Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–HA–0007; 0720–AB21]

32 CFR Part 199

TRICARE; Reimbursement of Critical Access Hospitals (CAHs)

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule is being published to implement the statutory provision in 10 United States Code (U.S.C.) 1079(j)(2) that TRICARE payment methods for institutional care be determined to the extent practicable in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This proposed rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for services provided by critical access hospitals (CAHs).

DATES: Written comments received at the address indicated below by June 4, 2008 will be accepted.

ADDRESS: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Martha M. Maxey, TRICARE Management Activity, Medical Benefits and Reimbursement Systems, telephone (303) 676–3627.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Hospitals are authorized TRICARE institutional providers under 10 U.S. Code 1079(j)(2) and (4). Under 10 U.S.C. 1079(j)(2), the amount to be paid to hospitals, skilled nursing facilities (SNFs), and other institutional providers under TRICARE, ''shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.'' Under 32 CFR 199.14(a)(1)(ii)(D)(1) through (9) it specifically lists those hospitals that are exempt from the DRG-based payment system. CAHs are not listed as exempt, thereby making them subject to the DRG-based payment system. CAHs are not listed as excluded, because at the time this regulatory provision was written, CAHs were not a recognized entity.

Legislation enacted as part of the Balanced Budget Act (BBA) of 1997 authorized states to establish State Medicare Rural Hospital Flexibility Programs, under which certain facilities participating in Medicare could become CAHs. CAHs represent a separate provider type with their own Medicare conditions of participation as well as a separate payment method of 101 percent of reasonable costs. Since that time, a number of hospitals have taken the necessary steps to be designated as CAHs by the Centers for Medicare & Medicaid Services (CMS). The statutory authority requires TRICARE to apply the same reimbursement rules as apply to payments to providers of services of the same type under Medicare to the extent practicable. Therefore, if practicable, TRICARE has the requirement through the publication of a proposed and final rule to exempt critical access hospitals from the DRG-based payment system and adopt a reimbursement method similar to Medicare principles for these hospitals. Until now, we have not amended 32 CFR 199.14(a)(1)(ii)(D) to exempt CAHs from the DRG-based payment system as it was deemed impracticable to replicate CMS' reimbursement methodology for CAHs because of a lack of access to facility-specific cost data. CMS has data on the costs at each of the CAHs and has indicated that it would provide whatever data TMA needed on these costs reports.

Currently under TRICARE, with the exception of Alaska, CAHs are subject to the TRICARE DRG-based payment system for inpatient care. For outpatient care, CAHs are reimbursed based on billed charges for facility charges. In Alaska, under a demonstration project, CAHs are reimbursed under a method similar to Medicare principles. They are reimbursed the lesser of the billed charge or 101 percent of reasonable costs for inpatient and outpatient care. The 101 percent of reasonable costs is calculated by multiplying the billed charge of each claim by the hospital's cost-to-charge ratio, and then adding 1 percent to that amount. The demonstration project in Alaska is working well. There have been no complaints since the new reimbursement methodology was implemented and it has resolved access to care issues in that State. Based on the above statutory mandate, TRICARE is proposing to adopt this same reimbursement methodology for all CAHs.

II. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

Section 801 of Title 5, U.S.C., and Executive Order (E.O.) 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule; however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or

by the private sector, of $100 million or more in any one year.

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

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly affect a substantial number of small entities.

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

This rule will not impose any additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

Executive Order 13132, ''Federalism''

This proposed rule has been examined for its impact under E.O. 13132. It does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, dental health, health care, health insurance, individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is 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. Paragraph 199.2(b) is amended by adding a definition for CAHs and placing it in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

CAHs. A small facility that provides limited inpatient and outpatient hospital services primarily in rural areas and meets the applicable requirements established by § 199.6(b)(4)(xvi).

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3. Section 199.6 is amended by adding new paragraph (b)(4)(xvi).

§ 199.6 TRICARE-authorized providers.

* * * * *

(b) * * *

(4) * * *

(xvi) *CAHs.* CAHs must meet all conditions of participation under 42 CFR part 485.601–485.645 in relation to TRICARE beneficiaries in order to receive payment under the TRICARE program. If CAH provides inpatient psychiatric services or inpatient rehabilitation services in a distinct part unit, these distinct part units must meet the conditions of participation in 42 CFR part 485.647, with the exception of being paid under the inpatient prospective payment system for psychiatric facilities as specified in 42 CFR part 412.1(a)(2) or the inpatient prospective payment system for rehabilitation hospitals or rehabilitation units as specified in 42 CFR part section 412(a)(3).

* * * * *

4. Section 199.14 is amended by redesignating paragraphs (a)(3) through (a)(5) as (a)(4) through (a)(6); revising newly redesignated paragraph (a)(4) introductory text, paragraphs (a)(6)(xi) and (xii), and the first sentence of paragraph (d)(1); and adding new paragraphs (a)(1)(ii)(D)(*10*), (a)(3), and (a)(6)(xiii) to read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(1) * * *

(ii) * * *

(D) * * *

(*10*) *CAHs.* Any facility which has been designated and certified as CAH as contained in 42 CFR part 485.606.

* * * * *

(3) *Reimbursement for inpatient services provided by CAH.* Inpatient services provided by CAH, other than services provided in psychiatric and rehabilitation distinct part units, shall be reimbursed at the lesser of the billed charge or 101 percent of reasonable costs. This does not include any costs of physician services or other professional services provided to CAH inpatients. Inpatient services provided in psychiatric distinct part units would be subject to the CHAMPUS mental health per diem payment system. Inpatient services provided in rehabilitation distinct part units would be subject to billed charges or set rates.

(4) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS Diagnosis Related Group-based payment system, the CHAMPUS mental health per diem system, or the reasonable cost method for critical access hospitals, shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

* * * * *

(6) * * *

(xi) *Facility charges.* TRICARE payments for hospital outpatient facility charges that would include the overhead costs of providing the outpatient service, with the exception of critical access hospitals, would be paid as billed. For the definition of facility charge, see § 199.2(b).

(xii) *Ambulatory surgery services.* Hospital outpatient ambulatory surgery services, with the exception of CAHs, shall be paid in accordance with § 199.14(d).

(xiii) *Outpatient services provided by CAH.* Outpatient services provided by CAH, to include ambulatory surgery services, shall be reimbursed at the lesser of the billed charge or 101 percent of reasonable costs. This does not include any costs of physician services or other professional services provided to CAH outpatients.

* * * * *

(d) * * *

(1) *In general.* CHAMPUS pays institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in this paragraph, with the exception of ambulatory surgery procedures performed in CAHs, which are to be reimbursed in accordance with the provisions of paragraph (a)(6)(xiii) of this section. * * *

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Dated: April 28, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–9800 Filed 5–2–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0100]

RIN 1625–AA09

Drawbridge Operation Regulation; Wabash River, IL; Permanent Change to Operating Schedule

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes amending the regulation for the