

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

RIN 0720-AA43

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Waiver of Collection of Payments Due From Certain Persons Unaware of Loss of CHAMPUS Eligibility

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule authorizes the waiver of collection of payments due from individuals who lost their CHAMPUS eligibility when they became eligible for Medicare Part A, due to disability or end stage renal disease.

DATES: Written comments will be accepted until February 2, 1998.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Health Affairs), 1B657 Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of Health Services Financing Policy, (703) 697-8975.

SUPPLEMENTARY INFORMATION: Formerly, under Title 10 United States Code, Section 1086(d), a beneficiary lost eligibility for CHAMPUS when he or she became eligible for Medicare Part A, including when eligibility was due to disability or end stage renal disease. Payments made after the beneficiary attained eligibility for Medicare Part A were erroneous payments and subject to collection under the Federal Claims Collection Act. In 1991, Congress amended 10 U.S.C. 1086(d) to provide that those persons eligible for Medicare by reason of disability or end stage renal disease who are enrolled in the supplementary medical insurance program under Medicare Part B retain eligibility for CHAMPUS, secondary to Medicare coverage. Section 743 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, provides authority, effective February 10, 1996, to waive the collection of erroneous civilian health care benefits from a person under age 65 who lost eligibility for civilian care due to disability or end stage renal disease. The period of this waiver authority begins January 1, 1967, and ends on the later of July 1, 1996, or the termination date of any special enrollment Medicare period established by law for such person.

Since most payments made under CHAMPUS are paid directly to participating providers of care, and not to the beneficiary, the proposed rule also provides for the waiver of collection of such payments made to participating providers. These providers are paid based on a contractual agreement of benefits by the beneficiaries. If the claim for these benefits cannot be paid due to ineligibility of the beneficiary, the beneficiary indebtedness to the provider would remain. Thus, the authority to relieve disabled CHAMPUS beneficiaries from the indebtedness arising from these erroneous payments does not depend upon who actually received the payments.

Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any significant regulatory action, defined as one which would have an annual effect on the economy of \$100 million or more, or have other significant effects.

The Regulatory Flexibility Act requires that each federal agency prepare a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. This proposed rule is not significant regulatory action under E.O. 12886, nor would it have a significant impact on small entities. The changes set forth in the proposed rule are minor revisions to the existing regulation. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). This is a proposed rule. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.11 is amended as follows:

- a. By revising paragraphs (b)(1) and (g) heading.
- b. By redesignating paragraphs (g)(3), (g)(4), (g)(5), (g)(6), (g)(7), (g)(8) and (g)(9) as paragraphs (g)(4), (g)(5), (g)(6), (g)(7), (g)(8), (g)(9) and (g)(10), respectively.

c. By adding paragraph (g)(3) and revising newly redesignated paragraph (g)(10).

The additions and revisions read as follows:

§ 199.11 Overpayments recovery.

* * * * *

(b) * * *

(1) *Federal statutory authority.* The Federal Claims Collection Act (31 U.S.C. 3701 et seq.) provides the basic authority under which claims may be asserted pursuant to this section. It is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR parts 101 through 105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed \$20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims. Section 743 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106, 110 Stat. 186) authorizes the waiver (see paragraph (g)(3) of this section) of collection of overpayments otherwise due from a person after the termination of the person's CHAMPUS eligibility, because the person became eligible for Medicare Part A by reason of disability or end-stage renal disease.

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(g) *Compromise, waiver, suspension or termination of collection actions arising under the Federal Claims Collection Act.*

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(3) *Waiver of collection of erroneous payments due from certain persons unaware of loss of CHAMPUS eligibility.*

(i) The Director, OCHAMPUS may waive collection of payments otherwise due from certain persons as a result of health benefits received under this Part after the termination of the person's eligibility for such benefits. Waiver may be granted if collection of such payments would be against equity and good conscience and not in the best interest of the United States. These criteria are met by a finding that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the person who received the erroneous payment or any other person having an interest in obtaining such waiver.

