reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(12) of this section, if the paper or request for continued examination is accompanied by a statement that each item of information contained in the information disclosure statement:

(i) Was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement; or

(ii) Is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

* * * * *

Dated: December 17, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2015–00061 Filed 1–8–15; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 71

RIN 2900–AN94

Caregivers Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts, with changes, the interim final rule concerning VA's Program of Comprehensive Assistance for Family Caregivers. VA administers this program to provide certain medical, travel, training, and financial benefits to caregivers of certain veterans and servicemembers who were seriously injured during service on or after September 11, 2001. Also addressed in this rulemaking is the Program of General Caregiver Support Services that provides support services to caregivers of veterans from all eras who are enrolled in the VA health care system. Specifically, changes in this final rule include a requirement that Veterans be notified in writing should a Family Caregiver request revocation (to no longer be a Family Caregiver), an extension of the application timeframe from 30 days to 45 days for a Family Caregiver, and a change in the stipend calculation to ensure that Primary Family Caregivers do not experience unexpected decreases in stipend amounts from year to year.

DATES: *Effective Date:* This rule is effective on January 9, 2015.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Final Rule

This final rule continues 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. VA has been administering the benefits program under this law continuously since May 5, 2011, under an interim final rule published in the **Federal Register** (76 FR 26148) as well as part 71 of title 38, Code of Federal Regulations (CFR). The purpose of the benefits program under this law 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. 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).

II. Major Provisions

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).

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.

III. Costs and Benefits

Summary of Costs of the Caregiver Program for FY2015 Through FY2017

In developing the Regulatory Impact Analysis (RIA) for this final rule, VA did consider different alternative approaches on how best to regulate the statutory provisions of the law. More specifically, VA changed the formula and methodology to compute the caregiver stipend rate from the interim final rule. Individuals designated as the eligible Veteran's primary family caregiver are eligible to receive a monthly stipend from VA as an

acknowledgement of the sacrifices they make to care for seriously injured eligible Veterans. The monthly stipend is not intended to replace career earnings or be construed to create an employment relationship between VA and caregivers. Family caregivers report that the stipend is the cornerstone of the Program of Comprehensive Assistance for Family Caregivers. The stipend helps to alleviate financial distress experienced by many primary family caregivers.

VA never intended that Primary Family Caregivers should be subject to decreased stipend payments from year to year. Therefore, upon drafting the final rule and final RIA, VA changed the stipend calculation to use the most recent data from the BLS on hourly wage rates for home health aides as well as the most recent CPI–U, unless using this most recent data for a geographic area would result in an overall BLS and CPI–U combined rate that is lower than that applied in the previous year for the same geographic area, in which case the BLS hourly wage rate and CPI–U that was applied in the previous year for that geographic area will be utilized to calculate the Primary Family Caregiver stipend. This revision ensures that Primary Family Caregivers will not unexpectedly lose monetary assistance upon which they had come to rely. VA started applying the new stipend calculation on January 1, 2013 under the auspices of the interim final rule being finalized with this rulemaking.

The total costs associated with this final rulemaking, including the stipend, are estimated to be $477.0 million in FY2015 and $1.67 billion over a three year period. Estimated costs and revised projections are based on actual caseloads, actual obligations and historical trends/data since implementation of the Caregiver Program (July 2011) and through FY2014. For more specific costing information, VA's full RIA can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the final rulemaking document is published. Additionally, a copy of this final rulemaking and the RIA are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

On May 5, 2011, VA published in the **Federal Register** (76 FR 26148) an interim final rule to implement title I of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the Caregivers Act), Public Law 111–163, codified at 38 U.S.C. 1720G and in other sections of title 38, U.S.C. Interested persons were invited to submit comments on or before July 5, 2011, and we received 12 comments. All of the issues raised by the commenters that opposed at least one portion of the rule can be grouped together by similar topic, and we have organized our discussion of the comments accordingly. Based on the rationale set forth in the interim final rule and in this document, VA is adopting the provisions of the interim final rule, including the Part 17 amendment, as a final rule except as amended herein.

Distinguishing Levels of Assistance Provided, and To Whom, Under This Rule

To ensure that the varying levels of assistance and accompanying eligibility criteria under the rule are appropriately distinguished, we amend § 71.10(a) to refer to the ''Program of Comprehensive Assistance for Family Caregivers'' where eligibility and assistance of both Primary and Secondary Family Caregivers are concerned, and to refer to the ''Program of General Caregiver Support Services'' where eligibility and support services for General Caregivers are concerned. This is consistent with the manner in which these two programs are distinguished in 38 U.S.C. 1720G(a) and (b). We similarly amend § 71.10(b) to refer to ''Family Caregiver benefits'' and ''General Caregiver benefits'' authorized by 38 U.S.C. 1720G, and amend the definition of ''in the best interest'' in § 71.15 to refer to the ''Program of Comprehensive Assistance for Family Caregivers,'' instead of to the ''Family Caregiver program.'' We also revise the rule in multiple places to refer to ''caregiver'' as opposed to ''Caregiver'' for consistency in capitalization throughout Part 71. These amendments do not create any substantive changes in the application of any of the rule's provisions. Throughout this rulemaking, we refer to ''Family Caregivers'' as those individuals who may be provided ''Family Caregiver benefits'' through the ''Program of Comprehensive Assistance for Family Caregivers,'' and refer to ''General Caregivers'' as those individuals who may be provided ''General Caregiver benefits'' through the ''Program of General Caregiver Support Services.''

Additionally, we clarify that ''eligible veteran'' by definition under § 71.15 includes both a veteran and a servicemember who meet the eligibility criteria in § 71.20, and have amended the regulations to ensure that the phrase ''eligible veteran'' is used to refer to both veterans and servicemembers in any context in which eligibility under § 71.20 has been established, and that the terms ''veterans'' and ''servicemembers'' are used separately in any context in which eligibility under § 71.20 has not been established. Similarly, in the definition of ''primary care team'' we amend the reference to ''veteran'' to instead refer to ''patient'' for consistency throughout the definition. These amendments do not create any substantive changes in the application of any of the rule's provisions, and are made to §§ 71.15, and 71.45(b) and (b)(3).

Expanding Eligibility to Veterans Who Served Before September 11, 2001

Multiple commenters argued that eligibility for Family Caregiver benefits should be extended to veterans who served before September 11, 2001 (''pre-9/11 veterans''). The commenters asserted that pre- and post-9/11 veterans may require the same levels of personal care based on equally serious injuries, and that dates of service should therefore not dictate the level of benefits and services available. The eligibility distinction between pre-and post-9/11 veterans was mandated by Congress in section 1720G, and we lack authority to make the change suggested by these comments. See 38 U.S.C. 1720G(a)(2)(B).

Commenters emphasized that VA should comply with the Caregivers Act's reporting requirements on the feasibility and advisability of expanding Family Caregiver benefits to caregivers of pre-9/11 veterans. See Pub. L. 111–163, title I, section 101(d)(1). VA has complied with these reporting requirements, and on September 4, 2013, transmitted the Secretary's recommendations to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives. We note that any pre-9/11 veterans who are enrolled in the VA health care system, and those veterans' caregivers, are eligible to receive benefits and services that are available for General Caregivers, pursuant to §§ 71.30 and 71.40(a). General Caregiver benefits include: instruction, preparation, training, and technical support under § 71.40(a)(1); counseling and other services described under § 71.50; and respite care for a qualified veteran under § 71.40(a)(4). No application or clinical evaluation is required to obtain General Caregiver benefits. See 38 CFR 71.30(c).

Causal Link Between a Serious Injury and the Need for Personal Care Services

Family Caregiver eligibility is predicated, under § 71.20(c), on the veteran or servicemember having a ''serious injury [incurred or aggravated in the line of duty that] renders the individual in need of personal care

services.'' The definition of ''serious injury'' in § 71.15 similarly requires that the injury render the individual in need of personal care services. Commenters argued that this causal link is too restrictive because they assert that it excludes from eligibility an individual who needs personal care services because of an in-service injury that worsens after separation from service, or because of a condition that is secondary to a serious injury. To address these comments, we will discuss and clarify the meaning and effect of § 71.20(c); however, no changes to the rule are required.

Generally, we clarify that under § 71.20(c) a veteran or servicemember could qualify for Family Caregiver benefits if the veteran or servicemember incurred or aggravated a serious injury in the line of duty, even if the need for a Family Caregiver developed due to a worsening of that serious injury after separation from service, as long as all other § 71.20 criteria are met. Section 71.20 requires that a serious injury ''renders the individual in need of personal care services,'' but does not require that the injury must have rendered the veteran or servicemember in need of personal care services at the time of discharge. Therefore, VA does not and will not apply the rule in such a restrictive manner. However, we do not believe the definition of ''serious injury'' may be expanded to include injuries that are secondary to a serious injury incurred or aggravated in the line of duty, unless the need for personal care services caused by the secondary injury is proximately due to or the result of the serious injury incurred or aggravated in the line of duty. In the following discussion, we respond to specific examples provided by commenters concerning serious injuries incurred or aggravated in the line of duty that worsen or create a worsening of a condition after discharge from service, which the commenters believed should be considered qualifying serious injuries. We additionally respond to specific examples of injuries that are secondary to the serious injury incurred or aggravated in the line of duty, which commenters also believed should be considered qualifying serious injuries.

Commenters provided as examples variations of a scenario concerning an individual who sustained fragment wounds in the line of duty that did not create the need for personal care services on or before the date that the individual was discharged from active military service. After separation from service, however, the individual began to experience worsening of a condition, as a result of remaining imbedded fragments, that created the need for personal care services.

In one commenter's scenario, for example, the remaining imbedded fragments began to leach toxins inside the individual's body, and those toxins then caused a worsening of condition that created the need for personal care services. Such an individual would likely meet the criteria in § 71.20(c) because the fragment injury was a serious injury incurred in the line of duty, and this same serious injury created a worsening of the condition to render the individual in need of personal care services. As clarified above, this scenario fits within the criteria of § 71.20(c) because the need for personal care services may have developed post-discharge, but the serious injury that created the need for personal care services was still incurred or aggravated in the line of duty.

Another example provided by commenters described a scenario where an individual with the same type of fragment injury underwent surgery after separation from service to remove remaining imbedded fragments, but the effects of the surgery created the need for personal care services. This scenario is more complex, because the surgery created a secondary injury that lead to the need for personal care services. A scenario such as this requires a determination of whether the need for personal care services, which was created by the surgery after service, was proximately due to or the result of the fragment injury incurred in the line of duty. If the surgery was medically necessary because of the fragment injury, and the need for personal care services was, therefore, proximately due to or the result of the serious injury sustained by the fragments, the veteran could meet the § 71.20(c) criteria.

However, if surgery to remove such fragments was not medically necessary because of the fragment injury, we do not believe it would be as clear that the need for personal care services was proximately due to or the result of the fragment injury. A clinical assessment would have to be completed to determine whether it was the veteran's or servicemember's injury incurred in the line of duty that rendered him or her in need of personal care services, or whether the surgery caused a separate post-service injury without which the veteran or servicemember would not require personal care services. In addition, we distinguish the situation where the need for personal care services may be the result of a clinical provider's negligence in treating the qualifying serious injury. While we do not anticipate many of these cases occurring, we make this distinction because in one commenter's example a ''mishap'' occurred during surgery to remove imbedded fragments, which created the need for personal care services. Congress and VA did not design the Program of Comprehensive Assistance for Family Caregivers to provide benefits to a Family Caregiver based on a post-service injury, caused by a provider's negligence or other reasons that are not the direct result of the qualifying serious injury. Moreover, if a veteran underwent negligent surgery, either at a VA medical facility or from a private medical provider, there are other remedies designed to provide compensation to the veteran, such as a tort action or an award under 38 U.S.C. 1151 (benefits for disability or death that results from VA hospital care, medical or surgical treatment or examination).

One commenter provided a final example of a veteran who lost a leg during service, and after separation from service experienced a bad fall due to loss of balance. This bad fall resulted in a severe head injury, and the effects of the head injury, in turn, created the need for personal care services. It is similarly unclear in this example whether the need for personal care services was proximately due to or the result of the veteran's serious injury incurred in the line of duty, the loss of the leg. In this example as well, a clinical assessment would have to be completed to determine whether the veteran's loss of a leg rendered him or her in need of personal care services related to the head injury, or whether the head injury was a separate post-service injury without which the veteran would not require personal care services. We note that the veteran in this example could be eligible for caregiver benefits based on the personal care services that may be needed due to the loss of the leg, regardless of eligibility determinations concerning the fall and resulting need for personal care services due to the head injury.

We emphasize that addressing the specific examples from commenters with regards to the causal link in § 71.20(b)–(c) is intended to illustrate our general rationale, and that this discussion does not encompass all possible scenarios where a veteran with a qualifying serious injury may suffer a worsening of that injury after separation from service that, in turn, creates the need for personal care services. Nor does this discussion establish a required determination for or against a particular individual's eligibility for a Family Caregiver based on an injury that is secondary to a qualifying serious injury.

We stress that all individuals are independently assessed by a clinical team to determine eligibility for benefits, and reiterate that generally a veteran or servicemember could qualify for Family Caregiver benefits if the veteran or servicemember incurred or aggravated a serious injury in the line of duty, even if the need for a Family Caregiver developed after separation from service, as long as all other § 71.20 criteria are met.

