DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 71

RIN 2900–AQ48

Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments Under the VA MISSION Act of 2018

AGENCY: Department of Veterans Affairs

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC). This rulemaking would propose improvements to PCAFC and would update the regulations to comply with the recent enactment of the VA MISSION Act of 2018, which made changes to the program's authorizing statute. These proposed changes would allow PCAFC to better address the needs of veterans of all eras and standardize the program to focus on eligible veterans with moderate and severe needs.

DATES: Written comments must be received on or before May 5, 2020.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ48, Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments under the VA MISSION Act of 2018.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Elyse Kaplan, National Deputy Director, Caregiver Support Program, Care Management and Social Work, 10P4C, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–7337. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Summary of Proposed Regulatory Changes

We propose to revise VA's regulations that govern PCAFC. This rulemaking would make improvements to PCAFC and update the regulations to comply with section 161 of Public Law 115–182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 or the VA MISSION Act of 2018, which made changes to PCAFC's authorizing statute.

This proposed rule—

- Would expand PCAFC to eligible veterans of all service eras, as specified.
- Would define new terms and revise existing terms used throughout the regulation. Some of the new and revised terms would have a substantial impact on eligibility requirements for PCAFC (*e.g.,* in need of personal care services; need for supervision, protection, or instruction; and serious injury), and the benefits available under PCAFC (*e.g.,* financial planning services, legal services, and monthly stipend rate).
- Would establish an annual reassessment to determine continued eligibility for PCAFC.
- Would revise the stipend payment calculation for Primary Family Caregivers.
- Would establish a transition plan for legacy participants and legacy applicants, as those terms would be defined in revised § 71.15, who may or may not meet the new eligibility criteria and whose Primary Family Caregivers could have their stipend amount impacted by changes to the stipend payment calculation.
- Would add financial planning and legal services as new benefits available to Primary Family Caregivers.
- Would revise the process for revocation and discharge from PCAFC.
- Would reference VA's ability to collect overpayments made under PCAFC.

Background on Governing Statutes and Public Input

Title I of Public Law 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010 (hereinafter referred to as ''the Caregivers Act''), established section 1720G(a) of title 38 of the United States Code (U.S.C.), which required VA to establish a program of comprehensive assistance for Family Caregivers of eligible veterans who have a serious injury incurred or aggravated in the line of duty on or after September 11, 2001. The Caregivers Act also required VA to establish a program of general caregiver support services, pursuant to 38 U.S.C. 1720G(b), which is available to caregivers of covered veterans of all eras of military service. VA implemented the program of comprehensive assistance for Family Caregivers (PCAFC) and the program of general caregiver support services (PGCSS) through its regulations in part 71 of title 38 of the Code of Federal Regulations (CFR). Through PCAFC, VA provides Family Caregivers of eligible veterans (as those terms are defined in 38 CFR 71.15) certain benefits, such as training, respite care, counseling, technical support, beneficiary travel (to attend required caregiver training and for an eligible veteran's medical appointments), 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. 1720G(a)(3), 38 CFR 71.40. This proposed rule relates primarily to PCAFC.

VA recognizes that improvements to PCAFC are needed to improve consistency and transparency in decision making and sought input from stakeholders on potential changes. On January 5, 2018, VA published a **Federal Register** Notice (FRN), requesting information and comments from the public to help inform VA of any changes needed to PCAFC that would increase consistency across the program as well as ensure the program supports those Family Caregivers of veterans and servicemembers most in need. See 83 FR 701 (January 5, 2018). On February 1, 2018, VA published a correction notice to clarify that public comments in response to the January 5, 2018 FRN had to be received by VA on or February 5, 2018.[1] See 83 FR 4772 (February 1, 2018).

Through these FRNs, we asked the public to comment on whether VA should change the definition of serious injury, how a veteran's need for supervision or protection should be assessed, how in the best interest should be defined, the circumstances under which veterans' eligibility should be reassessed after approval for PCAFC, what terminology VA should use for those who are no longer eligible for PCAFC, whether VA should modify its timeframes for continuation of benefits when a caregiver is revoked, how VA should calculate stipend rates, and how VA should assess and determine the amount and degree of personal care services provided by the Family

[1] While the January 5, 2018 FRN also required comments to be received by VA on or before February 5, 2018, it mistakenly referred to a 45-day (instead of 30-day) comment period, which was corrected in the February 1, 2018 FRN.

Caregiver. 83 FR 703 (January 5, 2018). In response to the FRNs, VA received three hundred and twenty-three (323) comments. Of these, one hundred and eighteen comments (118) addressed at least one of the eight questions listed in the notice and described above, and we considered these comments when developing this proposed rule. Most commenters expressed support for expanding PCAFC to include veterans of all eras, followed by comments identifying challenges with operational processes of the current program including inconsistency with eligibility determinations and the completion of home monitoring visits. The comments received from this FRN are publicly available online at *www.regulations.gov.* Copies of the comments are also available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (exception holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

On June 6, 2018, the VA MISSION Act of 2018 was signed into law. Section 161 of the VA MISSION Act of 2018 amended 38 U.S.C. 1720G by expanding eligibility for PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, establishing new benefits for designated Primary Family Caregivers of eligible veterans, and making other changes affecting program eligibility and VA's evaluation of PCAFC applications. The VA MISSION Act of 2018 established that expansion of PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, will occur in two phases. The first phase will begin when VA certifies to Congress that it has fully implemented a required information technology system that fully supports PCAFC and allows for data assessment and comprehensive monitoring of PCAFC. During the 2-year period beginning on the date of such certification to Congress, PCAFC will be expanded to include Family Caregivers of eligible veterans who 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 before May 7, 1975. Two years after the date of submission of the certification to Congress, PCAFC will be expanded to Family Caregivers of all eligible veterans who 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, regardless of the period of service in which the serious injury was incurred or aggravated in the line of duty in the active military, naval, or air service.

On November 27, 2018, VA again sought public comment through a FRN that requested input from the public on certain changes to PCAFC required by section 161 of the VA MISSION Act of 2018. 83 FR 60966 (November 27, 2018). Specifically, we asked how VA should define ''a need for regular or extensive instruction or supervision'' in new 38 U.S.C. 1720G(a)(2)(C)(iii); how ''need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired'' would differ from ''a need for supervision or protection based on symptoms of residuals of neurological or other impairment or injury;'' how VA should assess whether the ability of the veteran to function in daily life would be seriously impaired without regular or extensive instruction or supervision; and what financial planning and legal services should be made available to Primary Family Caregivers, how such services should be provided, and what types of entities provide such services. VA received two hundred and twenty (220) comments, including comments outside the scope of questions posed. Many comments focused on the desire for PCAFC to be expanded to veterans of all eras, and to include illnesses as covered conditions for which a veteran may be eligible. In direct response to the questions posed, some commenters shared opinions on the importance of including the veteran's and caregiver's perspective in the assessment process and considering the complexity and frequency of the care being provided and what would happen to the veteran in the absence of such care. Other commenters offered support for utilizing the need for long-term care as a criterion for PCAFC. VA appreciates the time and attention from commenters who shared their opinions on how to improve PCAFC, and we considered these comments when developing this proposed rule. The comments received from this FRN are publicly available online at *www.regulations.gov.* Copies of the comments are also available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (exception holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

Additional efforts were made to garner input from stakeholders. On February 25 and March 5, 2019, meetings were held with various Veteran Service Organizations (VSOs) to discuss PCAFC and the VA MISSION Act of 2018. Discussion topics included the definitions of serious injury, need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, and inability to perform an activity of daily living; the tier system related to stipend payments; and revocation and transition of participants from PCAFC. Furthermore, on April 26, May 16, and May 29, 2019, listening sessions were held with representatives from an organization advocating for military caregivers, various VSOs, and Caregiver Support Program Peer Mentors, consecutively, to discuss legal and financial services needed by caregivers. Discussion topics included, but were not limited to: Estate planning, end of life planning, advanced directives and living wills, designating a power of attorney, guardianship, debt management, household budget planning, retirement planning, and insurance review and counseling. The notes from these meetings and listening sessions can be found as supporting documents at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published.

Introduction to Proposed Regulatory Changes

As explained in more detail below, we propose to revise and update 38 CFR part 71 to comply with changes made to 38 U.S.C. 1720G by section 161 of the VA MISSION Act of 2018, to further improve PCAFC for eligible veterans of all eras of service by improving consistency and transparency in how the program is administered across VA, and to provide a better experience for eligible veterans and their caregivers.

In this proposed rule, we refer to two implementation dates—one related to the first phase of expansion of PCAFC to eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, and another for purposes of our other proposed changes to part 71. As we stated above, the first phase of PCAFC expansion under the VA MISSION Act of 2018 to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, will begin when VA certifies to Congress that it has fully implemented a required information technology system. It is VA's intent that such certification be provided to

Congress on the same day that our other proposed regulatory changes would go into effect. However, we recognize that the timeline for development of an information technology system can be unpredictable. Additionally, changes to this proposed approach may be warranted based on public comments we receive in response to this proposed rule and other factors. Therefore, this proposed rule indicates that the first phase of PCAFC expansion would begin on a ''date specified in a future **Federal Register** document,'' and the other proposed changes in this proposed rule would go into effect on the effective date of this rule. In the proposed regulatory text below, the effective date of the final rule is referenced as ''[EFFECTIVE DATE OF FINAL RULE]''.

71.10 Purpose and Scope

We propose to amend § 71.10(b), which sets forth the scope of part 71 to clarify the first sentence and add a new sentence at the end. The first sentence of current paragraph (b) states that part 71 regulates the provision of Family and General Caregiver benefits authorized by 38 U.S.C. 1720G. We propose to revise this language to better align with the language used in 38 U.S.C. 1720G(a) and (b). We propose to revise the language to state, ''[t]his 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.''

The second sentence of current paragraph (b) explains that individuals eligible for such benefits may also be eligible for other VA benefits pursuant to other laws or parts of title 38, CFR, and we would make no changes to the current language.

We also propose to add a sentence at the end of paragraph (b) to explain that these benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20). Section 101(20) of title 38, U.S.C., defines ''State'' to mean ''each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.'' Although it has been VA's practice since the programs started in 2011, the regulations in part 71 do not state that these programs are provided only to those individuals residing in a State. Therefore, we would update our regulations to align with current practice. We note that it is not currently feasible for VA to provide benefits under part 71 outside of a State. The requirements of this part include in-home visits such as an initial home-care assessment under current § 71.25(e) and the provision of certain benefits that can be provided in-home such as respite care under current § 71.40(a)(4) and (c)(2), which would be difficult to conduct and provide in a consistent manner outside of a State. Also, ensuring oversight of PCAFC and PGCSS outside of a State would be resource-intensive and we do not believe there is sufficient demand to warrant the effort that would be required. We note that currently there are administrative limitations that prevent VA from providing certain benefits under this part in remote areas, even within the scope of the term ''State,'' such as in the Commonwealth of the Northern Mariana Islands; however, VA will continue to explore the potential for expanding VHA services to support PGCSS and PCAFC in these remote areas. As revised, § 71.10(b) would state, ''[t]his 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 residing in a State as that term is defined in 38 U.S.C. 101(20).''

71.15 Definitions

We propose to amend § 71.15, which contains definitions for terms used throughout part 71, by removing the definitions of ''combined rate,'' and ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' revising the definitions of ''in the best interest,'' ''inability to perform an activity of daily living (ADL),'' ''primary care team,'' and ''serious injury''; and adding new definitions for the terms ''domestic violence,'' ''financial planning services,'' ''in need of personal care services,'' ''institutionalization,'' ''intimate partner violence,'' ''joint application,'' ''legacy applicant,'' ''legacy participant,'' ''legal services,'' ''monthly stipend rate,'' ''need for supervision, protection, or instruction,'' ''overpayment,'' and ''unable to self-sustain in the community.'' These proposed changes are explained in more detail below. We emphasize, as stated in the introductory language for § 71.15, that these proposed definitions would apply only for purposes of part 71.

In § 71.15, we would remove the current definition of ''combined rate.'' This term is currently defined to refer 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). Also, the current definition explains how the rate will be determined for the purposes of this program. As further explained in this rulemaking regarding our proposed definition of the term ''monthly stipend rate'' and proposed § 71.40(c)(4), we are proposing to determine monthly stipend payments using data from the Office of Personnel Management's (OPM) General Schedule (GS) instead of using the combined rate. Although some Primary Family Caregivers would, for one year after the effective date of the rule, maintain the stipend amount they were eligible to receive as of the day before the effective date of this rule, we would no longer make annual adjustments to the combined rate, and it would otherwise no longer apply after the effective date of this rule. One year after the effective date of this rule, all stipend payments would be calculated using the monthly stipend rate (as that term would be defined in proposed § 71.15). Therefore, the definition of combined rate would no longer be needed or applicable in 38 CFR part 71.

In § 71.15, we would add a new definition for the term ''domestic violence.'' We would define domestic violence to refer 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. We believe other types of interpersonal violence would include, but would not be limited to, financial harm and threatening behavior. This definition is based on the definition of domestic violence used by the Veterans Health Administration's (VHA) Intimate Partner Violence Assistance Program. As explained later in this rulemaking, we would define this term as it is used in proposed § 71.45(b)(3)(iii)(B) concerning a Family Caregiver's request for discharge from PCAFC due to domestic violence.

In proposed § 71.15, we would add a new definition of ''financial planning services.'' We would define this term to address changes made to 38 U.S.C. 1720G by the VA MISSION Act of 2018. Specifically, the VA MISSION Act of 2018 added financial planning services relating to the needs of injured veterans and their caregivers as a benefit for Primary Family Caregivers. See 38 U.S.C. 1720G(a)(3)(A)(ii)(VI)(aa), as amended by Public Law 115–182, section 161(a)(3). As explained later in this rulemaking, we propose to add

''financial planning services'' to the benefits available to Primary Family Caregivers under a revised § 71.40(c).

We propose to define ''financial planning services'' in § 71.15 to mean 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. We believe ''household budget planning'' would include making a budget, learning to balance a checking account, and learning to pay bills; ''debt management'' would include assistance establishing payment plans and credit counseling; ''retirement planning'' would include review and education on personal retirement plans, pension planning, and investment options, however it would not include specific investment advice; and ''insurance review and education'' would include review of current insurance policies, and education on alternative insurance options to include health, automobile, life, or house insurance. These services would be aimed at increasing the financial capability of Primary Family Caregivers and assisting Primary Family Caregivers in being able to manage their own personal finances and those of the eligible veteran, as applicable. We believe this is reasonable under the authorizing statute.

The VA MISSION Act of 2018 requires that these financial planning services relate ''to the needs of injured veterans and their caregivers'' and we believe defining these services in this manner would meet this requirement as these types of services are relevant and applicable to the care and needs of the eligible veteran and the caregiver. We believe these would be the type of financial planning services that Primary Family Caregivers would need and best support Primary Family Caregivers. This definition would also align with the feedback we received from the public in response to the November 27, 2018 FRN as well as additional meetings and listening sessions held to garner input from stakeholders. For example, some feedback included a desire for assistance with bill paying, balancing a checking account, and debt management. Additionally, it was noted that the loss of income combined with additional expenses, often unexpected, attributed to caring for another, are concerns experienced by veterans and caregivers.

We would limit these services to only those related to the personal finances of the eligible veteran and the Primary Family Caregiver. PCAFC is designed to support the clinical needs of the eligible veteran and the benefits provided to Family Caregivers under PCAFC are the direct result of the personal care services they provide to eligible veterans. As a result, these services would not be provided to assist a Primary Family Caregiver with any business or other professional endeavors because these endeavors would not be related to the provision of personal care services to an eligible veteran. We also believe limiting these services in this manner aligns with feedback received since business and professional endeavors were not raised as financial planning services that VA should provide to caregivers. We note that these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities.

In proposed § 71.15, we would add a new definition of ''In need of personal care services.'' We would define this term to mean 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.

Current § 71.15 defines personal care services to mean ''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.'' This definition is used for purposes of PCAFC and PGCSS; however, it does not provide sufficient clarity for purposes of PCAFC, which we believe is targeted to a narrower population. Specifically, it does not delineate whether such services must be provided in person or can be provided remotely, or what it means to be ''in need of'' such services under 38 U.S.C. 1720G(a)(2)(C). Because we believe this definition is still appropriate for purposes of 38 U.S.C. 1720G(b) with respect to PGCSS, we would add a new definition of ''in need of personal care services'' for purposes of determining PCAFC eligibility under proposed § 71.20(a)(3), discussed further below, and maintain our current definition of ''personal care services'' in § 71.15.[2]

Our proposed definition of ''in need of personal care services'' would reflect that PCAFC Family Caregivers perform in-person personal care services, and without such care, alternative caregiving arrangements would be required.

The statute makes clear the importance of regular support to an eligible veteran by allowing more than one Family Caregiver to be trained to provide personal care services. 38 U.S.C. 1720G(a)(5) and (6). Likewise, eligible veterans are provided protections under the statute in the absence of a Family Caregiver such as respite care during a family member's initial training if such training would interfere with the provision of personal care services for the eligible veteran. 38 U.S.C. 1720G(a)(6)(D). Thus, we believe ''in need of personal care services'' under section 1720G(a)(2)(C) means that without Family Caregiver support, VA would otherwise need to hire a professional home health aide or provide other support to the eligible veteran such as adult day health care, respite care, or facilitate a nursing home or other institutional care placement.

While regular support is essential, the frequency with which such services are required may differ depending on the eligible veteran's care needs. Therefore, our proposed definitions of inability to perform an activity of daily living (ADL) and need for supervision, protection, or instruction, as proposed in this section, would further clarify the eligible veteran's frequency of needed care.

