

**STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON HEALTH
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 11, 2011**

Madame Chairwoman and Members of the Subcommittee:

On behalf of the more than 1.2 million members of the Disabled American Veterans (DAV) and its Auxiliary, thank you for inviting our organization to submit testimony for this important oversight hearing on the Department of Veterans Affairs (VA) proposed interim final rule (IFR) to implement title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law (P.L.) 111-163.

As you may be aware, DAV submitted comments to the IFR and it is with sincere appreciation that we have this opportunity to share our comments, concerns, and recommendations. We believe VA's effort in proposing rules to implement a national caregiver support program is commendable. Nonetheless, we believe the program as proposed will fall short of its Congressional mandate without a number of significant changes.

Based on VA's advances in medicine, health technology, expansion of home care and the Department's push to provide the highest quality of care to veterans in the least restrictive setting to achieve rehabilitation, recovery, and community reintegration, today's VA health care and the delivery of such care have shifted the burden, cost, and responsibility for some levels and types of care onto sick and disabled veterans, their families and other loved ones.

Without proper training and support, family caregivers and veterans receiving care from family caregivers can incur greater emotional, physical, and financial strain. Families have been brought to the verge of bankruptcy and ruin. Such adverse impacts would affect the quality of care and quality of life of caregivers and care recipients, as well as other family members and loved ones. We believe a strong and flexible VA family caregiver program can provide caregivers the support they need and allow veterans to remain in their own homes – a much healthier outcome for the victims of war, their families, and for VA as well.

We urge this Subcommittee to continue its strong oversight of this critical program and to ensure VA meets two required reports to be submitted to the House and Senate Veterans' Affairs Committees not later than two years after the effective date (January 30, 2013) on a comprehensive annual evaluation on implementation and on the feasibility and advisability of expanding caregiver assistance under title 38, United States Code (U.S.C.), § 1720G(a) to caregivers of veterans seriously injured in the line of duty prior to September 11, 2001. In addition, we urge Congress to provide sufficient program funding to help make this program a success.

Effective date of benefits provided under 38 U.S.C. § 1720G

We note that public comments have been submitted to VA on the issue of effective date for benefits provided under 38 U.S.C. § 1720G. We believe Section 101(a)(3) of P.L. 111-163 is pertinent and provides

that the amendments made by this subsection shall take effect on the date that is 270 days after the date of the enactment of this Act (January 30, 2011).

VA proposes the effective date of its rule is May 5, 2011. (76 Fed. Reg. at 26148). The Department provides further clarification under 38 § C.F.R. 17.40(d), “[C]aregiver 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.” Additionally, “[T]he stipend... 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.”

In statutory interpretation, if "the plain meaning of a statute is discernable, that 'plain meaning must be given effect.'" *Johnson v. Brown*, 9 Vet.App. 369, 371 (1996) (quoting *Tallman v. Brown*, 7 Vet.App. 453, 460 (1995)); *see also Brown v. Gardner*, 513 U.S. 115, 119 (1994). “Determining a statute's plain meaning requires examining the specific language at issue and the overall structure of the statute.” *Gardner v. Derwinski*, 1 Vet.App. 584, 586 (1991) (citing *Bethesda Hosp. Ass'n v. Bowen*, 485 U.S. 399, 403-05 (1988)), *aff'd sub nom. Gardner v. Brown*, 5 F.3d 1456 (Fed.Cir. 1993), *aff'd*, 513 U.S. 115 (1994). Because the plain reading of the P.L. 111-163 is unambiguous, we believe the effective date of benefits provided under 38 U.S.C. § 1720G should be January 30, 2011.

Eligibility requirements for the family caregiver program

VA proposes a veteran or servicemember be eligible for benefits and services provided under 38 U.S.C. § 1720G (a) if the individual meets requirements under 38 U.S.C. § 1720G (a)(2)(A) and (B), and *all three* elements under (C). However, the law clearly defines an eligible individual as one that meets requirements under 38 U.S.C. § 1720G (a)(2)(A) and (B), and *only one of the three* elements under (C).