Inclusion of the Term ''Illness'' in the Definition of ''Serious Injury''

Under § 71.15, a serious injury is defined 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.'' Multiple commenters asserted that VA's definition of ''serious injury'' should be expanded to refer to and include the term ''illness'' (or variations of such term) for multiple reasons. We do not make any changes to refer to or include the term ''illness,'' as explained below.

First, commenters asserted that Congress intended ''illness'' to be considered as a qualifying criterion. However, the definition of ''serious injury'' is a virtually verbatim recitation of section 1720G(a)(2)(B) and the requirement in section 1720G(a)(2)(C) that the individual be ''in need of personal care services.'' Because section 1720G does not define the term ''serious injury'' to include illness, and the term ''illness'' does not appear elsewhere in title I of the Caregivers Act, we do not expand our definition of serious injury to include ''illness.''

Commenters provided examples of legislative history that they believe supports the assertion that Congress intended that ''illness'' should be considered in relation to eligibility for Family Caregiver assistance. We disagree with these interpretations of the legislative history. First, commenters correctly stated that the Caregiver Assistance and Resource Enhancement Act, H.R. 3155, 111th Congress, 1st Session (2009), as reported in the House of Representatives, would have established a program to provide specific caregiver benefits for certain disabled or ill veterans (certain veterans deemed to have a ''service-connected disability or illness that is severe''). While H.R. 3155 was engrossed by the House of Representatives, the bill was never considered by the Senate and consequently it failed to pass both houses of Congress. Instead, Congress enacted S. 1963, 111th Congress (2009), which specifically did not include the term ''illness'' in relation to eligibility for caregiver assistance and support services. We do not believe that the legislative history of a bill that did not pass must be used to inform the text of a bill that actually did pass, particularly when the text of both bills differed significantly—in particular, on the very point that the commenters wish to prove.

Multiple commenters cited the Explanatory Statement (joint statement) that accompanied the Caregivers Act to indicate that Congress intended that ''illness'' be considered in relation to eligibility for Family Caregiver assistance. See 156 Cong. Rec. S2566, S2567 (2010). Essentially, these commenters asserted that the joint statement indicates Congress' intent that the Program of Comprehensive Assistance for Family Caregivers should account for ''ill'' as well as ''injured'' veterans because that statement cited a Center for Naval Analyses report that considered the economic impact on caregivers of the seriously ill as well as seriously injured veterans. We disagree that the mere reference to a report that considered a broader cohort of ''ill'' individuals necessitates a more expansive interpretation of the narrower cohort of ''injured'' individuals actually described in the law passed by Congress. Moreover, the joint statement explains that the Caregivers Act will limit participation in the Program of Comprehensive Assistance for Family Caregivers ''only to 'seriously injured or very seriously injured' veterans.'' 156 Cong. Rec. S2567. Thus, the joint statement clearly expresses Congress' intent, under the Caregivers Act, to consider only seriously ''injured'' veterans as eligible for the Program of Comprehensive Assistance for Family Caregivers.

The joint statement explains that the House of Representatives and Senate versions of the caregiver program legislation were considered prior to enactment of the Caregivers Act. As explained in the joint statement, the House version's eligibility criteria accounted for ''OEF [Operation Enduring Freedom] or OIF [Operation Iraqi Freedom] veterans . . . who have a service-connected disability or illness that is severe.'' Id. However, the joint statement goes on to explain that the Senate bill's eligibility criteria, which do not account for veterans with a serious illness, will be reflected in the Caregivers Act. Id. ''[W]here the language under question was rejected by the legislature and thus not contained in the statute it provides an indication that the legislature did not want the issue considered.'' 2A Norman J. Singer, Sutherland Statutory Construction, section 48:04 (6th ed. 2000). Because it is clearly the Senate bill's eligibility criteria that became law, we do not agree with the commenters that VA must include ''illness'' in the definition of serious injury.

Commenters also stated that considering ''illness'' within the definition of ''serious injury'' is necessary to ensure consistency with other Federal government programs for recovering veterans and servicemembers which contemplate ''illness'' as a basis for eligibility. Examples of such programs, as provided by commenters, included the program of monetary compensation for certain servicemembers provided by DoD under 37 U.S.C. 439, and the Federal Recovery Coordination Program (FRCP). We make no changes based on these comments, as we do not believe that these other programs are comparable, nor are they intended to be comparable, to the Program of Comprehensive Assistance for Family Caregivers.

The monetary compensation offered by DoD under 37 U.S.C. 439, unlike the Program of Comprehensive Assistance for Family Caregivers, does not provide mental health services, healthcare, or a monthly stipend for eligible Family Caregivers. Instead, DoD pays ''monthly special compensation'' directly to qualifying servicemembers. Moreover, DoD's eligibility criteria are more stringent than the criteria in the Program of Comprehensive Assistance for Family Caregivers. An eligible individual under section 439 must have a ''catastrophic'' injury or illness, be certified by a licensed physician to be in need of assistance from another person, and in the absence of such assistance must require ''hospitalization, nursing home care, or other residential institutional care.'' 37 U.S.C. 439(b).

Similarly, the FRCP functions very differently than the Program of Comprehensive Assistance for Family Caregivers. The FRCP provides oversight and coordination of clinical and non-clinical care for eligible severely wounded, ill, or injured servicemembers and veterans through recovery, rehabilitation, and reintegration into their home community, while Family Caregiver benefits are intended to provide support and assistance to designated and approved Family Caregivers to enhance the health and well-being of eligible veterans participating in the Program of

Comprehensive Assistance for Family Caregivers.

Based on the differences between the Program of Comprehensive Assistance for Family Caregivers and the programs discussed by the commenters, we do not agree that the rule should be amended to match or bridge perceived gaps with other Federal government programs.

Multiple commenters asserted that historical remarks in news releases quote the Secretary of Veterans Affairs (Secretary) as being in support of including ''illness'' within the definition of ''serious injury.'' Specifically, commenters submitted that subsequent to the passing of the Caregivers Act, the Secretary stated in a press release dated February 9, 2011, that ''[c]aregivers make tremendous sacrifices every day to help Veterans of all eras who served this nation. . . . They are critical partners with VA in the recovery and comfort of ill and injured Veterans, and they deserve our continued training, support and gratitude.'' In this statement, the Secretary was referring to caregivers for all era veterans, including those pre-9/11 veterans who can receive General Caregiver benefits under § 71.30, which covers any ''veteran who is enrolled in the VA health care system and needs personal care services because the veteran . . . [i]s unable to perform an activity of daily living; or . . . [n]eeds supervision or protection based on . . . impairment or injury.'' The effects of illness may be considered in determining eligibility for General Caregivers benefits because the ''serious injury'' requirement is not applicable to § 71.30.

One commenter asserted that section 1720G allows for flexibility to include the term ''illness'' in our definition of serious injury, because section 1720G(a)(2)(C)(ii) includes the phrase ''or other impairment.'' See 38 U.S.C. 1720G(a)(2)(C)(i)–(iii) (which 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;'' has 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 criteria in section 1720G(a)(2)(C)(i)–(iii), to include the phrase ''or other impairment,'' all explain the circumstances for which personal care services may be needed, these criteria do not define the underlying ''serious injury'' term or the separate eligibility requirement that the individual have a serious injury. We therefore disagree that section 1720G(a)(2)(C)(ii) permits the discretionary inclusion of ''illness'' in the rule.

Lastly, one commenter argued that VA generally does not differentiate between injury and illness as a basis of eligibility for VA benefits, and that the Program of Comprehensive Assistance for Family Caregivers should similarly not make such a distinction. In support of this contention, the commenter cited multiple VA regulations primarily related to disability compensation, where eligibility for benefits is based on both injury and a disease process or illness, and further stated that ''[t]he caregiver provisions should be interpreted in harmony with the general principle established in the statutory scheme, that veterans with a qualifying disability are entitled to benefits whether such disability resulted from an injury or an illness.'' We do not agree with the commenter that the statutory scheme that supports these other VA regulations may be used to interpret the eligibility criteria for the Program of Comprehensive Assistance for Family Caregivers for several reasons.

First, the interpretive relevance of any seemingly related statute is outweighed when the subject statute's meaning is clear: ''[I]n line with the basic rule on the use of extrinsic aids, other statutes may not be resorted to if the statute is clear and unambiguous.'' 2B Norman J. Singer, Sutherland Statutory Construction, section 51:01 (6th ed. 2000). As stated previously, section 1720G is clear that ''illness'' is not considered in relation to eligibility under the Program of Comprehensive Assistance for Family Caregivers.

Second, the stipend provided to a caregiver under section 1720G is not disability compensation, and is not related to VA's disability compensation regulations. The stipend is paid directly to the Family Caregiver and not the veteran, and is calculated based on the degree of assistance required by the veteran, and not the veteran's rated level of disability. Disability compensation schedules are designed to measure the effect of disease or injury on a veteran's earning capacity, and not the level of personal care services needed by a veteran.

Finally, Congress could easily have linked the Family Caregiver stipend to VA disability compensation; however, section 1720G mandates that VA create a program that is distinct from virtually all other VA benefits programs. In turn, the regulations implementing the stipend payments under the Program of Comprehensive Assistance for Family Caregivers were specifically established to meet the goals of the statute governing the Program of Comprehensive Assistance for Family Caregivers. As such, the Family Caregiver stipend is designed to enable caregivers to provide certain home-based care—it is not designed to supplement, replace, or be dependent in any manner on the level of disability compensation received by the veteran.

Use of Global Assessment of Functioning (GAF) Score as an Eligibility Criterion

Multiple commenters argued for the revision or removal of § 71.20(c)(3), which authorizes eligibility for Family Caregiver benefits on the basis that an individual requires personal care services because of a ''[p]sychological trauma or a mental disorder that has been scored . . . 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.'' Commenters interpreted this GAF criterion to be the sole means of eligibility for an individual with a psychological trauma or mental health disorder, and subsequently asserted that such a criterion was arbitrary and too restrictive. We do not make any changes to the rule based on these comments; however, we clarify that the GAF score criterion in § 71.20(c)(3) is not the sole means to establish eligibility based on a psychological trauma or mental health disorder. We do not intend, and the rule does not state, that any psychological trauma or mental disorder must have an accompanying GAF score of 30 or less in order to qualify as a serious injury. In providing the bases upon which an individual may require personal care services to establish eligibility, the rule states in § 71.20(c) that ''any one of the following clinical criteria'' may suffice, to include a GAF score of 30 or below in § 71.20(c)(3). The GAF score criterion is not a sole eligibility basis for individuals with mental disorders, but rather an irrebuttable basis for eligibility under § 71.20(c) when an individual presents with a psychological trauma or mental disorder that meets the GAF score requirement. A veteran or servicemember with a mental health disorder that does not meet the requirements of § 71.20(c)(3) could still qualify under § 71.20(b)–(c) if that mental disorder is a serious injury that renders the individual in need of personal care services because of any of the other eligibility criteria in § 71.20(c)(1), (c)(2), or (c)(4). For instance, if an individual with a psychological trauma or mental disorder requires supervision or protection due

to such trauma or disorder, an assessment of their application may show they are eligible under § 71.20(c)(2), and that same individual will not then be required to submit a GAF score due to their injury being related to mental health. Rather than being an undue restriction, we consider the GAF score criterion in § 71.20(c)(3) in fact to be an expansion of the statutory bases of eligibility, permissible under 38 U.S.C. 1720G(a)(2)(C)(iii).

Commenters stated that the requirement that the GAF score be continuous for 90 days would necessitate undue repeated testing during the 90-day period, and that the 90-day requirement was too lengthy and would result in an unreasonable delay of benefits. We do not make any changes to the rule based on these comments, because VA does not intend to continuously test veterans during the 90-day period in an effort to rebut a GAF score of 30 or less. Additionally, 90 days is a reasonable and necessary timeframe to determine if an impairment is non-episodic to necessitate Family Caregiver benefits. As the rule states, if there is a GAF score of 30 or less at the beginning of the 90-day period as well as a score of 30 or less at the end of that period, we will apply § 71.20(c)(3) unless there is an intervening GAF score of more than 30 for veterans or servicemembers seeking to qualify for the program on this basis. Typically, GAF tests are administered and GAF scores are recorded at appropriate clinical intervals during the provision of care. Two GAF scores below 30 that are 90 days apart provides a sound basis to clinically determine that the servicemember's or veteran's injury and need for a Family Caregiver is chronic and not episodic in nature, or that the injury is not responsive to treatment such that the assistance of a Family Caregiver is required. How many other GAF scores might be present in the medical record to be considered intervening could depend on multiple individual factors. However, GAF tests will not be initiated by VA to develop evidence to rebut the servicemember's or veteran's need for a Family Caregiver.

We further disagree with some commenters' statements that a GAF score range of 30 or less, if used as an eligibility criterion in the rule, is too restrictive. Commenters argued that the range should be higher, including commenters who advocated for scores of up to 50. One commenter noted that a score range of 31–40 should be used because it indicates ''some impairment in reality testing or communication,'' or also indicates ''major impairment in several areas, such as work or school, family relations, judgment, thinking or mood.'' However, we reiterate from the interim final rule that we find the description for a GAF score of 30 and below to be the most appropriate description to support the presumption that a Family Caregiver is needed, when a GAF score is used as the qualifier. 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.

