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38 CFR Parts 17 and 71
Caregivers Program; Interim Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 71

RIN 2900–AN94

Caregivers Program

AGENCY: Department of Veterans Affairs.
ACTION: Interim final rule.

SUMMARY: This document promulgates Department of Veterans Affairs (VA) interim final regulations concerning a new caregiver benefits program provided by VA. This rule implements title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, which was signed into law on May 5, 2010. The purpose of the new caregiver benefits program is to provide certain medical, travel, training, and financial benefits to caregivers of certain veterans and servicemembers who were seriously injured in the line of duty on or after September 11, 2001.

DATES: *Effective Date:* This rule is effective on May 5, 2011. Comments must be received on or before July 5, 2011.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN94, Caregivers Program." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Amdur, Chief Consultant, Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, 202–461–6780. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 5, 2010, the President signed into law the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163. Among other things, title I of the law established 38 U.S.C. 1720G, which requires VA to "establish a program of comprehensive assistance for family caregivers of eligible veterans," as well as a program of "general caregiver support services" for caregivers of "veterans who are enrolled in the health care system established under [38 U.S.C. 1705(a)] (including caregivers who do not reside with such veterans)." 38 U.S.C. 1720G(a),(b). This rulemaking implements this new statutory authority.

Veterans and servicemembers may be eligible for the Family Caregiver program if they incurred or aggravated a serious injury in the line of duty on or after September 11, 2001. We anticipate that roughly 3,596 veterans and servicemembers will qualify to receive benefits under this rule during the first year, at an estimated cost of $69,044,469.40 for FY2011 and $777,060,923.18 over a 5 year period. VA distinguishes between three types of caregivers based on the requirements of the law: Primary Family Caregivers, Secondary Family Caregivers, and General Caregivers. A Primary Family Caregiver is an individual designated as a "primary provider of personal care services" for the eligible veteran under 38 U.S.C. 1720G(a)(7)(A), who the veteran specifies on the joint application and is approved by VA as the primary provider of personal care services for the veteran. A Secondary Family Caregiver is an individual approved as a "provider of personal care services" for the eligible veteran under 38 U.S.C. 1720G(a)(6)(B), and generally serves as a back-up to the Primary Family Caregiver. General Caregivers are "caregivers of covered veterans" under the program in 38 U.S.C. 1720G(b), and provide personal care services to covered veterans, but do not meet the criteria for designation or approval as a Primary or Secondary Family Caregiver.

In general, caregivers receive the following benefits and services:

- General Caregivers—Education and training on caring for an enrolled Veteran; use of telehealth technologies; counseling and other services under § 71.50; and respite care.
- Secondary Family Caregivers—All benefits and services available to General Caregivers; monitoring; veteran-specific instruction and training; beneficiary travel under 38 CFR part 70; ongoing technical support; and counseling.
- Primary Family Caregivers—All benefits and services available to both General Caregivers and Secondary Family Caregivers; monthly caregiver stipend; respite care available for at least 30 days per year, and may exceed 30 days per year if clinically appropriate and if requested by the Primary Family Caregiver; and health care coverage (if they are eligible).

We refer throughout these rules to the wide array of benefits provided to veterans and their caregivers under section 1720G using the term "caregiver benefits." Some of these benefits are delivered directly to veterans, such as monitoring the quality of the care provided by caregivers to ensure that the veteran is able to live in a residential setting without unnecessary deterioration of his or her disability, and safe from potential abuse or neglect. Other benefits are delivered directly to the veteran's caregiver, such as a stipend or enrollment in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), which provides health coverage for certain Primary Family Caregivers. The fact that caregiver benefits are offered and delivered to both the veteran and his or her caregiver makes the benefits significantly different from virtually all other benefits programs offered through the Veterans Health Administration. For this reason, we have organized the regulations implementing section 1720G in a new part 71 of title 38, U.S. Code of Federal Regulations. This will make the benefits easy to find, and will emphasize the unique nature of the program.

VA welcomes comments on any aspect of this rule.

We now discuss the new regulations section by section.

71.10 Purpose and Scope

Section 71.10 establishes the purpose and scope of the new part 71, CFR. The purpose of this part is to implement VA's caregiver benefits program. Receipt of "caregiver benefits" under 38 CFR part 71 is based on an independent eligibility determination for benefits—it is not a barrier to, or substitute for, other benefits offered by VA. If you are a veteran and a caregiver to another veteran, you will not lose eligibility for any of your veteran benefits because you are a caregiver.

71.15 Definitions

Section 71.15 provides definitions for the purposes of part 71.

We define an "inability to perform an activity of daily living (ADL)" as inability to perform any of six activities that are widely recognized as ADLs by clinicians and are found in the *Katz Basic ADL Scale.* In addition, we include a seventh activity specific to veterans who require the use of prosthetics or orthopedic appliance. Inability to perform an activity of daily living is one of several alternative bases for a determination that an individual is in need of personal care services under § 71.20(c)(1), and is one of the

alternative bases for such need per section 1720G(a)(2)(C)(i).

We believe that the seven activities listed in the definition sufficiently identify the activities that would be impaired for an extended period of 6 months or more as a result of a serious injury, as that term is defined in this rulemaking; however, we welcome suggestions from the public as to additional activities that should be included in this list.

We define an eligible veteran as "a veteran, or a servicemember, who is found eligible for a caregiver under § 71.20." This term is established for ease of reference throughout the part 71 regulations. The term is also used in section 1720G(a).

We define "General Caregiver," "Primary Family Caregiver," and "Secondary Family Caregiver" by referencing the sections that set forth the eligibility requirements for, and describe how to establish eligibility for, benefits as such a caregiver.

We define "in the best interest" to mean, "for the purpose of determining whether it is in the best interest of the eligible veteran to participate in the Family Caregiver program under 38 U.S.C. 1720G(a), a clinical determination that participation in such program is likely to be beneficial to the eligible veteran. Such determination will include consideration, by a clinician, of whether participation in the program significantly enhances the eligible veteran's ability to live safely in a home setting, supports the eligible veteran's potential progress in rehabilitation, if such potential exists, and creates an environment that supports the health and well-being of the eligible veteran."

Under 38 U.S.C. 1720G(a)(1)(B), VA "shall only provide support under the [Family Caregiver program] to a family caregiver of an eligible veteran if the Secretary determines it is in the best interest of the eligible veteran to do so." Congress has left it to the Secretary to define "in the best interest" for this purpose. VA concludes that determinations of "in the best interest" must be clinical determinations, guided by VA health professionals' judgment on what care will best support the health and well-being of the veteran or servicemember—including that which offers the best opportunity for recovery and rehabilitation, whenever possible. In some cases a clinician may determine that other care and maintenance options would better promote the eligible veteran's functional capabilities and potential for independence.

We define the "[n]eed for supervision or protection based on symptoms or residuals of neurological or other impairment or injury" as requiring supervision or assistance based on any one of seven listed impairments. We based these impairments on the *UK Functional Independence Measure and Functional Assessment Measure, and the Neuropsychiatric Inventory.* Like the definition of activity of daily living (ADL), we believe that this definition targets the population that section 1720G(a) is clearly intended to benefit. The need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury is the second alternative basis for a determination that an individual is in need of personal care services under § 71.20(c)(2), and is one of the alternative bases for such need per section 1720G(a)(2)(C)(ii). As with the definition of ADL, we welcome suggestions from the public as to additional impairments that should be included in this list.

This regulation provides elaboration upon the statutory definition of "personal care services" set out in 38 U.S.C. 1720G(d)(4). There, personal care services is said to mean "[a]ssistance with one or more independent activities of daily living [and] [a]ny other non-institutional extended care (as such term is used in section 1701(6)(E) of [title 38])." The term "independent activity of daily living" does not have a commonly understood usage or meaning. Consistent with the purpose of the statute, we interpret "independent activity of daily living" to mean personal functions required in everyday living to sustain health and well-being and keep oneself safe from hazards or dangers incident to one's daily environment.

Similarly, non-institutional extended care services are not defined in 38 U.S.C. 1701(6)(E) in a manner that delineates the types of non-institutional extended care that constitute "personal care services" under the statute—rather that section merely authorizes the Secretary to provide non-institutional extended care. (See 38 U.S.C. 1701(6)(E) explaining that the term "medical services" includes "noninstitutional extended care services, including alternatives to institutional extended care that the Secretary may furnish directly, by contract, or through provision of case management by another provider or payer.") VA provides non-institutional care services to enrolled veterans (and as provided in 38 CFR 17.36(a)) through VA's medical benefits package, which include but are not limited to "noninstitutional geriatric evaluation, noninstitutional adult day health care, and noninstitutional respite care." 38 CFR 17.38(a)(1)(xi)(B).

Based on the types of non-institutional care services provided under title 38 and our interpretation of the term "independent activities of daily living" within the context of the statute, we read these terms together to mean "care or assistance of another person necessary in order to support the eligible veteran's health and well-being, and perform personal functions required in everyday living ensuring the eligible veteran remains safe from hazards or dangers incident to his or her daily environment." We welcome public comments on our interpretation of this term.

We define a "primary care team" as "a group of medical professionals who care for a patient and who are selected based on the clinical needs of the patient. The team must include a primary care provider who coordinates the care, and may include clinical specialists (e.g., a neurologist, psychiatrist, etc.), resident physicians, nurses, physicians' assistants, nurse practitioners, occupational or rehabilitation therapists, social workers, etc., as indicated by the needs of the particular veteran." The term is used throughout the regulations to refer to the medical professionals who approve and/or monitor caregiver benefits. A team, rather than a single individual, is generally necessary due to the complex nature of a serious injury or injuries and their impact on the veteran and their caregivers that are prerequisites to eligibility and to the ongoing obligation on the part of VA to monitor and provide support for the veteran's home-based care.

Consistent with 38 U.S.C. 1720G(a), we define "serious injury" as "any injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, that renders the veteran or servicemember in need of personal care services." See discussion of section 71.20(c) below, which explains VA's rationale for establishing a causal relationship between the need for personal care services as it relates to the veteran or servicemember's serious injury.

We define "[u]ndergoing medical discharge" by requiring "that the servicemember has been found unfit for duty due to a medical condition by their Service's Physical Evaluation Board, and a date of medical discharge has been issued." This term is used to determine eligibility for a caregiver for active duty servicemembers. The

process of disability evaluation and medical discharge in some cases can be quite lengthy, and we do not believe that Congress intended to authorize prolonged caregiver benefits for active duty servicemembers, particularly because they have authorized Department of Defense to provide similar benefits to active duty servicemembers. Rather, we interpret the inclusion of servicemembers undergoing medical discharge in 38 U.S.C. 1720G(a)(2)(A) as an effort to ensure that, upon discharge, the individual will have a person identified and prepared to provide care. Therefore, this definition will ensure that the individual is far enough along in the medical discharge process that there will not be extended overlap between the individual's period of service and the time that he or she achieves veteran status. This definition will however, allow sufficient opportunity for a servicemember and caregiver to initiate an application for, and begin participation in, the VA program.

71.20 Eligible Veterans and Servicemembers

Section 71.20 sets forth the eligibility criteria for a veteran or servicemember seeking a Primary or Secondary Family Caregiver.

Section 71.20(a) and (b) restate the eligibility criteria from 38 U.S.C. 1720G(a)(2)(A) and (B) without substantive change. VA's interpretation of the terms "serious injury" and "undergoing medical discharge" are addressed earlier in this notice.

Paragraph (c) implements 38 U.S.C. 1720G(a)(2)(C)(i) through (iii). Therein, the law premises eligibility on the individual being in need of personal care services because the individual is unable "to perform one or more activities of daily living"; having a "need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury"; or "such other matters as the Secretary considers appropriate." Although the statute does not clearly state that the need for personal care services must relate to the "serious injury" required under section 1720G(a)(2)(B), such a causal relationship is at a minimum strongly implied by the overall purpose and language of the law. We believe that it is reasonable to interpret the statute, which premises eligibility on a serious injury, as requiring that such serious injury is the basis for the individual's need for a caregiver. It would not be rational to decouple the concepts such that, for example, a veteran with a serious injury incurred during service could be eligible for a caregiver based on an injury incurred after service and that is unrelated to the veteran's service. We would explicitly require such a connection in paragraph (c). We invite public comment as to whether another interpretation is possible and consistent with Congressional intent.

We also have included a requirement that the individual need personal care services "for a minimum of 6 continuous months (based on a clinical determination)." We believe it is clear the intent of the statute—as far as direct-to-caregiver benefits—was not to invoke family caregiver designations for shorter-term periods of recovery, for example a recovery from a single surgery that is not connected with a long-term condition. We believe throughout the public discussion and deliberations the focus is on persons with longer term disabilities. We believe that a 6-month minimum requirement of these services, based on a clinical determination, is a reasonable way to ensure that caregiver benefits are provided to those individuals who are most likely the intended beneficiaries of the law. This 6-month period, we believe, is a reasonable period on which to distinguish these more temporary circumstances. We note that the Family and Medical Leave Act (FMLA) uses 26 workweeks (approximately 6 months) as the period to which an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember may be accorded unpaid leave to provide care to that covered servicemember. While such leave is unpaid, we believe the fact this period was used for the protection of a caregiver's employment relationship buttresses the choice of 6 months as a reasonable dividing line to distinguish episodic periods of care.

Paragraph (c)(3) establishes another basis upon which an individual can be determined to be "in need of personal care services"—by establishing a basis for eligibility of veterans and servicemembers whose serious injury is a psychological trauma or mental disorder, and who have received Global Assessment of Functioning (GAF) scores of 30 or less continuously for a 90-day period immediately preceding VA's receipt of the application for a Caregiver. The GAF assessment is a well-established mental health examination that uses a score of zero to 100 to determine an individual's ability to function psychologically and socially. The following description from the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM–IV) of GAF scores in the 21–30 range is the minimum impairment standard that VA will require to consider a mental health diagnosis a serious injury: "Behavior is considerably influenced by delusions or hallucinations OR serious impairment, in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends)." At this assessed level of impairment, the supervision or protection of a caregiver is essential to the individual. An individual who has been assessed as having a psychological trauma or mental disorder scored at 30 GAF or less generally requires a higher level of care that would provide constant supervision. We require that, during the 90-day period immediately preceding the date on which VA receives the Caregiver application, the individual was continuously scored at 30 GAF or less. For purposes of determining eligibility, we intend that this requirement will eliminate consideration of injuries that only consist of temporary psychological conditions, periodic exacerbations of such conditions, or conditions that have improved with treatment such that a caregiver is not required.

Under paragraph (c)(3), VA will consider a GAF score to be "continuous" if there are at least two scores during the 90-day period (one that shows a GAF score of 30 or less at the beginning of the 90-day period and one that shows a GAF score of 30 or less at the end of the 90-day period) and there are no intervening GAF scores of more than 30. We believe that this is sufficient evidence that the individual's GAF score has not changed to be more than 30 during that 90-day period.

Paragraph (c)(4) establishes another basis upon which a veteran can be determined to be "in need of personal care services"—if the veteran was awarded service connection for a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, has been rated 100 percent disabled for that serious injury, and has been awarded special monthly compensation that includes an aid and attendance allowance. The Secretary considers appropriate the inclusion of this category of veterans.

