

Dated: December 15, 1997.

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

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 199

[DoD 6010.8-R]

RIN 0720-AA44

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Retiree Dental Program (TRDP)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the TRICARE Retiree Dental Program (TRDP), a premium based indemnity dental insurance coverage program, that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries.

EFFECTIVE DATE: This final rule is effective January 22, 1998.

ADDRESSES: Office of Health Services Financing Policy, Department of Defense, Room 1B657 Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697-8975.

SUPPLEMENTARY INFORMATION:

I. Overview of the Final Rule

Implementation of the TRICARE Retiree Dental Program (TRDP) was directed by Congress in section 703 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104-201, which amended title 10, United States Code, by adding section 1076c. This final rule also incorporates the minor changes in the National Defense Authorization Act for Fiscal Year 1998 which expand eligibility to retirees of the Public Health Service and the National Oceanic and Atmospheric Administration, and active duty survivors and their dependents. The law directs the implementation of a dental program for: (1) Members of the Uniformed Services who are entitled to retired pay, (2) Members of the Retired Reserve under the age of 60, (3) Eligible dependents of (1) or (2) who are covered by the enrollment of the member, and (4) The unmarried surviving spouse

and eligible child dependents of a deceased member who died while in status described in (1) or (2); the unmarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unmarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

Included in the program are the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. The final rule expands the coverage of the program to include all U.S. Territories. Enrollment in the program is voluntary and members enrolled in the dental plan will be responsible for paying the full cost of the premiums. Under the final rule, the initial enrollment period has been extended from 12 months to 24 months (similar to the Active Duty Dependents Dental Program) in order to reduce the risk of adverse selection. The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs). Dental coverage under the TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. Minor administrative changes have been made in the plan benefits section in order to correct outdated codes and to include codes that were inadvertently excluded from the list.

Under this rule, where possible, members entitled to retired pay and eligible family members and their dependents may make use of participating dental providers in their areas and may benefit from reduced out-of-pocket and provider submission of claims and acceptance of contractor allowances and arrangements. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Under the final rule, the maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of the billed charges or the Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code). TRDP eligibles will obtain information concerning the

program and the application process from the contractor.

This final rule adopts the statutory preemption authority of 10 U.S.C., section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities.

II. Public Comments

The proposed rule was published on June 24, 1997 (62 FR 34032-34035). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits:* We received a comment that an error exists in the description of procedure code 00120, 00140, and 00150.

Response: We appreciate the comment and we have replaced "examination" with "evaluation" in the description of the procedure codes 00120, 00140, and 00150.

2. *Benefits:* The commenter pointed out an oversight in that two procedures, Amalgam-one surface, permanent (02140) and Amalgam (two-surface), permanent (02150) were not included in the benefits of the program.

Response: We concur with the comment and procedures codes 02140 and 02150 have been added under the restorative benefits under the program.

3. *Benefits:* Another comment we received pointed out that several periodontic (04261, 04262, 04268) codes are outdated and have been changed.

Response: We appreciate the comment. These periodontic codes have been changed in the final rule as follows: code 04261 has been replaced by Bone replacement graft-first site in quadrant (04263); code 04262 has been replaced by Bone replacement-each additional site in quadrant; code 04268 has been replaced by Guided tissue regeneration-resorbable barrier, per site, per tooth (04266) and Guided tissue

regeneration-nonresorbable barrier, per site, per tooth (includes membrane removal) (04267).

4. *Benefits:* We received a comment that the benefits need to be expanded to include prosthetic services.

Response: Under the law, 10 U.S.C. 1076c, the TRICARE Retiree Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency services; prosthetic services are not included.

5. *Maximum Annual Cap:* The commenter expressed concern about the \$1,000 maximum annual cap and recommended a higher annual maximum benefit.

Response: As the government does not share in the cost of the premium, the maximum annual cap is necessary to ensure that the monthly premium is a reasonable/affordable amount for the enrollee. It is important to note that the maximum annual cap does not apply to all of the diagnostic services and some of the preventive services covered under the program.

6. *Benefit Payment:* The commenter pointed out a mistake in the Benefit payment section. The section states, "For enrollees who do not use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP."

Response: The commenter is correct and the sentence has been corrected to state, "For enrollees who do use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP."

7. *Balance Billing:* A commenter asked if balance billing is limited to 115% of the CHAMPUS allowable charge for a service.

Response: As this is not a CHAMPUS program, DoD's statutory authority to limit balance billing to 115% of the CHAMPUS allowable charge does not apply. Non-network providers are not limited in the amount they may balance bill an enrollee.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of \$100 million or more, or 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 will impose additional information collection requirements on the public, associated with beneficiary enrollment, under the Paperwork Reduction Act of 1995. OMB approval number 0720-0015 pending a development of a contractor-designed enrollment form which has now been accomplished. The form will be submitted to OMB concurrently with publication of this notice. The collection instrument serves as an application form for military members entitled to retired pay and eligible dependents to enroll in the TRICARE Retiree Dental Program. The application will allow the Department of Defense to identify enrollment applicants, evaluate their eligibility for the enrollment, and determine other health insurance coverage which an applicant may have.

