

26, 2010, (75 FR 52485) announced that a public hearing was scheduled for September 27, 2010 at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 7430 of the Internal Revenue Code.

The public comment period for these regulations expired on September 22, 2010. Outlines of topics to be discussed at the hearing were due on September 20, 2010. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak, and an outline of the topics to be addressed. As of Wednesday, September 22, 2010, no one has requested to speak. Therefore, the public hearing scheduled for September 27, 2010, is cancelled.

LaNita Van Dyke,

*Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel.*

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD-2009-HA-0175]

RIN 0720-AB38

TRICARE: Elimination of Copayments for Authorized Preventive Services for Certain TRICARE Standard Beneficiaries

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Section 711 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (FY 2009). Section 711 eliminates copayments for authorized preventive services for TRICARE Standard beneficiaries other than Medicare-eligible beneficiaries. This proposed rule also realigns the covered preventive services listed in the Exclusions section of the TRICARE regulation to the Special Benefits section in the regulation.

DATES: Written comments received at the address indicated below by November 26, 2010 will be accepted.

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN)

and title, by any of the following methods:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, District of Columbia 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Saly, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676-3742.

SUPPLEMENTARY INFORMATION:

I. Background

TRICARE currently covers those preventive services authorized by statute for all TRICARE Standard beneficiaries. The NDAA for FY 1996 (Pub. L. 104-106) and NDAA FY 1997 (Pub. L. 104-201) provided authority for such care. Although beneficiaries enrolled in TRICARE Prime receive preventive services with no copayment requirement, prior to enactment of Section 711 of the Duncan Hunter NDAA FY 2009 (Pub. L. 110-417), TRICARE Standard beneficiaries who received preventive care were required to pay a cost-share. For further information on TRICARE, to include preventive services covered under TRICARE Prime and TRICARE Standard, and cost-shares, please visit <http://www.tricare.mil>.

II. Section 711 of the Duncan Hunter NDAA for FY 2009

This proposed rule implements section 711 of the Duncan Hunter NDAA for FY 2009. The language in Section 711 reads as follows:
SEC. 711. WAIVER OF CO-PAYMENTS FOR PREVENTIVE SERVICES FOR CERTAIN TRICARE BENEFICIARIES.

(a) Waiver of Certain Co-payments—Subject to subsection (b) and under regulations prescribed by the Secretary of Defense, the Secretary shall—

(1) Waive all co-payments under sections 1079(b) and 1086(b) of title 10, United States Code, for preventive services for all beneficiaries who would otherwise pay copayments; and

(2) Ensure that a beneficiary pays nothing for preventive services during a year even if the beneficiary has not paid the amount necessary to cover the beneficiary's deductible for the year.

(b) Exclusion for Medicare-Eligible Beneficiaries—Subsection (a) shall not apply to a medicare-eligible beneficiary.

(c) Refund of Co-payments—

(1) Authority—Under regulations prescribed by the Secretary of Defense, the Secretary may pay a refund to a medicare-eligible beneficiary excluded by subsection (b), subject to the availability of appropriations specifically for such refunds, consisting of an amount up to the difference between—

(A) The amount the beneficiary pays for copayments for preventive services during Fiscal Year 2009; and

(B) The amount the beneficiary would have paid during such fiscal year if the copayments for preventive services had been waived pursuant to subsection (a) during that year.

(2) Co-payments Covered—The refunds under paragraph (1) are available only for copayments paid by medicare-eligible beneficiaries during Fiscal Year 2009.

(d) Definitions—In this section:

(1) Preventive Services—The term “preventive services” includes, taking into consideration the age and gender of the beneficiary:

- (A) Colorectal screening.
- (B) Breast screening.
- (C) Cervical screening.
- (D) Prostate screening.
- (E) Annual physical exam.
- (F) Vaccinations.

(G) Other services as determined by the Secretary of Defense.

(2) Medicare-Eligible—The term “medicare-eligible” has the meaning provided by section 1111(b) of Title 10, United States Code.

III. General

This language requires all co-payments to be eliminated for authorized preventive services for certain TRICARE Standard beneficiaries who would otherwise pay co-payments and that certain TRICARE Standard beneficiaries pay nothing for the preventive services during a year, even if the beneficiary has not paid the amount necessary to cover the beneficiary's deductible for the year. The language does not expand coverage of preventive services not otherwise authorized by law under the TRICARE preventive care benefit.

IV. Medicare-Eligible Beneficiaries

Section 711 specifically states that elimination of the co-payment shall not

apply to any TRICARE beneficiary who is Medicare-eligible. For the purposes of this section, the term “Medicare-eligible” is defined in 10 U.S.C., Section 1111(b) and means a person entitled to benefits under Medicare Part A.

Section 711 also states that the Secretary of Defense may prescribe regulations to refund co-payments paid by Medicare-eligible beneficiaries during fiscal year 2009 when the following conditions are met: (1) When appropriations specifically for such refunds are appropriated; and (2) the amount of the refund is the difference between the amount of co-payments the beneficiary paid during fiscal year 2009 and the amount the beneficiary would have paid if the co-payments for preventive services had been waived during that year. However, no funds have been appropriated specifically for this purpose; as a result, subsection (c), Refund of Co-Payments, of Section 711 will not be implemented.

