

(c) *Charges for Healthcare services other than inpatient deductible amount.*

(1) The Assistant Secretary of Defense (Health Affairs) may establish charge amounts for Medicare supplemental plans to collect reasonable charges for inpatient and outpatient copayments and other services covered by the Medicare supplemental plan. Any such schedule of charge amounts shall:

(i) Be based on percentage amounts of the per diem, per visit and other rates established by § 220.8 comparable to the percentage amounts of beneficiary financial responsibility under Medicare for the service involved;

(ii) Include adjustments, as appropriate, to identify major components of the all inclusive per diem or per visit rates for which Medicare has special rules.

(iii) Provide for offsets and/or refunds to ensure that Medicare supplemental insurers are not required to pay a limited benefit more than one time in cases in which beneficiaries receive similar services from both a facility of the uniformed services and a Medicare certified provider; and

(iv) Otherwise conform with the requirements of this section and this part.

(2) If collections are sought under paragraph (c) of this section, the effective date of such collections will be prospective from the date the Assistant Secretary of Defense (Health Affairs) provides notice of such collections, and will exempt policies in continuous effect without amendment or renewal since the date the Assistant Secretary of Defense (Health Affairs) provides notice of such collections.

(d) *Medicare claim not required.* Notwithstanding any requirement of the Medicare supplemental plan policy, a Medicare supplemental plan may not refuse payment to a claim made pursuant to this section on the grounds that no claim had previously been submitted by the provider or beneficiary for payment under the Medicare program.

(e) *Exclusion of Medicare supplemental plans prior to November 5, 1990.* This section is not applicable to Medicare supplemental plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the Medicare supplemental plan, that the plan agreement clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

[57 FR 41102, Sept. 9, 1992, as amended at 59 FR 49003, Sept. 26, 1994; 67 FR 57742, Sept. 12, 2002]

§ 220.11 Special rules for automobile liability insurance and no-fault automobile insurance.

(a) *Active duty members covered.* In addition to Uniformed Services beneficiaries covered by other provisions of this part, this section also applies to active duty members of the Uniformed Services. As used in this section, “beneficiaries” includes active duty members.

(b) *Effect of concurrent applicability of the Federal Medical Care Recovery Act—*

(1) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095 and the Federal Medical Care Recovery Act (FMCRA), Pub. L. 87-693 (42 U.S.C. 2651 *et seq.*). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(2) *Cases involving tort liability.* In cases in which the right of the United States to collect from the automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095. All other

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matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095 and this part.

(c) *Exclusion of automobile liability insurance and no-fault automobile insurance plans prior to November 5, 1990.* This section is not applicable to automobile liability insurance and no-fault automobile insurance plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

[57 FR 41103, Sept. 9, 1992]

§ 220.12 [Reserved]

§ 220.13 **Special rules for workers' compensation programs.**

(a) *Basic rule.* Pursuant to the general duty of third party payers under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a workers' compensation program or plan generally has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under a workers' compensation program due to an employment related injury, illness, or disease. Except to the extent modified or supplemented by this section, all provisions of this part are applicable to any workers' compensation program or plan in the same manner as they are applicable to any other third party payer.

(b) *Special rules for lump-sum settlements.* In cases in which a lump-sum workers' compensation settlement is made, the special rules established in

this paragraph (b) shall apply for purposes of compliance with this section.

(1) *Lump-sum commutation of future benefits.* If a lump-sum worker's compensation award stipulates that the amount paid is intended to compensate the individual for all future medical expenses required because of the work-related injury, illness, or disease, the Uniformed Service health care facility is entitled to reimbursement for injury, illness, or disease related, future health care services or items rendered or provided to the individual up to the amount of the lump-sum payment.

(2) *Lump-sum compromise settlement.* (i) A lump sum compromise settlement, unless otherwise stipulated by an official authorized to take action under 10 U.S.C. 1095 and this part, is deemed to be a workers' compensation payment for the purpose of reimbursement to the facility of the Uniformed Services for services and items provided, even if the settlement agreement stipulates that there is no liability under the workers' compensation law, program, or plan.

(ii) If a settlement appears to represent an attempt to shift to the facility of the Uniformed Services the responsibility of providing uncompensated services or items for the treatment of the work-related condition, the settlement will not be recognized and reimbursement to the uniformed health care facility will be required. For example, if the parties to a settlement attempt to maximize the amount of disability benefits paid under workers' compensation by releasing the employer or workers' compensation carrier from liability for medical expenses for a particular condition even though the facts show that the condition is work-related, the facility of the Uniformed Services must be reimbursed.

(iii) Except as specified in paragraph (b)(2)(iv) of this section, if a lump-sum compromise settlement forecloses the possibility of future payment or workers' compensation benefits, medical expenses incurred by a facility of the Uniformed Services after the date of the settlement are not reimbursable under this section.

(iv) As an exception to the rule of paragraph (b)(2)(iii) of this section, if the settlement agreement allocates