

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

RIN 0720-AA93

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2005; TRICARE Dental Program**AGENCY:** Office of the Secretary. DoD.**ACTION:** Interim final rule.

SUMMARY: The Department is publishing this interim final rule to implement sections 711 and 715 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA-05), Public Law 108-375. Specifically, that legislation makes young dependents of deceased Service members eligible for enrollment in the TRICARE Dental Program when the child was not previously enrolled because of age, and authorizes post-graduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association to provide dental treatment to dependents who are 12 years of age or younger and who are covered by a dental plan established under 10 U.S.C. 1076a. This rule also corrects certain references in 32 CFR 199.13. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates. Public comments are invited and will be considered for possible revisions to the final rule.

DATES: This rule is effective November 21, 2005.

Comments: Written comments received at the address indicated below by November 21, 2005 will be accepted. Because of staff and resource limitations, we can only accept comments by mail or electronic mail (e-mail). We are unable to accept comments by facsimile (FAX) transmission. Send e-mail comments to TDP.rule@tma.osd.mil Mail written comments to the following address only: TRICARE Management Activity, TRICARE Operation/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041-3206; Attention: Col. Gary C. Martin, Director. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity,

telephone (703) 681-0039. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:**I. Background***Opportunity for Young Child Dependent of Deceased Member To Become Eligible for Enrollment in a TRICARE Dental Plan*

Currently, military members may enroll dependent children of any age in the TRICARE Dental Program (TDP), but many members choose not to enroll young children until they are automatically enrolled at four years of age. Unfortunately, when a member on active duty for a period of more than thirty days or a member of the Ready Reserve (*i.e.*, Selected Reserve and Individual Ready Reserve) dies, dependent children less than four years of age who are not enrolled in the TDP at the time of the member's death are ineligible for enrollment for the three-year TDP survivor's benefit. The NDAA for FY05 corrects this inequity by giving young dependent children of deceased Service members the opportunity to become eligible for enrollment in the TDP although they were not previously enrolled due to their age.

Professional Accreditation of Military Dentists

Currently, section 199.13(a)(2)(iii) of this Part excludes dependents of active duty, Selected Reserve and individual Ready Reserve members enrolled in the TRICARE Dental Program (TDP) from obtaining benefit services provided by the TDP in military dental care facilities except for emergency treatment, dental care provided outside the United States, and services incidental to non-covered services. Due to insufficient numbers of pediatric patients available for treatment in DoD's training facilities, the uniformed services faced significant problems with program accreditation and pediatric dental training. The Services had difficulty maintaining accreditation of post-graduate training programs because of a lack of pediatric dental patients with the proper dental case mix required for training. In addition, without adequate case numbers and case complexity, residents who at completion of their training were assigned overseas were not always fully trained to manage and treat pediatric dental patients.

Therefore, section 715 of the NDAA FY 05 provides the uniformed services with authority to maintain American Dental Association accreditation standards for certain military dental

specialty training programs that require treatment of pediatric patients and to provide pediatric training to meet requirements for the delivery of authorized dental care to children accompanying sponsors at OCONUS locations. The statute authorizes the Services to treat in their facilities a limited number of pediatric dental patients enrolled in the TDP. The Services have estimated their pediatric patient load requirements to sustain training facilities at 500-600 patients annually per Service. Only those patients age 12 years or younger meeting training needs and accepted for care in DoD's training programs will be treated in those programs to the maximum of 2,000 patients annually across DoD. To ensure strict compliance with the amended statute, Health Affairs will allocate specific numbers of patient training cases to each Service POC. Service POCs will implement registries to track the number of patients served on a daily basis to ensure that the respective patient case caps are not exceeded. Each Service will forward a semi-annual report to the Dental Care Division, TRICARE Management Activity. An annual report will be submitted at the end of each fiscal year to the Assistant Secretary of Defense for Health Affairs.

II. Regulatory Procedures*Executive Order (EO) 12866*

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that 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 rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this interim final rule is not subject to any of these requirements. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive Order 12866 and has been reviewed by the Office of Management and Budget. This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments

prior to issuance. This is because the effective date of the changes to these statutes was October 28, 2004. The rule changes the regulation to conform to the new statutory entitlement. Based on these statutory requirements, the Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical and contrary to the public interest. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Dental Program, Dental Health, Health care, Health insurance, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 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 199.13 is amended by revising paragraphs (a)(2)(iii), (c)(2)(i)(a)(2) and (c)(3)(ii)(E)(2), and adding paragraphs (a)(2)(iv) and (i) to read as follows:

§ 199.13 TRICARE Dental Program.

- (a) * * *
- (2) * * *

(iii) *Exclusion of benefit services performed in military dental care facilities.* Except for emergency treatment, dental care provided outside the United States, services incidental to noncovered services, and services provided under paragraph (a)(2)(iv), dependents of active duty, Selected Reserve and Individual Ready Reserve members enrolled in the TDP may not obtain those services that are benefits of the TDP in military dental care facilities, as long as those covered benefits are available for cost-sharing under the TDP. Enrolled dependents of active duty, Selected Reserve and Individual Ready Reserve members may continue to obtain noncovered services from military dental care facilities subject to the provisions for space available care.

(iv) *Exception to the exclusion of services performed in military dental care facilities.*

(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under this section may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if

(1) Treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

(2) The number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such programs or students.

(B) The total number of dependents treated in all facilities of the uniformed services under paragraph (a)(2)(iv) in a fiscal year may not exceed 2,000.

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- (c) * * *
- (2) * * *
- (i) * * *
- (A) * * *

(2) Child. To be eligible, the child must be unmarried and meet one of the requirements set forth in section 199.3(b)(2)(ii)(A)–(F) or 199.3(b)(2)(ii)(H).

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- (c) * * *
- (3) * * *
- (ii) * * *
- (E) * * *

(2) *Continuation of eligibility.* Eligible dependents of active duty members while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (i.e., Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively), shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death, if, on the date of the death of the member, the dependent is enrolled in the TDP, or is not enrolled by reason of discontinuance of a former enrollment under paragraphs (e)(3)(ii)(E)(4)(ii) and (c)(3)(ii)(E)(4)(iii) of this section, or is not enrolled because the dependent was under the minimum age for enrollment at the time

of the member's death. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

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(i) *Implementing Instructions.* The Director, TRICARE Management Activity or designee may issue TRICARE Dental Program policies, standards, and criteria as may be necessary to implement the intent of this section.

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Dated: September 14, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18753 Filed 9–20–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2005–22429]

RIN 1625–AA11

Safety Zones; Sector New Orleans; Barges

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the navigable waters of Sector New Orleans surrounding barges that have sustained damage requiring salvage operations during Hurricane Katrina. This action is necessary to provide for the safety of life and property during salvage operations, as well as to minimize effects on the navigable waters of Sector New Orleans.

DATES: This rule is effective from September 19, 2005 through December 31, 2005.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2005–22429 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this