Part 199.11

Overpayments Recovery

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(a) General. Actions to recover overpayments arise when the government has a right to recover money, funds, or property from any person, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except another Federal agency, because of an erroneous payment of benefits under both CHAMPUS and the TRICARE program under this part. The term "Civilian Health and Medical Program of the Uniformed Services" (CHAMPUS) is defined in 10 U.S.C. 1072(2), referred to as the CHAMPUS basic program. Prior to January 1, 2018, the term "TRICARE program" referred to the triple-option of health benefits known as TRICARE Prime, TRICARE Extra, and TRICARE Standard. Specifically, TRICARE Standard was the TRICARE program under which the basic program of health care benefits generally referred to as CHAMPUS was made available to eligible beneficiaries under this Part 199. Effective January 1, 2018, the term "TRICARE program" is defined in 10 U.S.C. 1072(2) and includes TRICARE Prime, TRICARE Select and TRICARE for Life. It is the purpose of this section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefit payments arising out of the administration CHAMPUS and the TRICARE program. For the purpose of this section, references herein to TRICARE beneficiaries, claims, benefits, payments, or appeals shall include CHAMPUS beneficiaries, claims, benefits, payments, or appeals. A claim against several joint debtors arising from a single incident or transaction is considered one claim. The Director, or a designee, may pursue collection against all joint debtors and is not required to allocate the burden of payment between debtors.

(b) Authority. (1) *Federal statutory authority.* The Federal Claims Collection Act, 31 U.S.C. 3701, et seq., as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (DCIA), provides the basic authority under which claims may be asserted pursuant to this section. The DCIA is implemented by the Federal Claims Collection Standards, joint regulations issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) (31 CFR Parts 900-904), that prescribe government-wide standards for administrative collection, offset, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of debts to private collection contractors for resolution, and referral to the Department of Justice for litigation to collect debts owed the Federal government. The regulations under this part are also issued under Treasury regulations implementing the DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5514; 5 CFR part 550, subpart K), administrative offset (31 U.S.C. 3716; 31 CFR part 285, subpart A); administrative offset of tax refunds (31 U.S.C. 3720A) and offset of military pay (37 U.S.C. 1007(c); Volume 7A, Chapter 50 and Volume 7B, Chapter 28 of the Department of Defense Financial Management Regulation, DOD 7000.14-R[1] (DoDFMR)).

[1] Copies may be obtained at http://www.dtic.mil/whs/directives/.

(2) *Other authority.* Federal claims may arise under authorities other than the federal statutes, referenced above. These include, but are not limited to:

(i) State worker's compensation laws.

(ii) State hospital lien laws.

(iii) State no-fault automobile statutes.

(iv) Contract rights under terms of insurance policies.

(c) Policy. The Director, TMA, or a designee, shall aggressively collect all debts arising out of its activities. Claims arising out of any incident, which has or probably will generate a claim in favor of the government, will not be compromised, except as otherwise provided in this section, nor will any person not authorized to take final action on the government's claim, compromise or terminate collection action. Title 28 U.S.C. 2415-2416 establishes a statute of limitation applicable to the government where previously neither limitations nor latches were available as a defense. Claims falling within the provisions of this statute will be referred to the Department of Justice without attempting administrative collection action, if such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) Appealability. This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of TRICARE. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of Sec. 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in Sec. 199.10 of this part may affect the processing of federal claims arising under this section. Those appeal procedures afford a TRICARE beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is an appealable issue. For example, a TRICARE contractor may erroneously make payment for services, which are excluded as TRICARE benefits because they are determined to be not medically necessary. In that event, the contractor will initiate recoupment action, and at the same time, the contractor will offer an administrative appeal as provided in Sec. 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, the pendency of the appeal may provide a basis for the suspension of collection in the recoupment case. If an appeal were resolved entirely in favor of the appealing party, it would provide a basis for the termination of collection action in the recoupment case.

(e) Delegation. Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, and compromise or to suspend or terminate collection action arising on claims under the Federal Claims Collection Act has been delegated to the Director, TMA, or a designee.