This definition would also clarify that ''in need of personal care services''

[2] The definition of ''personal care services'' in 38 CFR 71.15 is based on VA's interpretation of the statutory definition of ''personal care services'' as it existed prior to the enactment of the VA MISSION Act of 2018. The statutory definition of ''personal care services,'' in 38 U.S.C. 1720G(d)(4), was amended by section 161(b) of the VA MISSION Act of 2018 by replacing ''independent activities of daily living'' with ''activities of daily living,'' and to include ''[s]upervision or protection based on symptoms or residuals of neurological or other impairment or injury'' and ''[r]egular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.'' However, we are not proposing to revise the definition of ''personal care services'' in § 71.15 as we believe our current definition encompasses these additional criteria and thereby recognizes all the bases upon which an eligible veteran can be deemed in need of personal care services under 38 U.S.C. 1720G(a)(2)(C)(i) through (iii) (*i.e.,* (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; and (iii) a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired), which are also encompassed in the eligibility criteria we would consider under proposed § 71.20(a)(3)(i) and (ii).

means that such services are required in person. While technological advances have improved the provision of telehealth and other remote clinical interventions for veterans, we believe PCAFC was intended to provide assistance to Family Caregivers who are required to be physically present to support eligible veterans in their homes. First, we note the term ''personal'' is an adjective that is defined to mean ''done, made, or performed in person'' among other relevant meanings such as, ''[o]f or relating to a particular person.'' The American Heritage Dictionary of the English Language 1311 (4th ed. 2000). Second, 38 U.S.C. 1720G(a) indicates that personal care services are provided in the eligible veteran's home. For example, in conducting monitoring, the statute authorizes VA to visit the ''eligible veteran in the eligible veteran's home to review directly the quality of personal care services provided to the eligible veteran.'' 38 U.S.C. 1720G(a)(9)(C)(i). Moreover, in requiring the personal caregiver stipend be not less than the ''amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran [or similar area],'' to the extent practicable, the statute establishes an expectation that Family Caregivers are providing services equivalent to that of a home health aide, which are generally furnished in-person and at home. 38 U.S.C. 1720G(a)(3)(C)(ii), (iv). For these reasons, we believe our proposed definition of ''in need of personal care services'' is a reasonable interpretation of the statute. Furthermore, we believe it would reduce clinical subjectivity in PCAFC eligibility determinations and thereby improve consistency in the program.

We note that the term ''in need of personal care services'' is used in 38 U.S.C. 1720G only for purposes of PCAFC under section 1720G(a)(2)(C) and would not apply to restrict eligibility under 38 U.S.C. 1720G(b) with respect to PGCSS. Moreover, this interpretation would not apply to other sections in title 38, U.S.C., that use the phrase ''in need of'' in reference to other types of VA benefits that have separate eligibility criteria. For example, 38 U.S.C. 1114(l), (m), (r), and (t) reference veterans ''in need of regular aid and attendance'' and ''in need of a higher level of care'' for special monthly compensation, and 38 U.S.C. 1710A and 1720C reference veterans ''in need of'' nursing home care. While veterans eligible for PCAFC may also be eligible for these other benefits, there are unique criteria applied by VA to establish a veteran's need for ''regular aid and attendance'' and ''a higher level of care'' under 38 U.S.C. 1114(l), (m), (r) and (t). Similarly, there are unique criteria that apply in establishing a veteran's eligibility for nursing home care under chapter 17 of title 38, U.S.C. Through this rulemaking, we do not purport to modify those criteria or establish eligibility criteria applicable under any other VA statute besides section 1720G(a)(2)(C), which is the only statute in title 38, U.S.C., that references veterans ''in need of personal care services.''

In proposed § 71.15, we would revise the current definition of ''in the best interest'' which is used to determine whether a veteran or servicemember is eligible for PCAFC under current § 71.20(d). This revised definition would be used to determine PCAFC eligibility under proposed § 71.20(a)(4). We would also move this term before ''inability to perform an activity of daily living (ADL)'' in § 71.15 so that the definitions would be listed in alphabetical order.

This term is currently defined to mean a clinical determination that participation in PCAFC is likely to be beneficial to the veteran or servicemember; and in making such determination, a clinician will consider whether participation in PCAFC significantly enhances the veteran or servicemember's ability to live safely in a home setting, supports potential rehabilitation progress of the veteran or servicemember (if that potential exists), and creates an environment supportive of the veteran's or servicemember's health and well-being. This current language would generally remain in the proposed definition of ''in the best interest.'' However, we would replace the phrase ''veteran or servicemember's'' with ''veteran's or servicemember's'' for clarity. Also, we propose to add language to this definition to explain that a clinician would also consider whether participation in PCAFC ''increases the veteran's or servicemember's potential independence, if such potential exists.'' We propose to add this additional consideration because we believe PCAFC is intended to help veterans and servicemembers achieve their highest level of health, quality of life, and independence. This would also reduce incentive for the dependence on a caregiver when there is potential for improvement. Considering an individual's level of independence, particularly when potential for improvement exists, is an important consideration in determining whether participation in PCAFC is in the best interest of the eligible veteran.

In proposed § 71.15, we would also revise the current definition of ''inability to perform an activity of daily living (ADL)'' which is one of the bases for determining eligibility under current § 71.20(c) and proposed § 71.20(a)(3). The ADLs listed in such term, numbered as paragraphs (1) through (7), would also be applied to determine whether a veteran or servicemember is unable to self-sustain in the community for purposes of the monthly stipend (as discussed below). ''inability to perform an activity of daily living (ADL)'' is currently defined as 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 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.). This current list reflects six activities that are widely recognized as ADLs by clinicians and are found in the Katz Basic ADL Scale, and one activity specific to veterans and servicemembers who require the use of a prosthetic or orthopedic appliance. 87 FR 26148 (May 5, 2011). We would maintain the current activities listed; however, we would revise the language for clarity and to delineate the frequency with which an eligible veteran would require personal care services to complete an ADL.

First, we would replace ''any one of the following'' with ''a veteran or servicemember requires personal care services each time he or she completes one or more of the following.'' This language would clarify our interpretation of ''inability'' as it pertains to ADLs, and specify the frequency with which such personal care services would be needed to qualify for PCAFC. In order to be considered to have an ''inability to perform an activity of daily living,'' we would require that a veteran or servicemember need personal care services each time he or she completes any of the ADLs listed in the definition (*e.g.,* every time the individual is dressing or undressing,

bathing, grooming, toileting, etc.). This would exclude veterans and servicemembers who need help completing an ADL only some of the time the ADL is completed (*e.g.,* the individual needs help with dressing or undressing only when wearing certain types of clothing). This change would be consistent with our goal of focusing PCAFC on eligible veterans with moderate and severe needs, and it would provide more objective criteria for clinicians evaluating PCAFC eligibility. This distinction is especially important for eligible veterans whose care needs may be more complex, particularly as personal care service needs related to a physical impairment can evolve over time. For example, infrequent assistance may be needed in the immediate time period following the onset of a disease (such that the individual needs help completing an ADL only some of the time it's completed), but over time and as the individual begins to age, the individual's care needs can progress. We would thus distinguish between veterans and servicemembers needing assistance with an ADL only some of the time from those who need assistance every time the ADL is completed, those who we believe have an ''inability'' to perform an ADL.

Unlike in our definition of ''need for supervision, protection, or instruction,'' discussed below, we would not require the veteran or servicemember qualifying for PCAFC on this basis to need personal care services daily. Although the statute refers to an eligible veteran's inability to perform one or more activities of daily living as a basis upon which he or she can be deemed in need of personal care services (38 U.S.C. 1720G(a)(2)(C)(i)), we recognize that not all activities of daily living need to be performed every day. For example, bathing is included in the current § 71.15 definition of ''[i]nability to perform an activity of daily living,'' but bathing may not be required every day. A veteran may be able to maintain health and wellness by adhering to a less frequent bathing routine.

Second, for consistency with the introductory language proposed for this definition, we would revise the seven ADLs by removing the level of impairment and frequency of need referenced for each ADL. Thus, we would shift the focus to the activity itself rather than the level of impairment (*i.e.,* we would remove the phrase ''[i]nability to'' from current paragraphs (1) through (3), (5), and (6); remove ''[f]requent need of'' from current paragraph (4); and remove ''[d]ifficultly with'' from current paragraph (7)). Despite the phrases ''[f]requent need of'' in current paragraph (4) and ''[d]ifficultly with'' in current paragraph (7) related to adjustment of a special prosthetic or orthopedic appliance and mobility, respectively, we do not believe these ADLs should be treated any differently than the other ADLs listed or have a lower threshold for purposes of PCAFC eligibility. This is because an individual who has difficulty with mobility would generally require personal care services every time they move. For example, an individual who is designated as a fall risk may require assistance each time he or she transfers from the bed to a chair or walks down the hall. Similarly, we believe the likelihood an individual may only require personal care services intermittently versus every time he or she needs to adjust any special prosthetic or orthopedic appliance is low. Finally, we would remove the phrase ''without assistance'' from current paragraph (5) in reference to toileting or attending to toileting as we believe this phrase is redundant because an eligible veteran would require assistance from another individual to complete any of the ADLs listed in this definition.

As revised, the term ''inability to perform an activity of daily living (ADL)'' would be defined to mean ''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.).''

In § 71.15, we also propose to add a definition for the term ''institutionalization.'' We would define institutionalization to refer to being institutionalized in a setting outside of the home residence to include a hospital, rehabilitation facility, jail, prison, assisted living facility, medical foster home, nursing home, or other similar setting. The term ''institutionalization'' is commonly used and understood by health care providers and we believe this definition generally aligns with the common use and understanding of the term. Furthermore, we note that the list in this definition is not meant to be exhaustive but rather illustrates the types of settings where an eligible veteran or Family Caregiver could reside to be considered institutionalized for purposes of discharge pursuant to proposed § 71.45. We recognize that the inclusion of medical foster homes (MFH) in this definition would deviate from the common understanding of MFH as a non-institutional long-term care option, and an alternative to facility-based institutional long-term care. VA refers veterans for MFH placement when they are unable to live independently safely or are in need of nursing home level care, but prefer to live in a private home setting. See 38 CFR 17.73 and 17.74. Therefore, we would consider MFH to be ''institutionalization'' only for purposes of PCAFC and only in proposed § 71.45(b)(1) and (2) concerning discharges of the Family Caregiver from PCAFC due to the eligible veteran's or Family Caregiver's institutionalization. As set forth in current § 71.20(e) and proposed § 71.20(a)(5), personal care services provided by the Family Caregiver under PCAFC cannot be simultaneously and regularly provided by or through another individual or entity. Therefore, a veteran participating in a MFH program would not qualify for PCAFC because his or her caregiver would be compensated through other means for the personal care services provided.

In § 71.15, we propose to add a definition for the term ''intimate partner violence (IPV).'' We would define intimate partner violence as referring 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. The definition would further explain that IPV can occur in heterosexual or same-sex relationships and does not require sexual intimacy or cohabitation. This definition is based on the definition used by VHA's Intimate Partner Violence Assistance Program. As explained later in this rulemaking, we would define this term as it will be used in proposed § 71.45(b)(3)(iii)(B) concerning a Family Caregiver's request

for discharge from PCAFC due to intimate partner violence.

In proposed § 71.15, we would add a new definition for ''joint application.'' We would define this term to mean an application that has all fields within the application completed, including that the application has been signed and dated by all applicants, with the following fields exempted: Social security number 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. This term would be used in the proposed definition of ''legacy applicant'' discussed further below, and throughout § 71.25, as we propose to revise such section. VA would also rely on this definition when determining the date that a joint application is received for the purpose of establishing the effective date of benefits for PCAFC in proposed § 71.40(d). Only an application with all mandatory fields completed (*i.e.,* all fields other than those specifically exempted) would be considered a ''joint application'' under these sections.

An application that does not have all of the mandatory sections completed (*e.g.,* names, address of veteran's or servicemember's residence, dates of birth, certifications, and signatures) would not meet the definition of joint application. Such an application would be considered incomplete and the application review process would not be able to begin. This is because the required sections are necessary for VA to begin evaluating the eligibility of veterans and servicemembers and their family members for PCAFC (*e.g.,* to validate that the family member applicant is at least 18 years of age). VA has found that when applicants do not provide all of the required information, this leads to delays as VA must take steps to obtain the missing information. Fields that would be excluded from the definition of ''joint application'' are fields which may not be relevant to all applicants. Thus, VA would only consider an application a ''joint application'' when all required sections are complete (*i.e.,* all fields other than those specifically exempted).

In proposed § 71.15, we would add a new definition for ''legacy applicant.'' We would define this term to mean a veteran or servicemember who submits a joint application for PCAFC that is received by VA before the effective date of this rule and for whom a Family Caregiver(s) is approved and designated on or after the effective date of this rule. The definition would further require that to be considered a legacy applicant, the Primary Family Caregiver approved and designated for the veteran or servicemember pursuant to such joint application (as applicable) continues to be approved and designated as such. We would also state that if a new joint application is received by VA on or after the effective date of the rule 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.

In proposed § 71.15, we would also add a new definition of ''legacy participant.'' We would define this term to mean an eligible veteran whose Family Caregiver(s) was approved and designated by VA under this part as of the day before the effective date of this rule so long as the Primary Family Caregiver approved and designated for the eligible veteran as of that date (as applicable) continues to be approved and designated as such. We would also state that if a new joint application is received by VA on or after the effective date of the rule that results in the approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy participant.

As explained later in this rulemaking, we are proposing changes to PCAFC that could affect the eligibility and benefits of Family Caregivers of legacy applicants and legacy participants, as those terms would be defined in proposed § 71.15. Therefore, our proposed rule would include requirements in proposed §§ 71.20, 71.30, and 71.40, that are intended to minimize disruption to these individuals for the one-year period following the effective date of the rule. These proposed requirements are addressed in the discussion of those sections below.

In proposed § 71.15, we would add a new definition of ''legal services.'' We would define this term to address changes made to 38 U.S.C. 1720G by the VA MISSION Act of 2018. Specifically, the VA MISSION Act of 2018 added ''legal services, including legal advice and consultation, relating to the needs of injured veterans and their caregivers,'' as a benefit for Primary Family Caregivers. See 38 U.S.C. 1720G(a)(3)(A)(ii)(VI)(bb), as amended by Public Law 115–182, section 161(a)(3). As explained later in this rulemaking, we propose to add ''legal services'' to the benefits available to Primary Family Caregivers under a revised § 71.40(c).

We would define ''legal services'' in § 71.15 to mean 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. We believe educational opportunities on topics relevant to caregiving would include topics such as advanced directives, simple wills, and estate planning. We believe that these types of legal services would support Primary Family Caregivers and would be relevant and applicable to the needs of eligible veterans and their caregivers.

As previously discussed, VA sought feedback from the public in a FRN published on November 27, 2018, which asked for public comments on what legal services should be made available to Primary Family Caregivers, how such services should be provided, and what type of entities provide such services. Additionally, we held meetings and listening sessions to garner input from stakeholders. The responses received from these activities varied. Some of the feedback received supported a referral system to community providers, while other feedback supported the provision of legal services in the most expansive way possible. Also, some feedback acknowledged the potential for conflict of interests between the eligible veteran and Family Caregiver regarding certain legal issues, including divorce or child custody. Furthermore, some of the feedback received specified that legal services should include the provision of advanced directives, power of attorney, wills, and guardianship. VA has considered the feedback received and believes an approach inclusive of providing assistance with advanced directives, power of attorney, simple wills, and guardianship; education on legal topics relevant to caregiving; and a referral service for other legal services is most appropriate. This definition would allow VA to address certain legal needs among those that relate to and support the Primary Family Caregiver's ability to provide personal care services to the eligible veteran, while also being mindful of VA resources.

The provision of assistance for certain legal matters, and a referral service for other legal matters would provide Primary Family Caregivers with access to community resources and a network of attorneys who practice in the area of law most appropriate to his or her needs. Furthermore, we believe education on legal topics related to caregiving would provide Primary Family Caregivers with access to a multitude of resources specific to caregiving needs. We believe that

paying for legal advice and consultation for matters other than advanced directives, power of attorney, simple wills, and guardianship would be cost prohibitive and may limit our ability to provide other benefits to Family Caregivers. Providing limited legal assistance, education, and referrals would ensure that VA is able to consistently provide the same legal services to all Primary Family Caregivers.

Our proposed definition of ''legal services'' would also limit these services to only those provided in relation to the personal legal needs of the eligible veteran and Primary Family Caregiver. We believe limiting these services is reasonable because PCAFC is designed to support the clinical needs of the eligible veteran and the benefits provided to Family Caregivers are the direct result of the personal care services they provide to eligible veterans. As a result, these services would not be provided to assist with any business or other professional endeavors of the eligible veteran or Primary Family Caregiver because these endeavors would not be directly related to the provision of personal care services to an eligible veteran. We also believe limiting these services in this manner aligns with feedback we received since business and professional endeavors were not raised as legal services that VA should provide to caregivers. We note that these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities.

Furthermore, we would explicitly exclude from this definition 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 government, and disputes between the eligible veteran and Primary Family Caregiver. However, we note that this would not exclude educational opportunities and referrals for such matters. We believe this is reasonable as VA should not be expected to provide legal services in a situation in which an eligible veteran or Primary Family Caregiver takes any adversarial legal action against the United States government, including VA and other Federal agencies. We believe that providing such services may result in conflicts of interest. Additionally, we do not believe VA should provide legal services in a situation where there is a dispute between the eligible veteran and Primary Family Caregiver. Although, PCAFC provides benefits directly to caregivers, VA's mission is to care for veterans, and we believe providing legal services in a situation where there is a dispute between the eligible veteran and Primary Family Caregiver could also create a conflict of interest.

In § 71.15, we propose to add a new definition for the term ''monthly stipend rate.'' We would define this term to mean 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. We would define ''monthly stipend rate'' as it will be used in proposed § 71.40(c)(4) concerning stipend payments for Primary Family Caregivers. Our basis for selecting this definition and payment rate, how we would address adjustments that result from OPM's updates to the GS rate, and periodic assessments of and, if applicable, adjustments to the monthly stipend rate are discussed below in the context of proposed changes to § 71.40(c)(4).

In proposed § 71.15, we would remove the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' and replace this term with a new definition of ''need for supervision, protection, or instruction.'' The term ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' is one of the bases for determining eligibility under current § 71.20(c), and it is currently defined to mean requiring supervision or assistance for any one of the seven listed reasons: Seizures (blackouts or lapses in mental awareness, etc.); difficulty with planning and organizing (such as the ability to adhere to medication regimen); safety risks (wandering outside the home, danger of falling, using electrical appliances, etc.); difficulty with sleep regulation; delusions or hallucinations; difficulty with recent memory; or self-regulation (being able to moderate moods, agitation or aggression, etc.). These impairments were based on the United Kingdom Functional Independence Measure and Functional Assessment Measure, and the Neuropsychiatric Inventory. 87 FR 26149 (May 5, 2011).

