

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

[[Docket ID: DOD–2020–HA–0091]

RIN 0720–AB84

Enrollment Fee and Cost Sharing Under TRICARE Prime and Select for Retirees and Their Dependents**AGENCY:** Department of Defense.**ACTION:** Interim final rule.

SUMMARY: This interim final rule (IFR) accompanies the in-progress implementation of section 702 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA–2020) as an administrative measure not intended to affect or grant rights. The law mandates that retirees and their dependents pay TRICARE premiums via allotment from military retired/retainer pay to the maximum extent practicable instead of credit card or electronic funds transfer (EFT), applicable to health care coverage beginning on or after January 1, 2021. In conforming the regulation to the mandatory statutory changes, this IFR improves TRICARE by reflecting the simplification and automation of premium fee collection.

DATES: This rule is effective August 1, 2022. Comments must be received by September 30, 2022.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier 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:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

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. Zelly Zim, Defense Health Agency, TRICARE Health Plan, (703) 275–6221, zelly.l.zim.civ@mail.mil.

SUPPLEMENTARY INFORMATION:**I. Executive Summary***A. Purpose of the Rule*

This rule is required as a “housekeeping matter” to support the in-progress implementation of section 702 of NDAA–2020. In implementing section 702 of NDAA–2020, this rule advances two major components of the Military Health System’s aims: better care and lower cost. The objective of better care is advanced by reducing the recurring administrative hurdle of credit card and electronic funds transfer (EFT) draft payments by pulling these premiums directly from monthly retired/retainer pay. These consistent payments, now conditioned (to the maximum extent practicable) on a recurring government process, ensure consistent access to care. The goal of lower cost is achieved by direct monetary savings to the government.

B. Interim Final Rule Justification

This rule must be issued prior to receiving public comment in order to comply with statutory mandates regarding effective dates of changes to TRICARE. The implementation date dictated by NDAA–2020 intended this regulation be in place no later than TRICARE Open Season for calendar year (CY) 2021 (November 9, 2020 through December 14, 2020) to correspond implementation no earlier than January 1, 2021. Beneficiaries will receive letters and electronic communication from their private sector care contractors in conjunction with DHA Strategic Communication (STRATCOM) before any changes are requested to their payment methods. In view of these statutory effective dates, the Department finds obtaining public comment in advance of implementing this rule is impracticable, unnecessary, and contrary to the public interest. Nonetheless, DoD invites public comments on this rule and is committed to considering all comments and issuing a final rule as soon as practicable.

C. Summary of Major Provisions

The rule amends the current regulation to conform it to the amended law, as written, that designates payment options for retirees and their dependents. The major provisions of the IFR are:

- (1) That premiums must be paid through allotment (*i.e.*, withheld from a retiree’s retired/retainer pay), to the maximum extent practicable, by members and former members of the uniformed services, or a dependent thereof, eligible for medical care and

dental care under section 1074(b) or 1076 of Title 10, chapter 55. This is to streamline payments, reduce fees from other payment methods, and ensure continued delivery of care.

- (2) That when payment through allotment is not practicable, premiums shall be paid in a frequency and method determined by the Secretary.

- (3) That the payment of enrollment fees or premiums by allotment should be implemented and apply to health care coverage beginning on or after January 1, 2021.

This rule only amends the Code of Federal Regulations (CFR) language to reflect these provisions.

D. Legal Authority for This Program

The statutory authority for this IFR is the Public Law 116–92, NDAA–20 Section 702, “TRICARE Payment Options for Retirees and Their Dependents.”

The regulatory authority for this IFR is promulgated in 32 CFR 199.17, “TRICARE program,” which dictates enrollment fees to begin for TRICARE Select Group A on January 1, 2021 and can be found at <https://www.govinfo.gov/app/details/CRPT-114hrpt537/CRPT-114hrpt537>. The legal authority for this rule also includes 10 U.S.C. chapter 55, “Medical and Dental Care,” which covers the entire program of medical and dental care for uniformed services members, former members and their dependents. Chapter 55 can be accessed via <https://uscode.house.gov>.

