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Title 38, Parts 17, 46, 47, 51–53,
58–62, 70, 71, and 200

Medical

Veterans Benefits Administration

Supplement No. 62

Covering period of *Federal Register* issues
through June 5, 2011

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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, 58–62, 70, 71, and 200

Medical

Veterans Benefits Administration

Supplement No. 62

5 June 2011

Covering the period of Federal Register issues
through June 5, 2011

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FILING INSTRUCTIONS

**Book I, Supplement No. 62
June 5, 2011**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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I-25 to I-26	I-25 to I-26	Book I Contents
17.38-1 to 17.39-1	17.38-1 to 17.39-1	§17.38
(none)	Part 71	Part 71 Title Part 71 Index
* add immediately following Part 70		§71.10 to §71.50

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HIGHLIGHTS

Book I, Supplement No. 62 June 5, 2011

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 5 May 2011, the VA published a final rule, effective that same date, to implement title I of the Caregivers and Veterans Omnibus Health Services Act of 2010. The purpose of the new caregiver benefits program is to provide certain medical, travel, training, and financial benefits to caregivers of certain veterans and servicemembers who were seriously injured in the line of duty on or after September 11, 2001. Changes:

- In §17.38, revised paragraph (a)(1)(vii); and
- Added new Part 71.



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Reserved

§17.38 Medical benefits package.

(a) Subject to paragraphs (b) and (c) of this section, the following hospital, outpatient, and extended care services constitute the “medical benefits package” (basic care and preventive care):

(1) *Basic care.*

- (i) Outpatient medical, surgical, and mental healthcare, including care for substance abuse.
- (ii) Inpatient hospital, medical, surgical, and mental healthcare, including care for substance abuse.
- (iii) Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system.
- (iv) Emergency care in VA facilities; and emergency care in non-VA facilities in accordance with sharing contracts or if authorized by §§17.52(a)(3), 17.53, 17.54, 17.120–132.
- (v) Bereavement counseling as authorized in §17.98.
- (vi) Comprehensive rehabilitative services other than vocational services provided under 38 U.S.C. chapter 31.
- (vii) Consultation, professional counseling, marriage and family counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, as necessary and appropriate, in connection with the veteran’s treatment as authorized under 38 CFR 71.50.
- (viii) Durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids as authorized under §17.149.
- (ix) Home health services authorized under 38 U.S.C. 1717 and 1720C.
- (x) Reconstructive (plastic) surgery required as a result of disease or trauma, but not including cosmetic surgery that is not medically necessary.
- (xi) (A) Hospice care, palliative care, and institutional respite care; and
(B) Noninstitutional extended care services, including but not limited to noninstitutional geriatric evaluation,

noninstitutional adult day health care, and noninstitutional respite care.

- (xii) Payment of beneficiary travel as authorized under 38 CFR part 70.
- (xiii) Pregnancy and delivery services, to the extent authorized by law.
- (xiv) Completion of forms (e.g., Family Medical Leave forms, life insurance applications, Department of Education forms for loan repayment exemptions based on disability, non-VA disability program forms) by healthcare professionals based on an examination or knowledge of the veteran's condition, but not including the completion of forms for examinations if a third party customarily will pay health care practitioners for the examination but will not pay VA.

(2) *Preventive care, as defined in 38 U.S.C. 1701(9), which includes:*

- (i) Periodic medical exams.
- (ii) Health education, including nutrition education.
- (iii) Maintenance of drug-use profiles, drug monitoring, and drug use education.
- (iv) Mental health and substance abuse preventive services.
- (v) Immunizations against infectious disease.
- (vi) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature.
- (vii) Genetic counseling concerning inheritance of genetically determined diseases.
- (viii) Routine vision testing and eye-care services.
- (ix) Periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.

(b) *Provision of the “medical benefits package”.* Care referred to in the “medical benefits package” will be provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.

(1) *Promote health.* Care is deemed to promote health if the care will enhance the quality of life or daily functional level of the veteran, identify a predisposition for development of a condition or early onset of disease which can be partly or totally ameliorated by monitoring or early diagnosis and treatment, and prevent future disease.

(2) *Preserve health.* Care is deemed to preserve health if the care will maintain the current quality of life or daily functional level of the veteran, prevent the progression of disease, cure disease, or extend life span.

(3) *Restoring health.* Care is deemed to restore health if the care will restore the quality of life or daily functional level that has been lost due to illness or injury.

(c) In addition to the care specifically excluded from the “medical benefits package” under paragraphs (a) and (b) of this section, the “medical benefits package” does not include the following:

(1) Abortions and abortion counseling.

(2) In vitro fertilization.

(3) Drugs, biologicals, and medical devices not approved by the Food and Drug Administration unless the treating medical facility is conducting formal clinical trials under an Investigational Device Exemption (IDE) or an Investigational New Drug (IND) application, or the drugs, biologicals, or medical devices are prescribed under a compassionate use exemption.

(4) Gender alterations.

(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services. This exclusion does not apply to veterans who are released from incarceration in a prison or jail into a temporary housing program (such as a community residential re-entry center or halfway house).

