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# Notice of Request for Information on the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers (PCAFC)

A Notice by the [Veterans Affairs Department](#) on 01/05/2018

 This document has a comment period that ends in 31 days. (02/05/2018)

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Comments in response to this request for information must be received by VA on or before February 5, 2018.

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## AGENCY:

Department of Veterans Affairs.

## ACTION:

Request for information.

## SUMMARY:

The Department of Veterans Affairs (VA) is requesting information regarding its Program of Comprehensive Assistance for Family Caregivers (PCAFC). Through PCAFC, VA provides certain medical, travel, training, and

stipend benefits to designated family caregivers of eligible veterans and servicemembers who were seriously injured in the line of duty on or after September 11, 2001. This notice requests information and comments from interested parties to help inform PCAFC of any changes needed to increase consistency across the program, as well as ensure it supports those family caregivers of veterans servicemembers most in need.

## **DATES:**

Comments in response to this request for information must be received by VA on or before February 5, 2018.

## **ADDRESSES:**

Written comments may be submitted through <http://www.Regulations.gov> (<http://www.Regulations.gov>); by mail or hand delivery to the Director, Office of Regulation Policy and Management (ooREG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "Notice of Request for Information on the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers (PCAFC)". Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management (ooREG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1063B, Washington, DC 20420, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except Federal holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. During the comment period, comments may also be viewed online through the Federal Docket Management System at [www.Regulations.gov](http://www.Regulations.gov) (<http://www.Regulations.gov>).

## **FOR FURTHER INFORMATION CONTACT:**

Margaret Kabat, National Director, Caregiver Support Program, 10P4C, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202-461-6780 (this is not a toll free number).

## **SUPPLEMENTARY INFORMATION:**

The Program of Comprehensive Assistance for Family Caregivers (PCAFC) was established by Title I of Public Law 111-163 (<https://api.fdsys.gov/link?collection=plaw&congress=111&lawtype=public&lawnnum=163&link-type=html>), Caregivers and Veterans Omnibus Health Services Act of 2010, and is codified in section 1720G(a) of title 38, United States Code (U.S.C.). VA has been administering PCAFC continuously since May 5, 2011 and has implemented this program through its regulations in part 71 of title 38, Code of Federal Regulations (CFR). The purpose of PCAFC is to support family caregivers of eligible veterans (as defined in 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G(a)(2) and 38 CFR 71.20 (/select-citation/2018/01/05/38-CFR-71.20) to include certain servicemembers) through the provision of caregiver benefits, including training, respite care, counseling, technical support, beneficiary travel (in certain circumstances), a monthly stipend payment, and access to health care (if qualified) through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G(a)(3), 38 CFR 71.40 (/select-citation/2018/01/05/38-CFR-71.40).

For purposes of this notice hereinafter, the term "veteran" refers to veterans and servicemembers who apply for or participate in the Program of Comprehensive Assistance for Family Caregivers.

We are issuing this notice in order to solicit input on several components of the program, as further explained below. This notice and request for information serves as a means for VA to consult with key stakeholders on whether and how PCAFC should be modified to provide the highest quality care and support to veterans and their family caregivers in a consistent manner. We will use the information to inform any updates to this program and its implementing regulations. To the extent that there are any comments related to, or which would require changing, the relevant statutory authorities, those comments are outside the scope of this notice, as those would require Congressional action. The intent of this notice is for VA to garner input from the public on whether and how to change its regulations under the current statute.

This notice and request for information has a comment period of 45 days, during which individuals, groups, and entities may reply to the questions presented below. VA believes that 45 days is sufficient to provide comments, as the individuals, groups, and entities interested in this program likely have information and opinions readily available or can quickly compile and submit such information. Commenters are encouraged to provide complete but concise responses to the questions outlined below. Please note that VA will not respond to comments or questions regarding policy plans, decisions, or issues with regard to this notice. VA may choose to contact individual commenters, and such communications would serve to further clarify their written comments.

In order to improve PCAFC, we are seeking information on the following topics and issues:

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### **Initial and Ongoing Eligibility of Veterans and Servicemembers**

In order to be eligible for PCAFC under the statute, the individual must be a veteran or a servicemember undergoing medical discharge from the Armed Forces and must have 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. 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G(a)(2)(A)-(B), 38 CFR 71.20 (/select-citation/2018/01/05/38-CFR-71.20)(a)-(b). We have defined “serious injury” as “any injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, that renders the veteran or servicemember in need of personal care services.” 38 CFR 71.15 (/select-citation/2018/01/05/38-CFR-71.15). We have interpreted 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G to require this causal relationship between the need for personal care services and the serious injury. 76 FR 26150 (/citation/76-FR-26150).