(f) Recoupment of erroneous payments. (1) *Erroneous payments are expenditures of government funds, which are not authorized by law or this part.* Examples which are sometimes encountered in the administration of TRICARE include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, incorrect application of the deductible or co-payment or payment for services which were not medically necessary. Claims in favor of the government arising as the result of the filing of false TRICARE claims or other fraud fall under the cognizance of the Department of Justice. Consequently, procedures in this section apply to such claims only when specifically authorized or directed by the Department of

Justice. (See 31 CFR 900.3.) Due to the nature of contractual agreements between network providers and TRICARE prime contractors, recoupment procedures may be modified or adapted to conform to network agreements. The provisions of Sec. 199.11 shall apply if recoupment under the network agreements is not successful.

(2) *Scope.* (i) *General.* Paragraph (f) of this section and the paragraphs following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, patient, beneficiary, provider, physician or other supplier of products or services under TRICARE.

(ii) *Debtor defined.* As used herein, "debtor" means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who for any reason has been erroneously paid under TRICARE. It includes an individual, partnership, corporation, professional corporation or association, estate, trust or any other legal entity.

(iii) *Delinquency defined.* A debt is "delinquent" if it has not been paid by the date specified in the initial written demand for payment (that is, the initial written notification) or other applicable contractual agreement, unless other satisfactory payment arrangements have been made by the date specified in the initial written demand for payment. A debt is considered delinquent if at any time after entering into a repayment agreement, the debtor fails to satisfy any obligations under that agreement.

(3) *Other health insurance claims.* Claims arising from erroneous TRICARE payments in situations where the beneficiary has entitlement to an insurance, medical service, health and medical plan, including any plan offered by a third party payer as defined in 10 U.S.C. 1095(h)(1) or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.) through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped following the procedures in paragraph (f) of this section. If the other plan has not made payment to the beneficiary or provider, the contractor shall first attempt to recover the overpayment from the other plan through the contractor's coordination of benefits procedures. If the overpayment cannot be recovered from the other plan, or if the other plan has made payment, the overpayment will be recovered from the party that received the erroneous payment from TRICARE. Nothing in this section shall be construed to require recoupment from any sponsor, beneficiary, provider, supplier and/or the Medicare Program under Title XVIII of the Social Security Act in the event of a retroactive determination of entitlement to SSDI and Medicare Part A coverage made by the Social Security Administration as discussed in Sec. 199.8(d) of this part.

(4) *Claims denials due to clarification or change.* In those instances where claim review results in the denial of benefits previously provided, but now denied due to a change, clarification or interpretation of the public law or this part, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification or interpretation.

(5) *Good faith payment.* (i) The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a file listing of persons eligible to receive benefits under TRICARE. However, it is the responsibility of the Uniformed Services to provide eligible TRICARE beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution identifying persons claiming to be eligible TRICARE beneficiaries, and furnish otherwise covered services and supplies to such persons in good faith, TRICARE benefits may be paid subject to prior approval by the Director, TMA, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently

determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care because of its own careless identification procedures.

(ii) When it is determined that a person was not a TRICARE beneficiary, the TRICARE contractor and the civilian source of medical care are expected to make all reasonable efforts to obtain payment or to recoup the amount of the good faith payment from the person who erroneously claimed to be the TRICARE beneficiary. Recoupment of good faith payments initiated by the TRICARE contractor will be processed pursuant to the provisions of paragraph (f) of this section.

(6) *Recoupment procedures.* (i) *Initial action.* When an erroneous payment is discovered, the TRICARE contractor normally will be required to take the initial action to effect recoupment. Such actions will be in accordance with the provisions of this part and the TRICARE contracts and will include a demand (or demands) for refund or an offset against any other TRICARE payment(s) becoming due the debtor. When the efforts of the TRICARE contractor to effect recoupment are not successful within a reasonable time, recoupment cases will be referred to the Office of General Counsel, TMA, for further action in accordance with the provisions of paragraph (f) of this section. All requests to debtors for refund or notices of intent to offset shall be in writing.

(ii) *Demand for payment.* Written demand(s) for payment shall inform the debtor of the following:

(A) The basis for and amount of the debt and the consequences of failing to cooperate to resolve the debt;

(B) The right to inspect and copy TRICARE records pertaining to the debt;

(C) The opportunity to request an administrative review by the TRICARE contractor; and that such a request must be received by the TRICARE contractor within 90 days from the date of the initial demand letter;

(D) That payment of the debt is due within 30 days from the date of the initial demand notification;

(E) That interest will be assessed on the debt at the Treasury Current Value of Funds rate, pursuant to 31 U.S.C. 3717, and will begin to accrue on the date of the initial demand letter; and that interest will be waived on the debt, or any portion thereof, which is paid within 30 days from the date of the initial demand notification letter;

(F) That administrative costs and penalties will be charged pursuant to 31 CFR 901.9;

(G) That collection by offset against current or subsequent claims or other amounts payable from the government may be taken;

(H) The opportunity to enter into a written agreement to repay the debt;

(I) The name, address, and phone number of a contact person or office that the debtor may contact regarding the debt.

