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Approved: June 13, 2006.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DoD-2006-OS-0022]

RIN 0720-AA99

#### **Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Reserve Select for Members of the Selected Reserve**

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

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule revises requirements and procedures for TRICARE Reserve Select pursuant to section 701 of the National Defense Authorization Act for FY 2006 (NDAA-06). TRICARE Reserve Select is the premium-based medical coverage program first made available in April 2005 for purchase by members of the Selected Reserve who fulfill the statutory qualification of having served on active duty in support of a contingency operation among other qualifications. By adding two new tiers of premium sharing by the government (50% and 85% member portion) to the existing premium tier (28% member portion), this interim final rule expands availability of TRICARE Reserve Select to include all Selected Reservists pursuant to section 702 of NDAA-06.

**DATES:** This rule is effective July 21, 2006. Submit comments on or before August 21, 2006. Coverage established during the one-time special open season described herein will be available no later than October 1, 2006.

**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 Regulatory Information Number (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://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 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**

An interim final rule was published in the **Federal Register** on March 16, 2005 (70 FR 12798-12805), that addressed three provisions of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA-05) (Pub. L. 108-375). That interim final rule established requirements and procedures to make permanent two provisions of the NDAA-05. Section 706 of the NDAA-05 made permanent the temporary revisions to the Transitional Assistance Management Program (TAMP), enacted in section 704 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA-04) (Pub. L. 18-136) and section 1117 of the Emergency Supplemental Appropriations Act for the Reconstruction of Iraq and Afghanistan, 2004 (Emergency Supplemental) (Pub. L. 108-106). Section 703 of the NDAA-05 made permanent the earlier TRICARE eligibility for certain reserve component members authorized by section 703 of the NDAA-04 and section 1116 of the Emergency Supplemental. A separate final rule will be issued for the requirements established by sections 703 and 706 of the NDAA for FY05.

The interim final rule published on March 16, 2005, also established requirements and procedures for implementation of TRICARE Reserve Select, the program authorized by section 701 of the NDAA-05 for premium-based medical coverage for certain members of the Selected Reserve and their family members. Before a final rule could be issued subsequent to the interim final rule published in the **Federal Register** on March 16, 2005 (70 FR 12798-12805), for the TRICARE Reserve Select program, it became evident that subsequent legislation

would likely amend the statutory provisions in section 701 of the NDAA-05 implemented in the interim final rule.

Therefore, this interim rule contains the provisions of the former interim rule on the TRICARE Reserve Select program (70 FR 12798-12805) and addresses two provisions of the National Defense Authorization Act for Fiscal Year 2006 (NDAA-06) (Pub. L. 109-163). First, section 701 of the NDAA-06 contains several provisions to enhance the TRICARE Reserve Select program implemented in fulfillment of section 701 of the NDAA-05. Second, section 702 of the NDAA-06 expands the TRICARE Reserve Select program to make it available to all members of the Selected Reserve of the Ready Reserve by providing the statutory basis to establish two tiers of premium sharing subject to a number of additional specific statutory requirements, which are outlined in this regulation. These two tiers are in addition to the premium sharing tier established by section 701 of the NDAA-05.

The law authorizing the TRICARE Reserve Select program uses the term "eligibility" to identify conditions under which a Reserve component member may purchase coverage. For purposes of program administration, the terms "qualifying" or "qualified" shall generally be used in lieu of such terms as "eligibility" or "eligible" to refer to a Reserve component member who meets the program requirements allowing purchase of TRICARE Reserve Select coverage.

This interim rule introduces certain terminology for TRICARE Reserve Select intended to reflect critical elements that distinguish it from other long-established TRICARE health programs. For instance, the effective date of eligibility for TRICARE has long been understood to mean that the eligible individual may obtain care under the military health system as of that date. However, that is not what it means in the context of TRICARE Reserve Select. To avoid the inevitable misunderstanding, this rule uses 239 the term "qualify" to mean that the member's reserve component has validated that the member has satisfied all the "qualifications" that must be met before the member is authorized to purchase coverage under a particular tier. Only then may the member purchase coverage by taking further action to submit a completed application along with payment of a one month premium. The term "coverage" indicates the benefit of TRICARE covering claims submitted by TRICARE authorized providers, hospitals, and

suppliers for payment of covered services, supplies, and equipment.

## II. TRICARE Reserve Select Program

A. *Establishment of the TRICARE Reserve Select Program* (paragraph 199.24(a)). This paragraph describes the nature, purpose, statutory basis, scope, and major features of TRICARE Reserve Select, a premium-based medical coverage program that was made available worldwide to certain members of the Selected Reserve and their family members. TRICARE Reserve Select is authorized by 10 U.S.C. 1076b and 10 U.S.C. 1076d.

The major features of the program include the following. TRICARE Reserve Select coverage is available for purchase by any Selected Reserve member if the member fulfills all of the statutory qualifications for one of the three premium tiers. The percentage of the total amount of the premium that members pay in each of the three premium tiers is prescribed by law: 28% for Tier 1, 50% for Tier 2, and 85% for Tier 3. Within each tier there is one premium rate for self-only coverage and one premium rate for self and family coverage. Additionally, TRICARE rules apply unless otherwise specified; certain special TRICARE programs are not part of TRICARE Reserve Select, including the Extended Health Care Option (ECHO) program, the Special Supplemental Food Program (also known as the Women, Infants, and Children—Overseas Program), and the Supplemental 240 Health Care Program, except when referred by a Medical Treatment Facility (MTF) provider for incidental consults and the MTF provider maintains clinical control over the episode of care. The TRICARE Dental Program is already available under 10 USC 1076a to all members of the Selected Reserve and their family members whether or not they purchase TRICARE Reserve Select coverage.

Under TRICARE Reserve Select, Selected Reserve members who fulfill all of the statutory qualifications for one of the three premium tiers may purchase either the self-only type of coverage or the self and family type of coverage by submitting a completed application form along with the appropriate monthly premium at the time of enrollment. When their coverage becomes effective, TRICARE Reserve Select beneficiaries receive the TRICARE Standard (and Extra) benefit. TRICARE Reserve Select features the deductible and cost share provisions of the TRICARE Standard (and Extra) plan for active duty family members (ADFM) for both the member and covered family members.

B. *TRICARE Reserve Select premium tiers* (paragraph 199.24(b)). Members are charged premiums for coverage under TRICARE Reserve Select that represent a portion of the total amount that the Assistant Secretary of Defense, Health Affairs (ASD(HA)) determines on an appropriate actuarial basis as being appropriate for coverage under the TRICARE Standard benefit for the TRICARE Reserve Select eligible population.

Members may qualify for one of three tiers of premium sharing with the Department of Defense. The first tier was established by section 701 of the NDAA-05 as 28% of the total cost of the premium and implemented in accordance with regulation issued March 16, 2005, (70 FR 12798-12805).

Selected Reserve members who qualify to purchase TRICARE Reserve Select coverage in Tier 1 shall pay 28% of the total cost of the premium. In the event of the death of a member of the Selected Reserve who is covered by TRICARE Reserve Select at the time of death, the premium amount shall be at the self-only rate if there is only one surviving family member to be covered by TRICARE Reserve Select and at the self and family rate if there are two or more survivors to be covered by TRICARE Reserve Select.