Affected Public: Eligible family members and their dependents.

Annual Burden Hours: 71,640.

Number of Respondents: 286,570.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Once, at time of initial application.

Respondents are retirees of the Uniformed Services entitled to retired pay and eligible family members and their dependents who are seeking enrollment in the TRICARE Retiree Dental Program. The enrollment application will allow the Department to collect the information necessary to properly identify the program's applicants and to determine their eligibility for enrollment in the TRICARE Retiree Dental Program. In completing and signing a TRICARE Retiree Dental Program enrollment form, applicants will acknowledge that they understand the benefits offered under the program and the rules they must follow to continue their participation in the program. Further, applicants will acknowledge that the premium will be withheld from retired pay when such pay is available. Initial enrollment will be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 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. Part 199 is amended by adding § 199.22 to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

(a) *Purpose.* The TRDP is a premium based indemnity dental insurance coverage program that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries, as specified in paragraph (d) of this section. The TRDP is authorized by 10 U.S.C. 1076c.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations, as specified in paragraph (f) of this section.

(2) Premium costs for this coverage will be paid by the enrollee.

(3) The program is applicable to authorized providers in the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Human Affairs) or designee, the TRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13 of this part.

(5) The TRDP shall be administered through a contract.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) of this part are relevant to the administration of the TRICARE Retiree Dental Program, the definitions contained in §§ 199.2 and 199.13(b) of this part shall apply to the TRDP as they do to CHAMPUS and the TRICARE Active Duty Dependents Dental Plan.

(d) *Eligibility and enrollment.*—(1) *Eligibility.* Enrollment in the TRICARE Retiree Dental Program is open to:

(i) Members of the Uniformed Services who are entitled to retired pay;

(ii) Members of the Retired Reserve under the age of 60;

(iii) Eligible dependents of paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section who are covered by the enrollment of the member; and

(iv) The unmarried surviving spouse and eligible child dependents of a deceased member who died while in status described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section; the

unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Retiree Dental Program.

(3) *Election of coverage.* Following this notification, interested members entitled to retired pay and eligible family members and their dependents may elect to enroll. In order to obtain dental coverage, written election by the eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Retiree Dental Program is voluntary and will be accomplished by submission of an application to the TRDP contractor. Initial enrollment shall be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

(5) *Period of coverage.* TRICARE Retiree Dental Program coverage is terminated when the member's entitlement to retired pay is terminated, the member's status as a member of the Retired Reserve is terminated, a dependent child loses eligible child dependent status, or in the case of remarriage of the surviving spouse.

(6) *Continuation of dependents' enrollment upon death of enrollee.* Coverage of a dependent in the TRDP under an enrollment of a member or surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. Coverage may be terminated when the premiums paid are no longer sufficient to cover continuation of the enrollment.

(e) *Premium payments.* Persons enrolled in the dental plan will be responsible for paying the full cost of the premiums in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs) or designee.

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee's disenrollment from the TRDP and subject to a lock-out period of 12 months. Following this period of

time, persons eligible will be able to reenroll if they so choose.

(3) *Member's payment of premiums.* The cost of the TRDP monthly premium will be paid by the enrollee. Interested beneficiaries may contact the dental contractor-insurer to obtain the enrollee premium cost.

(f) *Plan benefits.* (1) The TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. The following is the TRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) Diagnostic: Periodic oral evaluation (00120); Comprehensive oral evaluation (limited to one exam per year in the same dental office) (00150); Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Intraoral-occlusal film (00240); Bitewings-single film (00270); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Caries susceptibility tests, by report (00425); Pulp vitality tests (00460).

(ii) Preventive: Prophylaxis-adult (limit-once per year) (01110); Prophylaxis-child (01120); Topical application of fluoride (excluding prophylaxis)-child (01203); Topical application of fluoride (excluding prophylaxis)-adult, by report, once per year (01204); Sealant-per tooth (01351); Space maintainer-fixed-unilateral (01510); Space maintainer-fixed-bilateral (01515); Space maintainer-removable-unilateral (01520); Space maintainer-removable-bilateral (01525); Recementation of space maintainer (01550).

