

plans that offer a prescription drug benefit must comply with Medicare Part D rules. The beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan before seeking CHAMPUS/TRICARE payment. CHAMPUS/TRICARE payment for such beneficiaries may not exceed that which would be payable for a beneficiary under paragraph (d)(1)(iii)(C) of this section.

\* \* \* \* \*

■ 3. Section 199.21 is amended by adding new paragraphs (g)(4) and (i)(2)(xi), and by revising paragraphs (h)(2)(ii) and (m), to read as follows:

**§ 199.21 Pharmacy benefits program.**

\* \* \* \* \*

(g) \* \* \*

(4) *Transition to the Uniform Formulary.* Beginning in Fiscal Year 2005, under an updated charter for the DoD P&T Committee, the committee shall meet at least quarterly to review therapeutic classes of pharmaceutical agents and make recommendations concerning which pharmaceutical agents should be on the Uniform Formulary, the Basic Care Formulary (BCF), and Extended Core Formulary (ECF). The P&T Committee will review the classes in a methodical, but expeditious manner. During the transition period from the previous methodology of formulary management involving only the MTFs and the TMOP Program, previous decisions by the predecessor DoD P&T Committee concerning MTF and Mail Order Pharmacy Program formularies shall continue in effect. As therapeutic classes are reviewed under the new formulary management process, the processes established by this section shall apply.

(h) \* \* \*

(2) \* \* \*

(ii) *Availability of formulary pharmaceutical agents at military treatment facilities (MTF).* Pharmaceutical agents included on the uniform formulary are available through facilities of uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the P&T Committee of the relative clinical effectiveness and cost effectiveness, based on costs to the Program associated with providing the agents to beneficiaries. The BCF is a subset of the uniform formulary and is a mandatory component of formularies at all full-service MTF pharmacies. The BCF contains the minimum set of pharmaceutical agents that each full-

service MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. Limited-service MTF pharmacies (e.g., specialty pharmacies within an MTF or pharmacies servicing only active duty military members) are not required to include the entire BCF on their formularies, but may limit their formularies to those BCF agents appropriate to the needs of the patients they serve. An ECF may list preferred agents in drug classes other than those covered by the BCF. Among BCF and ECF agents, individual MTF formularies are determined by local P&T Committees based on the scope of health care services provided at the respective MTFs. All pharmaceutical agents on the local formulary of full-service MTF pharmacies must be available to all categories of beneficiaries.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(xi) For a Medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by 10 U.S.C. 1086.

\* \* \* \* \*

(m) *Effect of other health insurance.* The double coverage rules of section 199.8 of this part are applicable to services provided under the pharmacy benefits program. For this purpose, the Medicare prescription drug benefit under Medicare Part D, prescription drug benefits provided under Medicare Part D plans are double coverage plans and such plans will be the primary payer, to the extent described in section 199.8 of this part. Beneficiaries who elect to use these pharmacy benefits shall provide DoD with other health insurance information.

\* \* \* \* \*

Dated: October 23, 2009.

**Patricia L. Toppings,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*  
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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

RIN 0720-AB28; DoD-2008-HA-0073

**32 CFR Part 199**

**TRICARE; Hospital-Based Psychiatric Partial Hospitalization Programs**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule will provide that TRICARE approval of a hospital is sufficient for its psychiatric partial hospitalization program (PHP) to be an authorized TRICARE provider. Upon implementation of this provision, separate TRICARE certification of hospital-based psychiatric PHPs would no longer be required. This rule will establish uniform requirements for recognizing a hospital-based PHP as an authorized TRICARE provider.

**DATES:** *Effective Date:* This rule is effective November 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ann N. Fazzini, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone, (303) 676-3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of December 30, 2008, (73 FR 79726), the Office of the Secretary of Defense published for public comment a proposed rule regarding TRICARE certification standards for psychiatric PHPs. The rule proposed that TRICARE no longer impose its unique certification standards upon hospital-based psychiatric PHPs. Rather, TRICARE approval of a hospital shall be sufficient to establish the hospital as an authorized provider of its PHP services to TRICARE beneficiaries.

**II. Review of Public Comments**

We received two comments on the proposed rule. One commenter applauded the agency for its decision to find that TRICARE approval of a hospital is sufficient for its psychiatric partial hospitalization program to be an authorized provider. We appreciate the comment.

A second commenter recommended that DoD eliminate TRICARE's unique requirements for hospital-based PHPs. We note that the proposed rule put forward eliminating the unique requirements for hospital based PHPs and recognizing a hospital-based PHP as

an authorized provider. This final rule adopts the provision.