The criteria set forth under paragraph (c)(3) and (c)(4) are authorized by 38 U.S.C. 1720G(a)(2)(C)(iii) as alternate bases for the need for personal care services required by section 1720G(a)(2)(C).

Paragraph (d) requires a clinical determination that it is in the best interest of the individual to participate in the program. This requirement is

based on 38 U.S.C. 1720G(a)(1)(B), which requires that the Secretary only provides support under the program if it is in the best interest of the individual to do so.

Paragraph (e) bars authorization of a Family Caregiver if the services that would be provided by the Family Caregiver would be simultaneously and regularly provided by or through another individual or entity. This is to ensure that caregivers are authorized for those who do not simultaneously and regularly use other means to obtain personal care services. Our intent is to ensure that the Family Caregiver is not depending on VA or another agency to provide the personal care services that the Family Caregiver is expected to provide.

Paragraphs (f) and (g) require that the individual, after VA designates a Family Caregiver, must agree to "receive care at home" and "receive ongoing care from a primary care team." Under 38 U.S.C. 1720G(a)(9)(A), VA must "monitor the well-being of each eligible veteran receiving personal care services" from a VA-designated caregiver. We are also required to document findings "pertinent to the appropriate delivery of personal care services to an eligible veteran under the program," and ensure appropriate follow up, which may include visiting the eligible veteran's home and taking corrective action when necessary, including additional training to a Family Caregiver. *See* 38 U.S.C. 1720G(a)(9)(B) and (C). The consent required by paragraphs (f) and (g) as a prerequisite to an award of caregiver benefits will enable VA to perform these statutorily required functions and will help VA ensure that the assignment of a specific caregiver and the provision of care in the veteran's home will continue to be in the best interest of the individual.

71.25 Approval and Designation of Primary and Secondary Family Caregivers

The rules governing approval and designation of particular individuals to serve as Family Caregivers, including the rules governing such individuals' eligibility to serve as Primary or Secondary Family Caregivers, are set forth in § 71.25. Paragraph (a)(1) requires anyone who would serve as a Primary or Secondary Family Caregiver to complete and sign a joint application, along with the eligible veteran. This implements the joint-application requirement in 38 U.S.C. 1720G(a)(4).

Upon receiving the application, § 71.25(a)(2) requires VA to determine whether the caregivers, as identified on the joint application, are appropriate to serve as caregivers and, if so, whether to designate applicants as Primary and Secondary Family Caregivers. These determinations require VA to perform all clinical evaluations and decide whether the application should be granted and, if so, whether each applicant should be designated as identified in the application, i.e., whether the identified Primary Family Caregiver should be so designated. Section 1720G(a)(7)(A) requires that VA, not the veteran, officially make the designation of Primary Family Caregiver, and, generally, section 1720G(a) requires VA to make certain evaluations prior to approving an application. In § 71.25(a)(3) we recognize that veterans and servicemembers may not have a "continuous" GAF score available at the time of their application. Therefore, in these instances, an application may be put on hold for no more than 90 days, from the date the application was received. This will enable VA to determine whether the GAF score of 30 or less is simply a transient condition likely to respond quickly to treatment obviating the need for a caregiver.

We note that section 1720G(a)(7)(A) appears to require that there be one Primary Family Caregiver as a prerequisite to receiving caregiver benefits under the law. It states that VA "shall designate one family member of such eligible veteran as the primary provider of personal care services for such eligible veteran." However, we do not believe that such a narrow interpretation of the law is consistent with the overall intent of the statute. If an eligible veteran does not desire a Primary Family Caregiver, and, if VA's clinical assessment leads to the determination that one or more Secondary Family Caregivers can, collectively, provide sufficient personal care services to enable the veteran to remain at home, there is no reason to deny the application simply because no individual Family Caregiver wants or assumes the responsibilities and benefits that would come with designation as the Primary Family Caregiver. Rather, we interpret the statutory language concerning "one family member * * * as the [Primary Family Caregiver]" to indicate that there cannot be more than one Primary Family Caregiver.

Paragraph (b) sets forth the requirements for basic eligibility to serve as a Primary or Secondary Family Caregiver. Our authority to assess applicants and determine whether we believe that they are capable of serving as Primary Family Caregivers derives from 38 U.S.C. 1720G(a)(7)(B)(iv) (the Primary Family Caregiver must be "considered by [VA] as competent to be the [Primary Family Caregiver]"). We are also required, under section 1720G(a)(1)(B), to provide caregiver benefits "only * * * if [VA] determines it is in the best interest of the eligible veteran to do so." We believe that the criteria specified under paragraph (b) are reasonable restrictions that are in the best interest of every veteran or servicemember who could be eligible for a caregiver under this part. If the public has concerns about these criteria, or believes that there should be fewer restrictions or greater oversight, we welcome public comments on this issue.

Paragraph (b)(1) requires that all Primary and Secondary Family Caregivers be at least 18 years of age. We do not believe that individuals under the age of majority can be relied upon to provide personal care services as defined by part 71. It is in the best interest of the eligible veteran to ensure that caregiver services are provided by individuals who are mature enough to understand the serious nature of this responsibility.

Paragraph (b)(2) requires that the Family Caregiver either be a member of the eligible veteran's family, i.e., his or her spouse, son, daughter, parent, step-family member, or extended family member; or a person who lives full-time with the eligible veteran or will do so if designated as a Family Caregiver. These restrictions are directly from the definition of family member set forth in 38 U.S.C. 1720G(d)(3).

Paragraph (b)(3) states that there "must be no determination by VA of abuse or neglect of the eligible veteran by the applicant." We think it is not in the best interest of the eligible veteran to place an eligible veteran with a caregiver who has abused or neglected that eligible veteran.

Paragraph (c) describes how VA assesses and trains applicants prior to granting an application and designating the applicants as Primary or Secondary Family Caregivers. Under 38 U.S.C. 1720G(a)(5)(B), we are required to assess applicants and under section 1720G(a)(6)(A) we are required to provide training and instruction to such applicants. Under section 1720G(a)(6)(B), VA cannot approve an applicant until such training has been completed successfully.

Assessment for caregiver training is required under paragraph (c)(1), and authority is delegated to the eligible veteran's primary care team in collaboration with the facility Caregiver Support Coordinator, who will be in the best position to determine whether specific applicants are able to meet the

needs of a specific eligible veteran. Paragraphs (c)(1)(A) and (B) prescribe basic requirements for any assessment, which concern the applicant's ability to communicate and whether the applicant will be capable of following without supervision the eligible veteran's treatment plan. These two requirements are essential to completion of caregiver training, the ability to appropriately care for the eligible veteran, and there is no reason to provide such training to individuals who cannot meet these two basic requirements.

Paragraph (c)(2) requires actual completion of caregiver training, which is discussed in detail in paragraph (d), and demonstration of "the ability to carry out the specific personal care services, core competencies, and other additional care requirements prescribed by the eligible veteran's primary care team." We believe that demonstration of the necessary skills is an essential part of "the successful completion * * * of instruction, preparation, and training" required by 38 U.S.C. 1720G(a)(6)(B). Moreover, without such demonstration, we cannot be assured that it is in the "best interest of the eligible veteran" to provide caregiver services through the particular applicant. 38 U.S.C. 1720G(a)(1)(B).

Paragraph (d) concerns the education and training of applicants who wish to be Family Caregivers. Under section 1720G(a)(6)(C), "subject to regulations [VA] shall prescribe, [VA shall] provide for necessary travel, lodging, and per diem expenses incurred by a family member of an eligible veteran in undergoing instruction, preparation, and training" to be a Family Caregiver. The statute does not link this benefit to VA's beneficiary travel authority under 38 U.S.C. 111(e); however, the requirement to promulgate regulations authorizes VA to make such a link in this rulemaking. Moreover, we note that after the caregiver education and training is complete, section 1720G(a)(3)(A)(i)(IV) requires VA to provide Primary and Secondary Family Caregivers with "lodging and subsistence under [38 U.S.C.] 111(e)." Rather than establish a different program for travel benefits before and after training, we authorize beneficiary travel benefits (as implemented in 38 CFR part 70) in § 71.25(d) to support the education and training of family members. This means that the provision of beneficiary travel is subject to any limitations or exclusions under part 70 as well. There is no reason to believe that section 1720G extends beneficiary travel benefits to Family Caregivers but does not also require the equal application of the limitations that apply to all individuals eligible for benefits under part 70.

Under section 1720G(a)(6)(D), respite care is to be provided to the eligible veteran during the initial provision of education and training to a Family Caregiver, if the Family Caregiver's participation in training "would interfere with the provision of personal care services to the eligible veteran." We implement this requirement in paragraph (d).

Paragraph (d) also sets forth the essential components of caregiver training. Of course, it is impossible to establish by regulation all that will be required for a particular eligible veteran. However, we have developed a program of caregiver training that covers the essential components of home-based care. These essential components are called "core competencies" in the regulation. We understand that, in a particular case, an eligible veteran might not need much assistance in one particular competency, such as skin care or pain control; however, we believe that all of these identified competencies are present to at least some degree in virtually all situations in which we will find a veteran or servicemember eligible for a Family Caregiver. If a particular eligible veteran presents complex challenges in any or all of these core competencies, we will provide more specific training in addition to the minimum training provided to all caregiver applicants.

Under 38 U.S.C. 1720G(a)(9)(C)(i), VA is authorized to visit an eligible veteran at home "to review directly the quality of personal care services provided to the eligible veteran." Paragraph (e) details the at-home assessment that must be conducted within 10 business days after the completion of caregiver education and training in order to determine whether the Family Caregiver has completed training and is competent to provide personal care services to the eligible veteran. This assessment is to be performed in the eligible veteran's home. Paragraph (e) does not obviate VA's right, or duty, to monitor the eligible veteran on an ongoing basis; however, it does establish that an assessment will be performed no later than 10 days after completion of Caregiver education and training.

Paragraph (f) authorizes the facility Caregiver Support Coordinator or designee to approve or disapprove applications, based on the clinical assessment of the primary care team, and designate the applicants as Primary and/or Secondary Caregivers. We note that such approval is predicated on the veteran or servicemember's and caregivers' continuing eligibility under part 71, and we cross-reference § 71.45, which concerns revocation.

71.30 General Caregivers

Pursuant to 38 U.S.C. 1720G(b)(1), VA is required to establish a program, distinct from the Family Caregiver program, of support services for caregivers of veterans who are enrolled in the VA health care system and who are in need of personal care services because they are either unable to perform an ADL or have a "need for supervision or protection based on symptoms or residuals of neurological care or other impairment or injury." These caregivers are referred to in our regulations as General Caregivers, to distinguish them from Primary or Secondary Family Caregivers. Unlike Family Caregivers, a General Caregiver need not be a family member of the veteran within the meaning of the law, and the veteran to whom service is provided need not have had a "serious injury" or have served on or after September 11, 2001. The benefits provided under section 1720G to General Caregivers are significantly less than those provided to Family Caregivers and are described in § 71.40(a). Section 71.30(a) and (b) describe these General Caregivers using the statutory requirements.

Paragraph (c) of § 71.30 states that no formal application is required to obtain General Caregiver benefits. In most cases, General Caregivers are individuals who live with or near a veteran and help that veteran with less-critical personal care, such as cooking meals, but they may, in some cases, benefit from the caregiver education and training that we offer under § 71.40(a), particularly if the veteran whom they assist is profoundly disabled. We want to make it easy for these types of "good Samaritans" to obtain education and training. The cost of providing these benefits is negligible in comparison to the benefits that veterans derive from having caring people voluntarily assisting them at home.

71.40 Caregiver Benefits

Under section 38 U.S.C. 1720G(b)(3)(A)(i), VA must provide General Caregivers with specified "support services" including "(I) educational sessions made available both in person and on an Internet Web site; (II) use of telehealth and other available technologies; and (III) teaching techniques, strategies, and skills for caring for a disabled veteran[.]" We implement all of these services under paragraph (a)(1), using virtually the same language as required by the statute.

Section 1720G(b)(3)(A)(ii) requires that VA provide General Caregivers with "[c]ounseling and other services" under 38 U.S.C. 1782. We define the scope of these benefits in this rulemaking under § 71.50.

Under 38 U.S.C. 1720G(b)(3)(A)(iii), VA must provide veterans serviced by General Caregivers with "[r]espite care under [38 U.S.C. 1720B] that is medically and age appropriate for the veteran (including 24-hour per day in-home care)." VA currently provides respite care under section 1720B, but we have not needed separate respite care regulations to do so. From this current practice, we know that VA is capable of providing such respite care.

Paragraph 71.40(b) implements the benefits to be provided to Secondary Family Caregivers under 38 U.S.C. 1720G(a)(3)(A). Secondary Family Caregivers are generally eligible for all of the benefits authorized for General Caregivers, based on our interpretation and application of section 1720G(a)(3)(A) and (B), in addition to the Secondary Family Caregiver benefits discussed further, below. Similarly, Primary Family Caregivers are authorized by section 1720G(a)(3)(A)(ii)(I) to receive all of the benefits that VA provides to Secondary Family Caregivers—in addition to a higher level of benefits authorized only for Primary Family Caregivers. Thus, we discuss the benefits provided to Secondary Family Caregivers under § 71.40(b) in terms of providing those benefits to both types of Family Caregivers, despite the fact that the paragraph's title only refers to Secondary Family Caregivers. The paragraph title is for ease of readability: A Secondary Family Caregiver can tell, based on the paragraph title, that all of his or her benefits will be described in § 71.40(b).

Under section 1720G(a)(9), VA must "monitor the well-being of each eligible veteran receiving personal care services," maintain a record regarding the delivery of personal care services to the eligible veteran, and establish "appropriate follow-up" regarding information in the record. Follow-up procedures may include home visits by VA to review the quality of personal care services being provided to the eligible veteran, and "corrective action" including additional training or revocation of the Caregiver's approval. Although we interpret these monitoring requirements as a condition for continued participation as a Family Caregiver, we believe that it is accurate to classify these requirements as "benefits" because they provide the Family Caregiver with support. VA's monitoring procedures will include evaluation of the eligible veteran's and caregiver's physical and emotional states, observing for signs of abuse or neglect, adequacy of care and supervision being provided by the Primary and Secondary Family Caregivers, the eligible veteran's and Family Caregivers' overall adjustment to care at home, identifying any additional training or equipment needs, and assessing the Family Caregivers' level of stress. Monitoring will occur no less often than every 90 days, unless otherwise clinically indicated.

Section 1720G(a)(3)(A)(i)(I) requires that VA provide to Primary and Secondary Family Caregivers "such instruction, preparation, and training" as appropriate to provide personal care services to the eligible veteran. In paragraph 17.40(b)(3), VA will provide these "continuing" services to Primary and Secondary Family Caregivers. We note that preliminary instruction, preparation, and training are required before VA designates family members as Primary or Secondary Family Caregivers. Those services offered by VA under this section refer to those services that follow after the Primary or Secondary Family Caregiver has begun providing personal care services to the eligible veteran. Depending on the eligible veteran's treatment plan, the caregiver may require additional training to improve the services already being provided to the eligible veteran, learn how to use new technology that will improve the provision of care, or meet changing clinical needs of the eligible veteran.