Family Caregiver Eligibility Requirements (Other Than the GAF Score) Are Not More Restrictive Than Permitted by Law

One commenter stated that certain eligibility criteria in § 71.20(a)–(g) are more restrictive than permitted by a plain reading of section 1720G. This commenter argued that VA has created additional, unlawful restrictions in the rule that will result in fewer veterans in need being deemed eligible for benefits and services. We do not make any changes based on this comment. All of the eligibility requirements in § 71.20(a)–(g) are either restatements of explicit criteria in section 1720G, are additional lawful criteria that are specifically authorized by discretionary language in section 1720G, or are supported by the clear intent of the law. The following discussion directly compares all provisions of the eligibility criteria in § 71.20(a)–(g) to the express provisions and intent of section 1720G.

The requirements in § 71.20(a)–(b) restate the requirements in section 1720G(a)(2)(A)–(B) that a qualifying individual must be a veteran, or servicemember undergoing medical discharge, who has a serious injury incurred or aggravated in the line of duty on or after September 11, 2001.

The requirements in § 71.20(c) create additional criteria which are not expressly stated in section 1720G, but that are necessary and consistent with the overall purpose of the law. Section 71.20(c) establishes that there must be a connection between the qualifying serious injury and the individual's need for personal care services, and that a minimum of six continuous months of care is required. As we stated in the interim final rule, we believe that it is reasonable to interpret section 1720G, which premises eligibility upon a serious injury incurred or aggravated in the line of duty, to require that the serious injury form the basis for the individual's need for a Family Caregiver. It would not have been reasonable for Congress to have authorized VA to provide Family Caregiver services to veterans and servicemembers with serious injuries but not to have also required that the need for such services be specifically linked with the serious injuries. We also interpret section 1720G to provide Family Caregiver support and assistance for the benefit of individuals with long-term disabilities, and not episodic flare ups that temporarily establish the need for a Family Caregiver; this is the basis for the required six-month period. We reiterate from the interim final rule that this requirement meets the intent of the statute to benefit persons with longer term care needs. The law contemplates training, payment of compensation, and ongoing monitoring of veterans receiving Family Caregiver services in their homes, all of which support a framework that will benefit those with longer-term care needs.

The requirements in § 71.20(c)(1)–(2) restate the criteria in section 1720G(a)(2)(C)(i)–(ii), that the qualifying individual be in need of personal care services because of an inability to perform an activity of daily living, or due to the individual needing supervision or protection based on symptoms or residuals of neurological or other impairment or injury. The requirements in § 71.20(c)(3)–(4) are discretionary eligibility criteria expressly permitted by section 1720G(a)(2)(C)(iii), and allow a veteran or servicemember to be considered in need of personal care services through two additional means: a qualifying Global Assessment of Functioning score of 30 or less; or if the individual is service-connected for a qualifying serious injury, is rated as 100 percent disabled for that injury, and has been awarded special monthly compensation that includes an aid and attendance allowance.

A veteran or servicemember is not required to meet all requirements under § 71.20(c)(1)–(4). Paragraph (c) specifies that an individual may be considered to be in need of personal care services ''based on any one of the following clinical criteria.'' 38 CFR 71.20(c). We further interpret that the law's use of the word ''or'' in section 1720G(a)(2)(C)

allows VA to choose, as needed, between the criteria in section 1720G(a)(2)(C)(i)–(iii) in determining a veteran or servicemember's eligibility, to include choosing them all. VA included all explicit criteria under section 1720G(a)(2)(C)(i)–(ii) in § 71.20(c)(1)–(2), and prescribed additional discretionary criteria in § 71.20(c)(3)–(4) as permitted by section 1720G(a)(2)(C)(iii).

The requirement in § 71.20(d) indicates that an individual may not be considered eligible unless a clinical determination is made that it is in the individual's best interest to participate in the program. One commenter suggested that this requirement was unreasonable, as VA's ''in the best interest'' determination is not analogous to the criterion in section 1720G(a)(1)(B), which states that VA ''shall only provide support under the [Program of Comprehensive Assistance for Family Caregivers] 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.'' Essentially, the commenter stated that VA incorrectly used the ''in the best interest'' criterion for the purposes of determining eligibility of the veteran themselves for benefits, instead of for the purposes of determining whether to provide benefits to a Family Caregiver. We recognize that the language in § 71.20(d) regarding the ''in the best interest'' determination is phrased differently than in section 1720G(a)(1)(B), but this difference is not contrary to section 1720G(a)(1)(B), and does not create more restrictive eligibility criteria than permitted by law. Section 1720G does not confer benefits to a Family Caregiver independent of a qualifying veteran or servicemember, nor are benefits available to a qualifying veteran or servicemember under section 1720G, without the designation of a Family Caregiver. Therefore, section 1720G(a)(1)(B) and § 71.20(d) both contemplate the same determination: whether it is in the best interest of the veteran or servicemember to receive care and services under the Program of Comprehensive Assistance for Family Caregivers, and therefore whether the Family Caregiver receives support from VA to provide such care and services. It is essential then to consider whether it is in the best interest of the veteran or servicemember to participate in the Program of Comprehensive Assistance for Family Caregivers generally, as part of the initial qualification criteria in § 71.20(d). Our use of the phrasing ''in the best interest of the individual to participate in the program'' in § 71.20(d) is not a more restrictive interpretation than permitted by law, because a determination that a veteran's or servicemember's caregiver should not receive benefits under section 1720G(a)(1)(B) is functionally the same as a determination that a veteran or servicemember may not participate in the program under § 71.20(d). The text of § 71.20(d) maintains the premise under section 1720G(a)(1)(B) that the determination be based on ''the best interest'' of the individual, and merely rephrases to clarify that benefits are provided to Family Caregivers only when it is in the best interest of the individual to participate in the Program of Comprehensive Assistance for Family Caregivers.

A related argument from the commenter contended further that our definition of ''[i]n the best interest'' in § 71.15 creates a higher standard than a stated goal of the Program of Comprehensive Assistance for Family Caregivers, in that this definition relies upon a determination that ''participation in the program significantly enhances the eligible veteran's ability to live safely in a home setting.'' 38 CFR 71.15. The commenter contrasts this ''significantly enhances'' criterion with one of the goals of the Program of Comprehensive Assistance for Family Caregivers as discussed in the supplementary information in the interim final rule, which is ''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.'' 76 FR 26148, May 5, 2011. In addition to asserting that the ''significantly enhances'' criterion in § 71.15 is a higher standard than expressed in the supplementary information section of the interim final rule, the commenter stated that the ''significantly enhances'' criterion is not defined and does not have an accompanying scale of measurement to express when it is met. Ultimately, the commenter urged VA to revise the rule to include a scale of measurement, or to remove the ''significantly enhances'' criterion altogether. We do not make any changes based on this comment, as the ''significantly enhances'' criterion in the definition of ''[i]n the best interest'' in § 71.15 does not create an unreasonable standard beyond a goal of the Program of Comprehensive Assistance for Family Caregivers. As stated in the rule, VA concludes that determinations of ''in the best interest'' must be clinical determinations, guided by VA health professionals' judgment as to 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. Consequently, such determinations will include clinical considerations of whether assistance from a Family Caregiver ''significantly enhances'' the individual's ability to live safely in a home setting, where we intend the ''significantly enhances'' criterion to be a threshold determination that assistance from a caregiver is actually necessary to allow a veteran or servicemember to live safely and receive care in a non-institutional home environment. This ''significantly enhances'' criteria allows health professionals, utilizing clinical judgment, to determine that Family Caregiver assistance is needed for an individual to live safely in a home setting. We do not interpret section 1720G to permit caregiver benefits and services for individuals who, though they may benefit from such assistance, can perform tasks safely and independently 100 percent of the time without a caregiver, for instance by using assistive devices or adaptive equipment. The ''significantly enhances'' phrase in the definition of ''[i]n the best interest'' therefore does not serve to unduly restrict the provision of Family Caregiver benefits, but rather ensures that these benefits are provided to only those veterans and servicemembers who actually require them to safely live and receive care in the home.

The requirement in § 71.20(e) bars authorization of a Family Caregiver if the services that would be provided would be simultaneously and regularly provided by or through another individual or entity. Our intent is to ensure that the Family Caregiver is not depending on VA or another agency or individual to provide the personal care services that the Family Caregiver is expected to provide. This requirement is not more restrictive than permitted by law, because Congress clearly intended to support Family Caregivers for the personal care services that Family Caregivers themselves provide to the veteran or servicemember.

The requirements in § 71.20(f)–(g) state that the individual must agree to ''receive care at home'' and ''receive ongoing care from a primary care team'' after VA designates a Family Caregiver. The consent required by paragraphs (f) and (g) as a prerequisite to an award of Family Caregiver benefits enables VA to perform statutorily required monitoring and documentation functions. Under section 1720G(a)(9)(A), VA must

''monitor the well-being of each eligible veteran receiving personal care services'' from a VA-designated caregiver under the Program of Comprehensive Assistance for Family Caregivers. 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. See 38 U.S.C. 1720G(a)(9)(B) and (C). In addition to meeting statutory requirements, the consent requirements in § 71.20(f)–(g) are not unreasonable, given that section 1720G generally is premised upon supporting caregivers in the provision of assistance to individuals in non-institutional home settings, and those individuals must then consent to receive such assistance. Neither of the requirements in § 71.20(f)–(g) impose more restrictive criteria than permitted by section 1720G.

As stated above, all of the rule's eligibility requirements in § 71.20(a)–(g) that are not restatements of law from section 1720G(a)(1)–(2) are either discretionary criteria as permitted by law, or are required for VA to implement other provisions of section 1720G. Section 71.20 merely places all mandatory and permissible eligibility requirements from section 1720G(a) in one place to make them apparent at the outset. None of the requirements in § 71.20(a)–(g) are more restrictive than contemplated by section 1720G(a), and therefore § 71.20(a)–(g) does not result in fewer veterans in need being deemed eligible for benefits and services than contemplated by law.

Servicemember Eligibility

Section 1720G indicates that servicemembers are eligible for benefits under the Program of Comprehensive Assistance for Family Caregivers if they are undergoing medical discharge from the Armed Forces: ''For purposes of this subsection, an eligible veteran is any individual who . . . is a veteran or member of the Armed Forces undergoing medical discharge from the Armed Forces.'' 38 U.S.C. 1720G(a)(2)(A). The rule in turn defines ''undergoing 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.'' 38 CFR 71.15. We received several comments related to the starting time of VA Family Caregiver benefits, or when a servicemember may be considered eligible for and then apply for benefits. Commenters asserted that a servicemember should be eligible to receive Family Caregiver benefits before receiving a medical discharge date, and specifically stated that a servicemember should be considered eligible at the beginning of the medical evaluation process within DoD. These commenters stated that allowing a servicemember to be considered eligible at an earlier date would ensure that training opportunities would be available to caregivers of servicemembers throughout the treatment of the servicemember by DoD, which the commenters assert is necessary to improve overall care provided to the servicemember. We make some changes to the rule based on these comments, as explained below.

The medical evaluation process that is used by DoD to determine whether a servicemember remains medically fit for active duty can take several months or more, and some servicemembers referred and evaluated will in fact return to active duty or be offered an opportunity to train for another military occupational specialty. Section 1720G, however, suggests by use of the phrase ''eligible veteran,'' that medical discharge and then transition to veteran status must be certain in order for a service member to be eligible for such benefits: ''For purposes of this subsection, an eligible veteran is any individual who . . . is a veteran or member of the Armed Forces undergoing medical discharge from the Armed Forces.'' 38 U.S.C. 1720G(a)(2)(A). We interpret the phrase ''undergoing medical discharge'' to require then that the individual be engaged in a process of actual separation from active duty, rather than a process of determining whether to separate from active duty. In order to effectuate this statutory requirement, we believe it is appropriate to ensure by regulation 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 they achieve veteran status, as well as to attempt to ensure that the discharge is essentially inevitable. Therefore, we make no change to our definition of ''[u]ndergoing medical discharge.''

In addition to the reasons stated above, we do not believe Congress intended to authorize prolonged VA Family Caregiver benefits for active duty servicemembers, particularly because it has authorized DoD to provide monthly special compensation, under 37 U.S.C. 439, to active duty servicemembers who, due to a catastrophic injury or illness incurred or aggravated in the line of duty, require a caregiver in order to avoid institutional care. One commenter expressed, however, that the special compensation that DoD may pay to these same servicemembers under section 439 is not sufficient to ensure that actual caregiver training is provided. As noted above, individuals receiving section 439 DoD compensation may eventually return to active duty. Although VA can and will provide Family Caregiver training for servicemembers who have been issued a medical discharge date (and meet other requirements to qualify for the Program of Comprehensive Assistance for Family Caregivers), for the reasons described above we do not believe that section 1720G authorizes VA to provide Family Caregiver training before the servicemember is assigned such a date.

However, we understand the commenters' stated concerns for those servicemembers who may be undergoing a lengthy discharge process due to multiple hospitalizations and extended recovery times, and their caregivers who would benefit from receiving VA Family Caregiver training in addition to the servicemember receiving the monetary benefit provided by DoD pursuant to 37 U.S.C. 439. In the interest of providing compassionate, patient-centric care, we note that VA has initiated discussions with DoD to design a caregiver training and education program that would be substantially similar to VA's program. Although such a program is not currently operationalized, DoD may utilize such a program in the future to train caregivers of active duty servicemembers.

