

standards that may be applied in determining whether a currency should be considered hyperinflationary for purposes of section 988. Examples of the latter category of comments would be suggestions of alternative time periods (base periods) and hyperinflationary thresholds (e.g., different from the current 100% cumulative inflation rate) which may be used in determining whether a currency is hyperinflationary. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 17, 2000, beginning at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance, located 1111 Constitution Avenue. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by April 20, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 20, 2000. A period of ten (10) minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information:** The principal author of these regulations is Roger M. Brown of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department also participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** In § 1.988-1 paragraph (f) is revised to read as follows:

#### § 1.988-1 Certain definitions and special rules.

\* \* \* \* \*

(f) *Hyperinflationary currency*—(1) *Definition.* For purposes of section 988, a hyperinflationary currency means a currency described in § 1.985-1(b)(2)(ii)(D). However, the base period means the thirty-six calendar month period ending on the last day of the taxpayer's (or qualified business unit's) current taxable year. Thus, for example, if for 1996, 1997, and 1998, a country's annual inflation rates are 6 percent, 11 percent, and 90 percent, respectively, the cumulative inflation rate for the three-year base period is 124%  $[(1.06 \times 1.11 \times 1.90) - 1.0 = 1.24] \times 100 = 124\%$ . Accordingly, assuming the QBU has a calendar year as its taxable year, the currency of the country is hyperinflationary for the 1998 taxable year.

(2) *Effective date.* Paragraph (f)(1) shall apply to transactions entered into after February 14, 2000.

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

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**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

#### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Establishment of an Appeals Process for TRICARE Claimcheck Denials

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements section 714 of the National Defense Authorization Act for Fiscal Year 1999 which requires the establishment of an appeals process for denials by TRICARE Claimcheck (TCC) or any similar software system. This proposed rule enhances the current appeals process by adding an additional level of appeal conducted at the TRICARE Management Activity (TMA) and by codifying the entire process in this part.

**DATES:** Public comments must be received by March 13, 2000.

**ADDRESSES:** Forward comments to: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011-9043.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Wagner, Office of Appeals and Hearings, TMA, (303) 676-3411.

**SUPPLEMENTARY INFORMATION:** On December 30, 1998 (63 FR 71915), the Department of Defense published a notice in the **Federal Register**. That notice provides additional detailed information regarding TMA's use of TCC.

TMA, first used TCC, the TMA version of a commercial claims auditing software, in May 1996. Use of the TCC software has been subsequently linked to the start of the TRICARE regional at-risk managed care support contracts. TMA has customized TCC to conform to specific statutory and regulatory requirements for the TRICARE program.

TRICARE Claimcheck is a fully automated program that contains specific auditing logic designed to ensure appropriate coding on professional claims and eliminate overpayments on those claims. TRICARE Claimcheck audits for: unbundling of services (fragmented billing of services when one code is appropriate), incidental procedures, mutually exclusive procedures, assistant surgeon codes, duplicate claims submission, unlisted procedures, age/gender conflicts, medical visits associated with pre- and post-operative care, and cosmetic procedures.

The auditing logic resulting in a TCC denial on a TRICARE claim currently can be administratively reviewed by the TRICARE Managed Care Support Contractor (MCSC), but the specific dollar amount of an allowance (e.g., the CHAMPUS Maximum Allowable Charge) is not formally appealable under TRICARE Claimcheck appeals or the appeals procedures established in 32 CFR 199.10. A determination by the MCSC that allows additional payment amounts results in an adjustment of the claim by the contractor with no further action required by the beneficiary or provider. No other appeal is currently allowed.

Section 714 of the National Defense Authorization Act for Fiscal Year 1999 (P.L. 105-261) required the establishment of an appeals process for denials by TCC or any similar software system. This proposed rule establishes a two-level appeals process for TCC denials and codifies it under the formal appeals procedures established in 32

CFR 199.10. TRICARE Managed Care Support Contractor conducts the first-level appeal. The second-level appeal is performed within the TMA.

We have also reinserted paragraphs (c)(1) through (c)(5) in section 199.10 which were inadvertently omitted in a previous publication of 32 CFR 199.10 and included other minor corrections to sections 199.10 and 199.15.

**Regulatory Procedures**

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

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under EO 12866 and has been reviewed by the Office of Management and Budget. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

**Paperwork Reduction Act**

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. If however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, and 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 199.2(b) is proposed to be amended by revising the definition of *Party to the initial determination* and by adding a new definition of *TRICARE Claimcheck* and placing both definitions in alphabetical order as follows:

**§ 199.2 Definitions.**

\* \* \* \* \*

*Party to the initial determination.* Includes CHAMPUS and also refers to a CHAMPUS beneficiary and a participating provider of services whose interests have been adjudicated by the initial determination. (Under TRICARE Claimcheck or other similar software, a party to the initial determination also includes a non-participating provider.) In addition, a provider who has been denied approval as an authorized CHAMPUS provider is a party to that initial determination, as is a provider who is disqualified or excluded as an authorized provider under CHAMPUS, unless the provider is excluded based on a determination of abuse or fraudulent practices or procedures under another federal or federally funded program. See § 199.10 for additional information concerning parties not entitled to administrative review under the CHAMPUS appeals and hearing procedures.

*TRICARE Claimcheck.* TRICARE Claimcheck is the TRICARE Management Activity version of a commercial claims auditing software designed to ensure appropriate coding on professional claims and eliminate overpayments on those claims.

\* \* \* \* \*  
3. Section 199.10 is proposed to be revised to read as follows:

**§ 199.10 Appeal and hearing procedures.**

(a) *General.* An appeal under CHAMPUS is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law or regulation. Paragraphs (a) through (e) of this section set forth the policies and procedures for appealing decisions made by OCHAMPUS and CHAMPUS contractors adversely affecting the rights and liabilities of CHAMPUS beneficiaries, CHAMPUS participating providers, and providers denied the status of authorized provider under CHAMPUS. Paragraph (f) of this section describes the appeal process for TRICARE Claimscheck or other similar software denials. Supplemental appeal procedures relating to determinations made under the quality and utilization review peer review organization program are contained in § 199.15.

(1) *Initial determination and right to appeal.* (A) OCHAMPUS and CHAMPUS contractors shall mail notices of initial determinations to the affected provider or CHAMPUS beneficiary (or representative) at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the

parent, guardian, or other representative, under established CHAMPUS procedures, constitutes notice to the beneficiary.

(B) CHAMPUS contractors shall notify a provider of an initial determination on a claim only if the provider participated in the claim or the initial determination resulted from the application of TRICARE Claimcheck or other similar software. (See § 199.7)

(C) CHAMPUS peer review organizations shall notify providers and CHAMPUS contractors of a denial determination on a claim.