This same commenter also urged DoD to revise its PHP reimbursement regulations by implementing a temporary military contingency payment adjustment (TMCPA) for PHP consistent with its policy for other outpatient services as described in 32 CFR 199.14. We refer the commenter to the final rule published in the **Federal Register** on December 10, 2008 (73 FR 74954), that discusses the Outpatient Prospective Payment System (OPPS). The OPPS allows for a temporary transitional payment adjustment (TTPA) and a TMCPA to buffer the financial impact of the new prospective payment system. The Department's rationale for adopting the TTPA was to ease the transition from the prior reimbursement system to the prospective payment-type of reimbursement and to give hospitals time to adjust and budget for potential revenue reductions. We note that the OPPS, TTPA, and TMCPA apply to PHP services.

Finally, the commenter also urged DoD to critically examine its payment structure for hospital-based PHP, with a strong attention to payment adequacy for hospital-based PHP. The commenter also stated that reviewing our payment structure will assure greater access to quality hospital-based PHPs. We respond by noting that we believe access and reimbursement will be enhanced by adopting the provision in this rule which provides that TRICARE approval of a hospital is sufficient for its PHP to be an authorized TRICARE provider. Upon implementation of this provision, separate TRICARE certification of hospital-based psychiatric PHPs shall no longer be required; consequently, access will be enhanced. Additionally, with our adoption of the Medicare full-day rate for partial hospitalization and allowing payment of professional services outside the per diem rate, with some exceptions, we feel the overall PHP payment (i.e., the TRICARE OPPS per diem plus payment for certain professional services) is comparable to the per diem rates currently in effect under TRICARE policy. In addition, the TMCPAs would also apply to ensure adequate access to PHP services. Again, for further information on PHP reimbursement and OPPS, we refer the reader to the final rule published in the **Federal Register** on December 10, 2008 (73 FR 74954). It should be noted, however, that neither the proposed rule nor this final rule address the reimbursement provisions of section 199.14.

**III. Regulatory Procedures**

*Executive Order 12866, "Regulatory Planning and Review"*

Executive Order 12866 requires 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. This final rule is not a significant regulatory action. Nor is it subject to the Congressional Review Act.

*Public Law 96-354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601)*

Public Law 96-354, "Regulatory Flexibility Act" (RFA) (5 U.S.C. 601), requires each Federal agency to prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

This rule does not contain a "collection of information" requirement, and will not impose additional information collection requirements on the public under Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

*Public Law 104-4, Section 202, "Unfunded Mandates Reform Act"*

Section 202 of Public Law 104-4, "Unfunded Mandates Reform Act," requires an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million in any one year. It has been certified that this final rule does not contain a federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Therefore, this final rule is not subject to this requirement.

*Executive Order 13132, "Federalism"*

Executive Order 13132, "Federalism," requires an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It has been certified that this final rule does not have federalism implications, as set forth in Executive Order 13132.

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

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

**PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)**

■ 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 199.6 is amended by revising paragraphs (b)(4)(xii)(A)(2)(i) and (b)(4)(xii)(E)(7) introductory text to read as follows:

**§ 199.6 TRICARE—authorized providers.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(xii) \* \* \*

(A) \* \* \*

(2) Eligibility. (i) Every free-standing psychiatric partial hospitalization program must be certified pursuant to TRICARE certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(xii)(A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, TRICARE Management Activity, determines are necessary to implement the basic standards. Each psychiatric partial hospitalization program must be either a distinct part of an otherwise-authorized institutional provider or a free-standing program. Approval of a hospital by TRICARE is sufficient for its partial hospitalization program to be an authorized TRICARE provider. Such hospital-based partial hospitalization programs are not required to be separately certified pursuant to TRICARE certification standards.

\* \* \* \* \*

(E) \* \* \*

(7) Free-standing partial hospitalization programs shall certify that:

\* \* \* \* \*

Dated: October 23, 2009.

**Patricia L. Toppings,**

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

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2009-OS-0043]

### 32 CFR Part 311

#### Privacy Act; Implementation

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

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of the Secretary of Defense shall exempt those records contained in DWHS E06, Enterprise Correspondence Control System (ECCS), when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The Privacy Act system of records notice has already been published on August 19, 2009 (74 FR 41870).

**DATES:** The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Federal Docket management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard at (703) 588-6830.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

#### Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

#### Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

#### Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

#### Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States,

on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### List of Subjects in 32 CFR Part 323

Privacy.

■ Accordingly, 32 CFR part 311 is amended as follows:

#### PART 311—OSD PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

**Authority:** Privacy Act of 1974, Pub. L. 93-579, Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 311.8 is amended to add paragraph (b)(16) to read as follows:

#### § 311.8 Procedures for exemptions.

\* \* \* \* \*

(b) \* \* \*

(16) System identifier and name: DWHS E06, Enterprise Correspondence Control System (ECCS).

(i) *Exemption:* During the staffing and coordination of actions to, from, and within components in conduct of daily business, exempt materials from other systems of records may in turn become part of the case record in this document control system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a (j)(2) and (k)(1) through (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The