

transferee's distributive share of income or loss from the contract.

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Par. 11. In § 1.751-1, a sentence is added at the end of paragraph (a)(2) to read as follows:

§ 1.751-1 Unrealized receivables and inventory items.

(a) * * *

(2) * * * See § 1.460-4(k)(2)(iv)(E) for rules relating to the amount of ordinary income or loss attributable to a contract accounted for under a long-term contract method of accounting.

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Par. 12. Section 1.755-1 is amended as follows.

1. Adding a sentence at the end of paragraph (b)(1)(ii).

2. Paragraph (c)(5) is redesignated as paragraph (c)(6).

3. New paragraph (c)(5) is added.

The additions read as follows:

§ 1.755-1 Rules for allocation of basis.

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(b) * * *

(1) * * *

(ii) * * * See § 1.460-4(k)(3)(v)(B) for a rule relating to the computation of income or loss that would be allocated to the transferee from a contract accounted for under a long-term contract method of accounting as a result of the hypothetical transaction.

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(c) * * *

(5) *Cross reference.* See § 1.460-4(k)(3)(v)(B) for a rule relating to the computation of unrealized appreciation or depreciation in a contract accounted for under a long-term contract method of accounting.

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Dale F. Hart,

Acting Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720-AA78

TRICARE; Individual Case Management Program; Program for Persons with Disabilities; Extended Benefits for Disabled Family Members of Active Duty Service Members; Custodial Care

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department is publishing this proposed rule to implement requirements enacted by Congress in section 701(g) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA-02), Pub. L. 107-107, which terminates the Individual Case Management Program. The Department withdraws its proposed rule published at 66 FR 39699-39705, August 1, 2001 regarding the Individual Case Management Program. This rule also implements section 701(b) of the NDAA-02 which provides additional benefits for certain eligible active duty dependents by amending the TRICARE regulations at 32 CFR 199.5 governing the Program for Persons with Disabilities. The Program for Persons with Disabilities will now be called the Extended Care Health Option. Other administrative amendments are included to clarify specific policies that relate to the Extended Care Health Option, custodial care, and to update related definitions.

Public comments are invited and will be considered for possible revisions to the Final Rule.

DATES: Written comments received at the address indicated below by October 6, 2003 will be accepted.

ADDRESSES: Because of staff and resource limitation, we cannot accept comments by facsimile (FAX) transmission or electronic mail (e-mail). Mail written comments to the following address ONLY: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

FOR FURTHER INFORMATION CONTACT:

Michael Kottyan, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676-3520. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

The Individual Case Management Program (ICMP). Under the provisions of section 704(3) of the NDAA-93 [Pub. L. 102-484], 10 U.S.C. 1079(a)(17) was enacted which allowed the DoD to establish the ICMP, also known as the Individual Case Management Program for Persons with Extraordinary Conditions (ICMP-PEC). This allowed a reasonable deviation from the restrictive statutory coverage of health services for patients who had exceptionally serious, long-range, costly and incapacitating conditions. The ICMP was officially

implemented in March 1999 as a waiver program that provided coverage for care and services that were normally restricted from coverage under the Basic Program. Specifically, when a beneficiary was determined to meet the TRICARE definition of custodial care, coverage under the Basic Program was limited to one hour of skilled nursing care per day, twelve physician visits per year related to the custodial condition, durable medical equipment and prescription medications. The Department recognized that the exclusion of coverage when a family member is deemed to be a custodial care patient is both a financial and emotional burden. Consequently, the Department used the ICMP/ICMP-PEC authority to cover medically necessary care and to enable TRICARE case managers to maximize available resources for these beneficiaries.

Repeal of the ICMP. Section 701(g) of the NDAA-02 repealed 10 U.S.C. 1079(a)(17), the statutory authority for the ICMP. However, section 701(d) allows the Department to continue to provide payment for home health care or custodial care services not otherwise authorized under the Basic Program as if the ICMP were still in effect. Payment may occur when a determination is made that discontinuation of payment would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to the beneficiary. Eligible beneficiaries are defined in section 701(d)(3) as covered beneficiaries who were regarded as custodial care patients under the ICMP/ICMP-PEC and received medically necessary skilled services for which the Secretary provided payment before December 28, 2001.

Custodial Care. Section 701(c) of the NDAA-02 provides a statutory definition of custodial care that is more consistent with other federal programs. The change also results in the narrowing of the statutory exclusions of custodial care that has the effect of eliminating current program restrictions on paying for certain medically necessary care.

Note: The statutory definition of custodial care under section 701(c) became effective on December 28, 2001, the effective date of the NDAA-02. Public notice of the substitution of the new statutory definition for the former custodial care definition in 32 CFR 199.2 was provided on June 13, 2002 (67 FR 40597-40606).

The Program for Persons with Disabilities (PFPWD). This program is now renamed the Extended Health Care Option (ECHO). The PFPWD was established by Congress in 1966 and