

home health aide, beneficiary transportation required for treatment plan implementation, and training for the beneficiary and primary caregiver sufficient to allow them to assume all feasible responsibility for the care of the beneficiary that will facilitate movement of the beneficiary to the least resource-intensive, clinically appropriate setting. (Qualifications for home health aides shall be based on the standards at 42 CFR 848.36.)

(6) *Case management acknowledgment.* The beneficiary, or representative, and the primary caregiver shall sign a case management acknowledgment as a prerequisite to prior authorization of case management services. The acknowledgment shall include, in part, all of the following provisions:

(i) The right to participate fully in the development and ongoing assessment of the treatment;

(ii) That all health care services for which TRICARE/CHAMPUS cost sharing is sought shall be authorized by the case manager prior to their delivery;

(iii) That there are limitations in scope and duration of the planned case management treatment, including provisions to transition to other arrangements; and

(iv) The conditions under which case management services are provided, including the requirement that the services must be cost effective and clinically appropriate;

(v) That a beneficiary's participation in the case management program shall be discontinued for any of the following reasons:

(A) The loss of TRICARE/CHAMPUS eligibility;

(B) A determination that the services or supplies provided are not cost effective or clinically appropriate;

(C) The beneficiary, or representative, and/or primary caregiver, terminates participation in writing;

(D) The beneficiary and/or primary caregiver's failure to comply with requirements in this paragraph (i); or

(E) A determination that the beneficiary's condition no longer meets the requirements of participation as described in paragraph (i) of this section.

(7) *Other administrative requirements.* (i) Qualified providers of services or items not covered under the basic pro-

gram, or who are not otherwise eligible for TRICARE/CHAMPUS authorized status, may be authorized for a time-limited period when such authorization is essential to implement the planned treatment under case management. Such providers must not be excluded or suspended as a CHAMPUS provider, must hold Medicare or state certification or licensure appropriate to the service, and must agree to participate on all claims related to the case management treatment.

(ii) Retrospective requests for authorization of waiver of benefit limits/exclusions will not be considered. Authorization of waiver of benefit limits/exclusions is allowed only after all other options for services or supplies have been considered and either appropriately utilized or determined to be clinically inappropriate and/or not cost-effective.

(iii) Experimental or investigational treatment or procedures shall not be cost-shared as an exception to standard benefits under this part.

(iv) TRICARE/CHAMPUS case management services may be provided by contractors designated by the Director, OCHAMPUS.

[51 FR 24008, July 1, 1986]

EDITORIAL NOTES: For FEDERAL REGISTER citations affecting § 199.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

**§ 199.5 Program for Persons with Disabilities (PFPWD).**

(a) *General.* This PFPWD provides financial assistance for certain CHAMPUS beneficiaries who are moderately or severely mentally retarded, or seriously physically disabled. The PFPWD is not intended to be a stand alone benefit.

(1) *Purpose.* The primary purpose of the PFPWD is to assist in reducing the disabling effects of a PFPWD qualifying condition.

(2) *Benefit source election.* A PFPWD beneficiary (or sponsor or guardian acting on behalf of the beneficiary) may elect to use the provisions of either this section, or the provisions of § 199.4, for a specific service or item which is allowable by both sections.

(i) *Election limitation.* No amount for authorized, or otherwise allowed,

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PFPWD services or items remaining after the maximum PFPWD benefit dollar amount has been reached in a given month may be cost-shared through the provisions of § 199.4.

(ii) *Election change.* A beneficiary (or sponsor or guardian acting on behalf of the beneficiary) shall have the right to request the Director, OCHAMPUS, or designee, to allow PFPWD cost-shared services or items otherwise allowable as a benefit of § 199.4, and which were rendered after the catastrophic loss protection provision applicable to § 199.4 was in effect for a given PFPWD beneficiary's sponsor, to be readjudicated according to the provisions of § 199.4. The Director, OCHAMPUS, or designee, shall allow readjudication when the sponsor's family's CHAMPUS benefit year cost-share liability would be reduced by such readjudication. Such requests are subject to the claims filing deadline provisions of § 199.7. The determination regarding readjudication is conclusive and may not be appealed.