(iii) A minimum of one demand letter is required. However, the specific content, timing and number of demand letters may be tailored to the type and amount of the debt, and the debtor's response, if any. Contractors' demand letters must be mailed or hand-delivered on the same date they are dated.

(iv) The initial or subsequent demand letters may also inform the debtor of the requirement to report delinquent debts to credit reporting agencies and to collection agencies, the requirement to refer debts to the Treasury Offset Program for offset from Federal income tax refunds and other amounts payable by the Government, offset from state payments, the requirement to refer debts to Treasury for collection and TRICARE policies concerning the referral of delinquent debts to the Department of Justice for enforced collection action. The initial or subsequent demand letter may also inform the debtor of TRICARE policies concerning waiver. When necessary to protect the Government's interest (for example to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this regulation, including referral to the Department of Justice for litigation. There should be no undue delay in responding to any communication received from the debtor. Responses to communications from debtors should be made within 30 days of receipt whenever feasible. If prior to the initiation of the demand process or at any time during or after completion of the demand process, the Director, TMA, or a designee, determines to pursue or is required to pursue offset, the procedures applicable to administrative offset, found at paragraph (f)(6)(v) of this section, must be followed. If it appears that initial collection efforts are not productive or if immediate legal action on the claim appears necessary, the claim shall be referred promptly by the contractor to the Office of General Counsel, TMA.

(v) *Collection by administrative offset.* Collections by offset will be undertaken administratively in every instance when feasible. Collections may be taken by administrative offset under 31 U.S.C. 3716, the common law or other applicable statutory authority. No collection by offset may be undertaken unless the debtor has been sent a written demand for payment, including the procedural safeguards described in paragraph (f)(6)(ii) of this section, unless the failure to take the offset would substantially prejudice the Government's ability to collect the debt, and the time before payment is to be made does not reasonably permit the time for sending written notice. Such prior offset must be promptly followed by sending a written notice and affording the debtor the opportunity for a review by the TRICARE contractor. Examples of erroneous payments include, but are not limited to, claims submitted by individuals ineligible for TRICARE benefits, claims submitted for non-covered services or supplies, claims for which payments by another insurance or health plan reduce TRICARE liability, and from claims made from participating providers in which payment was initially erroneously made to the beneficiary. The resolution of recoupment claims rarely involves issues of credibility or veracity and a review of the written record is ordinarily an adequate means to correct prior mistakes. For this reason, the pre-offset oral hearing requirements of the Federal Claims Collection Standards, 31 CFR 901.3(e) do not apply to the recoupment of erroneous TRICARE payments. However, in instances where an oral hearing is not required, the debtor will be afforded an administrative review if the TRICARE contractor receives a written request for an administrative review within 90 days from the date of the initial demand letter. The appeals procedures described in Sec. 199.10 of this part, afford a TRICARE beneficiary or participating provider an opportunity for an administrative appellate review, including under certain circumstances, the right to an oral hearing before a hearing officer when an appealable issue exists. TRICARE contractors may take administrative action to offset erroneous payments against other current TRICARE payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or part of a debt may be offset depending on the amount available for offset. Any requests for offset received from other agencies and garnishment orders issued by courts of competent jurisdiction will be forwarded to the Office of General Counsel, TMA. Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the TRICARE official or officials charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to

judgment. This section does not apply to debts arising under the Social Security Act, except as provided in 42 U.S.C. 404, payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c), debts arising under, or payments made under, the Internal Revenue Code, except for offset of tax refunds or tariff laws of the United States; offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716; offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States; offset or recoupment under common law, state law, or federal statutes specifically prohibiting offset or recoupment of particular types of debts or offsets in the course of judicial proceedings, including bankruptcy.

