

Dated: August 21, 2009.

**Patricia L. Toppings,**  
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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DoD-2009-HA-0095]

RIN 0720-AB33

#### TRICARE; Extended Care Health Option

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense is publishing this proposed rule to implement the requirements enacted by Congress in Section 732 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 which changes the limit of the Government's share of providing certain benefits under the Extended Care Health Option (ECHO) from \$2,500 per month to \$36,000 per year, and for other non-legislated changes to the ECHO.

**DATES:** Comments received at the address indicated below by October 30, 2009 will be accepted.

**ADDRESSES:** 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, Room 3C843 Pentagon, 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:**

Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3520.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1079 of title 10, United States Code (U.S.C.), as amended by Section 701(b) of the National Defense Authorization Act for Fiscal Year 2002 [Pub. L. 107-107], required the Department of Defense to establish a program of extended benefits for eligible dependents. That program, known as the Extended Care Health Option (ECHO), replaced the Program for Persons with Disabilities (PPPWD) and was implemented on September 1, 2005. The primary purpose of the ECHO is to provide eligible beneficiaries with benefits that are not available through the TRICARE Basic Program. The term "eligible beneficiary" means an individual who is a dependent of an Active Duty Service Member (ADSM) or is a Transitional Survivor of a deceased ADSM and who has a qualifying condition. Qualifying conditions include moderate or severe mental retardation, serious physical disability, or an extraordinary physical or psychological condition. The benefits available through the ECHO are intended to assist in the reduction of the disabling effects of an ECHO qualifying condition.

Section 1079(e)(3) and (4) authorized benefits, including training, rehabilitation, special education, assistive technology devices, institutional care in private, nonprofit, public, and State institutions and facilities and, if appropriate, transportation to and from such institutions and facilities in which the beneficiary is receiving institutional care.

Section 1079(f)(2) limited the Government's liability for benefits authorized by Section 1079(e) and (4) to \$2,500 per month and required that the beneficiary's sponsor be liable for any amount of the monthly total cost for those benefits that exceeded the Government's limit. Section 1079(e) also authorized the extended benefits program to provide additional benefits including diagnostic services, inpatient and outpatient care, comprehensive home health care, respite care, and other services and supplies as determined appropriate by the Secretary. However, Section 1079(f) did not limit the Government's liability for those additional benefits. By Final Rule published in the **Federal Register** on August 20, 2004, (69 FR 51559) the Department established that those additional benefits accrued to the \$2,500 per month limit.

Section 732 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 [Public Law 110-417]

(NDAA 2009) changed the limit of the Government's liability for benefits authorized under Section 1079(e)(3) and (4) from \$2,500 per month to \$36,000 per year, prorated as determined by the Secretary. This rule does not prorate the annual limit of Government liability. Section 732 does not affect other benefits authorized under Section 1079(e).

This proposed rule changes the Government's share of providing all benefits available through the Extended Care Health Option from \$2,500 per month to \$36,000 per fiscal year. This rule does not change the Government's liability for benefits provided by the ECHO Home Health Care (EHHC) benefit or the EHHC Respite Care benefit.

Additionally, Section 732 changed the sponsor's liability for costs exceeding the limit of the Government's liability from a per-month basis to a per-year basis; this rule includes that change.

The following additional changes contained in this rule are further discussed below: deletes references to the PFPWD, eliminates allocating the allowable cost of durable equipment authorized for purchase through the ECHO, clarifies the monthly reimbursement for benefits received through the ECHO Home Health Care (EHHC), and allows a waiver of the requirement to enroll in the sponsor's branch of Service Exceptional Family Member Program (EFMP) in order to register in the ECHO.

Active Duty Family Members who have a qualifying condition are eligible to receive benefits through the ECHO. Qualifying conditions include moderate or severe mental retardation, a serious physical disability, or an extraordinary physical or psychological condition such that the beneficiary is homebound. Serious physical disabilities include those conditions that preclude an individual from the unaided performance of at least one major life activity such as breathing, cognition, hearing, seeing, and age appropriate ability essential to bathing, dressing, eating, grooming, speaking, stair use, toilet use, transferring, and walking.

The ECHO, as the replacement for the PFPWD, has been fully implemented for several years; it is therefore appropriate to delete references in the regulations to the transition of the PFPWD to the ECHO.

Durable equipment, which is defined as a device or apparatus which does not qualify as "Durable Medical Equipment" under the TRICARE Basic Program but which is essential to the efficient arrest or reduction of the functional loss resulting from, or the

disabling effects of an ECHO-qualifying condition, is eligible for TRICARE coverage through the ECHO. Paragraph (g)(2) within § 199.5 provides for prorating the allowable amount for durable equipment over a calculated period of time. The method of proration resulted in the monthly benefit limit of \$2,500 being divided, at the ECHO-registered beneficiary's sponsor's discretion, at least equally between the allowable cost of purchasing ECHO-authorized durable equipment and the cost of other authorized ECHO benefits. As a result of Section 732 and the changes made in this rule, the allowable expense for durable equipment accrues to the maximum fiscal year Government limit of \$36,000. Therefore, proration of allowable durable equipment expense is no longer an appropriate option. As a result, the ECHO beneficiary's sponsor will have only one cost share liability for each authorized item of durable equipment purchased through the ECHO.

The ECHO Home Health Care benefit is limited on a fiscal year basis to the amount TRICARE would reimburse a Skilled Nursing Facility (SNF) if the beneficiary were a patient in the SNF. Paragraph (g)(4)(iii) of § 199.5 limits the maximum monthly Government reimbursement for the EHHC, including EHHC respite care, to no more than one-twelfth of the annual maximum Government cost share. Because the actual number of days in the month varies, the one-twelfth limit can be over or understated for a given month. This rule revises that requirement by taking into account the actual number of days in a month EHHC benefits are received.

