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TRICARE
MANAGEMENT ACTIVITY

MB&RB

**CHANGE 124
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**PUBLICATIONS SYSTEM CHANGE TRANSMITTAL
FOR
TRICARE POLICY MANUAL (TPM), AUGUST 2002**

The TRICARE Management Activity has authorized the following addition(s)/revision(s).

**CHANGE TITLE: NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) 2007, SECTION 707 -
TRICARE AND EMPLOYER-SPONSORED GROUP HEALTH PLANS (GHPs)**

CONREQ: 15056

PAGE CHANGE(S): See page 2.

SUMMARY OF CHANGE(S): This change provides information that employers are prohibited by law from offering financial or other incentives to certain TRICARE-eligible beneficiaries to not enroll in employer-offered GHPs. This is to prevent employers from shifting responsibility for their employees onto the Federal taxpayers.

EFFECTIVE DATE: April 9, 2010.

IMPLEMENTATION DATE: Upon direction of the Contracting Officer.

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Chief, Medical Benefits and
Reimbursement Branch**

**ATTACHMENT(S): 6 PAGE(S)
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RELATIONSHIP BETWEEN TRICARE AND EMPLOYER-SPONSORED GROUP HEALTH PLANS (GHPs)

ISSUE DATE: July 22, 2010

AUTHORITY: Section 707 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Public Law 109-364), [32 CFR 199.8\(d\)\(6\)](#)

I. POLICY

A. By law, employers are prohibited from offering financial or other incentives to certain TRICARE-eligible employees to not enroll in employer-offered Group Health Plans (GHPs). The TRICARE prohibition applies in the same manner as employers are currently prohibited from offering incentives to Medicare-eligible employees under section 1862(b)(3)(C) of the Social Security Act (42 United States Code (USC) 1395y(b)(3)(C)). Many employers, including state and local governments, have begun to offer their employees who are TRICARE-eligible a TRICARE supplement as an incentive not to enroll in the employer's primary GHP. The purpose of the prohibition on incentives not to enroll in employer-sponsored GHPs is to prevent employers from shifting their responsibility for their employees onto the federal taxpayers.

B. For this prohibition, a TRICARE-eligible employee is a person who is eligible for TRICARE coverage under 10 USC Section 1086. This essentially applies to retirees and their family members and does not include dependents of active duty personnel.

C. The term "group health plan" means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

D. In general, employers must offer the same health insurance benefits under the same conditions to TRICARE eligibles that other employees receive. Certain common employer benefit programs do not constitute improper incentives under the law.

1. An employer-funded benefit offered through an employer's cafeteria plan would not be considered an improper incentive, as long as it is not a TRICARE exclusive benefit. (The cafeteria plan must comply with Section 125 of the Internal Revenue Code.) Employers who offer all similarly situated employees without regard to TRICARE eligibility a choice between health insurance and cash payment equivalents are not considered in violation of the prohibition. Therefore, if a TRICARE beneficiary elects a cash payment option as a benefit offered via the employer's cafeteria plan, then this is not a violation of these provisions.

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2. Health Reimbursement Arrangements (HRAs) are employer sponsored plans that are generally are classified as GHPs. Only employers can make contributions to HRAs. If the HRA is available to and can be used by all similarly situated employees (not limited to TRICARE beneficiaries), it does not violate this provision. Further, cash payments or other bona fide fringe benefits may properly be offered under the McNamara O'Hara Service Contract Act (SCA) and otherwise in lieu of health care coverage as long as the employer does not consider TRICARE eligibility when formulating the cash payment or fringe benefits options.

3. In general, the law prohibits employer-endorsed TRICARE supplemental plans as an option for health coverage under an employer-sponsored GHP to TRICARE-eligible beneficiaries. A TRICARE supplemental plan cannot be offered as part of a cafeteria plan because the employer, by endorsing this type of plan, effectively offers an improper incentive targeted only at TRICARE beneficiaries for not enrolling in the employer's main health plan option or options.

4. These provisions do not impact TRICARE supplemental plans that are not offered by an employer but are sold by an insurer and/or beneficiary association working in conjunction with an insurer. Such non-employer-sponsored TRICARE supplemental plans continue to be expressly excluded as double coverage under TRICARE (see the TRICARE Reimbursement Manual (TRM), [Chapter 4, Section 4](#)). TRICARE is the primary payer and the TRICARE supplemental plan is the secondary payer.

5. The prohibition on employer incentives does not include TRICARE supplemental plans when it is properly documented that 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 participation of the employee in the plan is completely voluntary.

6. The regulation requires documentation certifying the requirements for a non-contributory TRICARE supplemental plan is met in cases in which an employer provides that option, and that the certification will be provided upon request to the Department of Defense (DoD). In cases in which a question arises about a TRICARE supplemental plan offered by an employer, this documentation will provide a simple means to resolve that it was offered within the authorized exception to the general rule against TRICARE-exclusive benefits.

E. Enforcement of this prohibition is afforded through civil monetary penalties not to exceed \$5,000 for each violation, investigative authorities of the Department of Defense Inspector General (DoDIG), recourse under the Debt Collection Improvement Act, and any other authority provided by law.

II. DEFINITIONS

A. Employer. Includes any State or unit of local government and any employer that employs at least 20 employees.

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B. TRICARE-Eligible Employee. For the purpose of the relationship between TRICARE and employer-sponsored GHPs, it means a covered beneficiary under 10 USC Section 1086, essentially military retirees and their eligible family members.

C. Similarly Situated. Employees sharing common attributes, such as part-time employees, or other bona fide employment-based classifications consistent with the employer's usual business practice, but not including TRICARE eligibility as a permissible classification.

D. Cafeteria Plan. As defined by the Internal Revenue Code, 26 USC 125(d), is a written plan under which all participants are employees and the participants may choose among two or more benefits consisting of cash and qualified benefits.

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