

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 26, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97-8789 Filed 4-4-97; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Nonavailability Statement Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises certain requirements and procedures for the TRICARE Program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this proposed rule include priority for access to care in military treatment facilities and requirements for payment of enrollment fees. This proposed rule also includes provisions revising the requirement that certain beneficiaries obtain a non-availability statement from a military treatment facility commander prior to receiving certain health care services from civilian providers.

DATES: Comments must be received on or before June 6, 1997.

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

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695-3350.

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

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Congressional Action

Section 712 of the National Defense Authorization Act for Fiscal Year 1996 revised 10 U.S.C. 1097(c), regarding the role of military medical treatment facilities in managed care initiatives, including TRICARE. Prior to the revision, section 1097(c) read in part, "However, the Secretary may, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section." The Authorization Act provision replaced "may" with "shall", which has the effect of directing priority access for TRICARE Prime enrollees over persons not enrolled.

Another statutory provision relating to access priority is 10 U.S.C. 1076(a), which establishes a special priority for survivors of sponsors who died on active duty: they are given the same priority as family members of active duty members. This special access priority is not time-limited, as is the special one-year cost sharing protection given to this category under 10 U.S.C. 1079.

The National Defense Authorization Act for FY 1997, section 734 amended 10 U.S.C. 1080 to establish certain exceptions to requirements for nonavailability statements in connection with payment of claims for civilian health care services. First, the Act eliminates authority for nonavailability statements for outpatient services; NASs have been required for a limited number of outpatient procedures over the past several years. Second, the Act eliminates authority for NAS requirements for enrollees in managed care plans, which has the effect of eliminating NAS requirements for TRICARE Prime enrollees. Finally, the Act gives the Secretary authority to waive NAS requirements based on an

evaluation of the effectiveness of NAS in optimizing use of military facilities.

The National Defense Authorization Act for FY 1996, section 713 requires that enrollees in TRICARE Prime be permitted to pay applicable enrollment fees on a quarterly basis, and prohibits imposition of an administrative fee related to the quarterly payment option.

B. Provisions of the Proposed Rule

1. Access Priority (proposed revisions to section 199.17(d)). This paragraph explains that in regions where TRICARE is implemented, the order of access priority for services in military treatment facilities is as follows: (1) active duty service members; (2) family members of active duty service members enrolled in TRICARE Prime; (3) retirees, their family members and survivors enrolled in TRICARE Prime; (4) family members of active duty service members who are not enrolled in TRICARE Prime; and (5) all others based on current access priorities. For purposes of access priority, but not for cost sharing, survivors of sponsors who died on active duty are to be given the same priority as family members of active duty service members. This means that if they are enrolled in TRICARE Prime, they have the same access priority as family members of active duty service members, or if not enrolled in TRICARE Prime, they have the same access priority for military treatment facility care as family members of active duty service members who are not enrolled in TRICARE Prime.

The proposed rule also includes a provision explaining that enrollment status does not affect access priority for some groups and circumstances. This provision would allow the commander of a military medical treatment facility to designate for priority access certain individuals, for specific episodes of health care treatment. Such individuals may include Secretarial designees, active duty family members from outside the MTF's service area, foreign military and their family members authorized care through international agreements, DoD civilians with authorizing conditions, individuals on the Temporary Disability Retired List, and Reserve and National Guard members. Additional exceptions may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is needed to provide a clinical case mix to support graduate medical education programs, upon approval by the Assistant Secretary of Defense (Health Affairs).

2. Enrollment Fees (proposed revisions to section 199.17(o) and 199.18(c)). These revisions would

eliminate the requirement for a TRICARE Prime enrollee to pay an additional maintenance fee of \$5.00 per installment for those TRICARE Prime enrollees who elect to pay their annual enrollment fee on a quarterly basis. Additionally, these revisions would permit waiver of enrollment fee collection for retirees, their family members, and survivors who are eligible for Medicare on the basis of disability. This group is eligible for TRICARE/CHAMPUS as a secondary payor if they are enrolled in Part B of Medicare, and pay the applicable monthly premium.

3. Nonavailability Statements (proposed revisions to section 199.4(a)). Revisions to this section modify our exiting requirements for beneficiaries to obtain nonavailability statements (NASs). The requirement for beneficiaries to obtain an NAS for selected outpatient procedures is eliminated. Beneficiaries who choose to obtain outpatient care, including ambulatory surgery, from civilian sources remain subject to current TRICARE/CHAMPUS cost sharing rules, but the requirement that the beneficiary obtain an NAS prior to TRICARE/CHAMPUS sharing in the civilian health care costs has been removed.