(D) Notice of an initial determination on a claim processed by a CHAMPUS contractor normally will be made on a CHAMPUS Explanation of Benefits (CEOB) form.

(E) Each notice of an initial determination on a request for benefit authorization, a request by a provider for approval as an authorized CHAMPUS provider, or a decision to disqualify or exclude a provider as an authorized provider under CHAMPUS shall state the reason(s) for the determination and the underlying facts supporting the determination.

(F) In any case when the initial determination is adverse to the beneficiary or participating provider, or to the provider seeking approval as an authorized CHAMPUS provider, the notice shall include a statement of the beneficiary's or provider's right to appeal the determination. The procedure for filing the appeal also shall be explained.

(ii) *Effect of initial determination.* The initial determination is final unless appealed in accordance with this section, or unless the initial determination is reopened by OCHAMPUS, the CHAMPUS contractor, or the CHAMPUS peer review organization.

(2) *Participation in an appeal.* Participation in an appeal is limited to any party to the initial determination, including OCHAMPUS, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS, may appeal an adverse determination. The appealing party is the party to the initial determination who actually files the appeal, whether personally or by representative.

(i) *Parties to the initial determination.* For purposes of the CHAMPUS appeals and hearing procedures, the following are not parties to an initial determination and are not entitled to administrative review under this section.

(A) A provider disqualified or excluded as an authorized provider under CHAMPUS based on a

determination of abuse or fraudulent practices or procedures under another Federal or federally funded program is not a party to the CHAMPUS action and may not appeal under this section.

(B) A beneficiary who has an interest in receiving care or has received care from a particular provider cannot be an appealing party regarding the exclusion, suspension, or termination of the provider under § 199.9.

(C) A sponsor or parent of a beneficiary under 18 years of age or guardian of an incompetent beneficiary is not a party to the initial determination and may not serve as the appealing party.

(D) A third party, such as an insurance company, is not a party to the initial determination and is not entitled to appeal even though it may have an indirect interest in the initial determination.

(E) A nonparticipating provider is not a party to the initial determination and may not appeal.

(ii) *Representative.* Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the custodial parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary. The custodial parent or legal guardian (appointed by a cognizant court) of a minor beneficiary may initiate an appeal based on the above presumption.

However, should a minor beneficiary turn 18 years of age during the course of an appeal, then any further requests to appeal on behalf of the beneficiary must be from the beneficiary or pursuant to the written authorization of the beneficiary appointing a representative. For example, if the beneficiary is 17 years of age and the sponsor (who is a custodial parent) requests a formal review, absent written objection by the minor beneficiary, the sponsor is presumed to be acting on behalf of the minor beneficiary. Following the issuance of the formal review determination, the sponsor requests a hearing; however, if at the time of the request for a hearing, the beneficiary is 18 years of age or older, the request must either be by the beneficiary or the beneficiary's appointed representative. The sponsor, in this example, could not pursue the request for hearing without being appointed by the beneficiary as the beneficiary's representative.

(A) The representative shall have the same authority as the appealing party and notice given to the representative

shall constitute notice to the appealing party.

(B) To avoid possible conflicts of interest, an officer or employee of the United States, such as an employee or member of a Uniformed Service, including an employee or staff member of a Uniformed Service legal office, or a CHAMPUS advisor, subject to the exceptions in 18 U.S.C. 205, is not eligible to serve as a representative. An exception usually is made for an employee or member of a Uniformed Service who represents an immediate family member. In addition, the Director, OCHAMPUS, or designee, may appoint an officer or employee of the United States as the CHAMPUS representative at a hearing.

(3) *Burden of proof.* The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to the authorization of CHAMPUS benefits, approval of authorized CHAMPUS provider status, or removal of sanctions imposed under § 199.9. If a presumption exists under the provisions of this part or information constitutes *prima facie* evidence under the provisions of this part, the appealing party must produce evidence reasonably sufficient to rebut the presumption or *prima facie* evidence as part of the appealing party's burden of proof. CHAMPUS shall not pay any part of the cost or fee, including attorney fees, associated with producing or submitting evidence in support of an appeal.

(4) *Evidence in appeal and hearing cases.* Any relevant evidence may be used in the administrative appeal and hearing process if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal courts.

(5) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the Director, OCHAMPUS, or a designee, that the timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits. The decision of the Director, OCHAMPUS, or a designee, on

the request for an exception to the filing requirement shall be final.

(6) *Appealable issue.* An appealable issue is required in order for an adverse determination to be appealed under the provisions of this section. Examples of issues that are not appealable under this section include:

(i) A dispute regarding a requirement of the law or regulation.

(ii) The amount of the CHAMPUS-determined allowable cost or charge, since the methodology for determining allowable costs or charges is established by this part.

(iii) The establishment of diagnosis-related groups (DRGs), or the methodology for the classification of inpatient discharges within the DRGs, or the weighting factors that reflect the relative hospital resources used with respect of discharges within each DRG, since each of these is established by this part.

(iv) Certain other issues on the basis that the authority for the initial determination is not vested in CHAMPUS. Such issues include but are not limited to the following examples:

(A) Determination of a person's eligibility as a CHAMPUS beneficiary is the responsibility of the appropriate Uniformed Service. Although OCHAMPUS and CHAMPUS contractors must make determinations concerning a beneficiary's eligibility in order to ensure proper disbursement of appropriated funds on each CHAMPUS claim processed, ultimate responsibility for resolving a beneficiary's eligibility rests with the Uniformed Services.

Accordingly, disputed question of fact concerning a beneficiary's eligibility will not be considered an appealable issue under the provisions of this section, but shall be resolved in accordance with § 199.3.

(B) Similarly, decisions relating to the issuance of a Nonavailability Statement (DD Form 1251) in each case are made by the Uniformed Services. Disputes over the need for a Nonavailability Statement or a refusal to issue a Nonavailability Statement are not appealable under this section. The one exception is when a dispute arises over whether the facts of the case demonstrate a medical emergency for which a Nonavailability Statement is not required. Denial of payment in this one situation is an appealable issue.

(C) Any sanction, including the period of the sanction, imposed under § 199.9 which is based solely on a provider's exclusion or suspension by another agency of the Federal Government, a state, or a local licensing authority is not appealable under this section. The provider must exhaust

administrative appeal rights offered by the other agency that made the initial determination to exclude or suspend the provider. Similarly, any sanction imposed under § 199.9 which is based solely on a criminal conviction of civil judgment against the provider is not appealable under this section. If the sanction imposed under § 199.9 is not based solely on the provider's criminal conviction or civil judgment or on the provider's exclusion or suspension by another agency of the Federal government, a state, or a local licensing authority, that portion of the CHAMPUS administrative determination which is in addition to the criminal conviction/civil judgment or exclusion/suspension by the other agency may be appealed under this section.