The NDAA-06 added two more tiers of premium sharing for members who may qualify as specified in paragraph 199.24(c). Selected Reserve members who qualify to purchase TRICARE Reserve Select coverage in Tier 2 shall pay 50% of the total cost of the premium. Selected Reserve members who qualify to purchase TRICARE Reserve Select coverage in Tier 3 shall pay 85% of the total cost of the premium.

Annual rates for the first year TRICARE Reserve Select was offered (calendar year 2005) were based on the annual premiums for the Blue Cross and Blue Shield Standard Service Benefit Plan under the Federal Employees Health Benefits Program, a nationwide plan closely resembling TRICARE Standard (and Extra) coverage, with an adjustment based on estimated differences in covered populations, as determined by the ASD(HA).

Based on an analysis of demographic differences between Blue Cross and Blue Shield participants and beneficiaries eligible for TRICARE Reserve Select, the adjustment amount in calendar year 2005 represented a 32% reduction from the Blue Cross and Blue Shield annual premium for self-only coverage and represented an 8% reduction from the Blue Cross and Blue Shield annual premium for self and

family coverage. (The difference in the percentage reductions between self-only and self and family premiums is due to the disproportionately high number of high cost, single, elderly retiree federal employees covered by Blue Cross and Blue Shield self-only coverage).

Premiums are to be paid monthly, except as otherwise established as part of the administrative implementation of TRICARE Reserve Select. Monthly premium rates are established and updated annually to maintain an appropriate relationship with the annual changes in Blue Cross and Blue Shield premiums, or by other adjustment methodology determined to be appropriate by the ASD(HA).

Separate rates will be established and updated annually for each of the two types of coverage, self-only and self and family, within each of the three tiers on a calendar year basis and are effective on the first of January each year. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

In addition to these annual premium changes, premium adjustments may also be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Reserve Select Program.

For calendar year 2005, the total annual premium for self-only coverage was \$3,214 and the total annual premium for self and family coverage was \$9,985. The member's portion of the annual premium for self-only coverage under TRICARE Reserve Select in Tier 1 was \$900 (\$75 monthly). The member's portion of the annual premium for self and family coverage under TRICARE Reserve Select in Tier 1 was \$2,796 (\$233 monthly).

For calendar year 2006, the total annual premium for self-only coverage increased 8.5% to \$3,487 (rounded to the nearest dollar) and the total annual premium (Tier 1) for self and family coverage increased 8.5% to \$10,834 (rounded to the nearest dollar). The 8.5% increase mirrors the increase in Blue Cross and Blue Shield rates in the Federal Employee Health Benefits program.

(a) For calendar year 2006, the member's portion in Tier 1 is 28% of the annual premium. Self-only coverage is \$972 (\$81 monthly). Self and family coverage is \$3,036 (\$253 monthly).

(b) For calendar year 2006, the member's portion in Tier 2 is 50% of the annual premium. Self-only coverage is \$1,743.48 (\$145.29 monthly). Self and family coverage is \$5,417.04 (\$451.42 monthly).

(b) For calendar year 2006, the member's portion in Tier 3 is 85% of the annual premium. Self-only coverage is \$2,964.00 (\$247.00 monthly). Self and family coverage is \$9,208.92 (\$767.41 monthly).

C. *Eligibility for qualifying to purchase TRICARE Reserve Select coverage* (paragraph 199.24(c)). This paragraph defines the statutory conditions for each of the three tiers within which members of a Reserve component may qualify to purchase TRICARE Reserve Select coverage. The Reserve components of the Armed Forces have the responsibility to determine and validate a member's qualifications to purchase TRICARE Reserve Select coverage and to identify the premium tier for which they qualify.

Section 701 of NDAA-05 established two distinct statutory basis for qualifying to purchase TRICARE Reserve Select coverage under Tier 1. The first statutory basis for Tier 1 established that a member or former member of a Reserve component of the Armed Forces who was released from active duty on or before April 26, 2005, qualifies to purchase TRICARE Reserve Select coverage in Tier 1 if the member meets all of the following conditions:

(a) Was called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B);

(b) Served continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b)(2)(A));

(c) Was released from active duty on or before April 26, 2005;

(d) Executed a service agreement with his or her Reserve component prior to purchasing TRICARE Reserve Select coverage, but no later than October 28, 2005, to serve continuously in the Selected Reserve for a period of 1 or more years; and,

(e) Is in a Selected Reserve status on the first day of coverage for TRICARE Reserve Select and maintains continued membership in the Selected Reserve.

This temporary opportunity for Tier 1 (until October 28, 2005) applied to current members of the Selected Reserve, and also to former members who served in support of a contingency after September 11, 2001, who rejoined the Selected Reserve, and who entered into a service agreement for continued service.

In conformance with section 701(b)(2)(B) of the NDAA-05, the

Department took steps to notify reservists released from active duty on or before April 26, 2005, who could potentially qualify for TRICARE Reserve Select and provided them information on the opportunity and procedures for entering into a service agreement together with a clear explanation of the benefits that the member is eligible to receive under TRICARE Reserve Select as a result of entering into such service agreement. Specifically, the Department delivered this information to all potentially eligible members (376,800) through a mass mailing conducted from April 22, 2005, to May 12, 2005.

The second statutory basis for Tier 1 established that a member or former member of a Reserve component of the Armed Forces who was released from active duty after April 26, 2005, qualifies to purchase TRICARE Reserve Select coverage in Tier 1 if the member meets all of the following conditions:

(a) Is called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B);

(b) Serves continuously on active duty for 90 days or more in support of a contingency operation on or after September 11, 2001 (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b)(2)(A)); and

(c) Is released from active duty after April 26, 2005;

(d) Executed a service agreement with his or her Reserve component to serve continuously in the Selected Reserve for a period of 1 or more years on or before the date of release from active duty if released from active duty before January 6, 2006, or not later than 90 days after release from active duty if released from active duty on or after January 6, 2006, except in the case of a member of the Individual Ready Reserve described in below, with the effective date of the Service agreement coinciding with the 246 TRS coverage begin date

(e) If not already a member of the Selected Reserve, the member shall be in the Selected Reserve on the first day of coverage for TRICARE Reserve Select and shall maintain continued membership in the Selected Reserve. A member of the Individual Ready Reserve released from active duty on or after January 6, 2006, who is unable to find a position in the Selected Reserve and who qualifies TRICARE Reserve Select coverage, except for membership in the Selected Reserve, has one year from the expiration of the member's entitlements to care and benefits following a

qualifying period of active duty to execute a service agreement with his or her Reserve component and become a member of the Selected Reserve. A member of the Selected Reserve released from active duty on or after January 6, 2006, who loses his or her position in the Selected Reserve before the end of the Transitional Assistance Management Program (TAMP) shall have one year from the expiration of TAMP period to execute a service agreement with his or her Reserve component and again become a member of the Selected Reserve. This opportunity for Tier I coverage is now permanent under the statute.