(3) *Application required.* A beneficiary shall establish PFPWD eligibility as a prerequisite to authorization or payment of any PFPWD benefits. Subsequent review of the PFPWD qualifying condition to confirm continued eligibility shall be made in accordance with the prognosis for a change in severity such that the condition would not likely continue to be a PFPWD qualifying condition.

(4) *Benefit authorization.* To establish whether a requested service or item is a PFPWD benefit, the beneficiary (or sponsor or guardian acting on the behalf of the beneficiary) shall provide such information about how the requested benefit will contribute to confirming, arresting, or reducing the disabling effects of the qualifying condition as the Director, OCHAMPUS, or designee, determines necessary for benefit adjudication.

(i) *Written authorization.* The Director, OCHAMPUS, or designee, may require written authorization for any PFPWD category or type of service or item as a prerequisite for adjudication of related claims.

(ii) *Format.* An authorization issued by the Director, OCHAMPUS, or designee, shall specify, such description,

dates, amounts, requirements, limitations or information as necessary for exact identification of approved benefits and efficient adjudication of resulting claims.

(iii) *Valid period.* An authorization for a particular PFPWD service or item shall not exceed six consecutive months.

(iv) *Authorization waiver.* The Director, OCHAMPUS, or designee, shall waive the requirement for a written CHAMPUS authorization for rendered PFPWD services or items that, except for the absence of the written CHAMPUS authorization, would be allowable as a PFPWD benefit.

(v) *Public facility use.* A PFPWD beneficiary residing within a State, as defined in § 199.2, must demonstrate that a public facility, as defined in § 199.2, funds, except funds administered under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) is not available or adequate, as defined in § 199.2, to meet the qualifying condition related need.

(A) Equipment repair or maintenance for beneficiary owned equipment shall be considered not available when the equipment is a type allowable as a benefit.

(B) A beneficiary shall not be required to change the provider of public facility funded therapy when public facility funding is depleted during that beneficiary's course of therapy and when such a change is determined by the Director, OCHAMPUS, or designee, to be clinically contraindicated. When contraindicated, other public facilities for the therapy shall not be considered adequate for the beneficiary.

(5) *Public facility use certification.* Written certification, in accord with information requirements, formats, and procedures established by the Director, OCHAMPUS, or designee that requested PFPWD services or items cannot be obtained from public facilities because the services or items are not available, or if available, are not adequate, is a prerequisite for PFPWD benefit payment.

(i) A Military Treatment Facility (MTF) Commander, or designee, may make such certification for a beneficiary residing within a defined geographic area.

(ii) An administrator of a public facility, or designee, may make such certification for a beneficiary residing within the service area of that public facility.

(iii) The domicile of the beneficiary shall be the basis for the determination of public facility availability when the sponsor and beneficiary are separately domiciled due to the sponsor's move to a new permanent duty station or due to legal custody requirements.

(iv) The Director, OCHAMPUS, or designee, may determine, on a case-by-case basis, that apparent public facility availability for a requested type of service or item can not be substantiated for a specific beneficiary's request for PFPWD benefits and is not available.

(A) A case-specific determination shall be based upon a written statement by the beneficiary (or sponsor or guardian acting on behalf of the beneficiary) which details the circumstances wherein a specific individual representing a specific public facility refused to provide a public facility use certification, and such other information as the Director, OCHAMPUS, or designee determines to be material to the determination.

(B) A case-specific determination of public facility availability by the Director, OCHAMPUS, or designee, is conclusive, and is not appealable.

(6) *Equipment.* (i) An item of equipment shall not be authorized when such authorization would allow concurrent PFPWD cost-sharing of more than one item of the same type of equipment for the same beneficiary.

(ii) Reasonable repairs and maintenance shall be allowable for any beneficiary owned equipment otherwise allowable by this section.