(v) A decision by the Director, OCHAMPUS, or a designee, as a suspending official when the decision is final under § 199.9(h)(1)(iv)(A).

(7) *Amount in Dispute.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth in the following:

(i) The amount in dispute is calculated as the amount of money CHAMPUS would pay if the services and supplies involved in dispute were determined to be authorized CHAMPUS benefits. Examples of amounts of money that are excluded by the Regulation from CHAMPUS payments for authorized benefits include, but are not limited to:

(A) Amounts in excess of the CHAMPUS-determined allowable charge of cost.

(B) The beneficiary's CHAMPUS deductible and cost-share amounts.

(C) Amounts that the CHAMPUS beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(D) Amounts excluded under § 199.8.

(ii) The amount in dispute for appeals involving a denial of a request for authorization in advance of obtaining care shall be the estimated allowable charge or cost for the services(s) requested.

(iii) There is no requirement for an amount in dispute when the appealable issue involves a denial of a provider's request for approval as an authorized CHAMPUS provider or the determination to exclude, suspend, or terminate a provider's authorized CHAMPUS provider status.

(iv) Individual claims may be combined to meet the required amount in dispute if all of the following exist:

(A) The claims involve the same beneficiary.

(B) The claims involve the same issue.

(C) At least one of the combined claims has had a reconsideration decision issued by a CHAMPUS contractor or a CHAMPUS peer review organization.

Note to paragraph (a)(7): A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (paragraph (a)(6)(i) of this section) or does not involve a sufficient amount in dispute (paragraph (a)(7) of this section) may not be rejected at the reconsideration level of appeal. However, an appeal shall involve an appealable issue and sufficient amount in dispute under these paragraphs to be granted a formal review or hearing.

(8) *Levels of appeal.* The sequence and procedures of a CHAMPUS appeal vary, depending on whether the initial determination was made by OCHAMPUS, a CHAMPUS contractor, or a CHAMPUS peer review organization.

(i) Appeal levels for initial determination made by CHAMPUS contractor or CHAMPUS peer review organization.

(A) Reconsideration by CHAMPUS contractor or CHAMPUS peer review organization.

(B) Formal review by OCHAMPUS (except for CHAMPUS peer review organization reconsiderations and reconsideration determinations issued by CHAMPUS contractors that are subject to § 199.15).

(C) Hearing.

(ii) Appeal levels for initial determination made by OCHAMPUS.

(A) Formal review by OCHAMPUS except initial determinations involving the suspension of claims processing where the Director, OCHAMPUS, or a designee, determines that additional proceedings are necessary as to disputed material facts and the suspending official's decision is not final under § 199.9(h)(1)(iv)(A) or § 199.9(h)(2) initial determinations involving the sanctioning (exclusion, suspension, or termination) of CHAMPUS providers. Initial determinations involving these matters shall be appealed directly to the hearing level.

(B) Hearing.

(9) *Appeal decision.* An appeal decision at any level may address all pertinent issues which arise under the appeal or are otherwise presented by the information in the case record (for example, the entire episode of care in the appeal), and shall not be limited to addressing the specific issue appealed by a party. In the case of sanctions imposed under § 199.9, the final decision may affirm, increase or reduce the sanction period imposed by CHAMPUS, or otherwise modify or reverse the imposition of the sanction.

(10) *Dismissal of request for reconsideration, formal review, or hearing.* (i) *By application of the appealing party.* A request for reconsideration, formal review, or hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of the final decision, upon the application of the appealing party. A request for dismissal must be in writing and filed with the Chief, Office of Appeals and Hearings, OCHAMPUS or designee, or the hearing officer in hearing cases. When dismissal is requested, the previous determination in the case shall be deemed final, unless the dismissal is vacated in accordance with paragraph (a)(10)(v) of this section.

(ii) *By stipulation of the parties.* A request for a reconsideration, formal review, or hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of notice of the reconsideration determination, formal review determination, or hearing final decision under a stipulation agreement between the appealing party and the Director, OCHAMPUS, or designee. When a dismissal is entered under a stipulation, the previous determination shall be deemed final, unless the dismissal is vacated in accordance with paragraph (a)(10)(v) of this section.

(iii) *By abandonment.* The Director, OCHAMPUS, or a designee, may dismiss a request for reconsideration, formal review, or hearing upon abandonment by the appealing party.

(A) An appealing party shall be deemed to have abandoned a request for hearing, other than when personal appearance is waived in accordance with § 199.10(d)(10)(xii), if neither the appealing party nor an appointed representative appears at the time and place fixed for the hearing and if, within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer before the time fixed for the hearing that an appearance could not be made.

(B) An appealing party shall be deemed to have abandoned a request for reconsideration, formal review, or hearing if, before mailing of the notice of the reconsideration determination or formal review determination or before assignment of the case to the hearing officer, the Director, OCHAMPUS, or a designee, is unable to locate either the appealing party or an appointed representative.

(C) An appealing party shall be deemed to have abandoned a request for

reconsideration, formal review, or hearing if the appealing party fails to prosecute the appeal. Failure to prosecute the appeal includes, but is not limited to, an appealing party's failure to provide information reasonably requested by the Director, OCHAMPUS, or a designee, or the hearing officer for consideration in the appeal.

(D) If the Director, OCHAMPUS, or a designee, dismisses the request for reconsideration, formal review, or hearing because of abandonment, the previous determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (a)(10)(v) of this section.

(iv) *For cause.* If the Director, OCHAMPUS, or a designee, may dismiss for cause a request for reconsideration, formal review, or hearing either entirely or as to any stated issue. If the Director, OCHAMPUS, or a designee, dismisses a reconsideration, formal review, or hearing request for cause, the previous determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (a)(10)(v) of this section. A dismissal for cause may be issued under any of the following circumstances:

(A) When the appealing party requesting the reconsideration, formal review, or hearing is not a proper party under paragraph (a)(2)(i) of this section, or does not otherwise have a right to participate in a reconsideration, formal review, or hearing.

(B) When the appealing party who filed the reconsideration, formal review, or hearing request dies, and there is no information before the Director, OCHAMPUS, or a designee, showing that a party to the initial determination who is not an appealing party may be prejudiced by the previous determination.

(C) When the issue is not appealable (see § 199.10(a)(6)).