II. Regulatory History

This rule, title 32 CFR 199.17(o)(3), was codified in 1998 implementing 10 U.S.C. 1097a(c), “TRICARE Prime: automatic enrollments,” where payment by allotment for retirees and their beneficiaries was listed as voluntary. Under 10 U.S.C. 1097a(c) fees could also be paid from a financial institution through EFT. Title 32 CFR 199.17(o)(3) was most recently updated on February 15, 2019 (84 FR 4326) by a final rule that continued to implement the statutory options for voluntary allotments or EFT payments of installment payments of enrollment fees under 10 U.S.C. 1097a(c); which options have been eliminated by Section 702(b)(1) of NDAA–2020.

III. Regulatory Analysis

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated non-significant under these Executive Orders and accordingly has not been reviewed by the Office of Management and Budget (OMB).

b. Summary

The rule amends the current regulation to conform to Section 702 of NDAA–2020 (as codified in 10 U.S.C. 1097a) that outlines payment options for retirees and their dependents by mandating payment withheld from retired/retainer pay where feasible, rather than allowing payment method and frequency to be voluntary. According to NDAA–2020, enrollment fees or premiums for this population must be paid in this manner beginning on or after January 1, 2021. The changes made by this rule are housekeeping edits for 32 CFR, and the statutory execution has been initiated.

c. Affected Population

This rulemaking action will apply to an estimated 611,734 beneficiaries: a member or former member of the Uniformed Services, or their dependents, eligible for medical and dental care under sections 1074(b) or 1076 of 10 U.S.C. chapter 55. These specific beneficiaries will be required to pay enrollment or premiums for their healthcare and must do so by allotment to the maximum extent practicable, as specified by the new payment options provisions. They will be required to access <https://tricare.mil> to receive specific instructions from their private sector care TRICARE contractor on allotment set up. These updates must be made no later than the end of the TRICARE open enrollment period before the allotments are to take effect, with specific cutoff dates to be messaged by their private sector care contractor. The

affected population will receive notification of this change and the actions needed to be in compliance via letters and electronic correspondence managed jointly by DHA Strategic Communication (STRATCOM) and their private sector care contractors. If beneficiaries targeted by this rule already pay their enrollment fees or premiums by allotment, no further action needs to be taken to be in compliance.

d. Costs

It is determined that this rulemaking action will have a cost saving to both the government and the private sector. As it currently stands, the Government reimburses the TRICARE contractors approximately 3 million dollars annually on \$169,423,439.34 in transactions (TRICARE enrollment fees and premiums costs) due to credit card and electronic funds transfer (EFT) processing fees charged by credit card companies and banking institutions. The 3 million dollar cost savings is all from government costs (processing fees). The private sector costs for implementing this rule only applies to those currently paying by credit card or EFT, and this cost is in the form of beneficiary time: initial action must be taken to set up the allotment process and it must be done in time to ensure the first allotted payment is received prior to January 1 of the enrollment year. Approximately 872,886 beneficiaries would need to undergo this process, which equates to approximately 332,469 separate households. These numbers are based on the fact that about 40 percent of enrolled retiree beneficiaries currently pay by credit card or EFT.

The remaining 60 percent of enrolled retiree beneficiaries already pay by allotment. Anticipating the transaction to take 15 minutes, and using \$9.14/hour (national average of minimum wages effective January 1, 2020) as the value of a beneficiary's time, switching to payment by allotment would cost each beneficiary household \$2.29. The time estimate of 15 minutes is drawn from 2019 data on the length of enrollment phone calls for a pool of 1.5 million beneficiaries. Thus, the total private cost of implementing this rule is \$761,354 (which is \$2.29 per household). However, by paying enrollment fees or premiums by allotment, the likelihood of breaks in coverage and additional fees due to transaction failures is drastically reduced for the beneficiary. For example, in CY 2018, approximately 2,850 TRICARE Prime plans terminated in the East Region for failure to pay

retiree enrollment fees due to EFT or debit/credit card issues. Considering parallel trends seen in the West Region, it can be inferred that the one-time \$2.29 (time) private cost of complying with this interim final rule is preferable to loss of coverage or termination.

