

Dated: August 26, 2004.
Charles E. Sandberg,
Regional Director, Mid-Continent Regional Coordinating Center.
■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS
■ 1. The authority citation for part 943 continues to read as follows:
Authority: 30 U.S.C. 1201 *et seq.*
■ 2. Section 943.15 is amended in the table by adding a new entry in

chronological order by “Date of final publication” to read as follows:
§ 943.15 Approval of Texas regulatory program amendments.
* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 4, 2004	September 14, 2004	16 TAC 12.108(b).

[FR Doc. 04–20662 Filed 9–13–04; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 199
RIN 0720–AA85
TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA–03)
AGENCY: Office of the Secretary, DoD.
ACTION: Final rule.

SUMMARY: This final addresses eliminating the requirement for TRICARE preauthorization of inpatient mental health care for TRICARE/Medicare eligible beneficiaries where Medicare is primary payer and has already authorized the care; approving a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare as a TRICARE provider if the provider is also a TRICARE authorized provider; and, expanding the TRICARE Dental Program (TDP) eligibility for dependents of deceased members.
DATES: This rule is effective September 14, 2004 except that the effective date for the amendment to 32 CFR 199.4(a)(12)(ii)(E)(2) is October 1, 2004, and the effective date for the amendment to 32 CFR 199.13(c)(13)(ii)(E)(2) is December 2, 2002. The applicability date for the amendment to 32 CFR 199.6(c)(2)(v) is for any TRICARE contract entered into on or after December 2, 2002.
FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, (303) 676–3803 (The sections of this rule regarding elimination of mental health preauthorization and Medicare providers as TRICARE providers) or Major Shannon Lynch, (303) 676–3496 (The section of this rule regarding the

TRICARE Dental Program). Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.
SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 19, 2003, (68 FR 65172), the Office of the Secretary of Defense published for public comment an interim final rule regarding the following three changes found in the the Bob Stump NDAA 03 (Pub. L. 107–314). We received no public comments.
I. Elimination of Mental Health Pre-Authorization
Section 701 of the Bob Stump NDAA–03 states that:
(B) Preadmission authorization for inpatient mental health services is not required under subparagraph (A) in the following cases:
(i) In the case of an emergency.
(ii) In a case in which any benefits are payable for such services under Part A of title XVIII of the Social Security act (42 U.S.C. 1395c *et seq.*) subject ot subparagraph (C).
(C) In a case of inpatient mental health services to which subparagraph (B)(ii) applies, the Secretary shall require advance authorization for a continuation of the provision of such benefits after benefits cease to be payable for such services under such part A.
This language eliminates the preauthorization requirement for inpatient mental health care where Medicare is primary payer. Currently, in situations where a Medicare beneficiary, who is also TRICARE eligible, receives inpatient mental health care, TRICARE applies its rules for preauthorization even though TRICARE is not the primary payer. The language found in Section 701 of the Bob Stump NDAA–03 changes the way we currently operate. Once this change is implemented, Medicare beneficiaries who are also TRICARE eligible, will follow Medicare’s rules until their Medicare benefit is exhausted. Once the Medicare benefit is exhausted, TRICARE’s rules regarding preauthorization will apply.

Section 701 of the Bob Stump NDAA–03 also continues our current policy that pre-authorization is not required in the case of an emergency.
II. Medicare Provider Certification Applicable to TRICARE Individual Professional Providers
Section 705 of the Bob Stump NDAA–03 states that:
Subject to subsection (a), a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of this title) shall be considered approved to provide medical care authorized under this section and section 1086 of this title unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner.
This language provides that a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. Approval is limited to those providers who are currently considered TRICARE authorized providers as outlined in 32 CFR 199.6. Services and supplies rendered by those providers not currently considered authorized providers shall be denied.
Our contractors are currently in compliance with this provision, but this final rule is necessary to add the statutory language to our regulation.
Section 705 continues the current TRICARE policy of excluding providers who are sanctioned or who have program integrity violations under

Medicare, TRICARE, or other Federal health programs. Such providers are presently specifically excluded as TRICARE providers.

III. TRICARE Dental Program

Section 703 of the Bob Stump NDAA 03 revises eligibility by stating:

If, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f).

Currently, eligibility in the TDP includes any such dependent of a member who died while on active duty for a period of 31 days or more or a member of the Ready Reserve (*i.e.*, Selected Reserve and Individual Ready Reserve) if the dependent was enrolled on the date of the death of the member. The exception to this is that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death. This 3-year period of continued enrollment also applies to dependents of active duty members who died on or between the dates of 1 February 2000 and 31 January 2001 while the dependents were enrolled in the TRICARE Family Member Dental Program (TFMDP). Section 703 of the NDAA FY03 TRICARE changes eligibility in the TDP by including any such dependent of a member who dies while on active duty for a period of 31 days or more or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan or is not enrolled in such a plan by reason of a discontinuance of a former enrollment due to transfer to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan. The exception remains that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.

IV. Regulatory Procedures

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.

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 major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). If, however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

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—[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 199.4 is amended by revising paragraphs (a)(12)(ii)(A) and (a)(12)(ii)(E) and the first sentence in paragraph (b)(6)(iii)(A) to read as follows:

§ 199.4 Basic program benefits

- (a) * * *
- (12) * * *
- (ii) * * *

(A) This section generally requires preadmission authorization for all non-emergency inpatient mental health services and prompt continued stay authorization after emergency admissions with the exception noted in paragraph (a)(12)(ii) of this section. It also requires preadmission authorization for all admissions to a partial hospitalization program, without exception, as the concept of an emergency admission does not pertain to a partial hospitalization level of care. Institutional services for which payment would otherwise be authorized, but which were provided without compliance with preadmission authorization requirements, do not qualify for the same payment that would be provided if the preadmission requirements had been met.

