that purports to establish any require-
ment on a third party payer that would
have the effect of excluding from cov-
erage or limiting payment, for any
health care services for which payment
by the third party payer under 10 U.S.C. 1095 or this part is required, is
preempted by 10 U.S.C. 1095 and shall
have no force or effect in connection
with the third party payer’s obliga-
tions under 10 U.S.C. 1095 or this part.

§ 220.3 Exclusions impermissible.

(a) Statutory requirement. Under 10
U.S.C. 1095(b), no provision of any third
party payer’s plan having the effect of
excluding from coverage or limiting
payment for certain care if that care is
provided in a facility of the uniformed
services shall operate to prevent col-
lection by the United States.

(b) General rules. Based on the statu-
tory requirement, the following are
general rules for the administration of
10 U.S.C. 1095 and this part.

(1) Express exclusions or limitations
in third party payer plans that are in-
consistent with 10 U.S.C. 1095(b) are in-
operative.

(2) No objection, precondition or lim-
itation may be asserted that defeats
the statutory purpose of collecting from third party payers.

(3) Third party payers may not treat
claims arising from services provided
in facilities of the uniformed services
less favorably than they treat claims
arising from services provided in other
hospitals.

(4) No objection, precondition or lim-
itation may be asserted that is con-
trary to the basic nature of facilities of
the uniformed services.

(c) Specific examples of impermissible
exclusion. The following are several spe-
cific examples of impermissible exclu-
sions, limitations or preconditions.
These examples are not all inclusive.

(1) Care provided by a government enti-
ty. A provision in a third party payer’s
plan that purports to disallow or limit
payment for services provided by a gov-
ernment entity or paid for by a govern-
ment program (or similar exclusion) is
not a permissible ground for refusing
or reducing third party payment.

(2) No obligation to pay. A provision in
a third party payer’s plan that pur-
ports to disallow or limit payment for
services for which the patient has no
obligation to pay (or similar exclusion)
is not a permissible ground for refusing
or reducing third party payment.

(3) Exclusion of military beneficiaries.
No provision of an employer sponsored
program or plan that purports to make
ineligible for coverage individuals who
are uniformed services health care
beneficiaries shall be permissible.

(4) No participation agreement. The
lack of a participation agreement or
the absence of privity of contract be-
tween a third party payer and a facil-
ity of the uniformed services is not a
permissible ground for refusing or re-
ducing third party payment.

(5) Medicare carve-out and Medicare
secondary payer provisions. A provision
in a third party payer plan, other than
a Medicare supplemental plan under
§ 220.10, that seeks to make Medicare
the primary payer and the plan the sec-
ondary payer or that would operate to
carve out of the plan’s coverage an
amount equivalent to the Medicare
payment that would be made if the
services were provided by a provider to
whom payment would be made under
Part A or Part B of Medicare is not a
permissible ground for refusing or re-
ducing payment as the primary payer
to the facility of the Uniformed Ser-
vices by the third party payer unless the
provision:

(i) Expressly disallows payment as
the primary payer to all providers to
whom payment would not be made
under Medicare (including payment
under Part A, Part B, a Medicare HMO,
or a Medicare+Choice plan); and

(ii) Is otherwise in accordance with
applicable law.

§ 220.4 Reasonable terms and condi-
tions of health plan permissible.

(a) Statutory requirement. The statu-
tory obligation of the third party to
pay is not unqualified. Under 10 U.S.C.
1095(a)(1) (as noted in §220.2 of this
part), the obligation to pay is to the
extent the third party payer would be