

intermediary to waive a CEOB to protect the privacy of a CHAMPUS beneficiary.

(4) *Benefit under \$1.* If the CHAMPUS benefit is determined to be under \$1, payment is waived.

(i) *Erroneous payments and recoupment—(1) Erroneous payments.* Erroneous payments are expenditures of government funds that are not authorized by law or this part. Such payments are to be recouped under the provisions of § 199.11 of this part.

(2) *Claims denials resulting from clarification or change in law or Regulation.* In those instances where claims review results in a finding of denial of benefits previously allowed but currently denied due to a clarification or interpretation of law or this part, or due to a change in this part, no recoupment action need be taken to recover funds expended prior to the effective date of such clarification, interpretation, or change.

(3) *Fraudulent billing.* Claims that are submitted to CHAMPUS that include a billing for services, supplies, or equipment not furnished, or used by, CHAMPUS beneficiaries will be denied in their entirety, regardless of the relative amount of the fraudulent billing compared to the total billings. Claims that have been CHAMPUS cost-shared that are retroactively audited or reviewed and are found to include fraudulent billings may be denied in part or in total based on the discretion of the Director, OCHAMPUS, or a designee.

(j) *General assignment of benefits not recognized.* CHAMPUS does not recognize any general assignment of CHAMPUS benefits to another person. All CHAMPUS benefits are payable as described in this and other Sections of this part.

[51 FR 24008, July 1, 1986, as amended at 52 FR 33007, Sept. 1, 1987; 53 FR 5373, Feb. 24, 1988; 54 FR 25246, June 14, 1989; 56 FR 28487, June 21, 1991; 56 FR 59878, Nov. 26, 1991; 58 FR 35408, July 1, 1993; 58 FR 51238, Oct. 1, 1993; 58 FR 58961, Nov. 5, 1993; 62 FR 35097, June 30, 1997]

§ 199.8 Double coverage.

(a) *Introduction.* In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit

and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

“A benefit may not be paid under a plan [CHAMPUS] covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under other plans, except in the case of a plan [Medicaid] administered under title 19 of the Social Security Act (42 U.S.C. 1306 *et seq.*)”

The above provision is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

(b) *Double coverage plan.* A double coverage plan is one of the following:

(1) *Insurance plan.* An insurance plan is any plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services and supplies. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(2) *Medical service or health plan.* A medical service or health plan is any plan or program of an organized health care group, corporation, or other entity for the provision of health care to an individual from plan providers, both professional and institutional. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(3) *Exceptions.* Double coverage plans do not include:

(i) Plans administered under title XIX of the Social Security Act (Medicaid);

(ii) Coverage specifically designed to supplement CHAMPUS benefits (a health insurance policy or other health benefit plan that meets the definition

and criteria under supplemental insurance plan as set forth in § 199.2(b));

(iii) Entitlement to receive care from Uniformed Services medical care facilities;

(iv) Certain Federal Government programs, as prescribed by the Director, OCHAMPUS, that are designed to provide benefits to a distinct beneficiary population and for which entitlement does not derive from either premium payment of monetary contribution (for example, the Indian Health Service); or

(v) State Victims of Crime Compensation Programs.

(c) *Application of double coverage provisions.* CHAMPUS claims submitted for otherwise covered services or supplies and which involve double coverage shall be adjudicated as follows:

(1) *CHAMPUS always last pay.* For any claim that involves a double coverage plan as defined above, CHAMPUS shall be last pay. That is, CHAMPUS benefits may not be extended until all other double coverage plans have adjudicated the claim.

(2) *Waiver of benefits.* A CHAMPUS beneficiary may not elect to waive benefits under a double coverage plan and use CHAMPUS. Whenever double coverage exists, the provisions of this Section shall be applied.

(3) *Last pay limitations.* CHAMPUS may not pay more as a secondary payer than it would have in the absence of other coverages. Application of double coverage provisions does not extend or add to the CHAMPUS benefits as otherwise set forth in this and other Sections of this part.

(d) *Special considerations.* (1) *CHAMPUS and Medicare.* In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, "Hospital Insurance," of Medicare is involved, the Medicare "lifetime reserve" benefit must be used before CHAMPUS benefits may be extended.

(2) *CHAMPUS and Medicaid.* Medicaid is not a double coverage plan. In any double coverage situation involving Medicaid, CHAMPUS is always the primary payer.

(3) *CHAMPUS and Worker's Compensation.* CHAMPUS benefits are not payable for a work-related illness or injury

that is covered under a worker's compensation program.

(4) *Program for persons with disabilities (PFPWD).* A PFPWD eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, OCHAMPUS, or designee, to be available and adequate to meet a disability related need for which a PFPWD benefit was requested. Benefits eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of PFPWD benefits.

(e) *Implementing instructions.* The Director, OCHAMPUS, or a designee, shall issue such instructions, procedures, or guidelines, as necessary, to implement the intent of this section.

[51 FR 24008, July 1, 1986, as amended at 62 FR 35097, June 30, 1997; 62 FR 54384, Oct. 20, 1997]

§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest.

(a) *General.* (1) This section sets forth provisions for invoking administrative remedies under CHAMPUS in situations involving fraud, abuse, or conflict of interest. The remedies impact institutional providers, professional providers, and beneficiaries (including parents, guardians, or other representatives of beneficiaries), and cover situations involving criminal fraud, civil fraud, administrative determinations of conflicts of interest or dual compensation, and administrative determinations of fraud or abuse. The administrative actions, remedies, and procedures may differ based upon whether the initial findings were made by a court of law, another agency, or the Director, OCHAMPUS (or designee).

(2) This section also sets forth provisions for invoking administrative remedies in situations requiring administrative action to enforce provisions of law, regulation, and policy in the administration of CHAMPUS and to ensure quality of care for CHAMPUS beneficiaries. Examples of such situations may include a case in which it is