Section 1720G(a)(3)(A)(i)(II) requires VA to provide "ongoing technical support consisting of information and assistance to address, in a timely manner, the routine, emergency, and specialized caregiving needs of the [Secondary F]amily [C]aregiver in providing personal care services to the eligible veteran." We interpret this sentence to require that VA maintain regular contact with the Primary and Secondary Family Caregiver and be available as a resource for questions about providing personal care services to the eligible veteran for routine, emergency, and specialized matters that pertain to the unique needs of the eligible veteran. Under paragraph (b)(4), VA will provide "[o]ngoing technical support, consisting of information and assistance to address, in a timely manner, the routine, emergency, and specialized needs of the Caregiver in providing personal care services to the eligible veteran."

Under section 1720G(a)(3)(A)(i)(III), VA must provide Primary and Secondary Family Caregivers with "counseling." Similarly, under section 1720G(a)(3)(A)(ii)(II), VA must provide Primary Family Caregivers with "such mental health services as the Secretary determines appropriate." We understand that the stresses of caregiving can lead to depression, anger, interpersonal conflict, anxiety, substance use, sleep disturbances, social isolation, and other personal and social issues. We also believe that these concerns are not unique to Primary Family Caregivers and intend to provide Secondary Family Caregivers with the same mental health services. We therefore interpret "counseling" for the purposes of the benefits offered to Primary and Secondary Family Caregivers to include individual and group therapy, counseling and peer support groups. We do not interpret the provision to include medication, inpatient psychiatric care, or other medical procedures related to mental health treatment. We also note that these services are broader than the "[c]ounseling and other services" provided to General Caregivers under § 71.40(a)(3) because the services under that authority, derived from 38 U.S.C. 1782, require that the services provided to the caregiver be connected to the treatment plan of the veteran. No such limitation exists under the section 1720G(a)(3)(A)(i)(III) or 1720G(a)(3)(A)(ii)(II) authorities. The counseling provided to Family Caregivers is intended to treat those Family Caregivers, independent of whether that treatment is likely to support the clinical objectives of the eligible veteran's treatment plan.

Under section 1720G(a)(3)(A)(i)(IV), VA must provide Primary and Secondary Family Caregivers with "lodging and subsistence under [38 U.S.C.] 111(e)." In addition, section 104 of Public Law 111–163 amended 38 U.S.C. 111(e) to authorize VA to provide to family caregivers the "expenses of travel (including lodging and subsistence)" during the period of time in which the veteran is traveling to and from a VA facility for the purpose of medical examination, treatment, or care, and the duration of the medical examination, treatment, or care episode for the veteran. VA implements 38 U.S.C. 111(e) through regulation under 38 CFR part 70. In § 71.40(b)(6), we state that Family Caregivers "are to be considered eligible for beneficiary travel under 38 CFR part 70." This means that the provision of beneficiary travel is subject to any limitations or exclusions under part 70 as well. There is no reason to believe that section 1720G extends beneficiary travel benefits to

Family Caregivers but does not also require the equal application of the limitations that apply to all individuals eligible for benefits under part 70.

The benefits available to Primary Family Caregivers are described in § 71.40(c).

Under section 1720G(a)(3)(A)(ii)(III), VA must provide Primary Family Caregivers with "respite care of not less than 30 days annually, including 24-hour-per day care of the veteran commensurate with the care provided by the family caregiver to permit extended respite." We believe that the 30-day provision was intended to emphasize that Primary Family Caregiver respite cannot be limited by VA to less than 30 days per year. Paragraph (c)(2) authorizes respite care that "may exceed 30 days per year if clinically appropriate and if requested by the Primary Family Caregiver."

Under section 1720G(a)(3)(A)(ii)(IV), VA must provide certain Primary Family Caregivers with medical care under 38 U.S.C. 1781. VA administers the section 1781 authority through the CHAMPVA program and its implementing regulations. As we did with beneficiary travel, we interpret this as a provision establishing eligibility, and such eligibility is subject to the same limitations to which all CHAMPVA beneficiaries are subjected. However, section 1720G does not authorize CHAMPVA coverage to Primary Family Caregivers who are covered by other health insurance. Section 102 of Public Law 111–163 amended subsection (a) of section 1781 of title 38 by including Primary Family Caregivers as a category of individuals eligible for medical care under 38 U.S.C. 1781. 38 U.S.C. 1781(a)(4), as amended, defines the new beneficiaries as "an individual designated as a primary provider of personal care services under section 1720G(a)(7)(A) of [title 38] * * * who is not entitled to care or services under a health-plan contract (as defined in section 1725(f) of [title 38])." We believe that the benefit provided by 38 U.S.C. 1720G(a)(3)(A)(ii)(IV), as added by section 101, should be read together with the amendment to 38 U.S.C. 1781(a) in section 102, and that a Primary Family Caregiver would only be eligible for medical care under 38 U.S.C. 1781 if he or she was not entitled to care or services under a health-plan contract (as defined in section 1725(f) of title 38).

As a matter of policy, we want to discourage Primary Family Caregivers from opting out of other health insurance to which they may be entitled. The facility Caregiver Support Coordinator or other designated case manager will review coverage options with the Primary Family Caregiver. VA is only authorized to provide CHAMPVA for the family member's duration as a Primary Family Caregiver. Therefore, if the individual's Primary Family Caregiver status ends for any reason, including the health of that Family Caregiver, improved condition of the eligible veteran, death of the eligible veteran, or for cause, the CHAMPVA coverage would terminate as well. We do not intend to interrupt enrollment in other health insurance that could persist despite the termination of one's status as a Family Caregiver. Doing so would raise serious issues of continuity of care, and could negatively impact eligible veterans who continue to live with a family member whose CHAMPVA coverage terminates as a result of that family member no longer serving as a Primary Family Caregiver.

Under section 1720G(a)(3)(A)(ii)(V), VA must provide a monthly stipend to the eligible veteran's designated Primary Family Caregiver. Under section 1720G(a)(3)(C)(i), VA must base the stipend amount on "the amount and degree of personal care services provided." VA must also, "to the extent practicable," ensure that the stipend amount "is not less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran to provide equivalent personal care services to the eligible veteran." 38 U.S.C. 1720G(a)(3)(C)(ii). If that geographic area does not have a commercial home health entity, then VA must "tak[e] into consideration the costs of commercial providers of personal care services in providing personal care services in geographic areas other than the geographic area of the eligible veteran with similar costs of living." 38 U.S.C. 1720G(a)(3)(C)(iii). The stipend amount will be based on the United States Department of Labor's Bureau of Labor Statistics (BLS) weekly wage rate for a Home Health Aide, multiplied by 4.35. The multiplier of 4.35 is based on the number of weeks per month for which care is provided and, therefore, the monthly stipend is payable. There are 365 days in a year, divided by 12 months, which equals 30.42. Thus, there are an average of 30.42 days per month. We then divided that number by 7, the number of days in a week, to reach 4.35, the average number of weeks per month. If 40 hours of care are provided per week, then the monthly stipend would be 40 hours multiplied by 4.35 to determine a flat, average cost—rather than make each monthly payment based on the days in that specific month. The BLS website (*http://www.bls.gov*) provides the geographic average pay rates for a Home Health Aide. The direct stipend payment is calculated based on the BLS wage rate for a Home Health Aide using the 75th percentile of the hourly wage rate in the geographic area of residence of the eligible veteran. We determined that the 75th percentile most accurately reflects the national hourly wage rate for the competencies to be performed. There is a large standard deviation on wage rates for home health aides depending on their experience and education as well as the economic factors in the geographic area (mainly supply and demand). Given the wide range in wage rates, the seventy-fifth percentile most accurately meets the intent of the statute that Caregivers not be paid less than home health aides in a geographic area. Currently, BLS provides 2009 wage rates therefore VA will factor in a cost of living adjustment based on the Consumer Price Index to calculate the current year's hourly wage rate. The foregoing explains the formula in paragraph (c)(4)(v), which is that the stipend amount "will be calculated by multiplying the Bureau of Labor Statistics hourly wage for home health aides in the geographic area by the Consumer Price Index and then multiplying that total by the number of weekly hours of Caregiver assistance required under paragraph (c)(4)(iv) of this section. This product will then be multiplied by 4.35." We will now address how we will determine the numbers that will be applied to this formula.

First, in paragraph (c)(4), we explain that "[t]o determine the stipend amount, VA first will determine the eligible veteran's level of dependency based on the degree to which the eligible veteran is unable to perform one or more ADLs, or the degree to which the veteran is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury." The ADLs and supervision/protection needs will be the 14 ADLs and needs (which we will call categories for the purposes of this discussion) that are listed in the definitions of those terms in § 71.15 (i.e., the seven ADLs and the seven "needs" or impairments).

In paragraph (c)(4)(iii) we explain that each of 14 categories will be assigned a clinical rating of zero to four, with zero meaning that no caregiver assistance is required by the eligible veteran in that category and a four meaning that the eligible veteran requires total assistance in that category, which is parenthetically defined as being able to

complete less than 25 percent of the specific task or function. These percentages, and the zero-to-four scale used in the regulation, are based on three widely accepted clinical tools for measuring ADLs and functional dependence, as applicable: The Katz Basic Activities of Daily Living Scale; the UK Functional Independence Measure and Functional Assessment Measure; and the Neuropsychiatric Inventory.

Pursuant to paragraph (c)(4)(iv), the sum of the zero-to-four scores assigned to each of the 14 categories is then used to assign a presumed number of hours required of the Caregiver. This sum total is then applied to a presumptive level of need: Eligible veterans who score 21 or higher, which can be achieved by having the need for assistance in at least six of the 14 categories, are presumed to need a full-time Caregiver (i.e., one who provides 40 hours of care per week). Under paragraph (c)(4)(iv)(B), a eligible veteran who scores 13 to 20 total in all categories will be presumed to require 25 hours per week of Caregiver assistance. Under paragraph (c)(4)(iv)(C), an eligible veteran who scores 1 to 12 will be presumed to require 10 hours per week of Caregiver assistance.

We believe it is not realistically possible for a veteran or servicemember who meets the other requirements of these regulations to score a zero based on the above formula. However, if a veteran or servicemember were theoretically able to score a zero, we do not believe that that veteran or servicemember's Caregiver would be entitled to a stipend because that veteran would not require any hours of care per week. Hence, the rule would not provide a stipend based on a zero sum score.

We also note that these scoring criteria are based on the definitions of ADL and need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury, but under § 71.20(c)(4), Caregiver eligibility extends to a veteran who is service connected for a serious injury that was incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, and has been rated 100 percent disabled for that serious injury, and has been awarded special monthly compensation that includes an aid and attendance allowance. Such a veteran will also have impairment in the categories used for this formula, and therefore it is reasonable to calculate the stipend for such a veteran using this formula. Likewise veterans and servicemembers who establish eligibility under § 71.20(c)(3) will also have an impairment in the categories used for this formula.

In paragraph (c)(4)(v), we explain the stipend-calculation formula described above. Paragraph (c)(4)(vi) explains the circumstances under which stipend payments will be prorated/adjusted.

The stipend is an acknowledgement of the sacrifices that Primary Family Caregivers are making to care for seriously injured eligible veterans. The law states that nothing in 38 U.S.C. 1720G, as added by section 101 of Public Law 111–163, shall be construed to create any entitlement of any assistance or support provided, nor to create an employment relationship between VA and an individual in receipt of assistance or support, which includes Primary Family Caregivers. 38 U.S.C. 1720G(c)(2). The stipend payments to Primary Family Caregivers under 38 U.S.C. 1720G(a)(3)(A)(ii)(V) constitute "payments [of benefits] made to, or on account of, a beneficiary" that are exempt from taxation under 38 U.S.C. 5301(a)(1). VA does not intend that the stipend replace career earnings. 38 U.S.C. 1720G(c)(2)(A) ("[n]othing in this section shall be construed to create * * * an employment relationship between the Secretary and an individual in receipt of assistance or support under this section"). This principle is set forth in paragraph (c)(4)(vii).

Paragraph (d) provides effective-date and payment-date rules that are consistent with VA practice and policy regarding the effective and payment dates of other VA benefits.

71.45 Revocation

Section 71.45 concerns revocation of the Family Caregiver designation. It is important that we allow revocation by the eligible veteran, by the Family Caregiver him- or herself, and by VA; however, the bases for such revocation will differ based on who initiates the revocation proceeding.

Under paragraph (a), we allow a Family Caregiver to revoke his or her caregiver status, and to provide a "present or future date" of such revocation. Many revocations will be requested immediately, but in some cases a Family Caregiver may wish to inform VA in advance that he or she will no longer be able to serve as a Family Caregiver at a specific, future date. The individual need not state a basis for revocation, as participation in the caregiver program is purely voluntary; however, we do require written revocation because the benefits provided to Family Caregivers are not insubstantial, and we want to ensure that there is formality to this process. We also will assist the Family Caregiver, if requested and applicable, in transitioning to alternative health care coverage and mental health services in order to help avoid to the maximum extent possible problems with continuity of medical care provided to that caregiver.

Under 38 U.S.C. 1720G(a)(7)(C), the eligible veteran may revoke the status of a Primary Family Caregiver. We implement this authority in § 71.45(b) and apply it to Secondary Family Caregivers as well. We establish straightforward procedures for such revocation, and we allow for a maximum 30-day period during which VA will review the request for revocation and determine whether there is a possibility for remediation. We allow up to 30 days because in some cases it may be necessary to allow for a "cooling off," during which time the eligible veteran may reconsider his or her request.

We also allow for up to 30 days continuing caregiver benefits, in order to assist the revoked individual in transitioning to other health care. Unlike the situation in paragraph (a), where the Family Caregiver is personally revoking his or her own status, in this situation, the Family Caregiver may not have had time to prepare for a transition from caregiver to non-caregiver status. There may be serious financial issues if the Family Caregiver has come to rely on the stipend, and there may be serious continuity of care issues if the Family Caregiver has been obtaining health care as a result of his or her caregiver status.

But this 30-day extension, which is not specifically authorized by statute, is not without limitation. First, if VA determines that the revoked individual committed fraud or abused or neglected the eligible veteran, we will not continue the benefits after the date of revocation. Second, we will terminate caregiver benefits immediately if the revoked individual was the Primary Family Caregiver, and another Primary Family Caregiver is assigned within 30 days after the date of revocation because the law allows for there to be only one individual receiving benefits as the Primary Family Caregiver. Similarly, caregiver benefits will terminate if another individual becomes a Family Caregiver during the 30-day period, because our regulations will only allow for three Family Caregivers at any one time. Finally, if the revoked individual stops living with the eligible veteran or dissolves his or her relationship with the eligible veteran, we do not believe that it is appropriate to continue to

provide support to that individual. We recognize that neither the 30-day post-revocation period during which benefits may continue, nor the limitations on that period, are clearly contemplated by statute. However, we believe that these rules are consistent with the legislation's purpose. We would like to consider public comment on this issue.

