DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2010–HA–0113]

RIN 0720–AB46

TRICARE: Changes Included in the National Defense Authorization Act for Fiscal Year 2010; Enhancement of Transitional Dental Care for Members of the Reserve Component on Active Duty for More Than 30 Days in Support of a Contingency Operation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement section 703 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10). Specifically, that legislation amends the transitional health care dental benefits for Reserve Component members on active duty for more than 30 days in support of a contingency operation. The legislation entitles these Reserve Component members to dental care in the same manner as a member of the uniformed services on active duty for more than 30 days, thus providing care to the Reserve member in both military dental treatment facilities and authorized private sector dental care. This final rule does not eliminate any medical or dental care that is currently covered as transitional health care for the member.

DATES: Effective January 27, 2012.

FOR FURTHER INFORMATION CONTACT: COL Jeffrey Chaffin, TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION: Section 703 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY10), Public Law 111–84, amends the transitional health care dental benefits for Reserve Component members on active duty for more than 30 days in support of a contingency operation. The legislation entitles these Reserve Component members to dental care in the same manner as a member of the uniformed services on active duty for more than 30 days, thus providing care to the Reserve member in both military dental treatment facilities and authorized private sector dental care. This final rule does not eliminate any medical or dental care that is currently covered as transitional health care for the member. However the member's dependents are not entitled to this enhanced benefit.

At present, the transitional health care dental benefits for Reserve Component members include space available care in military dental treatment facilities and eligibility for the TRICARE Dental Program (TDP). The implementation of section 703 of NDAA for FY10 will enhance the dental benefit to include space required care in military dental treatment facilities; military dental treatment facility referred care to the private sector; and authorized remote dental care in the private sector during the 180 day transitional health care period. Both dental treatment facility referred care and remote care will be administered by TRICARE's Active Duty Dental Program (ADDP). TDP eligibility will begin after the transitional health care period ends.

Reserve Component family members are also eligible for the TRICARE Dental Program (TDP). These family members pay 100% of the premiums while their sponsor is in Reserve status. If their sponsor is activated for more than 30 days, the TDP enrolled Reserve Component family members obtain the same benefits as any other TDP enrolled active duty family members with the Government subsidizing 60 percent of the premium cost for enrolled active duty family members. This change in status and subsidy occurs automatically. Upon the sponsor's deactivation, the family members automatically revert to Reserve Component family member TDP status and pay 100% of the TDP premium cost. With the final rule, there is no change to status or eligibility for family members.

I. Background

Currently, Reserve Component members who separate from active duty after serving for more than 30 days in support of a contingency operation are entitled to dental care under the transitional assistance medical program in the same manner as a dependent. This consists of only space-available dental care in a military dental treatment facility and is very limited.

This final rule amends the transitional health care dental benefit for Reserve Component members who were on active duty for more than 30 days in support of a contingency operation by providing those members' dental care is the same as that for a member of the uniformed services on active duty for more than 30 days. This enhanced benefit does not apply to member's dependents.

As mentioned, the transitional health care dental benefits for Reserve Component members include space available care in military dental treatment facilities. Additionally, Reserve Component members are eligible for the TRICARE Dental Program (TDP). The TDP provides comprehensive dental care insurance and requires premium and cost-share payments but includes an annual maximum per enrollee per contract year for non-orthodontic services. This means that the total payments for covered dental services (except orthodontic services) for each enrolled member will not exceed the annual maximum amount in any contract year. The Government subsidizes 60 percent of the premium cost for enrolled Reserve Component members. If activated for more than 30 days in support of a contingency operation, a TDP enrolled Reserve Component member is automatically disenrolled from the TDP and automatically re-enrolled upon deactivation.

Under the final rule, a TDP enrolled Reserve Component member activated for more than 30 days is still automatically disenrolled from the TDP; however, the Reserve Component member will not be automatically re-enrolled upon deactivation because the member will be entitled to the same dental benefits as an active duty member. The Reserve Component member will be TDP eligible and automatically re-enrolled in the TDP after the Transitional Health Care period is completed.

Reserve Component family members are also eligible for the TRICARE Dental Program (TDP). These family members pay 100% of the premiums while their sponsor is in Reserve status. If their sponsor is activated for more than 30 days, the TDP enrolled Reserve Component family members obtain the same benefits as any other TDP enrolled active duty family members with the Government subsidizing 60 percent of the premium cost for enrolled active duty family members. This change in status and subsidy occurs automatically. Upon the sponsor's deactivation, the family members automatically revert to Reserve Component family member TDP status and pay 100% of the TDP premium cost. With the final rule, there is no change to status or eligibility for family members.

