

TABLE TO APPENDIX A—EXPLANATION OF FOIA EXEMPTIONS—Continued

Exemption	Explanation
(b)(5) .....	Applies to records and information of internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations.
(b)(6) .....	Applies to records or information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals.
(b)(7) .....	Applies to records or information compiled for law enforcement purposes that could: (a) Reasonably be expected to interfere with law enforcement proceedings; (b) deprive a person of a right to a fair trial or impartial adjudication; (c) reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; (d) disclose the identity of a confidential source; (e) disclose investigative techniques and procedures; or (f) reasonably be expected to endanger the life or physical safety of any individual.
(b)(8) .....	Applies to records and information for the use of any agency responsible for the regulation or supervision of financial institutions.
(b)(9) .....	Applies to records and information containing geological and geophysical information (including maps) concerning wells.

(2) *Classification Categories.* Information will not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of Executive Order 13526, and it pertains to one or more of the following:

- (i) Military plans, weapons systems, or operations;
  - (ii) Foreign government information;
  - (iii) Intelligence activities (including covert action), intelligence sources or methods, or cryptology;
  - (iv) Foreign relations or foreign activities of the United States, including confidential sources;
  - (v) Scientific, technological, or economic matters relating to the national security;
  - (vi) U.S. Government programs for safeguarding nuclear materials or facilities;
  - (vii) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or
  - (viii) The development, production, or use of weapons of mass destruction.
- (b) [Reserved]

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

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### APPENDIX A TO PART 199—ACRONYMS

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

SOURCE: 51 FR 24008, July 1, 1986, unless otherwise noted.

### § 199.1 General provisions.

(a) *Purpose.* This part prescribes guidelines and policies for the administration of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS) and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA).

(b) *Applicability*—(1) *Geographic.* This part is applicable geographically within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States possessions and territories, and

in all foreign countries, unless specific exemptions are granted in writing by the Director, OCHAMPUS, or a designee.

(2) *Agency.* The provisions of this part apply throughout the Department of Defense (DoD), the Coast Guard, the Commissioned Corps of the USPHS, and the Commissioned Corps of the NOAA.

(c) *Authority and responsibility—(1) Legislative authority—(i) Joint regulations.* 10 U.S.C. chapter 55 authorizes the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation jointly to prescribe regulations for the administration of CHAMPUS.

(ii) *Administration.* 10 U.S.C. chapter 55 also authorizes the Secretary of Defense to administer CHAMPUS for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer CHAMPUS for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer CHAMPUS for the Commissioned Corps of the NOAA and the USPHS.

(2) *Organizational delegations and assignments—(i) Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR part 367, delegated authority to the ASD(HA) to provide policy guidance, management control and coordination as required for CHAMPUS, and to develop, issue, and maintain regulations with the coordination of the Military Departments and consistent with DoD 5025.1-M.<sup>1</sup> Additional implementing authority is contained in DoD Directive 5105.46.<sup>2</sup>

(ii) *Department of Health and Human Services.* The Secretary of Health and Human Services has delegated authority to the Assistant Secretary for Health, DHHS, to consult with the Secretary of Defense or a designee and to

approve and issue joint regulations implementing 10 U.S.C. chapter 55. This delegation was effective April 19, 1976 (41 FR 18698, May 6, 1976).

(iii) *Department of Transportation.* The Secretary of Transportation has delegated authority to the Commandant, United States Coast Guard, to consult with the Secretary of Defense or a designee and to approve an issue joint regulations implementing 10 U.S.C., chapter 55.

(iv) *Office of CHAMPUS (OCHAMPUS).* By DoD Directive 5105.46, OCHAMPUS was established as an OSD field activity under the policy guidance and direction of the ASD(HA). The Director, OCHAMPUS, is directed to execute the following responsibilities and functions:

(A) Supervise and administer the programs and missions to:

(1) Provide technical direction and guidance on organizational, administrative, and operational matters.

(2) Conduct studies and research activities in the health care area to assist in formulating policy required to guide OCHAMPUS in carrying out its programs.

(3) Enter into agreements through the Department of Defense with respect to the Military Departments or other U.S. Government entities, as required, for the effective performance of CHAMPUS.

