Dated: July 24, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA72

TRICARE Program; Waiver of Certain TRICARE Deductibles; Clarification of TRICARE Prime Enrollment Period; Enrollment in TRICARE Prime Remote for Active Duty Family Members

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: A proposed rule to implement section 714 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000 was published on April 18, 2002 (67 FR 19141) to authorize the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than one year. The proposed rule also established circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than one year. The proposed rule is withdrawn and instead is implemented along with section 702 of the NDAA for FY 2003, which establishes circumstances under which dependents of Reserve Component and National Guard members called to active duty in support of contingency operations may enroll in TRICARE Prime Remote for Active Duty Family Members, and dependents of TRICARE Prime Remote service members who are enrolled in TRICARE Prime Remote for Active Duty Family Members may remain enrolled when the service member receives orders for an unaccompanied follow-on assignment. This interim final rule authorizes the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than 1 year. It establishes circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than 1 year.

EFFECTIVE DATE: This interim final rule is effective September 29, 2003.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3572.

SUPPLEMENTARY INFORMATION:

I. Summary of Interim Final Rule Provisions

The reader should refer to the proposed rule that was published on April 18, 2002, (67 FR 19141) for more detailed information regarding these changes. This interim final rule describes the circumstances under which eligible dependents of active duty members, and eligible dependents of Reserve Component and National Guard members called to active duty in support of contingency operations may enroll in TRICARE Prime Remote for Active Duty Family Members. In addition, this interim rule describes the circumstances under which eligible dependents of TRICARE Prime Remote service members who are enrolled in the TRICARE Prime Remote for Active Duty Family Member program may remain enrolled when the service member receives a follow-on accompanied assignment and the dependents continue to reside in the TRICARE Prime Remote location.

Changes to the provisions for TRICARE Prime Remote for Active Duty Family Members (TPRADFM) are required by Section 702 of P.L. 107–314 (the NDAA for FY 2003). First, family members who are enrolled in TPRADFM may continue their enrollment when the member has relocated without the family members pursuant to orders for a permanent change of duty station, if the orders do not authorize dependents to accompany the member to the new duty station at the expense of the United States, and if the family members continue to reside at the same location at which they were enrolled in TPRADFM. Second, family members of a reserve component member ordered to active duty for a period of more than 30 days may enroll in TPRADFM if they reside with the member and if the residence is more than fifty (50) miles, or approximately one hour driving time, from the nearest military medical treatment facility adequate to provide the needed care.

The changes related to TPRADFM were not included in the original proposed rule, but, since they are statutorily required and also require a change to a paragraph of 32 CFR Part 199.17 that was being revised pursuant to the proposed rule, we are including all of the changes in this interim final rule.

II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments.

III. Changes in the Interim Final Rule

In both paragraph (f)(2)(i)(H) of Section 199.4 and paragraph (o)(2) of Section 199.17, we have clarified that these provisions apply only to members of the National Guard who are ordered to federal active duty under authority of the President and not to those members who are ordered to active duty under the authority of a governor of a state. In addition, in paragraph (f)(2)(i)(H) of Section 199.4, we have changed ''the Secretary of Defense, or a designee,'' to ''the Director, TRICARE Management Activity'' as the authority to waive the annual fiscal year deductible. This is only a wording change and not a substantive change, since the Secretary of Defense, through 32 CFR 199.1(c)(2) and 32 CFR part 367, has delegated authority to the Assistant Secretary of Defense (Health Affairs), who has delegated authority to the Director, TRICARE Management Activity, to provide policy guidance, management control, and coordination as required by CHAMPUS.

The proposed rule would have established in the regulation an administrative authority for Reservists and members of the National Guard who are called or ordered to active duty for a period of 179 days or more to enroll in TRICARE Prime. We are changing that provision in this interim final rule.

Reserve components (including both reservists and members of the National Guard) participate in military conflicts and peacekeeping missions in areas such as Bosnia, Kosovo, and southwest Asia, and assist in homeland security. The operational tempo following the events of September 11, 2001, showed a dramatic increase in the number of reservists activated for these requirements. These reservists receive varying levels of medical benefits according to their primary residence location, length of call up, and type of activation order. For example, the Department established a demonstration in order to ease the burden imposed on the large number of reserve component members who have been activated in response to September 11 under Operations Noble Eagle and Enduring Freedom (66 FR 55928). This demonstration which is called the TRICARE Reserve Family Member

Demonstration Project (TRFMDP) provides three enhancements to the TRICARE Standard benefit for their family members: the annual deductible was waived, the requirement to obtain a non-availability statement was waived, and TRICARE will pay up to fifteen percent above the TRICARE maximum allowable charge for services received from nonparticipating providers. However, the demonstration is due to expire on November 1, 2003, although large numbers of individuals continue to be activated. In addition, family members of reserve component members who are activated under other authorities do not receive these enhanced benefits.

In order to eliminate these discrepancies while continuing to provide some enhanced benefits to family members of activated reserve component members, the Department has authorized family members of activated reserve component members who live in military treatment facility catchment areas to enroll in TRICARE Prime if the member is activated for more than 30 days rather than for 179 days or more. A catchment area is established by zip codes, but is generally a home residence within 50 miles, or approximately one hour driving time, from the nearest military treatment facility adequate to provide care. This change accomplishes three goals. First, it provides family members of these activated reserve component members with substantially the same benefits available to family members of activated reserve component members under the TRFMDP. Second, it provides these family members with the same benefits available to family members who live outside catchment areas under the TPRADFM through the provisions of Section 702 of P.L. 107–314. Third, it ensures that the medical benefits available to family members of activated reservists are as similar as possible to those available to family members of active duty members.