The statutory basis for Tier 2 established that a member who is a member of a Reserve component of the Armed Services qualifies to purchase TRICARE Reserve. Select coverage in Tier 2 if the member meets all of the following conditions:

(a) Executes a service agreement to serve continuously in the Selected Reserve for a period of time that extends through the period of coverage; and

(b) Maintains continued membership in the Selected Reserve as determined by the member's Reserve component; and

(c) Submits certification in accordance with procedures established by the Under Secretary of Defense for Personnel and Readiness that is appropriate to substantiate the Reserve component member's assertion that the member is one of the following:

- an eligible unemployment compensation recipient;
- either employed by an employer that does not offer a health benefits plan to anyone working for the employer, or is in a category of employees (based on hours, duties, employment agreement, or such other characteristic, but not membership in the Selected Reserve) to which the member's employer does not offer a health benefits plan;
- self-employed (where income earned from such self-employment is the member's primary source of annual income, as reported to the IRS, other than service in the Selected Reserve).

Further, the member shall submit certification appropriate to substantiate the member's assertion of qualifying for Tier 2 in accordance with procedures established by the Under Secretary of Defense for Personnel and Readiness. Documentation required to support the certifications includes supplementation covering the full period of qualification. In the event that documentation fails to support qualification or continued qualification or the condition of

qualification otherwise ceases to exist and the member fails to report such event to the TRICARE contractor servicing the member's coverage, the member's coverage under Tier 2 will terminate, effective on the date the required condition ceased to exist. In that case, the member may elect coverage in Tier 3 and will be responsible for the additional premiums required for Tier 3, effective from that date.

The statutory basis for Tier 3 established that a member who is a member of a Reserve component of the Armed Services qualifies to purchase TRICARE Reserve 248 Select coverage in Tier 3 if the member meets all of the following conditions.

(a) Executes a service agreement to serve continuously in the Selected Reserve for a period of time that extends through the period of coverage;

(b) Maintains continued membership in the Selected Reserve; and

(c) Does not qualify for either Tier 1 or Tier 2.

D. *TRICARE Reserve Select enrollment procedures* (paragraph 199.24(d)). To purchase TRICARE Reserve Select coverage, Reserve component members qualified under paragraph 199.24(c) must complete and submit the applicable TRICARE enrollment application, along with an initial payment of the monthly premium share required under paragraph 199.24(b) to the appropriate TRICARE contractor in accordance with deadlines and other procedures established by the ASD(HA) for receipt not later than 30 days prior to the start of the period of coverage as it has been determined. A member may purchase one of two types of coverage: self-only coverage or self and family coverage.

For qualified members, the decision to purchase TRICARE Reserve Select coverage in Tier 1 is a one-time opportunity. If not purchased within the prescribed time limit, if coverage is taken for a period less than the maximum period of eligibility, or if coverage is terminated for any reason, coverage may not be initiated or extended later, nor may any period of qualification be saved to be used later.

Members qualified under Tier 1 based upon qualifying active duty that ended on or before April 26, 2005 are required to submit the required application and premium 249 payment as soon as practicable after entering into a Service Agreement with their respective Reserve component. Members qualified under Tier 1 based upon qualifying active duty that ended after April 26, 2005 are required to submit the proper application and premium payment for

receipt by the appropriate TRICARE contractor not later than 30 days before the last day of qualifying active duty or the last day of coverage under the Transition Assistance Management Program, whichever is later, unless the otherwise qualified member is a member of the Individual Ready Reserve at that time. In that case, the member shall submit the required application and premium payment as soon as practicable after entering into a Service Agreement with his or her respective Reserve component.

Thus, for example, if a member served for one year in support of a contingency operation, the member may purchase Tier 1 coverage for the next four years if the member agrees to continue service in the Selected Reserve for four years. However, if that member elects to continue service in the Selected Reserve for only two years, the member will qualify for only two years of TRICARE Reserve Select coverage under the Tier 1 premium rate. This two-year coverage period based on the qualifying period of active duty cannot be extended later, even if the member later extends Selected Reserve service for two more years. The only way to extend TRICARE Reserve Select coverage under the Tier 1 premium rate beyond the period determined when the one-time choice is made is by qualifying again through another period of active duty service in support of a contingency operation.

Open Season is the time period during which a member who qualifies for coverage in Tier 2 or Tier 3 may purchase new coverage, renew existing coverage with or without 250 a change in type of coverage, or terminate coverage. One open season will be offered each year in accordance with procedures established by the ASD(HA). A one-time special open season will be offered in 2006 for members to purchase coverage and coverage will be available no later than October 1, 2006. Before a member's coverage may be renewed during open season, the service agreement must be valid through December 31st of the renewed year of coverage and all other qualifications under Tier 2 or Tier 3 must be validated by the member's Reserve component. Actions requested during an open season will take effect January 1st of the year following the open season. Existing Coverage that is not renewed during open season will be terminated no later than December 31st of that year. Upon assignment to the Selected Reserves, members who qualify for coverage under either Tier 2 Or Tier 3 may purchase coverage in accordance with deadlines and other procedures established by the ASD(HA). Members

may request certain changes to their TRICARE Reserve Select Coverage in connection with certain events called qualifying life events in accordance with deadlines and other procedures established by the ASD(HA). The first type of qualifying life event is associated with changes in immediate family composition and it is the responsibility of the member to provide his or her personnel office with the necessary evidence required to substantiate the change in immediate family composition. Personnel will update the Defense Enrollment Eligibility Reporting System (DEERS) in the usual manner, which will then notify the appropriate TRICARE contractor who will take appropriate action upon receipt of a proper application. The second type of qualifying life event is associated with changes in family employment or health coverage status.

If a member who is covered under Tier 1 experiences a qualifying life event, the only action a member may request is a change in type of coverage. The member may request termination of coverage at any time; however, they will not be allowed to purchase coverage again under Tier 1, unless the member qualifies again for Tier 1 coverage after the date of termination for Tier 1 coverage. If a member who is covered under either Tier 2 or Tier 3 experiences a qualifying life event, the member may apply to purchase coverage, request changes in type of coverage, or terminate coverage. Otherwise, a member who is covered under either Tier 2 or Tier 3 may not request to terminate coverage outside of open season.

A member of a Reserve component who qualifies to purchase coverage may elect self-only or self and family coverage. Immediate family members of the Reserve component member, as defined in §§ 199.3(b)(2)(i) (except former spouses) and 199.3(b)(2)(ii) of this part, may be included in such family coverage. After purchasing coverage under *Tier 1*, members may change type of coverage only in conjunction with a qualifying life event. After purchasing coverage under *Tiers 2 and 3*, members may change type of coverage either during an open season or in conjunction with a qualifying life event.

The period of coverage for members who qualify under Tier 1 is equal to either the number of whole years covered by the executed service agreement, or to one year in the case of a member who is otherwise eligible but does not serve continuously on active duty for 90 days because of an injury,

illness, or disease incurred or aggravated while deployed.

The period of coverage for members released from active duty on or before April 26, 2005 begins on the date that is the later of the expiration of TAMP benefits or the 252 effective date of the service agreement, but in no case later than October 28, 2005.

