

(2) Ensure that the Commanding Officer, Coast Guard Pay and Personnel Center:

(i) Implements procedures established by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and Chief, Office of Personnel and Training.

(ii) Considers whether the Servicemembers Civil Relief Act, as amended (50 U.S.C. Appendix, sections 501–591) has been complied with pursuant to 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Coast Guard manager for forms necessary to process involuntary allotments.

Dated: September 30, 2008.

**Patricia L. Toppings,**

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

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

[DoD–2008–HA–0035]

RIN 0720–AA69

**Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Voluntary Disenrollment From the TRICARE Retiree Dental Program (TRDP)**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 726 of the Floyd D. Spence National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2001, which amended 10 U.S.C. 1076c to allow for voluntary disenrollment from the TRICARE Retiree Dental Program (TRDP) in certain circumstances.

**DATES:** *Effective Date:* This rule is effective November 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Colonel Gary Martin, TMA, TRICARE Policy and Operations, telephone (703) 681–0039.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of Final Rule Provisions**

Section 726 of the Floyd D. Spence NDAA for FY 2001 (Pub. L. 106–398), amended 10 U.S.C. 1076c by directing the Department to allow an enrollee to the TRDP to disenroll at the beginning

of the prescribed enrollment period and to permit disenrollment thereafter under limited circumstances providing that the fiscal integrity of the dental program is not jeopardized. The amendment specifies the inclusion of the following circumstances: a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; assignment of Federal employment outside dental plan jurisdiction that prevents utilization of the plan’s benefits; a serious medical condition that prevents utilization of the plan’s benefits; and, severe financial hardship. The final rule expands the voluntary termination provision of the TRDP provided by the Department and originally contained in a final rule published in the **Federal Register** on January 30, 2002 (67 FR 4353). Under the statutory mandate for voluntary enrollment required by section 704 of the NDAA for FY 2000 (Pub. L. 106–65), that provision implemented a grace period in which a new enrollee could voluntarily disenroll during the first 30 days following the beginning date of coverage on the condition that no benefits had been used and, effectively, nullify the enrollment. It also designated the TRDP contractor as the authority for grace period disenrollment decisions.

This final rule provides another opportunity for voluntary disenrollment from the TRDP during the enrollment lock-in period that could occur upon an enrollee’s request without any penalty and is based on the extenuating circumstances specified in the Floyd D. Spence NDAA for FY 2001. The TRDP contractor continues as the authority for voluntary disenrollment decisions but only at the initial level. The final rule allows a process for enrollees to appeal to the TMA all adverse decisions made by the contractor in response to requests for voluntary disenrollment.

The final rule also makes administrative corrections.

**II. Review of Public Comments**

We published the proposed rule on January 30, 2002 (67 FR 4375) and provided a 60-day comment period. We received no public comments.

**III. Regulating Procedures**

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically 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. 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 rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements.

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 (Title 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 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 insurance, Individuals with disabilities, Military personnel.

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

**PART 199—[AMENDED]**

■ 1. The authority citation for 32 CFR part 199 continues to read as follows:

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

■ 2. Section 199.22 is amended by revising paragraph (b)(4); the first two sentences of paragraph (d)(1)(iv) introductory text; and paragraphs (d)(4)(ii), (d)(5)(ii), (e)(2) and (k) to read as follows:

**§ 199.22 TRICARE Retiree Dental Program (TRDP).**

\* \* \* \* \*

(b) \* \* \*

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Health Affairs) or designee, the TRDP is administered in a manner similar to the TRICARE Dental Program under § 199.13 of this part.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) Eligible dependents of a member described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section when the member is not enrolled in the program and the member meets at least one of the conditions in paragraphs (d)(1)(iv)(A) through (C) of this section. Already enrolled members must satisfy any remaining enrollment commitment prior to enrollment of dependents becoming effective under this paragraph, at which time the dependent-only enrollment will continue on a voluntary basis as specified in paragraph (d)(4) of this section. \* \* \*

\* \* \* \* \*

(4) \* \* \*

(ii) *Enrollment period for enhanced benefits.* The initial enrollment period for enhanced benefit coverage described in paragraph (f)(2) of this section shall be established by the Director, TMA, or designee, to be a period of not less than 12 months and not more than 24 months. The initial enrollment period shall be followed by renewal enrollment periods of up to 12 months as long as the enrollee chooses to continue enrollment and remains eligible. An enrollee who chooses not to continue enrollment upon completion of an enrollment period may re-enroll at any time. However, an enrollee who is disenrolled from the TRDP before completion of an initial or subsequent enrollment period for reasons other than those in paragraphs in (d)(5)(ii)(A) and (B) of this section shall incur a lockout period of 12 months before re-enrollment can occur. Former enrollees who re-enroll following a lockout period or following a period of disenrollment after completion of an enrollment period must comply with all provisions that apply to new enrollees, including a new enrollment commitment.