We believe the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' unduly restricts VA's ability to consider all functional impairments that may impact a veteran's or servicemember's ability to maintain his or her personal safety on a daily basis. For example, an individual with a diagnosis of dysautonomia, which refers to a wide range of conditions that affect the autonomic nervous system, could experience symptoms such as an inability to stay upright, tremors, and concentration, and thus be in need of personal care services based on a need for supervision or protection, but would not necessarily have one of the seven impairments listed in the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury.'' It is VA's intent to broaden the current criteria in the definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' so as not to limit eligibility to veterans and servicemembers with a predetermined list of impairments.

We propose to replace this term with a new term, ''need for supervision, protection, or instruction,'' which would be one of the bases for determining eligibility under proposed § 71.20(a)(3). This term would also be applied to determine whether a veteran or servicemember is unable to self-sustain in the community for purposes of the monthly stipend (as discussed below). The term ''need for supervision, protection, or instruction'' would represent and combine two of the statutory bases upon which a veteran or servicemember can be deemed in need of personal care services—''a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' and ''a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.'' See 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii), as amended by Public Law 115–182, section 161(a)(2). We believe these two bases of eligibility capture the personal care service needs of veterans and servicemembers with a significant cognitive, neurological, or mental health impairment, as opposed to an inability to perform an ADL, which captures the personal care service needs of veterans and servicemembers with physical impairment.

The term ''need for supervision, protection, or instruction,'' would mean an individual has a functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis. Examples of conditions that may cause such functional impairment include dementia, psychosis, seizures, other disorders of mental competence. However, instead of listing specific symptoms and diagnoses, which can

evolve as clinical practice guidelines are updated over time, the proposed definition would shift the focus to functional impairment. In determining eligibility on this basis, VA would not focus on the individual's specific diagnosis or conditions, but rather whether the veteran or servicemember has impairment in functioning that directly impacts the individual's ability to maintain his or her personal safety on a daily basis and thus requires supervision, protection, or instruction from another individual. For example, an individual with schizophrenia who has active delusional thoughts that lead to unsafe behavior (*e.g.,* setting a fire, walking into traffic) may require another individual to provide supervision or instruction to ensure his or her personal safety on a daily basis. Additionally, an individual with dementia may be physically capable of washing their hands or taking a bath but may be unable to use the appropriate water temperature and may thus require step-by-step instruction or sequencing in order to maintain his or her personal safety on a daily basis. However, an individual with dementia who is forgetful or misplaces items but can adapt and manage successfully without compromising his or her personal safety on a daily basis (*e.g.,* by relying on lists and visual cues for prompting), may not be in need of supervision, protection, or instruction.

This definition would also recognize that impairment in functioning may result from multiple conditions or diagnoses and the impact of the functional impairment on the individual's personal safety can change over time (*e.g.,* for a veteran or servicemember with a progressive disease). Whether a veteran or servicemember would qualify for PCAFC on this basis would depend on whether his or her functional impairment directly impacts the individual's ability to maintain his or her personal safety on a daily basis. For example, a veteran or servicemember who is diagnosed with Parkinson's disease may not qualify on this basis during the initial onset of symptoms, but over time or because of comorbidities, could be determined eligible on this basis.

We would require that the functional impairment impact the individual's ability to maintain personal safety on a daily basis to address and clarify the frequency with which a veteran or servicemember would need for supervision, protection, or instruction for purposes of PCAFC eligibility. This requirement would be consistent with our goal of focusing PCAFC on eligible veterans with moderate and severe needs. We also believe it is consistent with the statutory criteria it would implement, which in part recognize that instruction or supervision are needed for the eligible veteran to function in daily life. See 38 U.S.C. 1720G(a)(2)(C)(iii). A veteran or servicemember meeting this criterion may not need supervision, protection, or instruction continuously during the day (see our proposed definition of ''unable to self-sustain in the community'' discussed further below), but would need such personal care services on a daily basis, even if just intermittently each day. For example, a veteran or servicemember may require supervision or instruction when completing certain daily tasks, such as administering daily medication, due to a cognitive impairment caused by dementia, but not require a caregiver to be physically present the remainder of the day.

In § 71.15, we propose to add a new definition for the term ''overpayment.'' We would define this term to mean a payment made by VA pursuant to part 71 to an individual in excess of the amount due, to which the individual was not eligible, or otherwise made in error. The definition would also specify that an overpayment is subject to collection action. This definition would clarify the payments that are considered overpayments and subject to collection action in accordance with the Federal Claims Collection Standards (FCCS) and as discussed below in the context of the proposed addition of § 71.47.

We propose to revise the definition of ''primary care team'' in current § 71.15 and the references to that term in various sections of part 71. The term ''primary care team'' is currently defined to mean ''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 current definition also specifies that ''[t]he 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.'' This term is currently used in part 71 in reference to: Authorizations made in the context of eligibility determinations under current § 71.20(c) and (d) and approval and designation under current § 71.25(f), the eligible veteran's ongoing care in current § 71.20(g), the initial assessment of the caregiver applicant in current § 71.25(c)(1), the caregiver applicant's ability to carry out care requirements in current § 71.25(c)(2), and monitoring visits in current § 71.40(b)(2). For reasons discussed further below, we would remove the references to ''primary care team'' in all but one of these contexts (regarding the eligible veteran receiving ongoing care from a primary care team), and we would add a reference to ''primary care team'' in one other context.

Instead of referencing the role of the primary care team in various paragraphs of §§ 71.20 and 71.25, we propose to include one reference to the primary care team in proposed § 71.25(a)(2)(i) that indicates PCAFC eligibility evaluations would be performed in collaboration with the primary care team to the maximum extent practicable. The current references to authorizations by the primary care team in current § 71.20(c) and (d) and current § 71.25(f) are unclear and have not been applied consistently due to variation between facilities on how such authorizations are obtained. Also, the individual or team best suited to conduct the initial assessment of an applicant seeking designation as a Family Caregiver under § 71.25(c)(1) can vary across VA depending on the individual needs of the veteran or servicemember. It may be more appropriate for clinical eligibility teams or providers other than the veteran's or servicemember's primary care team to perform these evaluations. Additionally, in evaluating the caregiver applicant's ability to carry out care requirements under current § 71.25(c)(2), it may be appropriate to consider care requirements prescribed by providers other than the veteran's or servicemember's primary care team, such as a VA clinical eligibility team, non-VA provider, or other appropriate individual or individuals in VA. These changes would give VA more flexibility in how it evaluates PCAFC eligibility and approves and designates Family Caregivers while also ensuring that joint applications are evaluated in collaboration with the primary care team of the veteran or servicemember to the maximum extent practicable.

Additionally, we would remove the reference to the primary care team maintaining the eligible veteran's treatment plan and collaborating with clinical staff making home visits for purposes of monitoring in current § 71.40(b)(2) (*i.e.,* wellness contacts in proposed § 71.40(b)(2)). It may not always be appropriate for the clinical staff conducting home visits to collaborate directly with the eligible veteran's primary care team. It may be more appropriate for the clinical staff

conducting home visits to collaborate with the Caregiver Support Coordinator (CSC) who would then collaborate with the primary care team, and would be the liaison between the primary care team and the clinical staff conducting home visits. As discussed below in the context of proposed § 71.40(b)(2), the primary care team would still maintain the eligible veteran's treatment plan and be involved in monitoring the well-being of eligible veterans.

With these changes, the term ''primary care team'' would only be referenced in part 71 in proposed § 71.20(a)(7) in reference to the eligible veteran receiving ongoing care from a primary care team (based on current § 71.20(g)) and proposed § 71.25(a)(2)(i) in reference to VA's evaluation of PCAFC applications. In these contexts, it is important to revise the current definition of ''primary care team'' in § 71.15 to make clear that it refers to one or more VA medical professionals, and to recognize the variation in how eligible veterans receive care from VA.

First, we would remove the reference to a group ''selected by VA'' and instead refer to ''one or more VA medical professionals.'' The current phrase ''selected by VA,'' is ambiguous and can be interpreted to mean non-VA medical professionals or VA medical professionals selected to serve on the primary care team for an eligible veteran. This proposed change would remove this ambiguity by clearly stating that the primary care team is one or more VA medical professionals. Pursuant to 38 U.S.C. 1720G(a)(9)(A) through (C), VA is required to monitor the well-being of eligible veterans receiving personal care services from a designated Family Caregiver; document findings pertinent to the delivery of personal care services; and ensure appropriate follow up. Requiring eligible veterans to receive ongoing care from a primary care team that consists of one or more VA medical professionals pursuant to proposed § 71.20(a)(7) would ensure that VA is able to continue to fulfill these statutory requirements. Additionally, section 161(a)(6) of the VA MISSION Act of 2018 requires that PCAFC applications be evaluated by VA in collaboration with the primary care team for the eligible veteran to the maximum extent practicable. See 38 U.S.C. 1720G(a)(5), as amended by Public Law 115–182, section 161(a)(6). We recognize that veterans or servicemembers may receive care from non-VA providers in the community; however, for purposes of evaluating joint applications under proposed § 71.25(a)(2)(i), we would rely on input from the VA medical professional(s) who care for the patient. Additionally, we recognize that eligible veterans, based on individual needs, may only receive care from one VA medical professional or may receive care from multiple VA medical professionals; therefore, we would remove reference to ''group'' and instead refer to ''one or more.'' This revised definition would ensure collaboration with the VA medical professional(s) involved in the patient's care during the evaluation of the individual's joint application. Referencing the phrase ''one or more VA medical professionals'' instead of referring to medical professionals ''selected by VA'' would operationally be the most feasible to implement and ensure VA meets its statutory obligations.

Second, we would remove the phrase ''who coordinates care'' from the current definition because that phrase can be misinterpreted to mean a care coordinator or a provider who coordinates care with other providers. This phrase also does not specify whether the care coordinated is specific to care related to PCAFC or all of the care coordination needs of the eligible veteran. We have interpreted this phrase to mean a provider who coordinates the clinical needs of his or her patients which we believe is inherent in the duties of VA medical professionals. Thus, we would remove the requirement in the current definition that the primary care team must include a ''provider who coordinates the care.''

Third, we would remove the phrase ''must include a primary care provider,'' and references to other clinical specialists as indicated by the needs of the particular patient. Some eligible veterans participating in PCAFC may receive their primary care in the community and may only utilize VA for a portion of their care, such as mental health or specialty services. Therefore, we would remove the requirement that a primary care provider must be part of the primary care team. Additionally, because this definition would refer to one or more VA medical professionals who care for a patient based on the clinical needs of the patient, we do not believe it is necessary to specify the types of medical professionals who could serve on the primary care team for an eligible veteran.

As revised the term ''primary care team'' would mean one or more VA medical professionals who care for a patient based on the clinical needs of the patient. We believe this revision would meet our statutory requirements, accommodate veterans and servicemembers who may receive care in the community, and ensure that eligible veterans participating in PCAFC receive care from one or more VA medical professionals based on their needs.

We would also revise the definition of ''serious injury'' in current § 71.15. When Congress enacted the Caregivers Act, it limited PCAFC to eligible Veterans with 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.'' 38 U.S.C. 1720G(a)(2)(B). Currently, VA's regulations define ''serious injury'' at § 71.15 and implement the requirement at current § 71.20(b) and (c) mainly by restating the statutory language without providing guidance or clarity as to its meaning. ''Serious injury'' is currently defined in § 71.15 to mean ''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.'' This definition has led to implementation challenges, among them inconsistent eligibility determinations by VA providers. We believe it is critical for VA to revise its definition of ''serious injury'' to address these challenges and improve PCAFC administration. In addition, we believe a revised definition of ''serious injury'' would help ensure that eligible veterans who served both before and after September 11, 2001 have equitable access to PCAFC. We propose four significant revisions to the current ''serious injury'' definition in § 71.15, which are discussed in detail below.

First, we would define the term ''injury'' to include ''any service-connected disability'' regardless of whether it resulted from an injury, illness, or disease. Second, we would define ''serious injury'' to mean having a singular or combined rating of 70 percent or more based on one or more service-connected disabilities. Third, we would no longer require a connection between the need for personal care services and a specific serious injury. Finally, we would remove the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' and replace it with ''service-connected.'' As revised, the term ''serious injury'' would be defined to mean 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. In this discussion, we outline the issues associated with PCAFC's current definition of ''serious injury,'' describe alternative approaches, and propose a new definition that would reduce subjectivity and help ensure more equitable implementation of PCAFC.

The lack of clarity on what constitutes an ''injury'' has placed an inordinate responsibility on providers assessing PCAFC eligibility and, as a result, has contributed to delays in VA's adjudication of PCAFC applications. It is generally not necessary for VA to distinguish between injuries and diseases in establishing service-connection for purposes of disability compensation. See 38 U.S.C. 1110 and 1131 (referring to both ''injury'' and ''disease''). Therefore, the vast majority of VA rating decisions do not indicate whether a disability is attributable to an injury as compared to a disease. In addition, the terms ''injury'' and ''disease'' for purposes of compensation are not defined in title 38, United States Code or Code of Federal Regulations. Thus, VA providers evaluating PCAFC eligibility must rely on complex assessment, clinical diagnoses, or other credible evidence of injury, which may not be available. In the absence of clear guidance on what constitutes an injury or how to distinguish an injury from illnesses and diseases, providers apply subjective clinical judgement on a case-by-case basis.

Providers' interpretations of the ''injury'' requirement vary, resulting in inconsistent outcomes for PCAFC applicants between VA facilities and VA providers. For example, some VA providers have applied the term injury to include illnesses and diseases that have resulted from an injury during service while others have not (*e.g.,* one VA provider may determine that a veteran's arthritis resulted from an injury incurred in the line of duty, whereas another may consider it to be a chronic disease that, while incurred in the line of duty, does not constitute an injury). Providers may also consider the term injury to include exposure to environmental hazards during service, such that illnesses and diseases resulting from an environmental exposure could be considered injuries (*e.g.,* a veteran may suffer from neurological impairments as a result of exposure to burn pits, but providers may have differing opinions on whether that type of exposure constitutes an injury). Additionally, providers may have differing opinions as to what caused a veteran's service-connected disability (*e.g.,* a provider in one VA facility may consider a veteran's migraine headaches to be caused by a traumatic brain injury (TBI), and therefore a qualifying injury, whereas in another the VA provider may attribute the migraine headaches to a viral or bacterial infection of the head and neck that does not constitute an injury). Furthermore, the inclusion of ''psychological trauma'' and ''other mental disorder'' in 38 U.S.C. 1720G(a)(2)(B) has raised questions as to which mental health diagnoses are considered an ''injury'' under the law. For example, providers may have different interpretations of whether ''injury'' includes a mental health diagnosis clearly associated with an illness or disease (*e.g.,* where a veteran's disability rating decision documents that the veteran's post-traumatic stress disorder (PTSD) or major depressive disorder is the result of an illness, like cancer). If VA continues to apply the current definition of ''serious injury,'' these challenges are likely to be exacerbated as PCAFC is expanded to veterans who served before September 11, 2001. Not only will VA be processing more applications for PCAFC, but also considering eligibility for veterans of earlier eras for whom evidence establishing ''injury'' during military service may not be as readily available.

Outside the context of PCAFC, VA generally only considers whether a disability or a death resulted from an injury as compared to a disease when a claim is filed alleging that a disability or death was incurred during inactive duty training. VA compensation is payable only if, during inactive duty training, an individual was disabled or died ''from an injury incurred or aggravated in line of duty,'' or from an ''acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.'' 38 U.S.C. 101(24)(C). The VA General Counsel has analyzed the distinction between ''injury'' and ''disease'' for purposes of 38 U.S.C. 101(24) and concluded that the term ''injury'' denotes harm from external trauma, as distinguished from ''disease'' which refers to a type of internal infection or degenerative process. Also, VA's disability compensation regulations specify that certain presumptive exposures during service constitute an ''injury'' for purposes of 38 U.S.C. 101(24). See 38 CFR 3.307(a)(6)(v) (regarding presumed exposures on C–123 aircraft) and (a)(7)(iv) (regarding presumed exposures to contaminants in the water supply at Camp Lejeune).

VA also administers the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program under 38 U.S.C. 1980A. TSGLI provides short-term financial assistance to servicemembers insured by Servicemembers' Group Life Insurance who sustain a traumatic injury directly resulting in a scheduled loss. VA's regulations governing TSGLI at 38 CFR 9.20(b) and (c)(1) define ''traumatic injury'' to mean ''physical damage to a living body'' caused by ''the application of external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being.'' The term ''traumatic injury'' specifically excludes ''damage to a living body caused by—(i) [a] mental disorder; or (ii) [a] mental or physical illness or disease, except if the physical illness or disease is caused by a pyogenic infection, biological, chemical, or radiological weapons, or accidental ingestion of a contaminated substance.'' 38 CFR 9.20(c)(2).

While VA's interpretation of ''injury'' for purposes of 38 U.S.C. 101(24) and the TSGLI definition of ''traumatic injury'' for purposes of 38 U.S.C. 1980A are useful as references in defining ''injury'' for purposes of PCAFC, they are not dispositive. In many respects, the term ''serious injury'' in 38 U.S.C. 1720G is distinguishable from ''injury'' and ''traumatic injury'' under 38 U.S.C. 101(24) and 1980A, respectively.

First, the context in which ''serious injury'' appears in 38 U.S.C. 1720G(a)(2)(B) diverges significantly from ''injury'' in 38 U.S.C. 101(24)(C) and ''traumatic injury'' in 38 U.S.C. 1980A. Section 1720G(a)(2)(B) includes the terms ''psychological trauma'' and ''other mental disorder,'' which suggests that, rather than distinguishing ''injury'' and ''disease,'' the term ''serious injury'' includes certain illnesses and diseases. This is in stark contrast to 38 U.S.C. 101(24)(B) and (C) where ''injury'' is clearly distinguished from the term ''disease.'' Compare 38 U.S.C. 101(24)(B) (''any period of active duty for training during which the individual concerned was disabled or died from a disease or injury''), with section 101(24)(C) (''any period of inactive duty training during which the individual concerned was disabled or died . . . from an injury''). The inclusion of ''mental disorder''—conditions that may otherwise be considered ''diseases''—also distinguishes ''serious injury'' in section 1720G(a)(2)(B) from TSGLI's definition of ''traumatic injury,'' which generally excludes coverage for mental disorders (except as specified). In addition, 38 U.S.C. 1980A prescribes certain ''qualifying losses'' for purposes of TSGLI, to include: Total and permanent loss of sight, speech, hearing

in both ears; loss of hand or foot by severance at or above the wrist or ankle; quadriplegia, paraplegia, or hemiplegia; certain burns; and coma or the inability to carry out two or more activities of daily living resulting from traumatic injury to the brain. Congress was not so prescriptive in 38 U.S.C. 1720G, and likely had a broader veteran population in mind when referencing ''serious injury'' for purposes of PCAFC as opposed to servicemembers with a ''traumatic injury'' under 38 U.S.C. 1980A. Whereas the term ''trauma'' is frequently defined with reference to external force or violence (see 70 FR 75940, at 75941 (December 22, 2005) (citing VAOPGC 6–86)), the term ''serious'' does not carry the same connotations. See *Ballentine's Law Dictionary,* 3rd Ed. (2010), *available at* LexisNexis (defining ''serious'' as ''[i]mportant; weighty, momentous and not trifling,'' and in the definition of ''serious bodily injury'' explaining ''[t]he word 'serious,' when used to define the degree of bodily harm or injury apprehended, requires or implies as high a degree as the word 'great' and the latter word means high in degree, as contradistinguished from trifling.'')

