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Medical

Book I

Title 38, Parts 17, 46, 47, 51–53,
58–64, 70, 71, and 200

Supplement No. 133

Covering period of *Federal Register* issues
through October 1, 2020

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book I*

Code of Federal Regulations

Title 38, Parts 17, 46, 47, 51–53, 58–64, 70, 71, and 200

Medical

Supplement No. 133

5 October 2020

Covering the period of Federal Register issues
through October 1, 2020

When **Book I** was originally prepared, it was current through final regulations published in the *Federal Register* of 15 January 2000. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page I-8 of Book I, *Medical*.

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FILING INSTRUCTIONS

**Book I, Supplement No. 133
October 5, 2020**

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
Do not file this supplement until you confirm that all prior supplements have been filed		
I-29 to I-30	I-29 to I-30	Book I Lead Material
71.INDEX-1 to 71.INDEX-2	71.INDEX-1 to 71.INDEX-2	Part 71 Index
71.10-1 to 71.50-2	71.10-1 to 71.50-2	§§71.10, 71.15, 71.20, 71.25, 71.30, 71.35, 71.40, 71.45, 71.47 & 71.50

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HIGHLIGHTS

Book I, Supplement No. 133 October 5, 2020

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §17.100, you will see a note at the end of that section which reads: “Supplement *Highlights* references—37(1).” This means that paragraph 1 of the *Highlights* section in Supplement No. 37 contains information about the changes made in §17.100. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: Beginning 1 January 2000, supplements for this Book I will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 31 July 2020, the VA published a final rule effective 1 October 2020, to adopt as final, with changes, a proposed rule to revise its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC). This final rule makes improvements to PCAFC and updates the regulations to comply with the recent enactment of the VA MISSION Act of 2018, which made changes to the program's authorizing statute. This final rule allows PCAFC to better address the needs of veterans of all eras and standardize the program to focus on eligible veterans with moderate and severe needs. Changes:

- Revised the authority citation for Part 71;
- In §71.10, revised paragraph (b);
- In §71.15, added definitions for *Domestic violence (DV)*, *Financial planning services*, *In need of personal care services*, *Institutionalization*, *Intimate partner violence (IPV)*, *Joint application*, *Legacy applicant*, *Legacy participant*, *Legal services*, *Monthly stipend rate*, *Need for supervision, protection, or instruction*, *Overpayment*, & *Unable to self-sustain in the community*;
- In §71.15, revised definitions for *In the best interest*, *Primary care team*, & *Serious injury*;
- In §71.15, removed definitions for *Combined rate* & *Need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury*;
- Revised §71.20;
- In §71.25, revised paragraphs (a), (c)(1), (c)(1)(i) and (ii), (c)(2), (e) and (f);
- Redesignated §71.30 as §71.35;

- Added §71.30;
- In §71.40, revised paragraphs (b)(2), (c), (c)(4) and (d), and added paragraphs (c)(5) and (6);
- Revised §71.45;
- Added §71.47; and
- Revised §71.50.

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[Reserved]



Part 71**Caregivers Benefits and Certain Medical Benefits Offered to Family Members of Veterans**

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

Section 71.40 also issued under 38 U.S.C. 111(e), 1720B, 1782.

Section 71.47 also issued under 31 U.S.C. 3711; 38 U.S.C. 5302, 5314.

Section 71.50 also issued under 38 U.S.C. 1782.

Source: 76 Fed. Reg. 26172, May 5, 2011, and as stated in specific sections.

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§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 benefits under the Program of Comprehensive Assistance for Family Caregivers and the Program of General Caregiver Support Services 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. These benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20).

[76 FR 26172, May 5, 2011; as amended at 80 FR 1376, Jan. 9, 2015; 85 FR 46293, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.15

§71.15 Definitions.

For the purposes of this part:

Domestic violence (DV) refers to any violence or abuse that occurs within the domestic sphere or at home, and may include child abuse, elder abuse, and other types of interpersonal violence.

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

Family Caregiver means both a Primary and Secondary Family Caregiver.

Financial planning services means services focused on increasing financial capability and assisting the Primary Family Caregiver in developing a plan to manage the personal finances of the Primary Family Caregiver and the eligible veteran, as applicable, to include household budget planning, debt management, retirement planning review and education, and insurance review and education.