Under 38 U.S.C. § 1720G (a)(2), to be eligible for a program of comprehensive assistance for their family caregivers, an individual must: (A) Be a veteran or member of the Armed Forces undergoing medical discharge from the Armed Forces, and; (B) 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. In addition, the individual must be in need of personal care services because of *one of the following*: (i) An inability to perform one or more activities of daily living; (ii) A need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or (iii) Such other matters as the Secretary considers appropriate.

VA on the other hand, proposes to define an eligible veteran for the family caregiver program under 38 U.S.C. § 1720G (a)(1), to mean a veteran or servicemember who is determined to be eligible for a Primary and Secondary Family Caregiver. VA provides further clarification that to be eligible for a Primary and Secondary Family Caregiver under this rule, VA proposes the veteran or servicemember meet all requirements under 38 C.F.R. § 71.20 (a) through (g).

DAV disagrees strongly with this proposal. In requiring a veteran or servicemember to meet all of the conditions under 38 C.F.R. § 71.20, VA's proposal goes beyond the plain reading of the law and imposes a more restrictive criteria that will result in fewer veterans in urgent need being deemed eligible for the benefits of the law. This proposed stricture will serve to deny benefits to deserving veterans.

We strongly recommend VA revise its proposed definition of an “eligible veteran” for the purposes of this benefit, and accordingly to revise its proposed eligibility criteria.

In addition, we voiced our concern that VA's interpretation of the proposed definition in individual cases may mean a veteran with a *serious illness* other than those specifically listed may be excluded from eligibility for family caregiver benefits, even if he or she meets all other requirements as proposed in the IFR. Such an outcome would be inequitable and not in keeping with the intent of Congress in enacting this benefit for those who nearly gave the ultimate sacrifice in combat deployments, training accidents and in contracting serious diseases in the line of duty or while performing military duty.

Veterans and servicemembers this program was intended to benefit have been and continue to be described as those who are, "wounded, ill, and injured." From the recently established programs within the Department of Defense (DOD), such as the Recovery Coordination Program (RCP), established by Section 1611 of the fiscal year 2008 National Defense Authorization Act, to the VA Federal Recovery Coordination Program (FRCP), wounded, *ill* or injured servicemembers, and their families have been the target population to provide comprehensive assistance.

We also believe Congress intended this program those veterans and servicemembers who are "seriously ill." The Joint Explanatory Statement of P.L. 111-163 states, "[T]he Compromise Agreement also includes an authorization for appropriations that is below the estimate furnished by the Congressional Budget Office. The lower authorization level is based on information contained in a publication (*Economic Impact on Caregivers of the Seriously Wounded, Ill, and Injured*, April 2009) of the Center for Naval Analyses (CNA)." This reports was written "[t]o estimate the economic impact on caregivers of the seriously wounded, ill, and injured (WII)," at the request of the Principal Deputy Assistant Secretary of the Air Force for Manpower and Reserve Affairs who was tasked by the Joint DOD/VA Wounded, Ill, and Injured Senior Oversight Committee.

Subsequent to the passing of P.L. 111-163, VA's press release dated February 9, 2011, (New and Enhanced VA Benefits Provided to Caregivers of Veterans), which quotes Secretary of Veterans Affairs Eric K. Shinseki declaring, "[c]aregivers make tremendous sacrifices every day to help Veterans of all eras who served this nation... They are critical partners with VA in the recovery and comfort of *ill* and injured Veterans, and they deserve our continued training, support and gratitude." (Emphasis added.)

Furthermore, VA's June 4, 2009, testimony before the House Veterans' Affairs Subcommittee on Health, discussing the Department's programs and support of family caregivers states, "[c]aregivers deliver essential services to seriously injured Veterans and service members and VA continues to support these compassionate providers as they help our wounded, *ill* and injured heroes regain and maintain health."