(7) *Implementing instructions.* The Director, OCHAMPUS, or designee shall issue policies, instructions, procedures, guidelines, standards, and criteria necessary to assure the quality and efficiency of services and items furnished as a PFPWD benefit and to otherwise accomplish the purpose of the PFPWD.

(i) *Other requirements.* All provisions of this part, except the provisions of § 199.4, apply to the PFPWD unless otherwise provided by this section.

(ii) *Continuity of eligibility.* A CHAMPUS beneficiary who has an outstanding Program for the Handicapped (PFTH) benefit authorization during the 30 calendar day period immediately prior to the effective date of the Program for Persons with Disabilities (PFPWD) shall be deemed to have a PFPWD qualifying condition for the duration of the period during which the beneficiary is otherwise eligible for PFPWD and the beneficiary continues to meet the applicable PFTH qualifying condition criteria.

(b) *Eligibility—(1) Spouse or child.* PFPWD benefits are limited to a CHAMPUS eligible child or spouse, but not a former spouse, except as provided in paragraph (b)(1)(ii) of this section, of:

(i) *Active duty sponsor.* An active duty member of one of the Uniformed Services as determined in accordance with the provisions of § 199.3; or

(ii) *Former member sponsor.* After November 13, 1986, a former member of a Uniformed Service, when the qualifying condition is the result of, or has been exacerbated by, an injury or illness resulting from physical or emotional abuse; or

(iii) *Deceased sponsor.* A CHAMPUS beneficiary remains eligible for benefits under the PFPWD:

(A) For a period of one calendar year from the date an active duty sponsor dies; or

(B) Through midnight of the beneficiary's twenty-first birthday when the beneficiary is receiving PFPWD benefits at the time the active duty sponsor dies and the sponsor was eligible, at the time of death, for receipt of hostile-fire pay or died as a result of a disease or injury incurred while eligible for such pay.

(2) *Loss of PFPWD eligibility.* Eligibility for PFPWD benefits ceases as of 12:01 a.m. of the day following the day that:

(i) The sponsor ceases to be an active duty member for any reason other than death; or

(ii) Eligibility based upon the abused dependent provisions of paragraph (b)(1) of this section expires; or

(iii) Eligibility based upon the deceased sponsor provisions of paragraph (b)(1) of this section expires; or

(iv) The Director, OCHAMPUS, or designee, determines that the beneficiary no longer has a qualifying condition.

(3) *Qualifying condition*—(i) *Mental retardation*. A diagnosis of moderate or severe mental retardation made in accordance with the criteria of the current edition of the “Diagnostic and Statistical Manual of Mental Disorders” published by the American Psychiatric Association is a PFPWD qualifying condition.

(ii) *Serious physical disability*. A serious physical disability as defined in § 199.2, is a PFPWD qualifying condition.

(iii) *Infant/toddler*. For CHAMPUS beneficiaries under the age of three years with a diagnosed neuromuscular developmental condition or Down syndrome, or other condition that can to a reasonable medical probability be expected to precede a diagnosis of moderate or severe mental retardation or be characterized as a serious physical disability before the age of seven, the Director, OCHAMPUS, or designee, shall establish criteria for PFPWD eligibility in lieu of the requirements of paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section.

(iv) *Multiple disabilities*. The cumulative disabling effect shall be used in the adjudication of a qualifying condition determination when an applicant has two or more disabilities involving separate body systems.

(c) *Benefit*. Items or services which the Director, OCHAMPUS, or designee, has determined to be intrinsic to the following benefit categories and has determined to be capable of confirming, arresting, or reducing the severity of the disabling effects of a qualifying condition, generally or in a specific case, and which are not otherwise excluded by this PFPWD, may be allowed.

(1) *Diagnostic procedures* to establish a qualifying condition diagnosis or to measure the extent of functional loss.