Finally, under paragraph (c), VA is authorized to revoke immediately the designation of a Family Caregiver "if the eligible veteran or individual designated as a Family Caregiver no longer meets the requirements of this part, or if VA makes the clinical determination that having the Family Caregiver is no longer in the best interest of the eligible veteran." However, if revocation is due to improvement in the eligible veteran's condition, death, or permanent institutionalization, the Family Caregiver will continue to receive caregiver benefits for 90 days, unless any of the conditions described in paragraph (b)(4)(i) through (iv) of this section apply. As above, this continuing period of eligibility for benefits is not contemplated by 38 U.S.C. 1720G, but we believe that it is an appropriate and compassionate way to interpret and enforce the law.

71.50 Provision of Certain Counseling, Training, and Mental Health Services to Certain Family Members of Veterans

Under 38 U.S.C. 1782(a), VA is required to provide specified benefits to eligible individuals in connection with the treatment of veterans with certain service-connected disabilities, and under § 1782(b), VA may provide the same benefits to eligible individuals in connection with the treatment of veterans with certain nonservice-connected disabilities. In the Veterans' Mental Health and Other Care Improvements Act of 2008, Public Law 110–387, § 301(a), Congress expanded the benefits that VA is authorized to provide to family members by adding "marriage and family counseling" to a list of benefits that already included consultation, professional counseling, training, and mental health services. Those benefits are listed in 38 CFR 17.38(a)(1)(vii) as part of the medical benefits package, as a result of a recent amendment to that section. 75 FR 54028 (Sep. 3, 2010).

The 2010 regulatory amendment to § 17.38 did not explain or clarify the scope of the benefits offered under 38 U.S.C. 1782. Many benefits listed in § 17.38 cross-reference sections that explain the benefit in more detail when the meaning or scope of the listed benefit is not entirely clear on its face, when the benefit is specifically limited by law, or when other regulations govern the actual provision of the benefit. *See, e.g.,* 38 CFR 17.38(a)(1)(v) (bereavement counseling), (a)(1)(viii) (certain durable medical equipment), (a)(1)(xii) (beneficiary travel). We believe that such a clarifying regulation would be helpful to explain the scope of the benefits provided under section 1782 as well, notwithstanding that these benefits have been authorized and provided by VA for several years without regulation.

Moreover, the Caregivers and Veterans Omnibus Health Services Act of 2010 amended section 1782 to provide eligibility for certain caregivers to the benefits and services authorized under section 1782. *See* Public Law 111–163, § 103(a) (amending section 1782(c)). General Caregivers of covered veterans under part 71 are also eligible for benefits under section 1782 pursuant to 38 U.S.C. 1720G(b)(3)(A)(ii). Thus, we believe it is important to include in part 71 the regulation that implements 38 U.S.C. 1782, collocated with the "Caregivers" rules, notwithstanding that section 1782 benefits are not limited to caregivers identified under part 71.

We note as well that caregivers identified under part 71 would receive section 1782 benefits under the same limitations that apply to individuals who receive section 1782 benefits under other provisions of law. There is no indication in section 1720G(b)(3)(A)(ii) that Congress intended, by making caregivers eligible for section 1782 benefits, to affect the manner in which such benefits are provided, or to lift any restrictions on the provision of such benefits.

In § 71.50(a), we do not differentiate between service-connected and non-service-connected disabilities. As noted above, VA is required to provide these benefits to service-connected veterans but is merely authorized to provide them to nonservice-connected veterans. VA has consistently exercised its authority to provide section 1782 benefits without regard to service connection, and we would not change our administration of the benefit now.

Paragraph (a) lists the benefits authorized by section 1782 verbatim, and states that they will be provided "to a family member when necessary in connection with the treatment of a disability for which the veteran is receiving treatment through VA." This restriction is specifically required by 38 U.S.C. 1782(a) and (b), both of which authorize the provision of these listed benefits to the family member of a veteran receiving treatment from VA "as are necessary in connection with that treatment." Because the meaning of this restriction may not be clear in all contexts, we explain in paragraph (a) that "in connection with the treatment" of the veteran's disability means that "in the clinical judgment of a VA medical professional who is providing treatment to the veteran, the provision of the benefit to the family member would further the objectives of the veteran's medical treatment plan." For example, a VA clinician is authorized to prescribe family participation is psychoeducational courses, if such courses are required for the treatment of a veteran's disability, because the courses are in connection with such treatment. In practice, our medical providers clearly articulate this limitation at the outset of treatment provided under section 1782, so that the individual being treated is aware of the limitations before beginning his or her course of care.

The goal of this rule is to provide care to a qualified family member that connects to the treatment plan of the veteran, so that the services provided to the family member will be a component of VA's overall treatment of the veteran's disability. In view of our longstanding primary purpose to provide veteran-focused care and the statutory limitation that VA provide services that are necessary in connection with the treatment of the veteran, we do not interpret section 1782 to allow us to provide medical care for family members unless such care will improve the veteran's own condition from a clinical perspective. Thus, under this rule, VA would not provide treatment to family members for the purposes of overall wellness, but would instead do so to help families participate in the treatment of a veteran. For example, VA would not provide counseling and referral for a depressed family member because his or her depression makes the veteran feel sad out of empathy. However, VA may provide counseling and referral to a veteran's caregiver if the caregiver is unable to help the veteran engage in or sustain engagement in VA treatment. Similarly, if a qualified veteran relies upon a family member to drive him or her to a VA facility on a regular basis, and a mental health condition renders the family member unable to drive a car, then the veteran is left without access to needed treatment. In this instance, VA will provide the appropriate psychotherapy or counseling for the family member's condition, or help the family member find appropriate care in the private sector, because such treatment is necessary in connection

with the course of treatment for the veteran's disability.

We also propose several clarifying paragraphs to help reduce potential confusion about the nature of the benefits authorized by section 1782. VA has interpreted the statutory list of benefits to contemplate psychotherapy, counseling, training, or education. VA will not provide prescriptions or medications to family members. Similarly, VA will not provide inpatient services under this section because such intensive care is, in our view, inconsistent with the types of benefits listed in the statute and with our veteran-focused mandate for medical care. This limitation is stated in paragraph (a)(1).

Paragraph (a)(2) states that "[t]his section does not authorize the provision of clinical evaluation or treatment that is not necessary in connection with the veteran's treatment or that involves treatment other than consultation, professional counseling, marriage and family counseling, training, and mental health services." We restate this limitation because it is important to emphasize the narrow nature of this benefit.

We explain in paragraph (a)(3) that "[m]arriage and family counseling includes services helping the veteran address mental health issues, manage physical health problems, and strengthen environmental supports as specified in the veteran's treatment plan" and "also includes interventions to reduce the negative impact for the veteran of mental illnesses or other medical conditions in family members."

Paragraph (b) defines "family member" for the purpose of this rule. The definition is derived from 38 U.S.C. 1782(c). The statute discusses members of the veteran's "immediate family," which we interpret as "person related to the veteran by birth or marriage who lives with the veteran or has regular personal contact with the veteran." We believe the term "immediate" connotes regular contact, usually living in the same household, and we would include this requirement in the definition. We consider this definition to be consistent with the overall intent of the law, which is to provide limited benefits to people who might be required to participate in the care of a veteran's condition or with whom the veteran might experience interactions that regularly exacerbate or contribute to his or her symptomatology.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures on this subject are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Secretary of Veterans Affairs finds good cause to issue this interim final rule prior to notice and comment procedures. This interim final rule implements statutory authorization for a comprehensive program of assistance and support services for caregivers of eligible servicemembers and veterans. In passing the Caregivers and Veterans Omnibus Health Services Act of 2010 (the Act), Congress indicated a clear intent to have this program implemented as swiftly as possible, requiring implementation no later than 270 days after the statutory enactment, namely by January 30, 2011. The statute required extensive consultation with particular stakeholders prior to implementation, and since the enactment, the Secretary of VA has continued to engage with such stakeholders as directed. Under these circumstances, the Secretary finds that seeking public notice and comment in addition to the statutorily-directed stakeholder consultations prior to issuance is impracticable and that further delay would thwart Congressional intent to deliver these benefits to caregivers in need expeditiously.

The statute required the Secretary to develop and implement a unique and highly complex program offering the following benefits to eligible caregivers:

- A monthly stipend;
- Health care coverage;
- Travel expenses, including lodging and per diem while accompanying veterans undergoing care;
- Respite care (not less than 30 days annually to allow the caregiver time away from caring for the veteran);
- Training; and
- Mental health services and counseling.

Before implementation could occur, the Act expressly required the Secretary consult with specified stakeholders. Accordingly, the Secretary immediately began a process of consultation with:

- Veterans;
- Their family members;
- The Secretary of Defense;
- Veterans services organizations;
- National organizations specializing in the provision of assistance to individuals with disabilities;
- National organizations that specialize in the provision of assistance to family members of veterans who provide personal care services; and
- Other organizations with an interest in the provision of care to veterans and assistance to Family Caregivers.

The Secretary has submitted to Congress a publicly available implementation plan that describes these mandatory consultations in detail, including recommendations from participants. Where such recommendations were not accepted, the Secretary's justifications were described as well. The Secretary now finds, having completed these required preliminary steps and provided Congress with an implementation plan, that it is imperative that the VA commence provision of the authorized assistance as quickly as possible.

The Secretary further finds that it is contrary to the public interest to delay issuance of this rule for the purpose of soliciting prior public comment because there is an immediate and pressing need for the assistance and support services that will be provided under the rule, without which harm to America's wounded, injured veterans and their caregivers would result. The conflicts in Iraq and Afghanistan have led to a sharp increase in the number of servicemembers and veterans returning with serious injuries that require substantial care. Recognizing this problem, Congress required the Secretary to take quick action to assist these veterans and their caregivers. Hundreds of seriously injured servicemembers and veterans have caregivers or potential caregivers who may be eligible for the assistance and support services that will be provided under this rule. Many caregivers, in order to assist their loved ones in a time of dire need, may have left or foregone employment due to the time commitment required to provide care for a seriously injured individual. These caregivers may have lost health insurance as a result of lost employment opportunities and may be in urgent need of mental health counseling due to the great emotional strain of caring for a severely injured servicemember or veteran. Further, caregivers may be in need of the training that will be provided under this rule in order to ensure that they are able to provide care in a manner that protects the safety and well being of their seriously injured servicemember or veteran. The assistance and services to be provided under this rule are needed as soon as

possible to respond to this increase in servicemembers and veterans with serious injuries in order to avoid financial hardship for caregivers and to ensure the provision of appropriate care for eligible seriously injured servicemembers and veterans.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest, and is accordingly issuing this rule as an interim final rule. The Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the **Federal Register**, including comments regarding eligibility criteria, and address them in a subsequent **Federal Register** notice announcing a final rule incorporating any changes made in response to the public comments.

In order to ensure timely implementation of the program established by this rule, and for the reasons stated above, the Secretary also finds, in accordance with 5 U.S.C. 553(d), that there is good cause for this interim rule to be effective immediately upon publication. For the same reasons detailed above—i.e., clear Congressional intent to implement the program swiftly and on a tight statutory schedule after extensive Secretarial consultation with stakeholders, as well as an immediate and pressing need for the assistance provided under this rule—it is in the public interest to commence this program as soon as possible, and this will be facilitated by an immediate effective date.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, or tribal governments, or on the private sector.

Paperwork Reduction Act

The interim final rule at § 71.25(a) contains a collection of information, which constitutes a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) and requires approval by the Office of Management and Budget (OMB). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking to OMB for review. OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have requested that OMB approve the collection of information on an emergency basis. If OMB does not approve the collection of information as requested, we will immediately remove § 71.25(a) or take such other action as is directed by OMB.

We are also seeking an approval of the information collection on a non-emergency basis. Accordingly, we are also requesting comments on the collection of information provisions contained in § 71.25(a) on a non-emergency basis. Comments must be submitted by *July 5, 2011.*

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through www.regulations.gov. Comments should indicate that they are submitted in response to "RIN 2900–AN94, Caregivers Program."

Title: Caregivers Program.

Summary of collection of information: The interim final rule at § 71.25(a) contains application provisions for individuals who wish to be considered for designation by VA as Primary or Secondary Family Caregivers for certain veterans. These provisions require the submission of a joint application completed by a veteran or servicemember and no more than three other individuals who intend to serve as Family Caregivers for an eligible veteran, with no more than one individual serving as veteran's Primary Family Caregiver.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for benefits under the Caregiver Program and to ensure that eligible veterans receive suitable caregiver services.

Description of likely respondents: Veterans' family members.

Estimated number of respondents per year: 5,000.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 1,250 hours.

Estimated annual burden per collection: 15 minutes.

OMB is required to make a decision concerning the collection of information contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule. VA considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Regulatory Flexibility Act

The Secretary of VA has determined that this regulatory action will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–12. This regulatory action affects individuals and would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final flexibility analysis requirements of sections 603 and 604.

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801–08, because it is likely to result in an annual effect on the economy of $100 million or more. Although this regulatory action is a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it is not subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because the Secretary finds that good cause exists under 5 U.S.C. 808(2) to make this regulatory action effective

immediately, consistent with the publication of this interim final rule. Congress established this program and intended it to be in effect by January 30, 2011, but the implementing regulations have taken longer to develop. In establishing this program, Congress and VA recognize the immediate and urgent need that many veterans, servicemembers, and their family members have for caregiver assistance and benefits. Accordingly, the Secretary finds that additional advance notice and public procedure thereon are impractical, unnecessary, and contrary to the public interest. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulatory action and VA's Regulatory Impact Analysis (RIA).

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 12866 defines a "significant regulatory action," which requires review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule has been designated a "economically" significant regulatory action under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and followed OMB Circular A–4 to the extent feasible in this Regulatory Impact Analysis. The circular first calls for a discussion of the need for the regulatory action.

Statement of Need

This rulemaking is necessary to implement title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163, which was signed into law on May 5, 2010. The purpose of the caregiver benefits program is to provide certain medical, travel, training, and financial benefits to eligible caregivers of veterans and certain servicemembers who incurred or aggravated a serious injury in the line of duty on or after September 11, 2001.

Summary of Estimated Impact

The estimated costs associated with this regulation are $69,044,469.40 for FY2011 and $777,060,923.18 over a 5 year period. These include costs associated with the implementation and development of the caregiver support program.

