

(k) *Limited immunity from liability for participants in PRO program.* The provisions of section 1157 of the Social Security Act (42 U.S.C. 1320c-6) are applicable to the CHAMPUS PRO program in the same manner as they apply to the Medicare PRO program. Section 1102(g) of title 10, United States Code also applies to the CHAMPUS PRO program.

(l) *Additional provision regarding confidentiality of records—(1) General rule.* The provisions of 10 U.S.C. 1102 regarding the confidentiality of medical quality assurance records shall apply to the activities of the CHAMPUS PRO program as they do to the activities of the external civilian PRO program that reviews medical care provided in military hospitals.

(2) *Specific applications.* (i) Records concerning PRO deliberations are generally nondisclosable quality assurance records under 10 U.S.C. 1102.

(ii) Initial denial determinations by PROs pursuant to paragraph (g) of this section (concerning medical necessity determinations, DRG validation actions, etc.) and subsequent decisions regarding those determinations are not nondisclosable quality assurance records under 10 U.S.C. 1102.

(iii) Information the subject of mandatory PRO disclosure under 42 CFR part 476 is not a nondisclosable quality assurance record under 10 U.S.C. 1102.

(m) *Obligations, sanctions and procedures.* (1) The provisions of 42 CFR 1004.1-1004.80 shall apply to the CHAMPUS PRO program as they do the Medicare PRO program, except that the functions specified in those sections for the Office of Inspector General of the Department of Health and Human Services shall be the responsibility of OCHAMPUS.

(2) The provisions of 42 U.S.C. section 1395ww(f)(2) concerning circumvention by any hospital of the applicable payment methods for inpatient services shall apply to CHAMPUS payment methods as they do to Medicare payment methods.

(3) The Director, or a designee, of CHAMPUS shall determine whether to impose a sanction pursuant to paragraphs (m)(1) and (m)(2) of this section. Providers may appeal adverse sanctions decisions under the procedures set forth in § 199.10(d).

(n) *Authority to integrate CHAMPUS PRO and military medical treatment facility utilization review activities.* (1) In the case of a military medical treatment facility (MTF) that has established utilization review requirements similar to those under the CHAMPUS PRO program, the contractor carrying out this function may, at the request of the MTF, utilize procedures comparable to the CHAMPUS PRO program procedures to render determinations or recommendations with respect to utilization review requirements.

(2) In any case in which such a contractor has comparable responsibility and authority regarding utilization review in both an MTF (or MTFs) and CHAMPUS, determinations as to medical necessity in connection with services from an MTF or CHAMPUS-authorized provider may be consolidated.

(3) In any case in which an MTF reserves authority to separate an MTF determination on medical necessity from a CHAMPUS PRO program determination on medical necessity, the MTF determination is not binding on CHAMPUS.

[55 FR 625, Jan. 8, 1990, as amended at 58 FR 58961, Nov. 5, 1993; 60 FR 52095, Oct. 5, 1995]

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

(a) *Purpose and applicability.* (1) The purpose of this section is to implement, with respect to health care services provided under the supplemental health care program for active duty members of the uniformed services, the provision of 10 U.S.C. 1074(c). This section of law authorizes DoD to establish for the supplemental care program the same payment rules, subject to appropriate modifications, as apply under CHAMPUS.

(2) This section applies to the program, known as the supplemental care program, which provides for the payment by the uniformed services to private sector health care providers for health care services provided to active duty members of the uniformed services. Although not part of CHAMPUS, the supplemental care program is similar to CHAMPUS in that it is a program for the uniformed services to purchase civilian health care services for active duty members. For this reason,

the Director, OCHAMPUS assists the uniformed services in the administration of the supplemental care program.

(3) This section applies to all health care services covered by the CHAMPUS. For purposes of this section, health care services ordered by a military treatment facility (MTF) provider for an MTF patient (who is not an active duty member) for whom the MTF provider maintains responsibility are also covered by the supplemental care program and subject to the requirements of this section.

(b) *Obligation of providers concerning payment for supplemental health care for active duty members—(1) Hospitals covered by DRG-based payment system.* For a hospital covered by the CHAMPUS DRG-based payment system to maintain its status as an authorized provider for CHAMPUS pursuant to § 199.6, that hospital must also be a participating provider for purposes of the supplemental care program. As a participating provider, each hospital must accept the DRG-based payment system amount determined pursuant to § 199.14 as payment in full for the hospital services covered by the system. The failure of any hospital to comply with this obligation subjects that hospital to exclusion as a CHAMPUS-authorized provider.

(2) *Other participating providers.* For any institutional or individual provider, other than those described in paragraph (b)(1) of this section that is a participating provider, the provider must also be a participating provider for purposes of the supplemental care program. The provider must accept the CHAMPUS allowable amount determined pursuant to § 199.14 as payment in full for the hospital services covered by the system. The failure of any provider to comply with this obligation subjects the provider to exclusion as a participating provider.