The requirement for beneficiaries enrolled in TRICARE Prime to obtain an NAS for inpatient care is also eliminated. TRICARE was designed so that the military treatment facility is the first source of specialty care, with TRICARE Prime enrollees having access priority before non-enrolled beneficiaries. In general, TRICARE Prime enrollees obtain care from civilian network providers only when the military treatment facility cannot provide the care because it does not have the capability, or because the enrollee cannot be seen within time frames required by TRICARE Prime access standards. Since the Health Care Finder must authorize all non-emergency specialty care obtained from civilian sources, the NAS requirement for this category of beneficiary is redundant.

Lastly, the revisions would eliminate the requirement that a non-enrolled beneficiary must obtain an NAS for inpatient hospital maternity care before TRICARE/CHAMPUS shares in any costs for related outpatient maternity care. Some diagnostic tests, procedures, or consultations from civilian sources may be required during a course of maternity care and this allows TRICARE/CHAMPUS to share in the costs of the civilian care without requiring the beneficiary to obtain all maternity related care in a civilian setting.

4. Revisions to the Uniform HMO Benefit. We are contemplating minor changes in the copayment structure of the Uniform HMO Benefit, which is used in TRICARE Prime. The proposed rule includes two revisions, which would eliminate copayments for preventive services and for ancillary services. Current provisions include copayments for ancillary services unless they are provided as part of an office visit. This has resulted in multiple copayments in cases where beneficiaries are sent to multiple sites for diagnostic testing pursuant to a visit, which we regard as unfair.

Suggestions for additional minor changes to the Uniform HMO benefit will be considered. We will need to maintain compliance with the statutory requirements of overall budget neutrality and for reduced beneficiary out-of-pocket costs.

5. Other provisions. The proposed rule also includes new provisions regarding two issues. The first is the inapplicability of the TRICARE Prime annual catastrophic cap to out-of-pocket costs incurred under the TRICARE Prime point-of-service option. This is at section 199.18(f)(2). Also, a restatement of current policy, at section 199.17(a)(7), records DoD interpretation of two statutory provisions preempting state laws in connection with TRICARE contracts.

C. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effort on the economy of \$100 million or more, or 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 is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This proposed rule will impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 USC 3501-3511).

This is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues raised by public comments will be included with issuance of the final rule, anticipated approximately 60

days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel. Accordingly, 32 CFR Part 199 is proposed to be 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 proposed to be amended by revising the definition of "nonavailability statement" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Nonavailability statement. A certification by a commander (or a designee) of a Uniformed Services medical treatment facility, recorded on DEERS, generally for the reason that the needed medical care being requested by a non-TRICARE Prime enrolled beneficiary cannot be provided at the facility concerned because the necessary resources are not available in the time frame needed.

* * * * *

3. Section 199.4 is proposed to be amended by removing paragraphs (a)(9)(i)(C) and (a)(9)(v)(B) and the note following paragraph (a)(9)(vi), by redesignating paragraph (a)(9)(i)(D) as paragraph (a)(9)(i)(C) and paragraph (a)(9)(v)(A) as paragraph (a)(9)(v), and by revising paragraphs (a)(9) introductory text, (a)(9)(i)(B), and (a)(9)(ii) and by adding new paragraph (a)(10)(vi)(E) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) *Nonavailability statements within a 40-mile catchment area.* In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required inpatient medical care can be provided through a Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with nonemergency inpatient hospital care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that a NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under section 199.17(n)(3).

* * * * *

(ii) *Beneficiary responsibility.* A CHAMPUS beneficiary who is not enrolled in TRICARE Prime is responsible for securing information whether or not he or she resides in a geographic area that requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the Offices of the Army, Navy, and Air Force Surgeons General; or a representative of the TRICARE managed care support contractor's staff, or the Director, OCHAMPUS.

* * * * *

(10) * * *

(vi) * * *

(E) The beneficiary is enrolled in TRICARE Prime.

3. Section 199.17 is proposed to be amended by adding paragraph (a)(7) and revising paragraphs (d)(1) and (o)(3) to read as follows:

§ 199.17 TRICARE program.

(a) * * *

(7) *Preemption of State laws.* Pursuant to 10 U.S.C. 1103 and the fourth proviso of section 8025 of the Department of Defense Appropriations Act, 1994 (Pub. L. 103-139), any state or local law relating to a health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE regional contracts. 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 the TRICARE regional contracts. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE contractors to conform with requirements similar or identical to

requirements of State or local laws or regulations.)