V. Clarification of Preventive Service Benefit for Purposes of Elimination of Co-Payments

Although beneficiaries enrolled in TRICARE Prime receive preventive services with no co-payment requirement, prior to enactment of Section 711 of the Duncan Hunter NDAA FY09 (Pub. L. 110–417), TRICARE Standard beneficiaries, including TRICARE Standard beneficiaries who elected to utilize the TRICARE Extra plan, were required to pay the appropriate cost-share for preventive care.

It is important to note the proposed rule does not expand the preventive care benefit for TRICARE Standard beneficiaries, but rather eliminates the co-payment requirements for those specific preventive services otherwise authorized in title 10, Chapter 55, United States Code. Therefore, although the language in Section 711 defines preventive services for which a cost share is not applicable as including an “annual physical exam,” routine annual examinations are not authorized preventive services under TRICARE Standard. By law, however, physical examinations conducted as part of health promotion and disease prevention visits are covered when provided in connection with otherwise authorized immunizations and well-child visits or cancer screenings, resulting in elimination of cost-shares for these specific physical examinations for TRICARE Standard beneficiaries. See Title 10, U.S.C. Section 1079(a)(2).

VI. Realignment of Preventive Services Listed in the TRICARE Regulation

Finally, this proposed rule clarifies and realigns the preventive services currently listed in the Exclusions section of the TRICARE regulation to the Special Benefits section in the regulation. This realignment does not remove from coverage any preventive services currently covered under the program. We are performing this realignment because Title 32 Code of Federal Regulations (CFR) 199.4(g), “Exclusions and limitations,” states in subparagraph (37) that preventive care is excluded, and then lists those services that are not excluded. We believe including covered preventive services in the Exclusions section creates confusion for those seeking information about preventive services under the TRICARE program. A person seeking information about what preventive services are covered would most likely not look for that information in a section labeled “Exclusions.” We intend to remedy this confusion by removing the list of covered preventive services from this section, and placing the list in the “Special Benefit Information” Section of 32 CFR 199.4(e). We also intend to realign those services currently in the “Exclusions” section that are not truly preventive but are more evaluative in nature in the “Special Benefit Information” Section of 32 CFR 199.4(e) and add a definition of “evaluative” services in 32 CFR 199.2.

VII. Summary of Regulatory Revisions

Section 199.2 addresses definitions used in the program.

Section 199.2(b) is revised to add a definition for evaluative services. The purpose of this is to make a distinction between an evaluative service and a preventive service.

Section 199.4 provides Basic Program benefits.

Section 199.4(e)(28) is added as special benefit information pertaining to covered preventive services under TRICARE Standard for which co-payments will be eliminated.

Section 199.4(e)(29) is added as special benefit information pertaining to evaluative services under TRICARE Standard for which co-payments and deductibles apply.

These two sections are necessary to distinguish those services TRICARE has determined eligible for a elimination of co-payment from those services that are not truly preventive, and therefore continue to require a beneficiary copayment.

Section 199.4(f)(12) is added to eliminate cost sharing for certain

preventive services authorized by paragraph (e)(28) of this section.

Section 199.4(g)(37) is revised to delete the list of preventive and other evaluative services benefits not excluded from coverage. Again, while such services are deleted from paragraph (g)(37), the intent is to move them to the special benefits section of the regulation to be clear that such services are covered by TRICARE.

Section 199.17 contains information about the TRICARE program.

Section 199.17(m)(1) and (2) are revised to eliminate cost sharing for certain preventive services provided by network and non-network providers, and by application to preventive services provided by non-military providers under external resource sharing agreements under § 199.17(m)(4).

VIII. Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review”

Section 801 of Title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or 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. It has been certified that this rule is not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E. O. 12866.

Public Law 96–354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601)

Public Law 96–354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule does not contain a “collection of information” requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35).

*Public Law 104-4, Section 202,
“Unfunded Mandates Reform Act”*

Section 202 of Public Law 104-4, “Unfunded Mandates Reform Act,” requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million in any 1 year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this proposed rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, 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(b) is amended by adding the definition of “evaluative services” in its appropriate alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Evaluative services. Diagnostic and other medical procedures that may not be related directly to a specific illness, injury or definitive set of symptoms, but are performed as health promotion or disease detection services.

* * * * *

3. Section 199.4 is amended by adding paragraphs (e)(28), (e)(29) and (f)(12), and revising (g)(37) to read as follows.

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(28) *Preventive care.* Coverage is provided for the following preventive services:

(i) Cervical, breast, colon and prostate cancer screenings in accordance with standards issued by the Director, TRICARE Management Activity, based on guidelines from the U.S. Department of Health and Human Services. Such standards may establish a specific schedule, including frequency, age specifications, and gender of the beneficiary, as appropriate.

