

the services from the second provider would probably be duplicative and result in unnecessary expenditures by TRICARE.

This policy has caused few problems, but there have been cases where a beneficiary has been dissatisfied with the care he/she was receiving from either TRICARE or the VA and has wanted to switch to the other program to receive services for the same episode of care. They have been unable to do so.

Section 708 of the National Defense Authorization Act for FY 2003 (Pub. L. 107-314) addresses this issue. Although it makes no change to the statutes that govern TRICARE (10 U.S.C. Chapter 55), it directs the Secretary of Defense to (1) take actions to establish a process for coordinating care between TRICARE and the VA that ensures patient safety and continuity of care while preventing diminution of access to health care from either source, and (2) prescribe a clear definition of an episode of care for use in the process of coordinating care between TRICARE and the VA.

In analyzing how best to establish this process, we have decided to change our basic policy rather than defining episode of care. By changing our policy we will ensure that no one is inadvertently denied access to care under TRICARE for which they also can receive treatment in a VA facility.

Any attempt to establish a workable definition of episode of care would require some specific and arbitrary end date which undoubtedly would be detrimental to some individual case. We also believe that there are few cases that actually are affected by this policy. For the vast majority of cases, beneficiaries decide to use either TRICARE or the VA for reasons that are important to them, and they are satisfied with continuing to receive their care from the same source.

Therefore, we propose to change our policy to include care from VA medical care facilities under the definition of double coverage for TRICARE. In support of the policy explained above, the TRICARE regulation (32 CFR Part 199) currently states that TRICARE double coverage plans do not include entitlement to receive care from VA medical care facilities. Most other coverages (insurance, medical service or health plans) are considered double coverage, which means that a beneficiary simply must submit a claim for services or supplies to the double coverage plan first. After the double coverage makes payment, TRICARE will process the claim and usually will pay the remaining liability on the claim.

The effect of our proposed change will be to enable individuals who are receiving care from the VA to change to

care under TRICARE for the same episode of care. Under this policy the VA will be responsible for payment for the services they provide, either directly through their medical care facilities or through a basic ordering agreement with a civilian provider. A claim can then be submitted to TRICARE for reimbursement of any VA cost-shares. At the same time, the beneficiary may choose to receive care from a civilian provider for the episode of care that has not been arranged by the VA. Claims for this care, so long as it is medically necessary, can be submitted to TRICARE, and they will be reimbursed.

This policy eliminates the need for an arbitrary definition of an episode of care, and it ensures full freedom of choice for beneficiaries who have entitlement to both TRICARE and VA benefits. While there may be some remaining issue regarding continuity of care and duplicative care for a very few cases, this is largely mitigated by the fact that many TRICARE beneficiaries are enrolled in TRICARE Prime. Under Prime, all care is coordinated by an assigned Primary Care Manager who can ensure that any care received under TRICARE does not interfere with or duplicate care being provided by the VA.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which 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 rule has been designated as significant and has been reviewed by the Office 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 imposes no burden as defined by the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is proposed to be 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 199.2 is proposed to be amended by revising the definition *double coverage plan* as follows.

§ 199.2 Definitions.

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(b) * * *

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Double coverage plan. The specific insurance, medical service or health plan under which a CHAMPUS beneficiary has entitlement to medical benefits that duplicate CHAMPUS benefits in whole or in part. Double coverage plans do not include;

(i) Medicaid.

(ii) Coverage specifically designed to supplement CHAMPUS benefits.

(iii) Entitlement to receive care from the Uniformed Services medical facilities;

(iv) Part C of the Individuals with Disabilities Education Act for services and terms provided in accordance with Part C of the IDEA that are medically or psychologically necessary in accordance with the Individualized Family Service plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

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3. Section 199.8 is proposed to be amended by redesignating existing paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5) respectively, and adding a new paragraph (b)(3) to read as follows:

§ 199.8 Double coverage plan.

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(b) * * *

(3) Entitlement to receive care from VA medical care facilities.

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Dated: August 12, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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