(A) *Referral for centralized administrative offset*. When cost-effective, legally enforceable non-tax debts delinquent over 180 days that are eligible for collection through administrative offset shall be referred to Treasury for administrative offset, unless otherwise exempted from referral. Referrals shall include certification that the debt is past due and legally enforceable and that TMA has complied with all due process requirements of the statute-authorizing offset. Administrative offset, including administrative offset against tax refunds due debtors under 26 U.S.C. 6402, in accordance with 31 U.S.C. 3720A, shall be effected through referral for centralized administrative offset, after debtors have been afforded at least sixty (60) days notice required in paragraph (f)(6) of this section. Salary offsets shall be effected through referral for centralized administrative offset, after debtors have been afforded due process required by 5 U.S.C. 5514, in accordance with 31 CFR 285.7. Referrals for salary offset shall include certification that the debts are past due, legally enforceable debts and that TMA has complied with all due process requirements under 5 U.S.C. 5514 and applicable agency regulations. The Treasury, Financial Management Service (FMS) may waive the salary offset certification requirement set forth in 31 CFR 285.7, as a prerequisite to submitting the debt to FMS for offset from other payment types. If FMS waives the certification requirement, before an offset occurs, TMA will provide the employee with the notice and opportunity for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable agency regulations have been met. TMA is not required to duplicate notice and administrative review or salary offset hearing opportunities before referring debts for centralized administrative offset when the debtor has been previously given them.

(B) *Referral for non-centralized administrative offset*. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due legally enforceable non-tax-delinquent debts that are eligible for referral may be collected through non-centralized administrative offset through a request directly to the payment-authorizing agency. Referrals shall include certification that the debts are past due and that the agency has complied with due process requirements under 31 U.S.C. 3716(a) or other applicable authority and applicable agency regulations concerning administrative offset. Generally, non-centralized administrative offsets will be made on an ad hoc case-by-case basis, in cooperation with the agency certifying or authorizing payments to the debtor.

(vi) *Collection by transfer of debts to Treasury or a Treasury-designated debt collection center for collection through cross servicing*. (A) The Director, TMA or a designee, is required to transfer legally enforceable non-tax debts that are delinquent 180 days or more to Treasury for collection through cross-servicing (31 U.S.C. 3711(g); 31 CFR 285.12.) Debts referred or transferred to Treasury or Treasury-designated debt collection centers shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts. Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. This fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Referrals will include certification that the debts transferred are valid, legally enforceable debts, that there are no legal bars to collection and that the agency has complied with all prerequisites to a particular collection action under the applicable laws, regulations or policies, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

(B) The requirement of paragraph (f)(1) of this section does not apply to any debt that:

(1) Is in litigation or foreclosure.

(2) Will be disposed of under an approved asset sale program.

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury.

(4) Will be collected under internal offset procedures within 3 years after the debt first became delinquent.

(5) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.

(vii) *Collection by salary offset.* When a debtor is a member of the military service or a retired member and collection by offset against other TRICARE payments due the debtor cannot be accomplished, and there have been no positive responses to a demand for payment, the Director, TMA, or a designee, may refer the debt for offset from the debtor's pay account pursuant to 37 U.S.C. 1007(c), as implemented by Volume 7A, Chapter 50 and Volume 7B, Chapter 28 of the DoDFMR. Collection from a Federal employee may be effected through salary offset under 5 U.S.C. 5514.

(A) For collections by salary offset the Director, TMA, or designee, will issue written notification, as required by 5 CFR 550.1104(d) at least 30 days before any offsets are taken. In addition, the notification will advise the employee that if he or she retires, resigns or his or her employment ends before collection of the debt is completed, collection may be made from subsequent payments of any nature due from the United States (e.g., final salary payment, lump-sum leave under 31 U.S.C. 3716 due the employee as of date of separation.) A debtor's involuntary payment of all or part of a debt being collected will not be construed as a waiver of any rights the debtor may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary or the employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay. No interest will be paid on amounts waived or determined not to be owed unless there are statutory or contractual provisions to the contrary.