(2) *Treatment* through the use of such medical, habilitative, or rehabilitative methods, techniques, therapies and equipment which otherwise meet the requirements of this PFPWD. Treatment includes, but is not limited to, prosthetic devices, orthopedic braces,

and orthopedic appliances. Otherwise allowable treatment may be rendered in-home, or as inpatient or outpatient care as appropriate.

(3) *Training* when required to allow the use of an assistive technology device or to acquire skills which are expected to assist the beneficiary to reduce the disabling effects of a qualifying condition and for parents (or guardian) and siblings of a PFPWD beneficiary when required as an integral part of the management of the qualifying condition.

(4) *Special education instruction*, other than training specifically designed to accommodate the disabling effects of a qualifying condition.

(5) *Institutional care* within a State, as defined in § 199.2, when the severity of the qualifying condition requires protective custody or training in a residential environment.

(6) *Transportation* when required to convey the PFPWD beneficiary to or from a facility or institution to receive otherwise allowable services or items. Transportation for a medical attendant may be approved when medically necessary for the safe transport of the PFPWD eligible beneficiary.

(7) *Adjunct services*—(i) *Assistive services*. Services of a qualified interpreter or translator for PFPWD beneficiaries who are deaf, readers for PFPWD beneficiaries who are blind, and personal assistants for PFPWD beneficiaries with other types of qualifying conditions, when such services are not directly related to the rendering or delivery of service or item otherwise an allowable PFPWD benefit.

(ii) *Equipment adaptation*. The allowable equipment purchase shall encompass such services and structural modification to the equipment as necessary to make the equipment serviceable for a particular disability.

(iii) *Equipment maintenance*. Reasonable repairs and maintenance for that portion of the useful life of beneficiary owned equipment that is concurrent with the beneficiary’s PFPWD eligibility.

(d) *Exclusions*—(1) *Inpatient acute care* for medical or surgical treatment of an acute illness, or of an acute exacerbation of the qualifying condition, is excluded.

(2) *Structural alterations* to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment, or to facilitate entrance or exit, are excluded.

(3) *Homemaker, sitter, or companion services*, except as institutional care of adjunct services, which predominantly provide assistance with daily living activities or accomplish household chores or provide companionship or provide supervision or observation, or any combination of these functions, are excluded.

(4) *Dental care or orthodontic treatment* is excluded.

(5) *Nondomestic travel* which originates outside of a State, as defined in §199.2, is excluded.

(6) *Deluxe travel accommodation* price differential between the price for a type of accommodation which provides services or features which exceed the requirements of the beneficiary's condition for safe transport and the price for a type of accommodation without those deluxe features, is excluded.

(7) *Equipment*. Exclusions for durable medical equipment at §199.4(d)(3)(ii)(D) apply to all PFPWD allowable equipment.

(8) *Medical devices*. Prosthetic devices and medical equipment which do not meet the benefit requirements of §199.4 are excluded.

(9) *No obligation to pay*. Services or items for which the beneficiary or sponsor has no legal obligation to pay, or for which no charge would be made if the beneficiary was not eligible for the CHAMPUS, are excluded.

(10) *Public facility or Federal government*. Services or items paid for, or eligible for payment, directly or indirectly by a Public Facility, as defined in §199.2, or by the Federal government, other than the Department of Defense, are excluded, except when such services or items are eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid).

(11) *Study, grant, or research programs*. Services and items provided as a part of a scientific clinical study, grant, or research program are excluded.

(12) *Unproven drugs, devices, and medical treatments or procedures*. Services

and items whose safety and efficacy have not been established as described in §199.4 are unproven and cannot be cost-shared by CHAMPUS.

(13) *Immediate family or household*. Services or items provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household, are excluded.

(14) *Court or agency ordered care*. Services or items ordered by a court or other government agency that are not otherwise a legitimate PFPWD benefit are excluded.

(15) *Excursions*. Additional or special charges for excursions, other than otherwise allowable transportation, are excluded even though part of a program offered by an approved provider.

(16) *Drugs and medicines*. Drugs and medicines which do not meet the benefit requirements of §199.4 are excluded.