Second, there are notable differences in PCAFC under 38 U.S.C. 1720G and these other title 38 authorities (*i.e.,* 38 U.S.C. 101(24) and 1980A). Section 101(24)(C) is limited to injuries and other conditions occurring during training, which is likely related to the nature of inactive-duty training as involving only brief periods of service. For example, Congress may have determined that diseases becoming manifest during such brief periods of service are less likely to be causally related to such service than injuries occurring during such service. The same cannot generally be said of veterans eligible for PCAFC. It is more likely that Congress limited PCAFC to veterans with a serious injury because PCAFC was originally focused on veterans who served on or after September 11, 2001, primarily veterans of Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn. TBI and PTSD have been referred to as ''invisible injuries'' and as the ''signature wounds'' of these conflicts, and it could have been Congress's intent to focus PCAFC benefits on veterans who sustained such disabilities and other ''visible'' injuries, as opposed to veterans with other service-connected illnesses or diseases.

Congress may have had a similar population in mind when establishing TSGLI benefits in 2005. Public Law 109–13, section 1032 (2005). As explained in VA's interim final rule establishing 38 CFR 9.20:

> TSGLI was designed to provide severely injured service members who suffer a loss as a direct result of a serious traumatic injury, such as a loss of an arm or leg, with monetary assistance to help the member and the member's family through an often long and arduous treatment and rehabilitation period. In many instances, the family of a member who suffers a traumatic loss in the service of his or her country must physically relocate in order to be with the member during this period in order to provide the member with emotional support. Relocating an entire family is not only disruptive but can and does result in economic hardship to the member and the member's family brought on by new and/or additional living expenses, and in some cases the loss of a job. TSGLI helps to lessen that economic burden by providing immediate financial relief.

70 FR 75940 (December 22, 2005). However, unlike PCAFC, TSGLI is modeled after commercial Accidental Death and Dismemberment insurance coverage, specifically, the ''dismemberment'' portion of the coverage. Id. In contrast, PCAFC is a clinical benefit program administered through VHA and designed to provide assistance to Family Caregivers that provide personal care services to eligible veterans. Unlike TSGLI, which is limited to lump-sum monetary assistance, PCAFC provides eligible Family Caregivers with training and technical support to assist Family Caregivers in their role as a caregiver for an eligible veteran. In addition, PCAFC provides eligible Family Caregivers with counseling and mental health services, respite care, medical care under CHAMPVA, and a monthly personal caregiver stipend. Rather than quantifying losses, PCAFC is designed to support the health and well-being of eligible veterans, enhance their ability to live safely in a home setting, and support their potential progress in rehabilitation, if such potential exists. 38 CFR 71.15.

Further, while Congress may have originally intended to focus PCAFC on the signature disabilities of veterans who served after September 11, 2001, the VA MISSION Act of 2018 expanded PCAFC to veterans of earlier eras. Veterans who served before September 11, 2001, have high incidences of PTSD and other ''visible'' injuries similar to those who served after September 11, 2001; however, the signature disabilities of earlier conflicts also include other illnesses and diseases, such as diseases presumed to be the result of herbicide exposure in Vietnam and other places, and chronic multi-symptom illness experienced by Persian Gulf Veterans. Other service-connected disabilities that prevail in these populations include multiple sclerosis (MS), amyotrophic lateral sclerosis (ALS), and hepatitis C—disabilities that are generally considered to be diseases, not injuries.

In establishing a proposed definition of ''injury'' for purposes of PCAFC, we considered incorporating elements of VA's interpretation of ''injury'' under 38 U.S.C. 101(24) and the TSGLI definition of ''traumatic injury'' for purposes of 38 U.S.C. 1980A, while also addressing the implementation challenges outlined above and recognizing the disabilities of veterans who served before September 11, 2001. One possibility we considered was defining ''injury'' for purposes of PCAFC to include not only harm resulting from a violent encounter, such as application of chemical, biological, and radiological weapons, but also adverse effects on body tissue or systems resulting from: Introduction of a foreign substance, such as ingestion of a contaminated substance or exposure to a vaccination; exposure to environmental hazards like certain herbicides agents, volatile organic compound contaminants, radiation, excessive heat or cold, or non-penetrating blast waves; detention, internment, or confinement as a prisoner of war; and an insect bite or sting, or animal bite. Such a definition would recognize as an ''injury'' those service-connected disabilities presumed by VA to be the result of exposure during service (including disabilities associated with exposure to certain herbicide agents and diseases specific to radiation-exposed veterans), as well as any illnesses or diseases known to be caused by exposure to environmental hazards based on direct evidence (including known exposure to burn pits).

Although such a definition would be more inclusive and address some of the confusion with the current ''serious injury'' definition, we believe it would also result in additional inequities. This is because not all veterans who experienced such exposures or other injuries qualify for statutory or regulatory presumptions of service-connection, and credible evidence of such exposures or other injuries is not always available. As a result, similarly situated veterans with the same debilitating disease could be treated differently for purposes of PCAFC eligibility based only on whether the veteran qualifies for a presumption of service-connection based on an exposure or other injury or has evidence reflecting that the disease was caused by an exposure or other injury. For example, a veteran's service-connected Parkinson's disease could be considered

to be an ''injury'' for purposes of PCAFC if the veteran's rating decision reflects a presumption of exposure to water supply contaminants at Camp Lejeune, but a similarly-situated veteran who does not qualify for a presumption of exposure could be determined ineligible for PCAFC based solely on a clinical decision that the disease did not result from a qualifying injury in the line of duty. Similarly, a veteran with type 2 diabetes who qualifies for a presumption of exposure to herbicides in the Republic of Vietnam could be considered to have an ''injury'' for purposes of PCAFC, but another Veteran with service-connected type 2 diabetes who served in a different location or era of service could be determined ineligible for PCAFC because of a lack of evidence linking the veteran's diabetes to an exposure or other injury during service. Likewise, a veteran who incurred hepatitis C in the line of duty may believe it to have been caused by exposure to an infected vaccine needle, but without evidence to establish such a connection or other injury, it would be difficult for a provider evaluating PCAFC eligibility to classify the disease as an ''injury'' under this definition.

Moreover, other disabilities presumed by VA to be caused by active military, naval, or air service, or compensable based on having manifested within a certain time period, are not known to have resulted from an identifiable exposure or other injury (such as ALS and certain disabilities of Persian Gulf Veterans). For some veterans, establishing that their illness or disease resulted from an exposure in the line of duty would be challenging. With ALS, for example, ''continuing uncertainty regarding specific precipitating factors or events that lead to development of the disease would present great difficulty for individual claimants seeking to establish service connection by direct evidence.'' 73 FR 54692 (September 23, 2008). The same would be true of veterans trying to characterize their ALS as an injury for purposes of PCAFC. Although VA could propose that veterans with these qualifying presumptions would be considered to have an injury for purposes of PCAFC, we do not believe there is a rational basis for including veterans with these presumptive disabilities while excluding veterans whose service-connection was based on direct evidence of other illnesses or diseases incurred or aggravated in the line of duty.

We believe the definition of ''injury'' for purposes of PCAFC should be as inclusive as possible, but also recognize that including additional categories of specific types of external trauma would result in continued inequities and seemingly arbitrary distinctions. Defining ''injury'' to include diseases resulting from presumed exposures to environmental hazards, for example, would result in an expansion of PCAFC eligibility to veterans of earlier service eras for whom presumptions have been established, but similarly situated veterans of later service eras would be excluded because there is not yet scientific evidence to establish such presumptions. While we believe it would be unreasonable for VA to expand PCAFC benefits to veterans who served before September 11, 2001 without also recognizing the disabilities prevalent among such veterans, it would also be unreasonable to consider the same disabilities to be disqualifying for purposes of PCAFC for veterans who served after September 11, 2001.

Even administrative improvements, like developing detailed clinical guidelines, centralizing eligibility decisions, and training providers who render PCAFC eligibility decisions, would not eliminate these inequities, and could place VA providers in the position of rendering adjudicative decisions like those made by VBA claims examiners for purposes of VA rating determinations. We do not believe Congress intended this result. Accordingly, we believe that, to the extent the statutory language allows, the statute should be construed in a manner that minimizes the potential for complex and time-consuming eligibility determinations and disparate treatment of veterans with similar service-connected conditions and similar medical needs arising from those conditions.

Caregivers of veterans with illnesses and diseases incurred or aggravated in the line of duty, like those mentioned above, could benefit from PCAFC assistance in the same manner as caregivers of veterans with injuries, such as TBI and spinal cord injury. The most equitable and reasonable approach to resolving these challenges would be to recognize any service-connected disability as an ''injury'' for purposes of PCAFC.

Therefore, to address the implementation challenges discussed above in a more objective, inclusive, and equitable manner, we propose to define ''injury'' in 38 U.S.C. 1720G(a)(2)(B) to include any service-connected disability, regardless of whether it resulted from an injury or an illness or disease.

We note that this definition would apply only for purposes of PCAFC and would not affect other VA statutes, specifically, the application of ''injury'' and ''traumatic injury'' under 38 U.S.C. 101(24) and 1980A, respectively. As we have explained above, PCAFC is distinguishable from these other statutes, and the context in which ''injury'' is used in 38 U.S.C. 1720G, supports a different interpretation than has been applied for 38 U.S.C. 101(24) and 1980A.

The fact that 38 U.S.C. 101(24) and 1980A appear to treat ''injury'' and ''disease'' as mutually exclusive categories for purposes of those statutes does not preclude us from construing the term ''injury'' in section 1720G(a)(2)(B) to include diseases and illnesses for purposes of that provision. Although ''there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . the presumption is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.'' *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U.S. 427, 433 (1932). Congress has not defined the term ''injury'' for purposes of title 38 nor has it otherwise indicated an intent that the term be given a single meaning for purposes of all provisions within title 38. *Cf. Allen* v. *Brown,* 7 Vet. App. 439, 447 (1995) (''The absence of a single generally applicable definition in 38 U.S.C. 101, which would control the interpretation of that term in other parts of title 38, suggests that the term 'disability' may reasonably be interpreted as having different meaning in different parts of title 38.'').

In section 1720G(a)(2)(B), Congress specified that the term ''serious injury'' includes ''traumatic brain injury, psychological trauma, or other mental disorder'' for purposes of that section. The most natural reading of that language is that all mental disorders—including those that could be considered diseases, rather than injuries, under other provisions in title 38—may be within the scope of the term ''serious injury'' for purposes of section 1720G(a)(2)(B). We therefore conclude that Congress did not intend to categorically exclude from coverage under section 1720G(a)(2)(B) all conditions that likely would be considered ''diseases'' for purposes of other provisions in title 38. Further, by using the term ''including'' to preface the parenthetical reference to TBI, psychological trauma, and other mental disorders, Congress indicated that those examples are not exhaustive.

Although we believe it is clear that the term ''injury'' as used in section 1720G(a)(2)(B) is broader in scope than the similar terms as used in other parts of title 38, the statutory text does not indicate the full intended scope of section 1720G(a)(2)(B). In resolving that ambiguity, we note that ''[s]tatutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible.'' *Am. Tobacco Co.* v. *Patterson,* 456 U.S. 63, 71 (1982). VA's proposed interpretation would minimize the risk of disparate treatment based on difficult and possibly subjective determinations as to the specific causes of a veteran's service-connected condition. It would also minimize the need for complex adjudicative determinations separate from those governing entitlement to VA disability compensation, which could delay administration of PCAFC assistance. Considering all service-connected disabilities to be injuries for purposes of PCAFC would reduce subjective clinical judgement and individual determinations with respect to whether a service-connected disability constitutes an ''injury.'' Instead, VA providers evaluating PCAFC eligibility could simply rely on VA rating decisions finding a disability in establishing whether a veteran has an ''injury'' for purposes of PCAFC, and thereby establish a more objective standard to assess eligibility. We note that under this proposed definition, VA would no longer be assessing whether a veteran's disability is related to an injury, however it would still have to be related to the veteran's military service. Under 38 U.S.C. 1720G(a)(2)(B), determining a veteran's disability to be ''incurred or aggravated in the line of duty in the active military, naval, or air service,'' requires evidence of a relationship between a veteran's in-service disease, injury, symptoms, or event and the veteran's current disability. In some cases, this relationship is shown by use of a legal presumption that the disability is related to a particular type of military service, but in other cases, it is established with direct evidence. However, in all cases, a veteran's disability must be determined to be related to the veteran's military service, even if the specific cause (*e.g.,* an injury or disease) is unknown.

The second revision to this definition would be to distinguish an ''injury'' from a ''serious injury'' by requiring that the veteran or servicemember have a single disability rated at 70 percent or more by VA, or a have a combined rating of 70 percent or more. We believe requiring at least a 70 percent rating for a singular service-connected disability or combined rating of 70 percent for multiple service-connected disabilities would demonstrate that a veteran's injuries rise to the level of serious. VA provides nursing home care, to include at VA Community Living Centers, to eligible veterans with a 70 percent or greater service-connected disability rating (see 38 U.S.C. 1710A) based on their clinical needs, and PCAFC is designed to assist a similar population of veterans and servicemembers to remain in their homes. We note that the eligibility criteria for PCAFC and nursing home care are not identical and that there may be many instances when nursing home care would be more appropriate for a veteran or servicemember than PCAFC. However, this definition would help ensure that we are targeting a similar group of veterans and servicemembers with moderate and severe needs. Also, it would remove the current subjectivity in determining whether an injury meets the level of serious injury and would provide a transparent and clearly defined standard that can be consistently applied throughout VA. It would also help ensure better understanding of the term ''serious'' by veterans, servicemembers, and caregivers. Additionally, we assessed the service-connected rating of eligible veterans currently participating in PCAFC and found that the majority have a single or combined rating of 70 percent or more. Furthermore, alternatives explored, such as requiring the eligible veteran qualify for a higher disability rating, would be too restrictive and would result in the majority of the current PCAFC participants no longer qualifying for the program.

For servicemembers undergoing medical discharge (as defined in current § 71.15) who apply for PCAFC, we would accept their proposed VA rating of disability when determining whether the servicemember has a serious injury. When servicemembers are referred to a Physical Evaluation Board and file a VA Form 21–0819, *VA/DOD Joint Disability Evaluation Board Claim,* they are issued a proposed VA rating decision. A final VA rating decision is not issued until VA verifies a member's character of service and date of discharge from active duty, but this proposed rating generally does not change from the time the member received the proposed rating until the official VA rating is provided unless a clear and unmistakable error exists in the proposed rating decision, and/or VA receives new evidence after issuing the proposed rating decision that justifies changing one or more of the decisions set forth in it. While proposed ratings may be adjusted, so can the disability ratings of a veteran over time. Thus, any changes to the rating, regardless of whether the change is for a servicemember undergoing medical discharge or a veteran, that results in a rating of less than 70 percent for a single service-connected disability or a combined rating of less than 70 percent for multiple service-connected disabilities would result in the veteran or servicemember no longer being eligible for PCAFC.

Third, we would no longer require a connection between the veteran's or servicemember's need for personal care services and a specific serious injury; instead, a veteran or servicemember may qualify for this program because they have a need for personal care services for another reason, so long as the veteran or servicemember also has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities (and meets other applicable criteria). We believe decoupling serious injury and the need for personal care services is necessary, as in most cases, the eligible veteran has multiple conditions that may warrant a need for personal care services, and it may not necessarily be because of the disability that he or she incurred or aggravated during their military service. We note that veterans often have complex needs as a result of several conditions and find this even more true among the older veteran population. Their needs can be so complex that it can be difficult to parse out and determine what specific condition out of many causes the need for personal care services. For example, an individual may have leg pain due to a service-connected spinal cord injury but be able to manage his or her symptoms. After a number of years, the individual is diagnosed with diabetes unrelated to his or her military service. Over time, the individual develops neuropathy in his or her lower extremities, which results in the individual being unable to complete his or her ADLs independently. The onset of neuropathy could be related to either the spinal cord injury or diabetes. This example illustrates the difficulty of these clinical decisions because the determination of whether the onset of neuropathy is related to the qualifying serious injury or the illness unrelated to military service would be a subjective clinical determination. Currently there is inconsistency in how the term

''serious injury'' is interpreted due to the complexity of assessing the specific medical condition and whether it renders the veteran or servicemember in need of personal care services. As a result, we believe it is necessary to decouple serious injury from the need for personal care services.

Finally, we propose to simplify the ''serious injury'' definition by replacing the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' with ''service-connected.'' As previously explained, the current definition for serious injury is based on the language in 38 U.S.C. 1720G(a). However, 38 U.S.C. 101(16) defines ''service-connected'' as a disability incurred or aggravated, or a death that resulted from a disability incurred or aggravated, in line of duty in the active military, naval or air service. Because the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' in 38 U.S.C. 1720G(a)(2)(B) is generally synonymous with the term ''service-connected'' in 38 U.S.C. 101(16), we would simplify the ''serious injury'' definition accordingly. Thus, we propose to use ''service-connected'' in the proposed revised definition for serious injury. We note that proposed § 71.20(a)(2) would continue to use the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' in reference to the veteran's or servicemember's serious injury for purposes of establishing eligibility under the dates specified in proposed § 71.20(a)(2)(i) through (iii) and 38 U.S.C. 1720G(a)(2)(B)(i) through (iii).