(B) *Petition for hearing.* The notice of the proposed offset will advise the debtor of his or her right to petition for a hearing. The petition for hearing must be signed by the debtor or his or her representative and must state whether he or she is contesting debt validity, debt amount and/or the terms of the proposed offset schedule. It must explain with reasonable specificity all the facts, evidence and witnesses, if any (in the case of an oral hearing and a summary of their anticipated testimony), which the debtor believes support his or her position, and include any supporting documentation. If contesting the terms of the proposed offset schedule, the debtor must provide financial information including a completed Department of Justice Financial Statement of Debtor form (OBD-500 or other form prescribed by DOJ), including specific details concerning income and expenses of the employee, his or her spouse and dependents for 1-year period preceding the debt notification and projected income and expenses for the proposed offset period and a statement of the reason why the debtor believes the salary offset schedule will impose extreme financial hardship. Upon receipt of the petition

for hearing, the Director, TMA, or a designee, will complete reconsideration. If the Director, TMA, or a designee determines that the debt amount is not owed, that a less amount is owed, or that the terms of the employee's proposed offset schedule are acceptable, it will advise the debtor and request that the employee accept the results of the reconsideration in lieu of a hearing. If the employee declines to accept the results of reconsideration in lieu of a hearing, the debtor will be afforded a hearing. Ordinarily, a petition for hearing and required submissions that are not timely filed, shall be accepted after expiration of the deadline provided in the notice of the proposed offset, only when the debtor can demonstrate to the Director, TMA, or a designee, that the timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it). Each request for an exception to the timely filing requirement will be considered on its own merits. The decision of the Director, TMA, or a designee, on a request for an exception to the timely filing requirement shall be final.

(C) *Extreme financial hardship.* The maximum authorized amount that may be collected through involuntary salary offset is the lesser of 15 percent of the employee's disposable pay or the full amount of the debt. An employee who has petitioned for a hearing may assert that the maximum allowable rate of involuntary offset produces extreme financial hardship. An offset produces an extreme financial hardship if the offset prevents the employee from meeting the costs necessarily incurred for the essential expenses of the employee, employee's spouse and dependents. These essential expenses include costs incurred for food, housing, necessary public utilities, clothing, transportation and medical care. In determining whether the offset would prevent the employee from meeting the essential expenses identified above, the following shall be considered:

(1) Income from all sources of the employee, the employee's spouse, and dependents;

(2) The extent to which assets of the employee, employee's spouse and dependents are available to meet the offset and essential subsistence expenses;

(3) Whether these essential subsistence expenses have been minimized to the greatest extent possible;

(4) The extent to which the employee or the employee's spouse can borrow money to meet the offset and other essential expenses; and

(5) The extent to which the employee and the employee's spouse and dependents have other exceptional expenses that should be taken into account and whether these expenses have been minimized.

(D) *Form and content of hearings.* The resolution of recoupment claims rarely involves issues of credibility or veracity and a review of the written record is ordinarily an adequate means to determine the validity or amount of the debt and/or the terms of a proposed offset schedule. The Director, TMA, or a designee, will determine whether an oral hearing is required. A debtor who has petitioned for a hearing, but who is not entitled to an oral hearing will be given an administrative hearing, based on the written documentation submitted by the debtor and the Director, TMA, or a designee. If the Director, TMA, or a designee, determines that the debtor should be afforded the opportunity for an oral hearing, the debtor may elect to have a hearing based on the written record in lieu of an oral hearing. The Director, TMA, or a designee, will provide the debtor (or his representative) notification of the time, date and location of the oral hearing to be held if the debtor has been afforded an oral hearing. Copies of records documenting the debt will be provided to the debtor or his representative (if they have not

been previously provided), at least 3 calendar days prior to the date of the oral hearing. At oral hearings, the only evidence permitted, except oral testimony, will be that which was previously submitted as pre-hearing submissions. At oral hearings, the debtor may not raise any issues not previously raised with TMA. In the absence of good cause shown, a debtor who fails to appear at an oral hearing will be deemed to have waived the right to a hearing and salary offset may be initiated.

(E) *Costs for attendance at oral hearings.* Debtors and their witnesses will bear their own costs for attendance at oral hearings.

(F) *Hearing official's decision.* The Hearing Official's decision will be in writing and will identify the documentation reviewed. It will indicate the amount of debt that he or she determined is valid and shall state the amount of the offset and the estimated duration of the offset. The determination of a hearing official designated under this section is considered an official certification regarding the existence and amount of the debt and/or the terms of the proposed offset schedule for the purposes of executing salary offset under 5 U.S.C. 5514. The Hearing Official's decision must be issued at the earliest practical date, but not later than 60 days from the date the petition for hearing is received by the Office of General Counsel, TMA, unless the debtor requests, and the Hearing Official grants a delay in the proceedings. If a hearing official determines that the debt may not be collected by salary offset, but the Director, TMA, or a designee, finds the debt is still valid, the Director, TMA or a designee, may seek collection through other means, including but not limited to, offset from other payments due from the United States.

