DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA70

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS): Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities, implements Section 640 of Public Law 105–17, which establishes the Civilian Health and Medical Program of the Uniformed Service (CHAMPUS) payment relationship for IDEA Part C services and items.

EFFECTIVE DATE: This final rule is effective May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Margaret Brown and Michael Kottyan, TRICARE Management Activity, Office of Medical Benefits and Reimbursement Systems (303) 676–3581 and (303) 676–3520 respectively.

SUPPLEMENTARY INFORMATION: On November 15, 2000 (65 FR 68957), the Department of Defense published a proposed rule with a public comment period. All respondents concurred with the proposed amendments. Five suggested several minor changes. Therefore, all comments were analyzed and considered in the formulation of this final rule.

Comments and Responses

Comment: PFPWD—Early Intervention: One comment stated that it was not clear from the materials provided whether CHAMPUS as first payer for allowable medical services and items provided as early intervention services (EIS) is a change to comply with the law or whether it is a clarification of present policy.

Response: This action is not a change in that it merely codifies Section 640 of Public Law 105–17, which defines the payment relationship of CHAMPUS and funds provided in accordance with that law.

Comment: Another comment suggested that the rule stipulate that families who reside on base are not eligible for TRICARE/CHAMPUS payment if the on-base program can provide the required EIS.

Response: Early Intervention Services (EIS) available from or through Military Treatment Facilities (MTFs), or other on-base programs, should be utilized to the extent appropriate. However, to restrict services to those not available from or through an MTF would require a mechanism similar to a non-availability statement, could precipitate a delay in delivery of necessary services, and is beyond the scope of this rule. Consequently, we have retained the language as originally proposed.

Comment: PFPWD Double Coverage Plan—Another comment suggested that we change the sentence ''medical services and items that are provided under Part C of the IDEA'' to ''services and devices provided under Part C of the IDEA that are medically or psychologically necessary.''

Response: We agreed to make this change. However, we did not change the term ''items'' to ''devices'' because items is the language used elsewhere in CHAMPUS' regulations and policies.

Comment: PFPWD Valid Authorization Period—The last comment regarding PFPWD and suggested that we change the sentence ''maximum of twelve months'' to ''maximum of twelve consecutive months.''

Response: We agreed to make this change.

Comment: Breast reconstructive surgery—One comment suggested that we change ''structures of the body in order to improve the patient's appearance and self-esteem remains an exclusion'' to ''structures of the body for the sole purpose of electively improving the patient's appearance remains an exclusion'' to clarify the intent of when reconstructive surgery is not paid.

Response: We agreed to make this change.

Comment: Statement at the paragraph 199.4(g)(15)(i)(D)—It was also suggested that we define the term ''reliable evidence'' by making a reference to the definition of reliable evidence in 32 CFR 199.2.

Response: This change is not necessary, because paragraph 199.4(g)(15)(i)(D) already contains a reference to the definition at the end of the paragraph.

Comment: Enuretic Devices—The last comment regarding enuretic devices suggested that we change the word ''physician'' to ''health care provider'' to expand the personnel available to provide professional guidance on the use of the enuretic devices, such as a physician's assistant or nurse practitioner.

Response: We agreed to make this change.

Overview of Changes

The following provides an overview of the changes in this final rule to §§ 199.2; 199.4; 199.5; and 199.8.

This final rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities (PFPWD), and establishes the CHAMPUS payment relationship for IDEA Part C services and items, and revises a statement to the paragraph at 32 CFR 199.4(g)(15)(i)(D).

Enuretic Devices

The TRICARE Management Activity received a request from the medical community that we re-evaluate our policy regarding enuretic devices, which currently are excluded from cost sharing under the CHAMPUS Basic Program. Recent literature review indicates that the medical community considers enuresis alarms the most effective method for treating enuresis. Having found no contradictory evidence, we agree that enuretic devices should be removed from the exclusions in the regulation. The removal of this exclusion allows physicians to select rational treatment options and insure that CHAMPUS pays only for the most appropriate and highest quality medical care possible.