Additionally, 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G requires that eligibility be premised on an individual's need for personal care services because of (1) an inability to perform one or more activities of daily living, (2) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, or (3) such other matters as the Secretary considers appropriate. 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G(a)(2)(C)(i)-(iii). This requirement is set forth in 38 CFR 71.20 (/select-citation/2018/01/05/38-CFR-71.20)(c), in which we require that the serious injury renders the veteran in need of personal care services for a minimum period of six continuous months based on specified criteria. Otherwise, the criteria under § 71.20(c) do not distinguish between, or require, any specific degree of need for assistance (*e.g.*, in frequency, complexity, or scope).

In order to be eligible for the program, we also require that a clinical determination be made that it is in the best interest of the individual to participate in the program. 38 CFR 71.20 (/select-citation/2018/01/05/38-CFR-71.20)(d). This determination currently requires the clinician to consider whether participation in the program significantly enhances the individual's ability to live safely in a home setting, supports the individual's potential progress in rehabilitation, if such potential exists, and creates an environment that supports the health and well-being of the individual. 38 CFR 71.15 (/select-citation/2018/01/05/38-CFR-71.15). VA has found variability in how these three considerations are applied by clinicians assessing whether participation in PCAFC is in a veteran's best interest.

Once a veteran has been determined to be eligible for the program and a family caregiver has been approved and designated, the veteran's well-being is monitored by VA no less often than every 90 days, unless otherwise clinically indicated. 38 CFR 71.40 (/select-citation/2018/01/05/38-CFR-71.40)(b)(2). Currently, there is no regulatory requirement to reassess eligibility. If, however, the veteran's level of functioning improves, lessening the need for assistance of a family caregiver, VA may determine that the veteran no longer meets the eligibility criteria for PCAFC. Because approval and designation of a family caregiver is conditioned on the eligibility criteria being met, in the instance that a veteran is determined to be ineligible for the program, VA will revoke the family caregiver's designation, and the caregiver benefits will cease. 38 CFR 71.25 (/select-citation/2018/01/05/38-CFR-71.25)(f), 71.45(c).

### **Continuation of Benefits After Revocation**

Under PCAFC, caregiver benefits may continue for a period of time after revocation of the family caregiver's designation in limited situations. For example, under § 71.45(b)(4), caregiver benefits continue for 30 days after the date of revocation initiated by the veteran or his or her surrogate, subject to certain exceptions. Additionally, under § 71.45(c), caregiver benefits continue for 90 days after revocation initiated by VA, subject to certain exceptions. We provide these extended periods of benefits to allow a family caregiver, who did not request the revocation, a transition period before benefits are discontinued (particularly, for certain benefits like health care). We believe these extended benefits periods are consistent with the purpose of 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G and represent an appropriate and compassionate way to interpret and enforce the law. 76 FR 26155 (/citation/76-FR-26155)-26156. The 30- and 90-day periods set forth in § 71.45(b)(4) and (c), respectively, are the only instances in which the regulations provide for extended caregiver benefits beyond the date of revocation.

While a family caregiver can voluntarily leave the program at any time, when a family caregiver initiates revocation, his or her caregiver benefits terminate at the present or future date of revocation as specified by the family caregiver. 38 CFR 71.45 (/select-citation/2018/01/05/38-CFR-71.45)(a). While a family caregiver is not required to provide a basis for revocation, a family caregiver's voluntary revocation may involve instances when the family caregiver leaves because of a situation involving actions of the veteran. VA is seeking input on whether there are any circumstances in which a family caregiver's benefits should be extended beyond the revocation date when the family caregiver makes the decision to be removed as the family caregiver as well as the length of such an extension.

### **Determination of Stipend Payment Methodology for Primary Family Caregivers**

Section 1720G(a)(3)(A)(ii)(V) of title 38, U.S.C., requires VA to provide a monthly stipend to primary family caregivers of eligible veterans. Under the statute, VA is required to base the stipend amount on the amount and degree of personal care services provided; to the extent practicable, ensure that the amount is not less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the veteran to provide equivalent personal care services; and in the instance that the geographic area

does not have a commercial home health entity, VA must take into consideration the costs of commercial providers of personal care services in those geographic areas with similar costs of living. See 38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G(a)(3)(C).

Under the implementing regulations, VA relies on the U.S. Department of Labor's Bureau of Labor Statistics (BLS) hourly wage rate for home health aides at the 75th percentile in the veteran's geographic area of residence, which is multiplied by the Consumer Price Index for All Urban Consumers. 38 CFR 71.15 (/select-citation/2018/01/05/38-CFR-71.15), 71.40(c)(4). We have used the BLS wage rate to meet the intent of the statute to ensure that primary family caregivers are not paid less than home health aides in the applicable geographic area. 76 FR 26154 (/citation/76-FR-26154). These rates, however, fluctuate annually in conjunction with changing geographical area designations, which can result in alterations to stipend amounts.

