care to qualifying CHAMPUS beneficiaries. One commenter suggested that limiting freedom of choice of civilian provider for TRICARE Standard beneficiaries through the "restricted NAS" provisions of 199.4(a)(9) would be unlawful.

One commenter objected to the use of the provisions for external partnership or resource sharing for mental health care, suggesting that it would be inappropriate mental health services because military mental health providers would provide limited interventions, disrupting care for mental health patients, particularly children and adolescents. Also, the commenter suggested that use of this provision would deny beneficiaries their right to seek care from any qualified CHAMPUS-authorized providers in the catchment area.

One commenter suggested that we define the terms for exceptions to the restricted NAS provision related to "exceptional hardship" or "other special reason," recommending that special reason include that more effective or appropriate care is available, and that hardships include financial and geographic hardships.

Response. We acknowledge that there is a legitimate point of view that TRICARE Standard, as the fee-for-service type option, should provide total freedom of choice of provider. However, the requirement that beneficiaries determine whether nearby MTFs can provide a needed service, before obtaining it from a civilian source, is important to the vitality of military medicine and the maintenance of medical readiness training for wartime.

Regarding the recommendation that NAS requirements be uniform throughout the nation, to avoid confusing the highly mobile beneficiary population, we agree, in the main. The only exceptions to nationally standard NAS requirements are those imposed in the context of the specialized treatment services program, wherein catchment areas of up to 200 miles surrounding a service site may be established for highly specialized, high cost services.

Regarding the comments that requiring non-enrolled beneficiaries to use network providers or civilian facilities with an external partnership or resource sharing agreement, through issuance of a "restricted" NAS, would be unfair to some beneficiaries, we point out that these NAS requirements in the proposed rule related to inpatient care and a limited, specific list of outpatient procedures. The requirements would not limit beneficiary freedom to choose a provider for most care, particularly care for chronic conditions.

Regarding the request for clarification of the applicability of the restricted NAS provisions, the proposed rule would have applied these to all CHAMPUSeligible beneficiaries. Regarding the comment that restricting use of nonnetwork care by TRICARE Standard beneficiaries would represent an unreasonable curb on their freedom of choice, we point out, as above, that these provisions apply to a very limited subset of care, and would not impede choice of provider in most cases. Regarding the comment that the restricted NAS would arbitrarily prevent an authorized CHAMPUS provider from furnishing care to qualifying CHAMPUS beneficiaries, this is true in a sense, for the very limited array of services covered. However, many rules and requirements are applicable to the provision and reimbursement of health care services under CHAMPUS, and we believe this limited extension of NAS requirements, specifically authorized by law, would not be arbitrary. Regarding the suggestion that limiting freedom of choice of civilian provider for TRICARE Standard beneficiaries (199.17(a)(6)(ii)(C)) through the "restricted NAS" provisions of 199.4(a)(9) would be unlawful, we would point out that the application of NAS requirements to services available in civilian provider networks is

1080(b). Regarding objections to the use of provisions for external partnership or resource sharing for mental health care, again, we point out that the only services to which these proposed requirements would have applied are those subject to normal NAS requirements: inpatient admissions and a limited set of outpatient technical procedures. They would not disrupt ongoing relationships with civilian providers.

authorized under 10 U.S.C. section

Regarding the suggestion that we define the terms for exceptions to the restricted NAS provision related to "exceptional hardship" or "other special reason," we agree with the commenters that the availability of more effective or appropriate care would constitute a valid reason for a determination that denying the NAS would be medically inappropriate. Also, we agree that the concept of hardship should include financial and geographic hardships.

3. Provisions of the Final Rule

Provisions regarding the "restricted NAS" have been deleted from the final rule. Our current plan is to evaluate the results of the California/Hawaii demonstration project, consider the

desirability of expanding the activity more broadly, and report to Congress on our conclusions. Should we decide to go forward with some use of the restricted NAS authority, we would initiate a new rulemaking proceeding.

The expanded authority pertaining to outpatient NASs for a limited set of procedures at a limited number of highly capable outpatient clinics is included in the final rule, consistent with the proposed rule.

B. Participating Provider Program (Revisions to 199.14)

1. Provisions of Proposed Rule

Revisions to section 199.14 change the Participating Provider Program from a mandatory, nationwide program to a localized, optional program. The initial intent of the program was to increase the availability of participating providers by providing a mechanism for providers to sign up as Participating Providers; a payment differential for Participating Providers was to be added as an inducement. With the advent of the TRICARE Program and its extensive network of providers, the nationwide implementation of the Participating Provider Program would be redundant. Accordingly, this rule would eliminate the nationwide program. Where the need arises, CHAMPUS contractors will act to foster participation, including establishment of a local Participating Provider Program when needed, but not including the payment differential feature.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Administrative Linkages of Medical Necessity Determinations and Nonavailability Statement Issuance (Revisions to 199.4(a)(9)(vii) and 199.15)

1. Provisions of Proposed Rule

Revisions to section 199.4(a)(9) would provide the basis for administrative linkages between a determination of medical necessity and the decision to issue or deny an Nonavailability Statement (NAS). NAS's are issued when an MTF lacks the capacity or capability to provide a service, but carry no imprimatur of medical necessity. Proposed revisions to section 199.15 establish ground rules for CHAMPUS PRO review of care in MTFs, and would allow for consolidated determinations of medical necessity applicable to both the