§ 71.42 [Amended]
From INT Chicago O'Hare, IL, 127° and Chicago Heights, IL, 358° radials; Chicago Heights; INT Chicago Heights 117° and Knox, IN, 276° radials; Knox; Webster Lake, IN; INT Webster Lake 097° and Flag City, OH, 289° radials; to Flag City.
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Edith V. Parish,
Manager, Airspace and Rules Group.

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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: Final rule.

SUMMARY: The Department of Defense is publishing this final 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: Effective Date: This rule is effective August 9, 2010 and applicable October 14, 2008, and all claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3520.

SUPPLEMENTAL 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 (NDAA) for Fiscal Year (FY) 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 (PFPWD) 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) authorizes 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)(3) 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 (FR) on August 20, 2004, (69 FR 51559) the Department established that those additional benefits accrued to the $2,500 per month liability limit.

Section 732 of the Duncan Hunter NDAA for FY 2009 [Pub. L. 110–147] (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 rule changes the Government’s share of providing all benefits available through the Extended Care Health Option.
Option from $2,500 per month to $36,000 per FY. 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 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 Sec. 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 FY 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 FY 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 Sec. 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.

II. Public Comments

We provided a 60-day public comment period following publication of the proposed rule in the Federal Register (74 FR 44800) on August 30, 2009. No comments were received. However, following additional Department review, Section 199.5(g)(2)(ii) was revised further to clarify the sponsor’s cost-share liability for benefits received under this section.

III. Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review”

Section 801 of Title 5, United States Code (U.S.C.), and Executive Order (E.O.) 12866 require 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.


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 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 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 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:
   a. Removing paragraphs (b)(4), (g)(2)(ii) introductory text through (g)(2)(ii)(C)(2), and (g)(2)(ii)(E);
§ 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 month in which equipment is purchased under this section. However, in no month shall a sponsor be required to pay more than one cost-share regardless of the number of benefits the sponsor’s dependents received under this section.

(j) Effective date. All changes to this section are effective as of October 14, 2009, for a 60-day comment period. We received one comment and we thank the person for commenting.