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MAR 8 2004

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# Submission of Federal Rules Under the Congressional Review Act

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TOFlet

President of the Senate  Speaker of the House of Representatives  GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

2. Subdivision or Office

Department of Defense

Office of the Secretary of Defense

3. Rule Title

Appeals and Hearings Procedures

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable) 0720-AA74

5. Major Rule  Non-major Rule

6. Final Rule  Other

7. With respect to this rule, did your agency solicit public comments? Yes  No  N/A

8. Priority of Regulation (fill in one)

Economically Significant; or Significant; or Substantive, Nonsignificant

Routine and Frequent or Informational/Administrative/Other  
*(Do not complete the other side of this form if filled in above.)*

9. Effective Date (if applicable) May 1, 1983

10. Is a concise Summary of the Rule provided? Yes  No

Submitted by: \_\_\_\_\_ (signature)

Name: L.M. BYNUM, Alternate OSD Federal

Title: Register Liaison Officer, DoD 2/6/04

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Committee of Jurisdiction: \_\_\_\_\_

41217



- |  | Yes                              | No                               | N/A                              |
|--|----------------------------------|----------------------------------|----------------------------------|
| A. With respect to this rule, did your agency prepare an analysis of costs and benefits?   | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| B. With respect to this rule, at the final rulemaking stage, did your agency   |                                  |                                  |                                  |
| 1. certify that the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b)?                                   | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| 2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?   | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)? | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| F. Did you discuss any of the following in the preamble to the rule?   |                                  |                                  |                                  |
| • E.O. 13132, Federalism   | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| • E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| • E.O. 12866, Regulatory Planning and Review   | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| • E.O. 12988, Civil Justice Reform   | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| • E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| • Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)  |                                  |                                  |                                  |

CONCISE GENERAL STATEMENT  
IN ACCORDANCE WITH  
SECTION 801 OF PUBLIC LAW 104-121  
0720-AA74

This final rule corrects §199.10, the Appeals and Hearings Procedures, by reinserting formal review paragraphs (c)(1) through (c)(5), as well as other minor editorial corrections to paragraphs (a) and (b) of the same section. Paragraphs (c)(1) through (c)(5) were inadvertently omitted when the July 1, 1991 edition of the 32 CFR was published. The amendment was published in the Federal Register on March 13, 2003, under an interim final rule.

**DEPARTMENT OF DEFENSE**

**Billing Code 5001-06**

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:** Final Rule.

**SUMMARY:** This final rule makes administrative corrections to the 32 CFR part 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.

**EFFECTIVE DATES:** May 1, 1983.

**ADDRESSES:** TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011-9066.

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

**SUPPLEMENTARY INFORMATION:**

I. Background

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.

The appeals procedures found in this final rule reflect the appeals process as it has continuously existed and been administered by the Department of Defense since its original effective date of May 1, 1983. This final rule is being published solely to reflect the inadvertent omission by the United States Government Printing Office of these procedures in 32 CFR Part 199. This correction to §199.10 is made in an effort to ensure that any party to an initial determination or reconsideration decision who may want to request a formal review is aware of these procedures.

## II. Public Comments

We published this rule on March 13, 2003 as an interim final rule, with a 60-day comment period, and received no public comments.

## III. Changes in the Final Rule

Additional administrative changes were made to correct designated paragraphs in (a)(8)(ii)(A) through (B). We have re-designated these paragraphs to (a)(8)(ii)(A) through (C).

## IV. Rulemaking Procedures

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 a significant rule and has been reviewed by the Office of Management and Budget as required under the provisions of Executive Order 12866. The

Department of Defense certifies that this final rule would not have a significant impact on small business entities.

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

This rule is being issued as a final rule.

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 redesignating paragraphs (a)(8)(ii)(A) through (B) as paragraphs (a)(8)(ii)(A) through (a)(8)(ii)(C), by revising paragraph (b) introductory text, and by adding paragraph (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 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  
February 5, 2004