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

In need of personal care services means that the eligible veteran requires in-person personal care services from another person, and without such personal care services, alternative in-person caregiving arrangements (including respite care or assistance of an alternative caregiver) would be required to support the eligible veteran's safety.

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

Inability to perform an activity of daily living (ADL) means a veteran or servicemember requires personal care services each time he or she completes one or more of the following:

- (1) Dressing or undressing oneself;
- (2) Bathing;
- (3) Grooming oneself in order to keep oneself clean and presentable;
- (4) Adjusting any special prosthetic or orthopedic appliance, that by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);
- (5) Toileting or attending to toileting;

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

(7) Mobility (walking, going up stairs, transferring from bed to chair, etc.).

Institutionalization refers to being institutionalized in a setting outside the home residence to include a hospital, rehabilitation facility, jail, prison, assisted living facility, medical foster home, nursing home, or other similar setting.

Intimate partner violence (IPV) refers to any violent behavior including, but not limited to, physical or sexual violence, stalking, or psychological aggression (including coercive acts or economic harm) by a current or former intimate partner that occurs on a continuum of frequency and severity which ranges from one episode that might or might not have lasting impact to chronic and severe episodes over a period of years. IPV can occur in heterosexual or same-sex relationships and does not require sexual intimacy or cohabitation.

Joint application means an application that has all fields within the application completed, including signature and date by all applicants, with the following exceptions: social security number or tax identification number, middle name, sex, email, alternate telephone number, and name of facility where the veteran last received medical treatment, or any other field specifically indicated as optional.

Legacy applicant means a veteran or servicemember who submits a joint application for the Program of Comprehensive Assistance for Family Caregivers that is received by VA before October 1, 2020 and for whom a Family Caregiver(s) is approved and designated on or after October 1, 2020 so long as the Primary Family Caregiver approved and designated for the veteran or servicemember on or after October 1, 2020 pursuant to such joint application (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after October 1, 2020 that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy applicant.

Legacy participant means an eligible veteran whose Family Caregiver(s) was approved and designated by VA under this part as of the day before October 1, 2020 so long as the Primary Family Caregiver approved and designated for the eligible veteran as of the day before October 1, 2020 (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after October 1, 2020 that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy participant.

Legal services means assistance with advanced directives, power of attorney, simple wills, and guardianship; educational opportunities on legal topics relevant to caregiving; and referrals to community resources and attorneys for legal assistance or representation in other legal matters. These services would be provided only in relation to the personal legal needs of the eligible veteran and the Primary Family Caregiver. This definition excludes assistance with matters in which the eligible veteran or Primary Family Caregiver is taking or has taken any adversarial legal action against the United States government, and disputes between the eligible veteran and Primary Family Caregiver.

Monthly stipend rate means the Office of Personnel Management (OPM) General Schedule (GS) Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12.

Need for supervision, protection, or instruction means an individual has a functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis.

Overpayment means a payment made by VA pursuant to this part to an individual in excess of the amount due, to which the individual was not eligible, or otherwise made in error. An overpayment is subject to collection action.

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

Primary care team means one or more medical professionals who care for a patient based on the clinical needs of the patient. Primary care teams must include a VA primary care provider who is a physician, advanced practice nurse, or a physician assistant.

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

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

Serious injury means any service-connected disability that:

- (1) Is rated at 70 percent or more by VA; or
- (2) Is combined with any other service-connected disability or disabilities, and a combined rating of 70 percent or more is assigned by VA.

Unable to self-sustain in the community means that an eligible veteran:

- (1) Requires personal care services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of daily living in this section, and is fully dependent on a caregiver to complete such ADLs; or
- (2) Has a need for supervision, protection, or instruction on a continuous basis.

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

VA refers to the Department of Veterans Affairs.

[76 FR 26172, May 5, 2011; as amended at 80 FR 1376, Jan. 9, 2015; 85 FR 46293, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.20

§71.20 Eligible veterans and servicemembers.

A veteran or servicemember is eligible for a Family Caregiver under this part if he or she meets the criteria in paragraph (a), (b), or (c) of this section, subject to the limitations set forth in such paragraphs.