Accordingly, we recommend VA adding the term "seriously ill" as considered under 38 U.S.C. § 1720G (a)(2)(B) and accordingly to revise its proposed eligibility criteria.

Definition of "in the best interest" of the veteran or servicemember

In citing 38 U.S.C. § 7120G(a)(1)(B), ("[T]he Secretary shall only provide support under the program required by subparagraph (A) to a family caregiver of an eligible veteran if the Secretary determines it is in the best interest of the eligible veteran to do so."), VA proposes the following:

[I]n 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.

38 C.F.R. § 71.15. We read this proposal to mean the “in the best interest” test includes that the following criteria must be met: (1) Participation in the program *significantly enhances* the eligible veteran's ability to live safely in a home setting; (2) Participation in the program supports the eligible veteran's potential progress in rehabilitation, if such potential exists, and; (3) Participation in the program creates an environment that supports the health and well-being of the eligible veteran.” (Emphasis added.) (38 C.F.R. § 71.15)

DAV takes no issue with the proposed criteria 2 and 3. However, we take issue with the proposed criteria 1. First, the “significantly enhances” criterion is ill-defined. The discussion on this criterion in the IFR and the proposed regulation does not provide for, or define, a measurement system or scale to express the degree to which the “significantly enhances” standard is or is not met.

Second, the goal of this program is, “[t]o ensure the veteran is able to live in a residential setting without unnecessary deterioration of his or her disability, and safe from potential abuse or neglect.” 76 Fed. Reg. at 26148. (See also the Joint Explanatory Statement of P.L. 111-163, “[T]he overall caregiver support program for caregivers of eligible [Operation Enduring Freedom] or [Operation Iraqi Freedom] veterans would authorize VA to provide training and supportive services to family members and certain others who wish to care for a disabled veteran in the home and to allow veterans to receive the most appropriate level of care.”)

We believe criteria 2 and 3 subscribe to the aforementioned goal as described in the IFR based on certain terms such as “[s]upports the eligible veteran's potential progress...if such potential exists,” and “creates an environment that supports....”

However, we believe criterion 1 proposes an unreasonable standard beyond the goal of the program. For example, comparing criterion 1, “[p]articipation in the program significantly enhances the eligible veteran's ability to live safely in a home setting,” to the program's goal “[t]o ensure that the situation [occurs in which a] veteran is able to live in a residential setting without unnecessary deterioration of his or her disability, and safe from potential abuse or neglect.” Criterion 1 is clearly a higher standard.

In addition, when determining whether benefits and services from VA's medical benefits package will be provided to an eligible veteran, 38 C.F.R. § 17.38(b) states:

“[C]are 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.”

We note VA does not impose any form of the “significantly enhances” criterion to provide care, yet it is a requisite consideration veterans and their family caregivers must meet in order to participate in these benefits. DAV believes this imposes an unnecessarily high standard and undue burden on the veteran, servicemember, and family caregivers of these individuals.

We recommend VA revise its proposed regulation to include a measurement system or scale to express the degree to which the “significantly enhances” standard is or is not met, or else remove the pertinent phrase entirely.

“In the best interest” as a requirement for eligibility of a veteran or servicemember

As previously mentioned, VA proposes that to be eligible for benefits under 38 U.S.C. § 1720G (a), a veteran or servicemember must meet all requirements under 38 C.F.R. §71.20, including subsection (d). (“[A] clinical determination has been made that it is *in the best interest* of the individual to participate in the program”) (Emphasis added). VA further clarifies and designates the “in the best interest” determination as a medical determination in citing 38 U.S.C. 1720G(a)(1)(B). (76 Fed. Reg. at 26149). (“[V]A concludes that determinations of ‘in the best interest’ must be clinical determinations.”).

DAV is concerned with VA’s proposed use of the “in the best interest” determination as an eligibility requirement and its designation as a clinical determination.

