

117TH CONGRESS
2D SESSION

S. 3964

To amend title 38, United States Code, to modify the family caregiver program of the Department of Veterans Affairs to include services related to mental health and neurological disorders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2022

Mr. MORAN introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to modify the family caregiver program of the Department of Veterans Affairs to include services related to mental health and neurological disorders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reinforcing Enhanced
5 Support through Promoting Equity for Caregivers Act of
6 2022” or the “RESPECT Act of 2022”.

1 **SEC. 2. MODIFICATION OF FAMILY CAREGIVER PROGRAM**
2 **OF DEPARTMENT OF VETERANS AFFAIRS TO**
3 **INCLUDE SERVICES RELATED TO MENTAL**
4 **HEALTH AND NEUROLOGICAL DISORDERS.**

5 (a) IN GENERAL.—Section 1720G of title 38, United
6 States Code, is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (2)(C)—

9 (i) in clause (iii), by striking “; or”
10 and inserting a semicolon;

11 (ii) by redesignating clause (iv) as
12 clause (v); and

13 (iii) by inserting after clause (iii) the
14 following new clause (iv):

15 “(iv) a diagnosed mental illness or history
16 of suicidal ideation within the past three years
17 that puts the veteran at risk of self-harm; or”;

18 (B) in paragraph (3)—

19 (i) in subparagraph (A)(ii)(VI)—

20 (I) in item (aa), by striking “;
21 and” and inserting a semicolon;

22 (II) in item (bb), by striking the
23 period at the end and inserting “;
24 and”; and

25 (III) by adding at the end the
26 following new item:

1 “(cc) mental health treatment and
2 counseling services.”; and

3 (ii) in subparagraph (C)—

4 (I) in clause (iii)—

5 (aa) in the matter preceding
6 subclause (I)—

7 (AA) by striking “or
8 regular instruction” and in-
9 serting “, regular instruc-
10 tion”; and

11 (BB) by inserting “or a
12 diagnosis of mental illness
13 or history of suicidal idea-
14 tion that puts the veteran at
15 risk of self-harm under
16 paragraph (2)(C)(iv),” be-
17 fore “the Secretary shall”;

18 (bb) in subclause (II), by in-
19 serting before the period at the
20 end the following: “, or assist-
21 ance relating to the risk of self-
22 harm of the veteran, as the case
23 may be”; and

24 (cc) in subclause (III), by
25 striking “such supervision, pro-

1 tection, or instruction to the vet-
 2 eran” and inserting “to the vet-
 3 eran such supervision, protection,
 4 or instruction, or assistance re-
 5 lating to the risk of self-harm of
 6 the veteran, as the case may be”;
 7 and

8 (II) by adding at the end the fol-
 9 lowing new clauses:

10 “(v)(I) For purposes of determining the amount and
 11 degree of personal care services provided under clause (i)
 12 with respect to a veteran described in subclause (II), the
 13 Secretary shall take into account relevant documentation
 14 evidencing the provision of personal care services with re-
 15 spect to the veteran during the preceding three-year pe-
 16 riod.

17 “(II) A veteran described in this subclause is a vet-
 18 eran whose need for personal care services as described
 19 in paragraph (2)(C) is based in whole or in part on—

20 “(aa) a diagnosis of mental illness or history of
 21 suicidal ideation that puts the veteran at risk of self-
 22 harm under clause (iv) of such paragraph; or

23 “(bb) a neurological disorder.”; and

24 (C) by adding at the end the following new
 25 paragraph:

1 “(14) The Secretary shall establish a process and re-
2 quirements for clinicians of facilities of the Department—

3 “(A) to document incidents in which an eligible
4 veteran presents at such a facility for treatment for
5 an emergent or urgent mental health crisis or an eli-
6 gible veteran is assessed by such a clinician to be at
7 risk for suicide; and

8 “(B) provide such documentation to the pro-
9 gram established under paragraph (1).”; and

10 (2) in subsection (d), by adding at the end the
11 following new paragraph:

12 “(5) The term ‘qualified mental health profes-
13 sional’ means a psychiatrist, psychologist, licensed
14 clinical social worker, psychiatric nurse, or other li-
15 censed mental health professional as the Secretary
16 considers appropriate.”.

17 (b) TIMING FOR ESTABLISHMENT OF REQUIRE-
18 MENTS AND PROCESSES.—

19 (1) REPORT.—Not later than 180 days after
20 the date of the enactment of this Act, the Secretary
21 of Veterans Affairs shall—

22 (A) establish the process and requirements
23 required under paragraph (14) of section
24 1720G(a) of title 38, United States Code, as
25 added by subsection (a)(1)(C); and

(B) submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a description of such process and requirements.