We believe these proposed changes to the definition of ''serious injury'' would establish faster, more consistent PCAFC eligibility determinations by VA providers, and help ensure more equitable implementation of PCAFC for veterans who served both before and after September 11, 2001. Defining serious injury in this manner would create more uniformity in eligibility determinations across VA through more objective criteria. By recognizing the disabilities prevalent among veterans who served before September 11, 2001 through inclusion of illnesses and diseases, we would support Congress's goal of remedying the ''inequity that currently exists between pre- and post-9/11 veterans and their caregivers'' and ''recognize the service and sacrifice of veteran caregivers of all ages and eras.'' H.R. Rep. No. 115–671, at 17 (2018) (accompanying H.R. 5674, which contained language identical to that enacted in sections 161–163 of the VA MISSION Act of 2018). Similarly, decoupling serious injury and the need for personal care services would also recognize the complex challenges faced by veterans whom we believe PCAFC was intended to support, and eliminate difficult clinical assignment of personal care service needs to specific conditions. Moreover, adopting a 70 percent or more service-connected disability rating requirement would provide an objective clinical standard to establish the appropriate degree of severity of a veteran's or servicemember's disability for purposes of PCAFC. Our proposed definition of ''serious injury'' would support transparency in PCAFC eligibility decisions and improve understanding by veterans, servicemembers, and their caregivers. However, we note that ''serious injury'' is only one criterion a veteran or servicemember would have to meet in proposed § 71.20 to be eligible for PCAFC.

We believe this approach comports with the statutory language and context and provides the most fair and effective means of implementing the statutory language by minimizing the potential for complex and time-consuming eligibility determinations and disparate treatment of veterans with similar service-connected conditions and similar medical needs arising from those conditions. We note that some veterans with service-connected disabilities resulting from illnesses and diseases have already been determined eligible for PCAFC even absent this definition as a result of providers' subjective clinical decisions and the statute's inclusion of certain illnesses and diseases under the terms ''psychological trauma'' and ''other mental disorder.''

We would add a new definition for the phrase ''unable to self-sustain in the community,'' which would be applied for purposes of determining the monthly stipend level under proposed § 71.40(c)(4)(i)(A), discussed further below. As further explained in this rulemaking, we propose to establish two levels for the monthly stipend payments versus the three tiers currently listed in § 71.40(c)(4)(iv)(A) through (C), and unable to self-sustain in the community would be used as the sole criterion to establish eligibility for the higher-level. The term ''unable to self-sustain in the community'' would mean 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. The basis for selecting this proposed definition is addressed in the discussion of proposed § 71.40(c)(4) below.

§ 71.20 Eligible Veterans and Servicemembers

Current 38 CFR 71.20 sets forth the criteria for veterans and servicemembers to be determined eligible for a Primary or Secondary Family Caregiver under part 71. In this section, we propose to revise the current eligibility criteria, but also ensure that legacy participants and legacy applicants, as those terms would be defined in proposed § 71.15, would remain eligible for PCAFC for a one-year transitional period beginning on the effective date of this rule (subject to the limitations discussed in this proposed rule) while VA completes a reassessment to determine their eligibility under our new proposed eligibility requirements. As a result, we propose to restructure § 71.20 to also accommodate legacy participants and legacy applicants. Proposed paragraphs (a)(1) through (7) would set forth proposed eligibility criteria adapted from current paragraphs (a) through (g); proposed paragraph (b) would address eligibility of legacy participants; and proposed paragraph (c) would address eligibility of legacy applicants. We would add a new introductory paragraph to establish that a veteran or servicemember would be eligible for a Family Caregiver under part 71 if he or she meets the criteria in paragraph (a), (b), or (c) of § 71.20, subject to the limitations set forth in such paragraphs.

In proposed § 71.20(a), we would set forth our proposed eligibility criteria for PCAFC, which would be adapted from current § 71.20(a) through (g). These criteria would be applied to determine eligibility pursuant to any joint application received by VA on or after the effective date of the rule, as discussed further below with regard to proposed § 71.25(a)(3). One year after the effective date of the rule, these criteria would apply to all veterans and servicemembers participating in PCAFC. We would redesignate the current introductory paragraph in § 71.20 as paragraph (a), which would provide that a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under part 71 if he or she meets all of the requirements in paragraphs (a)(1) through (7). We would make no changes to the language that appears in the current introductory paragraph. Proposed paragraph (a)(1), and new proposed paragraphs (a)(1)(i) and (ii) would state that the individual must be either a veteran, or a member of the Armed Forces undergoing a

medical discharge from the Armed Forces. This is the same language in current paragraphs (a) introductory text and (a)(1) and (2).

Current paragraph (b) of § 71.20 sets forth the requirement that the individual 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. As explained previously in this rulemaking, section 161 of the VA MISSION Act of 2018 amended 38 U.S.C. 1720G by expanding eligibility for PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001 in a phased approach.

We propose to redesignate current paragraph (b) as (a)(2), revise proposed paragraph (a)(2), and add paragraphs (a)(2)(i) through (iii) to address the phased expansion required by the VA MISSION Act of 2018. Current paragraph (b) states that 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. In proposed paragraph (a)(2), we would continue to state that the individual has a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service. However, we would remove the phrase ''including traumatic brain injury, psychological trauma, or other mental disorder'' that appears in current § 71.20(b) because such conditions would be captured by our proposed definition of ''serious injury.''

As previously explained, we are proposing to revise the definition of ''serious injury'' in § 71.15 to mean 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. This proposed definition of serious injury would include service-connected disabilities regardless of whether they are injuries, illnesses, or diseases, and thus would encompass traumatic brain injury, psychological trauma, or other mental disorder. Although the phrase ''incurred or aggravated in the line of duty in the active military, naval, or air service'' would also be encompassed by our revised definition of ''serious injury'' through the term ''service-connected,'' as previously explained, it would be needed for purposes of determining eligibility based on the dates specified in proposed paragraphs (a)(2)(i) through (iii).

We would move the language in current paragraph (b) that requires this serious injury have been incurred or aggravated in the line of duty in the active military, naval, or air service ''on or after September 11, 2001'' to proposed new paragraph (a)(2)(i). In proposed new paragraph (a)(2)(ii), we would add language to reflect that a veteran or servicemember would be eligible for this program if his or her serious injury was incurred or aggravated in the line of duty in the active military, naval, or air service ''on or before May 7, 1975.'' We would include language to state that the expansion of the program under proposed paragraph (a)(2)(ii) would become effective on the date specified in a future **Federal Register** document since this expansion is contingent upon the Secretary submitting the required certification to Congress, as discussed previously.

Similarly, in proposed new paragraph (a)(2)(iii), we would add language to reflect that a veteran or servicemember would be eligible for this program if his or her serious injury was incurred or aggravated in the line of duty in the active military, naval, or air service after May 7, 1975 and before September 11, 2001. Proposed paragraph (a)(2)(iii) would cover the final expansion of the program to eligible veterans of all eras, as required by the VA MISSION Act of 2018. We would include language to state that the expansion of the program under proposed paragraph (a)(2)(iii) would be effective two years after the date of the future **Federal Register** document specified in paragraph (a)(2)(ii) since this expansion is triggered two years after we submit the required certification to Congress, as discussed previously. We note that pursuant to proposed § 71.25(a)(3)(ii)(A) and (B), discussed further below, VA would deny any joint application received by VA from a veteran or servicemember before such veteran or servicemember becomes eligible under paragraphs (a)(2)(ii) or (iii).

Current paragraph (c) of § 71.20 requires that the veteran or servicemember have a serious injury that renders the individual in need of personal care services for a minimum of six continuous months. This is based on a clinical determination authorized by the individual's primary care team, and is based on whether the veteran or servicemember meets one of four specifically listed criteria.

As part of this rulemaking, we propose to revise current paragraph (c) by redesignating it as paragraph (a)(3) and removing the language that requires the individual's serious injury to render the individual in need of personal care services. We would specifically remove the language that ''couples'' the serious injury with the need for personal care services, as we previously explained in detail in the discussion on the proposed definition of ''serious injury'' in proposed § 71.15. Our proposed definition of ''in need of personal care services'' would apply for purposes of determining eligibility under proposed paragraph (a)(3).

As discussed above regarding our proposed definition of ''primary care team'' in proposed § 71.15, we would also remove the current language that states the individual's primary care team authorizes the clinical determination that the individual has a serious injury that renders the individual in need of personal care services for a minimum of six continuous months. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i). Furthermore, the use of the term ''clinical'' is redundant since all decisions affecting the furnishing of assistance or support under 38 U.S.C. 1720G are considered medical determinations. See 38 U.S.C. 1720G(c)(1). As revised, § 71.20(a)(3) would state that ''[t]he individual is in need of personal care services for a minimum of six continuous months based on any one of the [criteria listed in proposed § 71.20(a)(3)(i) and (ii)].''

Current 38 CFR 71.20(c)(1) through (4) provides that the veteran or servicemember must have: (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 with Global Assessment of Functioning test scores of 30 or less; or (4) a service connected disability rated at 100 percent for a serious injury incurred or aggravated in the line of duty on or after September 11, 2001, and the veteran or servicemember has been awarded special monthly compensation that includes an aid and attendance allowance. The former two bases upon which the individual can be deemed in need of personal care services (*i.e.,* an inability to perform an activity of daily living; and a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, including traumatic brain injury), contained in current § 71.20(c)(1) and (2), restate the bases in 38 U.S.C. 1720G(a)(2)(C)(i) and

(ii). The latter two criteria (*i.e.,* the use of Global Assessment Functioning (GAF) scores, and the 100 percent service connected disability rating that includes an aid and attendance allowance award), contained in 38 CFR 71.20(c)(3) and (4), are alternative bases authorized pursuant to 38 U.S.C. 1720G(a)(2)(C)(iv) and were established by VA when these regulations were first promulgated in 2011. See 76 FR 26150 (May 5, 2011).

In proposed § 71.20, we would redesignate current paragraph (c)(1) as new paragraph (a)(3)(i). We would revise current paragraph (c)(2) and redesignate it as new paragraph (a)(3)(ii). Paragraphs (a)(3)(i) and (ii) would provide the bases upon which an individual can be deemed in need of personal care services for a minimum of six continuous months. The language in current paragraph (c)(1), which refers to ''[a]n inability to perform an activity of daily living,'' would remain the same and would simply be moved to new paragraph (a)(3)(i). The revised definition of inability to perform an ADL in proposed § 71.15 would apply to this paragraph.

In proposed paragraph (a)(3)(ii), we would provide the second basis upon which an individual could be deemed in need of personal care services for a minimum of six continuous months—based on a need for supervision, protection, or instruction. As previously explained regarding § 71.15, we are proposing to remove the current definition of ''need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' and add a new definition for ''need for supervision, protection, or instruction.'' This new definition would broaden the eligibility criteria in current paragraph (c)(2) and would combine two of the statutory bases upon which a veteran or servicemember can be deemed in need of personal care services—''a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury,'' and ''a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.'' See 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii), as amended by Public Law 115–182, section 161(a)(2). We would add this new criterion to newly designated paragraph § 71.20(a)(3)(ii). Additionally, we would remove the phrase ''including traumatic brain injury'' that appears in current (c)(2). An individual with a traumatic brain injury could be deemed in need of personal care services based on a need for supervision, protection, or instruction in proposed § 71.20(a)(3)(ii), but we would not specifically list traumatic brain injury or any other specific conditions or diagnoses in that paragraph.

In this rulemaking, we also propose to remove current § 71.20(c)(3), which currently states that an individual can be deemed in need of personal care services based on psychological trauma or a mental disorder that has been scored with 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. At the time these regulations were first promulgated, the GAF assessment was a well-established mental health examination. See 76 FR 26150 (May 5, 2011). However, we now propose to remove this basis because the GAF scoring system was removed from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5), with which a mental disorder diagnosis must conform for VA rating purposes, 38 CFR 4.125(a), and is no longer widely used. Additionally, we note that no veterans and servicemembers have been deemed eligible for PCAFC based solely on their GAF score, as these individuals have also qualified under another basis in current paragraph (c). We believe that any veteran or servicemember who would qualify for PCAFC on this basis would be eligible for PCAFC under the other criteria in proposed § 71.20(a)(3)(i) and (ii). Thus, removing the criterion in current paragraph (c)(3) would likely have no impact on current and future participants.

Additionally, we also propose to remove current § 71.20(c)(4) which sets forth the basis that the veteran is service-connected for a serious injury incurred or aggravated in the line of duty on or after September 11, 2001, has been rated 100 percent disabled for that injury, and has been awarded special monthly compensation that includes an aid and attendance allowance. We believe that any veteran or servicemember who would qualify for PCAFC on this basis, even if it were expanded to reference eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, would be eligible for PCAFC under the other criteria in proposed § 71.20(a)(3)(i) and (ii). Thus, we believe it is reasonable to remove this basis in current § 71.20(c)(4).

We also propose to redesignate current § 71.20(d) as paragraph (a)(4) and revise the language. Current § 71.20(d) provides that 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. Newly designated paragraph (a)(4), would state that it is in the best interest of the individual to participate in the program. The revised definition of ''in the best interest'' in proposed § 71.15 would apply to this paragraph. As discussed above regarding our proposed definition of ''primary care team'' in § 71.15, we would remove the current language that refers to a clinical determination being authorized by the individual's primary care team. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i). Furthermore, the use of the term ''clinical'' is redundant since all decisions affecting the furnishing of assistance or support under 38 U.S.C. 1720G are considered medical determinations. See 38 U.S.C. 1720G(c)(1). Because current paragraph (d) would be revised and redesignated as paragraph (a)(4), we would remove paragraph (d) from § 71.20.

We propose to redesignate current paragraphs (e) through (g) as paragraphs (a)(5) through (7), respectively. The language in current paragraph (e) would remain the same and would simply be moved to new paragraph (a)(5). In paragraphs (a)(6) and (7) we would remove the phrase ''agrees to,'' replace ''receive'' with ''receives,'' replace ''after'' with ''or will do so if,'' and keep the remaining language the same. Current paragraphs (a)(6) and (7) state that after VA designates a Family Caregiver, the individual agrees to receive care at home and to receive ongoing care from a primary care team, respectively. We believe receiving care at home and receiving ongoing care from a primary care team (as such term would be defined in revised § 71.15) should be continuous requirements and not just an agreement made by the veteran or servicemember at some point prior to the Family Caregiver's approval and designation. Therefore, in proposed paragraphs (a)(6) and (7) we would remove the phrase ''agrees to,'' and replace ''receive'' with ''receives.'' We also intend for these requirements to apply throughout the Family Caregiver's approval and designation and therefore propose to replace ''after'' with ''or will do so if'' in proposed paragraphs (a)(6) and (7), so that these paragraphs are not interpreted to apply to any one point following VA's designation of the Family Caregiver. The phrase ''or will do so if'' is used in current § 71.25(b)(2)(ii) with respect to a caregiver applicant who is not a family member but lives with the eligible

veteran full-time ''or will do so if designated as Family Caregiver.'' Including this language would recognize that the veteran or servicemember may not be receiving care at home or receiving ongoing care from a primary care team at the time of his or her application for PCAFC, but would fulfill those requirements if his or her Family Caregiver is approved and designated by VA. As explained in VA's interim final rule and final rule implementing PCAFC, these requirements are needed to enable VA to perform statutorily required monitoring and documentation functions. See 76 FR 26151 (May 5, 2011) and 80 FR 1363–64 (January 9, 2015) (citing 38 U.S.C. 1720G(a)(9)). The remaining language in paragraphs (a)(6) and (7) would remain unchanged.

As a result of changes, we propose to make to the eligibility criteria, we would add a new paragraphs (b) and (c), which would establish that legacy participants and legacy applicants, respectively, would remain eligible for PCAFC for a one-year transitional period (subject to the limitations discussed in this proposed rule). Proposed paragraph (b) would state that for one year beginning on the effective date of the rule, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy participant. We believe that a one-year transition period is reasonable because it would allow individuals who are participating in PCAFC as of the day before the effective date of the rule to remain in the program for a transitional period while VA completes a reassessment to determine their eligibility under revised § 71.20(a).

Similarly, proposed paragraph (c) would state that for one year beginning on the effective date of the rule, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy applicant. We note that eligibility under paragraphs (b) or (c) would not exempt the Family Caregiver of a legacy participant or legacy applicant from being revoked or discharged pursuant to proposed § 71.45 for reasons other than not meeting the eligibility criteria in proposed § 71.20(a) in the one-year period beginning on the effective date of the rule. For example, the Family Caregiver could be revoked for cause, non-compliance, or VA error, or discharged due to death or institutionalization of the eligible veteran or Family Caregiver, as discussed in the context of proposed § 71.45 below. Therefore, in order to be considered a ''legacy participant,'' and remain eligible under § 71.20(b), we would require the Primary Family Caregiver approved and designated for the veteran or servicemember as of the day before the effective date of the rule (as applicable) would have to continue to be approved and designated as such. Likewise, in order to be considered a ''legacy applicant,'' and remain eligible under § 71.20(c), we would require that the Primary Family Caregiver approved and designated for the veteran or servicemember pursuant to a joint application received by VA prior to the effective date of the rule (as applicable), continues to be approved and designated as such. Although it is unlikely, we would include ''as applicable'' in parentheses to account for any legacy participant or legacy applicant who has only a Secondary Family Caregiver(s). A veteran or servicemember not meeting these requirements generally would no longer be participating in PCAFC, or would have the same or a new Primary Family Caregiver approved and designated pursuant to a joint application received by VA on or after the effective date of the rule, as discussed further below.

At the end of the one-year period following the effective date of the rule, legacy participants and legacy applicants who do not meet the new § 71.20(a) eligibility criteria would be discharged from PCAFC in accordance with proposed § 71.45, as such section would be revised by this rulemaking. However, VA would continue to support such individuals through alternative supports and services as desired and applicable. PCAFC is just one program through which VA supports veterans and their caregivers. Through the PGCSS, caregivers have access to training and education, self-care courses, peer support, and a Caregiver Support Line. Additional resources to support eligible veterans include respite care, home health aides, home based primary care, or home telehealth to name a few. Upon determining that a legacy participant or legacy applicant and his or her Family Caregiver(s) would not meet criteria for ongoing participation in PCAFC after the one-year transitional period, the local Caregiver Support Coordinator or designated social worker would begin working with the veteran or servicemember and his or her Family Caregiver on discharge.

§ 71.25 Approval and Designation of Primary and Secondary Family Caregivers

Section 71.25 currently describes the application and designation process for Family Caregivers. We propose to amend this section by revising certain terminology, revising and restructuring paragraph (a), and revising paragraphs (c), (e), and (f). These proposed changes are discussed in detail further below.