(4) Supervise and administer OCHAMPUS financial management activities to include:

(i) Formulating budget estimates and justifications to be submitted to the Deputy Assistant Secretary of Defense (Administration) (DASD(A)) for inclusion in the overall budget for the Office of the Secretary of Defense.

(ii) Ensuring the establishment and maintenance of necessary accounting records and submission of required financial reports to the DASD(A).

(iii) Ensuring the effective execution of approved budgets.

(5) Contract for claims processing services, studies and research, supplies, equipment, an other services necessary to carry out the CHAMPUS programs.

(6) Monitor claims adjudication and processing contracts to ensure that CHAMPUS fiscal intermediaries are fulfilling their obligations.

<sup>1</sup>Copies may be obtained, if needed, from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup>Copies may be obtained; if needed from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

(7) Convey appropriate CHAMPUS information to providers of care, practitioners, professional societies, health industry organizations, fiscal agents, hospital contractors, and others who have need of such information.

(8) Collect, maintain, and analyze program cost and utilization data appropriate for preparation of budgets, fiscal planning, and as otherwise needed to carry out CHAMPUS programs and missions.

(9) Arrange for the facilities logistical and administrative support to be provided by the Military Departments.

(10) Execute such other functions as appropriate to administer the programs and missions assigned.

(B) Direct and control of the office, activities, and functions of OCHAMPUS Europe (OCHAMPUSEUR).

NOTE: The Director, OCHAMPUS, may also establish similar offices for OCHAMPUS Southern Hemisphere (OCHAMPUSSO) and OCHAMPUS Pacific (OCHAMPUSPAC).

(C) Develop for issuance, subject to approval by the ASD(HA), such policies or regulations as required to administer and manage CHAMPUS effectively.

(v) *Evidence of eligibility.* The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under CHAMPUS. Identification cards or devices bearing information necessary for preliminary evidence of eligibility, subject to verification through the DEERS, shall be issued to eligible persons by the appropriate Uniformed Services (DoD 1341.1-M, "Defense Enrollment Eligibility Reporting System (DEERS) Program Manual").

(d) *Medical benefits program.* The CHAMPUS is a program of medical benefits provided by the U.S. Government under public law to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services. Although similar in structure in many of its aspects, CHAMPUS is not an insurance program in that it does not involve a contract guaranteeing the indemnification of an

insured party against a specified loss in return for a premium paid. Further, CHAMPUS is not subject to those state regulatory bodies or agencies that control the insurance business generally.

(e) *Program funds.* The funds used by CHAMPUS are appropriated funds furnished by the Congress through the annual appropriation acts for the Department of Defense and the DHHS. These funds are further disbursed by agents of the government under contracts negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Acquisition Regulation (FAR). These agents (referred to in this part as CHAMPUS fiscal intermediaries) receive claims against CHAMPUS and adjudicate the claims under this part and in accordance with administrative procedures and instructions prescribed in their contracts. The funds expended for CHAMPUS benefits are federal funds provided CHAMPUS fiscal intermediaries solely to pay CHAMPUS claims, and are not a part of or obtained from the CHAMPUS fiscal intermediary's funds related to other programs or insurance coverage. CHAMPUS fiscal intermediaries are reimbursed for the adjudication and payment of CHAMPUS claims at a rate (generally fixed-price) prescribed in their contracts.

(f) *Claims adjudication and processing.* The Director, OCHAMPUS, is responsible for making such arrangements as are necessary to adjudicate and process CHAMPUS claims worldwide.

(1) *The United States—(i) Contracting out.* The primary method of processing CHAMPUS claims in the United States is through competitively procured, fixed-price contracts. The Director, OCHAMPUS, or a designee, is responsible for negotiating, under the provisions of the FAR, contracts for the purpose of adjudicating and processing CHAMPUS claims (and related supporting activities).

(ii) *In-house.* The Director, OCHAMPUS, or a designee, is authorized to adjudicate and process certain CHAMPUS claims in-house at OCHAMPUS, when it is determined to be in the best interests of CHAMPUS subject to applicable considerations set forth in OMB Circular A-76. Such in-house claims processing may involve

special or unique claims, or all claims for a specific geographic area.

(2) *Outside the United States*—(i) *Special subsidiary office or contracting out.* For adjudicating and processing CHAMPUS claims for services or supplies provided outside the United States, the Director, OCHAMPUS, or a designee, has the option of either setting up a special subsidiary claims paying operation (such as OCHAMPUSEUR) or contracting out as described in paragraph (f)(1)(i) of this section. Such claims paying operations are reviewed periodically to determine whether current arrangements continue to be appropriate and the most effective.