Enuretic conditioning programs are also specifically excluded from CHAMPUS cost sharing. Enuretic conditioning programs will continue to be excluded. The basis for excluding enuretic conditioning programs is to restrict the payment for professional guidance on the use of these devices to an authorized health care provider, such as, the attending physician or a physician's assistant or a nurse practitioner.

Breast Reconstructive Surgery.

Benefits under the basic program are not available for cosmetic, reconstructive, or plastic surgery. However, the regulation provides exceptions for procedures that are essentially cosmetic when performed in response to a congenital anomaly, post mastectomy breast reconstruction for malignancy, fibrocystic disease, or other covered mastectomies, an accidental injury or disfiguring scars resulting from neoplastic surgery.

The regulation currently contains contradictory provisions relating to post mastectomy breast reconstruction. Paragraph 199.4 (e)(8)(i)(D) specifically authorizes post mastectomy breast reconstruction. However, paragraph 199.4 (e)(8)(ii)(D) excludes breast augmentation mammoplasty even when performed as a part of post mastectomy breast reconstruction procedure. Because an augmentation mammoplasty is an integral part of most post mastectomy breast reconstruction procedures, it is inconsistent to exclude it as a part of that procedure.

Further, in the context of post mastectomy breast reconstruction, reduction mammoplasty may be performed to achieve symmetry of the collateral breast. This too is an integral part of the post mastectomy breast reconstruction process and should not be excluded from cost sharing by CHAMPUS. We are adding language to clarify the rule that reduction mammoplasty on the collateral breast is an authorized part of the post mastectomy breast reconstruction procedure.

Cosmetic, reconstructive or plastic surgery that is performed to reshape normal structures of the body for the sole purpose of electively improving the patient's appearance remains an exclusion.

PFPWD Valid Authorization Period

The regulation currently provides that a valid authorization for receipt of services and items under the Program for Persons with Disabilities (PFPWD) shall not exceed six consecutive months. For services that are required for more than six months, and for the allowable cost of durable equipment and durable medical equipment that is prorated for more than six months, this requirement places unnecessary hardship on the family of an individual with a disability and additional administrative workload on the managed care support contractors. Changing the valid period of a PFPWD authorization to a maximum of twelve consecutive months enhances the PFPWD without compromising its accountability.

Early Intervention Services

Part C of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Public Law 105–17, enacted June 4, 1997, provides financial assistance to States to, among other provisions, facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage). Early intervention services are developmental services provided to individuals under age three (3) who have a developmental delay or who would be at risk of experiencing a substantial developmental delay if those services were not provided.

Part C, Section 640, Payer of Last Resort, establishes that funds provided under the Act may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense. This language establishes CHAMPUS as first payer for medical services and items provided as early intervention services in accordance with Part C and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

Statement at Paragraph 32 CFR 199.4(g)(15)(i)(D)

The revised statement clarifies that the consensus among experts must be based on reliable evidence.

Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one that 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 and has been reviewed by the Office Management and Budget as required under the provisions of Executive Order 12866.

The changes set forth in this final rule are minor revisions to the existing regulation. This final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subject in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, 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 199.2 is amended in the definition of ''Double coverage plan'', by removing ''or'' at the end of paragraph (iii), removing the period at the end of paragraph (iv) and adding ''; or'' in its place, and adding paragraph (v) to read as follows:

§ 199.2 Definitions.

* * * * *

Double coverage plan. * * *

(v) Part C of the Individuals with Disabilities Education Act for services and items provided in accordance with Part C of the IDEA that are medically or psychologically necessary in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

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3. Section 199.4 is amended by removing paragraph (e)(8)(ii)(D), and by revising paragraphs (e)(8)(iv)(C), (e)(8)(iv)(E), (g)(15)(i)(D), and (g)(58), to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(8) * * *

(iv) * * *

(C) *Augmentation mammoplasties.* Augmentation mammoplasties, except for breast reconstruction following a covered mastectomy and those specifically authorized in paragraph (e)(8)(i) of this section.