(6) Membership in spas and health clubs. (Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782)

[64 FR 54217, Oct. 6, 1999, as amended at 67 FR 35039, May 17, 2002; 73 FR 36798, June 30, 2008; 75 FR 54030, Sept. 3, 2010; 76 FR 11339, Mar. 2, 2011; 76 FR 26172, May 5, 2011]

Supplement *Highlights* references: 37(1). Book I, 9(1), 41(1), 57(1), 61(2), 62(1).

§17.39 Certain Filipino veterans.

(a) Any Filipino Commonwealth Army veteran, including one who was recognized by authority of the U.S. Army as belonging to organized Filipino guerilla forces, or any new Philippine Scout is eligible for hospital care, nursing home care, and outpatient medical services within the United States in the same manner and subject to the same terms and conditions as apply to U.S. veterans, if such veteran or scout resides in the United States and is a citizen or lawfully admitted to the United States for permanent residence. For purposes of these VA health care benefits, the standards described in 38 CFR 3.42(c) will be accepted as proof of U.S. citizenship or lawful permanent residence.

(b) Commonwealth Army Veterans, including those who were recognized by authority of the U.S. Army as belonging to organized Filipino guerilla forces, and new Philippine Scouts are not eligible for VA health care benefits if they do not meet the residency and citizenship requirements described in §3.42(c). (Authority: 38 U.S.C. 501, 1734)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0091.)

[67 FR 41179, June 17, 2002, as amended at 71 FR 6680, Feb. 9, 2006]

Supplement *Highlights* references: Book I, 10(1), 32(1).

Part 71

Caregivers Benefits and Certain Medical Benefits Offered to Family Members of Veterans

Reserved

Part 71

Caregivers Benefits and Certain Medical Benefits Offered to Family Members of Veterans

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

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

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Reserved

§71.10 Purpose and scope.

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

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

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

[76 FR 26172, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.15

§71.15 Definitions.

For the purposes of this part:

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

Family Caregiver means both a Primary and Secondary Family Caregiver.

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

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

- (1) Inability to dress or undress oneself;
- (2) Inability to bathe;
- (3) Inability to groom oneself in order to keep oneself clean and presentable;
- (4) Frequent need of adjustment of any special prosthetic or orthopedic appliance that, by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);
- (5) Inability to toilet or attend to toileting without assistance;
- (6) Inability to feed oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; or
- (7) Difficulty with mobility (walking, going up stairs, transferring from bed to chair, etc.).

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

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

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

- (2) Difficulty with planning and organizing (such as the ability to adhere to medication regimen);
- (3) Safety risks (wandering outside the home, danger of falling, using electrical appliances, etc.);
- (4) Difficulty with sleep regulation;
- (5) Delusions or hallucinations;
- (6) Difficulty with recent memory; and
- (7) Self regulation (being able to moderate moods, agitation or aggression, etc.).

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

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

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

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

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

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

VA refers to the Department of Veterans Affairs.

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

[76 FR 26172, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.20

§71.20 Eligible veterans and servicemembers.

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

(a) The individual is either:

(1) A veteran; or

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

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

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

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

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

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

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

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

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

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

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

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

[76 FR 26173, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.25

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

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

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

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

(1) Be at least 18 years of age.

(2) Be either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[76 FR 26173, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.30

§71.30 General Caregivers.

(a) A General Caregiver is a person who:

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

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

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

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

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

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

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

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

[76 FR 26174, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.40

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

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

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

(5) Counseling, which for the purposes of paragraph (b) of this section includes individual and group therapy, individual counseling, and peer support groups. Counseling does

not include the provision of medication, inpatient psychiatric care, or other medical procedures related to mental health treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Effective date and payment date of benefits

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

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

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

[76 FR 26175, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.45

§71.45 Revocation.

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

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

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

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

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

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

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

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

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

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

(c) *Revocation by VA.* VA may immediately revoke the designation of a Family Caregiver if the eligible veteran or individual designated as a Family Caregiver no longer meets the requirements of this part, or if VA makes the clinical determination that having the Family Caregiver is no longer in the best interest of the eligible veteran. VA will, if requested by the

Family Caregiver, assist him or her in transitioning to alternative health care coverage and with mental health services. If revocation is due to improvement in the eligible veteran's condition, death, or permanent institutionalization, the Family Caregiver will continue to receive caregiver benefits for 90 days, unless any of the conditions described in paragraph (b)(4)(i) through (iv) of this section apply, in which case benefits will terminate immediately. In addition, bereavement counseling may be available under 38 U.S.C. 1783. If VA suspects that the safety of the eligible veteran is at risk, then VA may suspend the caregiver's responsibilities, and remove the eligible veteran from the home if requested by the eligible veteran or take other appropriate action to ensure the welfare of the eligible veteran, prior to making a formal revocation.

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

[76 FR 26175, May 5, 2011]

Supplement *Highlights* references: 62(1).

Next Section is §17.50

§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.

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

[76 FR 26176, May 5, 2011]

Supplement *Highlights* references: 62(1).