

**§ 520.1194 [Amended]**

■ 2. Section 520.1194 is amended in paragraph (b) by removing “050604” and by adding in its place “017135”.

Dated: March 31, 2005.

**Bernadette A. Dunham,**

*Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

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**DEPARTMENT OF JUSTICE****Parole Commission****28 CFR Part 2**

**Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes**

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** During 2004 the Parole Commission carried out a pilot project to study the feasibility of conducting parole release hearings through videoconferences between an examiner at the Commission's office and prisoners at selected institutions of the Federal Bureau of Prisons. In order to give notice of this project, the Commission promulgated an interim rule that provided that a parole release hearing may be conducted through a videoconference with the prisoner. The pilot project has been a success and the Commission is now amending the interim rule to include institutional revocation hearings as hearings that may be conducted by videoconference. The Commission is taking this action to further conserve personnel resources and reduce the costs associated with travel by the agency's hearing examiners.

**DATES:** Effective Date: May 13, 2005. Comments must be received by June 13, 2005.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

**FOR FURTHER INFORMATION CONTACT:** Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** The Parole Commission's hearing examiners travel to more than 60 locations of Federal correctional facilities to conduct parole release and revocation hearings. In order to reduce travel costs and to conserve the time and effort of its hearing examiners, in 2004 the Commission initiated a pilot project in which examiners conducted some parole release hearings by videoconference between the Commission's office in Maryland and the prisoner's Federal institution. The Commission published an interim rule that provided notice that the Commission would be using the videoconference procedure. 69 FR 5273 (Feb. 4, 2004).

By the end of 2004, the Commission conducted 102 hearings via videoconference at 11 institutions. The videoconference technology has worked well. Video and audio transmissions are clear and the hearings are seldom interrupted by technical difficulties. The Commission's experience is that the prisoner's ability to effectively participate in the hearing has not been diminished by the use of the videoconference procedure.

The Commission's pilot project only included parole release hearings. Now the Commission is extending the use of the videoconference procedure to institutional revocation hearings. A revocation hearing is held at a Federal institution when the releasee admits to the violation charge, is convicted of a new crime, or waives a local revocation hearing, *i.e.*, a hearing at the place of the alleged violation or arrest. Adverse witnesses are not produced at institutional revocation hearings for confrontation and cross-examination. On rare occasions, the releasee has a witness testify on his behalf at the hearing. Because the violation charge is either not contested by the releasee or is conclusively established by the new conviction, an institutional revocation hearing primarily focuses on the decisions regarding the appropriate prison term for the releasee's violation and whether the releasee should be returned to the community on supervision. Therefore, an institutional revocation hearing bears considerable similarity to a parole determination proceeding. Given this similarity and the additional cost savings and conservation of resources that may be gained from use of the videoconference procedure, the Commission is adding institutional revocation hearings to those hearings an examiner may conduct by videoconference.

Extending the videoconference procedure to institutional revocation hearings will provide additional

flexibility for both the Commission and the Bureau of Prisons in the disposition of accused release violators and the use of personnel. For example, if the releasee is serving a new prison term at an institution where the Commission conducts parole hearings via videoconference, the Bureau will be able to designate that same institution as the site of the releasee's institutional revocation hearing. This saves either the cost of transporting the releasee to FTC Oklahoma or FDC Philadelphia, the institutions where the Commission conducts the majority of institutional revocation hearings, or the cost of sending a hearing examiner to travel to the institution to conduct one institutional revocation hearing when all other hearings at that same institution are conducted via videoconference. Moreover, conducting institutional revocation hearings by videoconference may avoid some violations of the 90-day time period for holding such hearings in situations where transportation difficulties or other problems have delayed the scheduling of the hearing.

The Commission is promulgating this rule as an interim rule in order to promptly take full advantage of the cost savings and other benefits in the deployment of examiner personnel that result from the extension of the videoconference procedure to institutional revocation hearings. The Commission is providing a 60-day period for the public to comment on the use of the videoconference procedure for such revocation hearings.

**Implementation**

The amended rule will take effect May 13, 2005, and will apply to institutional revocation hearings for Federal parolees and District of Columbia parolees and supervised releasees held on or after the effective date.