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

(1) The individual is either:

(i) A veteran; or

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

(2) The individual has a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service:

(i) On or after September 11, 2001;

(ii) Effective on the date specified in a future *Federal Register* document, on or before May 7, 1975; or

(iii) Effective two years after the date specified in a future *Federal Register* document as described in paragraph (a)(2)(ii) of this section, after May 7, 1975 and before September 11, 2001.

(3) The individual is in need of personal care services for a minimum of six continuous months based on any one of the following:

(i) An inability to perform an activity of daily living; or

(ii) A need for supervision, protection, or instruction.

(4) It is in the best interest of the individual to participate in the program.

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

(6) The individual receives care at home or will do so if VA designates a Family Caregiver.

(7) The individual receives ongoing care from a primary care team or will do so if VA designates a Family Caregiver.

(b) For one year beginning on October 1, 2020, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy participant.

(c) For one year beginning on October 1, 2020, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy applicant.

[76 FR 26173, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015; 85 FR 46295, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.25

§71.25 Approval and Designation of Primary and Secondary Family Caregivers.*(a) Application requirement.*

(1) Individuals who wish to be considered for designation by VA as Primary or Secondary Family Caregivers must submit a joint application, along with the veteran or servicemember. Individuals interested in serving as Family Caregivers must be identified as such on the joint application, and no more than three individuals may serve as Family Caregivers at one time for an eligible veteran, with no more than one serving as the Primary Family Caregiver and no more than two serving as Secondary Family Caregivers.

(2) (i) Upon receiving such application, VA (in collaboration with the primary care team to the maximum extent practicable) will perform the evaluations required to determine the eligibility of the applicants under this part, and if eligible, determine the applicable monthly stipend amount under §71.40(c)(4). Notwithstanding the first sentence, VA will not evaluate a veteran's or servicemember's eligibility under §71.20 when a joint application is received to add a Secondary Family Caregiver for an eligible veteran who has a designated Primary Family Caregiver.

(ii) Individuals who apply to be Family Caregivers must complete all necessary eligibility evaluations (along with the veteran or servicemember), education and training, and the initial home-care assessment (along with the veteran or servicemember) so that VA may complete the designation process no later than 90 days after the date the joint application was received by VA. If such requirements are not complete within 90 days from the date the joint application is received by VA, the joint application will be denied, and a new joint application will be required. VA may extend the 90-day period based on VA's inability to complete the eligibility evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is solely due to VA's action.

(3) (i) Except as provided in this paragraph, joint applications received by VA before October 1, 2020 will be evaluated by VA based on 38 CFR 71.15, 71.20, and 71.25 (2019). Notwithstanding the previous sentence, the term "joint application" as defined in §71.15 applies to applications described in this paragraph.

(ii) Joint applications received by VA on or after October 1, 2020 will be evaluated by VA based on the provisions of this part in effect on or after October 1, 2020.

(A) VA will deny any joint application of an individual described in §71.20(a)(2)(ii), if such joint application is received by VA before the date published in a future *Federal Register* document that is specified in such section. A veteran or servicemember seeking to qualify for the Program of Comprehensive Assistance for Family Caregivers pursuant to §71.20(a)(2)(ii) should submit a joint application that is received by VA on or after the date published in a future *Federal Register* document that is specified in §71.20(a)(2)(ii).

(B) VA will deny any joint application of an individual described in §71.20(a)(2)(iii), if such joint application is received by VA before the date that is two years after the date published in a future *Federal Register* document that is specified in §71.20(a)(2)(ii). A veteran or servicemember seeking to qualify for the Program of Comprehensive Assistance for Family Caregivers pursuant to §71.20(a)(2)(iii) should submit a

joint application that is received by VA on or after the date that is two years after the date published in a future *Federal Register* document that is specified in §71.20(a)(2)(ii).

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

(1) Be at least 18 years of age.

(2) Be either:

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

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

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

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

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

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

(i) Whether the applicant can communicate and understand the required personal care services and any specific instructions related to the care of the eligible veteran (accommodation for language or hearing impairment will be made to the extent possible and as appropriate); and

(ii) Whether the applicant will be capable of performing the required personal care services without supervision, in adherence with the eligible veteran's treatment plan in support of the needs of the eligible veteran.

(2) Complete caregiver training and demonstrate the ability to carry out the specific personal care services, core competencies, and additional care requirements.