Cost Projections for Caregiver Program - (FY2011 - FY2015)

Description of Costs	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	5 Year Total
Caregiver Program Staffing	$8,083,644.80	$19,400,747.43	$20,176,777.32	$20,983,848.42	$21,823,202.37	$90,468,220.34
Caregiver Program Stipend	$27,617,530.00	$77,658,984.00	$83,992,329.20	$90,834,536.00	$98,215,650.00	$378,319,029.20
Respite Care	$13,815,832.00	$35,156,000.00	$37,966,400.00	$41,107,360.00	$44,436,480.00	$172,482,072.00
Mental Health Services	$305,660.00	$992,970.00	$1,073,088.00	$1,158,606.00	$1,254,894.00	$4,785,218.00
General Caregiver Educ. & Trng.	$6,057,760.00	$190,185.60	$205,852.80	$222,682.50	$240,683.40	$6,917,164.30
Lodging/Mileage/Meal Per Diem (Veteran Inpatient/ Outpatient Visits)	$466,975.52	$1,211,092.78	$1,308,547.76	$1,413,433.83	$1,528,241.79	$5,928,291.68
Mileage for Caregiver Training	$373,085.00	$35,856.00	$37,350.00	$38,844.00	$40,338.00	$525,473.00
Healthcare Coverage (CHAMPVA)	$2,752,390.92	$6,765,401.32	$6,943,472.78	$7,505,688.62	$8,205,989.03	$32,172,942.66
Caregiver Oversight (Contract)	$0.00	$1,448,846.08	$1,567,203.20	$1,694,887.36	$1,833,527.52	$6,544,464.16
Caregiver Oversight (VA)	$4,014,070.96	$10,420,334.14	$11,271,763.58	$12,189,701.34	$13,184,910.50	$51,080,780.52
Caregiver Support Line	$1,500,000.00	$2,500,000.00	$2,599,999.58	$2,703,999.11	$2,812,159.03	$12,116,157.72
Study and Survey	$245,959.20	$238,359.20	$225,859.20	$0.00	$0.00	$710,177.60
Outreach & Additional Supt.Programs	$3,811,561.00	$2,673,358.00	$2,772,356.00	$2,830,224.00	$2,923,433.00	$15,010,932.00
TOTAL	$69,044,469.40	$158,692,134.55	$170,140,999.42	$182,683,811.18	$196,499,508.63	$777,060,923.18

Estimated costs and projections are based on the best, reasonably obtainable, and economic information available. Some portions of the analysis rely upon assumptions that may change, due to the unpredictability of catastrophic and severe injuries resulting from military service and combat during war. This analysis sets forth the basic assumptions, methods, and data underlying the analysis and discusses the uncertainties associated with the estimates. Assumptions and methodologies for each portion of the analysis are explained in more detail in the Estimate of Potential Program Costs below. As VA develops claims data and becomes more cognizant of the cost of caregiver benefits, VA will make appropriate adjustments in the amount of funds requested for future fiscal years. VA invites public comments on all of these projections.

Potential Benefits

Hundreds of seriously injured servicemembers and veterans have caregivers or potential caregivers who may be eligible for the assistance and support services that will be provided under this rulemaking. The purpose of providing Family Caregiver assistance under this law is to benefit eligible veterans whose personal care service needs could be substantially satisfied with the provision of such services by a family member (as defined in the law); and to provide eligible veterans with additional options so that they can choose the setting for the receipt of personal care services that best suits their needs.

Alternatives

On May 5, 2010, the President signed into law the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163. Title I of the law established 38 U.S.C. 1720G, which requires VA to "establish a program of comprehensive assistance for family caregivers of eligible veterans," as well as a program of "general caregiver support services" for caregivers of "veterans who are enrolled in the health care system established under [38 U.S.C. 1705(a)] (including caregivers who do not reside with such veterans)." 38 U.S.C. 1720G(a)–(b).

The law authorizes assistance for caregivers of Post 9/11 veterans and servicemembers. It recognizes that Post 9/11 veterans and servicemembers return home with serious injuries that often were fatal in the past. These veterans present complex recovery and adjustment processes requiring ongoing medical supervision.

VA initially considered a narrow definition of eligibility, but ultimately decided to broaden the program's eligibility in order to encompass more seriously injured post-9/11 veterans. The law requires VA to report on the program's potential for future expansion to all era veterans, so under this law Congress will consider that aspect of the program at a later time.

Estimate of Potential Program Costs

To project the best possible economic impact of this regulation VA conducted an analysis on veterans and servicemembers who incurred or aggravated a serious injury in the line of duty on or after September 11, 2001. The analysis also focused on the number of veterans and servicemembers who have an impairment in one or more of seven activities of daily living (ADLs) or require supervision or protection based on symptoms or residuals of neurological or other impairment or injury, and those whose injury is strictly diagnosed as a mental health condition with a GAF score of no greater than 30. The results of this analysis identified an estimated 3,596 veterans and servicemembers who would meet the eligibility criteria established in § 71.20 of this regulation, thus being eligible for Family Caregiver benefits. The estimated 3,596 number of potentially eligible veterans and servicemembers was applied to the applicable methodologies and calculations in this regulatory impact analysis to project the best possible economic impact of this regulation.

Caregiver Program Staffing

Staffing costs were calculated for the following number of full-time employees (FTE) and salaries. Based on the publication date of this rulemaking (May 2011), the total staffing cost for FY11 ($8,083,644.80) is based on the 5 remaining months of FTE costs (May–Sep). A 4 percent total General Schedule Increase and Locality Payment rate was applied to the FTE costs for FY13 through FY15.

Caregiver Program Staffing Cost									
Title	# of FTE	Grade	Salary (+ benefits)	FY11	FY12	FY13	FY14	FY15	5-Year Totals
VACO National Program Director	1	GS-15/5	$186,530.44	$77,721.02	$186,530.44	$193,991.66	$201,751.33	$209,821.38	$869,815.83
VACO Caregiver Program	1	GS-14/5	$158,574.62	$66,072.76	$158,574.62	$164,917.60	$171,514.30	$178,374.88	$739,454.16
VACO Health Systems Specialist	1	GS-13-14/5	$158,574.62	$66,072.76	$158,574.62	$164,917.60	$171,514.30	$178,374.88	$739,454.16
VACO Training Program Manager	2	GS-13-14/5	$317,149.23	$132,145.51	$317,149.23	$329,835.20	$343,028.61	$356,749.75	$1,478,908.30
VACO Peer Support/Mentor Program Manager	1	GS-13-14/5	$158,574.62	$66,072.76	$158,574.62	$164,917.60	$171,514.30	$178,374.88	$739,454.16
VACO Program Specialist	1	GS-12/5	$112,848.66	$47,020.28	$112,848.66	$117,362.61	$122,057.12	$126,939.40	$526,228.07
VACO Program Specialist	1	GS-11/5	$94,148.94	$39,228.73	$94,148.94	$97,914.90	$101,831.49	$105,904.75	$439,028.81
VISN Regional Training Program Coordinator	4	GS-13-14/5	$634,298.46	$264,291.03	$634,298.46	$659,670.40	$686,057.22	$713,499.51	$2,957,816.62
VA Chief Business Office Claims Processor	2	GS-9/5	$155,627.56	$64,844.82	$155,627.56	$161,852.66	$168,326.77	$175,059.84	$725,711.65
VA Chief Business Office Claims Program Manager	1	GS-12/5	$112,848.66	$47,020.28	$112,848.66	$117,362.61	$122,057.12	$126,939.40	$526,228.07
VA Caregiver Business Operations Program Manager	1	GS-14/5	$158,574.62	$66,072.76	$158,574.62	$164,917.60	$171,514.30	$178,374.88	$739,454.16
VAMC Caregiver Support Coordinators	152	GS-12/5	$17,152,997.00	$7,147,082.09	$17,152,997.00	$17,839,116.88	$18,552,681.56	$19,294,788.82	$79,986,666.35
			5-Year Totals	$8,083,644.80	$19,400,747.43	$20,176,777.32	$20,983,848.42	$21,823,202.37	$90,468,220.34

Caregiver Program Stipend

The caregiver stipend is based on the Department of Labor (DOL) national estimate for hourly wages of a Home Health Aide, which was $11.67 for FY09. To compute the FY11 rate, a 7.5 percent annual inflation rate was applied to obtain the FY11 rate of $12.55 per hour. To determine the number of stipend hours that each caregiver would be able to provide VA used Veterans Benefits Administration (VBA) data, which categorizes veterans by the severity of their disability or their injury. Based on this data, VA projects a caseload of 3,596 veterans and servicemembers, consisting of: 2,116 veterans and servicemembers with serious injuries and service-connected (SC) anatomical loss, or loss of use, and 220 veterans with 100 percent SC traumatic brain injury (TBI); 146 veterans with a 100 percent SC mental health (MH) condition with a GAF score of 30 or less; 394 service members with a serious injury; and 720 potentially new service members identified by the Department of Defense (DoD).

For FY 11, VA assumes that 50 percent of the R1, R2, L, M, N, O veterans (2,116/2 = 1,058), 50 percent of the 394 and 720 servicemembers (394 + 720 = 1,114/2 = 557), all of the SC MH with a GAF score of 30 or less (146), and 50 percent of the SC 100% TBI (220/2 = 110), totaling 1,871 or approximately 52 percent of the 3,596 caseload would fall into the high percentage of hours (26–40 hrs) that caregivers will provide.

VA assumes that 25 percent of the R1, R2, L, M, N, O veterans (2,116/4 = 529), 50 percent of the SC 100% TBI (220/2 = 110) and 50 percent of the servicemembers (557), totaling 1,196 or approximately 33 percent of the 3,596 caseload would fall into the medium percentage of hours (10–25 hrs) that caregivers will provide.

VA assumes that 25 percent of the R1, R2, L, M, N, O veterans (2,116/4 = 529), totaling 529 or approximately 15 percent of the 3,596 caseload would fall into the low percentage of hours (less than <10 hrs) that caregivers will provide.

Based on the publication of this rulemaking (May 2011), the Total Stipend Cost for FY11 ($27,617,530.00) is based on 5 months only (–20 weeks). A 4 percent inflation rate was applied to the stipend cost per hour and a 4 percent population growth rate was applied to the projected caregiver caseload for all out years.

Estimated Caregiver Program Stipend Cost										
FY	Projected Caregiver Caseload	Percentage of Hours that Caregivers will Provide			Cost Per hour	Weeks	High (26-40 hrs)	Medium (10-25 hrs)	Low (<10 hrs)	Total Stipend Cost
		High (26-40 hrs)	Medium (10-25 hrs)	Low (<10 hrs)						
		52%	*33%*	*15%*			Cost	Cost	Cost	
FY11	3,596	1,871	1,196	529	$12.55	20	$18,784,840.00	$7,504,900.00	$1,327,790.00	$27,617,530.00
FY12	3,740	1,946	1,244	550	$13.05	52	$52,822,224.00	$21,104,460.00	$3,732,300.00	$77,658,984.00
FY13	3,890	2,024	1,294	572	$13.57	52	$57,128,614.40	$22,827,454.00	$4,036,260.80	$83,992,329.20
FY14	4,046	2,105	1,346	595	$14.11	52	$61,779,224.00	$24,689,678.00	$4,365,634.00	$90,834,536.00
FY15	4,208	2,189	1,400	619	$14.67	52	$66,794,270.40	$26,699,400.00	$4,721,979.60	$98,215,650.00
5-Year Totals							$257,309,172.80	$102,825,892.00	$18,183,964.40	$378,319,029.20

Respite Care

VA assumed that respite care will be primarily in-home care for 24 hours per day. The FY11 rate of $226 was calculated using an actual FY09 rate of $209 and adding a 4 percent inflation rate. The rates were provided by VA's Geriatrics and Extended Care Strategic Healthcare Group. VA assumed 40 days of respite care. This includes the minimum of 30 days of respite care for the Primary Family Caregiver, plus 5 days for training for each (2) Secondary Family Caregiver. The 40 days of respite is consistent for all out year cost and encompasses respite care during training for all "new" Family Caregivers. VA assumes that all Family Caregivers will receive training simultaneously or provide coverage for each other during periods of training. Therefore, VA anticipates 3,596 Family Caregivers will request respite care during training in FY11. However, based on the publication date of this rulemaking (May 2011), Family Caregivers will only have 5 months to utilize respite benefits (May–Sep). Thus, FY11 respite care was calculated to be 17 days. A 4 percent inflation rate was applied to the respite cost per day.

Estimated Respite Cost						
FY	Projected Caregiver Caseload	In-Home Respite Cost per day (24 hrs)	Days of Respite	Total Days of Respite Per Year	Cost for Respite & Training per Caregiver	Total Cost for Respite
FY11	3,596	$226.00	17	61,132	$3,842.00	$13,815,832.00
FY12	3,740	$235.00	40	149,600	$9,400.00	$35,156,000.00
FY13	3,890	$244.00	40	155,600	$9,760.00	$37,966,400.00
FY14	4,046	$254.00	40	161,840	$10,160.00	$41,107,360.00
FY15	4,208	$264.00	40	168,320	$10,560.00	$44,436,480.00
5-Year Totals						$172,482,072.00

Mental Health Services

VA assumes that as many as 50 percent of the total caregivers might have mental health issues and of those, only half would seek mental health services based on trends in a review of medical literature (3,596/4 = 899). Recent National Alliance for Caregiving (NAC) literature indicates that 67 percent of caregivers of veterans report they are highly stressed, and may experience anxiety, sleep deprivation, or depression. Data from the National Institutes for Health indicate that mental health utilization rates average 12 percent for the general population. VA anticipates that a larger number of new caregivers will seek these services. VA acknowledges that the 50 percent assumption may be conservative, but VA has the resources to absorb increased requests for mental health services. Based on information obtained from VA's Mental Health Services, VA assumed six (6) visits per year at an initial cost of $170 per visit. Based on the publication of this rulemaking and when mental health services are expected to become available (May 2011), caregivers will only have a 5 month period to seek mental health service benefits (May–Sep). VA assumes that 5 months is not a sufficient amount of time for caregivers to fully utilize the annual average of six (6) visits. Caregivers must be trained and certified before they are eligible for these benefits. Therefore, the average number of visits for FY11 is estimated at two (2) visits ($6/12 \times 4 = 2$). A 4 percent inflation rate was applied to the mental health service cost per visit and a 4 percent population growth rate was applied to the projected caregiver caseload for all out years.

Estimated Mental Health Services Cost					
FY	Projected Caregiver Caseload	Avg # Visits per Year	Cost Per Visit	Total Cost per year per Caregiver	Total Cost for all Caregivers
FY11	899	2	$170.00	$340.00	$305,660.00
FY12	935	6	$177.00	$1,062.00	$992,970.00
FY13	972	6	$184.00	$1,104.00	$1,073,088.00
FY14	1,011	6	$191.00	$1,146.00	$1,158,606.00
FY15	1,051	6	$199.00	$1,194.00	$1,254,894.00
5-Year Totals					$4,785,218.00

Education and Training

Cost projections were based on development and implementation of training for Family Caregivers using a core curriculum provided by a designated contractor. Training for General Caregivers will use a modified version of this core curriculum and will be managed by VA staff. The training modules will also be available through Workbook/DVD and web-based versions. VA assumes a maximum of two Secondary Family Caregivers per veteran. Comprehensive Family Caregiver training will only be provided once for each Family Caregiver, to include primary and secondary caregivers. This comprehensive Family Caregiver training will be reviewed annually. Updated core curriculum training and guidance will be available on the Caregiver Support Program's website and from a Caregiver Support Coordinator, at each VA Medical Center.

In FY11, VA projects 3,596 Primary Family Caregivers and 7,192 (3,596 × 2) Secondary Family Caregivers will be trained. VA projects that 10 percent (3,000) of veterans from all eras receiving VA Aid and Attendance, including seriously injured active servicemembers pending a medical discharge may be eligible for General Caregiver training and benefits. Therefore, the total cost for training all caregivers (13,788) for FY11 is estimated to be $6,057,760.00.