(ii) Immunizations as recommended by the Centers for Disease Control and Prevention (CDC).

(iii) Well-child visits for children under six (6) years of age as set forth in paragraph (c)(3)(xi) of this section.

(iv) Health promotion and disease prevention visits may be provided in connection with immunizations and cancer screening examinations authorized by this section.

(29) *Evaluative services.* Coverage is provided for the following evaluative health promotion and disease detection services:

(i) Well-child care, except for well-child visits and immunizations which are covered under preventive services as described in paragraph (e)(28) of this section.

(ii) Rabies shots.

(iii) Tetanus shot following an accidental injury.

(iv) Rh immune globulin.

(v) Genetic tests as specified in paragraph (e)(3)(ii) of this section.

(vi) Physical examinations provided when required in the case of dependents of active duty military personnel who are traveling outside the United States as a result of an active duty member's assignment and such travel is being performed under orders issued by a Uniformed Service. Any immunizations required for a dependent of an active duty member to travel outside of the United States is not considered an evaluative health promotion and disease detection service, but is covered as a preventive service under paragraph (e)(28) of this section.

(vii) Health promotion and disease detection visits may be provided in connection with the evaluative services authorized by this section.

(viii) Physical examinations for beneficiaries ages 5 through 11 that are required in connection with school enrollment, and that are provided on or after October 30, 2000.

(f) * * *

(12) *Cost-sharing for preventive services.* (i) Effective for dates of service on or after October 14, 2008, beneficiaries, other than Medicare-

eligible beneficiaries, shall not pay any cost-share for preventive services listed in paragraph (e)(28) of this section. Such beneficiary shall not be required to pay any portion of the cost of these preventive services even if the beneficiary has not satisfied the deductible for that year.

(ii) This elimination of cost-sharing for preventive services does not apply to any beneficiary who is a Medicare-eligible beneficiary. For purposes of this section, the term “Medicare-eligible” beneficiary is defined in Title 10 United States Code Section 1111(b) and refers to a person eligible for Medicare Part A.

(iii) Requests for reimbursement of copayments paid by beneficiaries for preventive services on or after October 14, 2008, may be made up to [DATE ONE YEAR FROM EFFECTIVE DATE IN FINAL RULE PUBLICATION] in accordance with procedures established by the Director, TRICARE Management Activity.

(iv) Appropriate copayments and deductibles will apply for all other preventive services not listed in paragraph (e)(28) of this section and all evaluative services.

(g) * * *

(37) Preventive care. Except as specified in paragraphs (e)(28) and (29) of this section, preventive care or other evaluative services, such as routine, annual, or employment-requested physical examinations; routine screening procedures.

* * * * *

4. Section 199.17 is amended by adding paragraphs (m)(1)(ii)(D) and (m)(2)(iii) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(m) * * *

(1) * * *

(ii) * * *

(D) In accordance with § 199.4(f)(12), TRICARE Standard beneficiaries, other than Medicare-eligible beneficiaries, shall have no cost sharing requirements for preventive care listed under § 199.4 (e)(28).

* * * * *

(2) * * *

(iii) In accordance with § 199.4(f)(12), TRICARE Standard beneficiaries, other than Medicare-eligible beneficiaries, shall have no cost sharing requirements for preventive care listed under § 199.4 (e)(28).

* * * * *

Dated: September 21, 2010.

Patricia L. Toppings,

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

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 222

[DoD-2010-OS-0043; RIN 0790-AI62]

DoD Mandatory Declassification Review (MDR) Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This part implements policy established in DoD Instruction 5200.01. It assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders.

DATES: Comments must be received by November 26, 2010.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number and/or RIN number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Robert Storer, 703-696-2197.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 222 does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the

environment; public health or safety; or State, local, or tribunal governments or communities;

- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order 12866, as amended by Executive Order 13422.

Sec. 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 222 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 222 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the procedures for the effective administration of the DoD MDR Program.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 222 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 222 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 222

Declassification; security information. Accordingly, 32 CFR part 222 is proposed to be added to read as follows:

PART 222—DOD MANDATORY DECLASSIFICATION REVIEW (MDR) PROGRAM

Sec.

- 222.1 Purpose.
- 222.2 Applicability.
- 222.3 Definitions.

222.4 Policy.

222.5 Responsibilities.

222.6 MDR processing procedures.

Appendix A to Part 222—Addressing MDR requests.

Authority: 5 U.S.C. 552

§ 222.1 Purpose.

This part implements policy established in DoD Instruction 5200.01.¹ It assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders.

§ 222.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

§ 222.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Foreign government information. (1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as "Foreign Government Information" under the terms of a predecessor order to E.O. 13526.

Formal tracking system. A system designed to ensure DoD Component accountability and compliance. For each MDR request, the system shall contain as a minimum a unique tracking number, requester's name and organizational affiliation, information requested, date of receipt, and date of closure.

¹ Available at <http://www.dtic.mil/whs/directives/corres/pdf/520001p.pdf>.