(viii) *[Reserved]*

(ix) *Collection of installments.* Debts, including interest, penalty and administrative costs shall be collected in one lump sum whenever possible. However, when the debtor is financially unable to pay the debt in one lump sum, the TRICARE contractor or the Director, TMA, or designee, may accept payment in installments. Debtors claiming that lump sum payment will create financial hardship may be required to complete a Department of Justice Financial Statement of Debtor form or provide other financial information that will permit TMA to verify such representations. TMA may also obtain credit reports to assess installment requests. Normally, debtors will make installment payments on a monthly basis. Installment payment shall bear a reasonable relationship to the size of the debt and the debtor's ability to pay. Except when a debtor can demonstrate financial hardship or another reasonable cause exists, installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less. (31 CFR 901.8(b)). Normally, installment payments of $75 or less will not be accepted unless the debtor demonstrates financial hardship. Any installment agreement with a debtor in which the total amount of deferred installments will exceed $750, should normally include an executed promissory agreement. Copies of installment agreements will be retained in the contractor's or TMA, Office of General Counsel's files.

(x) *Interest, penalties, and administrative costs.* Title 31 U.S.C. 3717 and the Federal Claims Collection Standards, 31 CFR 901.9, require the assessment of interest, penalty and administrative costs on delinquent debts. Interest shall accrue from the date the initial debt notification is mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (the Treasury tax and loan account rate). The collection of interest on the debt or any portion of the debt, which is paid within 30 days after the date on which interest begins to accrue, shall be waived. The Director, TMA, or designee, may extend this 30-day period on a case-by-case basis, if it reasonably determines that such action is appropriate. The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness; except that where the debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the

current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded; that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. However, if a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement, shall be added to the principal under the new repayment agreement. The collection of interest, penalties and administrative costs may be waived in whole or in part as a part of the compromise of a debt as provided in paragraph (g) of this section. In addition, the Director, TMA, or designee may waive in whole or in part, the collection of interest, penalties, or administrative costs assessed herein if he or she determines that collection would be against equity and good conscience and not in the best interest of the United States. Some situations in which a waiver may be appropriate include:

(A) Waiver of interest consistent with 31 CFR 903.2(c)(2) in connection with a suspension of collection when a TRICARE appeal is pending under Sec. 199.10 of this part where there is a substantial issue of fact in dispute.

(B) Waiver of interest where the original debt arose through no fault or lack of good faith on the part of the debtor and the collection of interest would impose a financial hardship or burden on the debtor. Some examples in which such a waiver would be appropriate include: A debt arising when a TRICARE beneficiary in good faith files and is paid for a claim for medical services or supplies, which are later determined not to be covered benefits, or a debt arising when a TRICARE beneficiary is overpaid as the result of a calculation error on the part of the TRICARE contractor or TMA.

(C) Waiver of interest where there has been an agreement to repay a debt in installments, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is so large in relation to the size of the installments that the debtor can reasonably afford to pay, that it is likely the debt will never be repaid in full. When a debt is paid in installments, the installment payments first will be applied to the payment of outstanding penalty and administrative cost charges, second, to accrued interest and then to principal. Administrative costs incurred as the result of a debt becoming delinquent (as defined in paragraph (f)(2)(iii) of this section) shall be assessed against a debtor. These administrative costs represent the additional costs incurred in processing and handling the debt because it became delinquent. The calculation of administrative costs should be based upon cost analysis establishing an average of actual additional costs incurred in processing and handling claims against other debtors in similar stages of delinquency. A penalty charge, not exceeding six percent a year, shall be assessed on the amount due on a debt that is delinquent for more than 90 days. This charge, which need not be calculated until the 91st day of delinquency, shall accrue from the date that the debt became delinquent.

(xi) *Referral to private collection agencies.* TMA shall use government-wide debt collection contracts to obtain debt collection services provided by private contractors in accordance with 31 CFR 901.5(b).