(2) CERTIFICATION.—

(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall require all clinicians of facilities of the Department to certify to the Secretary that the clinician understands the process and requirements established under paragraph (1)(A).

(B) FACILITIES OF THE DEPARTMENT DEFINED.—In this paragraph, the term “facilities of the Department” has the meaning given that term in section 1701 of title 38, United States Code.

SEC. 3. REQUIREMENTS RELATING TO EVALUATIONS, ASSESSMENTS, AND REASSESSMENTS RELATING TO ELIGIBILITY OF VETERANS AND CAREGIVERS FOR FAMILY CAREGIVER PROGRAM.

(a) IN GENERAL.—Subsection (a) of section 1720G of title 38, United States Code, as amended by section

1 2(a)(1), is further amended by adding at the end the fol-
2 lowing new paragraphs:

3 “(15)(A) For purposes of conducting evaluations and
4 assessments to determine eligibility of a veteran and care-
5 giver for the program established under paragraph (1) or
6 conducting reassessments to determine continued eligi-
7 bility for such program, the Secretary shall—

8 “(i) take into account relevant documentation
9 and medical records generated by non-Department
10 health care providers, including qualified mental
11 health professionals and neurological specialists;

12 “(ii) if the caregiver of the veteran claims that
13 the serious injury or need for personal care services
14 of the veteran as described in paragraph (2) is based
15 in whole or in part on psychological trauma or an-
16 other mental disorder, ensure—

17 “(I) a qualified mental health professional
18 that treats the veteran participates in the eval-
19 uation process; and

20 “(II) a qualified mental health professional
21 participates in the assessment or reassessment
22 process; and

23 “(iii) if the caregiver of the veteran claims that
24 the serious injury or need for personal care services
25 of the veteran as described in paragraph (2) is based

1 in whole or in part on a neurological disorder, en-
2 sure—

3 “(I) a neurological specialist that treats
4 the veteran participates in the evaluation proc-
5 ess; and

6 “(II) a neurological specialist participates
7 in the assessment or reassessment process.

8 “(B)(i) The Secretary shall establish an appropriate
9 time limit during a 24-hour period for the active participa-
10 tion of a veteran in an evaluation, assessment, or reassess-
11 ment to determine eligibility of the veteran for the pro-
12 gram established under paragraph (1).

13 “(ii) In determining an appropriate time limit for a
14 veteran under clause (i), the Secretary shall—

15 “(I) take into consideration necessary accom-
16 modations for the veteran stemming from the dis-
17 ability or medical condition of the veteran; and

18 “(II) consult with the primary care provider,
19 neurological specialist, or qualified mental health
20 professional that is treating the veteran.

21 “(C) The Secretary shall not require the presence of
22 a veteran during portions of an evaluation, assessment,
23 or reassessment to determine eligibility of the veteran for
24 the program established under paragraph (1) that only re-
25 quire the active participation of the caregiver.

1 “(D)(i) The Secretary shall make reasonable efforts
 2 to assist a caregiver and veteran in obtaining evidence nec-
 3 essary to substantiate the claims of the caregiver and vet-
 4 eran in the application process for evaluation, assessment,
 5 or reassessment for the program established under para-
 6 graph (1).

7 “(ii)(I) As part of the assistance provided to a care-
 8 giver or veteran under clause (i), the Secretary shall make
 9 reasonable efforts to obtain relevant private records that
 10 the caregiver or veteran adequately identifies to the Sec-
 11 retary.

12 “(II) Whenever the Secretary, after making reason-
 13 able efforts under subclause (I), is unable to obtain all
 14 of the relevant records sought, the Secretary shall notify
 15 the caregiver and veteran that the Secretary is unable to
 16 obtain records with respect to the claim, which shall in-
 17 clude—

18 “(aa) an identification of the records the Sec-
 19 retary is unable to obtain;

20 “(bb) a brief explanation of the efforts that the
 21 Secretary made to obtain such records; and

22 “(cc) an explanation that the Secretary will
 23 make a determination based on the evidence of
 24 record and that this clause does not prohibit the

1 submission of records at a later date if such submis-
2 sion is otherwise allowed.

3 “(III) The Secretary shall make not fewer than two
4 requests to a custodian of a private record in order for
5 an effort to obtain such record to be treated as reasonable
6 under subclause (I), unless it is made evident by the first
7 request that a second request would be futile in obtaining
8 such record.

9 “(iii) Under regulations prescribed by the Secretary,
10 the Secretary—

11 “(I) shall encourage a caregiver and veteran to
12 submit relevant private medical records of the vet-
13 eran to the Secretary to substantiate the claims of
14 the caregiver and veteran in the application process
15 for evaluation, assessment, or reassessment for the
16 program established under paragraph (1) if such
17 submission does not burden the caregiver or veteran;
18 and

19 “(II) may require the caregiver or veteran to
20 authorize the Secretary to obtain such relevant pri-
21 vate medical records if such authorization is re-
22 quired to comply with Federal, State, or local law.

