§ 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 collection by the United States.

(b) General rules. Based on the statutory 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 inconsistent with 10 U.S.C. 1095(b) are inoperative.

(2) No objection, precondition or limitation 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 limitation may be asserted that is contrary to the basic nature of facilities of the uniformed services.

(c) Specific examples of impermissible exclusion. The following are several specific examples of impermissible exclusions, limitations or preconditions. These examples are not all inclusive.

(1) Care provided by a government entity. A provision in a third party payer’s plan that purports to disallow or limit payment for services provided by a government entity or paid for by a government 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 purports 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 between a third party payer and a facility of the uniformed services is not a permissible ground for refusing or reducing 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 secondary 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 reducing payment as the primary payer to the facility of the Uniformed Services 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 conditions of health plan permissible.

(a) Statutory requirement. The statutory 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
obliged to pay if the beneficiary in-
curred the costs personally.

(b) General rules. (1) Based on the
statutory requirement, after any im-
permissible exclusions have been made
inoperative (see §220.3 of this part),
reasonable terms and conditions of the
third party payer's plan that apply
generally and uniformly to services
provided in facilities other than facili-
ties of the uniformed services may also
be applied to services provided in fa-
cilities of the uniformed services.

(2) Except as provided by 10 U.S.C.
1095, this part, or other applicable law,
third party payers are not required to
treat claims arising from services pro-
vided in or through facilities of the
Uniformed Services more favorably
than they treat claims arising from
services provided in other facilities or
by other health care providers.

c) Specific examples of permissible
terms and conditions. The following are
several specific examples of permissible
terms and conditions of third party
payer plans. These examples are not all
inclusive.

(1) Generally applicable coverage provi-
sions. Generally applicable provisions
regarding particular types of medical
care or medical conditions covered by
the third party payer's plan are per-
missible grounds to refuse or limit
third party payment.

(2) Generally applicable utilization re-
view provisions. (i) Reasonable and gen-
erally applicable provisions of a third
party payer's plan requiring pre-admis-
sion screening, second surgical opin-
ions, retrospective review or other
similar utilization management activi-
ties may be permissible grounds to
refuse or reduce third party payment if
such refusal or reduction is required by
the third party payer's plan.

(ii) Such provisions are not permis-
sible if they are applied in a manner
that would result in claims arising
from services provided by or through
facilities of the Uniformed Services
being treated less favorably than
claims arising from services provided
by other hospitals or providers.

(iii) Such provisions are not permis-
sible if they would not affect a third
party payer's obligation under this
part. For example, concurrent review
of an inpatient hospitalization would
genernally not affect the third party
payer's obligation because of the DRG-
based, per-admission basis for calcu-
lating reasonable charges under
§220.8(a) (except in long stay outlier
cases, noted in §220.8(a)(4)).

(3) Restrictions in HMO plans. Gen-
erally applicable exclusions in Health
Maintenance Organization (HMO) plans
of non-emergency or non-urgent serv-
dices provided outside the HMO (or simi-
lar exclusions) are permissible. How-
ever, HMOs may not exclude claims or
refuse to certify emergent and urgent
services provided within the HMO's
service area or otherwise covered non-
emergency services provided out of the
HMO's service area. In addition, opt-
out or point-of-service options avail-
able under an HMO plan may not ex-
clude services otherwise payable under
10 U.S.C. 1095 or this part.

d) Procedures for establishing reason-
able terms and conditions. In order to es-
tablish that a term or condition of a
third party payer's plan is permissible,
the third party payer must provide ap-
propriate documentation to the facil-
ity of the Uniformed Services. This in-
cludes, when applicable, copies of ex-
planation of benefits (EOBs), remit-
tance advice, or payment to provider
forms. It also includes copies of poli-
cies, employee certificates, booklets,
or handbooks, or other documentation
detailing the plan's health care bene-
fits, exclusions, limitations,
deductibles, co-insurance, and other
pertinent policy or plan coverage and
benefit information.

§220.5 Records available.

Pursuant to 10 U.S.C. 1095(c), facili-
ties of the uniformed services, when re-
quested, shall make available to rep-
resentatives of any third party payer
from which the United States seeks
payment under 10 U.S.C. 1095 for in-
spection and review appropriate health
care records (or copies of such records)
of individuals for whose care payment
is sought. Appropriate records which
will be made available are records
which document that the services
which are the subject of the claims for