This interim final rule establishes specific regulatory authority for this provision.

IV. Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any major rule. A ''major rule'' is defined as one that would result in the annual effect on the national economy of $100 million or more, or have other substantial impact. 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 regulations which would have a significant impact on a substantial number of small entities.

This interim final rule is not major rule under the Congressional Review Act. The changes set forth in this interim final rule are minor revisions to existing regulation. The changes made in this interim final rule involve an expansion of TRICARE benefits. In addition, this interim final rule will have minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866.

This interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

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 adding a new paragraph (f)(2)(i)(H) 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 but less than one year or a National guard member who is called or ordered to full-time federal National guard duty for a period of more than 30 days but less than one year, 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 as defined in paragraphs (b)(2)(ii)(A) through (F) and (b)(2)(ii)(H)(*1*), (*2*) and (*4*) of Part 199.3.

* * * * *

■ 3. Section 199.17 is amended by revising paragraphs (g)(3), (o) and (o)(2) as follows:

§ 199.17 TRICARE Program.

(g) * * *

(3) Eligibility.

(i) An active duty family member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and, on or after December 2, 2003 meets the criteria of either (g)(3)(i)(A) and (B), or (g)(3)(i)(C):

(A) The family member's active duty sponsor has been assigned permanent duty as a recruiter; as an instructor at an educational institution, an administrator of a program, or to provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps; as a full-time adviser to a unit of a reserve component; or any other permanent duty designated by the Director, TRICARE Management Activity that the Director determines is more than 50 miles, or approximately one hour driving time, from the nearest military treatment facility that is adequate to provide care.

(B) The family members and active duty sponsor, pursuant to the assignment of duty described in paragraph (g)(3)(i)(A) of this section, reside at a location designed by the Director, TRICARE Management Activity, that the Director determines is more than 50 miles, or approximately one hour driving time, from the nearest military medical treatment facility that is adequate to provide care.

(c) The family member, having resided together with the active duty sponsor while the sponsor served in an assignment described in (g)(3)(i)(A), continues to reside at the same location after the sponsor relocates without the family member pursuant to orders for a permanent change of duty station, and the orders do not authorize dependents to accompany the sponsor to the new duty station at the expense of the United States.

(ii) A family member who is a dependent of a reserve component member is eligible for TRICARE Prime Remote for Active Duty Family members if he or she is eligible for CHAMPUS and meets all of the following additional criteria:

(A) The reserve component member has been ordered to active duty for a period of more than 30 days.

(B) The family member resides with the member.

(C) The Director, TRICARE Management Activity, determines the residence of the reserve component member is more than 50 miles, or approximately one hour driving time, from the nearest military medical treatment facility that is adequate to provide care.

(D) ''Resides with'' is defined as the TRICARE Prime Remote residence

address at which the family resides with the activated reservist upon activation.

* * * * *

(o) TRICARE program enrollment procedures. There are certain requirements pertaining to procedures for enrollment in Prime and TRICARE Prime Remote for Active Duty Family Members. (These procedures do not apply to active duty members, whose enrollment is mandatory).

(1) * * *

(2) Enrollment period. The following provisions apply to enrollment periods on or after March 10, 2003.

(i) Beneficiaries who select the TRICARE Prime option or the TRICARE Prime Remote for Active Duty Family Members option remain enrolled for 12 months increments until: they take action to disenroll; they are no longer eligible for enrollment in TRICARE Prime or TRICARE Prime Remote for Active Duty Family Members; or they are disenrolled for failure to pay required enrollment fees if applicable. For those who remain eligible for TRICARE Prime enrollment, no later than 15 days before the expiration date of an enrollment, the sponsor will be sent a written notification of the pending expiration and renewal of the TRICARE Prime enrollment. TRICARE Prime enrollments shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined by the sponsor. Termination of enrollment for failure to pay enrollment fees is addressed in paragraph (o)(3) of this section.

(ii) Exceptions to the 12-month enrollment period.

(A) Beneficiaries who are eligible to enroll in TRICARE Prime but have less than one year of TRICARE eligibility remaining.

(B) The dependents of a reservist who is called or ordered to active duty or of a member of the National Guard who is called or ordered to full-time federal National Guard duty for a period of more than 30 days.

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Dated: July 24, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–105]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.515 during the 189th Defender's Day Celebration fireworks display to be held September 13, 2003, over the waters of the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATE: 33 CFR 100.515 is effective from 5:30 p.m. to 11 p.m. on September 13, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor the 189th Defender's Day Celebration fireworks display on September 13, 2003 over the waters of the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. A fleet of spectator vessels is expected to gather nearby to view the aerial display. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: July 22, 2003.

Sally Brice-O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–101]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the ''Point Pleasant OPA/NJ Offshore Grand Prix'', a marine event to be held on the waters of the Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule is effective from 9:30 a.m. to 3:30 p.m. on August 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–101 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable. The event will take place on August 15, 2003. There is not sufficient time to allow for a notice and comment period prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for