(5) \* \* \*

(ii) *Voluntary termination.* All enrollee requests for termination of TRDP coverage before the completion of an enrollment period shall be submitted to the TRDP contractor for determination of whether the enrollee qualifies to be disenrolled under paragraphs (d)(5)(ii)(A) or (B) of this section.

(A) *Enrollment grace period.* Regardless of the reason, TRDP coverage shall be cancelled, or otherwise terminated, upon request from an enrollee if the request is received by the TRDP contractor within 30 calendar days following the enrollment effective date and there has been no use of TRDP benefits under the enrollment during

that period. If such is the case, the enrollment is voided and all premium payments are refunded. However, use of benefits during this 30-day enrollment grace period constitutes acceptance by the enrollee of the enrollment and the enrollment period commitment. In this case, a request for termination of enrollment under paragraph (d)(5)(ii)(A) of this section will not be honored, and premiums will not be refunded.

(B) *Extenuating circumstances.* Under limited circumstances, TRDP enrollees shall be disenrolled by the contractor before the completion of an enrollment period commitment upon request by an enrollee if the enrollee submits written, factual documentation that independently verifies that one of the following extenuating circumstances occurred during the enrollment period. In general, the circumstances must be unforeseen and long-term and must have originated after the effective date of TRDP coverage.

(1) The enrollee is prevented by a serious medical condition from being able to utilize TRDP benefits,

(2) The enrollee would suffer severe financial hardship by continuing TRDP enrollment; or

(3) Any other circumstances which the Secretary considers appropriate.

(C) *Effective date of voluntary termination.* For cases determined to qualify for disenrollment under the grace period provisions in paragraph (d)(5)(ii)(A) of this section, enrollment is completely nullified effective from the beginning date of coverage. For cases determined to qualify for disenrollment under the extenuating circumstances provisions in paragraph (d)(5)(ii)(B) of this section, the effective date of disenrollment is the first of the month following the contractor's initial determination on the disenrollment request or the first of the month following the last use of TRDP benefits under the enrollment, whichever is later.

(D) *Appeal process for denied voluntary enrollment termination.* An enrollee has the right to appeal the contractor's determination that a disenrollment request does not qualify under paragraphs (d)(5)(ii)(A) or (B) of this section. The enrollee may appeal that determination by submitting a written appeal to the TMA, Office of Appeals and Hearings, with a copy of the contractor's determination notice and relevant documentation supporting the disenrollment request. This appeal must be received by TMA within 60 days of the date on the contractor's determination notice. The burden of proof is on the enrollee to establish affirmatively by substantial evidence

that the enrollee qualifies to be disenrolled under paragraphs (d)(5)(ii)(A) or (B) of this section. TMA will issue written notification to the enrollee and the contractor of its appeal determination within 60 days from the date of receipt of the appeal request. That determination is final.

\* \* \* \* \*

(e) \* \* \*

(2) *Effects of failure to make premium payments.* Failure to make premium payments will result in the enrollee's disenrollment from the TRDP and a lockout period of 12 months. Following this period of time, eligible individuals will be able to re-enroll.

\* \* \* \* \*

(k) *Appeal procedures.* All levels of appeal established by the contractor shall be exhausted prior to an appeal being filed with the TMA. Procedures comparable to those established for appeal of benefit determinations under § 199.10 of this part shall apply together with the procedures for appeal of voluntary disenrollment determinations described in paragraph (d)(5)(ii)(D) of this section.

\* \* \* \* \*

Dated: September 30, 2008.

**Patricia L. Toppings,***OSD Federal Register Liaison Officer,  
Department of Defense.*

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**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 212**

[DoD-2006-OS-0041; 0790-AI35]

**Procedures and Support for Non-Federal Entities Authorized To Operate on Department of Defense (DoD) Installations****AGENCY:** Department of Defense.**ACTION:** Final rule.

**SUMMARY:** This rule updates responsibilities and procedures to define and reestablish a framework for non-Federal entities (NFEs) (previously called "private organizations") authorized to operate on DoD installations. It requires the Heads of DoD Components to conduct periodic reviews of facilities, programs, services, and membership provisions of NFEs operating on DoD installations and authorizes installation commanders or higher authority to determine if an NFE detracts from DoD programs and to eliminate duplication. The rule also