4642 Ontario Drive
New Port Richey, FL 34652
Phone: 727.247.8141
Fax: 727-255-5085
Email: contact@veteran-warriors.org

VETERAN WARRIORS
STATEMENT FOR THE RECORD
THE DEPARTMENT OF VETERAN AFFAIRS
VETERAN HEALTH ADMINISTRATION
SPECIAL MEDICAL ADVISORY GROUP

RE: VETERAN ASSESSMENT TOOL FOR THE CAREGIVER SUPPORT PROGRAM

SEPTEMBER 26, 2019

The Scoring Methodology is the current assessment tool to be used to assess veterans for eligibility and tier designation per Congress. Congress developed the scoring methodology as a specific and intendent assessment derived from a specific compilation of pertinent pieces of the FIM/FAM, KATZ, and NPI because none of the current assessment tools would provide the information needed to determine the veterans need for a caregiver or the level of care a veteran requires due to severe qualifying injuries when used in their intended purpose. Congress developed this tool to allow for a veteran who does not require assistance with all ADLs to still qualify for the program; see the example provided by Congress in the CFR supporting information below.

It was stated in the Final Rule that CONGRESS (not VA) would make the necessary regulatory changes to the scoring methodology IF Congress deemed changes were needed; at present, Congress has not deemed these changes need and has not approved the creation of a new assessment.

MISSION Act was written by Congress to expand the program to pre-9/11 era veterans with the same eligibility requirements. Per Congress, there were to be NO changes to the eligibility with this expansion. It is implied that the scoring tool is also to be used for pre-9/11 veterans as they are required to meet the same eligibility requirements. The ONLY change to the program that is written into MISSION Act by Congress is to allow veterans who served and were injured prior to 9/11 to have access to this program.

MISSION Act repeatedly references the Final Rule of the law when discussing expansion of the program therefore confirming there are to be no other changes; see the MISSION Act quote regarding expansion eligibility for confirmation below.

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It should be clearly understood that VA does not have the authority to make any changes to eligibility criteria or the assessment tool. It is the job of Congress to make such changes. At present, it is unnecessary to change eligibility criteria or make changes to the scoring methodology. The only changes that are required of this program are as follows:

1. Training for all employees,
   - VA has been offered a FREE training program as well as FREE onsite training that is in accordance with the law but declined stating training is "a tall ask."
2. The law to be followed DIRECTLY as written and intended by Congress,
   - VA has created restrictions against the law to the program such as discharging veterans who are employed (even with accommodations), attend school (even if online), have small children, or based on their personal opinion/bias
3. VHA Directive 1152 rescinded as it directly violates the law with regard to who determines eligibly.
   - The law, interim rule, and final rule state it is the "eligible veteran's primary care team" who determines eligibly and tier designation and monitors ongoing benefits (participation). The directive allows for the use of Clinical Eligibility Teams (CETs) to determine eligibility and tier which violates the law.

Any alterations to the responsible party for either initial or ongoing eligibility, any alteration to or restriction of eligibility criteria and any revocation or reduction in tier based on any of these; are direct contradictions to Congresses intent and the very specific letter of the law. For the last three (3) years, Veteran Warriors has attempted to engage and work WITH the VA; to help VA program employees, veterans and their caregivers; fully understand these very simple and clear edicts by Congress. With the latest deliberate subversion to be uncovered (yet another unlawful attempt by VA to alter the eligibility and further restrict the program); it is clear that VA must yet again be reminded by Congress that they do not possess the authority to make any alterations to the law or the program.

Effective Tuesday, October 1, 2019, the program budget will be $900 MILLION with approximately 19,000 veterans in the program. That is a $60 MILLION increase over last year with only REDUCTIONS in the number of participating veterans. This latest effort by VA to excise even more veterans from the program – without lawful justification or authority – and forces those affected to demand an answer to the question; When will Congress see that VA has discovered a cash-cow and without any oversight; will continue to disenfranchise the most vulnerable veterans even further and leave their families without any assistance, benefits or even a caring authority to provide either.

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Respectfully submitted,

Holly Ferrell
National Appeals Director
Veteran Warriors, Inc.

Code of Federal Regulations, January 9, 2015, page 1371

- *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).*

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MISSION Act, section 161:

- *(2) EXPANSION OF NEEDED SERVICES IN ELIGIBILITY CRITERIA.—Subsection (a)(2)(C) of such section is amended—*

  (A) in clause (ii), by striking "; or" and inserting a semicolon;

  (B) by redesignating clause (iii) as clause (iv); and

  (C) by inserting after clause (ii) the following new clause (iii):

  > *"(iii) a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired; or".*