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

- (1) Medication management;
- (2) Vital signs and pain control;
- (3) Infection control;
- (4) Nutrition;
- (5) Functional activities;
- (6) Activities of daily living;
- (7) Communication and cognition skills;
- (8) Behavior management skills;
- (9) Skin care; and
- (10) Caregiver self-care.

(e) *Initial home-care assessment.* VA will visit the eligible veteran's home to assess the eligible veteran's well-being and the well-being of the caregiver, as well as the caregiver's competence to provide personal care services at the eligible veteran's home.

(f) *Approval and designation.* VA will approve the joint application and designate Primary and/or Secondary Family Caregivers, as appropriate, if the applicable requirements of this part are met. Approval and designation is conditioned on the eligible veteran and designated Family Caregiver(s) remaining eligible for Family Caregiver benefits under this part, the Family Caregiver(s) providing the personal care services required by the eligible veteran, and the eligible veteran and designated Family Caregiver(s) complying with all applicable requirements of this part, including participating in reassessments pursuant to Sec. 71.30 and wellness contacts pursuant to Sec. 71.40(b)(2). Refusal to comply with any applicable requirements of this part will result in revocation from the program pursuant to Sec. 71.45, Revocation and Discharge of Family Caregivers.

[76 FR 26173, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015; 85 FR 46295, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.30

§71.30 Reassessment of Eligible Veterans and Family Caregivers.

(a) Except as provided in paragraphs (b) and (c) of this section, the eligible veteran and Family Caregiver will be reassessed by VA (in collaboration with the primary care team to the maximum extent practicable) on an annual basis to determine their continued eligibility for participation in PCAFC under this part. Reassessments will include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under §71.40(c)(4)(i)(A). Reassessment may include a visit to the eligible veteran's home.

(b) Reassessments may occur more frequently than annually if a determination is made and documented by VA that more frequent reassessment is appropriate.

(c) Reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary.

(d) Failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to this section will result in revocation pursuant to §71.45, Revocation and Discharge of Family Caregivers.

(e) (1) If the eligible veteran meets the requirements of §71.20(b) or (c) (i.e., is a legacy participant or a legacy applicant), the eligible veteran and Family Caregiver will be reassessed by VA (in collaboration with the primary care team to the maximum extent practicable) within the one-year period beginning on October 1, 2020 to determine whether the eligible veteran meets the requirements of §71.20(a). This reassessment may include a visit to the eligible veteran's home. If the eligible veteran meets the requirements of §71.20(a), the reassessment will consider whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under §71.40(c)(4)(i)(A).

(2) Notwithstanding paragraph (e)(1) of this section, a reassessment will not be completed under paragraph (e)(1) if at some point before a reassessment is completed during the one-year period beginning on October 1, 2020 the individual no longer meets the requirements of §71.20(b) or (c).

[76 FR 26174, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015; 85 FR 46296, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.35

§71.35 General Caregivers.

(a) A General Caregiver is a person who:

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

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

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

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

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

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

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

[76 FR 26174, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015; 85 FR 46296, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.40

§71.40 Caregiver benefits.

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

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

(i) Online and in-person educational sessions.

(ii) Use of telehealth and other available technologies.

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

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

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

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

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

(1) General Caregiver benefits described in paragraph (a) of this section, except that respite care under paragraph (a)(4) is limited to veterans enrolled in the VA health care system. Respite care may be provided during a Family Caregiver's training, as described under §71.25(d).

(2) Wellness contacts to review the eligible veteran's well-being, adequacy of personal care services being provided by the Family Caregiver(s), and the well-being of the Family Caregiver(s). This wellness contact will occur, in general, at a minimum of once every 120 days, and at least one visit must occur in the eligible veteran's home on an annual basis. Failure of the eligible veteran and Family Caregiver to participate in any wellness contacts pursuant to this paragraph will result in revocation pursuant to §71.45, Revocation and Discharge of Family Caregivers.

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

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

(5) Counseling, which for the purposes of paragraph (b) of this section includes individual and group therapy, individual counseling, and peer support groups. Counseling does not include the provision of medication, inpatient psychiatric care, or other medical procedures related to mental health treatment. Counseling does not have to be in connection with the treatment of a disability for which the eligible veteran is receiving treatment from VA.

(6) 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.