Under the interim final rule, § 71.25(d) defined caregiver training as ''a program of education and training designed by and provided through VA.'' Before an individual is approved as a Family Caregiver, § 71.25(c)(2) requires that the individual complete caregiver training as defined under § 71.25(d). Based on comments concerning the need to allow caregivers to receive training while their veterans are still active duty servicemembers, and provided that DoD may adopt a training program for caregivers in the future, we amend § 71.25(d) to remove the requirement that caregiver training be ''provided through'' VA, so that § 71.25(d) will define Family Caregiver training as ''a program of education and training designed and approved by VA.'' Consequently, VA will approve and accept participation by a caregiver of an active duty servicemember in DoD caregiver training that is modeled after VA's caregiver training to satisfy the training requirements under § 71.25(c)(2). Recognition of such training that may be offered by DoD in

the future, that is substantially similar to that offered by VA, will prevent Family Caregivers from having to undertake the same training more than once, unless necessary.

We also amend § 71.25(e) to require that VA visit the veteran at home and assess the Family Caregiver's competence to provide personal care services within 10 business days after VA certifies completion of training, rather than within 10 business days of training completion. As noted above, the training may be provided by DoD to caregivers of active duty servicemembers who are not at that time eligible for Family Caregiver benefits; therefore, we cannot visit the home within 10 days after completion of such training. Thus, § 71.25(e) now provides that a home-care assessment must be conducted by VA not later than 10 business days after VA certifies completion of Family Caregiver training, versus not later than 10 business days after completion of the training. In practice, VA will certify that previous DoD training has been completed when the caregiver presents documentation showing completion to VA, after a joint application has been submitted and all eligibility and approval criteria are otherwise met under §§ 71.20–71.25. This amendment of § 71.25(e) will not have any adverse effect on caregivers of eligible veterans who complete Family Caregiver training provided through VA, as VA will continue to schedule the home visit within 10 days of training completion.

Procedures for Clinical Ratings

One commenter stated that the rule failed to clearly articulate how VA makes clinical determinations. Specifically, the commenter suggested that the phrase ''clinical rating'' be defined to describe procedures that would ensure that clinical determinations are made by an interdisciplinary team (and not one individual), and that would ensure that the perspectives of the caregiver are considered when determining need for personal care services. The commenter suggested that the caregiver be interviewed to capture the caregiver's assessment of the veteran's or servicemember's need for personal care services, as well as to assess the level of distress potentially experienced by the caregiver. The commenter lastly urged that eligibility evaluations concerning a need for ''supervision or protection'' specifically should account for how the individual veteran or servicemember functions at home and in his or her community to properly evaluate the individual's need for protection or supervision.

The rule states in § 71.25(f) that ''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.'' We intend that the clinical determinations made under § 71.20 regarding the veteran's or servicemember's initial eligibility as well be authorized by a primary care team versus a single individual, and agree with the commenter that § 71.20 be so amended. Section 71.20(c) will now similarly states that ''such serious injury renders the individual in need of personal care services for a minimum of 6 continuous months (based on a clinical determination authorized by the individual's primary care team), based on any one of the following clinical criteria.'' Section 71.20(d) will now state that ''a clinical determination (authorized by the individual's primary care team) has been made that it is in the best interest of the individual to participate in the program.'' We believe § 71.20(c) otherwise clearly specifies the criteria by which personal care services are determined to be needed.

We additionally make one change to the definition of ''Primary care team'' as that term is defined in § 71.15 to indicate that we are referring to a group of medical professionals who care for a patient and who are selected ''by VA.'' We do not believe this is a substantive change, as the rule clearly states that VA is responsible for conducting all clinical assessments and determinations in the process of assessing and approving Family Caregivers. See § 71.25(a)(2), (b)(3), (c), (c)(1), (e), and (f).

Section 71.25(c) further mandates that during the application process, the primary care team will screen the family member to ensure the family member meets criteria to complete caregiver education and training, and thereby is deemed able to provide caregiver assistance. We believe that this caregiver screening is consistent with law, and we do not find that an additional, individual interview with the caregiver, or required inclusion of the caregiver in the veteran's or servicemember's assessment, should be a formal part of the current clinical process in determining the level of personal care services needed by every veteran or servicemember. However, it is not VA practice to bar a caregiver from being present during the veteran's or servicemember's assessment. The regulation at § 71.40(c)(4) similarly does not restrict the presence of a caregiver during a veteran's or servicemember's assessment, nor does it restrict a primary care team from considering the input of a caregiver. It is likely then that in many cases the caregiver will be present during the clinical assessment of the veteran or servicemember and that the primary care team will have discussions with that caregiver as needed to assist in determining the level of personal care services needed by the veteran or servicemember. As to the commenter's request for an assessment of a caregiver's level of distress, we recognize that it is important that caregivers be adequately trained so as not to experience undue levels of distress. In determining whether a particular caregiver should be approved and designated, VA will apply the objective criteria in § 71.25(b) and then assess the prospective caregiver in accordance with § 71.25(c). It is at that time that the clinical team will be able to determine whether the individual can perform the duties of a Family Caregiver and, in making that determination, the clinical team will consider ''any relevant information specific to the needs of the eligible veteran. . . .'' 38 CFR 71.25(c)(1). Information that a family member experiences too much stress to provide personal care services would be considered at such time. To the extent that a family member may be designated as a Family Caregiver and then, subsequently, find the responsibility to be stressful, we note that respite care will be available under § 71.40, and revocation of Family Caregiver status is available under § 71.45.

Lastly, we believe that initial eligibility determinations for individuals who may require supervision or protection do take into account how each individual functions in his or her home and community. The current evaluation process captures whether the veteran or servicemember is experiencing symptoms that necessitate supervision or protection, as those symptoms are described in § 71.15. We do, however, make changes to § 71.25(e) to facilitate ease of understanding related to home visits, and to clarify that an eligible veteran's well-being is independently assessed to determine if any additional training is needed for the caregiver to meet the eligible veteran's personal care needs. We believe this addresses the commenter's concern that VA assess a veteran's or servicemember's functionality in his or her home as appropriate. Section 71.25(e) is amended to make clear that

the purpose of the home visit is for the VA clinician or clinical team to assess the caregiver's completion of training and competence to provide personal care services to the eligible veteran, and to measure the eligible veteran's well-being.

We believe the evaluation process as discussed above appropriately describes an interdisciplinary clinical assessment process that involves the caregiver, without being overly prescriptive beyond the requirements of the law. We make one last non-substantive change to § 71.25(c)(1)(i) to clarify that accommodation for language or hearing impairment during an initial assessment of the application will be made ''to the extent possible and'' as appropriate.

Appeals

Multiple commenters stated that the rule should address a veteran's, servicemember's, or caregiver's right to appeal decisions made in connection with the Program of Comprehensive Assistance for Family Caregivers. In response, we first note that medical determinations are not subject to the jurisdiction of the Board of Veterans' Appeals under 38 U.S.C. 7104, or pursuant to our implementing regulation, which states that ''medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the [Board of Veterans' Appeals'] jurisdiction.'' 38 CFR 20.101(b). We additionally note that the Caregivers Act expressly states that ''[a] decision by the Secretary under [the Program of Comprehensive Assistance for Family Caregivers or the Program of General Caregiver Support Services] affecting the furnishing of assistance or support shall be considered a medical determination.'' 38 U.S.C. 1720G(c)(1). Therefore, all determinations that affect the furnishing of assistance or support through the programs under 38 U.S.C. 1720G are medical determinations as a matter of law, and as such may not be adjudicated in the standard manner as claims associated with veterans' benefits. We consequently do not make any changes to the rule.

Commenters asserted nonetheless that not all decisions under these regulations are medical in nature, and as such VA must distinguish in the rule those determinations that are not medical and that therefore may be appealed through the current processes associated with adjudicating veterans' benefits claims. Commenters also advocated that this rule must further prescribe an appellate mechanism for medical determinations. We disagree, and do not make any changes based on these comments.

Though the commenters recognize the clear mandate that all decisions regarding benefits under the rule are medical determinations and therefore are not appealable to the Board of Veterans' Appeals, commenters assert that Congress could not have intended to make decisions related specifically to eligibility determinations exempt from appellate review. In support of this contention, commenters cited 38 CFR 20.101(b), which states that ''[t]he [Board of Veterans' Appeals'] appellate jurisdiction extends to questions of eligibility.'' To illustrate their point, commenters argued that Congress could not have intended to deny an administrative right to appeal, for example, a nonmedical decision that a veteran's or servicemember's injury was incurred in the line of duty, or was incurred on or after September 11, 2001. The plain language of section 1720G(c)(1) removes any doubt that Congress intended to insulate even decisions of eligibility from appellate review under the Program of Comprehensive Assistance for Family Caregivers, and VA's regulation at § 20.101(b) cannot circumvent a statutory requirement. ''If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'' *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 842–43 (1984). Further, Congress is presumed to know what laws and regulations exist when it enacts new legislation, and it is reasonable to infer that Congress knew that medical determinations were not appealable under § 20.101, and subsequently used that precise phrase in the statute to limit appeals of decisions in the Program of Comprehensive Assistance for Family Caregivers. See *California Indus. Products, Inc.* v. *United States,* 436 F.3d 1341, 1354 (Fed. Cir. 2006) (''These regulations are appropriately considered in the construction of [this particular statute] because Congress is presumed to be aware of pertinent existing law.'').

We recognize the seeming incongruence of the statutory mandate; for instance, a determination under the Program of Comprehensive Assistance for Family Caregivers that a veteran's or servicemember's military record did not support eligibility because he or she was discharged from active duty before September 11, 2001, is deemed a ''medical determination'' because it affects the provision of Family Caregiver benefits. However, if a veteran or servicemember believes that his or her military records are incorrect, he or she may seek correction of those records through his or her service department. If VA errs in applying these types of non-discretionary criteria, the error should be clear on the face of the evidence presented, or could be rectified with the presentation of alternate or corrected evidence. Such decisions would not create a situation in which the expertise of the Board of Veterans' Appeals at interpreting legal and regulatory provisions would be required. Instead, VHA has a clinical appeals process that will be sufficient to resolve such conflict. Under the VHA appeals process, patients or their representatives have access to a fair and impartial review of disputes regarding clinical determinations or services that are not resolved at the facility level. This process is intended to resolve conflicts about whether an appropriate clinical decision has been made, and the process certainly can resolve whether the adverse decision was based, for example, on a misreading of a date in a military record. Other issues that are being resolved through the VHA clinical appeals process include basic eligibility, determination of ''illness'' or ''injury,'' and the tier level assigned for stipend payment. This appeals process does not defy the statutory restriction at 38 U.S.C. 1720G(c)(1) against appeals to the Board of Veterans' Appeals because it is specifically designed to resolve conflicts based upon medical determinations.

We note, however, that not all benefits provided to caregivers are provided under 38 U.S.C. 1720G. Certain benefits afforded to caregivers by 38 U.S.C. 1720G are provided through other statutory authorities, and decisions regarding those benefits are therefore not made under 38 U.S.C. 1720G. For example, decisions by the Secretary affecting the payment of beneficiary travel (under 38 U.S.C. 111(e)(2) as authorized by 38 U.S.C. 1720G(a)(3)(A)(i)(IV)), the provision of CHAMPVA (under 38 U.S.C. 1781 as authorized by 38 U.S.C. 1720G(a)(3)(A)(ii)(IV)), and debt collection and waiver (under 31 U.S.C. 3711 and 38 U.S.C. 5302) are examples of matters decided under statutory authorities other than 38 U.S.C. 1720G. Appeal processes associated with those decisions, under applicable statutes and regulations, may be pursued by caregivers who disagree with a VA decision made under those authorities. See *e.g.,* 38 CFR 70.40, 17.276, 1.900–1.970.

Expansion of ''Activities of Daily Living'' in Stipend Calculation

Under § 71.40(c)(4), VA calculates the monthly stipend available to Primary Family Caregivers based on clinical ratings of both the eligible veteran's level of dependence in performing activities of daily living (ADLs) listed in the definition of the term ''[i]nability to perform an activity of daily living'' in § 71.15, and his or her ''[n]eed for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' under § 71.15. The ADLs designated in § 71.15 are: Dressing; bathing; grooming; frequent need of adjustment of special prosthetic or orthopedic appliance that, by reason of the particular disability, cannot be done without assistance; toileting; feeding oneself; and mobility.

Several commenters sought to include additional activities in the list of ADLs in § 71.15, because a Primary Family Caregiver may assist with activities that maintain an individual's quality of life but that are not listed as ADLs in § 71.15 and, therefore, are not accounted for in the stipend calculation. Examples of such activities included meal preparation, housework, shopping, transportation, laundry services, medication management, and using a telephone or other communication device. Multiple commenters referred to these activities as ''instrumental activities of daily living'' to distinguish them from the self-care ADLs already described in § 71.15. We do not make any changes to the rule based on these comments, and do not expand the listed ADLs in § 71.15 that are considered in calculating the stipend.