(xii) *Reporting delinquent debts to credit reporting agencies.* Delinquent consumer debts shall be reported to credit reporting agencies. Delinquent debts are debts which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial debt notification letter, or those for which the debtor has entered into a written payment agreement and installment payments are past due 30 days or longer. Such referrals shall comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The provisions of the Privacy Act do not apply to credit bureaus (31 CFR 901.4(1)). There is no requirement to duplicate the notice and review opportunities before referring debts to credit bureaus. Debtors will be advised of the specific information to be transmitted (i.e., name, address, and taxpayer identification number, information about the debt). Procedures developed for such referrals must ensure that an accounting of the

disclosures shall be kept which is available to the debtor; that the credit reporting agencies are provided with corrections and annotations of disagreements of the debtor; and that reasonable efforts are made to ensure that the information to be reported is accurate, complete, timely and relevant. When requested by a credit-reporting agency, verification of the information disclosed will be provided promptly. Once a claim has been reviewed and determined to be valid, a complete explanation of the claim will be given the debtor. When the claim is overdue, the individual will be notified in writing that payment is overdue; that within not less than 60 days, disclosure of the claim shall be made to a consumer reporting agency unless satisfactory payment arrangements are made, or unless the debtor requests an administrative review and demonstrates some basis on which the debt is legitimately disputed; and of the specific information to be disclosed to the consumer reporting agency. The information to be disclosed to the credit reporting agency will be limited to information necessary to establish the identity of the debtor, including name, address and taxpayer identification number; the amount, status and history of the claim; and the agency or program under which the claim arose. Reason able action will be taken to locate an individual for whom a current address is not available. The requirements of this section do not apply to commercial debts, although commercial debts shall be reported to commercial credit bureaus. Treasury will report debts transferred to it for collection to credit reporting agencies on behalf of the Director, TMA, or a designee.

(xiii) *Use and disclosure of mailing addresses.* In attempting to locate a debtor in order to collect or compromise a debt under this section, the Director, TMA, or a designee, may send a written request to the Secretary of the Treasury, or a designee, for current address information from records of the Internal Revenue Service. TMA may disclose mailing addresses obtained under this authority to other agencies and to collection agencies for collection purposes.

(g) Compromise, suspension or termination of collection actions arising under the Federal Claims Collection Act. (1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of TRICARE may be compromised or collection action taken thereon may be suspended or terminated in compliance with the Federal Claims Collection Act, 31 U.S.C. 3711, as implemented by the Federal Claims Collection Standards, 31 CFR Parts 900-904. The provisions concerning compromise, suspension or termination of collection activity pursuant to 31 U.S.C. 3711 apply to debts, which do not exceed $100,000 or any higher amount authorized by the Attorney General, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or any higher amount authorized by the Attorney General, exclusive of interest, penalties and administrative costs, the authority to suspend or terminate rests solely with the DOJ.

(2) *Authority.* TRICARE contractors are not authorized to compromise or to suspend or terminate collection action on TRICARE claims. Only the Director, TMA, or designee or Uniformed Services claims officers acting under the provisions of their own regulations are so authorized.

(3) *Basis for compromise.* A compromise should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time collection will take. A claim may be compromised hereunder if the government cannot collect the full amount if:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The cost of collecting the claim does not justify enforced collection of the full amount; or

(iii) The government is unable to enforce collection of the full amount within a reasonable time by enforced collection proceedings; or

(iv) There is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed; or

(v) The cost of collecting the claim does not justify enforced collection of the full amount.

(4) *Basis for suspension.* Collection action may be suspended for the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim, considering its size and the amount, which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor's financial condition is expected to improve; or

(iii) The debtor is unable to make payments on the government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action and;

(A) The applicable statute of limitations has been tolled or started running anew; or

(B) Future collections can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims with due regard to the 10-year limitation for administrative offset under 31 U.S.C. 3716(e)(1); or

(C) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended and such temporary suspension is likely to enhance the debtor's ability fully to pay the principal amount of the debt with interest at a later date.

(iv) Consideration may be given by the Director, TMA, or designee to suspend collection action pending action on a request for a review of the government's claim against the debtor or pending an administrative review under Sec. 199.10 of this part of any TRICARE claim or claims directly involved in the government's claim against the debtor. Suspension under this paragraph will be made on a case-by-case basis as to whether:

(A) There is a reasonable possibility that the debt (in whole or in part) will be found not owing from the debtor;

(B) The government's interest would be protected if suspension were granted by reasonable assurance that the debt would be recovered if the debtor does not prevail; and

(C) Collection of the debt will cause undue hardship.