Current § 71.25(a) describes the process and requirements to apply for designation as a Primary or Secondary Family Caregiver. We propose to revise § 71.25(a)(1) by replacing the phrase ''complete and sign a joint application'' with ''submit a joint application.'' As previously explained, we are proposing a new definition for joint application. This definition would describe the requirements for a joint application to be considered complete by VA to include signatures of all applicants. Thus, the phrase ''complete and sign'' would be redundant since it would be encompassed in the proposed definition for joint application. We would also add language to the end of the paragraph to clarify that no more than two individuals may serve as a Secondary Family Caregiver at one time for an eligible veteran. PCAFC has generally been implemented by allowing the application and designation of one Primary Family Caregiver and up to two Secondary Family Caregivers for each eligible veteran, and this language would align with current practice. For example, the current VA Form 10–10CG has fields for only two Secondary Family Caregivers and we are not aware of any instances in which a veteran or servicemember has sought to apply with three Secondary Family Caregivers. The remaining text in this paragraph would remain unchanged.

We propose to redesignate current paragraph (a)(2) as paragraph (a)(2)(i) and revise the language. Current paragraph (a)(2) states that ''[u]pon 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.'' In newly designated paragraph (a)(2)(i), we would add ''(in collaboration with the primary care team to the maximum extent practicable)'' in between ''VA'' and ''will perform.'' As previously discussed regarding our proposed definition of ''primary care team'' in § 71.15, this would ensure collaboration with the VA medical professionals involved in the patient's care during VA's evaluation of the joint application. For example, a clinical eligibility team or other provider(s) responsible for evaluating joint applications for PCAFC eligibility would seek input from the primary care team to inform their evaluation of joint applications received.

Additionally, we would remove the term ''clinical'' as this is redundant since all decisions affecting the furnishing of assistance or support under 38 U.S.C. 1720G are considered medical determinations. 38 U.S.C. 1720G(c)(1). We would also reword the remaining language for clarity and to more precisely describe VA's evaluation of the joint application by indicating that VA would ''perform the evaluations required to determine the eligibility of the applicants under [part 71].'' We would also add that if the applicants are determined to be eligible, VA would determine ''the applicable monthly stipend amount under § 71.40(c)(4).'' Monthly stipend payments are based on the amount and degree of personal care services provided to the eligible veteran, and the initial eligibility evaluation provides an opportunity for the applicants to provide information to VA about the health status and care needs of the veteran or servicemember. VA values input from caregivers, as well as veterans and servicemembers, and this information would be utilized by VA to determine the appropriate stipend level for the Primary Family Caregiver. We note that the VA MISSION Act of 2018 requires VA to consider, among other things, the Family Caregiver's assessment of the needs and limitations of certain eligible veterans in determining their Primary Family Caregivers' stipend amount. See 38 U.S.C. 1720G(a)(3)(C)(iii)(I), as amended by Public Law 115–182, section 161(a)(4). Specifically, the input received from the Family Caregiver applicant would be taken into account when determining whether a veteran or servicemember is unable to self-sustain in the community (as such term would be defined in proposed § 71.15).

Furthermore, we would also include language that VA will not evaluate a veteran's or servicemember's eligibility under § 71.20 when a joint application is received to add a Secondary Family Caregiver for an eligible veteran who has a designated Primary Family Caregiver. This is because an eligible veteran with a designated Primary Family Caregiver has already been deemed eligible under § 71.20 and we do not believe it is necessary to reevaluate an eligible veteran each time he or she submits a joint application to add a new or replace a former Secondary Family Caregiver because Secondary Family Caregivers generally serve as backup support to the Primary Family Caregiver. Also, as further discussed in proposed § 71.30, eligible veterans would be reassessed for eligibility on an annual basis, unless a determination is made and documented by VA that a more or less frequent reassessment is appropriate. Therefore, upon receiving a joint application to add a new or replace a former Secondary Family Caregiver only, VA would only evaluate the eligibility of the Secondary Family Caregiver applicant. However, for any joint application received by VA requesting the approval and designation of a Primary Family Caregiver, VA would consider the eligibility of the veteran or servicemember, as well as the Primary Family Caregiver applicant and any Secondary Family Caregiver applicants (and if eligible, the applicable monthly stipend amount), pursuant to the requirements of part 71. These requirements would apply to all joint applications received by VA on or after the effective date of the rule, including joint applications submitted by legacy participants and legacy applicants.

We would redesignate current paragraph (a)(3) as paragraph (a)(2)(ii) and revise the language. The revised requirements would be based on current § 71.40(d)(1), which would be revised to address only the effective date of PCAFC benefits, as discussed later in this rulemaking. Current paragraph (a)(3) permits an application to 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. Because we are proposing to eliminate use of the GAF score as a basis for eligibility under current § 71.20(c)(3), as explained in the preceding discussion, we would also remove language in this paragraph referencing GAF test scores.

Also, we would remove language in this paragraph referencing that an application may be put on hold for no more than 90 days. Instead of placing applications on hold, we would extend the 45-day designation timeline in current § 71.40(d)(1) to 90 days.

Proposed paragraph (a)(2)(ii) would state that ''[i]ndividuals who apply to be Family Caregivers must complete all necessary eligibility evaluations (along with the veteran or servicemember), education and training, and the initial home-care assessment (along with the veteran or servicemember) so that VA may complete the designation process no later than 90 days after the date the joint application was received by VA .'' Further we would state that ''[i]f such requirements are not complete within 90 days from the date the joint application is received by VA, the joint application will be denied, and a new joint application will be required.'' This language is adapted from current § 71.40(d)(1), which requires individuals who apply to be Family Caregivers to ''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 . . . a new joint application will be required to serve as the date of application for payment purposes.'' We would move this requirement to § 71.25(a) because it pertains to application requirements. We would specify that in addition to education, instruction, and training (which we would refer to as ''education and training'' for consistency with § 71.25(d)), eligibility evaluations and the initial home-care assessment would also have to be completed within 90 days from the date joint application is received by VA because those requirements are necessary prerequisites to VA's approval and designation of a Family Caregiver. We would also apply this timeline to veteran and servicemember applicants, as they must also participate in eligibility evaluations and the initial home-care assessment before VA can approve and designate their Family Caregivers.

The 45-day timeline in current § 71.40(d)(1) is in many cases too brief to allow applicants to complete the requirements for approval and designation of a Family Caregiver because eligibility determinations are complex and require detailed assessments. We believe the accuracy of determinations takes precedence over speed of such determinations. Also, we note that in a recent VA Office of Inspector General (OIG) report, OIG identified that of 1,822 veterans approved to participate in PCAFC, 65 percent did not have their applications processed timely and within the 45-day timeframe in current § 71.40(d)(1). VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, p. 8. Due to the complex nature of eligibility determinations, as well as new criteria and an expanded population of potentially-eligible veterans under the VA MISSION Act of 2018, we propose to remove the current 45-day timeline in current § 71.40(d)(1). We would change this to a 90-day timeline and allow VA to extend the timeline beyond 90 days if the requisite steps are not completed as a result of a delay that is solely due to VA's action. We would state that ''VA may extend the 90-day period based on VA's inability to complete the eligibility

evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is solely due to VA's action.'' We believe 90 days is a reasonable amount of time for VA to make accurate and comprehensive determinations, without unduly delaying the provision of benefits to those ultimately approved for the program. However, we would not penalize an applicant if he or she cannot meet the 90-day timeline as a result of VA's delay in completing eligibility evaluations, providing necessary education and training, or conducting the initial home-care assessment.

We note that access to care for eligible veterans would not be delayed by these proposed changes because clinical interventions and contacts with providers and various clinical teams occur throughout the application and evaluation process. For example, during evaluation of the joint application, VA may make referrals for applicants (including those ineligible for PCAFC) for additional support and services that are not specific to PCAFC. Additionally, these changes generally would not reduce any stipend benefit the Primary Family Caregiver would receive, as stipends and certain other benefits for approved and designated Family Caregivers would continue to be retroactive to the date the application was received or the date on which the eligible veteran begins receiving care at home (or other applicable date specified in proposed § 71.40(d), as discussed further below). While proposed § 71.25(a)(2)(ii) would not impose any specific timeline on VA to complete its evaluation of joint applications, we would continue to monitor application processing times, establish indicators to identify timelines that are not in accordance with any established norms, and conduct outreach as necessary to prevent undue application processing delays.

We would exclude from proposed § 71.25(a)(2)(ii) the language in current § 71.40(d)(1) that authorizes VA to ''extend the 45-day period for up to 90 days after the date the joint application was submitted . . . based on training identified under § 71.25(d) that is still pending completion, or hospitalization of the eligible veteran.'' As previously explained, we would extend the designation period from 45 days after the joint application was submitted to 90 days after the date the joint application was received by VA. Therefore, we believe that the current language in § 71.40(d)(1) that allows for an extension from 45 days to 90 days would no longer be necessary since applicants would have 90 days from the date the joint application is received by VA to complete all requirements so that VA may complete the designation process. As stated previously, this 90-day timeline would also apply to veteran and servicemember applicants as they must also participate in eligibility evaluations and the initial home-care assessment. Therefore, if a veteran or servicemember is hospitalized following the submission of his or her joint application for PCAFC, but before a Family Caregiver is approved and designated, and this hospitalization prevents VA from completing the approval and designation process within 90 days from the date the joint application is received, then the joint application would be denied and a new joint application would be required.

We would also exclude from proposed § 71.25(a)(2)(ii) the language in current § 71.40(d)(1) that addresses how application timelines are impacted when an application has been placed on hold for a GAF assessment. Because we propose to remove reference to GAF test scores in proposed § 71.20 with respect to PCAFC eligibility, we would also remove the language in current § 71.40(d)(1) that refers to the GAF assessment.

As previously explained, we would redesignate current paragraph (a)(3) as paragraph (a)(2)(ii). We would then add a new paragraph (a)(3) to address how applications will be reviewed once received by VA in proposed new paragraphs (a)(3)(i) and (ii). The application process for PCAFC requires evaluation, training, and assessment that do not occur instantaneously. Thus, we anticipate there will be joint applications received by VA prior to the effective date of the rule for which eligibility determinations are still pending on the effective date of the rule. We propose to review these joint applications against the eligibility criteria that existed before the effective date of the rule. Since we are proposing to change the eligibility criteria, including definitions, that would affect VA's review of joint applications received, we believe it is reasonable for VA to continue to evaluate joint applications received prior to the effective date of the rule under the criteria in §§ 71.15, 71.20, and 71.25 as they appeared in part 71, and that were in effect, at the time the joint application was received by VA. We believe that changing the eligibility criteria during the adjudication of a joint application would place an undue hardship on applicants who relied on the eligibility criteria in effect at the time of submitting the joint application to VA. Thus, proposed paragraph (a)(3)(i) would state that, except as otherwise provided, joint applications received by VA before the effective date of the rule will be evaluated by VA based on 38 CFR 71.15, 71.20, and 71.25 (2019) (*i.e.,* as they appeared in part 71 on the day before the effective date of the rule). The one exception to this would be that the term ''joint application'' as we propose to define it in § 71.15 would apply such that only those applications with all mandatory fields completed (*i.e.,* all fields other than those specifically exempted) would be considered ''joint applications'' under this paragraph. A veteran or servicemember who submits a joint application that is received by VA before the effective date of the rule and for whom a Family Caregiver(s) is approved and designated on or after the effective date of the rule would be considered a ''legacy applicant,'' as such term would be defined in proposed § 71.15.

Proposed paragraph (a)(3)(ii) would state that joint applications received by VA on or after the effective date of the rule will be evaluated by VA based on the provisions of this part in effect on or after the effective date of the rule. If a veteran or servicemember and individuals who apply to be his or her Family Caregivers submit a joint application that is received by VA before the effective date of the rule, and are determined to be ineligible for PCAFC under §§ 71.15, 71.20, and 71.25 as they existed before the effective date of the rule, the veteran or servicemember along with his or her caregivers could submit another joint application on or after the effective date of the rule in order be considered under the new criteria.

The proposed changes in §§ 71.20 and 71.40 should minimize the incentive (at least within part 71) for a legacy participant or legacy applicant to submit a new joint application for PCAFC on or after the effective date of the rule. However, if a legacy participant or legacy applicant submits a new joint application on or after the effective date of the rule seeking the approval and designation of a Primary Family Caregiver, we note that pursuant to proposed § 71.25(a)(3)(ii), such application would be evaluated by VA based on the provisions of this part in effect on or after the effective date of the rule, to include an evaluation of the veteran's or servicemember's eligibility under proposed § 71.20(a). As specified in the definitions of ''legacy participant'' and ''legacy applicant,'' if a Primary Family Caregiver is approved

and designated pursuant to such application, the eligible veteran would no longer be considered a legacy participant or legacy applicant. This would include the approval and designation of a new Primary Family Caregiver, including a Secondary Family Caregiver seeking to become a Primary Family Caregiver, or a current or former Primary Family Caregiver who is reapplying. If a Primary Family Caregiver is not approved and designated for a legacy participant or legacy applicant pursuant to a joint application received by VA on or after the effective date of the rule (because the legacy participant or legacy applicant does not qualify under proposed § 71.20(a), the joint application requests the approval and designation of a Secondary Family Caregiver only, or the joint application is withdrawn before approval and designation), the veteran or servicemember would continue to be designated as a legacy participant or legacy applicant and remain eligible for PCAFC under proposed § 71.20(b) or (c), respectively.

We would add paragraphs (a)(3)(ii)(A) and (B) to address joint applications submitted by veterans and servicemembers seeking to qualify for PCAFC under proposed § 71.20(a)(2)(ii) and (iii) (*i.e.,* veterans and servicemembers who incurred or aggravated a serious injury in the line of duty in the active military, naval, or air service before September 11, 2001). As previously discussed, the first phase of PCAFC expansion under proposed § 71.20(a)(2)(ii) would begin on a ''date specified in a future **Federal Register** document.'' The second phase of PCAFC expansion under proposed § 71.20(a)(2)(iii) would begin two years after the date specified in a future **Federal Register** document as described in § 71.20(a)(2)(ii). Proposed § 71.25(a)(3)(ii)(A) and (B) would state that joint applications received from individuals described in § 71.20(a)(2)(ii) and (iii) prior to the date on which such individuals become eligible would be denied and that a veteran or servicemember seeking to quality for PCAFC pursuant to § 71.20(a)(2)(ii) and (iii) should submit a joint application that is received by VA on or after the **Federal Register** document date specified in proposed § 71.20(a)(2)(ii), or two years after such date as specified in proposed § 71.20(a)(2)(iii), respectively, as applicable. We believe denying applications received prior to the effective dates of eligibility expansion specified in proposed § 71.20(a)(2)(ii) and (iii) is appropriate because it is consistent with current practice in that we currently deny applications received from veterans or servicemembers with a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service before September 11, 2001. Moreover, holding applications of applicants seeking to qualify for PCAFC pursuant to § 71.20(a)(2)(ii) and (iii) would result in burdens on both VA and the applicants. A number of factors could change between the time a joint application is received by VA and the effective dates of eligibility expansion, such that the information on the joint application could be outdated by the applicable effective date of eligibility expansion. For example, there could be a different individual providing care to the veteran or servicemember than originally listed on the joint application, or the clinical status of the veteran or servicemember could change. If VA were to hold applications of individuals who would not be eligible (or potentially eligible) for PCAFC until the applicable effective date of eligibility expansion, upon the effective date of eligibility expansion, VA would have to contact each applicant to ensure all the information provided on the joint application is current before evaluating PCAFC eligibility. This would require additional steps in VA's evaluation of joint applications and impose delays before approval and designation of the Family Caregiver(s).

Additionally, we would make changes to § 71.25(c). First, we propose to remove the reference to primary care team in current paragraph (c)(1), as discussed above regarding our proposed definition of ''primary care team'' in § 71.15. Current paragraph (c)(1) requires that an applicant seeking to be designated as a Family Caregiver must be ''initially assessed by a VA primary care team as being able to complete caregiver education and training.'' We would replace the reference to ''a VA primary care team'' in current paragraph (c)(1) with ''VA.'' With this change, the initial assessment of the Family Caregiver applicant could be done by a primary care team, clinical eligibility team, or other appropriate individual or individuals in VA. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i).

Current § 71.25(c)(1)(i) requires that the initial assessment of the Family Caregiver applicant consider ''[w]hether the applicant can communicate and understand details of the treatment plan and any specific instructions related to the care of the eligible veteran.'' We propose to revise § 71.25(c)(1)(i) by replacing the phrase ''details of the treatment plan'' with ''the required personal care services.'' We believe the phrase ''required personal care services'' more accurately reflects the Family Caregiver's role in the veteran's care. We note that treatment plans may be inclusive of clinical needs that are outside the scope of the personal care services provided by the Family Caregiver. It is critical that the Family Caregiver applicant be able to communicate and understand the required personal care services of the eligible veteran, but not necessarily the details of the treatment plan.

We propose to revise § 71.25(c)(1)(ii) by updating the language to better reflect the responsibilities of Family Caregivers. Current paragraph (c)(1)(ii) describes one of the criteria that VA will consider when conducting an assessment of caregiver applicants. Under this paragraph, assessments consider whether the applicant will be capable of following without supervision a treatment plan listing the specific care needs of the eligible veteran. We propose to revise this paragraph to instead state that assessments would consider whether the applicant will be capable of performing the required personal care services without supervision, in adherence with the eligible veteran's treatment plan in support of the needs of the eligible veteran. We believe the phrase ''required personal care services'' more accurately reflects the Family Caregiver's role in the eligible veteran's care. We note that treatment plans may be inclusive of care needs outside the scope of the personal care services provided by the Family Caregiver, and our proposed changes would recognize that the Family Caregiver may not follow an entire treatment plan without supervision. Furthermore, we believe the phrase ''in support of the needs of the eligible veteran'' further clarifies the role of the Family Caregiver to provide personal care services that are not only specific to the needs of the eligible veteran, but support those needs.

We propose to revise § 71.25(c)(2) which currently states that before VA approves an applicant to serve as a Family Caregiver, the applicant must ''[c]omplete 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.'' We would remove ''other'' for clarity and would remove the phrase ''prescribed by the eligible veteran's primary care team,'' as discussed above regarding our proposed definition of ''primary care team'' in § 71.15, to account for care requirements

prescribed by providers other than the veteran's or servicemember's primary care team.

