

Custom Federal Regulations Service™

**This is supplemental material
for Book I of your set of
Federal Regulations**

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

Medical

Veterans Benefits Administration

Supplement No. 90

Covering period of *Federal Register* issues
through February 1, 2015

Copyright © 2015 Jonathan Publishing

Need Assistance?

Questions concerning **MISSING SUPPLEMENTS**, need for **ADDITIONAL BOOKS**, and other **DISTRIBUTION LIST** issues for this loose-leaf service should be directed to:

Department of Veterans Affairs
Veterans Benefits Administration
Administration
Mail Code: 20M33
810 Vermont Avenue, N.W.
Washington DC 20420
Telephone: 202/273-7588
Fax: 202/275-5947
E-mail: coarms@vba.va.gov

Questions concerning the **FILING INSTRUCTIONS** for this loose-leaf service,
or the reporting of **SUBSTANTIVE ERRORS** in the text,
may be directed to:

Jonathan Publishing
660 Laurel Street, B-103
Baton Rouge LA 70802
Telephone: 225-205-5873
Fax: 702-993-6003
E-mail: info@jonpub.com

Copyright © 2015 Jonathan Publishing

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

Veterans Benefits Administration

Supplement No. 90

5 February 2015

Covering the period of Federal Register issues
through February 1, 2015

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*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page I-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page I-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page I-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book I, Supplement No. 90
February 5, 2015**

*Remove these
old pages*

*Add these
new pages*

*Section(s)
Affected*

**Do not file this supplement until you confirm that
all prior supplements have been filed**

71.10-1 to 71.50-2

71.10-1 to 71.50-2

§§71.10, 71.15,
71.20, 71.25, 71.30,
71.40 & 71.45

**Be sure to complete the
Supplement Filing Record (page I-9)
when you have finished filing this material.**

HIGHLIGHTS

Book I, Supplement No. 90 February 5, 2015

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 9 January 2015, the VA published a final rule effective that same day, to adopt, with changes, the interim final rule concerning VA's Program of Comprehensive Assistance for Family Caregivers. VA administers this program to provide certain medical, travel, training, and financial benefits to caregivers of certain veterans and servicemembers who were seriously injured during service on or after September 11, 2001. Also addressed in this rulemaking is the Program of General Caregiver Support Services that provides support services to caregivers of veterans from all eras who are enrolled in the VA health care system. Specifically, changes in this final rule include a requirement that Veterans be notified in writing should a Family Caregiver request revocation (to no longer be a Family Caregiver), an extension of the application timeframe from 30 days to 45 days for a Family Caregiver, and a change in the stipend calculation to ensure that Primary Family Caregivers do not experience unexpected decreases in stipend amounts from year to year. Changes:

- Revised §71.10 through §71.45.

§71.10 Purpose and scope.

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

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

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

[76 FR 26172, May 5, 2011; as amended at 80 FR 1376, Jan. 9, 2015]

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

Next Section is §71.15

§71.15 Definitions.

For the purposes of this part:

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

- (1) The most recent BLS hourly wage rate for home health aides at the 75th percentile in the geographic area multiplied by the most recent CPI-U; or
- (2) The combined rate applied for the geographic area in the previous year.

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 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 or servicemember's ability to live safely in a home setting, supports the veteran or servicemember's potential progress in rehabilitation, if such potential exists, and creates an environment that supports the health and well-being of the veteran or servicemember.

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; or
- (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 by VA based on the clinical needs of the patient. The team must include a primary care provider who coordinates the care, and may include clinical specialists (e.g., a neurologist, psychiatrist, etc.), resident physicians, nurses, physicians' assistants, nurse practitioners, occupational or rehabilitation therapists, social workers, etc., as indicated by the needs of the particular patient.

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; as amended at 80 FR 1376, Jan. 9, 2015]

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

Next Section is §71.20

§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 authorized by the individual's primary care team), 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 (authorized by the individual's primary care team) has been made that it is in the best interest of the individual to participate in the program.

(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; as amended at 80 FR 1377, Jan. 9, 2015]

Supplement *Highlights* references: 62(1), 90(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 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 to the extent possible and 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 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.* No later than 10 business days after VA certifies completion of caregiver education and training, or should an eligible veteran be hospitalized during this process, no later than 10 days from the date the eligible veteran returns home, a VA clinician or a clinical team will visit the eligible veteran's home to assess the caregiver's completion of training and competence to provide personal care services at the eligible veteran's home, and to measure the eligible veteran's well being.

(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; as amended at 80 FR 1377, Jan. 9, 2015]

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

Next Section is §71.30

§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 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; as amended at 80 FR 1377, Jan. 9, 2015]

Supplement *Highlights* references: 62(1), 90(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) 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. 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 (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. 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 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 caregiver will receive a stipend equivalent to the eligible veteran requiring 40 hours per week of caregiver assistance.

(B) 13 to 20, then the caregiver will receive a stipend equivalent to the eligible veteran requiring 25 hours per week of caregiver assistance.

(C) 1 to 12, then the caregiver will receive a stipend equivalent to the eligible veteran requiring 10 hours per week of caregiver assistance.

(v) The monthly stipend payment will be calculated by multiplying the combined rate 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 45 days after the date that the joint application was submitted or, if the application has been placed on hold for a GAF assessment, 45 days after the hold has been lifted, or a new joint application will be required to serve as the date of application for payment purposes. VA may extend the 45-day period for up to 90 days after the date the joint application was submitted or, if the application has been placed on hold for a GAF assessment, for up to 90 days after the hold has been lifted. Such an extension may either be based on training identified under §71.25(d) that is still pending completion, or hospitalization of the eligible veteran.

(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; as amended at 80 FR 1377, Jan. 9, 2015]

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

Next Section is §71.45

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

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

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

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

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

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

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

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

(iii) If another individual is designated to be a Family Caregiver within 30 days after the date of revocation, such that there are three Family Caregivers assigned to the eligible veteran, in which case benefits for the revoked Family Caregiver will terminate the day before the date the new Family Caregiver is designated.

(iv) The revoked individual had been living with the eligible veteran and moves out, or the revoked individual abandons or terminates his or her relationship with the eligible veteran, in which case benefits will terminate immediately.

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

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

[76 FR 26175, May 5, 2011; as amended at 80 FR 1377, Jan. 9, 2015]

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

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

[76 FR 26176, May 5, 2011]

Supplement *Highlights* references: 62(1).

End of Part 71