

is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

#### **§ 591.704 Penalty imposition or withdrawal.**

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

#### **§ 591.705 Administrative collection; referral to United States Department of Justice.**

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the

penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in federal district court.

### **Subpart H—Procedures**

#### **§ 591.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart D, of this chapter.

#### **§ 591.802 Delegation by the Secretary of the Treasury.**

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13194 of January 18, 2001 (66 FR 7389, January 23, 2001), Executive Order 13213 of May 22, 2001 (66 FR 28829, May 24, 2001), and any further Executive orders relating to the national emergency declared in Executive Order 13194 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

### **Subpart I—Paperwork Reduction Act**

#### **§ 591.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: December 14, 2001.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: January 30, 2002.

**Jimmy Gurulé,**

*Under Secretary (Enforcement), Department of the Treasury.*

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 199**

[RIN 0720-AA68]

#### **TRICARE Prime Remote for Active Duty Family Members**

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

**ACTION:** Interim final rule.

**SUMMARY:** This rule implements 10 U.S.C. 1079(p), as added by section 722(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule provides coverage for medical care for active duty family members who reside with an active duty member of the Uniformed Services assigned to remote areas and eligible for the program known as TRICARE Prime Remote. Active duty family members who enroll in TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will enjoy benefits generally comparable to TRICARE Prime enrollees including access standards, benefit coverage, and cost-shares.

**DATES:** This interim final rule is effective April 8, 2002. Written comments will be accepted until April 8, 2002.

**ADDRESSES:** Forward comments to Optimization and Integration Division TRICARE Management Activity, Skyline 5, Suite 801, 5111 Leesburg Pike, Falls Church, VA 22041-3206.

**FOR FURTHER INFORMATION CONTACT:** LCDR Robert Styron, Optimization and Integration, TRICARE Management Activity, Office of the Secretary of Defense (Health Affairs), telephone (703) 681-0064. Questions regarding payment of specific TRICARE claims should be addressed to the appropriate TRICARE contractor.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Overview of the Rule**

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 20012 (NDAA) (Public Law 106-398) was signed into law. This interim final rule implements section 722(b) of this Act, which amended section 1079 of Title 10, United States Code, by adding subsection (p). It requires a TRICARE Prime-like benefit for active duty family members residing with their active duty Uniformed Services sponsor eligible for TRICARE Prime Remote, as defined by section 1074(c)(3) of Title 10, United States Code.

## II. TRICARE Prime Remote for Active Duty Members

A member of the uniformed services who is on active duty is entitled to medical and dental care in any facility of any Uniformed Service under 10 U.S.C. 1074(a). Although members on active duty have this entitlement, members of the Uniformed Services who qualify for TRICARE Prime Remote may not be required to receive routine primary medical care at a military treatment facility. TRICARE Prime Remote (TPR) was established under 10 U.S.C. 1074(c) to provide a TRICARE Prime-like benefit. As defined by 10 U.S.C. 1074(c)(3), the benefit is for active duty service members (ADSM) assigned to remote locations, who pursuant to that assignment, work and reside at a location more than 50 miles, or approximately one hour of driving time, from the nearest military treatment facility. ADSM who are TPR-eligible are required to enroll in TPR unless another enrollment site designated by the services is available.

The TPR ADSM is required to use the network providers, including network Veteran's Affairs facilities, provided the network providers have capacity and meet the TRICARE drive time standards of 30 minutes for primary care and one hour for specialty care.

## III. TRICARE Prime Remote for Active Duty Family Members

In order to be eligible for TRICARE Prime Remote for Active Duty Family Members (TPRADFM), active duty family members (ADFM) must reside with a TPR-eligible and enrolled ADSM. For purposes of TPRADFM, ADFM include the spouse and children of an active duty member and certain unmarried dependents placed in the legal custody of the active duty member as a result of a court order for a period of at least 12 months. ADFM must enroll in TPRADFM to receive the TPRADFM benefit. ADFM who elect not to enroll, or whose sponsor has not enrolled in TPR, may use the TRICARE Standard benefit, or enroll in TRICARE Prime where available. Under section 722(c) of the Floyd D. Spense National Defense Authorization Act for Fiscal Year 2001 (NDAA), the waiver of TRICARE Standard cost-shares and deductibles that apply during the interim period between the enactment of the NDAA and implementation of TPRADFM will expire upon implementation of this rule. TPRADFM eligible beneficiaries may elect not to enroll in TPRADFM, and instead receive benefits under the Standard program, but will be required

to pay the associated TRICARE Standard cost-shares and deductibles.

Section 1079(p) of Title 10, subject to such exceptions as the Secretary considers necessary, requires coverage for medical care under this section for dependents and standards with respect to timely access to such care to be comparable to coverage and standards under the managed care option of the TRICARE program known as TRICARE Prime. Therefore, the requirements and benefits of TPRADFM shall be similar to TRICARE Prime under Section 199.17 to the maximum extent practicable.

