

have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 13, 1999.

D.L. Riffin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-27275 Filed 10-18-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Double Coverage; Third Party Recoveries

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 711 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 which allows the Secretary of Defense to authorize certain CHAMPUS/TRICARE claims to be paid, even though other health insurance may be primary payer, with authority to collect from the other health insurance (third-party payer) the CHAMPUS/TRICARE costs incurred on behalf of the beneficiary.

DATES: Public comments must be received by December 20, 1999.

ADDRESSES: Forward comments to: TRICARE Management Activity (TMA), Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011-9043.

FOR FURTHER INFORMATION CONTACT: Robert Shepherd, Office of General Counsel, TMA, (303) 676-3705.

SUPPLEMENTARY INFORMATION: This Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplements the availability of health care in military hospitals and clinics.

Statutory Authority

CHAMPUS/TRICARE is second pay to all other health insurance except, generally, Medicaid plans, based on authority of 10 U.S.C. 1079(j) and 1086(g). Under these provisions, CHAMPUS/TRICARE could not pay a benefit for a person covered by any other health insurance (i.e., health insurance, medical service, or health plan, including any plan offered by a third-party payer) to the extent the benefit was covered under the other plan. Therefore, payment of CHAMPUS/TRICARE claims were delayed pending payment by the other health insurance in order for CHAMPUS/TRICARE to be second payer on the claim. In certain situations (e.g., for example when a patient was injured in an automobile accident) delays in payment by the responsible third-party frequently resulted in the beneficiary being billed directly by providers of care or collection agencies. Under the provision enacted in 1998 by Congress as section 711 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105-261, CHAMPUS/TRICARE can now pay a claim when a third-party payer (as defined in the law) is involved and then seek recovery of the CHAMPUS/TRICARE costs from the third-party payer. When a beneficiary is covered by primary health insurance (not a third-party payer), the primary health insurance will continue to be first payer on a claim before CHAMPUS/TRICARE will pay.

Proposed Changes

This proposes a change to the CHAMPUS/TRICARE "double coverage" provisions authorizing payment of claims when a third-party payer is involved rather than delaying CHAMPUS/TRICARE payments pending payment by the third-party payer. In addition, this proposes a change to the CHAMPUS/TRICARE "third party recoveries" provisions incorporating the authority to collect from third-party payers the CHAMPUS/TRICARE costs for health care services incurred on behalf of the patient/beneficiary.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact

analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under EO 12866 and has been reviewed by the Office of Management and Budget. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. If, however, any program implemented under this rule causes such a burden to be imposed, approval therefore will be sought by the Office of Management and Budget in accordance with the Act, prior to implementation.

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 proposed to be amended by adding new definitions in alphabetical order:

§ 199.2 Definitions.

* * * * *

Automobile liability insurance. Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

- (1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and
- (2) Uninsured and underinsured coverage, in which there is a third party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis),

but the insured party is not the tortfeasor.

* * * * *

No-fault insurance. No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on who may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

* * * * *

Third-party payer. Third-party payer means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and a worker's compensation program or plan, and any other plan or program (e.g., homeowners insurance, etc.) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of "third-party payer," an insurance, medical service, or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

* * * * *

3. Section 199.8 is proposed to be amended by revising paragraphs (a), (c)(1), (d)(2), and (d)(3), redesignating paragraphs (b)(3), (c)(2) and (c)(3) as paragraphs (b)(4), (c)(4) and (c)(5), respectively, and adding new paragraphs (b)(3), (c)(2), and (c)(3) to read as follows:

§ 199.8 Double coverage.

(a) **Introduction.** (1) In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit, insurance and third-party payer plans. 10 U.S.C. 1079(j)(1) specifically provides:

A benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in 10 U.S.C. 1095(h)(1)) to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

(2) The above provision is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(g). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

* * * * *

(b) * * *

(3) **Third-party payer.** A third-party payer means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and workers' compensation program or plan, and any other plan or program (e.g., homeowners insurance, etc.) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of "third-party payer," an insurance, medical service or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

* * * * *

(c) * * *

(1) For any claim that involves a double coverage plan as defined in paragraph (b) of this section, CHAMPUS shall be last pay except as may be authorized by the Director, OCHAMPUS, pursuant to paragraph (c)(2) of this section. That is, CHAMPUS benefits may not be extended until all other double coverage plans have adjudicated the claim.

(2) The Director, OCHAMPUS, may authorize payment of a claim in advance of adjudication of the claim by a double coverage plan and recover, under § 199.12, the CHAMPUS costs of health care incurred on behalf of the covered beneficiary under the following conditions:

(i) The claim is submitted for health care services furnished to a covered beneficiary;

(ii) The claim is identified as involving services for which a third-party payer, other than a primary medical insurer, may be liable; and,

(iii) The authority to make payment in advance of adjudication and payment of the claim by the third-party payer is delegated to a CHAMPUS contractor under contractual terms in which the contractor assigns to the government

any rights to seek recovery from the third-party payer of health care costs incurred on behalf of the covered beneficiary.

