

beneficiary. The radar should refer to the proposed rule that was published on October 19, 1999 (64 FR 56283), for more detailed information regarding these changes.

## II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments.

## III. Changes in the Final Rule

We have made changes in the final rule based on section 716 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65, which was passed subsequent to preparation of the proposed rule. We have removed paragraph (c)(2)(iii) of Section 199.8 as originally set forth in the proposed rule. The essence of this change is to remove the proposed requirement for contractors to assign the government any rights to seek recovery from third-party payers. Based on the section 716 of the National Defense Authorization Act for Fiscal Year 2000, it is clear that the government, rather than the contractor, has the authority to collect amounts paid on behalf of TRICARE beneficiaries for which there is a liable third party.

Based on Section 8118 of the Fiscal Year 2000 Department of Defense Appropriations Act, we also have eliminated the change to paragraph (d)(2) of Section 199.8 established Medicaid as primary payer to TRICARE under the case management program that is set out in Part 199.4(i). As a result, TRICARE will continue to be primary to Medicaid in all situations including case management.

## IV. Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically 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 that would have a significant impact on a substantial number of small entities.

This rule has been designated as significant rule 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 final rule will not significantly affect a substantial number of small entities.

## Paperwork Reduction Act.

This final rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. If, however, any program implemented under this final rule causes such a burden to be imposed, approval will be sought of the Office of Management and Budget in accordance with the Act prior to implementation.

## List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and 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 199.2(b) is amended by adding new definitions *automobile liability insurance*, *no-fault insurance*, and *third-party payer* in alphabetical order:

### § 199.2 Definitions.

\* \* \* \* \*

*Automobile liability insurance.* Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

(1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and

(2) Uninsured and underinsured coverage, in which there is a third-party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis), but the insured party is not the tortfeasor.

\* \* \* \* \*

*No-fault insurance.* No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on whom may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

\* \* \* \* \*

*Third-party payer.* Third-party means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no

fault insurance carrier and a worker's compensation program or plan, and any other plan or program (e.g., homeowners insurance) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of "third-party payer," an insurance, medical service, or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

**Note:** TRICARE is secondary payer to all third-party payers. Under limited circumstances described in § 199.8(c)(2) of this part, TRICARE payment may be authorized to be paid in advance of adjudication of the claim by certain third-party payers. TRICARE advance payments will not be made when a third-party provider is determined to be a primary medical insurer under § 199.8(c)(3) of this part."

\* \* \* \* \*

3. Section 199.8 is amended by revising paragraphs (a), (c)(1), and (d)(3), redesignating paragraphs (b)(3), (c)(2) and (c)(3) as paragraphs (b)(4), (c)(4) and (c)(5), respectively, and adding new paragraphs (b)(3), (c)(2), and (c)(3) to read as follows:

### § 199.8 Double coverage.

(a) *Introduction.* (1) In enacting TRICARE legislation, Congress clearly has intended that TRICARE be the secondary payer to all health benefit, insurance and third-party payer plans. 10 U.S.C. 1079(j)(1) specifically provides that a benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in 10 U.S.C. 1095(h)(1)) to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

(2) The provision in paragraph (a)(1) of this section is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(g). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that TRICARE beneficiaries receive maximum benefits while ensuring that the combined payments of TRICARE and other health and insurance plans do not exceed the total charges.

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