II. Public Comments

The proposed rule was published in the **Federal Register** on January 13, 2011 (76 FR 2288) for a 60-day comment period. We received only two comments on the proposed rule. Both comments were supportive of the rule and the enhanced dental benefits offered. No changes have been made to the final rule as a result of these comments.

III. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''; Executive Order 13563, ''Improving Regulation and Regulatory Review''; and Regulatory Flexibility Act

Executive Orders 12866 and 12563 require 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 a 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.

Paperwork Reduction Act

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).

Unfunded Mandates

This rule does not contain unfunded mandates. It 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.

Federalism

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 care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 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. § 199.3 is amended by revising paragraph (e)(3) to read as follows:

§ 199.3 Eligibility.

* * * * *

(e) * * *

(3) TAMP benefits under TRICARE begin on the day after the member is separated from active duty, and, if such separation occurred on or after November 6, 2003, end 180 days after such date. TRICARE benefits available to both the member and eligible family members are generally those available to family members of members of the uniformed services under this Part. However, during TAMP eligibility, a member of a Reserve Component as described in paragraph (e)(1)(ii) of this section, is entitled to dental care to which a member of the uniformed services on active duty for more than 30 days is entitled. Each branch of service will determine eligibility for its members and eligible family members and provide data to DEERS.

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■ 3. § 199.13 is amended by revising paragraph (c)(3)(ii)(E)(*1*) to read as follows:

§ 199.13 TRICARE Dental Program.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) Changes in and termination of enrollment.

(*1*) *Changes in status of active duty, Selected Reserve or Individual Ready Reserve member.* When the active duty, Selected Reserve or Individual Ready Reserve member is separated, discharged, retired, transferred to the Standby or Retired Reserve, his or her enrolled dependents and/or the enrolled Selected Reserve or Individual Ready Reserve member loses eligibility and enrollment as of 11:59 p.m. on the last day of the month in which the change in status takes place. When the Selected Reserve or Individual Ready Reserve member is ordered to active duty for a period of more than 30 days without a break in service, the member loses eligibility and is disenrolled, if previously enrolled; however, their enrolled dependents maintain their eligibility and previous enrollment subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract.

(*i*) *Reserve component members separated from active duty in support of a contingency operation.* When a member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is for more than 30 days, the member becomes eligible for Transitional Health Care pursuant to 10 U.S.C. 1145(a) and the member is entitled to dental care to which a member of the uniformed services on active duty for more than 30 days is entitled. Thus the member has no requirement for the TDP and is not eligible to purchase the TDP. Upon the termination of Transitional Health Care eligibility, the member regains TDP eligibility and is reenrolled, if previously enrolled.

(*ii*) *Dependents of members separated from active duty in support of a contingency operation.* Dependents of a member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active for more than 30 days maintain their eligibility and previous enrollment, subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract. During the member's Transitional Health Care eligibility, the dependents are considered family members of Reserve Component members.

(*iii*) *Members separated from active duty and not covered by 10 U.S.C. 1145(a)(2)(B).* When the previously enrolled active duty member is transferred back to the Selected Reserve or Individual Ready Reserve, and is not covered by 10 U.S.C. 1145(a)(2)(B), without a break in service, the member regains TDP eligibility and is reenrolled; however, enrolled dependents maintain their eligibility and previous enrollment subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract.

(*iv*) Eligible dependents of an active duty, Selected Reserve or Individual Ready Reserve member serving a sentence of confinement in conjunction with a sentence of punitive discharge are still eligible for the TDP until such time as the active duty, Selected Reserve or Individual Ready Reserve member's discharge is executed.

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Dated: December 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2009–HA–0175]

RIN 0720–AB38

TRICARE; Elimination of Co-payments for Authorized Preventive Services for Certain TRICARE Standard Beneficiaries

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this final rule to implement section 711 of the National Defense Authorization Act (NDAA) for Fiscal Year 2009 (FY 2009), Public Law 110–417. Section 711 eliminates copayments for authorized preventive services for TRICARE Standard beneficiaries other than Medicare-eligible beneficiaries. This rule also realigns the covered preventive services listed in the Exclusions section of the regulation to the Special Benefits section in the regulation.

