

SILENT PARTNER

PRIMER ON FORMER SPOUSE MEDICAL BENEFITS

Introduction: SILENT PARTNER is a lawyer-to-lawyer resource for military legal assistance attorneys and civilian lawyers, published by the North Carolina State Bar's military committee. Please send any comments, corrections and suggestions to the address at the end of this SILENT PARTNER. There are many SILENT PARTNER infoletters on military pension division, and other aspects of military divorce. Just go to www.nclamp.gov > For Lawyers (the website of the military committee, N.C. State Bar).

Introduction

The most common question asked by a non-military spouse in a military divorce case is "What are my benefits?" While this may sometimes refer to a share of the military pension, allocation of the Survivor Benefit Plan or division of accrued leave, the usual meaning is "What health care benefits can I receive?" A summary of the answers is found below.

First of all, review the facts with the client. Does "Jane Doe" need medical benefits? Perhaps she already has an excellent health care insurance policy. If not, then go over the military and marital dates with her - when were the parties married, when did "John Doe" enter military service, and what number of years represents the overlap between the two?

Next, check your resources. The Code of Federal Regulations is a good starting point for information. You'll find "Benefits for former spouses" at 32 CFR § 161.19, and the tables there show what spouses and former spouses may obtain, depending on the number of marital years, the years of military service and the overlap between the two. Here is an example:

Table 24, Subpart C of 32 C.F.R. Part 161 - Benefits for 20/20/20 Former Spouses of Active Duty, Regular Retired, and Non-Regular Retired Members at Age 60

Benefit→ Category ↓	CHC	DC	C	MWR	E
Former Spouse:					
Unremarried	1,2	1	Yes	Yes	Yes
Remarried	No	No	No	No	No
Unmarried	No	No	Yes	Yes	Yes

Notes:

1. Yes, if the former spouse certifies in writing that the former spouse has no medical coverage under an employer-sponsored health plan.
2. Yes, if:
 - a. Not entitled to Medicare Part A hospital insurance through the SSA.
 - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance with the exception of those individuals who qualify in accordance with section 706 of Pub. Law 111-84.

Here are the meanings for the benefit abbreviations shown above: CHC - civilian health care; DC - direct care at MTFs (military treatment facilities); C - commissary privileges; MWR - morale, welfare and recreation; E - exchange

privileges. *Unremarried* means a former spouse who has never remarried since the divorce from the servicemember/retiree. *Unmarried* means one who has remarried, and that marriage ended through death or divorce.

TRICARE and Former Military Spouses

While Jane Doe is married to John, an active-duty servicemember (SM) or retiree, she is eligible for TRICARE, the military equivalent of medical insurance; this is used for civilian health care. For the former spouse facing loss of such coverage, the Defense Enrollment Eligibility Reporting System (DEERS) is a good starting point for investigating military medical coverage and eligibility. DEERS is a database of eligibility information regarding “sponsors” (i.e., members of the uniformed services) and their family members. To obtain military medical coverage through TRICARE, one needs to be registered in DEERS.

Medical care at on-base military treatment facilities (MTFs) is more limited. In February 2020 the Defense Department issued a list of such facilities which will be used only for active-duty personnel, as part of a shift in focus to supporting active-duty readiness. This will have an impact on military retirees and the families of active-duty personnel. Jane will need to check with the nearest MTF to find out if she can be seen there.

Most of the time, Jane will lose access to MTFs and to TRICARE one minute after midnight on the day after the entry of a final decree of divorce, dissolution, or annulment. However, if she fits into one of two categories and meets certain criteria, she can retain full eligibility for TRICARE, pursuant to 10 USC 1072 (2)(f). The initial criteria are:

1. She must not have remarried,
 2. She must not be covered under an employer-provided health insurance program,
- As an unremarried former spouse (“UFS”), she will need these documents to establish her eligibility: A) her marriage certificate, B) her divorce decree, and C) the ex-husband’s discharge papers (i.e., DD Form 214) or Statement of Service from the applicable Service Personnel Component.

Category 1: The *20-20-20 Rule*¹

Jane Doe, the former spouse, is eligible for TRICARE as her own sponsor and under her own Social Security Number if she meets the following criteria:

- **20** - Her ex-spouse has (or had) at least 20 years of service creditable toward eligibility for retired pay;
- **20** – The parties were married to each other for at least 20 years; and

¹ 10 U.S.C. § 1062.

- **20** - All 20 years of marriage overlap the 20 years of creditable (active-duty or Guard/Reserve) service which counted towards retirement.

If Jane Doe meets the requirements of the *20-20-20 Rule*, as confirmed by the Service Personnel Component,² then she will be issued a new ID card with her own name and SSN listed as the *sponsor Social Security Number* the first time she renews her card after the effective date of the divorce.

