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TRICARE
MANAGEMENT ACTIVITY

MB&RB

**CHANGE 29
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(TMA VERSION)**

FINAL RULE

The Department of Defense, Office of the Secretary, has authorized the following addition(s)/revision(s) to 32 CFR Part 199, reissued April 2005.

CHANGE TITLE: TRICARE; RELATIONSHIP BETWEEN THE TRICARE PROGRAM AND EMPLOYER-SPONSORED GROUP HEALTH COVERAGE

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PAGE CHANGE(S): See page 2.

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prescription drug benefit must comply with Medicare Part D rules. The beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan before seeking CHAMPUS/TRICARE payment. CHAMPUS/TRICARE payment for such beneficiaries may not exceed that which would be payable for a beneficiary under paragraph (d)(1)(iii)(C) of this section.

(vii) Effect of other double coverage plans, including medigap plans. CHAMPUS is second payer to other third-party payers of health insurance, including Medicare supplemental plans.

(viii) Effect of employer-provided insurance. In the case of individuals with health insurance due to their current employment status, the employer insurance plan shall be first payer, Medicare shall be the second payer, and CHAMPUS shall be the tertiary payer.

(2) CHAMPUS and Medicaid. Medicaid is not a double coverage plan. In any double coverage situation involving Medicaid, CHAMPUS is always the primary payer.

(3) TRICARE and Workers' Compensation. TRICARE benefits are not payable for a work-related illness or injury that is covered under a workers' compensation program. Pursuant to paragraph (c)(2) of this section, however, the Director, TRICARE Management Activity, or a designee, may authorize payment of a claim involving a work-related illness or injury covered under a workers' compensation program in advance of adjudication and payment of the workers' compensation claim and then recover, under Sec. 199.12, the TRICARE costs of health care incurred on behalf of the covered beneficiary.

(4) Extended Care Health Option (ECHO). For those services or supplies that require use of public facilities, an ECHO eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, TRICARE Management Activity or designee to be available and adequate to meet a disability related need for which an ECHO benefit was requested. Benefits eligible for payment under a state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of ECHO benefits.

(5) Primary payer. The requirements of paragraph (d)(4) of this section notwithstanding, TRICARE is primary payer for services and items that are provided in accordance with the Individualized Family Service Plan as required by Part C of the Individuals with Disabilities Education Act and that are medically or psychologically necessary and otherwise allowable under the TRICARE Basic Program or the Extended Care Health Option.

(6) Prohibition against financial and other incentives not to enroll in a group health plan--(i) General rule. Under 10 U.S.C. 1097c, an employer or other entity is prohibited from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in, a group health plan that is or would be primary to TRICARE. This prohibition applies in the same manner as section 1862(b)(3)(C) of the Social Security Act applies to incentives for a Medicare-eligible employee not to enroll in a group health plan that is or would be primary to Medicare.

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(ii) Application of general rule. The prohibition in paragraph (d)(6)(i) of this section precludes offering to TRICARE beneficiaries an alternative to the employer primary plan unless:

(A) The beneficiary has primary coverage other than TRICARE; or

(B) The benefit is offered under a cafeteria plan under section 125 of the Internal Revenue Code and is offered to all similarly situated employees, including non-TRICARE eligible employees; or

(C) The benefit is offered under a cafeteria plan under section 125 of the Internal Revenue Code and, although offered only to TRICARE-eligible employees, the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support for the benefits under the cafeteria plan, and the employee's participation in the plan is completely voluntary.

(iii) Documentation. In the case of a benefit excluded by paragraph (d)(6)(ii)(C) of this section from the prohibition in paragraph (d)(6)(i) of this section, the exclusion is dependent on the employer maintaining in the employer's files a certification signed by the employer that the conditions described in paragraph (d)(6)(ii)(C) of this section are met, and, upon request of the Department of Defense, providing a copy of that certification to the Department of Defense.

(iv) Remedies and penalties. (A) Remedies for violation of this paragraph (d)(6) include but are not limited to remedies under the Federal Claims Collection Act, 31 U.S.C. 3701 et seq.

(B) Penalties for violation of this paragraph (d)(6) include a civil monetary penalty of up to \$5,000 for each violation. The provisions of section 1128A of the Social Security Act, 42 U.S.C. 1320a-7a, (other than subsections (a) and (b)) apply to the civil monetary penalty in the same manner as the provisions apply to a penalty or proceeding under section 1128A.

(v) Definitions. For the purposes of this paragraph (d)(6):

(A) The term "employer" includes any State or unit of local government and any employer that employs at least 20 employees.

(B) The term "group health plan" means a group health plan as that term is defined in section 5000(b)(1) of the Internal Revenue Code of 1986 without regard to section 5000(d) of the Internal Revenue Code of 1986.

(C) The term "similarly situated" means sharing common attributes, such as part-time employees, or other bona fide employment-based classifications consistent with the employer's usual business practice. (Internal Revenue Service regulations at 26 CFR 54.9802-1(d) may be used as a reference for this purpose). However, in no event shall eligibility for or entitlement to TRICARE (or ineligibility or non-entitlement to TRICARE) be considered a bona fide employment-based classification.

(D) The term "TRICARE-eligible employee" means a covered beneficiary under section

1086 of title 10, United States Code, Chapter 55, entitled to health care benefits under the TRICARE program.

(vi) Procedures. The Departments of Defense and Health and Human Services are authorized to enter into agreements to further carry out this section.

(e) Implementing instructions. The Director, OCHAMPUS, or a designee, shall issue such instructions, procedures, or guidelines, as necessary, to implement the intent of this section.

[51 FR 24008, Jul 1, 1986, as amended at 62 FR 35097, Jun 30, 1997; 62 FR 54384, Oct 20, 1997; 63 FR 59232, Nov 3, 1998; 64 FR 46141, Aug 24, 1999; 66 FR 40607, Aug 3, 2001; 67 FR 18827, Apr 17, 2002; 68 FR 6618, Feb 10, 2003; 68 FR 23032, Apr 30, 2003; 68 FR 32361, May 30, 2003; 69 FR 44952, Jul 28, 2004; 69 FR 51569, Aug 20, 2004; 74 FR 55775, Oct 29, 2009; 75 FR 18054, Apr 9, 2010]

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