(D) When the amount in dispute is less than \$50 in a formal review or less than \$300 in a hearing.

(E) When all appealable issues have been resolved in favor of the appealing party.

(v) *Vacation of dismissal.* Dismissal of a request for reconsideration, formal review, or hearing may be vacated by the Director, OCHAMPUS, or a designee, upon written request of the appealing party, if the request is received within 6 months of the date of the notice of dismissal mailed to the last known address of the party requesting the reconsideration, formal review, or hearing.

(b) *Reconsideration.* Any party to the initial determination made by the

CHAMPUS contractor or a CHAMPUS peer review organization may request a reconsideration.

(1) *Requesting a reconsideration.* (i) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the notice of initial determination (such as the CEOB form) made by the CHAMPUS contractor or the CHAMPUS peer review organization.

(ii) *Where to file.* The request shall be submitted to the office that made the initial determination (*i.e.*, the CHAMPUS contractor or the CHAMPUS peer review organization) or any other CHAMPUS contractor designated in the notice of initial determination.

(iii) *Allowed time to file.* The request must be mailed within 90 days after the date of the notice of initial determination.

(iv) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is mailed and postmarked. For the purposes of CHAMPUS, a postmark is a cancellation mark issued by the United States Postal Service. If the request does not have a postmark, it shall be deemed filed on the date received by the CHAMPUS contractor or the CHAMPUS peer review organization.

(2) *The reconsideration process.* The purpose of the reconsideration is to determine whether the initial determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time of the initial determination and/or reconsideration decision involving a provider request for approval as an authorized provider under CHAMPUS. The reconsideration is performed by a member of the CHAMPUS contractor or the CHAMPUS peer review organization staff who was not involved in making the initial determination and is a thorough and independent review of the case. The reconsideration is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or the CHAMPUS contractor or the CHAMPUS peer review organization may obtain.

(3) *Timeliness of reconsideration determination.* The CHAMPUS contractor or the CHAMPUS peer review organization normally shall issue its reconsideration determination no later than 60 days from the date of receipt of the request for reconsideration by the CHAMPUS contractor or the CHAMPUS peer review organization.

(4) *Notice of reconsideration determination.* The CHAMPUS

contractor or the CHAMPUS peer review organization shall issue a written notice of the reconsideration to the appealing party at his or her last known address. The notice of the reconsideration must contain the following elements:

(i) A statement of the issues or issue under appeal.

(ii) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(iii) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(iv) Payment and liability under § 199.4(h), if applicable.

(v) Whether the reconsideration determination upholds the initial determination or reverses it, in whole or in part, and the rationale for the action.

(vi) A statement of the right to appeal further in any case when the reconsideration determination is less than fully favorable to the appealing party and the amount in dispute is \$50 or more.

(5) *Effect of reconsideration determination.* The reconsideration determination is final if the following exits:

(i) The amount in dispute is less than \$50.

(ii) Appeal rights have been offered, but a request for formal review (or hearing in a case subject to § 199.15) is not postmarked or received by OCHAMPUS within 60 days of the date of the notice of the reconsideration determination.

(c) *Formal review.* Except as explained in this paragraph, any party to an initial determination made by OCHAMPUS, or a reconsideration determination made by the CHAMPUS contractor may request a formal review by OCHAMPUS if the party is dissatisfied with the initial or reconsideration determination unless the initial or reconsideration determination:

(1) Is final under paragraph (b)(5) of this section.

(2) Involves the sanctioning of a provider by the exclusion, suspension or termination of authorized provider status;

(3) Involves a written decision issued pursuant to § 199.9(h)(1)(iv)(A) regarding the temporary suspension of claims processing; or

(4) Involves a reconsideration determination by a CHAMPUS peer review organization. A hearing, but not a formal review level of appeal, may be available to a party to an initial determination involving the sanctioning of a provider or to a party to a written decision involving a temporary

suspension of claims processing. A beneficiary (or an authorized representative of a beneficiary), but not a provider (except as provided in § 199.15), may request a hearing, but not a formal review, of a reconsideration determination made by a CHAMPUS peer review organization.

(5) *Requesting a formal review.* (i) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination or OCHAMPUS initial determination) being appealed, and shall include any additional information or documents not submitted previously.

(ii) *Where to file.* The request shall be submitted to the Chief, Office of Appeals and Hearings, TRICARE Management Activity, 16401 East Centretch Parkway, Aurora, Colorado 80011-9043.

(iii) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the reconsideration determination or OCHAMPUS initial determination being appealed.

(iv) *Official filing date.* A request for a formal review shall be deemed filed on the date it is mailed and postmarked. For the purposes of CHAMPUS, a postmark is a cancellation mark issued by the United States Postal Service. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(6) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time of the initial determination, reconsideration, or formal review decision involving a provider request for approval as an authorized CHAMPUS provider. The formal review is performed by the Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information upon which the initial determination and/or reconsideration determination was based, and any additional information the appealing party may submit or OCHAMPUS may obtain.

(7) *Timeliness of formal review determination.* The Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee, normally shall issue the formal review determination no later than 90 days from the date of receipt of

the request for formal review by the OCHAMPUS.

(8) *Notice of formal review determination.* The Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee, shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(i) A statement of the issue or issues under appeal.

(ii) The provisions of law, regulation, policies, and guidelines, that apply to the issue or issues under appeal.

(iii) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(iv) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(v) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is \$300 or more.

(9) *Effect of formal review determinations.* The formal review determination is final if one or more of the following exist:

(i) The issue is not appealable. (See paragraph (a)(6) of this section.)

(ii) The amount in dispute is less than \$300. (See paragraph (a)(7) of this section.)

(iii) Appeal rights have been offered but a request for hearing is not postmarked or received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

(d) *Hearing.* Any party to the initial determination may request a hearing if the party is dissatisfied with the formal review determination and the formal review determination is not final under the provisions of paragraph (c)(9), of this section; or the initial determination involves the sanctioning of a provider under § 199.9 and involves an appealable issue; or the reconsideration determination is issued by a CHAMPUS peer review organization under § 199.15 and is not final under paragraph (b)(5) of this section.

(1) *Requesting a hearing.* (i) *Written request required.* The request shall be in writing, state the specific matter in dispute, include a copy of the initial determination, reconsideration determination, or formal review determination being appealed, and include any additional information or documents not submitted previously.

(ii) *Where to file.* The request shall be submitted to the Chief, Office of

Appeals and Hearings, TRICARE Management Activity, 16401 East Centretch Parkway, Aurora, Colorado 80011-9043.