Caseload projections for FY12 and all out years are based on training "new" Family Caregivers. Comprehensive training in its entirety will only be provided once for each Family Caregiver. VA applied a 4 annual percent (4%) population growth rate, which is based on historical growth trends in compensation benefits, to determine the estimated number of "new" Family Caregivers (432 for FY12) that will require training annually.

In FY12, VA projects that 144 Primary Family Caregivers will be trained along with 288 (144 × 2) Secondary Family Caregivers and 3,120 General Caregivers. Therefore, the total cost for training all caregivers (3,552) for FY12 is estimated to be $190,185.60.

Total Estimated Caregiver Education & Training Cost				
FY	Comprehensive Caregiver Training for Primary Family Caregivers	Comprehensive Caregiver Training for (2) Secondary Family Caregivers	General Caregiver Training Conducted by VA Staff	Total Cost
FY11	$5,752,000.00	$215,760.00	$90,000.00	$6,057,760.00
FY12	$83,856.00	$8,985.60	$97,344.00	$190,185.60
FY13	$90,850.00	$9,702.55	$105,300.25	$205,852.80
FY14	$98,280.00	$10,496.25	$113,906.25	$222,682.50
FY15	$106,110.00	$11,372.40	$123,201.00	$240,683.40
5-Year Totals	$6,131,096.00	$256,316.80	$529,751.50	$6,917,164.30

Comprehensive Caregiver Training for Primary Family Caregivers					
FY	Caregivers attending Traditional Classroom Training	Caregivers who choose At-home Training (Workbook / DVD)	Caregivers who choose Web-Based Training	Total Primary Family Caregivers Trained	Total Cost to Train Primary Family Caregivers
FY11	1,199	1,199	1,198	3,596	$5,752,000.00
FY12	48	48	48	144	$83,856.00
FY13	50	50	50	150	$90,850.00
FY14	52	52	52	156	$98,280.00
FY15	54	54	54	162	$106,110.00
5-Year Totals					$6,131,096.00

Comprehensive Caregiver Training for (2) Secondary Family Caregivers (Workbook/DVD/Web-Based only)				
FY	Projected Number of Secondary Family Caregivers	Cost to train via At-Home Training per Secondary Family Caregiver	Cost to train via web-based training	Total Cost to Train (2) Secondary Family Caregivers
FY11	7,192	$30.00	$0.00	$215,760.00
FY12	288	$31.20	$0.00	$8,985.60
FY13	299	$32.45	$0.00	$9,702.55
FY14	311	$33.75	$0.00	$10,496.25
FY15	324	$35.10	$0.00	$11,372.40
5-Year Totals				$256,316.80

General Caregiver Training conducted by VA Staff (Workbook/DVD/Web-Based only)				
FY	Projected Number of General Caregivers	Cost to train via At-Home Training per General Caregiver	Cost to train via web-based training	Total Cost per to Train General Caregivers
FY11	3,000	$30.00	$0.00	$90,000.00
FY12	3,120	$31.20	$0.00	$97,344.00
FY13	3,245	$32.45	$0.00	$105,300.25
FY14	3,375	$33.75	$0.00	$113,906.25
FY15	3,510	$35.10	$0.00	$123,201.00
5-Year Totals				$529,751.50

Lodging/Mileage/Meal Per Diem (Veteran Inpatient/Outpatient)

Mileage, lodging, and meal per diem will be provided to Family Caregivers when VA determines that an overnight stay is required. VA assumed that lodging would be provided within VA or VA-affiliated resources (i.e., at a Fisher House, VA Hoptel, or other setting at VA expense). VA determined that meal per diem for caregivers who require lodging would be no more than half of the highest rate ($35.00 to $70.00). The lodging per diem would be half of the average federal lodging and per diem rates for ten (10) facilities with Spinal Cord Injury (SCI) and VA's four (4) polytrauma centers ($223.00). Therefore, for FY11, VA assumes that meal per diem would be $35.00 per day and lodging per diem would be $111.50.00 per day. To determine the average length of stay (ALOS) for veterans requiring inpatient care, VA obtained data from VA's Office of the Assistant Deputy Under Secretary for Health, Policy and Planning. This data indicated that slightly more than 196,000 of 982,000 (20%) Priority Group 1 (PG1) veteran users were admitted in FY09 for an average length of stay (ALOS) of 7.3 days. VA assumes that the 7.3 days would increase to 9.3 days based on severity of this population and extensive rehabilitation needs. VA also assumed an ALOS of 1 day for Family Caregivers of veterans requiring outpatient services. In FY11, it is estimated that 1,438 (719 × 2) Family Caregivers will require lodging during the veteran's inpatient or outpatient visit. The total cost in FY11 for lodging, meal per diem and mileage is $466,975.52. Based on the publication date of this rulemaking, these costs are based on 5 months only (May–Sep). A 4 percent inflation rate was applied to the meal and lodging per diems. A 4 percent population growth rate was applied to the projected caregiver caseload for all out years.

Total Estimated Lodging/Mileage/Meal Per Diem Cost		
FY	Caregivers Eligible for Lodging/Mileage/ Meal Per Diem (Inpatient + Outpatient)	Total
2011	1,438	$466,975.52
2012	1,496	$1,211,092.78
2013	1,556	$1,308,547.76
2014	1,618	$1,413,433.83
2015	1,684	$1,528,241.79
5-Year Totals		$5,928,291.68

Estimated Lodging/Mileage/Meal Per Diem Cost (Inpatient)												
FY	Projected Caregiver Caseload	Caseload x 20%	Lodging Rate	Average Length of Stay (ALOS)	Lodging Rate x ALOS	Total Lodging Cost	Meal Per Diem Rate	Total Meal Per Diem Costs	Mileage Rate	Miles per Visit	Total Mileage Cost	Total Costs for Caregivers Requiring Lodging
2011	3,596	719	$111.50	9.3	$1,036.95	$745,567.05	$35.00	$234,034.50	0.415	60	$17,903.10	$415,626.94
2012	3,740	748	$115.96	9.3	$1,078.43	$806,664.14	$36.40	$253,212.96	0.415	60	$18,625.20	$1,078,502.30
2013	3,890	778	$120.60	9.3	$1,121.58	$872,589.24	$37.86	$273,932.24	0.415	60	$19,372.20	$1,165,893.68
2014	4,046	809	$125.42	9.3	$1,166.41	$943,622.45	$39.37	$296,208.07	0.415	60	$20,144.10	$1,259,974.62
2015	4,208	842	$130.44	9.3	$1,213.09	$1,021,423.46	$40.94	$320,584.76	0.415	60	$20,965.80	$1,362,974.03
5-Year Totals												$5,242,924.71

Estimated Lodging/Mileage/Meal Per Diem Cost (Outpatient)												
FY	Projected Caregiver Caseload	Caseload x 20%	Lodging Rate	Average Length of Stay (ALOS)	Lodging Rate x ALOS	Total Lodging Cost	Meal Per Diem Rate	Total Meal Per Diem Costs	Mileage Rate	Miles per Visit	Total Mileage Cost	Total Costs for Caregivers Requiring Lodging
2011	3,596	719	$111.50	1	$111.50	$80,168.50	$35.00	$25,165.00	0.415	60	$17,903.10	$51,348.58
2012	3,740	748	$115.96	1	$115.96	$86,738.08	$36.40	$27,227.20	0.415	60	$18,625.20	$132,590.48
2013	3,890	778	$120.60	1	$120.60	$93,826.80	$37.86	$29,455.08	0.415	60	$19,372.20	$142,654.08
2014	4,046	809	$125.42	1	$125.42	$101,464.78	$39.37	$31,850.33	0.415	60	$20,144.10	$153,459.21
2015	4,208	842	$130.44	1	$130.44	$109,830.48	$40.94	$34,471.48	0.415	60	$20,965.80	$165,267.76
5-Year Totals												$645,320.11

Mileage for Caregiver Training

VA assumes that Family Caregiver training will be conducted in the proximity of the veteran's and caregiver's geographical residence. Thus, only mileage reimbursement will be provided. Costs were calculated assuming that an average of two caregivers per veteran would be undergoing training for 5 days each, for a total of 10 days. VA assumed that caregivers would drive no more than 60 miles total to attend training and would be reimbursed at a mileage rate of 41.5 cents per mile. The mileage rate of (41.5 cents per mile) is based on the beneficiary travel rate established for veterans, codified at 38 U.S.C. 111. Based on the publication date of this rulemaking (May 2011), the total travel mileage cost for FY11 is $373,085.00 and is based on 5 months only (May–Sep). Total Caseload projections for FY12 and all out years only include initial training for "new" primary and Secondary Family Caregivers (144). The 144 reflects a 4 percent (4%) population growth rate from the FY11 caseload.

Total Estimated Travel/Mileage Cost for Caregivers Driving to Training (No Lodging)							
FY	Projected Caregiver Caseload	Days of Travel	Total Days	Miles per Day	Total Miles	Mileage Rate	Total Travel Mileage Cost
2011	3,596	10	35,960	60	2,157,600	0.415	$373,085.00
2012	144	10	1,440	60	86,400	0.415	$35,856.00
2013	150	10	1,500	60	90,000	0.415	$37,350.00
2014	156	10	1,560	60	93,600	0.415	$38,844.00
2015	162	10	1,620	60	97,200	0.415	$40,338.00
5-Year Totals							$525,473.00

Health Care (CHAMPVA)

A 2010 NAC report indicates that around 70 percent of caregivers of veterans are spouses and thus likely eligible for TRICARE benefits based on the assumption that veterans eligible for this program will have received a medical retirement from the service based on 30 percent disability or greater. Therefore VA assumes that only 30 percent of Primary Family Caregivers (30% of 3,596 = 1079) will be eligible for CHAMPVA health care coverage.

Estimated costs for 1,079 Primary Caregivers in FY11 were calculated assuming seven (2) new FTE and five (5) contract or term employees for the initial start-up of the project. These staff will be utilized to verify enrollment and administer benefits for the new beneficiaries for the CHAMPVA program. In FY11, the seven (7) FTE costs represent a Denver-based GS–7/5 salary of $47,184 with a 33 percent benefit and overhead cost factor applied ($62,755). The total costs for CHAMPVA, FTE and Operating Costs in FY11 is $2,752,390.92. This amount reflects only 5 months of FTE and Medical cost (May–Sep), due to the publication date of this rulemaking (May 2011). The FTE figure was reduced to two (2) FTE for FY13–14. In FY15 there is an increase in one (1) FTE based the ratio of 1 FTE per 500 beneficiaries reflected in the caseload. A 4 percent total General Schedule Increase and Locality Payment was applied to the FTE costs beginning in FY13 through FY15. Additional costs associated with the start-up of the new program are identified in the chart below. These costs include the purchase of computers, cubicles, furniture, telephones, materials, and training to support the new Caregiver Program. The approximate cost of setup for each new FTE is $21,000.00 and ongoing training is estimated at $5,400.00 per person. The average annual cost per beneficiary for FY11 was estimated to be $5,389.00, which reflects the estimated medical cost per beneficiary when CHAMPVA is the primary payer. A 4 percent annual inflation rate was applied to the annual cost per caregiver for the out years. Based on the publication date of this rulemaking (May 2011), VA does not anticipate that the total projected caregiver caseload will apply and receive health care coverage within the 5 remaining months in FY11 (May–Sep). Caregivers must be trained and certified before they are eligible for these benefits. Therefore, the expected total medical cost per year in FY11 ($2,422,355.50) is based on 5 months only.

Estimated Healthcare Coverage (CHAMPVA) & Operating Costs								
FY	Projected Caregiver Caseload	Projected # of FTE	Annual Cost per FTE w/ benefits (GS-7/5)	Total FTE Cost per Year	Start-Up & Additional Cost	Annual Medical Cost Per Caregiver	Total Medical Cost Per Year	Total Costs
FY11	1,079	7	$62,755.00	$183,035.42	$147,000.00	$5,389.00	*$2,422,355.50*	$2,752,390.92
FY12	1,122	7	$62,755.00	$439,285.00	$37,800.00	$5,604.56	$6,288,316.32	$6,765,401.32
FY13	1,167	2	$65,265.20	$130,530.40	$10,800.00	$5,828.74	$6,802,142.38	$6,943,472.78
FY14	1,214	2	$67,875.81	$135,751.62	$10,800.00	$6,061.89	$7,359,137.00	$7,505,688.62
FY15	1,263	3	$70,590.84	$211,772.52	$31,800.00	$6,304.37	$7,962,416.51	$8,205,989.03
5-Year Totals								$32,172,942.66

Caregiver Oversight (Contract)

Oversight for veterans and caregivers who live in remote areas will be contracted with a national home health agency. VA estimated that 40 percent of caregivers (3,596 × 40% = 1,438) would receive oversight or monitoring by VA contractors due to the veteran's or caregiver's geographical location. Costs were estimated using a home health agency contractor for one (1) visit per quarter by a registered nurse (RN) for two (2) hours per visit, using a national hourly rate of $116.40 for skilled nursing visits based on CMS Lupa rates. Based on the publication of this rulemaking (May 2011) and based on

VA's decision to ensure that the first home visit is conducted by VA clinical staff, there are no projected contract costs for FY11. A 4 percent inflation rate was applied to the cost per caregiver per/hr and a 4 percent population growth rate was applied to the projected caregiver caseload to produce costs for out years identified in the chart below.

Estimated Caregiver Oversight (Contract) Cost								
FY	Projected Caregiver Caseload (40%)	Hrs Per Qtr.	Total Hrs Per Qtr	Total Hrs Per Year	Cost Per Caregiver Per/Hr	Cost Per Caregiver Per Qtr	Cost Per Caregiver Per Year	Total Cost
FY11	1,438	0	0	0	$116.40	$0.00	$0.00	$0.00
FY12	1,496	2	2,992	11,968	$121.06	$242.12	$968.48	$1,448,846.08
FY13	1,556	2	3,112	12,448	$125.90	$251.80	$1,007.20	$1,567,203.20
FY14	1,618	2	3,236	12,944	$130.94	$261.88	$1,047.52	$1,694,887.36
FY15	1,683	2	3,366	13,464	$136.18	$272.36	$1,089.44	$1,833,527.52
5-Year Totals	7,791							$6,544,464.16

Caregiver Oversight (VA)

Based on the projected caregiver caseload (3,596), VA assumes that approximately 1,438 (40%) will utilize Telehealth in conjunction with contract oversight services compared to 2,158 (60%) that will utilize Home Based Primary Care (HBPC) or other similar services. Based on the publication of this rulemaking (May 2011), the total Telehealth and HBPC cost for FY11 is based on 5 months only. The Telehealth average cost per caregiver per month ($208.33) was provided by Telehealth Services. A 4 percent inflation rate was applied to the Telehealth average cost per caregiver per year and a 4 percent population growth to the projected caregiver caseload for all out years. Total HBPC Cost for each FY includes a 20 percent increase due to normal variation in staffing levels and geographic availability. HBPC cost per caregiver/per visit is estimated to be $583.00 (based on a four (4) hour visit including travel up to a sixty (60) mile radius and other associated costs). A 4 percent inflation rate applied for all out years.