For primary care, family members enrolled in TPRADFM will be assigned or be allowed to select a primary care manager when available through the TRICARE civilian provider network. The primary care manager may be an individual physician, a group practice, a clinic, a treatment site or other designation. If a network provider is not available to serve as their primary care provider, the TPRADFM enrollee will be able to utilize any local TRICARE authorized provider for primary care services.

Family members enrolled in TPRADFM will have the same cost-shares and deductibles as those enrolled in TRICARE Prime. If a TRICARE network primary care provider is available to serve as their primary care manager (PCM); TPRADFM enrollees must select or be assigned to the PCM. Enrollment with the network PCM and compliance with the program requirements will result in the TPRADFM enrollee having no cost-shares or deductibles for the care provided. A TPRADFM enrollee who does not enroll with a network provider when one is available to serve as their primary care manager is subject to higher point-of-service deductible and cost sharing requirements under Section 199.17. Similarly, when a TPRADFM is enrolled with a TRICARE network PCM and receives health care services for a provider other than their PCM, he/she will be responsible for the point-of-service cost-shares and deductibles under Section 199.17. If a network provider is not available to serve as their primary care manager, a TPRADFM enrollee may use any local TRICARE authorized provider for their primary care, and will have no cost-shares or deductibles for the care provided.

TPRADFM enrolled members will be able to access their primary care provider without pre-authorization. Referrals to specialists will require a pre-authorization by the regional managed care support contractor for medical appropriateness and necessity. To the greatest extent possible,

contractors will assist in finding a TRICARE network or authorized provider within the TRICARE Prime drive time access standards of one hour for specialty care. Contractors will not be required to establish new network relationships for TPRADFM enrollees, except where contractually required or deemed economically feasible. TPRADFM members are required to use TRICARE network providers for specialty-care where available within TRICARE access standards or pay the point-of-service deductible and cost-shares under Section 199.17. They may use any TRICARE authorized provider to obtain specialty-care where a network provider is not available with access standards, once they have received authorization and assistance in finding a provider by the contractor.

## IV. Rulemaking Procedures

Executive Order 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 on the economy of \$100 million or more, or have other substantial impacts. This rule is not an economically significant regulatory action and it will not significantly affect a substantial number of small entities. 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 entities.

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

This rule is being implemented as an interim final rule, with comment period, as an exception to our normal practice of soliciting public comment prior to issuance. The Acting Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This rule implements statutory requirements that became effective October 30, 2000, for a program Congress intended to become operational one year later. This rule implements the new statutory program without significant embellishment of the legislative requirements. Public comments are welcome and will be considered for possible revisions in the rule.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as

required under the provisions of Executive Order 12866.

#### List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, TRICARE Prime.

For the reasons set forth in the preamble, 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 199.16 is amended by revising paragraphs (d) introductory text and (d)(2), redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and adding a new paragraph (e) to read as follows:

#### § 199.16 Supplemental Health Care Program for active duty members.

\* \* \* \* \*

(d) *Special rules and procedures.* As exceptions to the general rule in paragraph (c) of this section, the special rules and procedures in this section shall govern payment and administration of claims under the supplemental care program. These special rules and procedures are subject to the TRICARE Prime Remote program for active duty service members set forth in paragraph (e) of this section and the waiver authority of paragraph (f) of this section.

\* \* \* \* \*

(2) Preauthorization by the Uniformed Services of each service is required for the supplemental care program *except* for services in cases of medical emergency (for which the definition in § 199.2 shall apply) or in cases governed by the TRICARE Prime Remote program for active duty service members set forth in paragraph (e) of this section. It is the responsibility of the active duty members to obtain preauthorization for each service. With respect to each emergency inpatient admission, after such time as the emergency condition is addressed, authorization for any proposed continued stay must be obtained within two working days of admission.

\* \* \* \* \*

(e) *TRICARE Prime Remote for Active Duty Members.* (1) *General.* The TRICARE Prime Remote (TPR) program is available for certain active duty members of the Uniformed Services assigned to remote locations in the United States and the District of Columbia who are entitled to coverage of medical care, and the standards for

timely access to such care, outside a military treatment facility that are comparable to coverage for medical care and standards for timely access to such care as exist under TRICARE Prime under § 199.17. Those active duty members who are eligible under the provisions of 10 U.S.C. 1074(c)(3) and who enroll in the TRICARE Prime Remote program, may not be required to receive routine primary medical care at a military medical treatment facility.

(2) *Eligibility.* To receive health care services under the TRICARE Prime Remote program, an individual must be an active duty member of the Uniformed Services on orders for more than thirty consecutive days who meet the following requirements:

(i) Has a permanent duty assignment that is greater than fifty miles or approximately one hour drive from a military treatment facility or military clinic designated as adequate to provide the needed primary care services to the active duty service member; and

(ii) Pursuant to the assignment of such duty, resides at a location that is greater than fifty miles or approximately one hour from a military medical treatment facility or military clinic designated as adequate to provide the needed primary care services to the active duty service member.

(3) *Enrollment.* An active duty service member eligible for the TRICARE Prime Remote program must enroll in the program. If an eligible active duty member does not enroll in the TRICARE Prime Remote program, the member shall receive health care services provide under the supplemental health program subject to all requirements of this section without application of the provisions of paragraph (e) of this section.