According to the language of the law, we believe the “in the best interest” determination is to be performed on an eligible veteran. (“[I]f the Secretary determines it is in the best interest of the *eligible* veteran...”.) (Emphasis added). Furthermore, the purpose of using the “in the best interest” determination is to satisfy a condition that would require VA to provide support under 38 U.S.C. § 1720G (a) to a family caregiver of a veteran or servicemember, and not for the purposes of determining eligibility of the veteran himself or herself for the benefit.

Regarding the designation of “in the best interest” determinations as clinical determinations, DAV notes the proposed regulation does not explicitly characterize the “in the best interest” determination to be a “medical determination.” However, we believe VA is at least strongly implying the phrase “clinical determination” as analogous to “medical determination,” according to 38 C.F.R. § 20.101(b), which in turn may import implications for a veteran’s procedural and appellate rights in the case of an adverse decision.

Current regulations stipulate the Board of Veterans’ Appeals (BVA) jurisdiction over eligibility issues outlined under 38 C.F.R. § 20.101(b):

[T]he Board’s appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration.

However, because VA’s proposal makes eligibility determinations contingent upon a medical determination (presumably to be made by a Veterans Health Administration clinician), it is in conflict with 38 C.F.R. § 20.101(b), which also states:

[M]edical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board’s jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be

ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

Congress broadly divested all federal courts but the United States Court of Appeals for Veterans Claims (CAVC) and the United States Court of Appeals for the Federal Circuit of jurisdiction to review any “questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a).

The question of a veteran’s eligibility for benefits administered by the VA is subject to a question of law and fact necessary to a decision by the Secretary and is therefore subject to one review on appeal to the Secretary, where final decisions on such appeals shall be made by the BVA. (38 U.S.C. §§ 7104, 7105, 7108)

Based on VA’s proposed regulation, however, should an appeal be perfected based on a denial of eligibility due to a “medical determination,” it may preclude review by the BVA and thus obviate appellate review by CAVC. (38 C.F.R. 20.101(b)). We believe such an outcome would be antithetical to the purposes of the act, and indeed, would not be in the best interest of the severely disabled veterans this law aims to serve.

Proposed definition of “personal care services” and their use in calculating the amount of monthly stipend

The law defines “personal care services” to mean, “[s]ervices that provide the veteran the...[a]ssistance with one or more independent activities of daily living [and] [a]ny other non-institutional extended care (as such term is used in section 1701(6)(E) of this title). 38 U.S.C. § 1720G(d)(4). 38 U.S.C. § 1701(6)(E) further provides, “[N]oninstitutional extended care services, *including* alternatives to institutional extended care that the Secretary may furnish directly, by contract, or through provision of case management by another provider or payer.” (Emphasis added).

VA proposes to define personal care services as, “[C]are 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.” (38 C.F.R. § 71.15).

DAV believes VA’s proposed definition is inadequate. In its discussion, VA limited the scope used to define the term “personal care services,” thus limiting its definition and other elements of the family caregiver program that are contingent upon its definition. These elements include identifying the personal care services required by the eligible veteran, education and training of family caregivers to meet those needs, and calculation of the monthly stipend.

VA indicates the statutory term “independent activity of daily living,” [d]oes not have a commonly understood usage or meaning,” and interprets the phrase to mean, “[p]ersonal functions required in everyday living to sustain health and well-being and keep oneself safe from hazards or dangers incident to one’s daily environment. (76 Fed. Reg. at 26149).

DAV agrees that “independent activity of daily living” is not a commonly used phrase; however, based on the context of the statute, the goal of this program, and VA health care programs and services that allow disabled veterans to remain in the community, we believe it is reasonable for VA to include in its proposed definition, services that provide the veteran assistance with Activities of Daily Living and Instrumental Activities of Daily Living.