(ii) *Persons eligible for waiver.* The following persons are eligible for waiver:

(A) A person who:
(1) Is entitled to Medicare Part A by reason of disability or end stage renal disease;
(2) In the absence of such entitlement, would have been eligible for CHAMPUS under section 1086 of title 10, United States Code; and
(3) At the time of the receipt of such benefits, was under age 65.

(B) Any participating provider of care who received direct payment for care provided to a person described in paragraph (g)(3)(ii)(A) of this section pursuant to an assignment of benefits from such person.

(iii) The authority to waive collection of payments under this section shall apply with regard to health benefits provided during the period beginning January 1, 1967, and ending on the later of: the termination date of any special enrollment period for Medicare Part B provided specifically for such persons; or July 1, 1996.

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(10) *Effect of compromise, waiver, suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title 11 bankruptcy case and totaling \$600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed for inclusion in the debtor's gross income for that year. Any action taken under this paragraph (g) regarding the compromise of a federal claim, or waiver or suspension or termination of collection action on a federal claim is not an initial determination for purposes of the appeal procedures of § 199.10.

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Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

36 CFR Part 327

Shoreline Use Permits, Flotation

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Supplementary proposed rule.

SUMMARY: The Corps published a proposed rule in the April 15, 1997,

issue of the **Federal Register**, concerning flotation materials to be used on all new docks and boat mooring buoys. Comments received during the 45 day comment period prompted the Corps to conduct further study and give additional consideration to flotation requirements. As a result, the Corps is withdrawing this amendment and proposing a new amendment.

An amendment to the Guidelines for Granting Shoreline Use Permits was also part of the proposed rule published on April 15, 1997. This language reduced onerous requirements on individuals who have requested waivers due to obvious limiting health conditions by giving Operations Project Managers flexibility to take special circumstances of the applicant into consideration when issuing a shoreline management permit. No negative comments were received during the comment period and this amendment will be issued as a final rule at a later date, probably in conjunction with the flotation amendment, once the flotation issue is resolved.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: HQUSACE, CECW-ON, Washington, D.C. 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 761-0247.

SUPPLEMENTARY INFORMATION: The Corps published a final rule providing policy and guidance on the management of shorelines of Corps of Engineers managed Civil Works projects in the **Federal Register** on July 27, 1990, (55 FR 30690-30702), last amended in the **Federal Register** on July 1, 1992 (57 FR 29219-29220).

Two amendments to the regulation were published as a proposed rule in the **Federal Register** on April 15, 1997 (62 FR 18307-18308). An amendment to Paragraph 2.c(9) of Appendix A, Section 327.30, Guidelines for Granting Shoreline Use Permits, gave operational project managers flexibility to take special circumstances of the applicant into consideration when issuing a permit. This language reflected the Corps desire to accommodate basic access for those individuals who have requested waivers due to either obvious limiting health conditions or those documented by a doctor's certification. No negative comments were received regarding this amendment during the comment period. Therefore, this portion of the April 15, 1997 proposed rule will be promulgated as a final rule at a later date.

Paragraph 14, Appendix C, of Section 327.30, also published in the April 15, 1997, proposed rule, reflected the Corps

amended flotation requirements for all new docks and boat mooring facilities. The Corps received 28 letters concerning flotation during the comment period of this proposed rulemaking. The comments prompted the Corps to conduct further study and give additional consideration to flotation requirements. Accordingly, the flotation portion of the proposed rule published on April 15, 1997, is withdrawn and a new amendment is proposed.

Procedural Requirements

Executive Order (E.O.) 12866

The Secretary of the Army has determined that this proposed revision is not a "major" rule within the meaning of Executive Order (E.O.) 12866. If approved, this revision will not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Collection of Information

This proposed rule contains no collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Executive Order 12612

The Corps has analyzed this proposed rule under principles and criteria in E.O. 12612 and has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The Corps has determined that this proposed rule does not have "significant" taking implications. The proposed rule does not pertain to taking of private property interests, nor does it impact private property.

NEPA Statement

The Corps has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human