The period of coverage for members released from active duty after April 26, 2005, begins on the first day following the date their TAMP benefits period ends under section 199.3(e) of this part; or the date that a member of the Individual Ready Reserve finds and occupies a position in the Selected Reserve, up to one year after expiration of TAMP benefits. The enrollment in TRICARE Reserve Select must be accomplished within 60 days of assignment to the Selected Reserve. When coverage is terminated or the member is otherwise disenrolled, a member may not purchase coverage in Tier 1 again unless recalled to active duty and the member qualifies again for this tier.

If a member of the Selected Reserves dies while in a period of coverage under Tier 1, the family member(s) may purchase new or continue TRICARE Reserve Select Tier 1 coverage for up to six months beyond the date of the member's death upon payment of monthly premiums. The premium amount shall be at the member only rate if there is only one surviving family member to be covered by TRICARE Reserve Select and at the member and family rate if there are two or more survivors to be covered.

The maximum duration for any period of coverage purchased by members who qualify for TRICARE Reserve Select under either Tier 2 or Tier 3 is one year and will coincide with the calendar year. The period of coverage begins in accordance with procedures established by the ASD(HA) and ends December 31st of the same year in which the current period of coverage began.

The period of coverage for members who purchase coverage in either Tier 2 or Tier 3 during the annual open season begins January 1st of the year immediately following the open season and ends December 31st of that same year.

The period of coverage for members who purchase coverage in either Tier 2 or Tier 3 as a result of assignment to the Selected Reserve or as a result of a qualifying life event described below begins in accordance with procedures established by the ASD(HA) and ends December 31st of the same year that coverage begins.

Coverage will terminate whenever a member ceases to meet the qualifications for the particular tier under which coverage was purchased or a request for termination is received in accordance with established procedures. However, unless the member's Reserve component terminates the member's service in the Selected Reserve, the service agreement remains in force and the end date is unchanged. Termination of coverage for the member will result in termination of coverage for the member's family members in TRICARE Reserve Select, except for qualified survivors of Reserve component members covered by TRICARE Reserve Select under Tier 1 at the time of death. Failure to make a premium payment in a timely manner will result in termination of coverage for the member and any covered family members and denial of claims for services received after the effective date of termination. Members whose coverage under Tier 1 terminates will not be allowed to purchase coverage again under Tier 1, unless the member qualifies again for Tier 1 coverage after the date of termination. Members whose coverage under any of the three tiers terminates may purchase coverage again under either Tier 2 or Tier 3 if they qualify during the annual open season, or in connection with a qualifying life event.

Effective January 6, 2006, with enactment of section 701 of the NDAA-06, the rules changed with regard to the TRICARE Reserve Select Tier 1 period of coverage when a member serves on active duty. Before January 6, 2006, when a member covered by TRICARE Reserve Select serves on active duty for a period of more than 30 days and receives other TRICARE coverage, TRICARE Reserve Select coverage is *superseded* [italics added] for the member and any covered family members, but the period of coverage continues to run. During any period in which TRICARE Reserve Select coverage is superseded, no premium payments for TRICARE Reserve Select are due. If applicable, this other TRICARE coverage includes early TRICARE coverage based on delayed-effective-date orders under § 199.3(b)(5) of this part and TAMP benefits under § 199.3(e) of this part. If the original end date of TRICARE Reserve Select coverage has not been reached by the time the other TRICARE coverage terminates, TRICARE Reserve Select coverage will resume with the same type of coverage in effect on the date coverage was suspended. Coverage will continue until the original end date of coverage or until coverage is otherwise

terminated. In addition, TRICARE Reserve Select coverage is also superseded by a new period of coverage established as a result of re-qualifying through another period of active duty service in support of a contingency operation under § 199.24(c) of this part.

On or after January 6, 2006, when a member covered by TRICARE Reserve Select under Tier 1 serves on active duty under orders for a period of more than 30 days and receives other TRICARE coverage, TRICARE Reserve Select Tier 1 coverage is *suspended* [italics added] for the member and any covered family members and the period of coverage stops. During any period in which TRICARE Reserve Select coverage is suspended, no premium payments for TRICARE Reserve Select are due. If applicable, this other TRICARE coverage includes early TRICARE coverage based on delayed-effective-date orders under § 199.3(b)(5) of this part and TAMP benefits under § 199.3(e) of this part. The end date of the TRICARE Reserve Select Tier 1 period of coverage will be extended for a period of time equal to the period of time that TRICARE Reserve Select coverage was suspended. TRICARE Reserve Select Tier 1 coverage will continue until the adjusted end date, or until coverage is otherwise terminated. In addition, the end date of the TRICARE Reserve Select Tier 1 period of coverage will be extended for a period of time equal to any new period of coverage established as a result of re-qualifying through another period of active duty service in support of a contingency operation under § 199.24(c) of this part and all other qualifications are met.

E. *Relationship to Continued Health Care Benefits Program (CHCBP)* (paragraph 199.24(e)). This paragraph addresses the relationship between TRICARE Reserve Select and the CHCBP. CHCBP is a program that (among other things) allows members released from active duty to purchase continued health care coverage through TRICARE. Coverage under TRICARE Reserve Select counts as coverage under a health benefit plan for purposes of individuals qualifying for the Continued Health Care Benefits Program (CHCBP) under § 199.20(d)(1)(ii)(B) or § 199.20(d)(1)(iii)(B) of this part. Some members and family members will be eligible for Tier 1 of TRICARE Reserve Select, and may also be eligible for CHCBP at the time of release from active duty.

This paragraph of the regulation provides that if a member purchases TRICARE Reserve Select coverage that is later terminated, the member or the

covered family members may then purchase CHCBP coverage for whatever period is remaining of the original 18 month eligibility. For example, in the case that TRICARE Reserve Select Tier 1 coverage that is terminated because of transfer or discharge from the Selected Reserve (such as through a reduction in force or base closure) of a member is within 18 months of release from active duty, the member could choose to continue health care coverage under CHCBP for the remainder of the period at the applicable CHCBP premiums. Eligibility and coverage for TRICARE Reserve Select under either Tier 2 or Tier 3 has no effect on eligibility for the CHCBP.

**F. Preemption of State laws** (paragraph 199.24(f)). This paragraph explains that the preemptions of State and local laws established for the TRICARE program also apply to TRICARE Reserve Select. 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 Reserve Select.

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).

**G. Administration** (paragraph 199.24(g)). This paragraph provides that the ASD(HA) may establish other rules and procedures necessary for the effective administration of TRICARE Reserve Select.

### 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. Any substantial impacts associated with implementation of TRICARE Reserve Select are already determined by statute and are outside any discretionary action of DoD or effect of this regulation.

This rule, however, does address novel policy issues relating to implementation of a new medical benefits program for members of the armed forces. Thus, this rule has been reviewed by the Office of Management and Budget under E.O. 12866.

We are in the process of determining whether the interim final rule imposes "collection of information" requirements on the public within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). If the determination is in the affirmative, we will promptly submit these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.

