage for the member's family members in TRICARE Retired Reserve, except for qualified survivors as described above.

—Coverage will terminate whenever a member (or qualified survivors) ceases to meet the qualifications for the program. For purposes of this section, the member no longer qualifies for TRICARE Retired Reserve when the member has been eligible for more than 60 days for coverage in a health benefits plan under Chapter 89 of Title 5, U.S.C. This affords the member sufficient time to make arrangements for health coverage and avoid any lapses in health coverage. Further, coverage shall terminate when the Retired Reserve member attains the age of 60 or, if survivor coverage is in effect, when the deceased Retired Reserve member would have attained the age of 60.

—Coverage may terminate for members who gain coverage under another TRICARE program.

—Failure to make a premium payment in a timely manner in accordance with established procedures will result in termination of coverage for the member and any covered family members and will result in denial of claims for services with a date of service after the effective date of termination.

—Procedures may be established for covered members and survivors to request termination of coverage at any time by submitting a completed request in the appropriate format.

—Members whose coverage under TRICARE Retired Reserve terminates upon their request or for failure to pay premiums will not be allowed to purchase coverage under TRICARE Retired Reserve to begin again for a period of one year following the effective date of termination.

—*Processing.* Upon receipt of a completed request in the appropriate format, the appropriate enrollment actions will be processed into DEERS in accordance with established procedures.

—*Periodic revision.* Periodically, certain features, rules or procedures of TRICARE Retired Reserve may be revised. If such revisions will have a significant effect on members' or survivors' costs or access to care, members or survivors may be given the opportunity to change their type of coverage or terminate coverage coincident with the revisions.

E. *Preemption of State laws* (paragraph 199.25(e)). This paragraph explains that the preemptions of State and local laws established for the TRICARE program also apply to TRICARE Retired Reserve. Any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Retired Reserve.

This includes State and local laws imposing premium taxes on health insurance carriers, underwriters or other plan managers, or similar taxes on such entities. Preemption does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

F. *Administration* (paragraph 199.25(f)). This paragraph provides that the Director, TRICARE Management Activity, may establish other rules and

procedures necessary for the effective administration of TRICARE Retired Reserve and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

G. *Terminology.* The following terms are applicable to the TRICARE Retired Reserve program.

—*Coverage.* This term means the medical benefits covered under the TRICARE Standard or Extra programs as further outlined in other sections of part 199 of Title 32 of the Code of Federal Regulations, whether delivered in military treatment facilities or purchased from civilian sources.

—*Immediate family member.* This term means spouse (except former spouse) as defined in paragraph 199.3(b)(2)(i) of this part, or child as defined in paragraph 199.3 (b)(2)(ii).

—*Qualified member.* This term means a member who has satisfied all the criteria that must be met before the member is authorized for TRR coverage.

—*Qualified survivor.* This term means an immediate family member who has satisfied all the criteria that must be met before the survivor is authorized for TRR coverage.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This interim final rule is not subject to any of those requirements because it would not have any of these substantial impacts.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

We have examined the impact(s) of the interim final rule under Executive Order 13132 and it does not have policies that have 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. The preemption provisions in the rule conform to law and long-established TRICARE policy. Therefore, consultation with State and local officials is not required.

This rule is being published as an interim final rule with comment period as an exception to our standard practice of soliciting public comment under a proposed rule first, in order to comply with the requirements of the National Defense Authorization Act for Fiscal Year 2010, Public Law 110–417, section 705, which was enacted on October 28, 2009. This section provides in pertinent part that this provision applies "to coverage for months beginning on or after October 1, 2009." In order to provide coverage as soon possible consistent with statutory entitlement, the ASD(HA) has determined that obtaining prior public comment is unnecessary, impractical, and contrary to the public interest. Public comments are welcome and will be considered before publication of the final rule.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and 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 199.2(b) is amended by adding at the appropriate place in alphabetical order the definition of "TRICARE Retired Reserve" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

TRICARE Retired Reserve. The program established to allow members of the Retired Reserve who are qualified for non-regular retirement, but are not yet 60 years of age, as well as certain survivors to qualify to purchase medical coverage equivalent to the TRICARE Standard (and Extra) benefit unless that member is either enrolled in, or eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code. The program benefits and requirements are set forth in section 25 of this Part.