“Activities of daily living” are defined as, “[e]veryday routines generally involving functional mobility and personal care, such as bathing, dressing, toileting, and meal preparation.” Stedman’s Medical Dictionary 30, 22 (28th ed. 2006). Instrumental Activities of Daily Living are defined as: “more complex and demanding activities of daily living required for more independent living[,] . . . includ[ing] using the telephone, traveling, shopping, preparing meals, doing housework, taking medications properly, and managing money.” Stedman’s Medical Dictionary 942, 1724 (28th ed. 2006).

Furthermore, to define “other non-institutional extended care (as such term is used in section 1701(6)(E) of this title),” VA cites 38 U.S.C. § 1701(6)(E) as the statutory authority for the Department to provide non-institutional extended care and states that it provides non-institutional care services to enrolled veterans (and as provided in 38 C.F.R. 17.36(a)) through VA’s medical benefits package, which include but are not limited to “noninstitutional geriatric evaluation, noninstitutional adult day health care, and noninstitutional respite care.” 38 C.F.R. § 17.38(a)(1) (xi)(B).

By using the phrase “[a]s such term is used in section...,” DAV believes that the law is merely citing 38 U.S.C. § 1701(6)(E) to help define the term “non-institutional extended care” and that it does not preclude other statutory authority that allows the Department to provide non-institutional extended care and alternatives to institutional extended care.

Consider for example, 38 U.S.C. § 1710B(a)(5), which discusses other, “[n]oninstitutional alternatives to nursing home care as the Secretary may furnish as medical services under section 1701(10) of this title.” In addition, 38 U.S.C. § 1720C provides VA authority to provide “[N]oninstitutional alternatives to nursing home care.” (“[T]he Secretary may furnish medical, rehabilitative, and health-related services in noninstitutional settings for veterans who are eligible under this chapter for, and are in need of, nursing home care.”).

Other statutory authorities that allow VA to provide home-based health care services include 38 U.S.C. § 1717. This section provides the authority for VA to provide home health services to an eligible veteran in any residential setting. (“[A]s part of medical services furnished to a veteran under section 1710(a) of this title, the Secretary may furnish such home health services as the Secretary finds to be necessary or appropriate for the effective and economical treatment of the veteran... The Secretary may furnish home health services to a veteran in any setting in which the veteran is residing”).

While section 1717 does not specifically state the authority provided is for noninstitutional or alternatives to institutional extended care, VA has used this authority to provide home health services under HBPC (*See* VHA Handbook 1141.01, Home-Based Primary Care, at 1). HBPC is an interdisciplinary home health care program delivering primary care provided by an interdisciplinary health care team in the homes of veterans. The goals of this program include “[P]romoting the veteran’s maximum level of health and independence by providing comprehensive care and optimizing physical, cognitive, and psychosocial function,” and “[R]educing the need for, and providing an acceptable *alternative* to, hospitalization, *nursing home care*, emergency department and outpatient clinic visits, through longitudinal care that provides close monitoring, early intervention, and a therapeutic safe home environment.” (Emphasis added.)

Based on these laws and regulations, we look finally at VA’s fiscal year 2012 budget request, for which Congress has provided appropriations and which lists those extended care programs it has categorized as “non-institutional.” These services include VA, State, and Contract Adult Day Health Care, Home-Based Primary Care, Homemaker/Home Health Aide Programs, Spinal Cord Injury Home Care, Telehome Health, and “Other Home Based Programs.”

In its proposed definition for “personal care services,” VA does not mention consideration of services beyond those under 38 C.F.R. §§ 17.36(a) and 17.38(a)(1)(xi)(B). Instead, VA proposes to

“[c]linically rate the eligible veteran's inability to perform each of the seven [Activities of Daily Living]...[and]... 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 [38 C.F.R.] § 71.15.”