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, 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 revising the definition of "TRICARE Reserve Select" to read as follows:

#### § 199.2 Definitions.

\* \* \* \* \*

(b) \* \* \*

**TRICARE Reserve Select.** The program established under 10 U.S.C. 1076d and 32 CFR 199.24.

\* \* \* \* \*

■ 3. Section 199.24 is revised to read as follows:

#### § 199.24 TRICARE Reserve Select.

(a) **Establishment.** TRICARE Reserve Select is established for the purpose of offering TRICARE Standard and Extra health coverage to qualified members of the Selected Reserve and their immediate family members.

(1) **Purpose.** TRICARE Reserve Select is a premium-based health plan that will be available to members of the Selected Reserve and their immediate family members as specified in paragraph (c) of this section.

(2) **Statutory Authority.** TRICARE Reserve Select is authorized by 10 U.S.C. 1076b and 1076d.

(3) **Scope of the Program.** TRICARE Reserve Select is applicable in the 50 United States, the District of Columbia, Puerto Rico, and, to the extent practicable, other areas where members of the Selected Reserve serve. In locations other than the 50 states of the United States and the District of Columbia, the Assistant Secretary of Defense may authorize modifications to the program rules and procedures as may be appropriate to the area involved.

(4) **Terminology.** Certain terminology is introduced for TRICARE Reserve Select intended to reflect critical elements that distinguish it from other long-established TRICARE health programs. For instance, the effective date of eligibility for TRICARE has long been understood to mean that the eligible individual may obtain care under the military health system as of that date. However, that is not what it means in the context of TRICARE Reserve Select. To avoid the inevitable misunderstanding, this regulation uses the term "qualify" to mean that the member's reserve component has validated that the member has satisfied all the "qualifications" that must be met before the member is authorized to purchase coverage under a particular premium tier. Only then may the member purchase coverage by taking further action to submit a completed application along with payment of a one month premium. The term "coverage" indicates the benefit of TRICARE covering claims submitted for payment of covered services, supplies, and equipment furnished by TRICARE authorized providers, hospitals, and suppliers.

(5) **Major Features of TRICARE Reserve Select.** 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 Reserve Select.

(B) Certain special programs established in 32 CFR Part 199 are not available to members covered under TRICARE Reserve Select. These include the Extended Health Care Option Program (see § 199.5), and the Special Supplemental Food Program (see § 199.23), and the Supplemental Health Care Program (see § 199.16) except when referred by a Medical Treatment Facility (MTF) provider for incidental consults and the MTF provider maintains clinical control over the episode of care. The TRICARE Dental Program (see § 199.13) is independent of this program and is otherwise available to all members of the Selected Reserve and their eligible family members whether or not they purchase TRICARE Reserve Select coverage.

(ii) *Premium Tiers.* TRICARE Reserve Select coverage is available for 261 purchase by any Selected Reserve member if the member fulfills all of the statutory qualifications for one of the three premium tiers. The percentage of the total amount of the premium that members pay in each of the three premium tiers is prescribed by law: 28% for Tier 1, 50% for Tier 2, and 85% for Tier 3. Within each tier there is one premium rate for self-only coverage and one premium rate for self and family coverage.

(iii) *Enrollment system.* Under TRICARE Reserve Select, Reserve component members who have been validated as fulfilling all of the statutory qualifications for one of the three premium tiers may purchase either the self-only type of coverage or the self and family type of coverage by submitting a completed application form along with the appropriate monthly premium at the time of enrollment. Rules and procedures for purchasing coverage and paying applicable premiums are prescribed in this section.

(iv) *Benefits.* When their coverage becomes effective, TRICARE Reserve Select beneficiaries receive the TRICARE Standard (and Extra) benefit including access to military treatment facility services and pharmacies, as described in § 199.17 of this part. TRICARE Reserve Select coverage features the deductible and cost share provisions of the TRICARE Standard (and Extra) plan for active duty family members for both the member and the member's covered family members. The TRICARE Standard (and Extra) plan is described in section § 199.17 of this part.

(b) *TRICARE Reserve Select premium tiers.* A member of the Selected Reserve covered under TRICARE Reserve Select

shall be required to pay a portion of the total amount that the ASD(HA) determines on an appropriate actuarial basis as being appropriate for that coverage. The member's monthly share of the premium is one-twelfth of the annual portion. The particular share of the premium to be paid by the member is determined by the particular tier for which a member qualifies as established in paragraphs (c)(2) of this section. The member's share of the premium is to be paid monthly, except as otherwise provided through administrative implementation, pursuant to procedures established by the ASD(HA).

(1) *Member's Share of the Total Premium.* (i) *Tier 1.* Selected Reserve members who qualify to purchase TRICARE Reserve Select coverage under paragraph (c)(2)(i) of this section shall pay 28% of the total cost of the premium as determined above. In the event of the death of a member of the Selected Reserve who is covered by TRICARE Reserve Select at the time of death, the premium amount shall be at the self-only rate if there is only one surviving family member to be covered by TRICARE Reserve Select and at the self and family rate if there are two or more survivors to be covered by TRICARE Reserve Select.

(ii) *Tier 2.* Selected Reserve members who qualify to purchase TRICARE Reserve Select coverage under paragraph (c)(2)(ii) of this section shall pay 50% of the total cost of the premium as determined paragraph (c) of this section.

(iii) *Tier 3.* Selected Reserve members who qualify to purchase TRICARE Reserve Select coverage under paragraph (c)(2)(iii) of this section shall pay 85% of the total cost of the premium as determined paragraph (c) of this section.

(2) *Annual establishment of rates.* (i) TRICARE Reserve Select 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, self-only and self and family as described in paragraphs (d)(2) of this section, within each of the premium tiers.

(ii) Annual rates for the first year TRICARE Reserve Select was offered (calendar year 2005) were based on the annual premiums for the Blue Cross and Blue Shield Standard Service Benefit Plan under the Federal Employees Health Benefits Program, a nationwide plan closely resembling TRICARE Standard (and Extra) coverage, with adjustments based on estimated differences in covered populations, as determined by the ASD(HA).

(A) For calendar year 2005, the total annual premium for self-only coverage was \$3,214 and the total annual premium for self and family coverage was \$9,985. The member's portion of the annual premium for self-only coverage under TRICARE Reserve Select in Tier 1 was \$900 (\$75 monthly). The member's portion of the annual premium for self and family coverage under TRICARE Reserve Select in Tier 1 was \$2,796 (\$233 monthly).

(B) For calendar year 2006, the total annual premium for self-only coverage is \$3,487 and the total annual premium for self and family coverage is \$10,834 (rounded to the nearest dollar).

(1) In Tier 1, the member's portion is 28% of the annual premium. Self-only coverage is \$972 (\$81 monthly). Self and family coverage is \$3,036 (\$253 monthly).

(2) In Tier 2, the member's portion is 50% of the annual premium. Self-only coverage is \$1,743.48 (\$145.29 monthly). Self and family coverage is \$5,417.04 (\$451.42 monthly).

(3) In Tier 3, the member's portion is 85% of the annual premium. Self-only coverage is \$2,964.00 (\$247.00 monthly). Self and family coverage is \$9,208.92 (\$767.41 monthly).