We believe that Congress specifically considered and rejected the use of the term ''instrumental activities of daily living'' in the Caregivers Act, as made apparent in the joint statement which accompanied the law. To reiterate our rationale from earlier in this rulemaking, it is clear from the joint statement that the eligibility criteria in the Senate bill (S. 1963, 111th Cong. (2009)), and not those in the House of Representatives bill (H.R. 3155, 111th Cong. (2009)), are generally reflected in the Caregivers Act, including the eligibility criteria and language regarding activities of daily living. In describing the eligibility criteria in the Senate bill, the joint statement states that ''[s]everely injured veterans are defined as those who need personal care services because they are unable to perform one or more independent activities of daily living.'' 156 Cong. Rec. S2567. This is in contrast to the eligibility criteria in the House of Representatives bill, which would have accounted for veterans ''unable to carry out activities (including instrumental activities) of daily living.'' Id. The Senate bill's eligibility criteria language most closely resembles that which was adopted in the Caregivers Act. See 38 U.S.C. 1720G(d)(4)(A) (which defines ''personal care services'' to include services that provide assistance with one or more ''independent activities of daily living''). ''[W]here the language under question was rejected by the legislature and thus not contained in the statute it provides an indication that the legislature did not want the issue considered.'' 2A Norman J. Singer, Sutherland Statutory Construction, section 48:04 (6th ed. 2000). Because it is clearly the Senate provision and its characterization of ADLs as ''independent'' and not ''instrumental'' that became law, we do not agree with the commenters that VA must expand the ADL listing in § 71.15 to include ''instrumental'' ADLs.

We clarify that some activities commenters wanted to add to the ADL listing in § 71.15 are already specifically considered in § 71.15, or elsewhere in the rule. An individual who has difficulty with ''medication management'' for instance, may be eligible if he or she is considered under § 71.15 as having ''[d]ifficulty with planning and organizing (such as the ability to adhere to medication regimen).'' Additionally, the costs involved in traveling to and from and for the duration of the eligible veteran's medical examination, treatment, or care may be compensable through the beneficiary travel program pursuant to § 71.40(b)(6) and section 104 of the Caregivers Act. To consider such costs in calculation of the stipend would amount to duplicative compensation. However, caregiver services consisting solely of common housekeeping activities (housecleaning, laundry, meal preparation, shopping, or other chores), as well as assistance with financial management and operating communication devices, should not be compensable as part of the stipend unless these deficiencies relate to a need for supervision or protection or inability to perform ADLs, pursuant to the explicit requirements of the Caregivers Act. Section 1720G(a)(3)(C)(i) states that VA must base the stipend amount on ''the amount and degree of personal care services provided,'' and section 1720G(a)(2)(C)(i)–(iii) predicates the need for personal care services on the individual being 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.'' Because the law premises the need for personal care services on specific ADL needs or supervision and protection needs, the calculation of the stipend amount is based upon the amount and degree of assistance an individual requires to perform one or more activities of daily living (ADL), or the amount and degree to which the individual is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury. The stipend is calculated, therefore, based on the personal care needs of each individual, not specific duties as performed by caregivers that are not directly related to assistance with ADLs or providing supervision or protection in the home. For instance, while housecleaning and shopping may be common activities in daily living, completion of these activities by the caregiver may not be for the exclusive benefit of the eligible veteran, but rather for the benefit of the entire household to potentially include the Primary Family Caregiver—these activities are not related to the eligible veteran's specific need for ADL assistance or need for protection or supervision.

While we do not amend the rule to add ADLs to § 71.15 as suggested by commenters, we do believe changes to § 71.40(c)(4)(iv)(A)–(C) would clarify the intent of the assessment of an eligible veteran's need for personal care services, with relation to calculating the monthly stipend for Primary Family Caregivers. Section 71.40(c)(4)(iv) currently equates the sum of a veteran's ratings under § 71.40(c)(4)(iii) with the number of caregiver assistance hours the veteran is presumed to need. See 38 CFR 71.40(c)(4)(iv) (explaining that the sum of ratings indicates that ''the eligible veteran is presumed to require'' a certain number of hours of caregiver assistance per week). Because the stipend amount must be based on the amount of personal care services needed, we will emphasize that an eligible veteran's rating under § 71.40(c)(4)(iii) will be the basis for the stipend the Family Caregiver will receive. We therefore amend § 71.40(c)(4)(iv)(A)–(C) to indicate that the sum of an eligible veteran's ratings under § 71.40(c)(4)(iii) will be the basis for the stipend payment the Family Caregiver will receive, equivalent to the eligible veteran requiring a designated number of hours of caregiver assistance. This change in the regulation text does

not create any substantive change in the calculation of the stipend.

Multiple commenters asserted that other VA statutory or regulatory authority supported the expansion of listed ADLs in § 71.15. One commenter asserted that the rule does not consider as eligible those veterans or servicemembers with residuals of traumatic brain injury (TBI) who are able to perform ADLs as listed in § 71.15, but not ''instrumental activities of daily living'' (IADLs) as that term is used in 38 CFR 4.124a, Schedule of ratings—neurological conditions and convulsive disorders. While the commenter cited 38 CFR 4.123, we assume that the commenter was referring to § 4.124a and that regulation's use of the term IADL to suggest that the rule should be consistent with VA's means of rating TBI for purposes of determining disability compensation. We disagree for several reasons. First, we reiterate that the stipend provided to a caregiver under section 1720G is not disability compensation, and is not related to disability compensation. The stipend is paid directly to the Primary Family Caregiver and is calculated based on the degree of assistance required by the eligible veteran. Congress could easily have linked the caregiver stipend to disability compensation; however, section 1720G instead mandates that VA create a program that is distinct from virtually all other VA benefits programs. The caregiver stipend is designed to assist eligible veterans by enabling Primary Family Caregivers to provide certain home-based care. It is not designed to supplement, replace, or be dependent on the level of disability compensation received by the veteran. The regulations implementing the Program of Comprehensive Assistance for Family Caregivers, in particular the criteria for calculating the stipend amount, were specifically established to meet the goals of the Caregivers Act governing the Program of Comprehensive Assistance for Family Caregivers. These regulations are not, and need not be, designed to complement the rating schedule in 38 CFR part 4.

Another commenter stated, ''Section 1115 of title 38 of the United States Code provides compensation to the veteran only when the spouse cannot perform the duties of a caregiver. This same level of stipend should be applied to non-medical care services provided by caregivers to service members and veterans.'' The meaning of this comment is unclear. First, it is not clear to what ''[t]his same level of stipend'' refers. Section 1115 of title 38, United States Code, does not provide a stipend; rather, it authorizes additional compensation for certain dependents to a veteran entitled to compensation at the rates provided under 38 U.S.C. 1114, and whose disability is rated at least 30 percent. Nothing in 38 U.S.C. 1115, or in VA's implementing regulation at 38 CFR 3.4(b)(2), suggests that a veteran's receipt of additional compensation for dependents is based on the veteran's dependent spouse being unable to serve as the veteran's caregiver. Section 1115 compensation is available to a veteran for a dependent spouse, regardless of the spouses' caregiver status, and the payment of section 1115 compensation to a veteran for a dependent spouse does not equate to VA paying for ''non-medical'' services provided to the veteran or to the dependent spouse. Rather, the payment of additional compensation for dependents is intended to assist a disabled veteran to continue to support certain dependents. Additionally, a veteran's receipt of additional compensation under section 1115 is not affected by a dependent spouse's receipt of the stipend under § 71.40(c)(4). Generally, we reiterate our rationale that the stipend provided to a Primary Family Caregiver under § 71.40(c)(4) is not disability compensation, and is not related to VA's disability compensation authorities, to include section 1115. The stipend is paid directly to the Primary Family Caregiver and not the veteran, and is calculated based on of the degree of assistance required by the veteran, and not the veteran's rated level of disability.

It is possible that the commenter intended to discuss the additional compensation payable based on a veteran's need for aid and attendance and a ''higher level of care'' (under 38 U.S.C. 1114(r)(2)), which is payable only if personal health care services must be provided by, or provided under the supervision of, a licensed provider in the veteran's home. 38 U.S.C. 1114(r)(2). Assuming that the commenter was referring to payments under section 1114(r)(2), we find the commenter's analogy between payments under that section and the stipend payments under this rule inapplicable. The duties provided by a Primary Family Caregiver are not exclusively personal health care services that must be performed by a person who is licensed to provide such services or under the regular supervision of a licensed health care professional, unlike the services required by a veteran under section 1114(r)(2). All assistance that is compensable under the stipend calculation in the rule, such as helping the eligible veteran with dressing, eating, grooming, using the toilet, etc., requires no special license and only a designated level of training as specified in § 71.25(d). Payments under section 1114(r)(2) would be even less comparable to stipend payments under the rule, in fact, if non-medical IADL services that clearly do not require licensure (*e.g.,* laundry, meal preparation) were considered in the calculation of the stipend. We additionally clarify that participation in the Program of Comprehensive Assistance for Family Caregivers would not bar a veteran from receiving aid and attendance compensation under section 1114(r), as § 71.20(c)(4) makes clear that one of the means of establishing a need for personal care services is the veteran having been rated 100 percent disabled for a service connected qualifying serious injury, where the individual has been awarded special monthly compensation that includes an aid and attendance allowance.

Lastly, one commenter stated that VA should expand the listing of ADLs in § 71.15, because VA is not limited by section 1720G(d)(4)(B) to only consider 38 U.S.C. 1701(6)(E) as its authority to define non-institutional extended care under the rule. In turn, as asserted by the commenter, VA is not so limited in defining ''personal care services'' in § 71.15. We do not make any changes based on this comment, as we believe we are so limited by the clear language of the law. The rule elaborates upon the statutory definition of ''personal care services'' set forth in 38 U.S.C. 1720G(d)(4). There, personal care services means services that provide the eligible veteran with ''[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]).'' 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,'' but rather only authorizes the Secretary of VA to provide non-institutional extended care. See 38 U.S.C. 1701(6)(E) (explaining that the term ''medical services'' includes ''[n]oninstitutional 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 noninstitutional extended care services to veterans through VA's medical benefits package,

which includes but is not limited to ''noninstitutional geriatric evaluation, noninstitutional adult day health care, and noninstitutional respite care.'' 38 CFR 17.38(a)(1)(xi)(B). The clear language of 38 U.S.C. 1720G(d)(4)(B) requires that VA apply the term ''non-institutional extended care'' according to this established framework, ''as such term is used in section 1701(6)(E) of [title 38].'' 38 U.S.C. 1720G(d)(4)(B). We do not agree, therefore, with the commenter's assertions that we may rely on statutory authorities other than section 1701(6)(E), and in turn the implementing regulation at 38 CFR 17.38(a)(1)(xi)(B), to provide non-institutional care under the rule or otherwise as support for expanding the definition of ''personal care services'' in § 71.15. Moreover, the other authorities the commenter suggested we utilize to define non-institutional care and thus, personal care services under the rule specifically relate to the delivery of home health services, extended care services, and similar treatment by an interdisciplinary health team, not the provision of personal care services by a Family Caregiver as intended by section 1720G. See 38 U.S.C. 1710B, 1717, 1720C.

40-Hour Cap on Compensable Personal Care Services

A commenter contended that the cap of 40 hours of compensable caregiver assistance under § 71.40(c)(4)(iv) is insufficient because the personal care needs of some eligible veterans may exceed that limit. Specifically, this commenter argued that the rationale for such a cap should be articulated in the rule, and that the rule must allow the caregiver a reasonable opportunity to rebut the presumption that a veteran requires no more than 40 hours of assistance a week. We do not make any changes based on this comment. As previously stated, the stipend is calculated based on the personal care needs of each veteran, and may not directly correlate with all of the activities a caregiver completes, and subsequently may not directly correlate with the actual number of hours that a caregiver spends completing such activities.

Moreover, we believe that it could jeopardize the health and welfare of the eligible veteran to require or expect a Primary Family Caregiver to work more than 40 hours per week. A significant factor in the passage of the Caregivers Act was the amount of work and stress that caregiver's experience. The Program of Comprehensive Assistance for Family Caregivers includes supplemental home-based care and respite care as resources for an eligible veteran who requires more than 40 hours per week of care. Neither the law, nor sound VA policy, contemplates overburdening caregivers by expecting them to provide care for more than 40 hours per week.

Hourly Wage Rate

A commenter stated that setting of the hourly wage rate at the 75th percentile of the rate established by the Bureau of Labor Statistics (BLS) for a home health aide (varying by geography) is inadequate compensation. Specifically, the commenter argued that a wage rate at the 90th percentile would more appropriately reflect the degree of complex services caregivers provide. As stated by the commenter, ''the caregiving needs of many within the population of young severely wounded veterans are far more extensive than the kind of routine care described by BLS, and often cannot be met by a home health aide. In describing her role as a caregiver, one [caregiver] explained, 'I am my husband's accountant; occupational therapist; physical therapist; driver; mental health counselor; and life coach.' '' We do not make any changes based on this comment. First, the commenter urges VA to provide compensation for services that are beyond the scope of expertise of a home health aide and should not otherwise be provided by a home health aide (*e.g.* physical and occupational therapy, mental health counseling), despite the mandate in the Caregivers Act that, ''to the extent practicable,'' VA must 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). We interpret section 1720G(a)(3)(C)(ii) to clearly mandate that stipend amounts should be relative to what a typical home health aide is paid, and subsequently that Family Caregivers should not be expected to provide services that home health aides do not typically provide. We do not find that the law can reasonably be interpreted to require stipend compensation for the provision of specialty clinical care or rehabilitative treatment, or any other care beyond that which can be provided by a typical home health aide, or by a Family Caregiver who may have no additional training beyond that provided by VA under § 71.25(d).