* * * * *

■ 3. Section 199.25 is added as follows:

§ 199.25 TRICARE Retired Reserve.

(a) *Establishment.* TRICARE Retired Reserve is established for the purpose of offering the medical benefits provided under the TRICARE Standard and Extra programs to qualified members of the Retired Reserve, their immediate family members, and qualified survivors.

(1) *Purpose.* As specified in paragraph (c) of this section, TRICARE Retired Reserve is a premium-based health plan that is available for purchase by any Retired Reserve member who is qualified for non-regular retirement, but is not yet 60 years of age, unless that member is either enrolled in, or eligible to enroll in, a health benefit plan under Chapter 89 of Title 5, United States Code, as well as certain survivors of Retired Reserve members.

(2) *Statutory Authority.* TRICARE Retired Reserve is authorized by 10 U.S.C. 1076e.

(3) *Scope of the Program.* TRICARE Retired Reserve is geographically applicable to the same extent as specified in 32 CFR 199.1(b)(1).

(4) *Major Features of TRICARE Retired Reserve.* The major features of the program include the following:

(i) *TRICARE rules applicable.* (A) Unless specified in this section or otherwise prescribed by the ASD (HA), provisions of 32 CFR part 199 apply to TRICARE Retired Reserve.

(B) Certain special programs established in 32 CFR part 199 are not available to members covered under TRICARE Retired Reserve. These include the Extended Health Care Option (ECHO) program and the Supplemental Health Care Program (see § 199.16) except when referred by a Military Treatment Facility (MTF) provider for incidental consults and the MTF provider maintains clinical control over the episode of care. The TRICARE Retiree Dental Program (see § 199.13) is independent of this program and is otherwise available to all members who qualify for the TRICARE Retiree Dental Program whether or not they purchase TRICARE Retired Reserve coverage. The Continued Health Care Benefits Program (see § 199.13) is also independent of this program and is otherwise available to all members who qualify for the Continued Health Care Benefits Program.

(ii) *Premiums.* TRICARE Retired Reserve coverage is available for purchase by any Retired Reserve member if the member fulfills all of the statutory qualifications as well as certain survivors. A member of the Retired Reserve or qualified survivor covered under TRICARE Retired Reserve shall pay the amount equal to the total amount that the ASD(HA) determines on an appropriate actuarial basis as being appropriate for that coverage. There is one premium rate for member-only coverage and one

premium rate for member and family coverage.

(iii) *Procedures.* Under TRICARE Retired Reserve, Retired Reserve members (or their survivors) who fulfilled all of the statutory qualifications may purchase either the member-only type of coverage or the member and family type of coverage by submitting a completed request in the appropriate format along with an initial payment of the applicable premium. Procedures for purchasing coverage and paying applicable premiums are prescribed in this section.

(iv) *Benefits.* When their coverage becomes effective, TRICARE Retired Reserve beneficiaries receive the TRICARE Standard (and Extra) benefit including access to military treatment facilities on a space available basis and pharmacies, as described in § 199.17 of this part. TRICARE Retired Reserve coverage features the deductible and cost share provisions of the TRICARE Standard (and Extra) plan for retired members and dependents of retired members. Both the member and the member's covered family members are provided access priority for care in military treatment facilities on the same basis as retired members and their dependents who are not enrolled in TRICARE Prime as described in paragraph 199.17(d)(1)(E) of this Part.

(b) *Qualifications for TRICARE Retired Reserve coverage—(1) Retired Reserve Member.* A Retired Reserve member qualifies to purchase TRICARE Retired Reserve coverage if the member meets both the following criteria:

(i) Is a member of a Reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of title 10, U.S.C., but who is not yet age 60 and

(ii) Is not enrolled in, or eligible to enroll in, a health benefits plan under chapter 89 of title 5, U.S.C.