(3) For purposes of paragraph (c)(2) of this section, a "primary medical insurer" is an insurance plan, medical service or health plan, or a third-party payer under this section, the primary or sole purpose of which is to provide or pay for health care services, supplies, or equipment. The term "primary medical insurer" does not include automobile liability insurance, no fault insurance, workers' compensation program or plan, homeowners insurance, or any other similar third-party payer as may be designated by the Director, OCHAMPUS, in any policy guidance or instructions issued in implementation of this part.

* * * * *

(d) * * *

(2) **CHAMPUS and Medicaid.**

Medicaid is not a double coverage plan except under the case management program as specified in § 199.4(i). With the exception of the case management program, in all other double coverage situations involving Medicaid, CHAMPUS is always the primary payer.

(3) **CHAMPUS and Workers' Compensation.** CHAMPUS benefits are not payable for a work-related illness or injury that is covered under a workers' compensation program. Pursuant to paragraph (c)(2) of this section, however, the Director, OCHAMPUS may authorize payment of a claim involving a work-related illness or injury covered under a workers' compensation program in advance of adjudication and payment of the workers' compensation claim and then recover, under § 199.12, the CHAMPUS costs of health care incurred on behalf of the covered beneficiary.

* * * * *

4. Section 199.12 is proposed to be revised to read as follows:

§ 199.12 Third party recoveries.

(a) **General.** This section deals with the right of the United States to recover from third parties the costs of medical care furnished to or paid on behalf of CHAMPUS beneficiaries. These third parties may be individuals or entities that are liable for tort damages to the injured CHAMPUS beneficiary or a liability insurance carrier covering the individual or entity. These third parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation program or other source of primary payment.

(b) **Authority.**

(1) *Third-party payers.* This part implements the provisions of 10 U.S.C. 1095b which, in general, allow the Secretary of Defense to authorize certain CHAMPUS claims to be paid, even though a third-party payer may be primary payer, with authority to collect from the third-party payer the CHAMPUS costs incurred on behalf of the beneficiary. (See § 199.2 for definition of "third-party payer.") Therefore, 10 U.S.C. 1095b establishes the statutory obligation of third-party payers to reimburse the United States the costs incurred on behalf of CHAMPUS beneficiaries who are also covered by the third-party payer's plan.

(2) *Federal Medical Care Recovery Act.*

(i) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095b and the Federal Medical Care Recovery Act (FMCRA), Pub. L. 87-693 (42 U.S.C. 2651 *et seq.*). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(ii) *Cases involving tort liability.* In cases in which the right of the United States to collect from an automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095b. All other matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095b and this part.

(c) *Appealability.* This section describes the procedures to be followed in the assertion and collection of third party recovery claims in favor of the United States arising from the operation of CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.10 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have

been denied and in which there is a significant factual dispute. For example, a CHAMPUS contractor may deny payment for services that are determined to be excluded as CHAMPUS benefits because they are found to be not medically necessary. In that event the CHAMPUS contractor will offer an administrative appeal as provided in § 199.10 on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under § 199.10.

(d) *Statutory obligation of third-party payer to pay.*

(1) *Basic rule.* Pursuant to 10 U.S.C. 1095b, when the Secretary of Defense authorizes certain CHAMPUS claims to be paid, even though a third-party payer may be primary payer (as specified under § 199.8(c)(2)), the right to collect from a third-party payer the CHAMPUS costs incurred on behalf of the beneficiary is the same as exists for the United States to collect from third party payers the cost of care provided by a facility of the uniformed services under 10 U.S.C. 1095 and part 220 of this title. Therefore the obligation of a third-party payer to pay is to the same extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third-party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(2) *Application of cost shares.* If the third-party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third-party payer is the cost of care incurred on behalf of the beneficiary less the appropriate deductible or copayment amount.

(3) *Claim from the United States exclusive.* The only way for a third-party payer to satisfy its obligation under 10 U.S.C. 1095b is to pay the United States or authorized representative of the United States. Payment by a third-party payer to the beneficiary does not satisfy 10 U.S.C. 1095b.

(4) *Assignment of benefits not necessary.* The obligation of the third-party payer to pay is not dependent upon the beneficiary executing an assignment of benefits to the United States.

(e) *Exclusions impermissible.*

(1) *Statutory requirement.* With the same right to collect from third-party payers as exists under 10 U.S.C. 1095(b), no provision of any third-party payer's plan having the effect of excluding from coverage or limiting payment for certain care if that care is provided or paid by the United States shall operate to prevent collection by the United States.

(2) *Regulatory application.* No provision of any third-party payer's plan or program purporting to have the effect of excluding or limiting payment for certain care that would not be given such effect under the standards established in part 220 of this title to implement 10 U.S.C. 1095 shall operate to exclude or limit payment under 10 U.S.C. 1095b or this section.

(f) *Records available.* When requested, CHAMPUS contractors or other representatives of the United States shall make available to representatives of any third-party payer from which the United States seeks payment under 10 U.S.C. 1095b, for inspection and review, appropriate health care records (or copies of such records) of individuals for whose care payment is sought.