VA also calculates the stipend amount based on a veteran's assigned tier level which is determined by a clinical assessment of functional needs, as further detailed in 38 CFR 71.40 (/select-citation/2018/01/05/38-CFR-71.40)(c)(4). Specifically, VA determines the veteran's level of dependency based on the degree to which he or she is unable to perform one or more activities of daily living or the degree to which he or she is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury. VA conducts a clinical assessment, which is scored and summed. Based on the sum of all ratings, the veteran is assigned a tier level. Each tier level is assigned a □ number of hours, up to forty hours per week. The primary family caregiver receives a stipend based on the assigned tier level. Currently, this is a determination based upon the needs of the veteran, not the family caregiver, and it distinguishes among three different tiers.

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## Request for Information

Through this notice, we are soliciting information on PCAFC. We ask respondents to address the following questions, where possible, in the context of the discussion in this document. Commenters do not need to address every question and should focus on those that relate to their expertise or perspectives. To the extent possible, please clearly indicate which question(s) you address in your response. As previously mentioned, responses to this request will inform our updates to PCAFC. Accordingly, we request comments on the following:

1. Should VA change how "serious injury" is defined for the purposes of eligibility?
  - a. Should the severity of injury be considered in determining eligibility to ensure VA is supporting family caregivers of Veterans most in need? If so, how should the level of severity be determined?
  - b. How should VA define veterans who are most in need?
  - c. Should eligibility be limited to only those veterans who without a family caregiver providing personal care services would otherwise require institutionalization? If so, how should this be determined?
2. One of the bases upon which a veteran can be determined to need personal care services is his or her need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury.
  - a. What should be the criteria to assess a veteran's need for supervision or protection?
  - b. What standardized tools should be used to assess a veteran's need for supervision or protection because of

a mental health condition?

3. To be eligible for the program, participation must be determined to be in the “best interest” of the veteran. How should “best interest” be defined?

a. How can VA improve consistency in “best interest” determinations for participation in the program?

b. Are there any conditions under which participation would not be in a veteran's best interest?

4. Once approved for PCAFC, should the veteran's eligibility be reassessed at specific time intervals or based on certain clinical indicators?

a. If so, what intervals and/or what clinical indicators should be used?

b. Should reassessments be standard for every participant? Are there conditions under which continued eligibility should be presumed and a reassessment not needed? If so, what would these conditions be?

5. When VA determines that a veteran or family caregiver is no longer eligible for PCAFC or the family caregiver or veteran no longer wishes to participate in PCAFC, the family caregiver's designation is “revoked”. The term “revok[ed]” is used in the statute (38 U.S.C. 1720 (<https://api.fdsys.gov/link?collection=uscode&title=38&year=mostrecent&section=1720&type=usc&link-type=html>)G(a)(9)(C)(ii)(II)); however, stakeholders have expressed concerns that this term is not supportive of participants. What terminology should VA use in reference to those participants who are determined to be no longer eligible for the program?

a. Should VA use such language as removal, discharge, or graduate in reference to participants who become ineligible for the program?

6. Should the timeframes for continuation of benefits for family caregivers who are revoked from the Program be modified?

a. If so, how?

b. Under what circumstances should family caregiver benefits be continued after revocation? For example, should VA continue providing benefits to a family caregiver who requests revocation due to an unsafe environment created by a veteran, such as an instance involving intimate partner violence committed by a veteran? How long should the benefits be continued under such circumstances?

7. VA's methodology of stipend calculations using the U.S. Department of Labor's Bureau of Labor Statistics (BLS) wage rates is complex and creates variability in stipend amounts annually across localities. How should VA calculate stipend rates?

a. What other standards or rates should VA consider using to calculate stipends?

b. Should VA use one BLS rate per state, *i.e.*, one rate that is applicable to all veterans residing in a particular state?

c. Should VA have one stipend amount for all primary family caregivers?

8. A veteran is assigned a stipend tier based on the amount and degree of personal care services provided.

How should VA assess and determine the amount and degree of personal care services provided to the veteran by the family caregiver?

a. How should “degree of” need be determined, for both physical needs and those related to the need for supervision and protection?

b. Should “degree of” need be based on *either* physical needs or needs related to psychological disorder? Or should all factors be considered together?

c. Should the three tier system be changed? If so, how should it be changed?

### **Paperwork Reduction Act**

This request for information constitutes a general solicitation of public comments as stated in the implementing regulations of the Paperwork Reduction Act of 1995 at 5 CFR 1320.3 (/select-citation/2018/01/05/5-CFR-1320.3)(h)(4). Therefore, this request for information does not impose information collection requirements (*i.e.*, reporting, recordkeeping or third-party disclosure requirements). Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 (<https://api.fdsys.gov/link?collection=uscode&title=44&year=mostrecent&section=3501&type=usc&link-type=html>) *et seq.*).

### **Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on December 6, 2017, for publication.

Dated: December 6, 2017.

Jeffrey Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

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