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

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

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

(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)).

(4) Primary Family Caregivers will receive a monthly stipend for each month's participation as a Primary Family Caregiver.

(i) *Stipend amount.*

(A) Except as provided in paragraph (c)(4)(i)(C) of this section, if the eligible veteran meets the requirements of §71.20(a), the Primary Family Caregiver's monthly stipend is the amount set forth in paragraph (c)(4)(i)(A)(1) or (2) of this section.

(1) The Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.625.

(2) If VA determines that the eligible veteran is unable to self-sustain in the community, the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00.

(B) Except as provided in paragraph (c)(4)(i)(C) of this section, for one year beginning on October 1, 2020, if the eligible veteran meets the requirements of §71.20(b) or (c), (i.e., is a legacy participant or a legacy applicant), the Primary Family Caregiver's monthly stipend is calculated based on the clinical rating in 38 CFR 71.40(c)(4)(i) through (iii) (2019) and the definitions applicable to such paragraphs under 38 CFR 71.15 (2019). If the sum of all of the ratings assigned is:

(1) 21 or higher, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00.

(2) 13 to 20, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.625.

(3) 1 to 12, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.25.

(C) For one year beginning on October 1, 2020, if the eligible veteran meets the requirements of §71.20(a) and (b) or (c), the Primary Family Caregiver's monthly stipend is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) or (B) of this section, whichever is higher. If the higher monthly stipend rate is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) of this section, the stipend rate will be adjusted and paid in accordance with paragraph (c)(4)(ii)(C)(2)(i) of this section.

(D) Notwithstanding paragraphs (c)(4)(i)(A) through (C) of this section, for one year beginning on October 1, 2020, if the eligible veteran meets the requirements of §71.20(b), the Primary Family Caregiver's monthly stipend is not less than the amount the Primary Family Caregiver was eligible to receive as of the day before October 1, 2020 (based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on such date) so long as the eligible veteran resides at the same address on record with the Program of Comprehensive Assistance for Family Caregivers as of the day before October 1, 2020. If the eligible veteran relocates to a different address, the stipend amount thereafter is determined pursuant to paragraph (c)(4)(i)(A), (B), or (C) of this section and adjusted in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Adjustments to stipend payments.*

(A) Adjustments to stipend payments that result from OPM's updates to the General Schedule (GS) Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides take effect prospectively following the date the update to such rate is made effective by OPM.

(B) Adjustments to stipend payments that result from the eligible veteran relocating to a new address are effective the first of the month following the month in which VA is notified that the eligible veteran has relocated to a new address. VA must receive notification within 30 days from the date of relocation. If VA does not receive notification within 30 days from the date of relocation, VA will seek to recover overpayments of benefits under this paragraph (c)(4) back to the latest date on which the adjustment would have been effective if VA had been notified within 30 days from the date of relocation, as provided in §71.47.

(C) The Primary Family Caregiver's monthly stipend may be adjusted pursuant to the reassessment conducted by VA under §71.30.

(1) If the eligible veteran meets the requirements of §71.20(a) only (and does not meet the requirements of §71.20(b) or (c)), the Primary Family Caregiver's monthly stipend is adjusted as follows:

(i) In the case of a reassessment that results in an increase in the monthly stipend payment, the increase takes effect as of the date of the reassessment.

(ii) In the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

(2) If the eligible veteran meets the requirements of §71.20(b) or (c), the Primary Family Caregiver's monthly stipend may be adjusted as follows:

(i) In the case of a reassessment that results in an increase in the monthly stipend payment, the increase takes effect as of the date of the reassessment. The Primary Family Caregiver will also be paid the difference between the amount under paragraph (c)(4)(i)(A) of this section that the Primary Family Caregiver is eligible to receive and the amount the Primary Family Caregiver was eligible to receive under paragraph (c)(4)(i)(B) or (D) of this section, whichever the Primary Family Caregiver received for the time period beginning on October 1, 2020 up to the date of the reassessment, based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on the date of the reassessment and the monthly stipend rate on such date. If there is more than one reassessment for an eligible veteran during the one-year period beginning on October 1, 2020, the retroactive payment described in the previous sentence applies only if the first reassessment during the one-year period beginning on October 1, 2020 results in an increase in the monthly stipend payment, and only as the result of the first reassessment during the one-year period.