(17) *Therapeutic absences*. Therapeutic absences from an inpatient facility are excluded.

(e) *Cost-share liability*—(1) *No deductible*. PFPWD benefits are not subject to a deductible amount.

(2)(i) *Sponsor cost-share liability*. Regardless of the number of PFPWD eligible family members, the sponsor's cost share for allowed PFPWD benefits in a given month is according to the following table:

Member's pay grade	Monthly share
E-1 through E-5 .....	\$25
E-6 .....	30
E-7 and O-1 .....	35
E-8 and O-2 .....	40
E-9, W-1, W-2, and O-3 .....	45
W-3, W-4, and O-4 .....	50
W-5 and O-5 .....	65
O-6 .....	75
O-7 .....	100
O-8 .....	150
O-9 .....	200
O-10 .....	250

(ii) The sponsor's cost-share will be applied, up to the amount given in the table in paragraph (e)(2)(i), to the first allowed charges in any given month. The government's share will be paid, up to the maximum amount(s) specified in paragraphs (e)(3) and (e)(4) of this section for allowed charges after the sponsor's cost-share has been applied.

(3) *Government cost-share liability: member who sponsors one PFPWD beneficiary.* The total government share of the cost of all PFPWD benefits provided in a given month to a beneficiary who is the sponsor's only PFPWD eligible family member may not exceed \$1,000 after application of the allowable payment methodology. Any amount remaining after the Government's maximum share has been reached is the responsibility of the active duty sponsor.

(4) *Government cost-share liability: member who sponsors more than one PFPWD beneficiary.* The total government share of the cost of all PFPWD allowable benefits provided in a given month to a beneficiary who is one of two or more PFPWD eligible family members of the same sponsor shall be determined as follows:

(i) *Maximum benefit limit determination for the first PFPWD eligible beneficiary.* The \$1,000 maximum monthly government PFPWD benefit amount shall apply only to the beneficiary incurring the least amount of allowable PFPWD expense in a given month, after application of the allowable payment methodology. If two or more PFPWD eligible beneficiaries have the same amount of allowable PFPWD expenses in a given month, the \$1,000 maximum benefit in that month shall apply to only one PFPWD eligible beneficiary.

(ii) *Maximum benefit limit determination for the remaining PFPWD eligible beneficiaries.* After application of the Government's cost-share specified in paragraph (e)(4)(i) of this section, the government shall cost-share the entire remaining amount for all allowable services and items received in that month by the remaining PFPWD eligible beneficiaries.

(f) *Benefit payment—(1) Equipment.* The allowable amount for equipment shall be calculated in the same manner as durable medical equipment allowable through § 199.4.

(2) *Transportation.* The allowable amount for transportation is limited to the actual cost of the standard published fare plus any standard surcharge made to accommodate any person with a similar disability or to the actual cost of specialized medical transportation when nonspecialized transport cannot accommodate the beneficiary's

disability related needs, or when specialized transport is more economical than nonspecialized transport. When transport is by private vehicle, the allowable amount is limited to the Federal government employee mileage reimbursement rate in effect on the trip date.

(3) *Proration of equipment expense.* The PFPWD beneficiary (or sponsor or guardian acting on the beneficiary's behalf) may, only at the time of the request for authorization of equipment, specify that the allowable cost of the equipment be prorated. Equipment expense proration permits the allowable cost of an item of PFPWD authorized equipment to be apportioned so that no portion of the allowable cost exceeds the monthly benefit limit and allows each apportioned amount to be separately authorized as a benefit during subsequent contiguous months.

(i) *Maximum period.* The maximum number of contiguous months during which a prorated amount may be authorized for cost-share shall be the lesser of:

(A) The number of months calculated by dividing the initial allowable cost for the item of equipment by \$1,000 and doubling the resulting quotient; or

(B) The number of months of useful equipment life for the requesting beneficiary, as determined by the Director, OCHAMPUS, or designee.