(iii) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the initial determination or formal review determination being appealed.

(iv) *Official filing date.* A request for hearing shall be deemed filed on the date it is mailed and postmarked. For the purposes of CHAMPUS, a postmark is a cancellation mark issued by the United States Postal Service. If a request for hearing does not have a postmark, it shall be deemed filed on the day received by OCHAMPUS.

(2) *Hearing process.* A hearing is an administrative proceeding in which facts relevant to the appealable issue(s) in the case are presented and evaluated in relation to applicable law, regulation, policies, and guidelines in effect at the time the care in dispute was provided or requested; at the time of the initial determination, formal review determination, or hearing decision involving a provider request for approval under CHAMPUS as an authorized provider; or at the time of the act or event which is the basis for the imposition of sanctions under this part. A hearing, except for an appeal involving a provider sanction, generally shall be conducted as a nonadversarial, administrative proceeding. However, an authorized party to any hearing, including CHAMPUS, may submit additional evidence or testimony relevant to the appealable issue(s) and may appoint a representative, including legal counsel, to participate in the hearing process.

(3) *Timeliness of hearing.* (i) Except as otherwise provided in this section, within 60 days following receipt of a request for hearing, the Director, OCHAMPUS, or a designee, normally will appoint a hearing officer to hear the appeal. Copies of all records in the possession of OCHAMPUS that are pertinent to the matter to be heard or that formed the basis of the formal review determination shall be provided to the hearing officer and, upon request, to the appealing party.

(ii) The hearing officer, except as otherwise provided in this section, normally shall have 60 days from the date of written notice of assignment to review the file, schedule and hold the hearing, and issue a recommended decision to the Director, OCHAMPUS, or designee.

(iii) The Director, OCHAMPUS, or designee, may delay the case assignment to the hearing officer if additional information is needed that cannot be

obtained and included in the record within the time period specified above. The appealing party will be notified in writing of the delay resulting from the request for additional information. The Director, OCHAMPUS, or a designee, in such circumstances, will assign the case to a hearing officer within 30 days of receipt of all such additional information, or within 60 days of receipt of the request for hearing, whichever shall occur last.

(iv) The hearing officer may delay submitting the recommended decision if, at the close of the hearing, any party to the hearing requests that the record remain open for submission of additional information. In such circumstances, the hearing officer will have 30 days following receipt of all such additional information including comments from the other parties to the hearing concerning the additional information to submit the recommended decision to the Director, OCHAMPUS, or a designee.

(4) *Representation at a hearing.* Any party to the hearing may appoint a representative to act on behalf of the party at the hearing, unless such person currently is disqualified or suspended from acting in another Federal administrative proceeding, or unless otherwise prohibited by law, this part, or any other DoD regulation (see paragraph (a)(2)(ii) of this section). A hearing officer may refuse to allow any person to represent a party at the hearing when such person engages in unethical, disruptive, or contemptuous conduct, or intentionally fails to comply with proper instructions or requests of the hearing officer, or the provisions of this part. The representative shall have the same authority as the appealing party and notice given to the representative shall constitute notice required to be given to the appealing party.

(5) *Consolidation of proceedings.* The Director, OCHAMPUS, or a designee, may consolidate any number of proceedings for hearing when the facts and circumstances are similar and no substantial right of an appealing party will be prejudiced.

(6) *Authority of the hearing officer.* The hearing officer in exercising the authority to conduct a hearing under this part will be bound by 10 U.S.C. Chapter 55 and this part. The hearing officer in addressing substantive, appealable issues shall be bound by policy manuals, instructions, procedures, and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may

not establish or amend policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD(HA), or a designee, when the final decision is issued in the case.

(7) *Disqualification of hearing officer.* A hearing officer shall voluntarily disqualify himself or herself and withdraw from any proceeding in which the hearing officer cannot give fair or impartial hearing, or in which there is a conflict of interest. A party to the hearing may request the disqualification of a hearing officer by filing a statement detailing the reasons the party believes that a fair and impartial hearing cannot be given or that a conflict of interest exists. Such request shall be immediately sent by the appealing party or the hearing officer to the Director, OCHAMPUS, or a designee, who shall investigate the allegations and advise the complaining party of the decision in writing. A copy of such decision also shall be mailed to all other parties of the decision in writing. A copy of such decision also shall be mailed to all other parties to the hearing. If the Director, OCHAMPUS, or a designee, reassigns the case to another hearing officer, no investigation shall be required.

(8) *Notice and scheduling of hearing.* The hearing officer shall issue by certified mail, when practicable, a written notice to the parties to the hearing of the time and place for the hearing. Such notice shall be mailed at least 15 days before the scheduled date of the hearing. The notice shall contain sufficient information about the hearing procedure, including the party's right to representation, to allow for effective preparation. The notice also shall advise the appealing party of the right to request a copy of the record before the hearing. Additionally, the notice shall advise the appealing party of his or her responsibility to furnish the hearing officer, no later than 7 days before the scheduled date of the hearing, a list of all witnesses who will testify and a copy of all additional information to be presented at the hearing. The time and place of the hearing shall be determined by the hearing officer, who shall select a reasonable time and location mutually convenient to the appealing party and OCHAMPUS.

(9) *Preparation for hearing.* (i) *Prehearing statement of contentions.* The hearing officer may on reasonable notice require a party to the hearing to submit a written statement of contentions and reasons. The written statement shall be provided to all

parties to the hearing before the hearing takes place.

(ii) *Discovery.* Upon the written request of a party to the initial determination (including OCHAMPUS) and for good cause shown, the hearing officer will allow that party to inspect and copy all document, unless privileged, relevant to issues in the proceeding that are in the possession or control of the other party participating in the appeal. The written request shall state clearly what information and documents are required for inspection and the relevance of the documents to the issues in the proceeding. Depositions, interrogatories, requests for admissions, and other forms of prehearing discovery are generally not authorized and the Department of Defense does not have subpoena authority for purposes of administrative hearings under this section. If the hearing officer finds that good cause exists for taking a deposition or interrogatory, the expense shall be assessed to the requesting party, with copies furnished to the hearing officer and the other parties to the hearing.

(iii) *Witnesses and evidence.* All parties to a hearing are responsible for producing, at each party's expense, meaning without reimbursement of payment by CHAMPUS, witnesses and other evidence in their own behalf, and for furnishing copies of any such documentary evidence to the hearing officer and other party or parties to the hearing. The Department of Defense is not authorized to subpoena witnesses or records. The hearing officer may issue invitations and requests to individuals to appear and testify without cost to the Government, so that the full facts in the case may be presented.