* * * * *

(d) * * *

(1) *Military treatment facility (MTF) care.* (i) *In general.* All participants in Prime are eligible to receive care in military treatment facilities. Participants in Prime will be given priority for such care over other beneficiaries. Among the following beneficiary groups, access priority for care in military treatment facilities where TRICARE is implemented as follows: Active duty service members; active duty service members' dependents who are enrolled in TRICARE Prime; Retirees, their dependents and survivors who are enrolled in TRICARE Prime; Active duty service member's dependents who are not enrolled in TRICARE Prime; and Retirees, their dependents and survivors who are not enrolled in TRICARE Prime. For purposes of this paragraph (d)(1), survivors of members who died while on active duty are considered as among dependents of active duty service members.

(ii) *Special provisions.* Enrollment in Prime does not affect access priority for care in military treatment facilities for several miscellaneous beneficiary groups and special circumstances. These include Secretarial designees, NATO and other foreign military personnel and dependents authorized care through international agreements, civilian employees under workers' compensation programs or under safety programs, members on the Temporary Disability Retired List (for statutorily required periodic medical examinations), members of the reserve components not on active duty (for covered medical services), active duty dependents unable to enroll in Prime and temporarily away from place of residence, and other beneficiary groups as designated by the ASD(HA). Additional exceptions to the normal Prime enrollment priority access rules may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is necessary to provide an adequate clinical case mix to support graduate medical education programs or readiness-related medical skills sustainment activities, to the extent approved by the Assistant Secretary of Defense (Health Affairs).

* * * * *

(o) * * *

(3) *Quarterly installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in quarterly installments, each equal to one-fourth of the total amount. For any beneficiary paying his or her enrollment

fee in quarterly installments, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, OCHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year.

* * * * *

4. Section 199.18 is proposed to be amended by revising paragraphs (d)(2)(i) and (f), and by adding paragraph (c)(3), to read as follows:

§ 199.18 Uniform HMO benefit.

* * * * *

(c) * * *

(3) *Waiver of enrollment fee for certain beneficiaries.* The Assistant Secretary of Defense (Health Affairs) may waive the enrollment fee requirements of this section for beneficiaries described in 10 U.S.C. 1086(d)(2) (i.e., those who are eligible for Medicare on the basis of disability or end stage renal disease and who maintain enrollment in Part B of Medicare).

(d) * * *

(2) * * *

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: dependents of active duty members in pay grades E-1 through E-4; dependents of active duty members in pay grades of E-5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies family health services, home health care visits, eye examinations, and immunizations. It does not apply to ancillary health services or to preventive health services described in paragraph (b)(2) of this section.

* * * * *

(f) *Limit on out-of-pocket under the uniform HMO benefit.* (1) Total out-of-pocket costs per family of dependents of active duty members under the Uniform HMO Benefit may not exceed \$1,000 during the one-year enrollment period. Total out-of-pocket costs per family of retired members, dependents of retired members and survivors under the Uniform HMO Benefit may not exceed \$3,000 during the one-year enrollment period. For this purpose, out-of-pocket costs means all payments required of beneficiaries under paragraphs (c), (d), and (e) of this section. In any case in which a family reaches this limit, all remaining payments that would have been required of the beneficiary under

paragraphs (c), (d), and (e) of this section will be made by the program in which the Uniform HMO Benefit is in effect.

(2) The limits established by paragraph (f)(1) of this section do not apply to out-of-pocket costs incurred pursuant to paragraphs (m)(1)(i) or (m)(2)(i) of § 199.7 under the point-of-service option of TRICARE Prime.

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Dated: April 1, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-8611 Filed 4-4-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07-97-010]

RIN 2115-AE46

Special Local Regulations; Fort Myers Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the permanent special local regulations for the Fort Myers Beach Offshore Grand Prix. This event, previously scheduled to be held annually on the first Saturday and Sunday of June, will now be held annually during the third Saturday and Sunday of May, between 12 p.m. and 3 p.m. each day (Eastern Daylight Time). These amended regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before May 1, 1997.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group St. Petersburg, 600 8th Ave. SE., St. Petersburg, Florida 33701-5099, or may be delivered to the Operations Department at the same address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (813) 824-7533. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LTJG T.J. Stuhldreier, Coast Guard Group St. Petersburg, FL at (813) 824-7533.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The proposed regulations are needed to provide for the safety of life during

the Fort Myers Beach Offshore Grand Prix because of the permanent change in the date of the event. The event was previously held on the first Saturday and Sunday in June, but will now be held from 12 p.m. EDT to 3 p.m. EDT each day on the third Saturday and Sunday in May. There will be approximately 170 participants and spectator craft associated with the event, which will be held off Fort Myers Beach between Matanzas Pass and Big Carlos Pass. The resulting congestion of navigable channels on the third weekend in May, vice the first weekend in June, creates an extra or unusual hazard in the navigable waters.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07-97-010) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt should include stamped, self-addressed post cards or envelopes.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of