Second, we believe Family Caregivers provide assistance within a range of complexity, given the level of assistance the individual veteran or servicemember is assessed to need and the moderate level of training and prequalification required before VA will designate a family member as a Family Caregiver. Consequently, the wage rate was set at the 75th percentile, which we continue to believe most accurately reflects the hourly rate of a home health aide for providing assistance with ADLs and supervision/protection needs, as they are defined in § 71.15. As we stated in the interim final rule, wage rates vary for home health aides depending on their experience and education, as well as economic factors in each geographic area. We believe the 75th percentile most accurately meets the intent of section 1720G given this range of wage rates, and is reasonable as a middle point between the 50th and 90th percentiles as identified by BLS for geographic areas. We do not believe the setting of the rate at the 75th percentile significantly hinders an eligible veteran's opportunities to receive the assistance they require.

The regulation text in the interim final rule at § 71.40(c)(4)(v), however, did not make clear that VA uses this 75th percentile per geographic area as a factor in calculating the stipend. We therefore make changes to § 71.15 and § 71.40(c)(4)(v) to clarify this point.

We also make clarifying changes to § 71.15 and § 71.40(c)(4)(v) unrelated to public comments to better describe how the Bureau of Labor Statistics (BLS) wage rates and Consumer Price Index (CPI) are used in calculating stipend amounts. Because BLS wage rates are generally based on the previous year's data, the interim final rule factored in a cost of living adjustment based on the CPI to calculate the current year's hourly wage rate. At the time the interim final rule was drafted, BLS provided 2009 wage rates. Shortly thereafter, BLS published its 2010 wage rates, and VA began issuing stipends based on the 2010 BLS wage rates adjusted by the CPI. The BLS's 2011 wage rates, however, reflected some dramatic decreases in the hourly wages of home health aides in various geographic areas of the United States. Application of the 2011 BLS hourly wage rate for all Primary Family Caregivers' stipends would have resulted in decreases in monthly stipend payments for 34% of approved Primary Family Caregivers, the largest decrease being over $6.00 per hour. We never intended that Primary Family Caregivers should be subject to decreased stipend payments from year to year due to decreased BLS rates or a decreased CPI rate. Therefore, we clarify in this final rule that VA's intent is to use the most recent data from the BLS

on hourly wage rates for home health aides as well as the most recent Consumer Price Index for All Urban Consumers (CPI–U), unless using this most recent data for a geographic area would result in an overall BLS and CPI–U combined rate that is lower than that applied in the previous year for the same geographic area. If using this most recent data would result in a BLS and CPI–U combined rate for a geographic area that is lower than that applied in the previous year, the BLS hourly wage rate and CPI–U that was applied in the previous year for that geographic area will be utilized to calculate the Primary Family Caregiver stipend. We note that the CPI–U has been and will continue to be used in the stipend calculation because its representative population coverage is more comprehensive than that of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), and therefore the CPI–U is more representative of Primary Family Caregivers around the country. (The CPI–U covers approximately 87 percent of the total population, and the CPI–W covers approximately 32 percent of the population and is a subset of the CPI–U population). More specifically, the annual CPI–U as used in the stipend calculation is a national average, based on a U.S. city average for the expenditure category ''care of invalids and elderly at home.'' This expenditure category is most representative, within the more general ''medical care'' expenditure category, of the type of care provided by most Family Caregivers.

To clarify this calculation methodology, we add a new definition of the term ''combined rate'' to § 71.15, to refer to the BLS hourly wage rate for home health aides at the 75th percentile in the eligible veteran's geographic area of residence, multiplied by the CPI–U. This definition will further clarify that the combined rate will be determined for each geographic area on an annual basis by comparing (1) the product of the most recent BLS hourly wage rate for home health aides at the 75th percentile in the geographic area and the most recent CPI–U, with (2) the combined rate applied for the geographic area in the previous year. Whichever of these is higher will represent the combined rate for that geographic area that year. We make corresponding revisions to the text of § 71.40(c)(4)(v) to reference the term ''combined rate'' as it is defined in § 71.15.

The combined rate will apply for the entire affected geographic area, such that existing Primary Family Caregivers and new Primary Family Caregivers in a geographic area will receive a stipend calculated with the same combined rate, even though new Primary Family Caregivers would not be adversely affected by a lower BLS hourly wage rate or a lower CPI–U than the previous year. Using one combined rate for both new and existing Primary Family Caregivers in the same geographic area will ensure equity in stipend payments between Primary Family Caregivers of eligible veterans requiring the same number of hours of personal care services, and permits VA to avoid costly and cumbersome adjustments that would be required if we allowed multiple, different combined rates to apply in the same geographic area—costs that were not considered in the impact analysis associated with this regulation, and burdens that were never intended to be a consequence of the interim final rule. Under this methodology, the number of hours of caregiver assistance required would be the only basis for different stipend amounts in each particular geographic area, and no Primary Family Caregiver will see downward fluctuations in their stipend amount from year to year unless the number of required hours of assistance decreases or the eligible veteran moves to a geographic area with a lower combined rate. This revision ensures that Primary Family Caregivers will not unexpectedly lose monetary assistance upon which they had come to rely based on their participation in the Program of Comprehensive Assistance for Family Caregivers. This is the fairest result for all Family Caregivers, and best effectuates our original intent. Moreover, this revision is consistent with the statutory requirement at 38 U.S.C. 1720G(a)(3)(C)(ii) to ensure that stipends are ''not less than'' the monthly amount a commercial home health entity would pay in the geographic area.

We are publishing this revision as part of this final rulemaking because prior notice and comment is not required. This revision is consistent with the calculation methodology set forth in the interim final rule because VA still uses the BLS rate per geographic area and multiplies that rate by the CPI–U (among other factors) to calculate the stipend amount. This revision merely ensures that Primary Family Caregivers' stipends will not decrease simply because the BLS wage rate for their geographic area or the CPI–U has decreased. Because these changes effectuate our original intent, are consistent with the governing statutory authority, serve only to benefit both Primary Family Caregivers and VA, and cannot be applied in a manner detrimental to the public, a new notice and comment period is not necessary.

Expansion of Symptoms Considered in ''Supervision or Protection'' Categories in § 71.15

One commenter argued that VA should expand the listed reasons an individual may require supervision or protection in § 71.15 (in the definition of ''[n]eed for supervision or protection based on symptoms or residuals of neurological or other impairment or injury''), to ensure that symptoms of depression, anxiety disorder, and post-traumatic stress disorder (PTSD) were included, and thereby to ensure that these disorders were considered as qualifying injuries under this rule. The commenter acknowledged that the current criteria of ''[s]elf regulation,'' ''[d]ifficulty with sleep regulation,'' and ''[s]afety risks'' in § 71.15 are criteria that may be met by veterans suffering from PTSD or severe depression, and thus that such veterans could be eligible for a Family Caregiver (assuming all other eligibility requirements are met). However, the commenter also advocated for additional criteria such as ''significant avoidant behaviors'' for someone with PTSD, or ''fear of leaving the home'' and related fearfulness symptoms experienced in conjunction with anxiety disorders.

We acknowledge that a significant number of post-9/11 veterans suffer from PTSD, anxiety disorders, and depression, which may create a need for personal care services. We also acknowledge that the behaviors described by the commenter may be present in this veteran population. However, we disagree that the current regulation does not adequately account for these veterans and servicemembers in the existing eligibility criteria. We therefore do not make any substantive changes.

The currently listed symptoms in § 71.15 pertaining to the need for ''supervision or protection'' are adequate to ensure eligibility for veterans and servicemembers with these disorders and to ensure that Primary Family Caregivers of eligible individuals with these disorders receive a monthly stipend comparable to the stipend paid to Primary Family Caregivers of eligible individuals whose need is based on other types of injuries. As discussed in the interim final rule and as is clear by the regulations themselves, the Program of Comprehensive Assistance for Family Caregivers seeks to train Family Caregivers to provide specific services to seriously injured eligible veterans in a home environment. It is not designed to compensate caregivers of veterans

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

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

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

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

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

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

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

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

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

provided examples in support of this assertion. For instance, one example described a veteran diagnosed with severe depression who was able to perform all ADLs, and whose symptoms included ''utter lack of energy, difficulty in even getting out of bed or concentrating on tasks, and feelings of hopelessness.'' This example further posited that because the veteran's symptoms were not controlled by medication the veteran in turn required ''virtually full time watch'' from his family members to ensure he did not ''attempt to harm himself.'' In this scenario, the commenter surmised that the veteran would rate as a ''4'' (needing total assistance) for three protection/supervision categories under § 71.15: safety risk, self regulation, and difficulty with planning and organizing. The commenter stated that the overall rating of ''12'' only presumes 10 hours per week of caregiver assistance, and that the stipend amount for 10 hours was too low to support a caregiver who must provide ''virtually full time watch'' to protect the veteran. While the commenter would use this scenario to show that a full time caregiver is needed, we do not agree that the protection or supervision categories should be weighted differently than the ADL categories, such that dependence in three supervision or protection categories (or even in a single protection or supervision category as used in another example by the commenter) would presume the full stipend amount. In fact, we find that the circumstances described in the commenter's example above in support of this assertion depict a scenario that is arguably unsafe for the veteran. If a veteran requires ''virtually full time watch'' to ensure that they do not harm themselves, an in-home care setting may not be the most appropriate level of care. The Program of Comprehensive Assistance for Family Caregivers is not designed to train Family Caregivers to the same levels as professional clinical care providers who provide continuous 24-hour, seven day a week support, and such providers with expertise in mental health would be the only individuals qualified to attempt to prevent self-harm. Additionally, we believe that weighing the supervision/protection categories more heavily than the ADL categories is unfair for those eligible veterans whose stipend amounts would be based solely on their need for assistance with ADLs.

Retroactive Provision of Benefits

Multiple commenters asserted that VA unnecessarily delayed the implementation of the Program of Comprehensive Assistance for Family Caregivers, which placed undue stress on an already strained population. These commenters argued that VA could mitigate this delay by retroactively providing Family Caregiver benefits. Particularly, one commenter asserted that VA should make all applicable Family Caregiver benefits effective retroactive to May 5, 2010. We do not have the authority to make this change. The Caregivers Act specifically provided for an effective date for the caregiver programs under 38 U.S.C. 1720G of January 30, 2011. See Pub. L. 111–163, title I, section 101(a)(3)(A) (stating that the amendments made by this subsection shall take effect ''270 days after the date of the enactment'').

Another commenter stated that stipend payments specifically should be retroactively provided to Family Caregivers from the intended effective date of the 38 U.S.C. 1720G, January 30, 2011. We regret that our program, while authorized as of January 2011, did not actually become operational until May 2011. The Caregivers Act established an unprecedented set of benefits to be administered to eligible veterans and non-veterans, as well as intricate eligibility criteria which required VA to promulgate regulations, a time intensive process, before we could legally provide stipend payments.

Currently, the stipend is paid monthly for personal care services that the Primary Family Caregiver provided in the prior month. Benefits due prior to designation of the Primary Family Caregiver, 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. While we acknowledge that the earliest date VA began accepting caregiver applications was after the effective date of 38 U.S.C. 1720G, we cannot provide stipend payments retroactive to that effective date for all current Primary Family Caregivers. This would create an unfair advantage for those who filed applications later than others, between the period of May 5, 2011, and the present.

Revocation of a Family Caregiver

Under § 71.45(a), a Family Caregiver may request a revocation of caregiver status in writing which provides the date of revocation, and all Family Caregiver benefits will continue until the date of revocation. VA may further assist the revoking Family Caregiver in transitioning to alternative health care and mental health coverage, if requested and applicable. 38 CFR 71.45(a). One commenter stated that the rule should also require that the revoking caregiver provide notice to the eligible veteran, and should specify an amount of time in which the Family Caregiver must continue to provide assistance after such notice is provided (with the exception of cases where the revoking caregiver may be abusing or neglecting the veteran). As stated in the interim final rule, participation in the Program of Comprehensive Assistance for Family Caregivers is purely voluntary. Accordingly, VA may not compel a Family Caregiver to continue providing assistance beyond the date provided in the written notice to VA, nor may VA compel a Family Caregiver to provide notice to the eligible veteran. However, we do amend § 71.45(a) to provide that VA will notify the eligible veteran verbally and in writing when the Family Caregiver requests revocation. We make an additional change to § 71.45(b)(2) to remove the word ''removal'' and replace it with the word ''revocation,'' for consistency and ease of understanding. We also amend § 71.45(b)(3) to be consistent with § 71.45(c), regarding VA's actions prior to making a formal revocation. The portion of § 71.45(b)(3) concerning VA actions in suspending Family Caregiver responsibilities now state that ''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.'' We did not intend to limit VA's ability to ''take other appropriate action to ensure the welfare of the eligible veteran'' to § 71.45(c) only, when § 71.45(b)(3) also discusses what may occur if VA suspects that the safety of the eligible veteran is at risk. This is not a substantive change to § 71.45(b)(3), and does not create any new restrictions or criteria.