(10) *Conduct of hearing.* (i) *Right to open hearing.* Because of the personal nature of the matters to be considered, hearings normally shall be closed to the public. However, the appealing party may request an open hearing. If this occurs, the hearing shall be open except when protection of other legitimate Government purposes dictates closing certain portions of the hearing.

(ii) *Right to examine parties to the hearing and their witnesses.* Each party to the hearing shall have the right to produce and examine witnesses, to introduce exhibits, to question opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party to the hearing first called the witness to testify, and to rebut any evidence presented. Except as to those witnesses employed by OCHAMPUS at the time of the hearing, and records in

the possession of OCHAMPUS, a party to a hearing shall be responsible for the cost of fee associated with producing witnesses and other evidence in the party's own behalf, and for furnishing copies of documentary evidence to the hearing officer and other party or parties to the hearing.

(iii) *Taking of evidence.* The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties to the hearing. Before taking evidence, the hearing officer shall identify and state the issues in dispute on the record and the order in which evidence will be received.

(iv) *Questioning and admission of evidence.* A hearing officer may question any witness and shall admit any relevant evidence. Evidence that is irrelevant or unduly repetitions shall be excluded.

(v) *Relevant evidence.* Any relevant evidence shall be admitted, unless unduly repetitious, if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal actions.

(vi) *CHAMPUS determination first.* The basis of the CHAMPUS determinations shall be presented to the hearing officer first. The appealing party shall then be given the opportunity to establish affirmatively why this determination is held to be in error.

(vii) *Testimony.* Testimony shall be taken only on oath or affirmation on penalty of perjury.

(viii) *Oral argument and briefs.* At the request of any party to the hearing made before the close of the hearing, the hearing officer shall grant oral argument. If written argument is requested, it shall be granted, and the parties to the hearing shall be advised as to the time and manner within which such argument is to be filed. The hearing officer may require any party to the hearing to submit written memoranda pertaining to any or all issues raised in the hearing.

(ix) *Continuance of hearing.* A hearing officer may continue a hearing to another time or place on his or her own motion or, upon showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as otherwise provided here, shall be in accordance with this part. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party to

the hearing who is present at the hearing.

(x) *Continuance for additional evidence.* If the hearing officer determines, after a hearing has begun, that additional evidence is necessary for the proper determination of the case, the following procedure may be invoked:

(A) *Continue hearing.* The hearing may be continued to a later date in accordance with § paragraph (d)(10)(ix) of this section.

(B) *Closed hearing.* The hearing may be closed, but the record held open in order to permit the introduction of additional evidence. Any evidence submitted after the close of the hearing shall be made available to all parties to the hearing, and all parties to the hearing shall have the opportunity for comment prior to the issuance of the recommended decision by the hearing officer. The hearing officer may reopen the hearing if any portion of the additional evidence makes further hearing desirable. Notice thereof shall be given in accordance with paragraph (d)(8) of this section.

(xi) *Transcript of hearing.* A verbatim taped record of the hearing shall be made and shall become a permanent part of the record. Upon request, the appealing party shall be furnished a duplicate copy of the tape. A typed transcript of the testimony will be made only when determined to be necessary by OCHAMPUS. If a typed transcript is made, upon request, the appealing party shall be furnished a copy without charge. Corrections shall be allowed in the typed transcript by the hearing officer solely for the purpose of conforming the transcript to the actual testimony.

(xii) *Waiver of right to appear and present evidence.* A party may waive his or her right to appear at a hearing and present evidence. If all parties waive their right to appear before the hearing officer for presenting evidence and contentions personally or by representation, it will not be necessary for the hearing officer to give notice of, or to conduct a formal hearing. A waiver of the right to appear must be in writing and filed with the hearing officer or the Chief, Office of Appeals and Hearings, OCHAMPUS. Such waiver may be withdrawn by the party by written notice received by the hearing officer or Chief, Office of Appeals and Hearings, no later than 7 days before the scheduled hearing or the mailing of notice of the final decision, whichever occurs first. For purposes of this section, failure of a party to appear personally or by representation after filing written notice of waiver, will not be cause for finding of abandonment and the hearing

officer shall make the recommended decision on the basis of all evidence of record.

(11) *Recommended decision.* At the conclusion of the hearing and after the record has been closed, the matter shall be taken under consideration by the hearing officer. Within the time frames previously set forth in this section, the hearing officer shall submit to the Director, OCHAMPUS, or a designee, a written recommended decision containing a statement of findings and a statement of reasons based on the evidence adduced at the hearing and otherwise included in the hearing record.

(i) *Statement of findings.* A statement of findings is a clear and concise statement of fact evidenced in the record or conclusions that readily can be deduced from the evidence of record. Each finding must be supported by substantial evidence that is defined as such evidence as a reasonable mind can accept as adequate to support a conclusion.

(ii) *Statement of reasons.* A reason is a clear and concise statement of law, regulation, policies, or guidelines relating to the statement of findings that provides the basis for the recommended decision.

(e) *Final decision.* (1) *Director, OCHAMPUS.* The recommended decision shall be reviewed by the Director, OCHAMPUS, or a designee, who shall adopt or reject the recommended decision or refer the recommended decision for review by the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, or a designee, normally will take action with regard to the recommended decision within 90 days of receipt of the recommended decision or receipt of the revised recommended decision following a remand order to the Hearing Officer.

(i) *Final action.* If the Director, OCHAMPUS, or a designee, concurs in the recommended decision, no further agency action is required and the recommended decision, as adopted by the Director, OCHAMPUS, is the final agency decision in the appeal. In the case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new

recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this section, shall be the final agency decision and the final decision, together with a copy of the recommended decision, shall be sent by certified mail to the appealing party or parties. A final agency decision under paragraph (e)(1)(i) of this section will not be relied on, used, or cited as precedent by the Department of Defense in the administration of CHAMPUS.

(ii) *Referral for review by ASD(HA)*. The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of CHAMPUS policy and issuance of a final decision which may be relied on, used, or cited as precedent in the administration of CHAMPUS. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(2) *ASD(HA)*. The ASD(HA), or a designee, after reviewing a case arising under the procedures of this section may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and the final decision, together with a copy of the recommended decision, shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this paragraph (e)(2) may be relied on, used, or cited as precedent in the administration of CHAMPUS.

