

DEPARTMENT OF DEFENSE

Billing Code 5001-08

OFFICE of the Secretary

32 CFR PART 199

RIN-0720-AA74

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS);

Appeals and Hearings Procedures, Formal Review

AGENCY: Office of the Secretary, DoD.

ACTION: Interim Final Rule; administrative corrections.

SUMMARY: This document makes administrative corrections to the 32 CFR 199, section 199.10, "Appeal and Hearing Procedures." These corrections include revising §199.10, adding paragraphs (c)(1) through (c)(5), and making other minor editorial changes.

DATES: Forward comments on or before (Insert date 60 days after date of publication in the FEDERAL REGISTER).

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011-9066.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676-3401.

SUPPLEMENTARY INFORMATION: Paragraphs (c)(1) through (c)(5) were inadvertently omitted when the July 1, 1991 edition of the 32 CFR was published. The discovery that the formal review process was missing from §199.10 occurred at the time that TRICARE was tasked to promulgate an appeal process for TRICARE Claimcheck denials.

This correction to §199.10 is necessary to provide the required procedures to any party to an initial determination or reconsideration determination made by the CHAMPUS contractor and who may want to request a formal review.

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action" defined as one, which would result in an annual effect on the economy of \$100 million or more, or 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 rule and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. The Department of Defense certifies that this interim final rule would not have a significant impact on small business entities.

This interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Dental Health, 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 199.10 is amended by revising paragraph (b) introductory text, and adding paragraphs (c), (c)(1) through (c)(5) to read as follows:

§ 199.10 Appeals and Hearings Procedures.

* * * * *

(b) Reconsideration. Any party to the initial determination made by the CHAMPUS contractor, or a CHAMPUS peer review organization may request reconsideration.

* * * * *

(c) Formal review. Except as explained in this paragraph, any party to an initial determination made by OCHAMPUS, or a reconsideration determination made by the CHAMPUS contractor, may request a formal review by OCHAMPUS if the party is dissatisfied with the initial or reconsideration determination unless the initial or reconsideration determination is final under paragraph (b)(5) of this section; involves the sanctioning of a provider by the exclusion, suspension or termination of authorized provider status; involves a written decision issued pursuant to §199.9(h)(1)(iv)(A) regarding the temporary suspension of claims processing; or involves a reconsideration determination by a CHAMPUS peer review organization. A hearing, but not a formal review level of appeal, may be available to a party to an initial determination involving the sanctioning of a provider or to a party to a written decision involving a temporary suspension of claims processing. A beneficiary (or an authorized representative of a beneficiary), but not a provider (except as provided in §199.15), may request a hearing, but not a formal review, of a reconsideration determination made by a CHAMPUS peer review organization.

(1) Requesting a formal review. (i) Written request required. The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination or OCHAMPUS initial determination) being appealed, and shall include any additional information or documents not submitted previously.

(ii) Where to file. The request shall be submitted to the Chief, Office of Appeals and Hearings, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066.

(iii) Allowed time to file. The request shall be mailed within 60 days after the date of the notice of the reconsideration determination or OCHAMPUS initial determination being appealed.

(iv) Official filing date. A request for a formal review shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(2) The formal review process. The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time of the initial determination, reconsideration, or formal review decision involving a provider request for approval as an authorized CHAMPUS provider. The formal review is performed by the Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information, upon which the initial determination and/or reconsideration determination was based, and any additional information the appealing party may submit or OCHAMPUS may obtain.

(3) Timeliness of formal review determination. The Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee normally shall issue the formal review determination no later than 90 days from the date of receipt of the request for formal review by the OCHAMPUS.

(4) Notice of formal review determination. The Chief, Office of Appeals and Hearings, OCHAMPUS, or a designee shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(i) A statement of the issue or issues under appeal.

(ii) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(iii) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(iv) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(v) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is \$300 or more.

(5) Effect of formal review determination. The formal review determination is final if one or more of the following exist:

(i) The issue is not appealable. (See paragraph (a)(6) of this section.)

(ii) The amount in dispute is less than \$300. (See paragraph (a)(7) of this section.)

(iii) Appeal rights have been offered but a request for hearing is not received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

* * * * *

L. M. Bynum
Alternate OSD Federal Register Liaison Officer
Department of Defense
March 7, 2003