* * * * *

(E) *Reduction mammoplasties.* Reduction mammoplasties (unless there is medical documentation of intractable pain, not amenable to other forms of treatment, resulting from large, pendulous breasts or unless performed as an integral part of an authorized breast reconstruction procedure under paragraph (e)(8)(i) of this section, including reduction of the collateral breast for purposes of ensuring breast symmetry)

* * * * *

(g) * * *

(15) * * *

(i) * * *

(D) If reliable evidence shows that the consensus among experts regarding the medical treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated doses, its toxicity, its safety, or its effectiveness as compared with the standard means of treatment or diagnosis (see the definition of reliable evidence in § 199.2 for the procedures used in determining if a medical treatment or procedure is unproven).

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(g) * * *

(58) *Enuretic.* Enuretic conditioning programs, but enuretic alarms may be cost-shared when determined to be medically necessary in the treatment of enuresis.

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4. Section 199.5 is amended by revising paragraph (a)(4)(iii) and adding paragraph (a)(5)(v) to read as follows:

§ 199.5 Program for Persons with Disabilities (PFPWD).

(a) * * *

(4) * * *

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

* * * * *

(5) * * *

(v) The requirements of this paragraph (a)(5) notwithstanding, no Public Facility Use Certification is required for medical services and items that are provided under Part C of the Individuals with Disabilities Education Act in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the PFPWD.

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5. Section 199.8 is amended by adding paragraph (d)(5) to read as follows:

§ 199.8. Double coverage.

* * * * *

(d) * * *

(5) The requirements of paragraph (d)(4) of this section notwithstanding, CHAMPUS is primary payer for services and items that are provided under Part C of the IDEA that are medically or psychologically necessary in accordance with the Individualized Family Service Plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

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Dated: April 10, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–9180 Filed 4–16–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 63

[CC Docket No. 01–150; FCC 02–78]

Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules to govern and streamline review of applications for section 214 of the Communications Act of 1934, as amended (the Act), to transfer control of domestic transmission lines. Specifically, this document establishes a thirty day streamlined review process that will presumptively apply to domestic section 214 transfer applications meeting specified criteria, and that will apply on a case-by-case basis to all other domestic section 214 applications. This document also sets forth the information that applicants must provide in their domestic section 214 applications, whether filed separately or in combination with an international section 214 applications. Moreover, this document defines pro forma transactions in a manner that is consistent with the definition used by the Commission in other contexts, and harmonizes the treatment of asset acquisitions with the treatment of acquisitions of corporate control.

DATES: Effective May 17, 2002, except §§ 63.01, 63.03 and 63.04 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Aaron Goldberger, Attorney-Advisor, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *agoldber@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 01–150, FCC 02–78, adopted March 14, 2002, and released March 21, 2002. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Report and Order

1. The Commission's goals in adopting this Report and Order are: (1) To add predictability, efficiency, and transparency to the Commission's domestic section 214 transfer of control review process; and (2) greatly improve the Commission's current domestic section 214 transfer of control procedures, which carriers have sometimes found confusing, cumbersome, and overly burdensome to navigate.

2. *Background.* Under section 214 of the Communications Act of 1934, as amended (Act), carriers must obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating or engaging in transmission over lines of communication, or before discontinuing, reducing or impairing service to a community. In considering such applications, the Commission has employed a public interest standard under section 214(a) that involves an examination of the potential public interest harms and benefits of a proposed transaction.

3. In 1999, the Commission adopted the current version of § 63.01 of the Commission's rule, granting all carriers blanket authority under section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line. The blanket authority in § 63.01, however, does not extend to the transfer of lines resulting from an acquisition of corporate control. Accordingly, with respect to acquisitions of corporate control, the Commission decided that carriers must file a section 214 application with the Commission and obtain Commission approval prior to consummating a proposed transaction.

4. In the Notice of Proposed Rulemaking adopted in this proceeding on July 12, 2001 (66 FR 41823 (2001)), the Commission tentatively concluded that a substantial number of transactions do not raise public interest concerns and should be granted on a streamlined basis. Therefore, the Commission sought comment on ways to streamline its review process for these transactions. Following from the Notice of Proposed Rulemaking, this Report and Order takes several significant steps to lessen the burden on carriers seeking authorization to acquire domestic transmission lines.