(ii) In the case of a reassessment that results in a decrease in the monthly stipend payment and the eligible veteran meets the requirements of §71.20(a), the new stipend amount under paragraph (c)(4)(i)(A) of this section takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after the date that is one year after October 1, 2020. On the date that is one year after October 1, 2020, VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

Note to paragraph (c)(4)(ii)(C)(2): If an eligible veteran who meets the requirements of §71.20(b) or (c) is determined, pursuant to a reassessment conducted by VA under §71.30, to not meet the requirements of §71.20(a), the monthly stipend payment will not be increased under paragraph (c)(4)(ii)(C)(2)(i) of this section or decreased under paragraph (c)(4)(ii)(C)(2)(ii) of this section. Unless the Family Caregiver is revoked or discharged under §71.45 before the date that is 60 days after the date that is one year after October 1, 2020, the effective date for discharge of the Family Caregiver of a legacy participant or legacy applicant under §71.45(b)(1)(ii) will be no earlier than 60 days after the date that is one year after October 1, 2020. On the date that is one year after October 1, 2020, VA will provide advanced notice of its findings to the eligible veteran and Family Caregiver.

(D) Adjustments to stipend payments for the first month will take effect on the date specified in paragraph (d) of this section. Stipend payments for the last month will end on the date specified in §71.45.

(iii) No employment relationship. Nothing in this section shall be construed to create an employment relationship between the Secretary and an individual in receipt of assistance or support under this part.

(iv) Periodic assessment. In consultation with other appropriate agencies of the Federal government, VA shall periodically assess whether the monthly stipend rate meets the requirements of 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv). If VA determines that adjustments to

the monthly stipend rate are necessary, VA shall make such adjustments through future rulemaking.

(5) Primary Family Caregivers are eligible for financial planning services as that term is defined in §71.15. Such services will be provided by entities authorized pursuant to any contract entered into between VA and such entities.

(6) Primary Family Caregivers are eligible for legal services as that term is defined in §71.15. Such services will be provided by entities authorized pursuant to any contract entered into between VA and such entities.

(d) *Effective date of benefits under the Program of Comprehensive Assistance for Family Caregivers.* Except for paragraphs (b)(6) and (c)(3) and (4) of this section, caregiver benefits under paragraphs (b) and (c) of this section are effective upon approval and designation under §71.25(f). Caregiver benefits under paragraphs (b)(6) and (c)(3) and (4) are effective on the latest of the following dates:

(1) The date the joint application that resulted in approval and designation of the Family Caregiver is received by VA.

(2) The date the eligible veteran begins receiving care at home.

(3) The date the Family Caregiver begins providing personal care services to the eligible veteran at home.

(4) In the case of a new Family Caregiver applying to be the Primary Family Caregiver for an eligible veteran, the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran (such that there is only one Primary Family Caregiver designated for an eligible veteran at one time).

(5) In the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran (such that there are no more than two Secondary Family Caregivers designated for an eligible veteran at one time).

(6) In the case of a current or previous Family Caregiver reapplying with the same eligible veteran, the day after the date of revocation or discharge under §71.45, or in the case of extended benefits under §71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which such Family Caregiver received caregiver benefits.

(7) The day after the date a joint application is denied.

[76 FR 26175, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015; 85 FR 46296, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.45

§71.45 Revocation and discharge of Family Caregivers.*(a) Revocation of the Family Caregiver—**(1) Bases for revocation of the Family Caregiver—*

(i) For cause. VA will revoke the designation of a Family Caregiver for cause when VA determines any of the following:

(A) The Family Caregiver or eligible veteran committed fraud under this part;

(B) The Family Caregiver neglected, abused, or exploited the eligible veteran;

(C) Personal safety issues exist for the eligible veteran that the Family Caregiver is unwilling to mitigate;

(D) The Family Caregiver is unwilling to provide personal care services to the eligible veteran or, in the case of the Family Caregiver's temporary absence or incapacitation, fails to ensure (if able to) the provision of personal care services to the eligible veteran.