We propose to revise § 71.25(e) which currently states that VA will conduct an initial home-care assessment no later than 10 business days after VA certifies completion of caregiver education and training, or in the instance that an eligible veteran is hospitalized during this process, no later than 10 days from the date the eligible veteran returns home. It also describes the purpose of such initial home-care assessment (*i.e.,* to assess the caregiver's completion of training and competence to provide personal care services, and to measure the eligible veteran's well-being).

First, we propose to revise paragraph (e) to remove the 10-day time period. VA believes flexibility to coordinate the most appropriate clinicians and/or teams to conduct these initial home-care assessments is necessary to ensure adequate VA resources, and this may require more than 10 days to complete. For example, in an attempt to meet the 10-day timeline, VA attempts to schedule visits before a Family Caregiver completes training; however, individuals who apply to become Family Caregivers complete training at different rates of speed. Because such completion dates cannot be predicted at the time training begins, the current 10-day timeline does not afford VA the opportunity to adequately plan, coordinate, and schedule these initial home-care assessments in a manner that would accommodate the needs of the applicants.

Additionally, the 10-day time period is not intended to be burdensome to PCAFC applicants, and we believe the removal of this time period would allow VA to better accommodate the needs of veterans and servicemembers, and individuals who apply to be their Family Caregivers. As discussed below regarding our proposed revisions to § 71.40(d), upon approval and designation of a Family Caregiver, certain benefits, including the stipend, may be provided retroactively to the date the joint application is received by VA, if applicable. Thus, removing the 10-day timeframe would not negatively impact the amount of the stipend and certain other benefits approved Family Caregivers will receive if the initial home-care assessment is conducted more than 10 business days after completion of the caregiver education and training.

Furthermore, the removal of the 10-day timeline is consistent with our proposal to extend the 45-day timeline standard from current § 71.40(d)(1) to 90 days in proposed § 71.25(a)(2)(ii) because we believe focusing on the timeline for the overall application process is more important than establishing a specific number of days between each stage of the designation process.

Second, we would remove ''VA clinician or clinical team'' and instead reference ''VA.'' As previously discussed, we are removing the specific reference to primary care team in paragraph (c)(1) of this section and instead referencing ''VA.'' This is because the individual or team best suited to conduct initial assessments can vary (*e.g.,* a primary care team, clinical eligibility team, or other appropriate individual or individuals in VA). We note that the current phrase ''VA clinician or clinical team'' is inclusive of a primary care team, clinical eligibility team, or other appropriate individual or individuals in VA; however, to maintain consistency with other proposed changes in this section and to avoid any misinterpretation that ''VA clinical or clinical team'' has a separate meaning from ''VA,'' we would only reference ''VA'' in paragraph (e).

Third, we would change the current text in § 71.25(e) that states VA will ''measure the eligible veteran's well-being'' to ''assess the eligible veteran's well-being.'' While the actions involved would not change, VA believes the term ''assess'' is used more widely than ''measure'' and therefore the intent of the initial home-care assessment would be clearer to eligible veterans and caregivers.

Fourth, we would also add new language that we would assess the well-being of the caregiver in addition to the eligible veteran. We believe an assessment of the caregiver's well-being is appropriate to ensure that the caregiver is physically, emotionally, and cognitively capable of providing personal care services to the eligible veteran. Also, an assessment of the caregiver's well-being would allow VA to refer the caregiver to appropriate resources, as necessary.

Fifth, we would remove reference to the assessment of the caregiver's completion of training and only refer to the caregiver's competence to provide personal care services. While caregiver education and training would still be required and would contribute to the caregiver's ability to provide personal care services, the assessment would not focus on whether training has been completed but rather the competence of the caregiver to provide personal care services.

Sixth, we would also remove language that the initial home-care assessment would occur after VA certifies completion of caregiver education and training. Because the needs of the veteran or servicemember and individuals applying to be a Family Caregiver may vary, we believe flexibility to conduct initial home-care assessments prior to the completion of training is necessary. For example, individuals who apply to become Family Caregivers complete training at different rates of speed, and VA may need to conduct an initial home-care assessment prior to the completion of training to allow for the identification of additional needs and necessary resources. Furthermore, an experienced caregiver may be capable of demonstrating the ability to provide personal care services prior to the completion of required training. In this instance, we believe the flexibility to conduct an initial home-care assessment prior to the completion of training would be appropriate and allow VA to better accommodate the scheduling needs of applicants.

Seventh, we would remove the reference to the eligible veteran being hospitalized. As previously explained, we are proposing to remove the 10-day timeline in this paragraph, and we propose to extend the 45-timeline in current § 71.40(d)(1) to 90 days in proposed § 71.25(a)(2)(ii). We believe the combination of these two proposed changes eliminates the need to retain the reference to the eligible veteran being hospitalized because we believe that 90 days is a reasonable amount of time for applicants to complete the application requirements, including the initial home-care assessment, in order for VA to designate the Family Caregiver. Therefore, if the hospitalization of an eligible veteran prevents VA from completing the initial home-care assessment (or complete the eligibility evaluations or provide necessary education and training) within 90 days from the date the joint application is received, then the joint application would be denied, and a new joint application would be required. For the aforementioned reasons, proposed paragraph (e) would state that VA will visit the eligible veteran's home to assess the eligible veteran's well-being and the well-being of the caregiver, as well as the caregiver's competence to provide personal care services at the eligible veteran's home.

We propose to revise current paragraph (f) which explains that VA will approve and designate Primary and/or Secondary Family Caregivers, as appropriate, if the eligible veteran and at least one applicant meet the requirements of part 71. It further

explains that this is a clinical determination authorized by the eligible veteran's primary care team, and that approval and designation is conditioned on the eligible veteran and Family Caregiver(s) remaining eligible for benefits under part 71.

First, we would revise the first sentence for clarity to state that ''VA will approve the joint application and designate Primary and/or Secondary Family Caregivers, as appropriate, if the applicable requirements of part 71 are met.''

Second, we would remove the second sentence stating, ''approval and designation will be a clinical determination authorized by the eligible veteran's primary care team.'' As discussed above regarding our proposed definition of ''primary care team'' in § 71.15, we would remove the current language that refers to a clinical determination being authorized by the individual's primary care team. Collaboration with the primary care team would instead be referenced in proposed § 71.25(a)(2)(i). Also, the term ''clinical'' is redundant since all decisions under 38 U.S.C. 1720G affecting the furnishing of assistance or support are considered medical determinations. 38 U.S.C. 1720G(c)(1).

Third, we would revise the last sentence of current paragraph (f) to state that approval and designation is conditioned on the eligible veteran's and designated Family Caregiver's continued eligibility for Family Caregiver benefits under part 71, the Family Caregiver(s) providing the personal care services required by the eligible veteran, and the eligible veteran and designated Family Caregiver(s) complying with all applicable requirements of this part, including participating in reassessments pursuant to § 71.30 and wellness contacts pursuant to § 71.40(b)(2), as such sections are proposed to be revised by this rulemaking. We would further explain that refusal to comply with any applicable requirements of part 71 will result in revocation from the program pursuant to § 71.45, Revocation and Discharge of Family Caregivers, as such section is proposed to be revised by this rulemaking. We would establish an explicit requirement that the Family Caregiver provide the eligible veteran with his or her required personal care services. Part of the eligibility requirements for veterans and servicemembers is that they are in need of personal care services; thus, we believe it is reasonable to require that a Family Caregiver(s) actually provides personal care services to an eligible veteran in order to continue to be approved and designated as such. We recognize that there may be instances where the Family Caregiver is temporarily absent and unable to personally provide personal care services, and we would not apply this requirement to such brief absences, such as when respite care is provided.

As discussed further below, we would also establish an explicit requirement for eligible veterans and Family Caregivers to participate in reassessments and wellness contacts. As explained in more detail in the discussion directly below, VA is required to conduct periodic evaluations of Family Caregivers' skills and eligible veterans' needs pursuant to 38 U.S.C. 1720G(a)(3)(D), as revised by the VA MISSION Act of 2018, and the reassessments and wellness contacts would ensure that VA is meeting this requirement and that the needs of PCAFC participants are being met. See 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). When either the eligible veteran or Family Caregiver refuses to participate in reassessments or wellness contacts, VA would revoke the Family Caregiver's designation pursuant to proposed § 71.45, which is explained in more detail later in this rulemaking.

§ 71.30 Reassessment of Eligible Veterans and Family Caregivers

We would redesignate current § 71.30, which pertains to PGCSS, as new § 71.35; and new § 71.30 would establish that VA will conduct reassessments of eligible veterans and Family Caregivers to determine their continued eligibility for participation in PCAFC under part 71. We would include this in proposed § 71.30 as it would logically follow the previous sections in 38 CFR part 71 describing eligibility for PCAFC.

Currently, there is no standardized or consistent requirement for PCAFC eligibility reassessments across VA; some facilities conduct reassessments while others do not. There is also no standard timeline for when such reassessments occur. A recent VA OIG report affirmed that veterans' health conditions change, and such changes may warrant a reassessment of the need for care for the purposes of determining continued PCAFC eligibility or the appropriate stipend tier level. VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, pp. 11–14. OIG also recommended VHA establish assessment guidelines for when a veteran's need for care changes. Id. According to OIG, without consistent monitoring of PCAFC participants and ''improved documentation of changes in the status of veterans' health, VHA cannot take timely action when veterans need more or less care. VHA needs to take this action to both support the needs of veterans and their caregivers and to identify veterans who need less care or no care at all.'' Id. at 14. Additionally, regular assessment of PCAFC participants would, like with proposed wellness contacts in proposed § 71.40(b)(2) (*i.e.,* monitoring visits in current § 71.40(b)(2)), ensure continued engagement between VA and PCAFC participants, and that additional support is provided when an eligible veteran's care needs increase. Congress recognized the need for such engagement in the VA MISSION Act of 2018 by requiring VA to ''periodically evaluate the needs of the eligible veteran and the skills of the [F]amily [C]aregiver of such veteran to determine if additional instruction, preparation, training, or technical support . . . is necessary.'' 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). For these reasons, we would add a reassessment requirement in proposed § 71.30.

Proposed § 71.30(a) would state that, except as provided in paragraphs (b) and (c) of this section, the eligible veteran and Family Caregiver will be reassessed by VA on an annual basis to determine their continued eligibility for participation in PCAFC under part 71, and that reassessments will include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under proposed § 71.40(c)(4)(i)(A). Additionally, it would state that such reassessments may include a visit to the eligible veteran's home. We believe this is reasonable under 38 U.S.C. 1720G, since we do not believe that Congress intended for PCAFC participants' eligibility to never be reassessed after the initial eligibility determination, particularly as an eligible veteran's and Family Caregiver's continued eligibility for the program can evolve.

We propose to conduct these reassessments on an annual basis, as eligible veterans' needs for personal care services may change over time as may the needs and capabilities of the designated Family Caregiver(s). Conducting this reassessment on an annual basis is reasonable as it will allow consideration of whether an eligible veterans' assessed level of need is sustained or if it has increased or decreased during the year. Requiring annual reassessments would also create

consistency across the program and ensure that reassessments are generally conducted on a standard timeline. Furthermore, eligibility for PCAFC is conditioned upon the eligible veteran receiving care at home (pursuant to proposed § 71.20(a)(6)); and an in-home assessment may be required as part of the reassessment to adequately evaluate the eligible veteran's and Family Caregiver's eligibility, including Family Caregiver's continued ability to perform the required personal care services.

Additionally, the reassessment would provide another opportunity for Family Caregivers and eligible veterans to give feedback to VA about the health status and care needs of the eligible veteran. Such information is utilized by VA to provide additional services and support, as needed, as well as to ensure the appropriate stipend level is assigned. We note that the VA MISSION Act of 2018 requires VA to consider, among other things, the Family Caregiver's assessment of the needs and limitations of certain eligible veterans in determining the Primary Family Caregivers' stipend amount. See 38 U.S.C. 1720G(a)(3)(C)(iii)(I), as amended by Public Law 115–182, section 161(a)(4). Specifically, this input from the Family Caregiver would be taken into account when determining whether the eligible veteran is unable to self-sustain in the community for purposes of proposed § 71.40(c)(4)(i)(A). Along with considering the input of Family Caregivers and eligible veterans during reassessments, we would ensure that they are notified in advance of these reassessments.

Reassessments would ensure that VA is supporting eligible veterans and Family Caregivers by offering the most appropriate level of care and support needed. Along with wellness contacts in proposed § 71.40(b)(2) (*i.e.,* monitoring visits in current § 71.40(b)(2)), discussed in more detail below, reassessments help identify whether any additional instruction, preparation, training, and technical support is needed in order for the eligible veteran's needs to be met by the Family Caregiver and is consistent with 38 U.S.C. 1720G(a)(3)(D), as amended by the VA MISSION Act of 2018. See 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). Periodically reassessing PCAFC participants' needs would help ensure that eligible veterans and Family Caregivers have the necessary skills, knowledge, and resources for the eligible veteran to continue progressing toward improved health, wellness, and independence when such potential exists. This annual reassessment would also ensure that VA is being a good fiscal steward and maintaining quality oversight over this program.

Proposed § 71.30(b) and (c) would establish exceptions to the requirement in proposed § 71.30(a) that reassessments occur annually. In proposed paragraph (b), we would explain that reassessments may occur more frequently than annually if a determination is made and documented by VA that more frequent reassessment is appropriate. Through policy, we would require VA to document the clinical factors relied upon in concluding that more frequent reassessment is needed. Clinical factors could include known improvements in or deterioration of the eligible veteran's condition. For example, reassessment may be warranted following a course of treatment or other clinical intervention that reduces an eligible veteran's level of dependency on his or her Family Caregiver, such as increased independence in mobility through the use of adaptive equipment that is expected to result in long-term gains, even if a previous reassessment had already been completed within the previous year. A more frequent than annual reassessment may also be warranted in instances in which there is a significant increase in personal care services needed by the eligible veteran due to a deterioration of a progressive condition or an intervening medical event or condition, such as a stroke that results in further clinical impairment.

In proposed paragraph (c), we would state that reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary. Through policy, we would require VA to document the clinical factors relied upon in concluding that less frequent reassessment is needed. We have found that there are eligible veterans who are not expected to improve over the long term and will continue to need the same amount and degree of personal care services over time. As a result, we believe it is reasonable to exclude such eligible veterans and their Family Caregivers from ongoing reassessments entirely or to require reassessments on a less than annual basis for such eligible veterans and their Family Caregivers. For example, VA may determine that an eligible veteran who is bed-bound and ventilator dependent, and requires the presence of a Family Caregiver to perform tracheotomy care to ensure uninterrupted ventilator support, may not need an annual reassessment because the eligible veteran's condition is expected to remain unchanged long-term. Even if VA is not conducting an annual reassessment (or is conducting reassessments less frequently than annually), VA would continue to conduct ongoing wellness contacts pursuant to proposed § 71.40(b)(2) (*i.e.,* monitoring as used in current § 71.40(b)(2)), as discussed in more detail in the following section. We believe it is reasonable under the authorizing statute to require more or less frequent than annual reassessments given the unique circumstances of each eligible veteran and his or her Family Caregiver(s).

In proposed paragraph (d), we would state that failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to this section will result in revocation pursuant to § 71.45, Revocation and Discharge of Family Caregivers, as such section would be revised by this rulemaking. Proposed § 71.30(d) would also be consistent with the language in proposed § 71.25(f) that would condition approval and designation of the Family Caregiver on, among other things, the eligible veteran and Family Caregiver participating in reassessments. These requirements would ensure that eligible veterans and Family Caregivers participate in reassessments so that VA is able to continue to evaluate the needs of eligible veterans and Family Caregivers.

We propose to conduct reassessments of legacy participants and legacy applicants pursuant to proposed § 71.30 within one year of the effective date of the rule to determine their continued eligibility for PCAFC under the new criteria in proposed § 71.20(a). In proposed paragraph (e)(1), we would state that if the eligible veteran meets the requirements of § 71.20(b) or (c) (*i.e.,* is a legacy participant or a legacy applicant), the eligible veteran and Family Caregiver will be reassessed by VA within the one-year period beginning on the effective date of the rule to determine whether the eligible veteran meets the requirements of § 71.20(a), and that such reassessment may include a visit to the eligible veteran's home. For example, if the rule becomes effective on April 1, 2020, then the eligible veteran and his or her Family Caregiver would be reassessed between April 1, 2020 and March 31, 2021. Additionally, proposed paragraph (e)(1) would provide that if the eligible veteran meets the requirements of § 71.20(a), these reassessments would include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A). This reassessment would be consistent with the

requirements in proposed paragraph (a) of this section except that legacy participants and legacy applicants would be reassessed under different eligibility criteria than the criteria applied by VA at the time their Family Caregivers were approved and designated. Like with proposed paragraph (a), reassessments of legacy participants and legacy applicants would provide another opportunity to ensure appropriate care and support is available to eligible veterans and Family Caregivers, but reassessments under proposed paragraph (e)(1) would also be necessary since eligibility under proposed § 71.20(b) and (c) would only be in effect for the one-year period beginning on the effective date of the rule.

In proposed paragraph (e)(2) we would explain that a reassessment will not be completed under paragraph (e)(1) if at some point before a reassessment is completed during the one-year period, the individual no longer meets the requirements of § 71.20(b) or (c). We believe it would be reasonable to forgo completing a reassessment because the veteran or servicemember would no longer be a legacy participant or legacy applicant. This would arise in instances where the Primary Family Caregiver for the legacy participant or legacy applicant is revoked or discharged under proposed § 71.45 (*e.g.,* revocation for cause or non-compliance; or discharge due to death, institutionalization, or request of the eligible veteran or Primary Family Caregiver), or where the same or a new Primary Family Caregiver is approved and designated for the veteran or servicemember pursuant to a joint application received by VA on or after the effective date of the rule. If the veteran or servicemember is no longer considered a legacy participant or legacy applicant before a reassessment is completed, then the Primary Family Caregiver for the legacy participant or legacy applicant would not receive any retroactive stipend increase that they may have been eligible to receive under proposed § 71.40(c)(4)(ii)(C)(2)(*i*), discussed further below, had they not been revoked or discharged before the reassessment was completed. In some cases, reassessment would not be feasible because of the death or institutionalization of the veteran or servicemember or his or her caregiver. In other cases, revocation or discharge would be the result of actions taken or not taken by the veteran or servicemember or his or her caregiver (*e.g.,* discharge at the request of the eligible veteran or Family Caregiver, or revocation for cause or noncompliance).