(c) *General rule for payment and administration.* Subject to the special rules and procedures in paragraph (d) of this section and the waiver authority in paragraph (e) of this section, as a general rule the provisions of § 199.14 shall govern payment and administration of claims under the supplemental care program as they do claims under CHAMPUS. To the extent necessary to

interpret or implement the provisions of § 199.14, related provisions of this part shall also be applicable.

(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 waiver authority of paragraph (e) of this section.

(1) There is no patient cost sharing under the supplemental care program. All amounts due to be paid to the provider shall be paid by the program.

(2) Preauthorization by the uniformed services of each service, except for services in cases of medical emergency (for which the definition in § 199.2 shall apply), is required for the supplemental care program. 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.

(3) With respect to the filing of claims and similar administrative matters for which this part refers to activities of the CHAMPUS fiscal intermediaries, for purposes of the supplemental care program, responsibilities for claims processing, payment and some other administrative matters may be assigned by the Director, OCHAMPUS to the same fiscal intermediaries, other contractor, or to the nearest military medical treatment facility or medical claims office.

(4) The annual cost pass-throughs for capital and direct medical education costs that are available under the CHAMPUS DRG-based payment system are also available, upon request, under the supplemental care program. To obtain payment include the number of active duty bed days as a separate line item on the annual request to the CHAMPUS fiscal intermediaries.

(5) For providers other than participating providers, the Director, OCHAMPUS may authorize payment in excess of CHAMPUS allowable

amounts. No provider may bill an active duty member any amount in excess of the CHAMPUS allowable amount.

(e) *Waiver authority.* With the exception of statutory requirements, any restrictions or limitations pursuant to the general rule in paragraph (c) of this section, and special rules and procedures in paragraph (d) of this section, may be waived by the Director, OCHAMPUS, at the request of an authorized official of the uniformed service concerned, based on a determination that such waiver is necessary to assure adequate availability of health care services to active duty members.

(f) *Authorities.* (1) The Uniformed Services may establish additional procedures, consistent with this part, for the effective administration of the supplemental care program in their respective services.

(2) The Assistant Secretary of Defense for Health Affairs is responsible for the overall policy direction of the supplemental care program and the administration of this part.

(3) The Director, OCHAMPUS shall issue procedural requirements for the implementation of this section, including requirement for claims submission similar to those established by § 199.7.

[56 FR 23801, May 24, 1991, as amended at 58 FR 58963, Nov. 5, 1993]

#### § 199.17 TRICARE program.

(a) *Establishment.* The TRICARE program is established for the purpose of implementing a comprehensive managed health care program for the delivery and financing of health care services in the MHSS.

(1) *Purpose.* The TRICARE program implements management improvements primarily through managed care support contracts that include special arrangements with civilian sector health care providers and better coordination between military medical treatment facilities (MTFs) and these civilian providers. Implementation of these management improvements includes adoption of special rules and procedures not ordinarily followed under CHAMPUS or MTF requirements. This section establishes those special rules and procedures.

(2) *Statutory authority.* Many of the provisions of this section are authorized by statutory authorities other than those which authorize the usual operation of the CHAMPUS program, especially 10 U.S.C. 1079 and 1086. The TRICARE program also relies upon other available statutory authorities, including 10 U.S.C. 1099 (health care enrollment system), 10 U.S.C. 1097 (contracts for medical care for retirees, dependents and survivors; alternative delivery of health care), and 10 U.S.C. 1096 (resource sharing agreements).

(3) *Scope of the program.* The TRICARE program is applicable to all of the uniformed services. Its geographical applicability is all 50 states and the District of Columbia. In addition, if authorized by the Assistant Secretary of Defense (Health Affairs), the TRICARE program may be implemented in areas outside the 50 states and the District of Columbia. In such cases, the Assistant Secretary of Defense (Health Affairs) may also authorize modifications to TRICARE program rules and procedures as may be appropriate to the area involved.

(4) *MTF rules and procedures affected.* Much of this section relates to rules and procedures applicable to the delivery and financing of health care services provided by civilian providers outside military treatment facilities. This section provides that certain rules, procedures, rights and obligations set forth elsewhere in this part (and usually applicable to CHAMPUS) are different under the TRICARE program. In addition, some rules, procedures, rights and obligations relating to health care services in military treatment facilities are also different under the TRICARE program. In such cases, provisions of this section take precedence and are binding.

(5) *Implementation based on local action.* The TRICARE program is not automatically implemented in all areas where it is potentially applicable. Therefore, provisions of this section are not automatically implemented. Rather, implementation of the TRICARE program and this section requires an official action by an authorized individual, such as a military medical treatment facility commander, a