As required by Section 1079(d)(1), eligible beneficiaries must register in the ECHO in order to receive ECHO benefits. Evidence of enrollment in the sponsor's branch of Service's EFMP is required in order to register in the ECHO. The Department recognizes there are circumstances when that requirement is not appropriate. This rule specifies when the EFMP enrollment requirement can be waived.

Except as specified herein, all other requirements of the ECHO remain as currently published.

### 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 proposed rule will not significantly affect a substantial number of small entities for purposes of the RFA.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

This rule will not impose significant 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 and 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

Extended benefits for disabled family members of Active Duty Service members, health care, 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 199.5 is amended by:
- Removing paragraphs (b)(4), (g)(2)(ii)(A) through (g)(2)(ii)(C)(2), and (g)(2)(ii)(E);
  - Redesignating paragraph (g)(2)(ii)(D) as (g)(2)(ii); and
  - Revising paragraphs (c)(6), (c)(7)(iii), (f)(3)(i), (g)(2)(i), newly redesignated paragraph (g)(2)(ii), (g)(4)(iii), (h)(2), (h)(3)(v)(A), and (j) to read as follows:

### § 199.5 TRICARE Extended Care Health Option (ECHO).

\* \* \* \* \*

(c) \* \* \*

(6) Transportation of an ECHO beneficiary receiving benefits under paragraph (c)(5), and a medical attendant when necessary to assure the beneficiary's safety, to or from a facility or institution to receive authorized ECHO services or items.

\* \* \* \* \*

(7) \* \* \*

(iii) The Government's cost-share incurred for these services accrues to the fiscal year benefit limit of \$36,000.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) *ECHO*. The total Government share of the cost of all ECHO benefits, except ECHO Home Health Care (EHHC) and EHHC respite care, provided in a given fiscal year to a beneficiary, may not exceed \$36,000 after application of the allowable payment methodology.

\* \* \* \* \*

(g) \* \* \*

(2) *Equipment*. (i) The TRICARE allowable amount for durable equipment shall be calculated in the same manner as durable medical equipment allowable through Section 199.4, and accrues to the fiscal year benefit limit specified in paragraph (f)(3) of this section.

(ii) *Cost-share*. A cost-share, as provided by paragraph (f)(2) of this section, is required for each item of durable equipment that is authorized and purchased by the Director, TRICARE Management Activity or designee.

\* \* \* \* \*

(4) \* \* \*

(iii) The maximum monthly Government reimbursement for EHHC, including EHHC respite care, will be based on the actual number of hours of EHHC services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section and adjusted according to the actual number of days in the month the services were provided.

(h) \* \* \*

(2) *Registration.* Active Duty sponsors must register potential ECHO-eligible beneficiaries through the Director, TRICARE Management Activity, or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity, or designee will determine ECHO eligibility and update the Defense Enrollment Eligibility Reporting System (DEERS) accordingly. Unless waived by the Director, TRICARE Management Activity or designee, sponsors must provide evidence of enrollment in the Exceptional Family Member Program provided by their branch of Service at the time they register their family member(s) for the ECHO.

(3) \* \* \*

(v) *Public facility use.* (A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirements shall apply to beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate for beneficiaries receiving institutional care, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of public facility non-availability or inadequacy is limited to \$36,000 per fiscal year per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

\* \* \* \* \*

(j) *Effective date.* All changes to this section are effective as of October 14, 2008, and claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

\* \* \* \* \*

Dated: August 21, 2009.

**Patricia Toppings,**

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

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 146**

[EPA-HQ-OW-2008-0390; FRL-8951-3]

RIN 2040-AE98

**Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO<sub>2</sub>) Geologic Sequestration (GS) Wells; Notice of Data Availability and Request for Comment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Data availability; request for comment.

**SUMMARY:** Today's Notice supplements the proposed "Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO<sub>2</sub>) Geologic Sequestration (GS) Wells" of July 25, 2008, presents new data and information, and requests public comment on related issues that have evolved in response to comments on the original proposal. This Notice contains preliminary field data from the Department of Energy-sponsored Regional Carbon Sequestration Partnership projects, the results of GS-related studies conducted by the Lawrence Berkeley National Laboratory, and additional GS-related research. Today's Notice also discusses comments and presents an alternative the Agency is considering related to the proposed injection depth requirements for Class VI wells.

**DATES:** Comments on the contents of this NODA must be received on or before October 15, 2009. EPA does not plan to extend the comment period for this Notice. EPA will hold a public hearing from 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m., CDT, September 17, 2009 in Chicago, IL.

**ADDRESSES:** The public hearing will be held at the Ralph H. Metcalfe Federal Building, 77 W. Jackson Boulevard, Chicago, IL 60604. Due to capacity limitations, we encourage you to indicate your intent to participate through pre-registration. To pre-register, for directions, and for site specific information, please visit the following Web site: <http://gshearing.cadmusweb.com/>.

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2008-0390, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4101T,

1200 Pennsylvania Ave., NW.,  
Washington, DC 20460.

- *Hand Delivery:* Water Docket, EPA Docket Center (EPA/DC), Public Reading Room, Room 3334, EPA West, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation which are 8:30 a.m. to 4:30 p.m., and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OW-2008-0390. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. Contact EPA directly (see the **FOR FURTHER INFORMATION CONTACT** section) prior to submitting CBI. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at