(ii) *Cost-share.* A cost-share is applicable in any month in which a prorated amount is authorized, subject to the cost-share provisions for a sponsor with two or more PFPWD eligible beneficiaries.

(iii) *Termination.* Prorated payments shall be terminated as of the first day of the month following the death of a beneficiary or as of the effective date of a beneficiary's loss of PFPWD eligibility for any other reason.

(4) *For-profit institutional care provider.* Institutional care provided by a for-profit entity may be allowed only when the care for a specific PFPWD beneficiary:

(i) Is contracted for by a public facility, as defined in § 199.2, as a part of a publicly funded long-term inpatient care program; and

(ii) Is provided based upon the PFPWD beneficiary's being eligible for

the publicly funded program which has contracted for the care; and

(iii) Is authorized by the public facility as a part of a publicly funded program; and

(iv) Would cause a cost-share liability in the absence of CHAMPUS eligibility; and

(v) Produces a PFPWD beneficiary cost-share liability that does not exceed the maximum charge by the provider to the public facility for the contracted level of care.

(g) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

[62 FR 35093, June 30, 1997, as amended at 62 FR 42904, Aug. 11, 1997]

#### § 199.6 Authorized providers.

(a) *General.* This section sets forth general policies and procedures that are the basis for the CHAMPUS cost-sharing of medical services and supplies provided by institutions, individuals, or other types of providers. Providers seeking payment from the Federal Government through programs such as CHAMPUS have a duty to familiarize themselves with, and comply with, the program requirements.

(1) *Listing of provider does not guarantee payment of benefits.* The fact that a type of provider is listed in this section is not to be construed to mean that CHAMPUS will automatically pay a claim for services or supplies provided by such a provider. The provider who actually furnishes the service(s) must, in fact, meet all licensing and other requirements established by this part to be an authorized provider; the provider must not be the subject of sanction under § 199.9; and, cost-sharing of the services must not otherwise be prohibited by this part. In addition, the patient must in fact be an eligible beneficiary and the services or supplies billed must be authorized and medically necessary, regardless of the standing of the provider.

(2) *Outside the United States or emergency situations within the United States.* Outside the United States or within the United States and Puerto Rico in

emergency situations, the Director, OCHAMPUS, or a designee, after review of the facts, may provide payment to or on behalf of a beneficiary who receives otherwise covered services or supplies from a provider of service that does not meet the standards described in this part.

NOTE: Only the Secretary of Defense, the Secretary of Health and Human Services, or the Secretary of Transportation, or their designees, may authorize (in emergency situations) payment to civilian facilities in the United States that are not in compliance with title VI of the Civil Rights Act of 1964. For the purpose of the Civil Rights Act only, the United States includes the 50 states, the District of Columbia, Puerto Rico, Virgin Islands, American Samoa, Guam, Wake Island, Canal Zone, and the territories and possessions of the United States.

(3) *Dual Compensation/Conflict of Interest.* Title 5, United States Code, section 5536 prohibits medical personnel who are active duty Uniformed Service members or civilian employees of the Government from receiving additional Government compensation above their normal pay and allowances for medical care furnished. In addition, Uniformed Service members and civilian employees of the Government are generally prohibited by law and agency regulations and policies from participating in apparent or actual conflict of interest situations in which a potential for personal gain exists or in which there is an appearance of impropriety or incompatibility with the performance of their official duties or responsibilities. The Departments of Defense, Health and Human Services, and Transportation have a responsibility, when disbursing appropriated funds in the payment of CHAMPUS benefits, to ensure that the laws and regulations are not violated. Therefore, active duty Uniformed Service members (including a reserve member while on active duty and civilian employees of the United States Government shall not be authorized to be CHAMPUS providers. While individual employees of the Government may be able to demonstrate that the furnishing of care to CHAMPUS beneficiaries may not be incompatible with their official duties and responsibilities, the processing of millions of CHAMPUS claims each year does not enable Program administrators to efficiently review the status