While we understand the assessment of need is required clinically and by law (to provide caregiver training and ongoing support in providing personal care services to the eligible veteran 38 U.S.C. 1720G(a)(3)(A)(i)(I) and (II)), we believe it reasonable to infer Congress intended the personal care services reflect skilled and unskilled home care services VA currently provides. Neither VA's proposed definition of personal care services nor the 14 categories of its assessment instrument reflect the plain reading of the law, which specifically “[m]eans *services* provide[d] [to] the veteran.” (Emphasis added).

In addition, DAV's concern with VA's proposal is four-fold. One, VA proposes to use a new 14-item instrument based on “[t]hree widely accepted clinical tools for measuring Activities of Daily Living and functional dependence...The Katz Basic Activities of Daily Living Scale (Katz ADL); the UK Functional Independence Measure and Functional Assessment Measure (FIM + FAM); and the Neuropsychiatric Inventory (NPI).” However, unlike VA's 14-item assessment instrument, the Katz ADL, UK FIM + FAM, and the NPI have proven reliability (internal consistency/reproducibility), validity (construct and criterion validity), responsiveness as an outcome measure, interpretability (provides clinically relevant event), and burden (cost and time to administer).

Two, VA proposes to evaluate the level of dependency with “[T]he sum of the zero-to-four scores assigned to each of the 14 categories... is then applied to a presumptive level of need: Eligible veterans who score 21 or higher...are presumed to need ... 40 hours of care per week... an eligible veteran who scores 13 to 20 total...will be presumed to require 25 hours per week of Caregiver assistance...[and]... an eligible veteran who scores 1 to 12 will be presumed to require 10 hours per week.” (76 Fed. Reg. at 26155). We note the validity and reliability of the Katz ADL instrument has been proven using a 2-, 3-, or 4-level scale, the UK FIM + FAM with a 7-level scale and the NPI uses a 6-level scale to measure “frequency” and a 3-point scale to measure “severity.” However, VA provides no discussion that using the Department's proposed 5-level scale (0-4) for its new instrument will provide equivalent inter-rater reliability and validity as the three assessment instruments on which it is based.

Three, VA proposes to give equal weight to all scores and/or items when clinically evaluating the level of a veteran's dependency based on its 14-item instrument. It is particularly conspicuous that VA provided no discussion or evidence this particular proposal is clinically or scientifically valid especially when all 14 items are derived from three distinct assessment instruments that measure different domains.

Four, VA proposes to use, “[t]he sum of the zero-to-four scores assigned to each of the 14 categories...to assign a presumed number of hours required of the Caregiver,” ostensibly, to meet the law's requirement that VA determine, “[t]he amount and degree of personal care services,” the family caregiver provides the veteran. DAV is concerned that VA's proposed presumptions eliminate the flexibility afforded to the clinical team assigned to perform these assessments to determine how long and how often any one type of assistance or personal care service a patient would require, which can vary from one patient to another, to remain in their community of choice. This variability can be of such value as to change the level of benefits the caregiver may receive.

With the time burden of performing the Katz ADL instrument consisting of a short six-item rating scale, the time required to administer the FIM+FAM is approximately 35 minutes, and the NPI interview can be completed in 7 to 10 minutes. However, according to a 1994 article in *Neurology* titled, “The Neuropsychiatric Inventory: Comprehensive assessment of psychopathology in dementia,” a caregiver of a patient with more psychopathology will require longer interviews than the presumed 7 to 10 minutes.

Because it is not only the level of caregiver benefit affected by the final definition of personal care services as well as the determination of the amount and degree of such services, but also the family caregiver's responsibility to the veteran, we recommend VA use these three instruments and determine the actual personal care services the eligible veteran needs and those personal care services the family caregiver will be required to provide (VA proposes in 38 C.F.R. § 17.25(c), an assessment of specific personal care services and a "[t]reatment plan listing the specific care needs of the eligible veteran"). We also recommend VA determine the frequency and hours required to perform such personal care services. Such assessments are currently performed outside VA as well as the determination of frequency and hours of home care services a patient needs to remain in their community. We believe this is a more reasonable and accurate approach to meet the law's requirement for VA to determine the amount and degree of personal care services each eligible veteran needs.