(4) *Preauthorization.* If a TRICARE Prime network under § 199.17 exists in the remote location, the TRICARE Prime Remote enrolled active duty member will select or be assigned a primary care manager. In the absence of a TRICARE primary care manager in the remote location and if the active duty member is not assigned to a military primary care manager based on fitness for duty requirements, the TRICARE Prime Remote enrolled active duty member may use a local TRICARE authorized provider for primary health care services without preauthorization. Any referral for specialty care will require the TRICARE Prime Remote enrolled active duty member to obtain preauthorization for such services.

\* \* \* \* \*

3. Section 199.17 is amended by revising paragraph (g) to read as follows:

#### § 199.17 TRICARE program.

\* \* \* \* \*

(g) *TRICARE Prime Remote for Active Duty Family Members.* (1) *In general.* In geographic areas in which TRICARE Prime is not offered and in which eligible family members reside, there is offered under 10 U.S.C. 1079(p) TRICARE Prime Remote for Active Duty Family Members as an enrollment option. TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will generally follow the rules and procedures of TRICARE Prime, except as provided in this paragraph (g) and otherwise except to the extent the Director, TRICARE Management Activity determines them to be infeasible because of the remote area.

(2) *Active duty family member.* For purposes of this paragraph (g), the term "active duty family member" means one of the following dependents of an active duty member of the Uniformed Services: spouse, child, or unmarried child placed in the legal custody of the active duty member as a result of an order of a court of competent jurisdiction for a period of at least 12 consecutive months.

(3) *Eligibility.* An active duty family member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and meets all of the following additional criteria:

(i) The family member's active duty sponsor has been assigned permanent duty as a recruiter; as an instructor at an educational institution, an administrator of a program, or to provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps; as a full-time adviser to a unit of a reserve component; or any other permanent duty more than 50 miles, or approximately one hour driving time, from the nearest military treatment facility that the Executive Director, TRICARE Management Activity determines is adequate to provide care.

(ii) The family member's active duty sponsor, pursuant to the assignment of duty described in paragraph (g)(3)(i) of this section, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility that the Director, TRICARE Management Activity determines is adequate to provide care.

(iii) The family member resides with the active duty sponsor.

(4) *Enrollment.* TRICARE Prime Remote for Active Duty Family Members requires enrollment under procedures set forth in paragraph (o) of

this section or as otherwise established by the Executive Director, TRICARE Management Activity.

(5) *Health care management requirements under TRICARE Prime Remote for Active Duty Family Members.* The additional health care management requirements applicable to Prime enrollees under paragraph (n) of this section are applicable under TRICARE Prime Remote for Active Duty Family Members unless the Executive Director, TRICARE Management Activity determines they are infeasible because of the particular remote location. Enrollees will be given notice of the applicable management requirements in their remote location.

(6) *Cost sharing.* Beneficiary cost sharing requirements under TRICARE Prime Remote for Active Duty Family Members are the same as those under TRICARE Prime under paragraph (m) of this section, except that the higher point-of-service option cost sharing and deductible shall not apply to routine primary health care services in cases in which, because of the remote location, the beneficiary is not assigned a primary care manager or the Executive Director, TRICARE Management Activity determines that care from a TRICARE network provider is not available within the TRICARE access standards under paragraph (p)(5) of this section. The higher point-of-service option cost sharing and deductible shall apply to specialty health care services received by any TRICARE Prime Remote for Active Duty Family Members enrollee unless an appropriate referral/preauthorization is obtained as required by section (n) under TRICARE Prime. In the case of pharmacy services under § 199.21, where the Director, TRICARE Management Activity determines that no TRICARE network retail pharmacy has been established within a reasonable distance of the residence of the TRICARE Prime Remote for Active Duty Family Members enrollee, cost sharing applicable to TRICARE network retail pharmacies will be applicable to all CHAMPUS eligible pharmacies in the remote area.

\* \* \* \* \*

Dated: January 29, 2002.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02-2676 Filed 2-5-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 01-020]

RIN 2115-AA97

#### Security Zone; San Diego, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in the waters adjacent to the San Onofre Nuclear Generating Station in San Diego, CA. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure. This security zone will prohibit all persons and vessels from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP), or his designated representative.

**DATES:** This rule is effective from 6 p.m. (PDT) on October 25, 2001 to 3:59 p.m. (PDT) on June 21, 2002.

**ADDRESSES:** Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 01-020, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** PO Christopher Farrington, Marine Safety Office San Diego, at (619) 683-6495.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon in Arlington, Virginia on the same day.

National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels operating in the waters adjacent to the San Onofre Nuclear Generating Station area. This security zone is needed to protect the United States and more specifically the personnel and property of the San Onofre Nuclear Generating Station.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Onofre Nuclear Generating Station vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by the rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to the San Onofre Nuclear Generating Station facility. Immediate action is required to accomplish this objective. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

#### Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the San Onofre Nuclear Generating Station present possible platforms from which individuals may gain unauthorized access to this installation, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the San Onofre Nuclear Generating Station.

This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and