Total Estimated Caregiver Oversight (VA) Cost - Telehealth and HBPC			
FY	Telehealth	HBPC	Total Cost
FY11	*$1,498,309.36*	$2,515,761.60	$4,014,070.96
FY12	$3,889,540.16	$6,530,793.98	$10,420,334.14
FY13	$4,207,361.76	$7,064,401.82	$11,271,763.58
FY14	$4,550,010.16	$7,639,691.18	$12,189,701.34
FY15	$4,922,101.80	$8,262,808.70	$13,184,910.50
5-Year Totals	$19,067,323.24	$32,013,457.28	$51,080,780.52

Estimated Telehealth Costs				
FY	Projected Caregiver Caseload (40%)	Avg Cost Per Caregiver Per Month	Avg Cost Per Caregiver Per Year ($2,500)	Total Telehealth Cost
FY11	1,438	$208.33	$2,499.96	*$1,498,309.36*
FY12	1,496	$216.66	$2,599.96	$3,889,540.16
FY13	1,556	$225.33	$2,703.96	$4,207,361.76
FY14	1,618	$234.34	$2,812.12	$4,550,010.16
FY15	1,683	$243.72	$2,924.60	$4,922,101.80
5-Year Totals				$19,067,323.24

Estimated HBPC Costs				
FY	Projected Caregiver Caseload (60%)	Cost Per Caregiver/ Per Visit	# of Visits per Year	Total HBPC Cost
FY11	2,158	$583.00	4	$2,515,761.60
FY12	2,244	$606.32	4	$6,530,793.98
FY13	2,334	$630.57	4	$7,064,401.82
FY14	2,427	$655.79	4	$7,639,691.18
FY15	2,524	$682.02	4	$8,262,808.70
5-Year Totals				$32,013,457.28

Caregiver Support Line

The toll-free National Caregiver Support Line is staffed by licensed clinical social workers and will be available to answer questions from Caregivers, veterans, and members of the public as well as directing calls to their local Caregiver Support Coordinator. The costs for annual salary plus benefits include a 10 percent adjustment for night/weekend differentials, since the support line is staffed from Monday through Friday 8 a.m. to 11 p.m. and Saturday 10:30 a.m. to 6 p.m. Eastern Standard Time. The estimated costs for the facilities contract include: Human Resources costs, housekeeping, furniture, IT equipment, supplies, and other miscellaneous support expenses. The total costs projections will be based upon a Memorandum of Understanding between the VA Facility and the Caregiver Support Program. VA assumes $520,156.33 for initial start-up costs in FY11, with maintenance costs of $148,375.20 in FY12, adjusted for inflation at 4 percent for all out years.

Caregiver Support Line										
FTEE	1	2	16	4	1	1	1			
Title	Support Line Manager	Support Line Supervisors	Support Line Social Workers	Support Line Health Techs	Support Line Admin Officer	Support Line Program Asst.	Program Coordinator			
Grade	GS-14/5	GS-12/5	GS-11/5	GS-6-7/5	GS-9-11/5	GS-6/5	GS-13/5			
Annual Salary + benefits	$153,413	$109,176	$91,085	$61,550	$91,085	$55,384	$129,825	Total FTE Cost	Facilities Contract Costs	Total Costs
FY11	$63,922.25	$90,980.17	$607,236.00	$102,582.67	$37,952.25	$23,076.67	$54,093.67	$979,843.67	$520,156.33	$1,500,000.00
FY12	$153,413.40	$218,352.40	$1,457,366.40	$246,198.40	$91,085.40	$55,384.00	$129,824.80	$2,351,624.80	$148,375.20	$2,500,000.00
FY13	$159,550.00	$227,086.00	$1,515,661.06	$256,046.34	$94,728.82	$57,599.36	$135,017.79	$2,445,689.37	$154,310.21	$2,599,999.58
FY14	$165,932.00	$236,169.00	$1,576,287.50	$266,288.19	$98,517.97	$59,903.33	$140,418.50	$2,543,516.49	$160,482.62	$2,703,999.11
FY15	$172,569.00	$245,616.00	$1,639,339.00	$276,939.72	$102,458.69	$62,299.46	$146,035.24	$2,645,257.11	$166,901.92	$2,812,159.03
5-Year Cost	$715,386.65	$1,018,203.57	$6,795,889.96	$1,148,055.32	$424,743.13	$258,262.82	$605,390.00	$10,965,931.44	$1,150,226.28	$12,116,157.72

Study and Survey

Estimated costs were based on MOU with a VA facility and the required resources to conduct a caregiver study/survey, which will evaluate the program and identify unmet caregiver needs.

Study and Survey Cost	
FY	Total Cost
FY11	$245,959.20
FY12	$238,359.20
FY13	$225,859.20
FY14	$0.00
FY15	$0.00
5 Year Total	$710,177.60

Staffing		YEAR 1	YEAR 2	YEAR 3
Director (25% FTE)		$30,138.00	$30,138.00	$30,138.00
Health Services Researcher & Clinician (Content Expert) (5%FTE)		$6,640.00	$6,640.00	$6,640.00
Epidemiologist (25% FTE)		$37,705.00	$37,705.00	$37,705.00
Statistician (15% FTE)		$19,050.00	$19,050.00	$19,050.00
Statistician (MA level) (25% FTE Years 1 & 3 & 50% Year 2)		$12,500.00	$25,000.00	$12,500.00
Health Economist(15% FTE)		$19,242.20	$19,242.20	$19,242.20
Health Services Data Systems Expert (10%)		$13,280.00	$13,280.00	$13,280.00
Coordinator TBN (100% FTE)		$57,404.00	$57,404.00	$57,404.00
Total Cost		$195,959.20	$208,459.20	$195,959.20
OTHER COSTS	SUBCONTRACT	YEAR 1	YEAR 2	YEAR 3
Systematic Review of the Literature (pre-survey)	VA Evidence Synthesis Center (to be completed Year 1)	$50,000.00		
Survey Administration (see attached)	Subcontract with Survey Research Center (to be completed Year 2)		$29,900.00	$29,900.00
	Totals:	$245,959.20	$238,359.20	$225,859.20

Outreach and Additional Support Programs

Estimated costs for the additional support programs below are $3,811,561.00 for FY11 and $15,010,932.00 over a 5 year period. Cost estimates for outreach and support programs are based on price estimates provided by leading national non-profit and for-profit firms.

Estimated Total Outreach and Additional Support Program Costs						
Description of Outreach Services and Support Programs	FY11	FY12	FY13	FY14	FY15	5-Year Totals
Resources for Enhancing All Caregivers Health	$676,799.00	$300,871.00	$312,906.00	$325,422.00	$338,439.00	$1,954,437.00
Caregiver Notebooks, Training Manuals	$410,658.00	$37,084.00	$38,568.00	$40,110.00	$41,715.00	$568,135.00
Wellness/Prevention Education and Training	$135,959.00	$141,398.00	$147,053.00	$119,910.00	$124,706.00	$669,026.00
Transitional Assistance Program for Caregivers	$455,041.00	$473,243.00	$319,116.00	$331,881.00	$345,156.00	$1,924,437.00
Estimated Educational Outreach	$623,810.00	$648,762.00	$674,713.00	$701,701.00	$729,769.00	$3,378,755.00
Website and Training Cost	$924,294.00	$500,000.00	$500,000.00	$500,000.00	$500,000.00	$2,924,294.00
Caregiver Development	$585,000.00	$572,000.00	$780,000.00	$811,200.00	$843,648.00	$3,591,848.00
5-Year Totals	$3,811,561.00	$2,673,358.00	$2,772,356.00	$2,830,224.00	$2,923,433.00	$15,010,932.00

Identification of Duplicative, Overlapping, or Conflicting Federal Rules

There are no duplicative, overlapping, or conflicting Federal rules identified with this regulatory action.

Accounting Statement and Table

As required by OMB Circular A–4, in the table below, VA has prepared an accounting statement showing the classification of transfers, benefits and costs associated with the provisions of this rulemaking. Some portions of the analysis rely upon assumptions that may change, due to the unpredictability of catastrophic and severe injuries resulting from military service and combat during war. The analysis for this rulemaking sets forth the basic assumptions, methods, and data underlying the analysis and discusses the uncertainties associated with the estimates. As VA develops claims data and becomes more cognizant of the cost of caregiver benefits, VA will make appropriate adjustments in the amount of funds requested for future fiscal years.

Category		Transfers								
Federal Annualized Monetized Transfers	Year Dollar									
	2011	FY2011	FY2012	FY2013	FY2014	FY2015	Present Value		Annualized	
							3%	7%	3%	7%
		$66.0	$149.0	$159.0	$171.0	$184.0	$660.7	$583.3	$140.1	$132.9
Category		**Benefits**								
Qualitative benefits		To benefit eligible veterans whose personal care service needs could be substantially satisfied with the provision of such services by a family member (as defined in the law); and to provide eligible veterans with additional options so that they can choose the setting for the receipt of personal care services that best suits their needs.								
Category		**Costs (Example PRA, any costs to beneficary)**								
Costs		The interim final rule at § 71.25(a) contains application provisions for individuals who wish to be considered for designation by VA as Primary or Secondary Family Caregivers for certain veterans. Description of likely respondents: veterans' family members. Estimated number of respondents per year: 5,000, estimated frequency of responses per year: 1, estimated total annual reporting and recordkeeping burden: 1,250 hours and estimated annual burden per collection: 15 minutes.								

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, 64.015, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on April 28, 2011, for publication.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 71

Administrative practice and procedure, Caregivers program, Claims, Health care, Health facilities, Health professions, Mental health programs, Travel and transportation expenses, Veterans.

Dated: May 2, 2011.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR Chapter I as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 510, and as noted in specific sections.

§ 17.38 [Amended]

■ 2. Section 17.38(a)(1)(vii) is amended by removing "treatment." and adding, in its place, "treatment as authorized under 38 CFR 71.50."

■ 3. Part 71 is added to read as follows:

PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS

Sec.
71.10 Purpose and scope.
71.15 Definitions.
71.20 Eligible veterans and servicemembers.
71.25 Approval and Designation of Primary and Secondary Family Caregivers.
71.30 General Caregivers.
71.40 Caregiver benefits.
71.45 Revocation.
71.50 Provision of certain counseling, training, and mental health services to certain family members of veterans.

(Authority: 38 U.S.C. 501, 1720G, and as noted in specific sections)

§ 71.10 Purpose and scope.

(a) *Purpose.* This part implements VA's caregiver benefits program, which, among other things, provides certain benefits to eligible veterans who have incurred or aggravated serious injuries during military service, and to their caregivers.

(b) *Scope.* This part regulates the provision of caregiver benefits authorized by 38 U.S.C. 1720G. Persons eligible for caregiver benefits may be eligible for other VA benefits based on other laws or other parts of title 38, CFR.

(Authority: 38 U.S.C. 501, 1720G)

§ 71.15 Definitions.

For the purposes of this part:

Eligible veteran means a veteran, or a servicemember, who is found eligible for a Family Caregiver under § 71.20.

Family Caregiver means both a Primary and Secondary Family Caregiver.

General Caregiver means an individual who meets the requirements of § 71.30.

Inability to perform an activity of daily living (ADL) means any one of the following:

(1) Inability to dress or undress oneself;

(2) Inability to bathe;

(3) Inability to groom oneself in order to keep oneself clean and presentable;

(4) Frequent need of adjustment of any special prosthetic or orthopedic appliance that, by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);

(5) Inability to toilet or attend to toileting without assistance;

(6) Inability to feed oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; or

(7) Difficulty with mobility (walking, going up stairs, transferring from bed to chair, etc.).

In the best interest means, for the purpose of determining whether it is in the best interest of the eligible veteran to participate in the Family Caregiver program under 38 U.S.C. 1720G(a), a clinical determination that participation in such program is likely to be beneficial to the eligible veteran. Such determination will include consideration, by a clinician, of whether participation in the program significantly enhances the eligible veteran's ability to live safely in a home setting, supports the eligible veteran's potential progress in rehabilitation, if such potential exists, and creates an environment that supports the health and well-being of the eligible veteran.

Need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury means requiring supervision or assistance for any of the following reasons:

(1) Seizures (blackouts or lapses in mental awareness, etc.);

(2) Difficulty with planning and organizing (such as the ability to adhere to medication regimen);

(3) Safety risks (wandering outside the home, danger of falling, using electrical appliances, etc.);

(4) Difficulty with sleep regulation;

(5) Delusions or hallucinations;

(6) Difficulty with recent memory; and

(7) Self regulation (being able to moderate moods, agitation or aggression, etc.).

Personal care services means care or assistance of another person necessary in order to support the eligible veteran's health and well-being, and perform personal functions required in everyday living ensuring the eligible veteran remains safe from hazards or dangers incident to his or her daily environment.

Primary care team means a group of medical professionals who care for a patient and who are selected based on the clinical needs of the patient. The team must include a primary care provider who coordinates the care, and may include clinical specialists (e.g., a neurologist, psychiatrist, etc.), resident physicians, nurses, physicians' assistants, nurse practitioners, occupational or rehabilitation therapists, social workers, etc., as indicated by the needs of the particular veteran.

Primary Family Caregiver means an individual who meets the requirements of § 71.25.

Secondary Family Caregiver means an individual who meets the requirements of § 71.25.

Serious injury means any injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, that renders the veteran or servicemember in need of personal care services.

Undergoing medical discharge means that the servicemember has been found unfit for duty due to a medical condition by their Service's Physical Evaluation Board, and a date of medical discharge has been issued.

VA refers to the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 1720G)

§ 71.20 Eligible veterans and servicemembers.

A veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if she or he meets all of the following requirements:

(a) The individual is either:

(1) A veteran; or

(2) A member of the Armed Forces undergoing a medical discharge from the Armed Forces.

(b) The individual has a serious injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001.

(c) Such serious injury renders the individual in need of personal care services for a minimum of 6 continuous months (based on a clinical determination), based on any one of the following clinical criteria:

(1) An inability to perform an activity of daily living.

(2) A need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, including traumatic brain injury.

(3) Psychological trauma or a mental disorder that has been scored, by a licensed mental health professional, with Global Assessment of Functioning (GAF) test scores of 30 or less, continuously during the 90-day period immediately preceding the date on which VA initially received the caregiver application. VA will consider a GAF score to be "continuous" if there are at least two scores during the 90-day period (one that shows a GAF score of 30 or less at the beginning of the 90-day period and one that shows a GAF score of 30 or less at the end of the 90-day period) and there are no intervening GAF scores of more than 30.

(4) The veteran is service connected for a serious injury that was incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, and has been rated 100 percent disabled for that serious injury, and has been awarded special monthly compensation that includes an aid and attendance allowance.

(d) A clinical determination has been made that it is in the best interest of the individual to participate in the program.

(e) Personal care services that would be provided by the Family Caregiver will not be simultaneously and regularly provided by or through another individual or entity.

(f) The individual agrees to receive care at home after VA designates a Family Caregiver.

(g) The individual agrees to receive ongoing care from a primary care team after VA designates a Family Caregiver.

(Authority: 38 U.S.C. 501, 1720G(a)(2))

§ 71.25 Approval and Designation of Primary and Secondary Family Caregivers.

