

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD-2010-HA-0033]

RIN 0720-AB44

TRICARE: Unfortunate Sequelae From Noncovered Services in a Military Treatment Facility**AGENCY:** Office of the Secretary, Department of Defense.**ACTION:** Final rule.

SUMMARY: The Department of Defense is publishing this final rule to allow coverage for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in a Military Treatment Facility (MTF), when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications. This final rule is necessary to protect TRICARE beneficiaries from incurring financial hardships due to the current regulatory restrictions that prohibit TRICARE coverage of treatment of the complications resulting from noncovered procedures, even when those procedures were conducted in a Department of Defense facility.

DATES: *Effective Date:* This rule is effective October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. René Morrell, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3618.

SUPPLEMENTARY INFORMATION:**I. Background**

In the **Federal Register** of August 6, 2010, (75 FR 47519-47520), the Office of the Secretary of Defense published for public comment a proposed rule to allow coverage for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in a Military Treatment Facility (MTF), when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications.

In order to support Graduate Medical Education and maintain provider skill levels, MTF providers are frequently required to perform medical procedures that may be excluded from coverage

under TRICARE. Unexpected complications (unfortunate sequelae) from these procedures may result and, in those instances where the MTFs are unable to provide the appropriate level of care necessary for the proper treatment of these complications, the MTF Commander must refer beneficiaries for treatment outside the MTF. Under current regulatory provisions, TRICARE is unable to cover treatment of the complications resulting from noncovered procedures. When beneficiaries require treatment outside the MTF for these complications, arising from noncovered procedures, they are responsible for payment for this necessary treatment resulting in significant financial hardship. This final rule will address that unfortunate situation by allowing coverage of treatment for the complications resulting from noncovered treatment provided in an MTF when the original procedure was authorized by the MTF Commander. The specific procedures for approval of this treatment will be addressed in the TRICARE Policy Manual rather than in the regulation to ensure that this information is current and easily accessible. TRICARE manuals may be accessed at <http://www.tricare.mil>.

II. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (75 FR 47519-47520) on August 6, 2010. One comment was received in full support of the rule.

III. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Section 801 of title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or 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. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

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

Section 202 of Public Law 104-4, "Unfunded Mandates Reform Act," requires that 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 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.

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

The "Regulatory Flexibility Act" (RFA) requires each Federal agency to 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 rule will not significantly impact a substantial number of small entities for purposes of the RFA.

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

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

Executive Order 13132, "Federalism"

This rule has been examined for its impact under E.O. 13132 and does not contain 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 in the distribution of power and responsibilities among the various levels of government; therefore, consultation with the State and local officials is not required.

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:

■ a. Redesignating paragraph (e)(9) as paragraph (e)(9)(i)

■ b. Adding new paragraph (e)(9)(ii)

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(9) * * *

(ii) Benefits are available for otherwise covered services and supplies required in the treatment of complications (unfortunate sequelae) resulting from a noncovered incident of treatment provided in an MTF, when the initial noncovered service has been authorized by the MTF Commander and the MTF is unable to provide the necessary treatment of the complications, according to the guidelines adopted by the Director, TMA, or a designee.

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Dated: August 24, 2011.

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

[Docket ID: DOD-2010-HA-0071; RIN 0720-AB40]

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2010; Expansion of Survivor Eligibility Under the TRICARE Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10), as amended by the National Defense Authorization Act for Fiscal Year 2011 (NDAA for FY11). Specifically, that legislation expands the survivor eligibility under the TRICARE Dental Program (TDP). The 2011 amendment to the legislation entitles the surviving spouse and child(ren) continuation of eligibility for the TDP regardless of whether they were previously enrolled in the TDP. Prior enrollment in the TDP had been a requirement of the 2010 legislation for both the spouse and children. The period of continued eligibility for a spouse will be 3 years beginning on the date of the member's death. The legislation entitles a child to continuation of eligibility for the TDP for the longer of three years or until age 21 (or 23 for most full-time students). Survivors, who meet the new eligibility requirements, will obtain TDP eligibility as of the publishing of the final rule in the **Federal Register**. Retroactive

payment of premiums or claims paid for dental treatment during the time of loss of TDP eligibility will not be reimbursed to surviving dependents.

DATES: *Effective Date:* This rule is effective October 17, 2011.

FOR FURTHER INFORMATION CONTACT: Col. Jeffrey Chaffin, TRICARE Management Activity, telephone (703) 681-0039.

SUPPLEMENTARY INFORMATION: This final rule implements section 704 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10), Public Law 111-84, as amended by Section 703 of the National Defense Authorization Act for Fiscal Year 2011 (NDAA for FY11), Public Law 111-83.

I. Background

This final rule expands the survivor eligibility under the TRICARE Dental Program (TDP). The legislation entitles the surviving spouse and child(ren) continuation of eligibility for the TDP regardless of whether they were previously enrolled in the TDP. Prior enrollment in the TDP had been a requirement of the 2010 legislation for both the spouse and children. The period of continued eligibility for spouse will be 3 years beginning on the date of the member's death. The period of continued eligibility for children will be 3 years beginning on the date of the member's death or until age 21 (or age 23 for most full-time students).

The final rule will maintain the government's payment of both the government and dependent's portion of the premium share during the period of continuous enrollment.

II. Public Comments

The proposed rule was published in the **Federal Register** on August 18, 2010, for a 60-day comment period. We received one comment expressing support of the extended eligibilities.

III. Regulatory Procedures

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any 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. 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 rule is not a significant regulatory

action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements.

Paperwork Reduction Act

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).

EO 13132, "Federalism"

We have examined the impact(s) of the 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, therefore, consultation with State and local officials is not required.

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 199.13 is amended by revising paragraph (c)(3)(ii)(E)(2) to read as follows:

§ 199.13 TRICARE Dental Program.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(2) *Continuation of eligibility.* Eligible dependents of active duty members who die while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (*i.e.*, Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively) who die, shall be eligible for continued enrollment in the TDP. This continued enrollment shall be up to (3) three years from the date of the member's death, except that, in the case of a dependent of the deceased who is described in 10 U.S.C. section 1072(2) by subparagraph (D) or (I), the period of continued enrollment shall be the longer of the following periods