(2) *Retired Reserve Survivor.* If a qualified member of the Retired Reserves dies while in a period of TRICARE Retired Reserve coverage, the immediate family member(s) of such member shall remain qualified to purchase new or continue existing TRICARE Retired Reserve coverage until the date on which the deceased member of the Retired Reserve would have attained age 60 as long as they meet the definition of immediate family members specified in paragraph (g)(2) of this section. This applies regardless whether either member-only coverage or member and family coverage was in effect on the day of the TRICARE Retired Reserve member's death.

(c) *TRICARE Retired Reserve premiums.* Members are charged premiums for coverage under TRICARE Retired Reserve that represent the full cost of the program as determined by the ASD(HA) utilizing an appropriate actuarial basis for the provision of the benefits provided under the TRICARE Standard and Extra programs for the TRICARE Retired Reserve eligible beneficiary population. Premiums are to be paid monthly. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

(1) *Annual establishment of rates.* (i) TRICARE Retired Reserve monthly premium rates shall be established and updated annually on a calendar year basis by the ASD(HA) for each of the two types of coverage, member-only coverage and member-and-family coverage.

(ii) The appropriate actuarial basis used for calculating premium rates shall be one that most closely approximates the actual cost of providing care to the same demographic population as those enrolled in TRICARE Retired Reserve as determined by the ASD(HA). TRICARE Retired Reserve premiums shall be based on the actual costs of providing benefits to TRICARE Retired Reserve members and their dependents during the preceding years if the population of Retired Reserve members enrolled in TRICARE Retired Reserve is large enough during those preceding years to be considered actuarially appropriate. Until such time that actual costs from those preceding years becomes available, TRICARE Retired Reserve premiums shall be based on the actual costs during the preceding calendar years for providing benefits to the population of retired members and their dependents in the same age categories as the retired reserve population in order to make the underlying group actuarially appropriate. An adjustment may be applied to cover overhead costs for administration of the program by the government.

(2) *Premium adjustments.* In addition to the determinations described in paragraph (c)(1) of this section, premium adjustments may be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Retired Reserve Program.

(3) *Survivor Premiums.* A surviving family member of a Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described herein will pay premium rates at the member-only rate if there is only one surviving family member to be covered by TRICARE Retired Reserve and at the member-and-family rate if there are two or more survivors to be covered.

(d) *Procedures.* The Director, TRICARE Management Activity (TMA), may establish procedures for the following.

(1) *Purchasing Coverage.* Procedures may be established for a qualified member to purchase one of two types of coverage: member-only coverage or member and family coverage. Immediate family members of the Retired Reserve member may be included in such family coverage. To purchase either type of TRICARE Retired Reserve coverage for effective dates of coverage described below, Retired Reserve members and survivors qualified under either paragraph (b)(1) or (b)(2) of this section must submit a request in the appropriate format, along with an initial payment of the applicable premium required by paragraph (c) of this section in accordance with established procedures.

(i) *Continuation Coverage.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage with an effective date immediately following the date of termination of coverage under another TRICARE program.

(ii) *Qualifying Life Event.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage on the occasion of a qualifying life event that changes the immediate family composition (*e.g.,* birth, death, adoption, divorce, etc.) that is eligible for coverage under TRICARE Retired Reserve. The effective date for TRICARE Retired Reserve coverage will coincide with the date of the qualifying life event. It is the responsibility of the member to provide personnel officials with the necessary evidence required to substantiate the change in immediate family composition. Personnel officials will update DEERS in the usual manner. Appropriate action will be taken upon receipt of the completed request in the appropriate format along with an initial payment of the applicable premium in accordance with established procedures.

(iii) *Open Enrollment.* Procedures may be established for a qualified member or qualified survivor to purchase TRICARE Retired Reserve coverage at any time. The effective date of coverage will coincide with the first day of a month.