Time constraints to implement this rule is a public cost to the TRICARE private sector care contractors, yet this burden is monetarily covered by the administrative cost of this rule, which acknowledges the fact that the systems need to set up allotments for beneficiaries are already in place and must be expanded to prepare for an influx of beneficiary calls and allotment arrangements.

e. Benefits

Having enrollment fees or premiums from retirees and their dependents paid via allotment increases access to care by preventing gaps in coverage, ensuring beneficiaries receive the care for which they are entitled and guaranteeing the government is doing everything possible to provide the health care entitlement. In this case, gaps in coverage are caused by late or missed payments, which are more likely when beneficiaries pay TRICARE enrollment fees or premiums by credit card or EFT without these methods being automated. It is estimated that about 40 percent of retired beneficiaries pay by credit card or EFT, and the projected private benefit would be directly to them. On the private side, The TRICARE contractors also benefit from the rulemaking action through the streamlined management of fees. The automated systems to be used to implement this rule are already in use for approximately 60 percent of the retiree-beneficiary population.

f. Alternatives

Baseline: No Action

Not implementing this rule would be in direct violation of the law set forth in NDAA–2020 requiring payment by allotment for beneficiaries covered by 10 U.S.C. 1074(b) or 1076 beginning on or after January 1, 2021. System changes, contract updates, and beneficiary notifications supporting the law are already in place. The result of taking no action would be continued cost to the government in the form of credit card and EFT fees, with a significant increase to the projected cost due to the approximately 500,000 additional households from which enrollment fees were collected as of January 1, 2021 (due to the start of TRICARE Select Group A enrollment fee collection). Taking no action fails to mitigate the EFT and credit card-related

costs and complexities for this additional group of beneficiaries that largely have never paid an enrollment fee for their TRICARE coverage before and the need to re-evaluate and cancel all changes already in place to support the statutory requirements of payment by allotment. Cost to beneficiaries would be the possible loss of coverage and related fees as a result of missed payments. For the East Region in CY 2018, approximately 2,850 TRICARE Prime plans terminated for failure to pay retiree enrollment fees were attributable to EFT or debit/credit card issues. Similar numbers were experienced in the West Region, and these numbers can be expected to increase with the additional enrollment fees that began January 1, 2021. Thus, there is no benefit to taking no action and the Department has no discretion to counter the laws requiring this rulemaking action.

Alternative Actions

No alternative courses of action are applicable and legally suitable. The statute is self-implementing and the rulemaking only effects the effective date that the regulation conforms with the law. The Agency has no authority to postpone implementation of mandatory statute.

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

The Office of the Assistant Secretary of Defense for Health Affairs certifies that this interim final rule 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. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This interim final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

D. Sec. 202, Public Law 104–4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This interim final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

E. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35) It has been determined that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. Existing information collection requirements of the TRICARE program will be utilized, using a DD Form 2896–1, Reserve Component Health Coverage Request Form. This enrollment form, accessible through the Beneficiary Web Enrollment (BWE) website, does not meet information collection requirements and thus not targeted by the Paperwork Reduction Act or governed by an OMB license.

F. Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements an agency must meet when it promulgates an interim final rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on State and local governments.

G. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates an interim final rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the federal government and Indian tribes. This interim final rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, and Military personnel.

Accordingly 32 CFR part 199 is amended to read as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.17 by revising paragraph (l)(2)(i)(A) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(l) * * *

(2) * * *

(i) * * *

(A) The enrollment fee in calendar years 2018 through 2020 is zero and the catastrophic cap is as provided in 10 U.S.C. 1079 or 1086. The enrollment fee and catastrophic cap in 2021 and thereafter for certain beneficiaries in the retired category is as provided in 10 U.S.C. 1075(e), except the enrollment fee and catastrophic cap adjustment shall not apply to survivors of active duty deceased sponsors and medically retired Uniformed Services members and their dependents. Payment of TRICARE premiums and enrollment fees will be withheld from the retired, retainer or equivalent pay of these beneficiaries in the retired category to the maximum extent practicable upon complete implementation of this rule and thereafter. Appropriate processes to require and manage these allotments, to include frequency and method, as well as alternatives when allotments are not practicable, shall be determined by the Director, DHA. An exception may be made for certain survivors of active duty deceased sponsors and medically retired Uniformed Services members and their dependents, for which the enrollment fee and catastrophic cap adjustments shall not apply.

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Dated: July 26, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–16332 Filed 7–29–22; 8:45 am]

BILLING CODE 5001–06–P