(3) *Premium adjustments.* In addition to the determinations described in paragraph (b)(2)(i) 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 Reserve Select Program.

(c) *Eligibility for (qualifying to purchase) TRICARE Reserve Select coverage.* (1) General—The law authorizing the TRICARE Reserve Select program uses the term "eligibility" to identify conditions under which a Reserve component member may purchase coverage. For purposes of program administration, the terms "qualifying" or "qualified" shall generally be used in lieu of such terms as "eligibility" or "eligible" to refer to a Reserve component member who meets the program requirements allowing purchase of TRICARE Reserve Select coverage.

(2) Reserve component members who meet the qualifications defined in paragraphs (c)(2)(i), (c)(2)(ii), or (c)(2)(iii), and have their qualifications validated under procedures in paragraph (c)(2)(iv) of this section may purchase TRICARE Reserve Select coverage as defined in this section. The Reserve components of the Armed Forces have the responsibility to determine and validate a member's qualifications to purchase TRICARE



Reserve Select coverage and identify the premium tier for which the member qualifies.

(i) *Tier 1. (A) Members released from active duty on or before April 26, 2005.*

A member or former member of a Reserve component of the Armed Forces who was released from active duty on or before April 26, 2005, qualifies to purchase TRICARE Reserve Select coverage in Tier 1 if the member meets all of the following conditions:

(1) Was called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B);

(2) Served continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b)(2)(A);

(3) Was released from active duty on or before April 26, 2005;

(4) Executed a service agreement with his or her Reserve component to serve continuously in the Selected Reserve for a period of 1 or more years prior to purchasing TRICARE Reserve Select coverage, but no later than October 28, 2005; and

(5) Is in a Selected Reserve status on the first day of coverage for TRICARE Reserve Select and maintains continued membership in the Selected Reserve.

(B) *Members released from active duty after April 26, 2005.* A member released from active duty after April 26, 2005, who is a member of a Reserve component of the Armed Forces qualifies to purchase TRICARE Reserve Select coverage in Tier 1 if the member meets all of the following conditions:

(1) Is called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B);

(2) Serves continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b)(2)(A));

(3) Is released from active duty after April 26, 2005;

(4) Executed a service agreement with his or her Reserve component to serve continuously in the Selected Reserve for a period of 1 or more years on or before the date of release from active duty if released from active duty before January 6, 2006, or not later than 90 days after release from active duty if released from

active duty on or after January 6, 2006, except in the case of a member of the Individual Ready Reserve described in paragraph (c)(2)(i)(B)(5) of this section, with the effective date of the Service agreement coinciding with the TRS coverage begin date; and

(5) If not already a member of the Selected Reserve, the member shall be in the Selected Reserve on the first day of coverage for TRICARE Reserve Select and shall maintain continued membership in the Selected Reserve. A member of the Individual Ready Reserve released from active duty on or after January 6, 2006, who is unable to find a position in the Selected Reserve and qualifies for TRICARE Reserve Select coverage, except for membership in the Selected Reserve, has one year from the expiration of the member's entitlements to care and benefits following a qualifying period of active duty to execute a service agreement with his or her Reserve component and become a member of the Selected Reserve. A member of the Selected Reserve released from active duty on or after January 6, 2006, who loses his or her position in the Selected Reserve before the end of the Transitional Assistance Management Program (TAMP) shall have one year from the expiration of TAMP period to execute a service agreement with his or her Reserve component and again become a member of the Selected Reserve.

(ii) *Tier 2.* A member who is a member of a Reserve component of the Armed Forces qualifies to purchase TRICARE Reserve Select coverage in Tier 2 if the member meets all of the following conditions:

(A) Executes a service agreement with his or her Reserve component to serve continuously in the Selected Reserve for a period of time that extends through the period of coverage;

(B) Maintains continued membership in the Selected Reserve; and

(C) Submits certification in accordance with procedures established by the Under Secretary of Defense for Personnel and Readiness that is appropriate to substantiate the Reserve component member's assertion that the member is one of the following:

(1) An eligible unemployment compensation recipient. This is a member who, with respect to any month, is determined eligible for any day of such month for unemployment compensation under State law (as defined in section 205(9) of the Federal-State Extended Unemployment Compensation Act of 1970), including Federal unemployment compensation laws administered through the State;

(2) An employee ineligible for health care benefits under an employer-sponsored health benefits plan. A Reserve component member shall be considered ineligible for health care benefits under an employer-sponsored health benefits plan only if the member is an employee and either:

(i) Is employed by an employer that does not offer a health benefits plan to anyone working for the employer; or

(ii) Is in a category of employees to which the member's employer does not offer a health benefits plan, if such category is designated by the employer based on hours, duties, employment agreement, or such other characteristic, other than membership in the Selected Reserve, as the regulations administering this section prescribe (such as part-time employees).

(3) *Self-employed.* A Reserve component member shall be considered to be self-employed if the income earned from such self-employment is the member's primary source of annual income, as reported to the IRS, other than service in the Selected Reserve.

(iii) *Tier 3.* A member who is a member of a Reserve component of the Armed Forces qualifies to purchase TRICARE Reserve Select coverage in Tier 3 if the member meets all of the following conditions:

(A) Executes a service agreement with his or her Reserve component to serve continuously in the Selected Reserve for a period of time that extends through the period of coverage;

(B) Maintains continued membership in the Selected Reserve; and

(C) Does not qualify under paragraphs (c)(2)(i) or (c)(2)(ii).

(iv) *Procedures validating qualifications for TRS coverage.* (A) The Reserve components are responsible for determining the member's Reserve category, details of potentially qualifying active duty periods, periods of obligation, and other military personnel matters that are pertinent to validating the member's qualifications and identification of the premium tier for which a member may purchase coverage. An executed service agreement does not guarantee Selected Reserve status for the full time period covered by the service agreement. Further, the member shall submit certification appropriate to substantiate the member's assertion of qualifying under paragraph (c)(2)(ii) of this section in accordance with procedures established by the Under Secretary of Defense for Personnel and Readiness.

(B) Documentation required to support the certifications referred to in paragraph (c)(2)(ii)(C) of this section includes supplementation covering the



full period of qualification. In the event that documentation fails to support qualification or continued qualification or the condition of qualification otherwise ceases to exist and the member fails to report such event to the TRICARE contractor servicing the member's coverage, the member's coverage under Tier 2 will terminate, effective on the date the required condition ceased to exist. In that case, the member's coverage will be in Tier 3 and the member will be responsible for the additional premiums required for Tier 3, effective from that date.

*(d) TRICARE Reserve Select enrollment procedures.*

(1) *Application procedures.* To purchase TRICARE Reserve Select coverage, qualified Reserve component members must complete and submit the applicable TRICARE enrollment application, along with an initial payment of the appropriate monthly premium share required by paragraph (b)(3) of this section to the appropriate TRICARE contractor in accordance with deadlines and other procedures established by the ASD(HA).