We further amend § 71.45(b)(4)(ii) and (b)(4)(iii) because they may be misconstrued to prohibit the provision of benefits for a revoked Family Caregiver for any portion of the 30 days after the date of revocation, if another Family Caregiver is designated within that 30 days. The intent of § 71.45(b)(4)(ii) is that there should not be any overlap in the provision of benefits for a revoked Primary Family Caregiver and newly designated Primary Family Caregiver of an eligible veteran, and the intent of § 71.45(b)(4)(iii) is that a maximum of three Family Caregivers for an eligible veteran may be designated and receiving benefits at one time. We additionally clarify that the

intent of § 71.45(b)(4)(i) remains that benefits should be immediately terminated after the revocation date when VA determines the Family Caregiver has committed fraud or abused or neglected the eligible veteran. Similarly, we clarify that the intent of § 71.45(b)(4)(iv) remains that benefits should be immediately terminated after the revocation date when 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. We note that we also amend § 71.45(b)(4)(ii) and (b)(4)(iii) to use the word ''designated'' versus ''assigned'' when referring to new replacement Family Caregivers. Our regulations do not define the word ''assigned,'' and we did not intend to create any ambiguity with regards to the process whereby Family Caregivers are approved and designated as such by VA. We amend § 71.45(b)(4)(i)–(iv) to reflect these clarifications. These are not substantive revisions, and they do not create any new restrictions or interpretations. Corresponding revisions are made to § 71.45(b)(4) and § 71.45(c).

Finally, we make clarifying edits to § 71.45 to clarify that VA will, if requested and applicable, assist revoked Family Caregivers in transitioning to alternative health care coverage and mental health services. The word ''with'' before the phrase ''mental health services'' in §§ 71.45(a), (b)(4), and (c) is extraneous and is removed for clarity. In addition, we clarify the phrase ''fraud or abuse or neglect of the eligible veteran'' in § 71.45(b)(4)(i). We amend §§ 71.45(a), (b)(4), (b)(4)(i), and (c) to reflect these clarifications. These are not substantive revisions, and they do not create any new restrictions or interpretations.

CHAMPVA Benefits

Commenters raised issues related to the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) benefits available to Primary Family Caregivers under this rule. One commenter asserted that a Primary Family Caregiver who is the spouse of a veteran with a service-connected disability rated at 100 percent, who becomes eligible for CHAMPVA benefits under this rule, should be able to retain CHAMPVA benefits despite revocation of caregiver status if the spouse otherwise would qualify for CHAMPVA due to a veteran's 100 percent service-connected disability rating. We believe this comment argued for the retention of CHAMPVA benefits for this group of spouses, based on the independent eligibility criterion for CHAMPVA benefits for a spouse of a veteran who has been adjudicated by VA as having a permanent and total service-connected disability. See 38 CFR 17.271(a)(1) (identifying as eligible for CHAMPVA benefits ''[t]he spouse or child of a veteran who has been adjudicated by VA as having a permanent and total service-connected disability''). We do not make any changes based on this assertion. If a Primary Family Caregiver is independently eligible for CHAMPVA benefits—irrespective of his or her status as a caregiver—then that caregiver's revocation will not affect his or her eligibility for CHAMPVA on that other basis. In order to maintain CHAMPVA coverage post-revocation, VA would need to adjudicate such independent eligibility. We would, of course, assist the revoked family member in this process during the applicable grace period or as otherwise provided by § 71.45. However, we note that a veteran's ''100 percent'' disability rating does not necessarily make that veteran's spouse eligible for CHAMPVA benefits under § 17.271(a)(1). Though a veteran's 100 percent disability rating is considered a ''total'' disability rating, it is not necessarily considered a ''permanent'' disability rating. We clarify this due to the commenter's example of a ''100 percent'' disability rating.

To the extent that the commenter may believe that Family Caregivers who are eligible solely based on their status as a caregiver should retain eligibility for CHAMPVA even after their status is revoked, we disagree. Under 38 U.S.C. 1720G(a)(3)(A)(ii)(IV), VA must provide certain Primary Family Caregivers with medical care under 38 U.S.C. 1781. VA administers section 1781 through the CHAMPVA program and its implementing regulations. Section 102 of the Caregivers Act added paragraph (4) under subsection (a) of section 1781 to expand CHAMPVA eligibility to any ''individual designated as a primary provider of personal care services under [38 U.S.C. 1720G(a)(7)(A)] . . . who is not entitled to care or services under a health-plan contract (as defined in [38 U.S.C. 1725(f)]) . . . [who is] not otherwise eligible for medical care under chapter 55 of title 10.'' Thus, for individuals eligible for CHAMPVA based solely on their status as a Primary Family Caregiver, VA is authorized to provide CHAMPVA only for the family member's duration as a Primary Family Caregiver.

An additional comment was that CHAMPVA benefits should be retroactive, first to January 31, 2011, for all currently designated Primary Family Caregivers, and then to the date a caregiver application was submitted for all future Primary Family Caregivers. First, we note that all Primary Family Caregiver benefits are effective as of the date the signed joint application is received by VA (or the date on which the eligible veteran begins receiving care at home, if later), if the application is approved, to include CHAMPVA benefits. This means that, in practice, an individual who receives private medical care prior to being designated as a Primary Family Caregiver after his or her joint application is received by VA, and who was not already entitled to care or services under a health-plan contract or eligible for medical care under chapter 55 of title 10, will, once approved and designated and determined eligible for CHAMPVA, be able to request reimbursement for that medical care retroactive to the date the joint application was received by VA. Claims from Primary Family Caregivers for such retroactive reimbursement for medical care are subject to the same procedural requirements imposed by CHAMPVA regulations for all CHAMPVA beneficiaries. See 38 CFR 17.272 *et seq.*

However, VA cannot provide such reimbursement for private medical care retroactive to January 30, 2011, for the same reasons that we will not provide stipend payments retroactive to any date that is prior to the actual date the joint application is received by VA.

One commenter stated that a Primary Family Caregiver's eligibility for CHAMPVA should not only be considered when they are first designated as a caregiver, but that a Primary Family Caregiver may enroll in CHAMPVA at any time after having begun to serve as a Primary Family Caregiver, for example, should they lose other health coverage after designation as a Primary Family Caregiver. This is the correct interpretation of § 71.40(c)(3), which states that ''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.'' We do not make any changes based on this comment because the commenter properly interpreted the rule and we do not see any inherent ambiguity. We note, however, that the commenter's additional assertion that the wording of § 71.40(c)(3) is vague and weakens the CHAMPVA eligibility provision by including the phrase ''to be considered'' is addressed by the removal of that phrase from the rule. Section 71.40(c)(3) is further clarified by adding

reference to the statutory authority for CHAMPVA (38 U.S.C. 1781), which specifically identifies Primary Family Caregivers as eligible for CHAMPVA.

Mental Health Services

One commenter expressed confusion related to counseling and other mental health services available to Family Caregivers, and further requested that it be more clearly stated in the rule that Family Caregivers may receive counseling and other services independent of whether those services are provided in connection with the treatment of a disability for which the veteran is receiving treatment from VA. Under §§ 71.40(b)(5) and 71.40(c)(1), all Family Caregivers may receive ''[c]ounseling, which . . . includes individual and group therapy, individual counseling, and peer support groups.'' We do not specify in §§ 71.40(b)(5) or 71.40(c)(1) that such counseling must be ''in connection with the treatment of a disability for which the veteran is receiving treatment through VA,'' which is the criteria that General Caregivers must meet to receive certain counseling and other mental health services under § 71.50(a). As explained in the interim final rulemaking, counseling for Family Caregivers may be provided for reasons not in connection with the treatment of a veteran, unlike the ''[c]ounseling and other services'' provided to General Caregivers under §§ 71.40(a)(3) and 71.50(a). See 76 FR 26153, May 5, 2011 (explaining the differences in statutory authorities to provide counseling to Family Caregivers versus to General Caregivers, and the subsequent differences in eligibility requirements). We amend § 71.40(b)(5) to make clear that counseling provided to Family Caregivers does not have to be in connection with the treatment of a disability for which the eligible veteran is receiving treatment from VA. The commenter must understand as well that because all General Caregiver benefits in § 71.40(a) are generally incorporated into the benefits listed for Secondary Family Caregivers by § 71.40(b)(1) and for Primary Family Caregivers by § 71.40(c)(1), Family Caregivers could receive both counseling services defined in § 71.40(b)(5), as well as those defined for General Caregivers in § 71.40(a)(3) (under § 71.50).

Mandatory Family Caregiver Training To Provide Specific Treatment

One commenter stated that VA should consider requiring that Family Caregivers, who provide personal care services for veterans with PTSD, receive training in the specific treatment modalities of eye movement desensitization and reprogramming, and myofascial release, to assist veterans with anger management and pain management issues. We do not make any changes to the rule based on these comments. Caregiver training as set forth in § 71.25(d) is designed to cover the essential components of home-based care (called ''core competencies'' in the rule), and prepare the caregiver to provide assistance with ''personal care services'' as that term is defined in section 1720G(d)(4) and § 71.15. 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 the competencies in § 71.25(d), we will provide more specific training to the Family Caregiver. However, we cannot mandate by regulation training in very specific treatment modalities that may not be applicable or beneficial to all eligible veterans.

Respite Care

One commenter expressed concern that the rule did not clearly state that respite care provided for Primary Family Caregivers ''shall be medically and age-appropriate and include in-home care,'' as is required by 38 U.S.C. 1720G(a)(3)(B). The commenter further stated that if the statutory requirement that respite care be ''age-appropriate and include in-home care'' is not explicitly stated in the rule, then VA personnel may erroneously advise caregivers that respite options are limited to VA nursing home placement. We note that the analysis of respite care costs in the rule assumes that ''respite care will be primarily in-home care for 24 hours per day,'' and VA does not intend to educate its personnel contrary to the rule and statutory requirements. 76 FR 26162, May 5, 2011. However, we agree that § 71.40(c)(2) should be clarified to conform to the requirements in section 1720G(a)(3)(B), and therefore we have revised § 71.40(c)(2) to indicate that respite care provided for Primary Family Caregivers ''shall be medically and age-appropriate and include in-home care.''

Beneficiary Travel

Commenters stated that the rule does not clearly specify that Family Caregivers are eligible for beneficiary travel benefits, and does not clearly specify the scope of those travel benefits. Beneficiary travel under 38 CFR part 70 is authorized for Family Caregivers in § 71.25(d) and § 71.40(b)(6). Section 71.40(b)(6) states that Family Caregivers ''are to be considered eligible for beneficiary travel under 38 CFR part 70.'' Commenters expressed concern that the phrase ''are to be considered'' is vague and ambiguous and suggested that the phrase could be used to exclude Family Caregivers who are eligible for beneficiary travel under section 104 of Public Law 111–163. This is not VA's intent; § 71.40(b)(6) is therefore amended to remove the phrase ''to be considered.''

In addition, we believe the language in § 71.40(b)(6) should be revised to clarify the scope of benefits authorized under 38 U.S.C. 111(e)(2), as added by section 104 of Public Law 111–163. Section 111(e)(2) of title 38, U.S.C., states: ''Without regard to whether an *eligible veteran entitled to mileage* under this section for travel to a Department facility for the purpose of medical examination, treatment, or care requires an attendant in order to perform such travel, an attendant of such veteran described in subparagraph (B) may be allowed expenses of travel (including lodging and subsistence) upon the same basis as such veteran.'' 38 U.S.C. 111(e)(2)(A) (emphasis added). This means that a veteran must be eligible for mileage under 38 U.S.C. 111 in order for his or her family caregivers to receive travel benefits during the period of time in which the eligible veteran is traveling to or from a VA facility for and throughout the duration of the eligible veteran's examination, treatment or care episode. We note that Family Caregivers may receive travel benefits for training purposes under § 71.25(d) without respect to the veteran's eligibility for beneficiary travel based on the authority in 38 U.S.C. 1720G(a)(6)(C), which is not tied to 38 U.S.C. 111(e). We have revised the text of § 71.40(b)(6) so it states that ''Primary and Secondary Family Caregivers are eligible for beneficiary travel under 38 CFR part 70 if the eligible veteran is eligible for beneficiary travel under 38 CFR part 70.''

Commenters also expressed concern that Family Caregivers would be denied benefits based on language in the supplementary information to the interim final rule that beneficiary travel would be available ''subject to any limitations or exclusions under [38 CFR] part 70,'' the regulations governing VA's beneficiary travel benefits (76 FR 26152, May 5, 2011), and that VA has not revised its beneficiary travel regulations to include Family Caregivers among those who are eligible persons under

§ 70.10. Our statement that the provision of beneficiary travel is subject to the limitations in part 70 does not appear in regulation, and we do not make any changes based on this comment. However, we clarify that the purpose of that statement was to express that Family Caregivers receiving beneficiary travel must comply with the procedural requirements and restrictions in part 70, not to impose new restrictions that do not apply to any other applicants for beneficiary travel benefits. Section 111(e)(2) of title 38, U.S.C., as amended by section 104 of the Caregivers Act, states that Family Caregivers ''may be allowed expenses of travel . . . upon the same basis as [the] veteran'' who is traveling for purposes of medical examination, treatment, or care; it does not provide an independent right to beneficiary travel benefits that would not be subject to the procedures established in 38 CFR part 70, which are applicable to all individuals seeking beneficiary travel benefits. Travel benefits under 38 U.S.C. 1720G(a)(6)(C) for purposes of Family Caregiver training were also linked to 38 CFR part 70 for ease of administering the benefits—instead of establishing a separate program of travel benefits for training purposes. However, we reiterate that for purposes of Family Caregiver training, a veteran's independent eligibility under 38 CFR part 70 is not relevant.