(f) *TRICARE Claimcheck or other similar software*. (1) *General*. This sets forth the policies and procedures for appealing adverse determinations issued as a result of the application of TRICARE Claimcheck or other similar software. The TRICARE Claimcheck or other similar software appeal procedures apply to denial or reduction in payment based on approved reimbursement methods; whereas, denials arising from TRICARE Claimcheck or other similar software relating to benefit determinations are subject to the appeal process in paragraphs (a) through (e) of this section. Non-participating providers may appeal only through the TRICARE Claimcheck or other similar software appeal procedures described in this paragraph (f). The levels of appeal under

the TRICARE Claimcheck or other similar software appeal procedures are: First-level appeal, issued by the CHAMPUS contractor; and second-level appeal, issued by OCHAMPUS. Provisions in paragraph (a)(10) of this section that apply to the dismissal of reconsideration and formal review determinations also apply to dismissal of first and second level appeals.

(i) *Initial determination and right to appeal*. (A) *Notice of initial determination*. (1) CHAMPUS contractors shall mail notices of initial determinations to the affected provider or CHAMPUS beneficiary (or representative) at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the other parent, guardian, or other representative, under established CHAMPUS procedures, constitutes notice to the beneficiary.

(2) Notice of an initial determination on a claim processed by a CHAMPUS contractor will be made on a CHAMPUS Explanation of Benefits (CEOB) form.

(3) Each CEOB shall state the reason for the determination.

(4) In any case when the initial determination is adverse to the beneficiary or provider, the CEOB shall include a statement of the beneficiary's or provider's right to appeal the determination. The procedure for filing a first-level appeal shall also be explained.

(B) *Effect of initial determination*. The initial determination is final unless appealed in accordance with this paragraph (f) or unless the initial determination is reopened by OCHAMPUS or the CHAMPUS contractor.

(ii) *Participation in an appeal*. Participation in an appeal is limited to any party to the initial determination, including OCHAMPUS, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS, may appeal an adverse determination.

(A) *Parties to the initial determination*. For purposes of this appeal procedure, the following are not parties to an initial determination and are not entitled to administrative review under this paragraph (f).

(1) A sponsor or parent of a beneficiary under 18 years of age or guardian of an incompetent beneficiary is not a party to the initial determination and may not serve as the appealing party.

(2) A third party, such as an insurance company, is not a party to the initial determination and is not entitled to appeal even though it may have an

indirect interest in the initial determination.

(B) *Representative*. Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the custodial parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary. The custodial parent or legal guardian (appointed by a cognizant court) of a minor beneficiary may initiate an appeal based on the above presumption. However, should a minor beneficiary turn 18 years of age during the course of an appeal, then any further requests to appeal on behalf of the beneficiary must be from the beneficiary or pursuant to the written authorization of the beneficiary appointing a representative. For example, if the beneficiary is 17 years of age and the sponsor (who is a custodial parent) requests a first-level appeal, absent written objection by the minor beneficiary, the sponsor is presumed to be acting on behalf of the minor beneficiary. Following the issuance of the first-level appeal determination, the sponsor requests a second-level appeal; however, if at the time of the request for a second-level appeal, the beneficiary is 18 years of age or older, the request must either be by the beneficiary or the beneficiary's appointed representative. The sponsor, in this example, could not pursue the request for a second-level appeal without being appointed by the beneficiary as the beneficiary's representative.

(1) The representative shall have the same authority as the appealing party and notice given to the representative shall constitute notice to the appealing party.

(2) To avoid possible conflicts of interest, an officer or employee of the United States, such as an employee or member of a Uniformed Service, including an employee or staff member of a Uniformed Service legal office, or a CHAMPUS advisor, subject to the exceptions in 18 U.S.C. 205, is not eligible to serve as a representative. An exception usually is made for an employee or member of a Uniformed Service who represents an immediate family member.

(iii) *Burden of proof*. The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to the authorization of CHAMPUS benefits. If a presumption exists under the provisions of this part or information

constitutes *prima facie* evidence under the provisions of this part, the appealing party must produce evidence reasonably sufficient to rebut the presumption or *prima facie* evidence as part of the appealing party's burden of proof. CHAMPUS shall not pay any part of the cost or fee, including attorney fees, associated with producing or submitting evidence in support of an appeal.

(iv) *Evidence in appeal cases.* Any relevant evidence may be sued in the TRICARE Claimcheck or other similar software appeal process if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might improper the admission of such evidence over objection in civil or criminal courts.

(v) *Late filing.* If a request for a first-level or second-level appeal is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the Director, OCHAMPUS, or a designee, that the timely filing of the request was not feasible due to the extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits. The decision of the Director, OCHAMPUS, or a designee, on the request for an exception to the filing requiring shall be final.

(vi) *Appealable issue.* An appealable issue is required in order for an adverse determination to be appealed under the provisions of this paragraph (f).

(vii) *Amount in dispute.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this paragraph (f). The amount in dispute is calculated as the amount of money CHAMPUS would pay if the services and supplies involved in dispute were determined to be authorized CHAMPUS benefits. Examples of amounts of money that are excluded by the Regulation from CHAMPUS payments for authorized benefits included but are not limited to:

(A) The beneficiary's CHAMPUS deductible and cost-share amounts.

(B) Amounts that the CHAMPUS beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(C) Amounts excluded under § 199.8.

(viii) *Scope of review.* The review of appeals under this paragraph (f) may identify issues other than TRICARE Claimcheck or other similar software

issues, which may be considered under other provisions of this part.

(2) *TRICARE Claimcheck or other similar software first-level appeal.* Any party to the initial determination made by the CHAMPUS contractor, may request a first-level appeal.

(i) *Requesting a first-level appeal.* (A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the CEOB issued by the CHAMPUS contractor.

(B) *Where to file.* The request shall be submitted to the CHAMPUS contractor that issued the CEOB or any other CHAMPUS contractor designated in the CEBO.

(C) *Allowed time to file.* The request must be mailed within 90 days after the date of notice on the CEOB.

(D) *Official filing date.* A request for a first-level appeal shall be deemed filed on the date it is mailed and postmarked. For the purposes of CHAMPUS, a postmark is a cancellation mark issued by the United States Postal Service. If the request does not have a postmark, it shall be deemed filed on the date received by the CHAMPUS contractor.

(ii) *The first-level appeal process.* The purpose of the first-level appeal is to determine whether the initial determination correctly identified improper claims. The first-level appeal review is performed by a member of the CHAMPUS contractor who was not involved in making the initial determination and is a thorough and independent review of the case. The first-level appeal is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or the CHAMPUS contractor may obtain.

(iii) *Timeliness of first-level appeal determination.* The CHAMPUS contractor normally shall issue its first-level appeal determination no later than 60 days from the date of receipt of the request for first-level appeal.