Beneficiary travel limitations

VA's family caregiver beneficiary travel proposal, based on 38 U.S.C. § 1720G (a)(6)(C), would be subject to any limitations or exclusions under Part 70 or title 38. VA indicated there is no reason to believe that section 1720G extends beneficiary travel benefits to Family Caregivers but does not also require the equal application of the limitations that apply to all individuals eligible for benefits under part 70.

DAV recommended VA take the opportunity to revise its regulations to meet the travel and transportation policies contained in its own 2009 Geriatric and Extended Care Strategic Plan.

This strategic plan, which has been submitted to Congress, notes, "[t]he major goal of community-based extended care is to reduce or eliminate the need for Veterans to travel to access care. Nonetheless, assistance in transportation options is a consistently-cited top need for informal caregivers. VA does allow caregivers to travel with Veterans who themselves have a travel benefit, if their presence is necessary to the well-being of the Veteran. But this does nothing for Veterans lacking the benefit, or for assisting caregivers to participate in support groups."

Significant barriers identified by VA in the strategic plan include, "[A]vailability of transportation services for disabled individuals is variable, insufficient, requires effort to access, and is often costly. Likewise, transportation is often provided only for care recipients and not for caregivers. Eligibility requirements are strict and round-trip duration times are excessive for many patients." Moreover, "[f]indings from a 2006 survey of VA health care staff (primarily social work, nursing, and physicians working in CLCs and HBPC programs) rating the perceived importance and availability of a range of caregiver support services. Inadequate transportation was cited most frequently by VA staff as a barrier to accessing [Adult Day Health Care] and caregiver support groups."

Notably, issues with the eligibility requirements were specifically discussed in the strategic plan. ADHC has strong appeal for veterans whose family caregivers must be absent (e.g., for work or other commitments) during workdays. ADHC may be provided for a specific number of days outside the number of routinely-scheduled visits. These days would be counted as respite care under 38 U.S.C. 1720B since these ADHC visits are temporary additions to the routine services the veteran already receives.

"[V]eterans with an indication for medical transport and meeting eligibility criteria, (outlined in *Beneficiary Travel Handbook 1601B.05 July 29, 2008*), may be eligible for special mode transportation to and from medical appointments. Caregivers may ride with the veteran if there is a determined need for an attendant. Although this benefit is available at all VA medical centers, the extent of its use can vary considerably based on the definition of "medically indicated." In general, this refers to veterans requiring

air or ground ambulance, wheel chair transportation, or transportation specially designed to transport disabled persons. “

The Beneficiary Travel Handbook 1601B.05 was recently revised but such revisions did not address the issues surrounding the eligibility criteria. The strategic plan recommendations regarding beneficiary travel include (#26) a, “[n]eeds based (not eligibility based) beneficiary travel for frail/disabled Veterans.”

We urge VA to reconsider its proposal to provide to family caregivers beneficiary travel benefits, “[s]ubject to any limitations or exclusions under part 70 as well.” (76 Fed. Reg. at 26153). Doing so would include family caregivers of those veterans who already face barriers to use this critical and needed benefit to access support and services.

Madame Chairwoman, DAV believes VA has a unique opportunity to address within its health care system, a national health care challenge with regard to informal caregivers. This new VA program could be a blessing to caregivers of severely disabled veterans and a benevolent response to those grievously injured in war and in military duties. We believe the comments, concerns, and recommendations we submitted will make the caregiver support program more effective, more humane, and one that will reach more veterans as intended by Congress and the American people.

Again, we thank you for the opportunity to present our views on VA’s IFR for title I of P.L. 111-163. The DAV is committed to working constructively with Congress, VA and the Administration to ensure family caregivers do not remain undertrained, underpaid, underappreciated, undervalued, and exhausted by their duties.