Appropriate records which will be made available are records which document that the CHAMPUS costs incurred on behalf of beneficiaries which are the subject of the claims for payment under 10 U.S.C. 1095b were incurred as claimed and the health care services were provided in a manner consistent with permissible terms and conditions of the third-party payer's plan. This is the sole purpose for which patient care records will be made available. Records not needed for this purpose will not be made available.

(g) *Remedies.* Pursuant to 10 U.S.C. 1095b, when the Director, OCHAMPUS, authorizes certain CHAMPUS claims to be paid, even though a third-party payer may be primary payer, the right to collect from a third-party payer the CHAMPUS costs incurred on behalf of the beneficiary is the same as exists for the United States to collect from third party payers the cost of care provided by a facility of the uniformed services under 10 U.S.C. 1095.

(1) This includes the authority under 10 U.S.C. 1095(e)(1) for the United States to institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under 10 U.S.C. 1095b and this section.

(2) This also includes the authority under 10 U.S.C. 1095(e)(2) for an authorized representative of the United States to compromise, settle or waive a claim of the United States under 10 U.S.C. 1095b and this section.

(3) The authorities provided by the Federal Claims Collection Act of 1966,

as amended (31 U.S.C. 3701 *et seq.*), and any implementing regulations (including 32 CFR part 199.11) regarding collection of indebtedness due the United States shall also be available to effect collections pursuant to 10 U.S.C. 1095b and this section.

(h) *Obligations of beneficiaries.* To insure the expeditious and efficient processing of third-party payer claims, any person furnished care and treatment under CHAMPUS, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

(1) To provide information regarding coverage by a third-party payer plan and/or the circumstances surrounding an injury to the patient as a condition precedent to the processing of a CHAMPUS claim involving possible third-party payer coverage.

(2) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person; and,

(3) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(i) *Responsibility for recovery.* The Director, OCHAMPUS, or a designee, is responsible for insuring that CHAMPUS claims arising under 10 U.S.C. 1095b and this section (including claims involving the FMCRA) are properly referred to and coordinated with designated claims authorities of the uniformed services who shall assert and recover CHAMPUS costs incurred on behalf of beneficiaries. Generally, claims arising under this section will be processed as follows:

(1) *Identification and referral.* In most cases where civilian providers provide medical care and payment for such care has been made by a CHAMPUS contractor, initial identification of potential third-party payers will be by the CHAMPUS contractor. In such cases, the CHAMPUS contractor is responsible for conducting a preliminary investigation and referring the case to designated appropriate claims authorities of the Uniformed Services.

(2) *Processing CHAMPUS claims.* When the CHAMPUS contractor initially identifies a claim as involving a potential third-party payer, it shall request additional information concerning the circumstances of the injury or disease and/or the identity of any potential third-party payer from the beneficiary or other responsible party unless adequate information is

submitted with the claim. The CHAMPUS claim will be suspended and no payment issued pending receipt of the requested information. If the requested information is not received, the claim will be denied. A CHAMPUS beneficiary may expedite the processing of his or her CHAMPUS claim by submitting appropriate information with the first claim for treatment of an accidental injury. Third-party payer information normally is required only once concerning any single accidental injury or episode of care. Once the third-party payer information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party payer information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(3) *Ascertaining total potential liability.* It is essential that the appropriate claims authority responsible for asserting the claim against the third-party payer receive from the CHAMPUS contractor a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by CHAMPUS for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible claims authority to secure from the CHAMPUS contractor updated information to insure that all amounts expended under CHAMPUS are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No CHAMPUS-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(j) *Reporting requirements.* Pursuant to 10 U.S.C. 1079a, all refunds and other amounts collected in the administration of CHAMPUS shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected. Therefore, the Department of Defense requires an annual report stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third-party payers (including FMCRA recoveries) arising from the operation of the CHAMPUS. To facilitate the preparation of this report and to maintain program

integrity, the following reporting requirements are established:

(1) *CHAMPUS contractors.* Each CHAMPUS contractor shall submit on or before January 31 of each year an annual report to the Director, OCHAMPUS, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar amount of cases of potential third-party payer/FMCRA liability referred to uniformed services claims authorities for further investigation and collection. These figures are to be itemized by the states and uniformed services to which the cases are referred.

(2) *Uniformed Services.* Each uniformed service will submit to the Director, OCHAMPUS, or designee, an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving CHAMPUS payments received from CHAMPUS contractors, the number and dollar amount of cases involving CHAMPUS payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third-party payers or under the FMCRA. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year.

(3) *Implementation of the reporting requirements.* The Director, OCHAMPUS, or a designee shall issue guidance for implementation of the reporting requirements prescribed by this section.

Dated: October 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-27060 Filed 10-18-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

[USCG-1998-4501]

Improvements to Marine Safety in Puget Sound-Area Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting and reopening comment period.

SUMMARY: The Coast Guard announces two identical meetings to describe the results of the cost-benefit analysis of potential rules that could improve