

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199****TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Nonavailability Statement Requirement for Maternity Care****AGENCY:** Office of the Secretary, DoD.**ACTION:** Final rule.

**SUMMARY:** This final rule implements Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106-65), which requires that a nonavailability-of-health-care statement shall be required for a beneficiary not enrolled in TRICARE Prime for TRICARE cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The Act reestablishes a requirement which was previously eliminated under the broad direction of the National Defense Authorization Act for FY 1997, section 734, which removed authority for nonavailability statements (NASs) for outpatient services. Therefore, the Act changes the provisions which require an NAS for inpatient delivery, but do not require an NAS for outpatient prenatal and post-partum care. The change will significantly contribute to continuity of care for maternity patients. In furtherance of that principle, and consistent with the previous policy, an NAS for maternity care shall not be required when a beneficiary has other health insurance for primary coverage.

**EFFECTIVE DATE:** This rule is effective October 5, 1999, the effective date of Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106-65), which imposes the requirement.

**ADDRESSES:** TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011-9043.

**FOR FURTHER INFORMATION CONTACT:** Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676-3801.

**SUPPLEMENTARY INFORMATION:****I. Final Rule Provisions**

This final rule implements section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106-65) which requires that a nonavailability-of-health-care

statement shall be required for TRICARE/CHAMPUS cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The nonavailability statement (NAS) requirement applies to non-enrolled TRICARE beneficiaries who live in a catchment area of a military treatment facility (MTF). Except for an emergency or when there is other primary health insurance coverage, these beneficiaries are required to obtain all maternity care from the MTF. If care is unavailable at the MTF, an NAS will be issued for the beneficiary. The Act changes the existing provisions which require an NAS for inpatient delivery but do not require an NAS for outpatient prenatal, outpatient delivery and post-partum care. The change will provide for continuity of care for maternity patients. Beneficiaries will need one NAS for the entire episode of maternity care which shall remain valid until 42 days following termination of the pregnancy. We published the interim final rule on December 23, 1999.

**II. Public Comments**

We provided a 60-day comment period on the interim final rule. We received no public comments, and no comments were received from other federal agencies with which we are required to coordinate.

**III. Regulatory 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 is not a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget. In addition, this final rule will not significantly affect a substantial number of small entities. The changes set forth in the final rule are minor revisions to the existing regulation.

The final 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, Handicapped, Health insurance, and Military personnel.

**PART 199—[AMENDED]**

Accordingly, 32 CFR 199 is amended as follows:

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 199.4(a) is amended by revising paragraphs (a)(9) and (a)(9)(i)(B).

**§ 199.4 Basic program benefits.**

\* \* \* \* \*

(a) \* \* \*

(9) Nonavailability Statements within a 40-mile catchment area. In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required medical care can be provided through an Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD Form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) \* \* \*

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with non-emergency inpatient hospital care and outpatient and inpatient maternity care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that an NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. For maternity care, an NAS is required for services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit that confirms the pregnancy. The requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

\* \* \* \* \*

Dated: July 17, 2000.

**L.M. Bynum,**

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

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP Western Alaska 00-010]

RIN 2115-AA97

#### **Safety Zone; U. S. Marine Corps Water Jump, Resurrection Bay, Seward, Alaska**

**AGENCY:** Coast Guard, DOT

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary 1100 yard radius safety zone around a point located at 60°02'28.7"N latitude, 149°23'02.8"W longitude in Resurrection Bay, Seward, AK. This safety zone is implemented to ensure the safety of approximately 25 U. S. Marine Corps personnel who will be jumping from a C-130 aircraft into the waters of Resurrection Bay at a time when this waterway will be extremely busy with commercial and recreational vessels. Entry into, transit through, anchoring or remaining in this zone is prohibited unless authorized by the Captain of the Port, Western Alaska, or his authorized representative.

**DATES:** This regulation is effective from 12:30 p.m. until 4:30 p.m. on July 20, 2000.

**ADDRESSES:** Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501. Comments received will be available for inspection and copying at Coast Guard Marine Safety Office Anchorage. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Mark McManus, USCG Marine Safety Office, Anchorage, at (907) 271-6762.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Regulation publication. Publishing an

NPRM and delaying its effective date would be contrary to the public interest since the scope of the activities requiring this safety zone, and other logistical details surrounding this port visit, were not finalized until a date fewer than 30 days prior to the project date. Furthermore, immediate action is necessary to provide for the safe transit of the vessel.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Those providing comments should identify the docket number for the regulation (COTP Western Alaska 00-010) and also include their name, addresses, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing the Marine Safety Office in Anchorage, Alaska at the address listed in **ADDRESSES** in this preamble.

##### **Background and Purpose**

Due to the fact that Resurrection Bay is a relatively narrow waterway, that commercial vessel traffic transits routinely through this area conducting business at the Port of Seward, and the large amount of recreational vessel traffic that utilize this waterway, the Coast Guard is establishing a 1100 yard radius safety zone to ensure the safety of 25 U.S. Marine Corps personnel that will be jumping into Resurrection Bay from a C-130 aircraft on July 20, 2000.

##### **Discussion of the Regulation**

The Coast Guard is establishing a temporary 1100 yard safety zone around a point located at 60°02'28.7"N latitude, 149°23'02.8"W longitude in Resurrection Bay, Seward, AK. This safety zone is implemented to ensure the safety of approximately 25 U. S. Marine Corps personnel who will be jumping from a C-130 aircraft into the waters of Resurrection Bay at a time when this waterway will be extremely busy with commercial and recreational vessels. The proposed safety zone is intended to become effective at 12:30 a.m. on July 20, 2000, and terminate at 16:30 p.m. on July 20, 2000. Entry into, transit through, anchoring or remaining in this zone is prohibited unless authorized by the Captain of the Port or his authorized representative.

##### **Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. Commercial and recreational vessel traffic will be able to transit into and out of the Port of Seward via the traffic lanes that will be open on the east and west sides of the safety zone area during the entire effective period of this regulation. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

##### **Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Mark McManus, Coast Guard Marine Safety Office Anchorage, AK, at (907) 271-6762.

##### **Collection of Information**

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).