(ii) *Support agreements.* In those situations outside the United States that demand special arrangements, the Director, OCHAMPUS, may enter into support agreements through the Department of Defense with any of the Military Departments or other government agency to process CHAMPUS claims in specific geographic locations. Such agreements may be negotiated for such period of time as the Director, OCHAMPUS, or designee, may determine to be necessary to meet identified special demands.

(g) *Recommendations for change to part.* The Director, OCHAMPUS, or a designee, shall establish procedures for receiving and processing recommendations for changes to this part from interested parties.

(h) *CHAMPUS, claims forms.* The Director, OCHAMPUS, or a designee, is responsible for the development and updating of all CHAMPUS claim forms and any other forms necessary in the administration of CHAMPUS.

(i) *The CHAMPUS handbook.* The Director, OCHAMPUS, or a designee, shall develop the CHAMPUS, Handbook. The CHAMPUS Handbook is a general program guide for the use of CHAMPUS beneficiaries and providers and shall be updated, as required.

(j) *Program integrity.* The Director, OCHAMPUS, or a designee, shall oversee all CHAMPUS personnel, fiscal intermediaries, providers, and beneficiaries to ensure compliance with this part. The Director, OCHAMPUS, or a designee, shall accomplish this by means of proper delegation of author-

ity, separation of responsibilities, establishment of reports, performance evaluations, internal and external management and fiscal audits, personal or delegated reviews of CHAMPUS responsibilities, taking affidavits, exchange of information among state and Federal governmental agencies, insurers, providers and associations of providers, and such other means as may be appropriate. Compliance with law and this part shall include compliance with specific contracts and agreements, regardless of form, and general instructions, such as CHAMPUS policies, instructions, procedures, and criteria relating to CHAMPUS operation.

(k) *Role of CHAMPUS Health Benefits Advisor (HBA).* The CHAMPUS HBA is appointed (generally by the commander of a Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving CHAMPUS. The CHAMPUS HBA may assist beneficiaries or sponsors in applying for CHAMPUS benefits, in the preparation of claims, and in their relations with OCHAMPUS and CHAMPUS fiscal intermediaries. However, the CHAMPUS HBA is not responsible for CHAMPUS policies and procedures and has no authority to make benefit determinations or obligate Government funds. Advice given to beneficiaries as to determination of benefits or level of payment is not binding on OCHAMPUS or CHAMPUS fiscal intermediaries.

(1) *Cooperation and exchange of information with other Federal programs.* The Director, OCHAMPUS, or a designee, shall disclose to appropriate officers or employees of the DHHS:

(1) *Investigation for fraud.* The name and address of any physician or other individual actively being investigated for possible fraud in connection with CHAMPUS, and the nature of such suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) *Unnecessary services.* The name and address of any provider of medical services, organization, or other person found, after consultation with an appropriate professional association or appropriate peer review body, to have

provided unnecessary services. Such information will be released only for the purpose of conducting an investigation or prosecution, or for the administration of titles XVIII and XIX of the Social Security Act, provided that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than program purposes.

(m) *Disclosure of information to the public.* Records and information acquired in the administration of CHAMPUS are records of the Department of Defense and may be disclosed in accordance with DoD Directive 5400.7<sup>3</sup>, DoD 5400.7-R<sup>4</sup>, and DoD 5400.11-R<sup>5</sup> (codified in 32 CFR parts 286 and 286a), constituting the applicable DoD Directives and DoD Regulations implementing the Freedom of Information and the Privacy Acts.

(n) *Discretionary authority.* When it is determined to be in the best interest of CHAMPUS, the Director, OCHAMPUS, or a designee, is granted discretionary authority to waive any requirements of this part, except that any requirement specifically set forth in 10 U.S.C. chapter 55, or otherwise imposed by law, may not be waived. It is the intent that such discretionary authority be used only under very unusual and limited circumstances and not to deny any individual any right, benefit, or privilege provided to him or her by statute or this part. Any such exception granted by the Director, OCHAMPUS, or a designee, shall apply only to the individual circumstance or case involved and will in no way be construed to be precedent-setting.