Category 2: The *20-20-15 Rule*³

Jane must meet the following criteria to qualify for limited military medical care and coverage under this rule:

- **20** - Her ex-spouse has at least 20 years of creditable service towards eligibility for retired pay;
- **20** – The parties were married to each other for at least 20 years; and
- **15** – There is an overlap of 15 years of marriage and of creditable (Active or Reserve) service which counted toward retirement.

If she is in this category, Jane’s military medical coverage will be TRICARE for one year from the date of the divorce.

Determining Eligibility – the Former Spouse Determination Program

The rules for the 20/20/20 and 20/20/15 tests become complex as to what periods of the military spouse’s service were “creditable” for retirement. These rules vary depending on the branch of the uniformed services in which the SM serves and whether the member is active duty or is a member of the Guard or Reserves. There is a *Former Spouse Determination Program* through which Jane can formally request the SM’s branch of service to advise her of the number of years and months their marriage was concurrent with the creditable time used to determine the military spouse’s retirement.

Jane Doe will need to verify her eligibility as recorded in DEERS by contacting the Defense Manpower Data Center Support Office at 1-800-538-9552 with her questions or concerns as to eligibility. She can also contact the appropriate Service Personnel Component; the telephone information is at - <https://tricare.mil/ContactUs/CallUs/ServicePersonnelComponents>.

Coverage Options

A former spouse who qualifies for TRICARE has the same benefits as a family member of a military retiree. There are several health plan options depending on where the former spouse lives:

<u>TRICARE Prime</u>	<u>TRICARE For Life</u> (with Medicare Part A & B)
<u>TRICARE Select</u>	<u>TRICARE Select Overseas</u>

² <https://tricare.mil/ContactUs/CallUs/ServicePersonnelComponents>

³ 10 U.S.C. § 1072(2)(H).

Descriptions of all of the above options are available on-line.

Military ID Card Rules

The rules on issuing military identification cards for military dependents and for former spouses are in a joint service regulation. The Air Force serves as the agency with primary responsibility for its development and publication. See AFI 36-3026_IP.

Continued Health Care Benefit Program (CHCBP)

If the servicemember's spouse for some reason loses eligibility for medical care (such as the entry of a judgment of divorce), the spouse may purchase a conversion health care policy under the DoD's Continued Health Care Benefit Program (CHCBP). 10 USC 1086(a). The CHCBP is not part of TRICARE; it is a health insurance plan negotiated between the Secretary of Defense and a private insurer. The spouse must apply for coverage within 60 days of losing TRICARE eligibility. The DoD sets the premiums for the CHCBP, and they must be paid promptly, either through a credit card on file with the agency or in quarterly advance payments. It is essential that the CHCBP premiums be paid on time and coverage not lapse because reenrollment will not be permitted.

On purchase of CHCBP coverage, the former spouse is entitled, on request, to medical care until the date that is 36 months after (1) the date on which the final decree of divorce, dissolution, or annulment occurs, or (2) the date the one-year extension of dependency under 10 USC 1072(2)(H) (for 20/20/15 spouses with divorce decrees on or after April 1, 1985) expires, whichever is later. 10 USC 1078a(g)(1)(C).

For further information regarding CHCBP coverage and benefits, one can use a search engine to look for "CHCBP," contact a military medical treatment facility health benefits advisor, or contact the CHCBP Administrator, P.O. Box 740072, Louisville, KY 40201-7472 (800-444-5445). As of this writing, the URL for CHCBP is <https://www.humanamilitary.com/beneficiary/benefit-guidance/special-programs/chcbp/>.

Certain unremarried former spouses who cannot satisfy the 20/20/20 or 20/20/15 rules may nevertheless be eligible for indefinite medical coverage through the CHCBP (under 10 USC 1078a and 32 CFR 199.20). The criteria which the DoD uses at this time is that the former spouse must:

- not have remarried before age 55,
- not be covered under a TRICARE program (20/20/20 and 20/20/15 former spouses), and
- receive a portion of military retired pay or receive a survivor annuity (i.e., the SBP) (Note: It is strongly recommended that both of these be involved, not just "either/or"), or

- have a court order for military pension division or a written agreement (whether voluntary or pursuant to a court order) providing for an election by John Doe, the member/retiree, to provide SBP coverage for her.

The current DoD contractor for the CHCBP is Humana Military Healthcare Services. The cost as of 2022 for former spouse coverage is about \$551 per month, and it rises every year or two. Note that the rules and premiums may change. Be sure to verify information with the contract administrator.