* * * * *

(E) Preadmission authorization for inpatient mental health services is not required in the following cases:

(1) In the case of an emergency.

(2) In a case in which benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c *et seq.*) subject to paragraph (a)(12)(iii) of this section.

(3) In a case of inpatient mental health services in which paragraph (a)(12)(ii) of this section applies, the Secretary shall require advance authorization for a continuation of the provision of such services after benefits cease to be payable for such services under such part A.

* * * * *

(b) * * *

(6) * * *

(iii) * * *

(A) With the exception noted in paragraph (a)(12)(ii)(E) of this section, all non-emergency admissions to an acute inpatient hospital level of care must be authorized prior to the admission. * * *

* * * * *

■ 3. Section 199.6 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 199.6 Authorized providers

* * * * *

(c) * * *

(2) * * *

(v) Subject to section 1079(a) of title 10, U.S.C., chapter 55, a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title 10 U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. Approval is limited to those classes of provider currently considered TRICARE authorized providers as outlined in 32 CFR 199.6. Services and supplies rendered by those providers who are not currently considered authorized providers shall be denied.

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■ 4. Section 199.13 is amended by revising paragraph (c)(3)(ii)(E)(2) to read as follows:

§ 199.13 TRICARE Dental Program.

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(2) Continuation of eligibility for dependents of service members who die while on active duty or while a member of the Ready Reserve (*i.e.*, Selected Reserve or Individual Ready Reserve). Eligible dependents of active duty members while on active duty for a period of thirty-one (31) days or more and eligible dependents of Ready Reserve (*i.e.*, Selected Reserve or Individual Ready Reserve members), as specified in 10 U.S.C. 10143 and 10144(b) respectively, if on the date of the death of the member, the dependent is enrolled in the TDP, or if not enrolled by reason of a discontinuance of a former enrollment under paragraphs (c)(4)(ii) and (c)(4)(iii) of this section shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death. This 3-year period of continued enrollment also applies to dependents of active duty members who died within the year prior to the beginning of the TDP while the dependents were enrolled in the TFMDP. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

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Dated: September 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04-20366 Filed 9-13-04; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 031125290-4058-02; I.D. 090304A]

RIN 0648-AQ97

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation of Pacific sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific

sardine harvest guideline in the exclusive economic zone off the Pacific coast. On September 1, 2004, 68,009 metric tons (mt) of the 122,747-mt harvest guideline were estimated to remain unharvested. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted and any uncaught portion of the harvest guideline remaining unharvested in Subarea A (north of Pt. Arena, CA) and Subarea B (south of Pt. Arena, CA) be added together and reallocated, with 20 percent allocated to Subarea A and 80 percent to Subarea B; therefore, 13,602 mt is allocated to Subarea A and 54,407 mt is allocated to Subarea B. The intended effect of this action is to ensure that a sufficient amount of the resource is available to all harvesters on the Pacific coast and to achieve optimum yield.

DATES: Effective September 8, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT:

Tonya L. Wick, Southwest Region, NMFS, 562-980-4036.

SUPPLEMENTARY INFORMATION: On February 25, 2004, NMFS published notice of a harvest guideline of 122,747 mt for Pacific sardine in the **Federal Register** (69 FR 8572) for the fishing season January 1, 2004, through December 31, 2004. The harvest guideline was allocated as specified in the FMP, that is, one-third (40,916 mt) for Subarea A, which is north of 39°00'00" N. lat. (Pt. Arena, CA) to the Canadian border; and two-thirds (81,831 mt) for Subarea B, which is south of 39°00'00" N. lat. to the Mexican border.

On August 26, 2003, a regulatory amendment to the FMP developed by the Pacific Fishery Management Council (Council) was approved, and a final rule implementing the amendment was published in the **Federal Register** on September 5, 2003 (68 FR 52523). The amendment: (1) changed the definition of Subarea A and Subarea B by moving the geographic boundary between the two areas from Pt. Piedras Blancas at 35°40'00" N. lat. to Pt. Arena at 39°00'00" N. lat.; (2) changed the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1; (3) changed the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B; and (4) reallocated all unharvested sardine that remain on December 1 coast wide.

Landings in the Pacific Northwest in 2004 have been above the landings for

the same period during the 2003 fishing season. Landings by September 1 in Subarea A north of Pt. Arena were estimated at 30,919 mt; therefore, 9,997 mt of the initial allocation to Subarea A of 40,916 mt remained unharvested. Landings in California have been below landings for the same period in 2003. Landings by September 1 in Subarea B south of Pt. Arena were estimated at 23,819 mt; therefore, 58,012 mt of the initial allocation to Subarea B of 81,831 mt remained unharvested. Based on this information, a total of 68,009 mt of the 122,747-mt harvest guideline remained unharvested on September 1, 2004. Therefore, according to the requirements of the FMP, as amended, 20 percent of 68,009 mt (13,602 mt) is allocated to Subarea A, and 80 percent of 68,009 mt (54,407 mt) is allocated to Subarea B.

Any portion of 122,747 mt harvest guideline that remains unharvested in Subarea A and Subarea B on December 1, 2004, will be available for harvest coast-wide until the 122,747-mt harvest guideline is reached and the fishery is closed.

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because redistribution of the harvest guideline is a ministerial act required by the FMP to ensure that all harvesters have access to the resource. This action relieves potential restrictions on those affected by Federal regulations, and affording additional notice and comment would impede the agency's ability to manage Pacific sardine. Accordingly, providing prior notice and an opportunity for public comment would serve no useful purpose.

Because this rule merely provides a redistribution of a harvest guideline to meet the requirements of the FMP and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Authority: 16 U.S.C. 1801 *et seq.*