and servicemembers simply because the veteran or servicemember has been injured or suffers from lasting effects of an injury that, while serious and disruptive, does not rise to the level of creating a need for protection or supervision. We do not minimize the impact of any symptoms suggested by the commenter. However, we cannot agree that a veteran or servicemember should be eligible for a Family Caregiver, or that a Family Caregiver's stipend should be increased, based on the veteran or servicemember having symptoms like avoidant behavior, unless those symptoms establish impairment that meets the statutory criterion of a need for protection or supervision. For example, a veteran or servicemember whose psychological disorder produces significant avoidant behavior requires mental health care but does not require a compensated caregiver, unless that avoidant behavior poses a safety risk, affects the veteran's or servicemember's ability to plan or organize, causes delusions, or results in one of the other criteria under "[n]eed for supervision or protection . . ." in § 71.15 (or if it affects the veteran's or servicemember's ability to perform ADLs). All of the symptoms listed under "[n]eed for supervision or protection . . ." in § 71.15 strongly indicate that an individual actually requires supervision or protection, and the list should not be expanded to include symptoms that are serious and that may require medical intervention, but do not require assistance from a Family Caregiver to provide supervision or protection.

We make one minor non-substantive correction to the regulation text in the definition of "[n]eed for supervision or protection based on symptoms or residuals of neurological or other impairment or injury" in § 71.15, by removing the word "and" in paragraph (6) of the definition, and replacing it with the word "or." This clarifies that a need for supervision or protection may be based on "any of the following reasons" under paragraphs (1)–(7) in that definition. See 38 CFR 71.15. This clarification is consistent with the clear language of § 71.15, and does not create any new restrictions.

Validity and Reliability of the Criteria in § 71.15 as an Assessment Instrument, and of the Scoring Methodology in § 71.40(c)(4)(iii)

We received several comments that the activities and symptoms listed in § 71.15 do not accurately assess the number of caregiver hours required for provision of personal care services. There were several bases offered for these comments; however, we do not make any changes.

First, commenters stated that the listed activities and symptoms do not comprise a reliable or valid clinical assessment because they are derived from three different clinical assessments, the Katz Basic Activities of Daily Living Scale (Katz), the UK Functional Independence Measure and Functional Assessment Measure (FIM+FAM), and the Neuropsychiatric Inventory (NPI). Commenters asserted that though each of these assessments separately are known to be valid and reliable measuring instruments, taking portions from each to create a new scale does not then make VA's criteria in § 71.15 reliable or valid. Instead, it was suggested by a commenter that VA administer each of these three assessments separately.

These comments may be based on a misunderstanding of the purposes of the applicable definitions in § 71.15. The criteria listed as ADLs or as establishing the need for supervision or protection serve two purposes. First, if any one of those criteria are met, a veteran or servicemember may be found under § 71.20(c)(1) or (2) to be in need of personal care services and thus, to be eligible for a Family Caregiver (if other eligibility criteria are met). Second, meeting one or more of those criteria establishes that the Primary Family Caregiver of an eligible veteran will be eligible to receive a stipend in recognition that the caregiver may in fact be providing services for which VA would otherwise need to hire a professional home health aide. It is unclear whether the commenters assert that the criteria under these definitions in § 71.15 are inappropriate for the first, second, or both of these purposes.

We use criteria from the three assessment tools described above because these are criteria that are typically used in considering a patient's level of impairment; we are not suggesting that our regulations be used as a substitute for these tools when the tools are being used for their intended purposes in the context of the treatment provided to an eligible veteran. At the same time, none of these three assessment tools are designed to identify or measure dependence in activities that would specifically render a veteran or servicemember in need of a caregiver who is not a medical professional. Nor are any of the three assessment tools designed to determine those activities for which a stipend ought to be provided to a Primary Family Caregiver providing certain care in the home. Using the three assessment tools in their original design would not, therefore, serve either of the purposes of the criteria listed in § 71.15 (*i.e.*, to determine which veterans and servicemembers are in need personal care services and level of dependence), and we make no changes based on these comments. We note that there were many comments concerning the addition of new criteria, and we have addressed these comments elsewhere in this rulemaking.

*Note "no change"

In addition, the commenters argued that VA has not adequately tested the scoring methodology in § 71.40(c)(4)(iii) to ensure that the actual amount and degree of personal care services will be captured for purposes of the stipend calculation. Specifically, commenters asserted that the aggregate scoring in § 71.40(c)(4)(iii)–(iv) inaccurately creates a presumption of an individual's need, and does not appropriately account for the actual time required to provide caregiver assistance. We concede that we did not have an opportunity to field test this formula prior to implementation of the interim final rule. If, in the future, we determine that the formula is inadequate, we will make necessary regulatory changes. At this time, we do not believe that changes are required. The current scoring methodology is broadly designed to ensure that an eligible veteran does not have to be rated as fully dependent in a majority of the 14 criteria in § 71.15 to receive the full stipend amount. In fact, an eligible veteran's need for personal care services can be relatively minor, and yet a stipend amount will still be provided. For example, the Primary Family Caregiver of an eligible veteran who scores a "1" in the category of dressing, which means that the eligible veteran can perform 75 percent or more of that task independently, and who scores a "0" in all other categories would receive, under § 71.40(c)(4)(iv)(C), a stipend amount based on the eligible veteran requiring 10 hours of caregiver assistance per week—which is one fourth of the total number of hours that can be authorized under § 71.40(c)(4)(iv).

One commenter additionally asserted that the aggregate scoring system in § 71.40(c)(4)(iii) is unfair to those eligible veterans who may only rate in a few "supervision and protection" categories, but who nonetheless may require a full time caregiver. The commenter further suggested that the "supervision and protection" categories should be weighed more heavily in the aggregate scoring, so that an eligible veteran who may rate in only one of these categories could qualify for a full time caregiver. The commenter

*Clearly states FIM + NPI are not to be used.