DATES: *Effective Date:* This final rule is effective January 27, 2012. *Applicability Date:* 32 CFR 199.4(f)(12) applies for dates of service on or after October 14, 2008, for preventive services listed in paragraph (e) (28) of this section.

FOR FURTHER INFORMATION CONTACT: Ann Fazzini, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676–3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1079(b) and 1086(b) of Title 10, United States Code (U.S.C.), as amended by Section 711 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110–417), required the Department of Defense to eliminate copayments for those authorized preventive services named in the law for TRICARE Standard beneficiaries other than Medicare-eligible beneficiaries.

This language requires all copayments to be eliminated for authorized preventive services for certain TRICARE Standard beneficiaries who would otherwise pay copayments and that certain TRICARE Standard beneficiaries pay nothing for the preventive services during a year even if the beneficiary has not paid the amount necessary to cover the beneficiary's deductible for the year. The language does not expand coverage of preventive services not otherwise authorized by law under the TRICARE preventive care benefit.

The proposed rule published in the **Federal Register** on September 27, 2010, (75 FR 59173) clarified and realigned the preventive services currently listed in the Exclusions section of the TRICARE regulation to the Special Benefits section in the regulation. This realignment does not remove from coverage any preventive services currently covered under the program nor does it create a new entitlement to preventive or other services not otherwise authorized in title 10, Chapter 55, United States Code. We performed this realignment because Title 32 Code of Federal Regulations (CFR) § 199.4(g), ''Exclusions and limitations,'' states in subparagraph (37) that preventive care is excluded, and then lists those services that are not excluded. We believe including covered preventive services in the Exclusions section created confusion for those seeking information about preventive services under the TRICARE program. A person seeking information about what preventive services are covered would most likely not look for that information in a section labeled ''Exclusions.'' We remedied this confusion by removing the list of covered preventive services from this section and placing the list in the ''Special Benefit Information'' section of 32 CFR 199.4(e). We also realigned those services currently in the ''Exclusions'' section that are not truly preventive but are more evaluative in nature in the ''Special Benefit Information'' section of 32 CFR 199.4(e) and added a definition of ''evaluative'' services in 32 CFR 199.2. However, based upon public comments received, we have removed the evaluative services definition and label from the Final Rule language, instead opting to simply list separately those covered benefits that while preventive in nature are authorized independently from the statutory lists of specifically authorized preventive services contained in Chapter 55 of title 10, United States Code. See Section III. Public Comments below.

II. Section 711 of the Duncan Hunter NDAA for FY 2009

Section 711 of the NDAA 2009 waives certain copayments for authorized preventive services for TRICARE Standard beneficiaries by amending subparagraphs 1079(b) and 1086(b) of Title 10, United States Code.

It is important to note that the language in Section 711 includes in the list of preventive services for which a cost share is not applicable an ''annual physical exam.'' By law, only well-child visits for beneficiaries under 6 years of age are covered, as are physical examinations for beneficiaries 6 years of age or older if conducted as part of health promotion and disease prevention visits when provided in connection with otherwise authorized immunizations and or cancer screenings, resulting in elimination of copayments for these specific physical examinations for TRICARE Standard beneficiaries. *See* Title 10, U.S.C. 1079(a)(2). Routine annual examinations, other than as described above, are not covered by the TRICARE program.

III. Public Comments

The proposed rule was published in the **Federal Register** (75 FR 59173) on September 27, 2010 for a 60-day public comment period. We received seven comments from six respondents on the proposed rule.

Five respondents expressed support of this rule change because it will provide better overall coverage for beneficiaries, will increase awareness of disease states and prevention, is a step toward healthier lifestyles and better health choices, and in the long run will save the government money. We agree, and are pleased to promulgate this rule.

One respondent stated agreement that a military beneficiary seeking information about what preventive services are covered would most likely not look for that information in a section labeled ''Exclusions.'' We agree and are pleased we are able to remedy this confusion.

Two respondents requested minimal changes to make the regulation better understood and to eliminate confusing verbiage. We appreciate the comments and believe that the new evaluative services category may have been misleading. Adding the new evaluative services language in 32 CFR 199.4, the ''Special Benefit Information'' section, may have had the unintended result of implying that we were expanding benefit coverage of preventive services beyond what was otherwise authorized by law or otherwise creating a new type