

**PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS**

residing in a State as that term is defined in 38 U.S.C. 101(20).

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

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

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

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

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

SOURCE: 76 FR 26172, May 5, 2011, unless otherwise noted.

**§ 71.10 Purpose and scope.**

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

(b) *Scope.* This part regulates the provision of benefits under the Program of Comprehensive Assistance for Family Caregivers and the Program of General Caregiver Support Services authorized by 38 U.S.C. 1720G. Persons eligible for such benefits may be eligible for other VA benefits based on other laws or other parts of this title. These benefits are provided only to those individuals

**§ 71.15 Definitions.**

For the purposes of this part:

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

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

*Family Caregiver* means both a Primary and Secondary Family Caregiver.

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

*General Caregiver* means an individual who meets the requirements of § 71.35.

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

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

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or servicemember's potential independence, if such potential exists, and creates an environment that supports the health and well-being of the veteran or servicemember.

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

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

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

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

*Joint application* means an application that has all fields within the application completed, including signature and date by all applicants, with the following exceptions: social security num-

ber or tax identification number, middle name, sex, email, alternate telephone number, and name of facility where the veteran last received medical treatment, or any other field specifically indicated as optional.

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

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

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

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government, and disputes between the eligible veteran and Primary Family Caregiver.

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

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

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

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

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

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

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

*Serious injury* means any service-connected disability that:

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

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

- (1) Requires personal care services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of

daily living in this section, and is fully dependent on a caregiver to complete such ADLs; or

- (2) Has a need for supervision, protection, or instruction on a continuous basis.

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

VA refers to the Department of Veterans Affairs.

[76 FR 26172, May 5, 2011, as amended at 80 FR 1376, Jan. 9, 2015; 85 FR 46293, July 31, 2020; 87 FR 57608, Sept. 21, 2022]

### § 71.20 Eligible veterans and servicemembers.

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

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

(1) The individual is either:

- (i) A veteran; or
- (ii) A member of the Armed Forces undergoing a medical discharge from the Armed Forces.

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

- (i) On or after September 11, 2001;
- (ii) Effective October 1, 2020, on or before May 7, 1975; or
- (iii) Effective October 1, 2022, after May 7, 1975 and before September 11, 2001.

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

- (i) An inability to perform an activity of daily living; or
- (ii) A need for supervision, protection, or instruction.

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

(5) Personal care services that would be provided by the Family Caregiver