Another commenter cited anecdotal reports that some VA personnel have not properly understood the scope of beneficiary travel benefits offered to Family Caregivers. We note that this is a new legal provision, and concede that some beneficiary travel authorizers may not have been adequately trained at the time that the commenter received the anecdotal reports. We regret this, but note that we are currently conducting formal trainings in VA facilities to educate VA personnel on Family Caregiver eligibility for beneficiary travel benefits, consistent with section 104 of Public Law 111–163. Training, and not regulatory revision, is required to address this problem.

Finally, we note that we are currently in the process of drafting amendments to part 70 that will clearly state that Family Caregivers may receive beneficiary travel benefits (under 38 U.S.C. 111(e)(2) and under 38 U.S.C. 1720G(a)(6)(C)) in the same manner, and subject to the same procedural requirements and limitations, as any individual currently identified as eligible in 38 CFR 70.10. In the interim, 38 U.S.C. 111(e), as amended by section 104 of the Caregiver Act, authorizes VA to provide to Family Caregivers the ''expenses of travel (including lodging and subsistence)'' during the period of time in which the eligible 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 eligible veteran. VA will rely upon that statutory authority as well as 38 U.S.C. 1720G(a)(6)(C) and our regulations in part 70 as authority to provide beneficiary travel benefits to eligible Family Caregivers.

Effective Date of Benefits

Section 71.40(d)(1) indicates that Family Caregiver benefits are effective as of the date that the signed joint application is received by VA or the date the eligible veteran begins receiving care at home (whichever is later), but that these benefits are not provided until a Family Caregiver has been designated. Family Caregivers must complete all required training and instruction to become so designated no later than 30 days after the date the joint application was submitted or, if the application was placed on hold for a GAF assessment, 30 days after the hold has been lifted.

Through implementing § 71.40(d)(1), VA has discovered that the 30-day timeframe is in many instances too brief to allow Family Caregivers to complete all required training. To avoid the delay that starting a new application would create, we are amending § 71.40(d)(1) to extend this timeframe to 45 days, and to include a mechanism to waive the need for a new application beyond 45 days in certain instances. VA may extend the 45-day period for up to 90 days after the date the joint application was submitted or, if the application has been placed on hold for a GAF assessment, for up to 90 days after the hold has been lifted. Such an extension may either be based on training identified under 38 CFR 71.25(d) that is still pending completion, or hospitalization of the eligible veteran. This regulatory change is a liberalization of a requirement, and does not add any restrictions for those otherwise eligible veterans and Family Caregivers with regards to the effective date of benefits.

Non-Substantive Change to § 71.30(b)(2)

Section 71.30(b)(2) provides that a ''covered veteran'' for purposes of the Program of General Caregiver Support Services is a veteran who is enrolled in the VA health care system and needs personal care services because the veteran ''[n]eeds supervision or protection based on symptoms or residuals of neurological care or other impairment or injury.'' The word ''care'' in § 71.30(b)(2) is extraneous and is removed to be consistent with the relevant statutory provision related to covered veterans in the Program of General Caregiver Support Services, 38 U.S.C. 1720G(b)(2)(B).

Administrative Procedure Act

In accordance with 5 U.S.C. 553(d)(3), the Secretary of Veterans Affairs concluded that there was good cause to publish this rule with an immediate effective date. Under the interim final rule, Caregiver benefits have been provided continuously since May 5, 2011. A delayed effective date for this final rule could confuse current Caregivers or VA employees, possibly leading to the misperception that existing Caregiver benefits will be interrupted during the 30-day period between publication of this final rule and the effective date. Therefore, there is good cause to publish this rule with an immediate effective date.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this 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 are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The interim final rule included a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under section 3507(d) of the Act, VA submitted a copy of that rulemaking to OMB for review. OMB assigns a control number for each collection of information it approves. 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.

In the interim final rule, we stated that § 71.25(a) contained collection of information provisions under the Paperwork Reduction Act of 1995, and we requested public comment on those provisions in the document published in the **Federal Register** on May 5, 2011 (76 FR 26158).

We did not receive any comments on the collection of information contained in the interim final rule, and this final rule does not change the burden and

number of respondents because eligibility criteria did not change. OMB approved these new information collection requirements associated with the interim final rule and assigned OMB control number 2900–0768.

Regulatory Flexibility Act

The Acting Secretary hereby certifies that this regulatory amendment 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. 601–612. This regulatory action affects individuals and will not affect any small entities. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by 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 this Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is an economically significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

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 developing any rule that may result in the expenditure by State, local, and 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, and tribal governments, or on the private sector.

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, Pension for Non-Service-Connected Disability for Veterans; 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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on June 30, 2014, 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: January 5, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set forth in the preamble, the interim final rule amending 38 CFR 17.38(a)(1)(vii) and 38 CFR part 71, that was published at 76 FR 26148 on May 5, 2011, is adopted as a final rule with the following changes:

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

■ 2. Amend § 71.10 by revising paragraphs (a) and (b) to read as follows:

§ 71.10 Purpose and scope.

(a) *Purpose.* This part implements the Program of Comprehensive Assistance for Family Caregivers, which, among other things, provides certain benefits to eligible veterans who have incurred or aggravated serious injuries during military service, and to their caregivers. This part also implements the Program of General Caregiver Support Services, which provides support services to caregivers of covered veterans from all eras who are enrolled in the VA health care system.

(b) *Scope.* This part regulates the provision of Family Caregiver benefits and General Caregiver benefits authorized by 38 U.S.C. 1720G. Persons eligible for such benefits may be eligible for other VA benefits based on other laws or other parts of this title.

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■ 3. Amend § 71.15 by:

■ a. Adding the definition for ''Combined rate'' in alphabetical order.

■ b. In the definition for ''In the best interest'', removing all references to ''eligible veteran'' and adding, in each place, ''veteran or servicemember'', and removing ''Family Caregiver program'' and adding, in its place, ''Program of Comprehensive Assistance for Family Caregivers''.

■ c. In the definition for ''Need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'', removing ''and'' at the end of paragraph (6) and adding, in its place, ''or''.

■ d. Revising the definition for ''Primary care team''.

The addition and revision read as follows:

§ 71.15 Definitions.

Combined rate refers to the Bureau of Labor Statistics (BLS) hourly wage rate for home health aides at the 75th percentile in the eligible veteran's geographic area of residence, multiplied by the Consumer Price Index for All Urban Consumers (CPI–U). The combined rate will be determined for each geographic area on an annual basis. For each geographic area, the combined rate will be the higher of:

(1) The most recent BLS hourly wage rate for home health aides at the 75th percentile in the geographic area multiplied by the most recent CPI–U; or

(2) The combined rate applied for the geographic area in the previous year.

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Primary care team means a group of medical professionals who care for a patient and who are selected by VA 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 patient.

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§ 71.20 [Amended]

■ 4. Amend § 71.20 by:

■ a. In paragraph (c), removing ''(based on a clinical determination)'' and adding, in its place, ''(based on a clinical determination authorized by the individual's primary care team)''.

■ b. In paragraph (d), immediately following ''A clinical determination'', adding ''(authorized by the individual's primary care team)''.

■ 5. Amend § 71.25 by:

■ a. In paragraph (c)(1)(i) parenthetical, immediately before ''as appropriate'', adding ''to the extent possible and''.

■ b. In paragraph (d), removing ''designed by and provided through'' and adding, in its place, ''designed and approved by'' .

■ c. Revising paragraph (e).

The revision reads as follows:

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

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(e) *Initial home-care assessment.* No later than 10 business days after VA certifies 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 to assess the caregiver's completion of training and competence to provide personal care services at the eligible veteran's home, and to measure the eligible veteran's well being.

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§ 71.30 [Amended]

■ 6. Amend § 71.30(b)(2) by removing ''care''.

■ 7. Amend § 71.40 by:

■ a. In paragraphs (b)(4), (c)(4)(iv)(A) through (C), and (c)(4)(v), removing all references to ''Caregiver'' and adding, in each place, ''caregiver''.

■ b. In paragraph (b)(5), adding, at the end of the paragraph, ''Counseling does not have to be in connection with the treatment of a disability for which the eligible veteran is receiving treatment from VA.''

■ c. In paragraph (b)(6), removing ''to be considered'', and adding, at the end of the sentence, ''if the eligible veteran is eligible for beneficiary travel under 38 CFR part 70.''

■ d. In paragraph (c)(2), adding, at the end of the paragraph, ''Respite care provided shall be medically and age-appropriate and include in-home care.''

■ e. Revising paragraph (c)(3).

■ f. In paragraphs (c)(4)(iv)(A) through (C), removing all references to ''then the eligible veteran is presumed to require'' and adding, in each place, ''then the caregiver will receive a stipend equivalent to the eligible veteran requiring''.

■ g. In paragraph (c)(4)(v), removing ''Bureau of Labor Statistics hourly wage for home health aides in the geographic area by the Consumer Price Index and then multiplying that total'' and adding, in its place, ''combined rate''.

■ h. Revising paragraph (d)(1).

The revisions read as follows:

§ 71.40 Caregiver benefits.

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(c) * * *

(3) Primary Family Caregivers are eligible for enrollment in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) pursuant to 38 U.S.C. 1781, unless they are entitled to care or services under a health-plan contract (as defined in 38 U.S.C. 1725(f)).

* * * * *

(d) * * *

(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 45 days after the date that the joint application was submitted or, if the application has been placed on hold for a GAF assessment, 45 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. VA may extend the 45-day period for up to 90 days after the date the joint application was submitted or, if the application has been placed on hold for a GAF assessment, for up to 90 days after the hold has been lifted. Such an extension may either be based on training identified under § 71.25(d) that is still pending completion, or hospitalization of the eligible veteran.

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8. Revising § 71.45 to read as follows:

§ 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 mental health services. VA will notify the eligible veteran verbally and in writing of the request for revocation.

(b) *Revocation by the eligible veteran or surrogate.* The eligible veteran 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 revocation.

(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 eligible veteran

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, or take other appropriate action to ensure the welfare of 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 mental health services, unless one of the following is true:

(i) VA determines that the Family Caregiver committed fraud or abused or neglected the eligible veteran, in which case benefits will terminate immediately.

(ii) If the revoked individual was the Primary Family Caregiver, and another Primary Family Caregiver is designated within 30 days after the date of revocation, in which case benefits for the revoked Primary Family Caregiver will terminate the day before the date the new Primary Family Caregiver is designated.

(iii) If another individual is designated 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, in which case benefits for the revoked Family Caregiver will terminate the day before the date the new Family Caregiver is designated.

(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, in which case benefits will terminate immediately.

(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 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 paragraphs (b)(4)(i) through (iv) of this section apply, in which case benefits will terminate as specified. 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.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XD287

Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Bering Sea and Aleutian Islands Management Area; Habitat Areas of Particular Concern

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Agency decision.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the approval of Amendment 104 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 104 to the FMP designates six areas of skate egg concentration as Habitat Areas of Particular Concern (HAPC). The HAPC designations for the six areas of skate egg concentration in the Bering Sea and Aleutian Islands Management Area (BSAI) are intended to highlight the importance of this essential fish habitat for conservation. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: The amendment was approved on January 5, 2015.

ADDRESSES: Electronic copies of Amendment 104 to the FMP and the Environmental Assessment (EA) prepared for this action are available from the Alaska Region NMFS Web site at *http://www.alaskafisheries.noaa.gov/analyses/default.htm.*

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–271–5195.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit proposed amendments to a fishery management plan to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that, upon receiving a fishery management plan amendment, NMFS immediately publish in the **Federal Register** a notice that the amendment is available for public review and comment.

The Notice of Availability for Amendment 104 was published in the **Federal Register** on October 8, 2014 (79 FR 60802), with a 60-day comment period that ended on December 8, 2014. NMFS received three comment letters that contained five substantive comments during the public comment period on the Notice of Availability for Amendment 104. No changes were made in response to these comments. NMFS summarized and responded to these comments under Comment and Responses, below.

NMFS determined that Amendment 104 to the FMP is consistent with the Magnuson-Stevens Act and other applicable laws, and the Secretary approved Amendment 104 on January 5, 2015. The October 8, 2014, Notice of Availability contains additional information on this action. No changes to Federal regulations are necessary to implement Amendment 104.

HAPC are geographic sites that fall within the distribution of essential fish habitat (EFH) for federally-managed species. HAPC are areas of special importance that may require additional protection from the adverse effects of fishing. EFH provisions provide a means for the Council to identify HAPC (50 CFR 600.815(a)(8)) in fishery management plans based on the rarity of the habitat type and at least one or more of the following considerations: the importance of the ecological function provided by the habitat; the extent to which the habitat is sensitive to human-induced environmental disturbance or degradation; and whether, and to what extent, development activities are, or will be, stressing the habitat type. The designation of HAPC does not require the implementation of regulations to limit fishing within HAPC unless such measures are determined to be necessary. EFH provisions require that a Council and NMFS act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature (50 CFR