(i) *Tier 1.* For qualified members, the decision to purchase TRICARE Reserve Select coverage in Tier 1 is a one-time opportunity. If not purchased in a timely manner, if coverage is taken for a period less than the maximum period of qualification, or if coverage is terminated for any reason, coverage may not be initiated or extended later, nor may any period of qualification be saved to be used later. Members qualified under paragraph (c)(2)(i)(A) of this section are required to submit the required application and premium payment as soon as practicable after entering into a Service Agreement with their respective Reserve component. Members qualified under paragraph (c)(2)(i)(B) of this section are required to submit the required application and premium payment for receipt by the appropriate TRICARE contractor not later than 30 days before the last day of qualifying active duty or the last day of coverage under the Transition Assistance Management Program, whichever is later, unless the otherwise qualified member is a member of the Individual Ready Reserve at that time. In that case, the member shall submit the required application and premium payment as soon as practicable after entering into a Service Agreement with his or her respective Reserve component.

(ii) *Open Season for Tiers 2 and 3.* Open Season is the time period during which a member who qualifies for coverage under either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this

section may purchase new coverage, renew existing coverage with or without a change in type of coverage, or terminate coverage. One open season will be offered each year in accordance with procedures established by the ASD(HA). Before a member's coverage may be renewed, the service agreement must be valid through December 31st of the renewed year of coverage and all other qualifications under either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this section must be validated by the member's Reserve component. Actions requested during an open season will take effect January 1st of the year following the open season. Existing coverage that is not renewed will be terminated no later than December 31st of that year. A one-time special open season will be offered in 2006 for members to purchase coverage.

(iii) *New Selected Reservists.* Upon assignment to the Selected Reserves, members who qualify for coverage under either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this section may purchase coverage in accordance with deadlines and other procedures established by the ASD(HA).

(iv) *Qualifying Life Events.* TRS members may request certain changes to their TRS coverage in connection with certain events called qualifying life events in accordance with deadlines and other procedures established by the ASD(HA). The first type of qualifying life event is associated with changes in immediate family composition. The second type of qualifying life event is associated with changes in family employment or health coverage status. If a member who is covered under Tier 1 experiences a qualifying life event, the only action a member may request is a change in type of coverage. (The member may request termination of coverage at any time; however, the member will not be allowed to purchase coverage again under Tier 1, unless he or she qualifies again after the date of termination for Tier 1 coverage). If a member who is covered under either Tier 2 or Tier 3 experiences a qualifying life event, the member may apply to purchase coverage, request changes in type of coverage, or terminate coverage.

(2) *Type of coverage.* A member of a Reserve component who qualifies to purchase coverage under paragraph 272(c) of this section may elect self-only or self and family coverage. Immediate family members as defined in §§ 199.3(b)(2)(i) (except former spouses) and 199.3 (b)(2)(ii) of this part may be included in such family coverage.

(i) *Tier 1.* After purchasing coverage, members who qualified under

paragraph (c)(2)(i)(A) or (c)(2)(i)(B) of this section may change type of coverage only in conjunction with a qualifying life event described in paragraph (d)(1)(iv) of this section. The change will become effective in accordance with procedures established by the ASD(HA).

(ii) *Tiers 2 and 3.* After purchasing coverage, members who qualified under either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this section may change type of coverage either during an open season described in paragraph (d)(1)(ii) of this section or in conjunction with a qualifying life event described in paragraph (d)(1)(iv) of this section. The change will become effective in accordance with procedures established by the ASD(HA).

*(3) Period of coverage.*

(i) *Tier 1.* (A) The period of coverage for members who qualify under (c)(2)(i) of this section shall be equal to the lesser of—

(1) one year, in the case of a member who otherwise qualifies but does not serve continuously on active duty for 90 days because of an injury, illness, or disease incurred or aggravated while deployed;

(2) one year for each consecutive period of 90 days of continuous active duty described in paragraph (c)(2)(i)(A)(1) or (c)(2)(i)(B)(1); or

(3) the number of whole years for which the member agrees under paragraph (c)(2)(i)(A)(4) or (c)(2)(i)(B)(4) to continue to serve in the Selected Reserve after the coverage begins.

(B) The number of years established by the service agreement that was entered into prior to beginning coverage in TRICARE Reserve Select under paragraph (c)(2)(i)(A)(4) or (c)(2)(i)(B)(4) of this section may not later be changed, even if that number of years was fewer than the maximum number of years that the member could have established in the service agreement. The number of years of coverage may only be changed if the member is recalled to active duty and qualifies again for a new period of coverage under paragraph (c)(2)(i) of this section. When coverage is terminated for any reason, a member may not purchase coverage again under paragraph (c)(2)(i)(B) unless recalled to active duty and the member qualifies again for a new period of coverage under paragraph (c) of this section.

(C) The period of coverage for members who qualify under paragraph (c)(2)(i)(A) of this section begins on the date that is the later of the expiration of TAMP benefits under § 199.3(e) of this part or the effective date of the service agreement referred to in paragraph (c)(2)(i)(A)(4) of this section, but in no

case later than October 28, 2005. The period of coverage for members who qualify under (c)(2)(i)(B) of this section begins the later of the day after the last day of active duty; the day after the expiration of TAMP benefits under § 19(e) of this part; or the date that a member of the Individual Ready Reserve finds and occupies a position in the Selected Reserve, up to one year after either the last day of active duty or the expiration of TAMP benefits, whichever is later.

(D) If a member of the Selected Reserves dies while in a period of TRICARE Reserve Select coverage under Tier 1, the family member(s) may purchase new or continuing TRICARE Reserve Select coverage under Tier 1 for up to six months beyond the date of the member's death upon payment of monthly premiums. The premium amount payable shall be as determined in accordance with paragraph (b)(1)(i) of this section.

(ii) *Tiers 2 and 3.* The maximum duration for any period of coverage purchased by members who qualify for TRICARE Reserve Select under either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) is one year and will coincide with the calendar year. The period of coverage begins in accordance with procedures established by the ASD(HA) and ends December 31st of the same year in which the current period of coverage began.

(4) *Enrollment processing.* Following validation, upon receipt of a completed TRICARE Reserve Select application, along with an initial payment of the appropriate monthly premium share required by paragraph (b) of this section, the appropriate TRICARE contractor will process enrollment actions into DEERS in accordance with deadlines and other procedures established by the ASD(HA).

(5) *Termination.* Coverage will terminate whenever a member ceases to meet any of the qualifications for the particular tier under which coverage was purchased or a request for termination for Tier 1 coverage is received in accordance with procedures established by the ASD(HA). However, unless the member's Reserve component terminates the member's service in the Selected Reserve, the service agreement described in paragraph (c) of this section remains in force and the end date is unchanged. Termination of coverage for the member will result in termination of coverage for the member's family members in TRICARE Reserve Select, except as described in paragraphs (d)(3)(i)(D). The termination will become effective in accordance

with procedures established by the ASD(HA).

(i) *Tier 1.* Members whose coverage under Tier 1 terminates will not be allowed to purchase coverage again under Tier 1, unless the member qualifies again for Tier 1 coverage under (c)(2)(i)(B) of this section after the date of termination. However, the member may qualify for coverage under conditions identified either in paragraphs (c)(2)(ii) or (c)(2)(iii) of this section.

