§ 700.843 Permitting procedures for Navajo Nation Lands.

(a) Pursuant to the Act and this Subpart, the written consent of the Navajo Nation is required. Written consent shall consist of a Navajo Nation permit issued in accordance with the Navajo Nation Code or a resolution of the Navajo Nation Council or delegated committee of that Council.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Navajo Nation and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office. The Office shall ensure that consultation with the Navajo Nation or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. Permits shall include terms and conditions requested by the Navajo Nation or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit by Indian tribal law.

Dated: June 23, 1997.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

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BILLING CODE 7560–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; conforming rule to Court's order.

SUMMARY: MSHA published safety standards for the ventilation of underground coal mines on March 11, 1996, which became effective on June 10, 1996. The National Mining Association (NMA) and the United Mine Workers of America (UMWA) challenged the rule. On June 17, 1997, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an order granting the petition for review relating to the 8-hour interval requirement for preshift examinations pursuant to 30 CFR 75.360(a)(1) (1996). The Court further denied the petition for review on all other issues and upheld the Agency's rulemaking. This document provides notice of, and effectuates, the Court's order.

DATES: Effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone 703/235–1910; fax 703/235–5551.

SUPPLEMENTARY INFORMATION: On May 15, 1992, MSHA published a final rule (57 FR 20868) revising its safety standards for ventilation of underground coal mines. The American Mining Congress and the National Coal Association [predecessors to NMA] and the UMWA challenged the 1992 rule in the D.C. Circuit. The D.C. Circuit stayed the application of 30 CFR 75.321(a) (oxygen in bleeder entries), and MSHA voluntarily stayed 30 CFR 75.313 (main mine fan stoppage with persons underground) and 75.344(a)(1) (compressors located in noncombustible structure or area). The remaining provisions became effective on November 16, 1992, or as otherwise provided in the rule.

MSHA agreed to further review the 1992 rule and to propose revisions. With the consent of the parties, the D.C. Circuit stayed the proceedings pending the Agency's review. On May 19, 1994, MSHA published a proposed rule (59 FR 26536) revising certain provisions of the 1992 rule.

On March 11, 1996, MSHA published a final rule (61 FR 9764). On June 7, 1996, the D.C. Circuit issued an order staying the application of 30 CFR 75.313(d)(2) (stopping of withdrawal of persons upon fan restart) and 75.321(a)(2) (oxygen in bleeder entries). All other requirements of the final rule, including the remaining provisions of 75.313 (main mine fan stoppage with persons underground) and 75.344(a)(1) (compressor enclosed or continuously attended), became effective on June 10, 1996, or as otherwise provided in the rule.

On June 17, 1997, the United States Court of Appeals for the District of Columbia Circuit, in *National Mining Association* v. *Mine Safety and Health Administration and Secretary of Labor (MSHA),* D.C. Cir. No. 92–1288 and consolidated cases, issued an order granting the petition for review on NMA's challenge to § 75.360 relating to preshift examinations.

Section 75.360(a)(1) states:

> Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. The operator shall establish the 8-hour intervals of time subject to the required preshift examinations. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the established 8-hour period.

Section 75.360(a) of the previous rule stated:

> Within 3 hours preceding the beginning of any shift and before anyone on the oncoming shift, other than certified persons conducting examinations required by this subpart, enters any underground area of the mine, a certified person designated by the operator shall make a preshift examination.

The operative difference between the two provisions was the substitution of the phrase ''8-hour interval [or] period'' in § 75.360(a)(1) (1996) for the phrase ''beginning of any shift'' in previous § 75.360(a). In compliance with the Court's order, paragraph (a) of previous § 75.360, with minor modifications, is now in effect as new paragraph (a)(1).

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Ventilation.

Dated: June 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 75—[AMENDED]

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 75.360, paragraph (a)(1), is revised to read as follows:

§ 75.360 Preshift examination.

(a)(1) Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any shift during which any person is scheduled to work or travel underground. No person other than certified examiners

may enter or remain in any underground area unless a preshift examination has been completed for the shift.

* * * * *

[FR Doc. 97–16963 Filed 6–27–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA32

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Program for Persons with Disabilities; Basic Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule simplifies the administration of benefits under the CHAMPUS Program for the Handicapped (PFTH) and changes the name of this benefit to Program for Persons with Disabilities (PFPWD); adds occupational therapists in independent practice to the list of authorized individual professional providers; provides criteria for cost-sharing certain procedures when data is transferred electronically from the patient's home to a medical practitioner; defines and limits plans recognized as supplemental insurance under CHAMPUS; and adopts the Federal Claims Collection Act and the Federal Claims Collection Standards by reference.