(a) *Application requirement.* (1) Individuals who wish to be considered for designation by VA as Primary or Secondary Family Caregivers must complete and sign a joint application, along with the veteran or

servicemember. Individuals interested in serving as Family Caregivers must be identified as such on the joint application, and no more than three individuals may serve as Family Caregivers at one time for an eligible veteran, with no more than one serving as the Primary Family Caregiver.

(2) Upon receiving such application, VA will perform the clinical evaluations required by this section; determine whether the application should be granted; and, if so, whether each applicant should be designated as identified in the application.

(3) An application may be put on hold for no more than 90 days, from the date the application was received, for a veteran or servicemember seeking to qualify through a GAF test score of 30 or less but who does not have a "continuous" GAF score available.

(b) *Eligibility to serve as Primary or Secondary Family Caregiver.* In order to serve as a Primary or Secondary Family Caregiver, the applicant must meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Be either:

(i) The eligible veteran's spouse, son, daughter, parent, step-family member, or extended family member; or

(ii) Someone who lives with the eligible veteran full-time or will do so if designated as a Family Caregiver.

(3) There must be no determination by VA of abuse or neglect of the eligible veteran by the applicant.

(4) Meet the requirements of paragraph (c) of this section, and any other applicable requirements of this part.

(c) *Assessment, education, and training of applicants.* Before VA approves an applicant to serve as a Primary or Secondary Family Caregiver, the applicant must:

(1) Be initially assessed by a VA primary care team as being able to complete caregiver education and training. Such assessment will consider any relevant information specific to the needs of the eligible veteran, as well as:

(i) Whether the applicant can communicate and understand details of the treatment plan and any specific instructions related to the care of the eligible veteran (accommodation for language or hearing impairment will be made as appropriate); and

(ii) Whether the applicant will be capable of following without supervision a treatment plan listing the specific care needs of the eligible veteran.

(2) Complete caregiver training and demonstrate the ability to carry out the specific personal care services, core competencies, and other additional care requirements prescribed by the eligible veteran's primary care team.

(d) *Caregiver education and training.* For the purposes of this section, caregiver training is a program of education and training designed by and provided through VA that consists of issues that are generally applicable to Family Caregivers, as well as issues specific to the needs of the eligible veteran. During this program of education and training, family members are eligible for beneficiary travel under 38 CFR part 70. Respite care will be provided during the period of initial caregiver instruction, preparation, and training if the participation would interfere with the provision of personal care services to the eligible veteran. Caregiver training will cover, at a minimum, education and training concerning the following core competencies:

(1) Medication management;

(2) Vital signs and pain control;

(3) Infection control;

(4) Nutrition;

(5) Functional activities;

(6) Activities of daily living;

(7) Communication and cognition skills;

(8) Behavior management skills;

(9) Skin care; and

(10) Caregiver self-care.

(e) *Initial home-care assessment.* No later than 10 business days after completion of Caregiver education and training, or should an eligible veteran be hospitalized during this process, no later than 10 days from the date the eligible veteran returns home, a VA clinician or a clinical team will visit the eligible veteran's home and assess the Caregiver's completion of training and competence to provide personal care services at the eligible veteran's home, to measure the eligible veteran's well being.

(f) *Approval and designation.* If the eligible veteran and at least one applicant meet the requirements of this part, VA will approve the application and designate Primary and/or Secondary Family Caregivers, as appropriate. This approval and designation will be a clinical determination authorized by the eligible veteran's primary care team. Approval and designation is conditioned on the eligible veteran and designated Family Caregivers remaining eligible for caregiver benefits under this part.

(Authority: 38 U.S.C. 501, 1720G)

§ 71.30 General Caregivers.

(a) A General Caregiver is a person who:

(1) Is not a Primary or Secondary Family Caregiver; and

(2) Provides personal care services to a covered veteran under this section, even if the individual does not reside with the veteran.

(b) A covered veteran, for purposes of this section, is a veteran who is enrolled in the VA health care system and needs personal care services because the veteran either:

(1) Is unable to perform an activity of daily living; or

(2) Needs supervision or protection based on symptoms or residuals of neurological care or other impairment or injury.

(c) No application or clinical evaluation is required to obtain benefits as a General Caregiver. Veterans or General Caregivers may request any of the benefits listed in § 71.40(a) as needed, from the appropriate VA clinicians and staff at their local VA facilities.

(d) A veteran is not required to meet the eligibility requirements in § 71.20 to be considered a covered veteran.

(Authority: 38 U.S.C. 501, 1720G(b)(1), (2))

§ 71.40 Caregiver benefits.

(a) *General Caregiver benefits.* VA will provide to General Caregivers all of the benefits listed in paragraphs (a)(1) through (4) of this section.

(1) Continued instruction, preparation, training, and technical support. Caregivers will have access to each of the following services, which may be provided through:

(i) Online and in-person educational sessions.

(ii) Use of telehealth and other available technologies.

(iii) Teaching techniques, strategies, and skills for caring for the eligible or covered veteran.

(2) Information concerning the supportive services available to caregivers under paragraph (a) of this section and other public, private, and nonprofit agencies that offer support to caregivers.

(3) Counseling and other services, as described under § 71.50.

(4) Respite care to eligible and covered veterans in support of the caregiver that is medically and age appropriate for the eligible or covered veteran (including 24-hour per day in-home respite care).

(b) *Secondary Family Caregiver benefits.* VA will provide to Secondary Family Caregivers all of the benefits listed in paragraphs (b)(1) through (6) of this section.

(1) General Caregiver benefits described in paragraph (a) of this section, except that respite care under paragraph (a)(4) is limited to veterans

enrolled in the VA health care system. Respite care may be provided during a Family Caregiver's training, as described under § 71.25(d).

(2) The primary care team will maintain the eligible veteran's treatment plan and collaborate with clinical staff making home visits to monitor the eligible veteran's well-being, adequacy of care and supervision being provided. This monitoring will occur no less often than every 90 days, unless otherwise clinically indicated, and will include an evaluation of the overall health and well-being of the eligible veteran.

(3) Continuing instruction, preparation, and training to maintain or improve the personal care services provided to the eligible veteran.

(4) Ongoing technical support, consisting of information and assistance to address, in a timely manner, the routine, emergency, and specialized needs of the Caregiver in providing personal care services to the eligible veteran.

(5) Counseling, which for the purposes of paragraph (b) of this section includes individual and group therapy, individual counseling, and peer support groups. Counseling does not include the provision of medication, inpatient psychiatric care, or other medical procedures related to mental health treatment.

(6) Primary and Secondary Family Caregivers are to be considered eligible for beneficiary travel under 38 CFR part 70.

(c) *Primary Family Caregiver Benefits.* VA will provide to Primary Family Caregivers all of the benefits listed in paragraphs (c)(1) through (4) of this section.

(1) Secondary Family Caregiver benefits, as listed under paragraph (b) of this section.

(2) Respite care includes 24-hour-per day care of the eligible veteran commensurate with the care provided by the Family Caregiver to permit extended respite. Respite care will be available for at least 30 days per year and may exceed 30 days per year if clinically appropriate and if requested by the Primary Family Caregiver.

(3) Primary Family Caregivers are to be considered eligible for enrollment in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), unless they are entitled to care or services under a health-plan contract (as defined in 38 U.S.C. 1725(f)).

(4) Primary Family Caregivers will receive a monthly stipend for each prior month's participation as a Primary Family Caregiver. To determine the stipend amount, VA first will determine the eligible veteran's level of dependency based on the degree to which the eligible veteran is unable to perform one or more activities of daily living (ADLs), or the degree to which the eligible veteran is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury, as follows:

(i) VA will clinically rate the eligible veteran's inability to perform each of the seven ADLs listed in the definition of that term in § 71.15.

(ii) VA will clinically rate the eligible veteran's need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury using the seven impairments listed in the definition of that term in § 71.15.

(iii) Clinical ratings under paragraphs (c)(4)(i) and (ii) of this section will be scored as follows: VA will assign a zero if the eligible veteran completes the task/activity without assistance; one if the eligible veteran requires minimal assistance (can complete 75 percent or more of the task without supervision or assistance); two if the eligible veteran requires moderate assistance (can complete 50 percent to 74 percent of the task without assistance); three if the eligible veteran requires maximal assistance (can complete 25 percent to 49 percent of the task without assistance); or four if the eligible veteran requires total assistance (can complete less than 25 percent of the task or is unable to do the task without assistance).

(iv) If the sum of all of the ratings assigned is:

(A) 21 or higher, then the eligible veteran is presumed to require 40 hours per week of Caregiver assistance.

(B) 13 to 20, then the eligible veteran is presumed to require 25 hours per week of Caregiver assistance.

(C) 1 to 12, then the eligible veteran is presumed to require 10 hours per week of Caregiver assistance.

(v) The monthly stipend payment will be calculated by multiplying the Bureau of Labor Statistics hourly wage for home health aides in the geographic area by the Consumer Price Index and then multiplying that total by the number of weekly hours of Caregiver assistance required under paragraph (c)(4)(iv) of this section. This product will then be multiplied by 4.35.

(vi) Stipend payments for the first month will be adjusted based on the number of days remaining in the month. Stipend payments will also be prorated where a Primary Family Caregiver's status is revoked and/or a new Primary Family Caregiver is designated prior to the end of a month. *See* § 71.45, Revocation.

(vii) Nothing in this section shall be construed to create an employment relationship between the Secretary and an individual in receipt of assistance or support under this part.

(d) *Effective date and payment date of benefits*—(1) *Effective date.* Caregiver benefits are effective as of the date that the signed joint application is received by VA or the date on which the eligible veteran begins receiving care at home, whichever is later. However, benefits will not be provided until the individual is designated as a Family Caregiver. Individuals who apply to be Family Caregivers must complete all necessary education, instruction, and training so that VA can complete the designation process no later than 30 days after the date that the joint application was submitted or, if the application has been placed on hold for a GAF assessment, 30 days after the hold has been lifted, or a new joint application will be required to serve as the date of application for payment purposes.

(2) *Payment date.* The stipend is paid monthly for personal care services that the Primary Family Caregiver provided in the prior month. Benefits due prior to such designation, based on the date of application, will be paid retroactive to the date that the joint application is received by VA or the date on which the eligible veteran begins receiving care at home, whichever is later.

(Authority: 38 U.S.C. 111(e), 501, 1720B, 1720G, 1782)

§ 71.45 Revocation.

(a) *Revocation by the Family Caregiver.* The Family Caregiver may request a revocation of caregiver status in writing and provide the present or future date of revocation. All caregiver benefits will continue to be provided to the Family Caregiver until the date of revocation. VA will, if requested and applicable, assist the Family Caregiver in transitioning to alternative health care coverage and with mental health services.

(b) *Revocation by the veteran, servicemember, or surrogate.* The veteran, servicemember, or the eligible veteran's surrogate may initiate revocation of a Primary or Secondary Family Caregiver.

(1) The revocation request must be in writing and must express an intent to remove the Family Caregiver.

(2) VA will notify the Family Caregiver verbally and in writing of the request for removal.

(3) VA will review the request for revocation and determine whether there

is a possibility for remediation. This review will take no longer than 30 days. During such review, the veteran, servicemember, or surrogate may rescind the request for revocation. If VA suspects that the safety of the eligible veteran is at risk, then VA may suspend the caregiver's responsibilities, and remove the eligible veteran from the home if requested by the eligible veteran, prior to making a formal revocation.

(4) Caregiver benefits will continue for 30 days after the date of revocation, and VA will, if requested by the Family Caregiver, assist the individual with transitioning to alternative health care coverage and with mental health services, unless one of the following is true, in which case benefit will terminate immediately:

(i) VA determines that the Family Caregiver committed fraud or abuse or neglect of the eligible veteran.

(ii) If the revoked individual was the Primary Family Caregiver, and another Primary Family Caregiver is assigned within 30 days after the date of revocation.

(iii) If another individual is assigned to be a Family Caregiver within 30 days after the date of revocation, such that there are three Family Caregivers assigned to the eligible veteran.

(iv) The revoked individual had been living with the eligible veteran and moves out, or the revoked individual abandons or terminates his or her relationship with the eligible veteran.

(c) *Revocation by VA.* VA may immediately revoke the designation of a Family Caregiver if the eligible veteran or individual designated as a Family Caregiver no longer meets the requirements of this part, or if VA makes the clinical determination that having the Family Caregiver is no longer in the best interest of the eligible veteran. VA will, if requested by the Family Caregiver, assist him or her in transitioning to alternative health care coverage and with mental health services. If revocation is due to improvement in the eligible veteran's condition, death, or permanent institutionalization, the Family Caregiver will continue to receive caregiver benefits for 90 days, unless any of the conditions described in paragraph (b)(4)(i) through (iv) of this section apply, in which case benefits will terminate immediately. In addition, bereavement counseling may be available under 38 U.S.C. 1783. If VA suspects that the safety of the eligible veteran is at risk, then VA may suspend the caregiver's responsibilities, and remove the eligible veteran from the home if requested by the eligible veteran or take other appropriate action to ensure the welfare of the eligible veteran, prior to making a formal revocation.

(Authority: 38 U.S.C. 501, 1720G)

§ 71.50 Provision of certain counseling, training, and mental health services to certain family members of veterans.

(a) *Benefits provided under this section.* VA will provide consultation, professional counseling, marriage and family counseling, training, and mental health services to a family member when necessary in connection with the treatment of a disability for which the veteran is receiving treatment through VA. For the purposes of this section, provision of a benefit is "in connection with the treatment" of a veteran's disability if, in the clinical judgment of a VA medical professional who is providing treatment to the veteran, the provision of the benefit to the family member would further the objectives of the veteran's medical treatment plan. The listed benefits provided under this section are to be provided within the following guidelines:

(1) All benefits will consist of psychotherapy, counseling, training, or education; VA will not provide prescriptions or medications to family members. VA also will not provide inpatient services under this section.

(2) This section does not authorize the provision of clinical evaluation or treatment that is not necessary in connection with the veteran's treatment or that involves treatment other than consultation, professional counseling, marriage and family counseling, training, and mental health services.

(3) Marriage and family counseling includes services to help the veteran address mental health issues, manage physical health problems, and strengthen environmental supports as specified in the veteran's treatment plan. It also includes interventions to reduce the negative impact for the veteran of mental illnesses or other medical conditions in family members.

(b) *Definition of family member.* For the purpose of this section, which provides certain benefits and services to eligible family members, a family member is:

(1) A person related to the veteran by birth or marriage who lives with the veteran or has regular personal contact with the veteran;

(2) The veteran's legal guardian or surrogate;

(3) A Primary or Secondary Family Caregiver or a General Caregiver; or

(4) The individual in whose household the veteran has certified an intention to live.

(c) *Family members or caregivers who need treatment not related to the treatment of the veteran.* Where a VA clinician believes that medical care or services are needed for a family member but cannot provide benefits under this section because such need is not necessary in connection with the treatment of the veteran, VA may refer such family member to an appropriate provider in the community, so that the family member may obtain care through other health coverage including care to which a Primary or Secondary Family Caregiver may be eligible under this part.

(Authority: 38 U.S.C. 1720G, 1782)

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