(5) Collection action may be terminated for one or more of the following reasons:

(i) TMA cannot collect or enforce collection of any substantial amount through its own efforts or the efforts of others, including consideration of the judicial remedies available to the government, the debtor's future financial prospects, and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, and either;

(iii) The costs of collection are anticipated to exceed the amount recoverable; or

(iv) It is determined that the debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations; or

(v) The debt cannot be substantiated; or

(vi) The debt against the debtor has been discharged in bankruptcy.

(vii) Collection activity may be continued subject to the provisions of the Bankruptcy Code, such as collection of any payments provided under a plan of reorganization or in cases when TMA did not receive notice of the bankruptcy proceedings.

(6) In determining whether the debt should be compromised, suspended or terminated, the responsible TMA collection authority will consider the following factors:

(i) Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; and the availability of assets or income which may be realized by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at a forced sale;

(iv) The probability of proving the claim in court because of legal issues involved or because of a bona fide dispute of the facts; the probability of full or partial recovery; the availability of necessary evidence and related pragmatic considerations. Debtors may be required to provide a completed Department of Justice Financial Statement of Debtor form (OBD-500 or such other form that DOJ shall prescribe) or other financial information that will permit TMA to verify debtors' representations. TMA may obtain credit reports or other financial information to enable it independently to verify debtors' representations.

(7) *Payment of compromised claims.* (i) *Time and manner.* Compromised claims are to be paid in one lump sum whenever possible. However, if installment payments of a compromised claim are necessary, a legally enforceable compromise agreement must be obtained. Payment of the amount that TMA has agreed to accept as a compromise in full settlement of a TRICARE claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised amount is not settled until full payment of the compromised amount has been made within the time and manner prescribed. Compromise agreements must provide for the reinstatement of the prior indebtedness, less sums paid thereon, and acceleration of the balance due upon default in the payment of any installment.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to default.

(iii) *Effect of compromise, waiver, suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6050P, compromises and terminations of undisputed debts totaling

$600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed. Amounts, other than those discharged in bankruptcy, will be included in the debtor's gross income for that year. Any action taken under paragraph (g) of this section regarding the compromise of a federal claim, or waiver or suspension or termination of collection action on a federal claim is not an initial determination for the purposes of the appeal procedures in Sec. 199.10.

(h) Referrals for collection. (1) *Prompt referral.* Federal claims of $2,500, exclusive of interest, penalties and administrative costs, or such other amount as the Attorney General shall from time to time prescribe on which collection action has been taken under the provisions of this section which cannot be collected or compromised or on which collection action cannot be suspended or terminated as provided herein, will be promptly referred to the Department of Justice for litigation in accordance with 31 CFR part 904. Such referrals shall be made as early as possible consistent with aggressive collection action made by TRICARE contractors and TMA. Referral will be made with sufficient time to bring timely suit against the debtor. Referral shall be made by submission of a completed Claims Collection Litigation Report (CCLR), accompanied by a signed Certificate of Indebtedness. Claims of less than the minimum amount shall not be referred unless litigation to collect such smaller claims is important to ensure compliance with TRICARE's policies or programs; the claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the referring office for enforcement; or the debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and judicial remedies available to the Government.

(2) *Preservation of evidence.* The Director, TMA, or a designee will take such action as is necessary to ensure that all files, records and exhibits on claims referred, hereunder, are properly preserved.

(i) *Claims involving indication of fraud, filing of false claims or misrepresentation.* Any case in which there is an indication of fraud, the filing of a false claim or misrepresentation on the part of the debtor or any party having an interest in the claim, shall be promptly referred to the Director, TMA, or designee. The Director, TMA, or a designee, will investigate and evaluate the case and either refer the case to an appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all TRICARE beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until the Director, TMA, or designee, authorizes payment or denial of the claims. Collection action on all claims in which a suspicion of fraud, misrepresentation or filing false claims arises, will be suspended pending referral to the appropriate law enforcement agencies by the Director, TMA, or a designee. Only the Department of Justice has authority to compromise, suspend or terminate collection of such debts.

(ii) *[Reserved]*

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