23 “(16)(A) The Secretary, in consultation with a health
24 care provider, neurological specialist, or qualified mental
25 health professional that is treating a veteran, shall waive

1 the reassessment requirement for the veteran for partici-
2 pation in the program established under paragraph (1)
3 if—

4 “(i) the serious injury of the veteran under
5 paragraph (2) is significantly caused by a degenera-
6 tive or chronic condition; and

7 “(ii) such condition is unlikely to improve the
8 dependency of the veteran for personal care services.

9 “(B) The Secretary shall require a health care pro-
10 vider, neurological specialist, or qualified mental health
11 professional that is treating a veteran to annually certify
12 the clinical decision of the provider, specialist, or profes-
13 sional under subparagraph (A).

14 “(C) The Secretary may rescind a waiver under sub-
15 paragraph (A) with respect to a veteran and require a re-
16 assessment of the veteran if a health care provider, neuro-
17 logical specialist, or qualified mental health professional
18 that is treating the veteran makes a clinical determination
19 that the level of dependency of the veteran for personal
20 care services has diminished since the last certification of
21 the clinical decision of the provider, specialist, or profes-
22 sional under subparagraph (B).”.

23 (b) DEFINITION.—Subsection (d) of such section, as
24 amended by section 2(a)(2), is further amended—

1 (1) by redesignating paragraphs (4) and (5) as
 2 paragraphs (5) and (6), respectively; and

3 (2) by inserting after paragraph (3) the fol-
 4 lowing new paragraph (4):

5 “(4) The term ‘neurological specialist’ means a
 6 neurologist, neuropsychiatrist, physiatrist, geriatrician,
 7 certified brain injury specialist, neurology
 8 nurse, neurology nurse practitioner, neurology physi-
 9 cian assistant, or such other licensed medical profes-
 10 sional as the Secretary considers appropriate.”.

11 **SEC. 4. REQUIREMENTS RELATING TO PROVISION OF**
 12 **GRANTS FOR ASSISTANCE TO FAMILY CARE-**
 13 **GIVERS OF VETERANS.**

14 (a) DISTRIBUTION OF GRANTS.—Section
 15 1720G(a)(3) of title 38, United States Code, is amended
 16 by adding at the end the following new subparagraph:

17 “(E)(i) The Secretary shall distribute grants provided
 18 under subparagraph (A)(ii)(VI) to entities eligible for the
 19 provision of such a grant in geographically dispersed
 20 areas.

21 “(ii) In providing grants to entities under subpara-
 22 graph (A)(ii)(VI), the Secretary shall provide equal con-
 23 sideration to national, regional, and local organizations,
 24 in an effort to adequately serve individuals in need of serv-
 25 ices provided pursuant to such a grant.”.

1 (b) GRANT PROGRAM REQUIREMENTS.—

2 (1) RULEMAKING.—Not later than 180 days
3 after the date of the enactment of this Act, the Sec-
4 retary of Veterans Affairs shall begin the rule-
5 making process to establish a grant program under
6 each of items (aa), (bb), and (cc) of section
7 1720G(a)(3)(A)(ii)(VI) of title 38, United States
8 Code, as amended by section 2(a)(1)(B)(i), to pro-
9 vide grants under such items.

10 (2) REPORT.—

11 (A) IN GENERAL.—Not later than one year
12 after the date on which the first grant is pro-
13 vided after the date of the enactment of this
14 Act under a grant program established under
15 paragraph (1), the Secretary shall submit to the
16 Committee on Veterans' Affairs of the Senate
17 and Committee on Veterans' Affairs of the
18 House of Representatives a report on the provi-
19 sion of grants under each such program.

20 (B) ELEMENTS.—The report required by
21 subparagraph (A) shall include the following:

22 (i) An assessment of the effectiveness
23 of the grant programs established under
24 paragraph (1), including—

1 (I) the number of individuals who
2 benefitted from each grant program in
3 each Veterans Integrated Service Net-
4 work of the Department of Veterans
5 Affairs; and

6 (II) an assessment of the effec-
7 tiveness of increasing engagement by
8 individuals eligible for such programs
9 in mental health care treatment and
10 services, financial planning services,
11 and legal services in each Veterans In-
12 tegrated Service Network.

13 (ii) A list of recipients of grants under
14 each such program and their partner orga-
15 nizations, if applicable, that delivered serv-
16 ices funded by the grant and the amount
17 of such grant received by each recipient
18 and partner organization.

○