(ii) Noncompliance. Except as provided in paragraph (f) of this section, VA will revoke the designation of a Family Caregiver when the Family Caregiver or eligible veteran is noncompliant with the requirements of this part. Noncompliance means:

(A) The eligible veteran does not meet the requirements of §71.20(a)(5), (6), or (7);

(B) The Family Caregiver does not meet the requirements of §71.25(b)(2);

(C) Failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to §71.30;

(D) Failure of the eligible veteran or Family Caregiver to participate in any wellness contact pursuant to §71.40(b)(2); or

(E) Failure to meet any other requirement of this part except as provided in paragraph (b)(1) or (2) of this section.

(iii) VA error. Except as provided in §71.45(f), VA will revoke the designation of a Family Caregiver if the Family Caregiver's approval and designation under this part was authorized as a result of an erroneous eligibility determination by VA.

(2) Revocation date. All caregiver benefits will continue to be provided to the Family Caregiver until the date of revocation.

(i) In the case of revocation based on fraud committed by the Family Caregiver or eligible veteran under paragraph (a)(1)(i)(A) of this section, the date of revocation

will be the date the fraud began. If VA cannot identify when the fraud began, the date of revocation will be the earliest date that the fraud is known by VA to have been committed, and no later than the date on which VA identifies that fraud was committed.

(ii) In the case of revocation based on paragraphs (a)(1)(i)(B) through (D) of this section, the date of revocation will be the date VA determines the criteria in any such paragraph has been met.

(iii) In the case of revocation based on noncompliance under paragraph (a)(1)(ii) of this section, revocation takes effect as of the effective date provided in VA's final notice of such revocation to the eligible veteran and Family Caregiver. The effective date of revocation will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver.

(iv) In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, the date of revocation will be the date the error was made. If VA cannot identify when the error was made, the date of revocation will be the earliest date that the error is known by VA to have occurred, and no later than the date on which VA identifies that the error occurred.

(3) *Continuation of benefits.* In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, caregiver benefits will continue for 60 days after the date of revocation unless the Family Caregiver opts out of receiving such benefits. Continuation of benefits under this paragraph will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in §71.47.

(b) *Discharge of the Family Caregiver—*

(1) *Discharge due to the eligible veteran—*

(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers when VA determines any of the following:

(A) Except as provided in paragraphs (a)(1)(ii)(A) and (b)(1)(i)(B) of this section, the eligible veteran does not meet the requirements of §71.20 because of improvement in the eligible veteran's condition or otherwise; or

(B) Death or institutionalization of the eligible veteran. Note: VA must receive notification of death or institutionalization of the eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization. Notification of institutionalization must indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization.

(ii) *Discharge date.*

(A) In the case of discharge based on paragraph (b)(1)(i)(A) of this section, the discharge takes effect as of the effective date provided in VA's final notice of such discharge to the eligible veteran and Family Caregiver. The effective date of discharge will be no

earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver that the eligible veteran does not meet the requirements of §71.20.

(B) For discharge based on paragraph (b)(1)(i)(B) of this section, the date of discharge will be the earliest of the following dates, as applicable:

(1) Date of death of the eligible veteran.

(2) Date that institutionalization begins, if it is determined that the eligible veteran is expected to be institutionalized for a period of 90 days or more.

(3) Date of the 90th day of institutionalization.

(iii) *Continuation of benefits.* Caregiver benefits will continue for 90 days after the date of discharge.

(2) *Discharge due to the Family Caregiver—*

(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers due to the death or institutionalization of the Family Caregiver. Note: VA must receive notification of death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization. Notification of institutionalization must indicate whether Family Caregiver is expected to be institutionalized for 90 or more days from the onset of institutionalization.

(ii) *Discharge date.* The date of discharge will be the earliest of the following dates, as applicable:

(A) Date of death of the Family Caregiver.

(B) Date that the institutionalization begins, if it is determined that the Family Caregiver is expected to be institutionalized for a period of 90 days or more.

(C) Date of the 90th day of institutionalization.

(iii) *Continuation of benefits.* Caregiver benefits will continue for 90 days after date of discharge in paragraph (b)(2)(ii)(B) or (C) of this section.

(3) *Discharge of the Family Caregiver by request of the Family Caregiver—*

(i) *Request for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers if a Family Caregiver requests discharge of his or her caregiver designation. The request may be made verbally or in writing and must provide the present or future date of discharge. If the discharge request is received verbally, VA will provide the Family Caregiver written confirmation of receipt of the verbal discharge request and the effective date of discharge. VA will notify the eligible veteran verbally and in writing of the request for discharge and the effective date of discharge.

