

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DoD–2006–OS–0091; RIN 0720–AB00]

**32 CFR Part 199****TRICARE; Reserve and Guard Family Member Benefits****AGENCY:** Office of the Secretary, DoD.**ACTION:** Final rule.

**SUMMARY:** This final rule implements sections 704 and 705 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. These provisions apply to eligible family members who become eligible for TRICARE as a result of their Reserve Component (RC) sponsor (including those with delayed effective date orders up to 90 days) being called or ordered to active duty for more than 30 days in support of a federal/contingency operation and choose to participate in TRICARE Standard or Extra, rather than enroll in TRICARE Prime. The first provision gives the Secretary the authority to waive the annual TRICARE Standard (or Extra) deductible, which is set by law (10 U.S.C. 1079(b)) at \$150 per individual and \$300 per family (\$50/\$100 for families of members in pay grades E–4 and below). The second provision gives the Secretary the authority to increase TRICARE payments up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient cost share if not previously waived under the first provision, for covered inpatient and outpatient health services received from a provider that does not participate (accept assignment) with TRICARE. These provisions help ensure timely access to health care and maintain clinically appropriate continuity of health care to family members of Reservists and Guardsmen activated in support of a federal/contingency operation; limit the out-of-pocket health care expenses for those family members; and remove potential barriers to health care access by Guard and Reserve families.

**DATES:** *Effective Date:* August 12, 2008.**FOR FURTHER INFORMATION CONTACT:** Jody W. Donehoo, TRICARE Policy and Operations, TRICARE Management Activity, telephone (703) 681–0039.**SUPPLEMENTARY INFORMATION:****I. Introduction and Background**

A. On November 5, 2001, the Department of Defense (DoD) published notice of a nationwide TRICARE Demonstration Project (66 FR 55928–

55930). This demonstration was conducted under the authority of 10 U.S.C. 1092. In this demonstration project, DoD addressed unreasonable impediments to the continuity of health care encountered by certain family members of Reservists and National Guard called to active duty in support of a federal contingency operation for more than 30 days.

On November 12, 2003, DoD published a notice (68 FR 64087) to extend through October 31, 2004, the demonstration project which was scheduled to end on November 1, 2003.

On October 1, 2004, the DoD published another notice (69 FR 58895) extending the demonstration project, previously scheduled to end on October 31, 2004, to October 31, 2005.

On October 12, 2005, DoD published a notice (70 FR 59320) to extend the demonstration project, previously scheduled to end on October 31, 2005, to October 31, 2007.

On June 19, 2007, the Department published a notice (72 FR 33742) to extend the demonstration through October 31, 2008.

On April 18, 2008, the Department published a notice (73 FR 21120) to extend the demonstration through October 31, 2009.

The continued deployment of RC members in support of Operation Noble Eagle/Operation Enduring Freedom and Operation Iraqi Freedom warrants making permanent the Secretary's authority to exercise certain components of this demonstration project. Sections 704 and 705 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 provide DoD authority to make two components of the demonstration project permanent and amend section 1095d(a) and section 1079(h) of Title 10, United States Code, as appropriate. In accordance with these two statutory provisions, DoD is implementing this discretionary authority.

B. **Public Comments.** The proposed rule was published in the **Federal Register** on August 22, 2006 (71 FR 48864). We received no public comments. The final rule is consistent with the proposed rule, with the exception of two technical corrections. In the proposed rule, the family deductible for E–4s and below was stated as \$150. That amount is incorrect. Under 10 U.S.C. 1079(b)(3), the family deductible for dependents of E–4s and below is \$100. The correct amount is reflected in this final rule.

