

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

[DoD-2006-OS-0209]

RIN 0720-AB02

**TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2006; TRICARE Dental Program**

**AGENCY:** Office of the Secretary, DoD.  
**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 713 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA for FY06), Public Law 109-163. The rule provides eligibility for survivor benefits under the TRICARE Dental Program (TDP) to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days who subsequently separates from active duty during the three-year transitional survivor period.  
**DATES:** *Effective Date:* September 20, 2007.

**ADDRESSES:** TRICARE Management Activity, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041.

**FOR FURTHER INFORMATION CONTACT:** Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681-0039.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of Final Rule Provisions**

Prior to section 713 of the FY 06 NDAA, a surviving spouse who is a member of the armed forces on active duty for a period of more than 30 days at the time the other active duty military member spouse dies, and who subsequently separates from active duty, was ineligible for the TRICARE Dental program (TDP) survivor benefit. The surviving active duty spouse was ineligible because he or she was not enrolled in the program at the time of the spouse's death. Active duty members are not eligible for enrollment in the TDP. There are many dual military couples in the armed forces and the authority provided by section 713 of the NDAA for FY06 directs the Department to expand the eligibility for survivor benefits under the TDP to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days who

subsequently separates from active duty during the three-year survivor period.

**II. Review of Public Comments**

We provided a 60 day comment period on the interim final rule which was published in the **Federal Register** on November 17, 2006 (71 FR 66871). We received no public comments.

**III. Regulatory Procedures**

*Executive Order (EO) 12866*

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would 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 is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive Order 12866 and has been reviewed by the Office of Management and Budget. The changes set forth in this final rule involve an expansion of TRICARE benefits.

*Paperwork Reduction Act*

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511).

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

**List of Subjects in 32 CFR Part 199**

Dental program, Dental health, Health care, Health insurance, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 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 199.13 is amended by revising paragraphs (c)(3)(ii)(E)(2), to read as follows:

**§ 199.13 TRICARE Dental Program.**

- \* \* \* \* \*
- (c) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*
- (E) \* \* \*

(2) *Continuation of eligibility.* Eligible dependents of active duty members while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (i.e., Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively), shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death, if, on the date of the death of the member, the dependent is enrolled in the TDP, or is not enrolled by reason of discontinuance of a former enrollment under paragraphs (c)(3)(ii)(E)(4)(ii) and (c)(3)(ii)(E)(4)(iii) of this section, or is not enrolled because the dependent was under the minimum age for enrollment at the time of the member's death, or is not qualified for enrollment because the dependent is a spouse who is a member of the armed forces on active duty for a period of more than 30 days but subsequently separates or is discharged from active duty. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the government and the beneficiary's portion of the premium share.

\* \* \* \* \*

Dated: September 13, 2007.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

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