One commenter questioned implementation of TRICARE in Washington and Oregon effective March 1, 1995, in advance of publication of this final rule.

One commenter suggested that initiation of TRICARE in an area be widely announced, including advance publication in the Federal Register to inform providers how to join preferred provider networks, mailed notice to current providers, and notifications to national associations representing providers. The commenter also suggested that it is inappropriate for DoD to have made decisions on how and in what order TRICARE is to be implemented nationally, in advance of final rule promulgation.

Response. We acknowledge the confusion that arose as a result of some of the explanation in the preamble to the proposed rule. The commenters correctly point out that the only TRICARE option which requires an affirmative "enrollment" action is TRICARE Prime. Our intent was to emphasize the all-encompassing nature of TRICARE, and the fact that care for all MHSS beneficiaries will be affected by the advent of TRICARE; in a very real sense, all peacetime care provided or paid for by DoD will become part of TRICARE.

Regarding the implementation of TRICARE in Washington and Oregon on March 1, 1995, prior to promulgation of this final rule, we point out that the program in Washington and Oregon is being implemented under a special demonstration authority (10 U.S.C. 1092) in advance of the promulgation of this rule. If features of the program in Washington and Oregon conflict with the provisions of this final rule, they will be revised after the rule becomes effective.

Regarding notifications to providers about the initiation of TRICARE, we believe that the competitive procurements being conducted for regional managed care support contracts provide ample opportunity for providers to become aware of and involved in the program. We publish advance notices in the Commerce Business Daily, issue formal requests for proposals, and publicize and conduct bidders conferences, in order to inform interested parties as fully as possible.

On the point of DoD making decisions about TRICARE implementation strategies in advance of final rule publication, the promulgation of this rule is entirely separate from operational decisions about the phasing of program implementation. The basic nature of our approach to implementing TRICARE managed care support

contracts was directed by Congress, and we reported to Congress in December 1993 on our plan for implementing the program region by region, achieving nationwide coverage in 1997.

## 3. Provisions of the Final Rule

The final rule clarifies that, while all beneficiaries participate in TRICARE, only the HMO-like option, TRICARE Prime, requires an action on the part of the beneficiary to enroll.

- B. Triple Option (Section 199.17(b))
- 1. Provisions of Proposed Rule

This paragraph presents an overview of the triple option feature of the TRICARE Program. Most beneficiaries are offered enrollment in the TRICARE Prime Plan, or "Prime." They are free to choose to enroll to obtain the benefits of Prime, or not to enroll and remain in the TRICARE Standard Plan, or "Standard," with the option of using the preferred provider network under the TRICARE Extra Plan, or "Extra." When the TRICARE Program is implemented in an area, active duty members will be enrolled automatically in Prime.

- 2. Analysis of Major Public Comments
  None
- 3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Eligibility for Enrollment in Prime (Section 199.17(c))

## 1. Provisions of Proposed Rule

This paragraph describes who may enroll in the Program. All active duty members are automatically enrolled in Prime; all CHAMPUS-eligible beneficiaries who live in areas covered by TRICARE Prime are eligible to enroll. Since it is likely that priorities for enrollment will be necessary owing to limited availability of Prime, the order of priority for enrollment will be as follows: first priority will be active duty members; second priority will be active duty family members; and third priority will be CHAMPUS-eligible retirees, family members of retirees, and survivors. At this time, TRICARE Prime does not offer enrollment to non-CHAMPUS-eligible beneficiaries.

## 2. Analysis of Major Public Comments

Several commenters objected to the exclusion of Medicare-eligible military beneficiaries from enrollment eligibility, and questioned the legal basis for such exclusion.

One commenter suggested that enrollment priorities be set nationally rather than locally, with local authority to follow the enrollment priority system only if all eligible beneficiaries cannot be enrolled.

One commenter raised the issue of a CHAMPUS beneficiary with Worker's Compensation coverage related to civilian government employment, receiving care from military providers, asking what effect TRICARE would have on this circumstance.

Response. Regarding the exclusion of Medicare beneficiaries, this is not the Department's preferred position. However, we are unable to offer enrollment to this group without reimbursement from the Medicare trust funds, which would require a statutory revision. Were we to include Medicareeligible beneficiaries under TRICARE Prime, we would be unable to comply with the cost requirement of section 731 of the National Defense Authorization Act for Fiscal Year 1994. That section requires that the "Uniform HMO Benefit," mandated for TRICARE Prime, must not increase DoD costs. Under law, civilian sector care provided to almost all Medicare beneficiaries is at no expense to DoD because they are not covered by CHAMPUS. TRICARE Prime, however, includes comprehensive civilian sector coverage. Were this to be provided at DoD expense, the additional costs to DoD would be considerable. There is no feasible way to restructure TRICARE Prime to accommodate those costs under the statutory cost neutrality requirement or under current budgetary realities.

With respect to DoD's legal authority to exclude Medicare-eligible beneficiaries from TRICARE Prime, the legal authority for TRICARE Prime, 10 U.S.C. 1097, allows DoD to establish health care plans covering selected health care services or selected beneficiaries. For the reasons explained above, the TRICARE Prime plan adopts the same exclusion of most Medicare beneficiaries as is required by law for CHAMPUS (10 U.S.C. 1086(d)), on which the civilian sector component of TRICARE Prime is based.

Regarding the primacy of national priorities for enrollment, we agree, and reaffirm that the statutory priorities for access to space-available care in MTFs will be used as the national priorities for enrollment; if priorities are needed at the local level owing to limited availability of enrollment during the phase-in of TRICARE, then the statutory priorities will be followed. The only additional prioritizing that is authorized is that, during a phase-in process, priority may be given to family members of members in lower pay grades. Eventually, however, in locations where Prime is offered, all CHAMPUS-eligible