Also, in the proposed rule, the allowable charge authorized for non-participating providers was described incorrectly. The proposed rule used the

phrase “the lower of the billed amount or the applicable balance billing limit under paragraph (j)(1)(i)(C) of this section, less the applicable beneficiary cost share.” The correct phrase to describe the allowable charge authorized for non-participating providers is “the CMAC level as established in paragraph (j)(1)(i)(B) of this section plus any balance billing amount up to the balance billing limit as referred to in paragraph (j)(1)(i)(C) of this section.” This phrase, which is more consistent with the statutory language, is used in this final rule.

**II. Permanent Benefits Offered To Reserve Component Families**

A. *Waiver of deductible* (paragraph 199.4(f)(2)(i)(H)). Eligible family members of RC sponsors called or ordered to active duty for more than 30 days in support of a federal contingency operation, who choose to participate in TRICARE Standard, may not be responsible for paying the annual TRICARE Standard deductible. By law, the TRICARE Standard deductible for active duty family members is \$150 per individual, \$300 per family (\$50/\$100 for E–4s and below) each fiscal year. Exercise of the authority to waive this annual deductible appropriately limits out-of-pocket expenses for many Reserve and Guard family members, in consideration of the fact that many may have already paid annual deductibles under their civilian health plan.

B. *Increased payment to providers* (paragraph 199.14(j)). Executive authority contained in this program allows an increase in TRICARE payments up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient cost share if not previously waived under the first provision, for inpatient and outpatient care received from a provider that does not participate (accept assignment) under TRICARE. This helps Reserve and Guard family members to be able to continue to see civilian providers with whom they have established relations and promotes access and clinically appropriate continuity of care.

**III. Regulatory Procedures**

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that results in an annual effect on the economy of \$100 million or more. 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 has significant impact on a substantial number of small entities. This final rule does not have an annual effect on the economy of \$100 million or more. According to an independent government cost estimate, the annual cost for both of these provisions will be less than \$30 million.

This rule, however, does address a novel policy issue relating to waiving the deductibles for one category of family member beneficiaries and not others, as well as allowing providers who treat this same group of beneficiaries to receive reimbursement at a higher rate than providers who treat similar beneficiaries. Thus this rule has been reviewed by the Office of Management and Budget under E.O. 12866.

This rule will not have a significant impact on a substantial number of small entities for purposes of the RFA.

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.

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

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 have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

**List of Subjects in 32 CFR Part 199**

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

**PART 199—[AMENDED]**

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.4 is amended by revising paragraph (f)(2)(i)(H) to read as follows:

**§ 199.4 Basic program benefits.**

\* \* \* \* \*  
(f) \* \* \*

(2) \* \* \*  
(i) \* \* \*

(H) The Director, TRICARE Management Activity, may waive the annual individual or family fiscal year deductible for dependents of a Reserve Component member who is called or ordered to active duty for a period of more than 30 days or a National Guard member who is called or ordered to fulltime federal National Guard duty for a period of more than 30 days in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)). For purposes of this paragraph, a dependent is a lawful husband or wife of the member and a child is defined in paragraphs (b)(2)(ii)(A) through (F) and (b)(2)(ii)(H)(1), (2), and (4) of § 199.3.

\* \* \* \* \*

■ 3. Section 199.14 is amended by adding paragraph (j)(1)(i)(E) to read as follows:

**§ 199.14 Provider reimbursement methods.**

\* \* \* \* \*

(j) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(E) *Special rule for certain TRICARE Standard Beneficiaries.* In the case of dependent spouse or child, as defined in paragraphs (b)(2)(ii)(A) through (F) and (b)(2)(ii)(H)(1), (2), and (4) of § 199.3, of a Reserve Component member serving on active duty pursuant to a call or order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, the Director, TRICARE Management Activity, may authorize non-participating providers the allowable charge to be the CMAC level as established in paragraph (j)(1)(i)(B) of this section plus any balance billing amount up to the balance billing limit as referred to in paragraph (j)(1)(i)(C) of this section.

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Dated: August 6, 2008.

**Patricia L. Toppings,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 65**

[Docket No. FEMA–B–7797]

**Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.