**Executive Order 12866**

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866.

**Executive Order 13132**

This regulation will not 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. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a federalism Assessment.

**Regulatory Flexibility Act**

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804 (3) (c) of the Congressional Review Act.

**Unfunded Mandates Reform Act of 1995**

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and Parole.

**The Interim Rule**

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

**PART 2—[AMENDED]**

- 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203 (a) (1) and 4204 (a) (6).

- 2. Revise § 2.25 to read as follows:

**§ 2.25 Hearings by videoconference.**

Parole determination hearings (including rescission hearings), and institutional revocation hearings, may be conducted by a videoconference between the hearing examiner and the prisoner or releasee.

Dated: April 5, 2005.

**Edward F. Reilly, Jr.,**

*Chairman, U.S. Parole Commission.*

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

**RIN 0720-AA79**

**TRICARE; Elimination of Non-Availability Statement and Referral Authorization Requirements and Elimination of Specialized Treatment Services Program**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule implements Section 735 of the National Defense Authorization Act for Fiscal Year 2002 (NDAA-02) (Pub. L. 107-107). It also implements Section 728 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (NDAA-01) (Pub. L. 106-398). Section 735 of NDAA-02 eliminates the requirement for TRICARE Standard beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain a nonavailability statement (NAS) or preauthorization from an MTF before receiving inpatient care (other than mental health services) or maternity care from a civilian provider in order that TRICARE will cost-share for such services. Section 735 of NDAA-02, however, authorizes the Department of Defense to make exceptions to the elimination of the requirement for a NAS through the exercise of a waiver process under certain specified conditions. This section also eliminates the NAS requirement for specialized treatment services (STSs) for TRICARE Standard beneficiaries who live outside the 200-mile radius of a designated STS facility. This rule portrays the Department's decision to eliminate the STS program entirely. Finally, Section 728 of NDAA-01 requires that prior authorization before referral to a specialty care provider that is part of the contractor network be eliminated under any new TRICARE contract.

**DATES:** Effective Date: December 28, 2003.

**ADDRESSES:** Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011-9066.

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

**SUPPLEMENTARY INFORMATION:**

**I. Elimination of Nonavailability Statement Requirement and Specialized Treatment Service Program**

The NDAA-02 was signed into law on December 28, 2001. Section 735 of NDAA-02 amends Section 721 of the NDAA-01 with respect to the nonavailability statement (NAS) elimination requirements and eliminates the requirement for non-enrolled TRICARE beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain an NAS or preauthorization from an MTF before receiving nonemergent inpatient or obstetrical (inpatient or outpatient) services from a civilian provider in order that TRICARE will cost-share for such services. A non-enrolled TRICARE beneficiary is a beneficiary who has not enrolled in TRICARE Prime, but who has chosen to use the TRICARE Standard and TRICARE Extra options. Section 735 retains MTF NAS authority for inpatient mental health services within the usual 40-mile catchment area. The section establishes that the NAS elimination requirements are to take effect on the earlier of the date the health care services are provided under new TRICARE contracts or the date that is two years after the date of the enactment of NDAA-02. As the health care services under new TRICARE contracts were to be available after March 2004, the NAS requirements are eliminated for admissions occurring on or after December 28, 2003, which is the date that is two years after the date of the enactment of NDAA-02. For obstetrical care, the NAS requirement is eliminated for maternity episodes wherein the first prenatal visit occurs on or after December 28, 2003. An NAS is required when the first prenatal visit occurs before December 28, 2003, by 10 U.S.C. 1080(b). The NAS for inpatient mental health care will continue to be required.

With the exception of maternity care, Section 735 of NDAA-02 gives the Secretary of DoD the authority to waive the NAS elimination requirements if: (a) Significant costs would be avoided by performing specific procedures at the affected military treatment facility (MTF); (b) A specific procedure must be provided at the affected MTF to ensure the proficiency levels of the practitioners at the facility; or (c) the lack of NAS data would significantly interfere with TRICARE contract administration. When this waiver authority will be exercised, the Department will notify the affected beneficiaries by publishing a notice in the **Federal Register** and notify the Congress. The TRICARE policy requires