(iii) Restorative: Amalgam-one surface, primary (02110); Amalgam-two surfaces, primary (02120); Amalgam-three surfaces, primary (02130); Amalgam-four or more surfaces, primary (02131); Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); Amalgam-three surfaces, permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Recement inlay (02910); Recement crown (02920); Prefabricated stainless steel crown-primary tooth (02930); Prefabricated stainless steel crown-permanent tooth (02931); Prefabricated resin crown

(02932); Prefabricated stainless steel crown with resin window (02933); Pin retention-per tooth, in addition to restoration (02951); Temporary crown (fractured tooth) (02970).

(iv) Endodontic: Pulp cap-indirect (excluding final restoration) (03120); Therapeutic pulpotomy (excluding final restoration) (03220); Pulpal therapy (resorbable filling)-anterior, primary tooth (excluded final restoration) (03230); Pulpal therapy (resorbable filling)-posterior, primary tooth (excluded final restoration) (03240); Anterior root canal (excluding final restoration) (03310); Bicuspid root canal (excluding final restoration) (03320); Molar root canal (excluding final restoration) (03330); Retreatment-anterior, by report (03346); Retreatment-bicuspid, by report (03347); Retreatment-molar, by report (03348); Apexification/recalcification-initial visit (apical closure/calcific repair of perforations, root resorption, etc.) (03351); Apexification/recalcification-interim medication replacement (apical closure/calcific repair of perforations, root resorption, etc.) (03352); Apexification/recalcification-final visit (includes completed root canal therapy-apical closure/calcific repair of perforations, root resorption, etc.) (03353); Apicoectomy/Periradicular surgery-anterior (03410); Apicoectomy/Periradicular surgery-bicuspid (first root) (03421); Apicoectomy/Periradicular surgery-molar (first root) (03425); Apicoectomy/Periradicular surgery (each additional root) (03426); Retrograde filling-per root (03430); Root amputation-per root (03450); Hemisection (including any root removal), not including root canal therapy (03920).

(v) Periodontic: Gingivectomy or gingivoplasty-per quadrant (04210); Gingivectomy or gingivoplasty-per tooth (04211); Gingival curettage, surgical, per quadrant, by report (04220); Gingival flap procedure, including root planing-per quadrant (04240); Mucogingival surgery-per quadrant (04250); Osseous surgery (including flap entry and closure)-per quadrant (04260); Bone replacement graft-single site (including flap entry and closure) (04263); Bone replacement graft-multiple sites (including flap entry and closure) (04264); Guided tissue regeneration—resorbable barrier (04266); Guided tissue regeneration—nonresorbable barrier (04267); Pedicle soft tissue graft procedure (including donor site) (04271); Periodontal scaling and root planing-per quadrant (04341); Periodontal maintenance procedures (following active therapy) (04910);

Unscheduled dressing change (by someone other than treating dentist) (04920).

(vi) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130) Surgical removal or erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Removal of impacted tooth-soft tissue (07220); Removal of impacted tooth-partially bony (07230); Removal of impacted tooth-completely bony (07240); Surgical removal of residual tooth roots (cutting procedure) (07250); Oral antral fistula closure (07260); Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth and/or alveolus (07270); Surgical exposure of impacted or unerupted tooth to aid eruption (07281); Biopsy of oral tissue-hard (07285); Biopsy of oral tissue-soft (07286); Surgical repositioning of teeth (074290); Alveoloplasty in conjunction with extractions-per quadrant (07310); Suture of recent small wounds up to 5 cm (07910); Complicated suture-up to 5 cm (07911); Complicated suture-greater than 5 cm (07912); Excision of pericoronal gingiva (07971).

(vii) Emergency: Limited oral evaluation—problem focused (00140); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(viii) Drugs: Therapeutic drug injection, by report (09610); Other drugs and/or medications, by report (09630).

(ix) Postsurgical: Treatment of complications (post-surgical) unusual circumstances, by report (09930).

(2) Codes listed in paragraph (f)(1) of this section may be modified by the Director, OCHAMPUS, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(g) *Maximum annual cap.* TRDP enrollees will be subject to a maximum cap of \$1,000.00 of paid allowable charges per enrollee per year.

(h) *Annual notification of rates.* TRDP premiums will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed.

(i) *Authorized providers.* The TRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(j) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TRDP contractor. For enrollees who do use these network providers, however, providers shall not balance bill any amount in excess of the maximum

payment allowable by the TRDP. Enrollees using non-network providers may balance billed amounts in excess of allowable charges. The maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of:

(1) Billed charges; or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(k) *Appeal and hearing procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) of this part shall apply.

(l) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(2) Based on the determination set forth in paragraph (l)(1) of this section, any State or local law or regulation pertaining to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Retiree Dental Program contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE Retiree Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Retiree Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(3) The preemption of State and local laws set forth in paragraph (l)(2) of this

section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of section 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(m) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and procedures for the administration of the TRICARE Retiree Dental Program.

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-97-120]

RIN 2115-AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500 yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.114 are effective from one hour