DATES: This rule is effective October 28, 1997, except § 199.11(g)(1) which is effective November 15, 1990.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Michael Kottyan, telephone (303) 361–1120.

SUPPLEMENTARY INFORMATION: The CHAMPUS supplements the availability of health care resources for Military Health Services System (MHSS) beneficiaries. The MHSS consists of military hospitals and the CHAMPUS. CHAMPUS consists of basic general medical and surgical benefits, and non-medical benefits through the Program for Persons with Disabilities (PFPWD).

A summary of written comments received, the CHAMPUS response, and the amendments being made by this final rule follow.

I. Program for Persons With Disabilities (PFPWD)

On June 10, 1991, a proposed rule was published in the **Federal Register** (56 FR 26635) regarding administrative revisions to the CHAMPUS Program for the Handicapped (PFTH), which included renaming these benefits the Program for Persons with Disabilities (PFPWD).

By law, PFPWD benefits are limited to spouses or children with diagnosed moderate or severe mental retardation, or serious physical disability, who have an active duty Uniformed Service Member sponsor, or who are determined to be an abused dependent of certain former Members. Unlike the basic benefit, the PFPWD applies a fixed, pay-grade based cost-share amount regardless of the amount of expense allowable as a benefit (basic benefit beneficiary cost-share is a percentage of the allowed amount), has no annual deductible amount, includes certain necessary services and items that are not medical in nature, and has a $1,000 per month benefit limit for most beneficiaries.

A distinctive aspect of the PFPWD is the statutory requirement that ties eligibility for benefits to the use of public facilities to the extent that such facilities are available and adequate to meet a specific disability related need.

CHAMPUS PFPWD benefits do not alter the obligations which Section 504 of the Rehabilitation Act, as amended, and the Americans with Disabilities Act, as amended, places upon CHAMPUS providers, nor are CHAMPUS benefits a substitute for special education and related services associated with a free appropriate public education which the Individuals with Disabilities Education Act, as amended, makes available.

Comment: Two comments noted that this rule should use the type of language currently preferred by the disability community. The terms ''handicap'' and ''the handicapped'' are no longer acceptable. The preferred forms are ''disability'' and ''persons with disabilities.''

Response: We have renamed the Program for the Handicapped (PFTH) the Program for Persons with Disabilities (PFPWD). This name change recognizes that the term ''handicapped'' presumes an unavoidable consequence of illness or injury that unnecessarily discounts the capabilities of every CHAMPUS beneficiary with a disability. Editorial changes throughout the final rule are responsive to current terminology preferences.

Comment: The statement that PFPWD beneficiaries reside, with few exceptions, within Military Treatment Facility catchment areas, and that the proposed change will facilitate beneficiary access to needed services and items is not true for the other three Uniformed Services and could adversely affect the Coast Guard, the Public Health Service, and the National Oceanic and Atmospheric Administration.

Response: We are aware that MHSS beneficiaries with sponsors in these Uniformed Services are not usually within a military hospital's catchment area. PFPWD eligibility determination, benefit authorization, and related support, will continue to be available through the network of regional CHAMPUS contractors.

Comment: A PFPWD qualifying condition is required to be certified again at least every 36 months. For certain conditions (i.e. severe mental retardation, cerebral palsy with paralysis, muscular dystrophy, missing essential body parts, etc.) there will never be a change in PFPWD clinical eligibility. A list of conditions which do not require frequent certification should be used.

Response: We have removed the 36 month review requirement. Rather than a list, reviews will now be based upon the prognosis for a change in the qualifying condition.

Comment: One comment recommended extending PFPWD benefits to retired members because, in many cases, beneficiaries will never lose their dependence on the sponsor. Special needs beneficiaries may force sponsors to remain on active duty longer than they desire merely to remain eligible for PFPWD.

Response: The limitation of PFPWD benefits to dependents of active duty uniformed service members is a requirement of the law that authorizes PFPWD benefits.

Comment: Two comments noted that the provisions for transportation should allow movement from one State to another when necessary to obtain care.

Response: We have clarified the transportation exclusion to assure that transportation between any of the United States, and certain other areas defined as a state by the Regulation, is not excluded.

Comment: The current edition of the Diagnostic and Statistical Manual of Mental Disorders is the Third Edition, Revised; Down Syndrome is generally preferred to Down's Syndrome; the phrase ''. . . are eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) . . .'' should be used throughout when referring to Medicaid benefits; and Medicaid