Transitional Compensation and Medical Care

When a servicemember is separated from the armed forces due to dependent abuse (i.e., abuse of one's spouse or child), the victim may be eligible for monthly compensation for up to 36 months. While these payments are made, the recipient is also eligible for

- medical and dental care (including mental health care services) to the same extent as if the victim were still a military dependent, and
- treatment of any adverse health consequences of the abuse.

These services are at military medical facilities and are subject to the availability of space, facilities, and staff. Generally speaking, the transitional compensation payments last from 12 months to a maximum of 36 months. The authorizing statute is 10 U.S.C. 1059 and the implementing regulation is Department of Defense Instruction (DoDI) 1342.24.

Dependent Abuse, Pension Division and Medical Care

When a retirement-eligible servicemember (i.e., one who has at least 20 years of service creditable toward retirement) is separated for a dependent abuse offense, the spouse or former spouse may be eligible to receive pension-share payments from the government, based on the anticipated pension which the SM would have received if not for the misconduct-based separation. During receipt of these pension payments, the spouse/former spouse is also eligible for military medical benefits. The requirements for such payment (and receipt of related medical benefit) are:

- (a) the SM is retirement-eligible based on longevity;
- (b) the SM has lost the right to retirement due to the commission of a dependent abuse offense, as statutorily defined;
- (c) a court order (such as a divorce decree) directs that a portion of the SM's non-existent retired pay be allocated to the spouse/ former spouse as a division of property;
- (d) the former spouse was married to the SM at the time of the abuse;
- (e) the spouse / former spouse was the victim of the abuse or is the natural or adoptive parent of the dependent child who was the victim of the abuse;
- (f) the spouse / former spouse was married to the SM for at least ten years and at least ten years of that marriage overlapped the SM's military service; and

(g) the spouse / former spouse has not remarried. If there is a remarriage which is then terminated by divorce, annulment, or death of the former recipient's spouse, payments and privileges may begin anew.

Note that a claimant cannot receive both transitional compensation under 10 U.S.C. 1059 and dependent abuse compensation under 10 U.S.C. 1408 (h) at the same time.

If the requirements identified above are all met, then the spouse /former spouse is eligible to receive military medical, exchange, and commissary privileges in the same manner as if the SM had retired. Payments and related benefits terminate pursuant to the terms of the applicable court order, date of death of the member / former member, or death of the recipient spouse, whichever occurs first.

Further, when a retirement eligible service member is separated for a dependent abuse offense, and a court order directs extraction of *child support* from the SM's retired pay, that dependent child may be eligible for the payment of child support from the government. In addition, a dependent child who was a member of the SM's household at the time of the dependent abuse offense is entitled to receive military medical benefits as if the SM had retired, so long as the child is unmarried and is a "dependent" as statutorily defined.

The federal statute is the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. §1408 (h). The implementing regulation is the Department of Defense Financial Management Regulation (DoDFMR), Volume 7B, Chapter 59. See 32 CFR 199.3 (b)(2)(iii) as to health care coverage for abused dependents.

"Legal Separation" and Military Medical Benefits

Sometimes a spouse will want to know about medical benefits after a decree of legal separation is entered by the court, or the parties have executed a separation agreement. The question is usually, "Does a legal separation end my entitlement to military medical care?"

The answer lies in the statute. A spouse is defined at 10 U.S.C. §1072(2)A as being a dependent of a member or former member of the uniformed services. If the court's order does not terminate the marital relationship, making the inquiring party an ex-spouse, then the usual military medical benefits are still available to him or her, including the dependent's military ID card.

Resources

As mentioned above, the Code of Federal Regulations is an excellent source of information. Go to "Benefits for Former Spouses" at 32 CFR § 161.19. Tables there show what benefits a former spouse may obtain, depending on the number of marital years, the years of military service and the overlap between the two.

Information on the categories for TRICARE coverage is located at <https://tricare.mil/Plans/Eligibility/FormerSpouses>. Part of the above text was adapted from that website.

Information on CHCBP may be found at: W. John Camp, *Health Care Options for Former Military Spouses: TRICARE and the Continued Health Care Benefit Program (CHCBP)*, *FAMILY LAW QUARTERLY*, Vol. 43, No. 2 (Summer 2009) and Lieutenant Junior Grade Jessica Lynn Pyle, *The Continued Health Care Benefit Program: The Department of Defense's Guarantee of Lifetime Health Care to All Former Military Spouses*, *LVI NAVAL LAW REVIEW* 199 (2008).

(Rev. 8/13/22)

* * *

This **SILENT PARTNER** was prepared by Raleigh, NC attorney Mark E. Sullivan, a retired Army Reserve JAG colonel. For revisions, comments or corrections, contact him at 919-832-8507, or at mark.sullivan@ncfamilylaw.com.