(iv) *Notice of first-level appeal determination.* The CHAMPUS contractor shall issue a written notice of the first-level appeal determination to the appealing party at his or her last known address. The notice of the first-level appeal determination must contain the following elements:

(A) A statement of the issues or issue under appeal.

(B) The provisions of law, regulation, policies and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the first-level appeal determination upholds the initial determination or reverses it, in whole or in part, and the rationale for the action.

(E) A statement of the right to appeal further in any case when the first-level appeal determination is less than fully favorable to the appealing party.

(v) *Effect of first-level appeal determination.* The first-level appeal determination is final if appeal rights have been offered, but a request for a second-level appeal is not postmarked or received by OCHAMPUS within 60 days of the date of the notice of the first-level appeal determination.

(3) *TRICARE Claimcheck or other similar software second-level appeal.* Except as explained in this paragraph (f), any party to a first-level appeal determination made by the CHAMPUS contractor may request a second-level appeal by OCHAMPUS if the party is dissatisfied with the first-level appeal determination unless the first-level appeal determination is final because of the reasons described in paragraph (f)(2)(v) of this section.

(i) *Requesting a second-level appeal.* (A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include a copy of the notice of first-level appeal determination being appealed, and shall include any additional information or documents not submitted previously.

(b) *Where to file.* The request shall be submitted to the Chief, Office of Appeals and Hearings, TRICARE Management Activity, 16401 E. Centertech Parkway, Aurora, CO 80011-9043.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the first-level appeal determination.

(d) *Official filing date.* A request for a second-level appeal shall be deemed filed on the date it is mailed and postmarked. For the purposes of CHAMPUS, a postmark is a cancellation mark issued by the United States Postal Service. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The second-level appeal process.* The purpose of the second-level appeal is to determine whether the initial determination and first-level appeal determination correctly identified improper claims. The second-level appeal is performed by the Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The second-level appeal determination is based on the information upon which the initial determination and the first-level appeal

determination were based, and any additional information the appealing party may submit or OCHAMPUS may obtain.

(iii) *Timeliness of second-level appeal determination.* The Chief, Office of Appeals and Hearings, OCHAMPUS or a designee, normally shall issue a written notice of the second-level appeal determination no later than 90 days from the date of receipt of the request for second-level appeal by OCHAMPUS.

(iv) *Notice of second-level appeal determination.* The Chief, Office of Appeals and Hearings, OCHAMPUS or designee, shall issue a written notice of the second-level appeal determination to the appealing party at his or her last known address. The notice of the second-level appeal determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the second-level appeal determination upholds the first-level appeal determination or reverses the first-level appeal determination in whole or in part and the rationale for the action.

(v) *Effect of second-level appeal determination.* The second-level appeal determination is the final action of the TRICARE Claimcheck or other similar software administrative appeal process.

4. Section 199.15 is proposed to be amended by revising paragraphs (f)(3)(ii)(A), (h), (i)(1), (i)(2), and (i)(4) as follows:

**§ 199.15 Quality and utilization review peer review organization program.**

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) A reconsideration determination that would be final in a cases involving sole-function PROs under paragraph (i)(2) of this section will not be final in cases involving multi-function PROs. In addition, a reconsideration determination that would be appealed to OCHAMPUS in cases involving sole-function PROs under paragraph (i)(1) of this section will not be appealed to OCHAMPUS in cases involving multi-function PROs. Rather, in such cases, an opportunity for a second reconsideration shall be provided. The second reconsideration will be provided by OCHAMPUS or another contractor independent of the multi-function PRO

that performed the review. The second reconsideration may not be further appealed by the provider except as provided in paragraph (i)(3) of this section.

\* \* \* \* \*

(h) *Procedures regarding reconsiderations.* The CHAMPUS PROs shall establish and follow procedures for reconsiderations that are substantively the same or comparable to the procedures applicable to reconsiderations under Medicare pursuant to 42 CFR 473.15 to 473.34, except that the time limit for requesting reconsideration (see 42 CFR 473.20(a)(1)) shall be 90 days. A PRO reconsideration determination is final and binding upon all parties to the reconsideration except to the extent of any further appeal pursuant to paragraph (i) of this section.

(i) \* \* \*

(1) Beneficiaries may appeal a PRO reconsideration determination to OCHAMPUS and obtain a hearing on such appeal to the extent allowed and under the procedures set forth in § 199.10(d).

(2) Except as provided in paragraph (i)(3) of this section, a PRO reconsideration determination may not be further appealed by a provider.

\* \* \* \* \*

(4) For purposes of the hearing process, a PRO reconsideration determination shall be considered as the procedural equivalent of a formal review determination under § 199.10, unless revised at the initiative of the Director, OCHAMPUS, prior to a hearing on the appeal, in which case the revised determination shall be considered as the procedural equivalent of a formal review determination under § 199.10.

\* \* \* \* \*

Dated: January 4, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer Department of Defense.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 100, 110, and 165**

**[COTP San Juan 99-088]**

**OPSAIL 2000, Port of San Juan, PR**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advanced notice of proposed rulemaking; request for comments.

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**SUMMARY:** The Coast Guard requests public comment on the temporary establishment of exclusion areas before, during, and after OPSAIL 2000 in the Port of San Juan, Puerto Rico from May 19 through May 29, 2000. The Coast Guard anticipates a rulemaking to establish temporary limited access areas and Special Local Regulations to control vessel traffic within the Port of San Juan during this event, including fireworks displays on the evenings of May 25, and May 28, 2000, and during the Outbound Parade of Sail on Monday, May 29, 2000, and establishing new and/or assigning currently designated Anchorage Grounds for spectator vessels. These temporary regulations will be necessary to ensure the safety of persons and property in the vicinity of fireworks displays and in the movement of numerous large sail vessels (Tall Ships) during the Parade of Sail.

**DATES:** Comments must be received on or before February 28, 2000.

**ADDRESSES:** Comments may be mailed to the U.S. Coast Guard Marine Safety Office San Juan, P.O. Box 71526, San Juan, Puerto Rico 00936-8626, or may be delivered to Rodriguez & Del Valle, 4th Floor, Calle San Martin, Carr #2 km 4.9, Guaynabo, Puerto Rico, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Marine Safety Office, San Juan, Puerto Rico maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office San Juan, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Robert Lefevers, U.S. Coast Guard Marine Safety Office, San Juan at (787) 706-2440, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in the early stages of this rulemaking by submitting written data, views, or arguments. Please explain your reasons for each comment so that we can carefully weigh the consequences and impacts of any future requirements we may propose. Persons submitting comments should include their names and addresses, identify this rulemaking (COTP San Juan 99-088) and the specific section of this document to which each comment applies. Please submit two copies of all comments and