

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

[DoD–2009–HA–0096]

RIN 0720–AB34

**TRICARE: Transitional Assistance Management Program****AGENCY:** Office of the Secretary, Department of Defense.**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense is publishing this proposed rule to implement section 4 of the Hubbard Act, Public Law 110–317, and section 734 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110–417. These Acts provide two new categories of beneficiaries for the Transitional Assistance Management Program (TAMP).

**DATES:** Comments received at the address indicated below by January 26, 2010 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or 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:** Glenn Corn, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676–3566.

**SUPPLEMENTARY INFORMATION:** This proposed rule implements section 4 of the Hubbard Act, Public Law 110–317, and section 734 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110–417, in establishing two new eligibility categories under TAMP. The TAMP benefit provides continued TRICARE

coverage for a period of 180 days. For those who qualify, the 180-day time frame begins upon the active duty member's separation. For further information on TAMP benefits, please visit the TRICARE Web site at <http://www.tricare.mil>.

The TAMP is available to specific beneficiary categories. Prior to the two additional categories that are being proposed in this rule, the TAMP was available to:

- A member who is involuntarily separated from active duty.
- A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days.
- A member who is separated from active duty for which the member is involuntarily retained under section 12305, in support of a contingency operation.
- A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

Public Law 110–317 amended Section 1145(a)(2) of title 10, U.S.C. by adding “a member who receives a sole survivorship discharge (as defined in section 1174(i) of this title)” as an additional category of TAMP eligible. The provision is effective August 29, 2008.

Public Law 110–417 amended Section 1145(a)(2) of title 10, U.S.C. by adding “a member who is separated from active duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component.” This provision is effective October 14, 2008.

Although the TRICARE Management Activity is tasked with publishing legislatively mandated eligibility changes, determination of eligibility is the primary responsibility of the Uniformed Services. TRICARE relies on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification. However, a determination by the Uniformed Services that a person is eligible does not automatically entitle such a person to TRICARE payments. Before any TRICARE benefits may be extended, additional requirements of 32 CFR Part 199 must be met. Disputes regarding eligibility or dates of beginning eligibility for benefits under TRICARE can only be resolved by the appropriate Uniformed Service.

**Regulatory Procedures**

*Executive Order 12866, “Regulatory Planning and Review”*

Section 801 of title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or 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. It has been certified that this rule is not a major rule or significant regulatory action.

*Public Law 104–4, Section 202, “Unfunded Mandates Reform Act”*

Section 202 of Public Law 104–4, “Unfunded Mandates Reform Act,” requires that 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 proposed 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, and thus this proposed rule is not subject to this requirement.

*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 that each Federal agency 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 proposed 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 proposed 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).

*Executive Order 13132, “Federalism”*

Executive Order 13132, “Federalism,” requires that 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 proposed 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 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 199.3 is amended by adding two new paragraphs (e)(1)(v) and (e)(1)(vi) to read as follows:

**§ 199.3 Eligibility.**

\* \* \* \* \*

- (e) \* \* \*
(1) \* \* \*

(v) A member who receives a sole survivorship discharge (as defined in section 1174(i) of title 10, United States Code).

(vi) A member who is separated from active duty who agrees newly to become a member of the Selected Reserve of the Ready Reserve of a reserve component.

\* \* \* \* \*

Dated: November 19, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DoD-2008-HA-0123; RIN 0720-AB29]

**32 CFR Part 199**

**TRICARE; TRICARE Delivery of Health Care in Alaska**

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

**ACTION:** Proposed rule.

**SUMMARY:** TRICARE has recognized the unique circumstances existing in Alaska which make the provision of medical care to TRICARE beneficiaries through the TRICARE program operated in the other 49 States unrealistic. Recognizing these unique conditions and circumstances, the Department of Defense has conducted a demonstration

project in the State of Alaska since implementation of the TRICARE program under which certain exceptions have been made for administration of the program in Alaska. This rule proposes to incorporate those demonstration exceptions as permanent changes to the administration of the TRICARE program in Alaska. This rule proposes no change to the TRICARE benefit or to those who are eligible for it. However, the rule does eliminate the financial underwriting of health care costs in the State of Alaska by a TRICARE contractor. In addition, TRICARE Prime may be limited to those eligible beneficiaries enrolled to a military treatment facility and those eligible for TRICARE Prime Remote.

**DATES:** Written comments received at the address indicated below by January 26, 2010 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either 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, Washington, DC 20301-1160.

**Instructions:** All submissions received must include the agency name and docket number or 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:** Mr. Michael O'Bar, TRICARE Management Activity, TRICARE Policy and Operations Directorate, telephone (703) 681-0039.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction and Background**

In recognition of the unique geographical and environmental characteristics of the State of Alaska, the Department of Defense has conducted a demonstration project which tested the viability of implementing the TRICARE program differently in Alaska (see Federal Register, Tuesday, May 18, 2004, 69 FR 28124-28125). To date that demonstration has supported the impracticability and lack of cost effectiveness to impose on a TRICARE contractor the financial underwriting of the delivery of health care resulting from costs associated with the TRICARE

program over which the contractor has no control. In addition, implementation of the TRICARE program in Alaska has limited TRICARE Prime to those eligible beneficiaries enrolled at a military treatment facility (MTF) and those eligible for TRICARE Prime Remote. The demonstration is scheduled to end on March 31, 2009. This rule will make permanent those aspects of the demonstration which the Department of Defense found to be best in the delivery of health care in Alaska. However, in order to ensure continuity of health care services in Alaska during the transition to the competitively awarded follow-on TRICARE contract, the demonstration may be extended until the later of the start of health care delivery under the new contract or until this rule becomes final.

**II. Regulatory Procedures**

Executive Order 12866, "Regulatory Planning and Review"

Section 801 of title 5, United States Code (U.S.C.) and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or 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. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Sec. 202, Public Law, 104-4, "Unfunded Mandates Reform Act"

It has been certified that this 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.

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

The Regulatory Flexibility Act (RFA) requires 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 proposed rule is not subject to any of these requirements.