(ii) *Discharge date.* The date of discharge will be the present or future date provided by the Family Caregiver or the date of the Family Caregiver's request for discharge if the Family Caregiver does not provide a date. If the request does not include an identified date of discharge, VA will contact the Family Caregiver to request a date. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(iii) *Continuation of benefits.*

(A) Except as provided in paragraph (b)(3)(iii)(B) of this section, caregiver benefits will continue for 30 days after the date of discharge.

(B) If the Family Caregiver requests discharge due to domestic violence (DV) or intimate partner violence (IPV) perpetrated by the eligible veteran against the Family Caregiver, caregiver benefits will continue for 90 days after the date of discharge when any of the following can be established:

(1) The issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran.

(2) A police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or

(3) Documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (e.g., physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist or counselor.

(4) *Discharge of the Family Caregiver by request of the eligible veteran or eligible veteran's surrogate—*

(i) *Request for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Caregivers if an eligible veteran or the eligible veteran's surrogate requests discharge of the Family Caregiver. The discharge request may be made verbally or in writing and must express an intent to remove the Family Caregiver's approval and designation. If the discharge request is received verbally, VA will provide the eligible veteran written confirmation of receipt of the verbal discharge request and effective date of discharge. VA will notify the Family Caregiver verbally and in writing of the request for discharge and effective date of discharge.

(ii) *Discharge date.* The date of discharge will be the present or future date of discharge provided by the eligible veteran or eligible veteran's surrogate. If the request does not provide a present or future date of discharge, VA will ask the eligible veteran or eligible veteran's surrogate to provide one. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(iii) *Rescission.* VA will allow the eligible veteran or eligible veteran's surrogate to rescind the discharge request and have the Family Caregiver

reinstated if the rescission is made within 30 days of the date of discharge. If the eligible veteran or eligible veteran's surrogate expresses a desire to reinstate the Family Caregiver more than 30 days from the date of discharge, a new joint application is required.

(iv) *Continuation of benefits.* Caregiver benefits will continue for 30 days after the date of discharge.

(c) *Safety and welfare.* If VA suspects that the safety of the eligible veteran is at risk, then VA may suspend the caregiver's responsibilities, and facilitate appropriate referrals to protective agencies or emergency services if needed, to ensure the welfare of the eligible veteran, prior to discharge or revocation.

(d) *Overpayments.* VA will seek to recover overpayments of benefits provided under this section as provided in §71.47.

(e) *Transition and bereavement counseling.* VA will, if requested and applicable, assist the Family Caregiver in transitioning to alternative health care coverage and mental health services. In addition, in cases of death of the eligible veteran, bereavement counseling may be available under 38 U.S.C. 1783.

(f) *Multiple bases for revocation or discharge.* In the instance that a Family Caregiver may be both discharged pursuant to any of the criteria in paragraph (b) of this section and have his or her designation revoked pursuant to any of the criteria in paragraph (a) of this section, the Family Caregiver's designation will be revoked pursuant to paragraph (a). In the instance that the designation of a Family Caregiver may be revoked under paragraph (a)(1)(i) and paragraph (a)(1)(ii) or (iii) of this section, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(i). In the instance that the designation of a Family Caregiver may be revoked under paragraphs (a)(1)(ii) and (iii) of this section, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(iii). In the instance that a Family Caregiver may be discharged under paragraph (b)(1), (2), (3), or (4) of this section, the Family Caregiver will be discharged pursuant to the paragraph most favorable to the Family Caregiver.

[76 FR 26175, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015; 85 FR 46298, July 31, 2020]

Supplement *Highlights* references: 62(1), 90(1), 133(1).

Next Section is §71.47

§71.47 Collection of overpayment.

VA will collect overpayments as defined in §71.15 pursuant to the Federal Claims Collection Standards.

[85 FR 46300, July 31, 2020]

Supplement *Highlights* references: 133(1).

Next Section is §71.50

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

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

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

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

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

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

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

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

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

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

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

[76 FR 26176, May 5, 2011; as amended at 85 FR 46300, July 31, 2020]

Supplement *Highlights* references: 62(1), 133(1).