(o) *Demonstration projects—(1) Authority.* The Director, OCHAMPUS may waive or alter any requirements of this regulation in connection with the conduct of a demonstration project required or authorized by law except for any requirement that may not be waived or altered pursuant to 10 U.S.C. chapter 55, or other applicable law.

(2) *Procedures.* At least 30 days prior to taking effect, OCHAMPUS shall pub-

lish a notice describing the demonstration project, the requirements of this regulation being waived or altered under paragraph (o)(1) of this section and the duration of the waiver or alteration. Consistent with the purpose and nature of demonstration projects, these notices are not covered by public comment practices under DoD Directive 5400.9 (32 CFR part 296) or DoD Instruction 6010.8.

(3) *Definition.* For purposes of this section, a "demonstration project" is a project of limited duration designed to test a different method for the finance, delivery or administration of health care activities for the uniformed services. Demonstration projects may be required or authorized by 10 U.S.C. 1092, any other statutory provision requiring or authorizing a demonstration project or any other provision of law that authorizes the activity involved in the demonstration project."

(p) *Military-Civilian Health Services Partnership Program.* The Secretary of Defense, or designee, may enter into an agreement (external or internal) providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers if the Secretary determines that such an agreement would result in the delivery of health care in a more effective, efficient or economical manner. This partnership allows CHAMPUS beneficiaries to receive inpatient and outpatient services through CHAMPUS from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. The policies and procedures by which partnership agreements may be executed are set forth in Department of Defense Instruction (DoDI) 6010.12, "Military-Civilian Health Services Partnership Program." The Director, OCHAMPUS, or a designee, shall issue policies, instructions, procedures, guidelines, standards, or criteria as may be necessary to provide support for implementation of DoDI 6010.12, to promulgate and manage benefit and financial policy issues, and to develop a program evaluation process to ensure the Partnership Program accomplishes the purpose for which it was developed.

<sup>3</sup> See footnote 2 to § 199.1(c)(2)(i)

<sup>4</sup> See footnote 1 to § 199.1(c)(2)(i)

<sup>5</sup> See footnote 1 to § 199.1(c)(2)(i)

(1) *Partnership agreements.* Military treatment facility commanders, based upon the authority provided by their representative Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. All such agreements are subject to the review and approval of the Director, OCHAMPUS, or designee, and the appropriate Surgeon General.

(i) *External partnership agreements.* The external partnership agreement is an agreement between a military treatment facility Commander and a CHAMPUS-authorized institutional provider, enabling Uniformed Services health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type of agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

(ii) *Internal partnership agreements.* The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS-authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in

Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS.

(2) *Beneficiary cost-sharing.* Beneficiary cost-sharing under the Partnership Program is outlined in § 199.4(f)(5) of this part.

(3) *Reimbursement.* Reimbursement under the Partnership Program is outlined in § 199.14(f) of this part.

(4) *Beneficiary eligibility and authorized providers.* Existing requirements of this Regulation remain in effect as concerns beneficiary eligibility and authorized providers.

(5) *Range of benefits.* Health care services provided CHAMPUS beneficiaries under the terms of the Partnership Program must be consistent with the CHAMPUS range of benefits outlined in this Regulation. The services rendered must be otherwise covered. Charges allowed for professional services provided under the Partnership Program may include costs of support personnel, equipment, and supplies when specifically outlined in the partnership agreement. However, all CHAMPUS coverage and provider requirements must be met.

(q) *Equality of benefits.* All claims submitted for benefits under CHAMPUS shall be adjudicated in a consistent, fair, and equitable manner, without regard to the rank of the sponsor.

(r) *TRICARE program.* Many rules and procedures established in sections of this part are subject to revision in areas where the TRICARE program is implemented. The TRICARE program is the means by which managed care activities designed to improve the delivery and financing of health care services in the Military Health Services System (MHSS) are carried out. Rules and procedures for the TRICARE program are set forth in § 199.17.

[51 FR 24008, July 1, 1986, as amended at 52 FR 38754, Oct. 19, 1987; 53 FR 27961, July 26, 1988; 55 FR 43338, Oct. 29, 1990; 60 FR 52094, Oct. 5, 1995]

#### § 199.2 Definitions.

(a) *General.* In an effort to be as specific as possible as to the word and intent of CHAMPUS, the following definitions have been developed. While