(iv) *Survivor coverage under TRICARE Retired Reserve.* Procedures may be established for a surviving family member of a qualified Retired Reserve member who qualified for TRICARE Retired Reserve coverage as described in paragraph (b)(2) of this section to

purchase new TRICARE Retired Reserve coverage or continue existing TRICARE Retired Reserve coverage. Procedures similar to those for qualifying life events may be established for a qualified surviving family member to purchase new or continuing coverage with an effective date coinciding with the day of the member's death. Procedures similar to those for open enrollment may be established for a qualified surviving family member to purchase new coverage at any time with an effective date coinciding with the first day of a month.

(2) *Changing type of coverage.* Procedures may be established for TRICARE Retired Reserve members/survivors to request to change type of coverage during open enrollment as described in paragraph (d)(1)(iii) of this section or on the occasion of a qualifying life event that changes immediate family composition as described in paragraph (d)(1)(ii) of this section by submitting a completed request in the appropriate format.

(3) *Termination.* Termination of coverage for the member will result in termination of coverage for the member's family members in TRICARE Retired Reserve, except as described in paragraphs (d)(1)(iv) of this section. The termination will become effective in accordance with established procedures.

(i) Coverage shall terminate for members or their survivors who no longer qualify for TRICARE Retired Reserve as specified in paragraph (c) of this section. For purposes of this section, the member or their survivor no longer qualifies for TRICARE Retired Reserve when the member has been eligible for coverage in a health benefits plan under Chapter 89 of Title 5, U.S.C. for more than 60 days. Further, coverage shall terminate when the Retired Reserve member attains the age of 60 or, if survivor coverage is in effect, when the deceased Retired Reserve member would have attained the age of 60.

(ii) Coverage may terminate for members and survivors who gain coverage under another TRICARE program.

(iii) Coverage shall terminate for members and survivors who fail to make a premium payment in accordance with established procedures.

(iv) Procedures may be established for covered members and survivors to request termination of coverage at any time by submitting a completed request in the appropriate format.

(v) Members or qualified survivors whose coverage under TRICARE Retired Reserve terminates under paragraph (d)(3)(iii) or (d)(3)(iv) of this section will not be allowed to purchase coverage under TRICARE Retired Reserve to begin again for a period of one year following the effective the date of termination.

(4) *Processing.* Upon receipt of a completed request in the appropriate format, enrollment actions will be processed into DEERS in accordance with established procedures.

(5) *Periodic revision.* Periodically, certain features, rules or procedures of TRICARE Retired Reserve may be revised. If such revisions will have a significant effect on members' or survivors' costs or access to care, members or survivors may be given the opportunity to change their type of coverage or terminate coverage coincident with the revisions.

(e) *Preemption of State laws.*—(1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs, at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to contracts that implement this section.

(2) Based on the determination set forth in paragraph (f)(1) of this section, any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Retired Reserve. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to TRICARE Retired Reserve. (However, the Department of Defense may, by contract, establish legal obligations on the part of DoD contractors to conform with requirements similar to or identical to requirements of State or local laws or regulations with respect to TRICARE Retired Reserve).

(3) The preemption of State and local laws set forth in paragraph (f)(2) of this section includes State and local laws imposing premium taxes on health insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of 10 U.S.C. 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those of the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(f) *Administration.* The Director, TRICARE Management Activity, may establish other rules and procedures for the effective administration of TRICARE Retired Reserve and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

(g) *Terminology.* The following terms are applicable to the TRICARE Retired Reserve program.

(1) *Coverage.* This term means the medical benefits covered under the TRICARE Standard or Extra programs as further outlined in other sections of Part 199 of Title 32 of the Code of Federal Regulations, whether delivered in military treatment facilities or purchased from civilian sources.

(2) *Immediate family member.* This term means spouse (except former spouses) as defined in paragraph 199.3(b)(2)(i) of this part, or child as defined in paragraph 199.3 (b)(2)(ii).

(3) *Qualified member.* This term means a member who has satisfied all the criteria that must be met before the member is authorized for TRR coverage.

(4) *Qualified survivor.* This term means an immediate family member who has satisfied all the criteria that must be met before the survivor is authorized for TRR coverage.

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OSD Federal Register Liaison Officer, Department of Defense.

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