(A) Members who qualify under paragraph (c)(2)(i) of this section may request to terminate coverage at any time.

(B) Coverage shall terminate for members who no longer qualify for TRICARE Reserve Select as specified in paragraph (c) of this section, including when the member's service in the Selected Reserve terminates.

(C) Coverage may terminate for members who fail to make a premium payment in accordance with procedures established by the ASD(HA).

(D) Coverage for survivors as described in paragraph (d)(3)(i)(D) shall terminate six months after the date of death of the covered Reserve component member.

(ii) *Tiers 2 and 3.* (A) Members who qualify under either paragraph (c)(2) or paragraph (c)(3) in this section may request to terminate coverage only during an open season by notifying the appropriate TRICARE office.

(B) Coverage shall terminate for members who no longer qualify for TRICARE Reserve Select as specified under either paragraph (c)(2) or paragraph (c)(3) of this section, including when the member's service in the Selected Reserve terminates. However, members whose coverage under Tier 2 terminates may be able to purchase continued coverage under Tier 3 outside of open season if they qualify under paragraph (c)(2)(iii).

(C) Coverage may terminate for members who fail to make a premium payment in accordance with procedures established by the ASD(HA).

(D) During the month that a Reserve component member qualified for coverage under paragraph (c)(2)(ii) of this section ceases to qualify, the Reserve component member must submit a request to terminate coverage under Tier 2. Failure to do so will result with the member being retroactively enrolled in Tier 3 as of the date the member no longer qualified for Tier 2. Such member will be responsible for the payment of Tier 3 premiums.

(6) *Effect of Other TRICARE Benefits on TRICARE Reserve Select.* During any period in which members covered by

TRICARE Reserve Select receive full TRICARE medical benefits (except the certain special programs listed in paragraph (a)(5)(i)(B) of this section), no premium payments for TRICARE Reserve Select are due.

(i) *Tier 1.* (A) Before January 6, 2006, when a member who was covered by TRICARE Reserve Select under Tier 1 serves on active duty for a period of more than 30 days and either is released from active duty or whose TAMP benefits under § 199.3(e) of this part end before January 6, 2006, receives other TRICARE benefits; TRICARE Reserve Select coverage is superseded for the member and any covered family members, but the period of coverage continues to run and the end date of coverage remains unchanged. If applicable, such TRICARE coverage includes early TRICARE benefits based on delayed-effective-date orders under § 199.3(b)(5) of this part. If the original end date of TRICARE Reserve Select coverage has not been reached by the time the other TRICARE benefits terminate, TRICARE Reserve Select coverage will resume with the same type of coverage in effect on the date coverage was suspended. TRICARE Reserve Select coverage will continue until the original end date of coverage or until coverage is otherwise terminated. The service agreement in effect as described in paragraphs (c)(2)(i)(A)(4) or (c)(2)(i)(B)(4) of this section remains in force and the end date is unchanged. In addition, TRICARE Reserve Select coverage is also superseded by a new period of coverage established as a result of qualifying again under paragraph (c)(2)(1)(B) of this section.

(B) On or after January 6, 2006, when a member who was covered by TRICARE Reserve Select under Tier 1 serves on active duty for a period of more than 30 days and either is released from active duty or whose TAMP benefits under § 199.3(e) of this part end on or after January 6, 2006, receives other TRICARE benefits; TRICARE Reserve Select coverage is suspended for the member and any covered family members. If such coverage was in effect on January 6, 2006, the effective date of the suspension is January 6, 2006. If applicable, such TRICARE coverage includes early TRICARE coverage based on delayed-effective-date orders under § 199.3(b)(5) of this part and TAMP benefits under § 199.3(e) of this part. The end date of the TRICARE Reserve Select period of coverage will be extended for a period of time equal to the period of time that TRS coverage was suspended. TRICARE Reserve Select coverage will continue until the

adjusted end date, or until coverage is otherwise terminated. The service agreement in effect as described in paragraphs (c)(2)(i)(A)(4) or (c)(2)(i)(B)(4) of this section remains in force and the end date is unchanged. In addition, the end date of the TRICARE Reserve Select period of coverage will be extended for a period of time equal to any new period of coverage established as a result of qualifying again under paragraph (c)(2)(i)(B) of this section.

(ii) *Tiers 2 and 3.* When a member covered by TRICARE Reserve Select under either Tier 2 or Tier 3 receives other TRICARE coverage, TRICARE Reserve Select coverage is superseded for the member and any covered family members, but the period of coverage continues to run and the end date of coverage remains unchanged. The service agreement described in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section remains in force and the end date remains unchanged.

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

(e) *Relationship to Continued Health Care Benefits Program.* Coverage under TRICARE Reserve Select counts as coverage under a health benefit plan for purposes of individuals qualifying for the Continued Health Care Benefits Program (CHCBP) under § 199.20(d)(1)(ii)(B) or § 199.2(d)(1)(iii)(B) of this part.

(1) *Tier 1.* If at the time a member who qualifies under (c)(2)(i) of this section purchases coverage in TRICARE Reserve Select, or resumes TRICARE Reserve Select coverage after a period in which coverage was superseded under paragraph (d)(6)(i)(A) or suspended under paragraph (d)(6)(i)(B) of this section, the member was also eligible to enroll in the Continued Health Care Benefits Program (CHCBP) under § 199.20(d)(1)(i) of this part (except to the extent eligibility in CHCBP was affected by enrollment in TRICARE Reserve Select), enrollment in TRICARE Reserve Select will be deemed to also constitute preliminary enrollment in CHCBP. If for any reason the member's coverage under TRICARE Reserve Select terminates before the date that is 18 months after discharge or release from the most recent period of active duty upon which CHCBP eligibility was based, the member or the member's family members eligible to be included

in CHCBP coverage may, within 30 days of the effective date of the termination of TRICARE Reserve Select coverage, begin CHCBP coverage by following the applicable procedures to purchase CHCBP coverage. The period of coverage will be as provided in 199.20(d)(6) of the part.

(2) *Tiers 2 and 3.* Coverage for TRICARE Reserve Select under either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this section has no effect on eligibility for the CHCBP.

(f) *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 Reserve Select. 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 Reserve Select. (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 Reserve Select).

(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 applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(g) *Administration.* The ASD(HA) may establish other rules and procedures for the effective administration of TRICARE Reserve Select, and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

Dated: June 13, 2006.

**L.M. Bynum,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Charleston 06-112]

RIN 1625-AA00

#### Fireworks Safety Zone; Skull Creek, Hilton Head, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone extending from a radius of 1000 feet around the barge located in Skull Creek, Hilton Head, South Carolina in (32°13.95' N 080°45.1' W). This regulation is necessary to protect life and property on the navigable waters of Skull Creek due to possible danger associated with fireworks. No vessel or person may enter the safety zone without permission of the Captain of the Port Charleston.

**DATES:** The rule is effective from 6 p.m. on July 4, 2006 until 12:01 a.m. on July 5, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [COTP Charleston 06-112] and are available for inspection or copying at Coast Guard Sector Charleston (WWM), 196 Tradd Street, Charleston, South Carolina 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.