§ 71.40 Caregiver Benefits

Current § 71.40 describes the benefits available to General Caregivers, Secondary Family Caregivers, and Primary Family Caregivers. This section implements 38 U.S.C. 1720G(a)(3) and (b)(3) which establish the benefits available to Family Caregivers and General Caregivers, respectively. We propose to revise current paragraph (b)(2), restructure and revise current paragraphs (c)(4) and (d), and add new paragraphs (c)(5) and (6). These proposed changes are discussed in detail further below.

We would revise current paragraph (b)(2) which states that 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 is required to occur at least every 90 days, unless otherwise clinically indicated. See § 71.40(b)(2). While monitoring is generally intended to be conducted every 90 days, we have found some Family Caregivers and eligible veterans find such requirements, including home and telephone visits, to be burdensome. We also acknowledge that we have experienced difficulty conducting monitoring due to limited resources. See VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, pp. 11–13.

As part of the proposed revisions to paragraph (b)(2), we propose to change the 90-day general timeframe to a minimum of once every 180 days. We believe this frequency would allow VA more than adequate opportunity to review the eligible veteran's and Family Caregiver's well-being and the adequacy of care and supervision being provided. We would conduct this monitoring (which we propose to refer to as ''wellness contacts'' as explained in the subsequent paragraph) via home visits, phone calls, or through other means; however, we would require at least one wellness contact to occur in the eligible veteran's home on an annual basis. We note that reducing the required frequency of these wellness contacts and conducting them through other means in addition to home visits, would allow VA to conduct these contacts on a semi-annual basis using means individualized to the eligible veterans and Family Caregivers while ensuring that the needs of eligible veterans and Family Caregivers are met. This would also be less burdensome on eligible veterans and their Family Caregivers and would allow VA to effectively manage limited resources. We note that not all eligible veterans or Family Caregivers participating in PCAFC benefit from the current frequency of contacts with VA. For example, an eligible veteran whose condition is generally unchanged, who is receiving care from a Family Caregiver well-versed in the provision of care, and who has established a routine that supports the wellness of himself or herself and the Family Caregiver, may experience significant disruption in the daily routine when having to make scheduling changes to accommodate a home visit or other monitoring contact by VA. Thus, we believe it would be appropriate to conduct these wellness contacts via home visits at least once a year and allow VA to use other means for the other wellness contacts based on the individual needs and circumstances of the eligible veteran and Family Caregiver. We note that the proposed changes would establish a minimum baseline for the frequency of wellness contacts (*i.e.,* every 180 days) and that these contacts (including home visits) may occur more frequently, if needed, to address the individual needs of the eligible veteran and his or her Family Caregiver.

As mentioned above, we propose to change the terminology from ''monitoring'' to ''wellness contacts'' as we believe this is a more accurate description of the purpose of these visits. We also note that in addition to reviewing the eligible veteran's well-being and adequacy of care and supervision being provided as we currently do during the monitoring visits and which is explained in current paragraph (b)(2), these wellness contacts would also include a review of the well-being of the Family Caregiver. The review of the Family Caregiver's well-being is equally as important as the review of the eligible veteran's well-being and adequacy of care. Wellness contacts ensure the opportunity to provide any additional support, services, or referrals for services needed by the eligible veteran or Family Caregiver. We would describe the purposes of these wellness contacts in proposed paragraph (b)(2), but change ''adequacy of care and supervision being provided'' to ''adequacy of personal care services being provided'' for consistency with the terminology used elsewhere in part 71 describing the role of Family Caregivers. We would also state that failure of the eligible veteran and Family Caregiver to participate in any

wellness contacts pursuant to proposed paragraph (b)(2) will result in revocation, pursuant to § 71.45, Revocation and Discharge of Family Caregivers. This requirement would also be consistent with the language in proposed § 71.25(f) that would condition approval and designation of the Family Caregiver on, among other things, the eligible veteran and Family Caregiver participating in wellness contacts. This requirement would ensure that eligible veterans and Family Caregivers participate in any required wellness contacts so that VA is able to continue to review the eligible veteran's and Family Caregiver's well-being, as well as the adequacy of personal care services being provided.

The VA MISSION Act of 2018 requires VA to periodically evaluate the needs of the eligible veteran and the skills of the Family Caregiver to determine if additional instruction, preparation, training, and technical support is necessary. See 38 U.S.C. 1720G(a)(3)(D), as amended by Public Law 115–182, section 161(a)(5). VA believes that this ''wellness contact'' as described in proposed paragraph (b)(2) and the proposed reassessments under proposed § 71.30, would meet this periodic evaluation requirement in section 161(a)(5) of the VA MISSION Act of 2018. During these wellness contacts and reassessments, VA would determine whether any additional instruction, preparation, training, and technical support is needed in order for the eligible veteran's needs to be met by the Family Caregiver.

The remaining language in current paragraph (b)(2), that the primary care team will maintain the eligible veteran's treatment plan and collaborate with clinical staff making home visits, would be removed from proposed paragraph (b)(2), as discussed above regarding our proposed definition of ''primary care team'' in § 71.15. We note that the primary care team would still be involved in monitoring the well-being of eligible veterans, including maintaining the treatment plan, and home visits and other wellness contacts, based on the needs of the eligible veterans (*e.g.,* the primary care team will be alerted to the results of visits, order consults, schedule a clinic appointment). The language would also be revised to reflect the change in terminology from ''home visits'' to ''wellness contacts.''

Current § 71.40(c) provides that VA will provide to Primary Family Caregivers all the benefits listed in paragraphs (c)(1) through (4) of this section. As explained later in this rulemaking we propose to add two new benefits (*i.e.,* financial planning services and legal services) for Primary Family Caregivers. Thus, in proposed § 71.40(c) we would replace the phrase ''(c)(1) through (4)'' with ''(c)(1) through (6).''

Current paragraph (c)(4) provides Primary Family Caregivers will receive a monthly stipend for each prior month's participation as a Primary Family Caregiver. It also explains how that will be determined. We propose to revise and restructure the stipend payment methodology, as further explained below. Therefore, in proposed paragraph (c)(4), we would remove the second sentence, which introduces the current stipend tier determination, and keep only the first sentence.

Additionally, we would replace the phrase ''each prior month's participation'' in the first sentence of paragraph (c)(4) with ''each month's participation.'' VA's current practice is to issue monthly stipend payments at the end of the month in which services are provided. To avoid confusion and allow flexibility depending on administrative needs and requirements, we propose to remove ''prior'' and simply state that Primary Family Caregivers will receive a monthly stipend payment for each month's participation as a Primary Family Caregiver. As further explained below, we would revise, redesignate, or remove the remaining subparagraphs in paragraph (c)(4). We would revise current paragraph (c)(4)(i) to set forth a new methodology for determining the amount of monthly stipend payments and paragraph (c)(4)(ii) to set forth rules for stipend payment adjustments. Current paragraph (c)(4)(vii) would be redesignated as (and replace current) paragraph (c)(4)(iii), current paragraph (c)(4)(iv) would be revised to establish periodic assessments of and, if applicable, adjustments to the monthly stipend rate, and paragraphs (c)(4)(v) through (vii) would be deleted.

The monthly stipend payment is meant to be an acknowledgement of the sacrifices that Primary Family Caregivers make to care for eligible veterans. 76 FR 26155 (May 5, 2011). These payments are made pursuant to 38 U.S.C. 1720G(a)(3)(A)(ii)(V), and 38 U.S.C. 1720G(a)(3)(C)(i) requires VA to base the stipend amount on ''the amount and degree of personal care services provided.'' The stipend amount is, to the extent practicable, not to be ''less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran;'' and in the instance that the geographic area of the eligible veteran does not have a commercial home health entity, VA is required to take into ''consideration the costs of commercial providers of personal care services in providing personal care services in geographic areas other than the geographic area of the eligible veteran with similar costs of living.'' 38 U.S.C. 1720G(a)(3)(C)(ii), (iv), as amended by Public Law 115–182, section 161(a)(4). Additionally, in making this determination ''with respect to an eligible veteran whose need for personal care services is based in whole or in part on a need for supervision or protection . . . or regular instruction or supervision,'' VA is required to take into account, ''[t]he extent to which the veteran can function safely and independently in the absence of such supervision, protection, or instruction,'' and ''[t]he amount of time required for the family caregiver to provide such supervision, protection, or instruction to the veteran.'' See 38 U.S.C. 1720G(a)(3)(C)(iii)(II) and (III), as amended by section 161(a)(4)(B) of the VA MISSION Act of 2018.

Currently, the calculation of the stipend amount is based upon the amount and degree of assistance an eligible veteran needs to perform one or more activities of daily living (ADL), or the amount and degree to which an eligible veteran is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury. See § 71.40(c)(4)(i) and (ii). VA clinically rates and scores the eligible veteran's level of dependency based on the degree to which the eligible veteran is unable to perform one or more 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. See § 71.40(c)(4)(i) through (iii). The ratings are added together, and if the sum is 21 or higher, the Primary Family Caregiver receives a stipend that is equivalent to 40 hours per week of caregiver assistance. 38 CFR 71.40(c)(4)(iv)(A). If the sum is 13 to 20, the Primary Family Caregiver receives a stipend that is equivalent to 25 hours per week of caregiver assistance. Id. at § 71.40(c)(4)(iv)(B). If the sum is one to 12, the Primary Family Caregiver receives a stipend that is equivalent to 10 hours per week of caregiver assistance. Id. at § 71.40(c)(4)(iv)(C). Current § 71.40(c)(4) explains that the monthly stipend payment that Primary Family Caregivers receive under the program will be calculated by multiplying the combined rate (*i.e.,* 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) as defined in current § 71.15) by the number of weekly hours of caregiver assistance determined to be required under § 71.40(c)(4)(iv), which is then multiplied by 4.35. Id. at § 71.40(c)(4)(v).

In this rulemaking, we propose several changes to this methodology and calculation. We would revise current paragraph (c)(4) to set forth a new stipend payment methodology based on the monthly stipend rate (as that term would be defined in § 71.15). We would also define two levels to distinguish the amount and degree of personal care services provided to an eligible veteran based on whether the eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15). Additionally, we would base stipend payments on a percentage of the monthly stipend rate (as that term would be defined in § 71.15) instead of presuming that the eligible veteran needs a certain number of weekly hours of caregiver assistance. Paragraph (c)(4) would also include provisions to ensure that the Primary Family Caregivers of legacy participants and legacy applicants are not disadvantaged by our proposed changes for the one-year period beginning on the effective date of the rule. Eventually, as described in detail below, all Primary Family Caregivers in the program would have their stipend payments calculated using the new proposed payment methodology in paragraph (c)(4)(i)(A).

First, instead of using the combined rate to determine the monthly stipend payment, we now propose to use the term monthly stipend rate as that term would be defined in proposed § 71.15. We propose to use this rate instead of the combined rate because of the combined rate's reliance on BLS rates, which have experienced drastic fluctuations across the country in both increases and decreases. As explained in VA's final rule implementing PCAFC, VA only adjusts the stipend rate for a geographic area each year if it results in an hourly wage increase, and if changing the stipend rate for a geographic area would result in a decrease in the hourly wage rate, the stipend rate remains at the rate applied for the previous year. See 80 FR 1370 (January 9, 2015). We have found that since implementing the combined rate to determine stipend amounts, the stipend rates have not always been reflective of actual wage rates, and the hourly rate assigned to many areas is well above the average hourly rate of a home health aide. These inflated rates have been identified in locations such as, College Station, TX; Albany, GA; Vineland-Bridgeton, NJ; Clarksville, TN; Santa Rose, CA; and Central Utah non-metropolitan area.

We have also found that there have been increases in the combined rate because the geographic areas for this rate continue to be redefined. Beginning with the May 2015 estimates, the BLS Occupational Employment Statistics (OES) program has implemented redefined metropolitan area definitions, as designated by the Office of Management and Budget (OMB) and based on the results of the 2010 census. As of May 2015, OES data is available for 394 metropolitan areas, 38 metropolitan divisions that make up 11 of the metropolitan areas, and 167 OES-defined nonmetropolitan areas. Prior to implementing the new area definitions, OES data was available for 380 metropolitan areas, 34 metropolitan divisions, and 172 OES-defined nonmetropolitan areas. For purposes of the combined rate, these changes resulted in an increase for certain areas that otherwise would have had lower rates. This is because a BLS geographic area can only have a single rate; thus, when a geographic area with a higher stipend rate is redefined to encompass another geographic area that had a lower stipend rate, the higher stipend rate applies to the entire new geographic area. If VA were to continue to use the combined rate in its calculations of stipend amounts, rates would continue to be inflated.

As noted above, the term ''monthly stipend rate'' would be defined in proposed § 71.15 as the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12. OPM's GS scale is an appropriate reference point for establishing the PCAFC stipend amounts because GS wage growth has historically tracked closely with median wage growth for home health aides, and it accounts for variations in cost-of-living across the U.S. Additionally, relying on a single GS grade and step across the U.S. would ensure more consistent, transparent, and predictable stipend payments for Primary Family Caregivers. Moreover, the monthly stipend rate would be consistent with 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv), as it would, to the extent practicable, not be less than the monthly amount a commercial home health care entity would pay an individual to provide equivalent personal care services in the eligible veteran's geographic area or geographic area with similar costs of living.

To determine whether GS wage rates track the private sector wages for home health aides, we analyzed data from the BLS OES and GS pay tables from OPM. Relying on data from 2012 to 2018, we tracked the BLS median wages across the U.S. for home health aides and wage growth in the GS scale over the same time period. Our findings indicate that BLS wage growth for home health aides and GS wage growth have tracked closely in the past both at a national level and for GS adjusted localities. This leads VA to presume that the GS wage rates, regardless of which grade and step, would grow on a similar trajectory to the median private wages for home health aides.

Additionally, relying on the GS scale in VA's stipend payment methodology would address some of the challenges VA has experienced with the combined rate. First, using the GS rate would allow VA to easily account for variations in cost-of-living depending on the geographic area of the eligible veteran. Utilizing the GS scale would allow for automation of stipend payments and reduce the potential for errors associated with the manual calculations required with the combined rate. Unlike the hundreds of geographic areas associated with the combined rate, for 2020, there are fifty-three locality pay tables for designated geographic areas, which include 50 metropolitan locality pay areas, the rest of the United States, Alaska, and Hawaii. VA would apply the GS–4, step 1 rate applicable to the eligible veteran's geographic area of residence using OPM's locality area designations. Second, using the GS scale would cause less fluctuation in monthly personal caregiver stipends than the combined rate because wages for a particular grade and step do not typically decrease. It would also ensure there is transparency with eligible veterans and Family Caregivers, as the rates are published and updated on an annual basis by OPM. OPM's GS rates are published annually and can be found at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/.*

In determining the appropriate GS grade and step for stipend payments, we assessed the 2018 BLS wage rates for commercial home health aides, which was the most current information available from BLS. To ensure an accurate comparison with the 2020 GS pay scale, we inflated the 2018 BLS home health aide wage rates to 2020 dollars. We found that for 2020, the BLS national median wage for home health aides is equivalent to the base GS rate at grade 3, step 3 (without a locality pay adjustment). Our findings also reflect

that the 2020 GS rate at grade 3, step 3 is representative of the BLS median wage for home health aides in nearly all geographic areas. While this is not true for every locality, this would mean that in most U.S. geographic areas for 2020, stipend payments based on the GS rate at grade 3, step 3 would be equal to or higher than the BLS median wage for home health aides in the same geographic areas.

For those geographic areas where the 2020 GS rate at grade 3, step 3 was less than the inflation-adjusted BLS median wage for home health aides, we considered applying a unique GS grade and step based on the median home health aide wage rate in each of those geographic areas. However, we determined that would not be appropriate or practicable. As noted above, VA has found that historically the BLS rates for home health aides have experienced drastic fluctuations across the country in both increases and decreases. Additionally, there has been variation in the level of growth from year to year across the U.S. and in each GS locality pay area, with some year's wages growing faster or slower than in the previous years. Therefore, point-in-time comparisons between the GS rates and the median home health aide wages in the future may reflect the same or other geographic areas where the median wage for home health aides is higher or lower than the applicable GS rate. It would not be practicable to adjust the GS grade and step for a particular geographic area every time there is new data reflecting a higher or lower median wage rate relative to the applicable GS rate. Moreover, wage data can fluctuate up or down in one year, but not indicate a continuing trend.

Because VA cannot predict over time which localities will have higher home health aide wage rates than the GS rate at grade 3, step 3, and which GS grade and step will be most equivalent to the median rate in those areas, we propose to use the slightly higher GS rate at grade 4, step 1 for all localities. Although there would still be certain areas where the 2020 GS rate at grade 4, step 1 is lower than the inflation-adjusted BLS median wage for home health aides, we reiterate that our findings are based only on the most current available data and could change when updated BLS data becomes available and based on changes to GS locality pay adjustments from year to year. Therefore, as discussed below regarding proposed § 71.40(c)(4)(iv), VA would periodically assess the monthly stipend rate, and if appropriate, VA would make adjustments through future rulemaking.

For these reasons, we believe the GS rate for grade 4, step 1 is, to the extent practicable, not less than the annual salary paid to home health aides in the commercial sector, particularly after considering that the monthly personal caregiver stipend is a nontaxable benefit. To illustrate, the 2020 base GS rate for grade 4, step 1 (without a locality pay adjustment) is $26,915. The 2018 BLS national median annual wage for a home health aide was $24,200, which after accounting for inflation, equates to $25,277 as of December 2019.

Additionally, the GS rate for grade 4 is the mid-range in which VA hires and staffs nursing assistant positions (GS–0621). Nursing assistants perform similar work to that of a home health aide including nonprofessional nursing care work, providing support and observation, and monitoring behavioral changes. See OPM's Position Classification Standard for Nursing Assistant Series, GS–0621 at *https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/0600/gs0621.pdf.*

Second, we propose to establish two levels for the stipend payments versus the three tiers that are set forth in current § 71.40(c)(4)(iv)(A) through (C). VA has found that utilization of the three tiers set forth in the current regulations has resulted in inconsistent assignment of ''amount and degree of personal care services provided.'' Although VA utilizes clinical ratings to assign stipend amounts, there can often be little variance in the personal care services provided by Primary Family Caregivers between assigned tier levels (*e.g.,* between tier 1 and tier 2, and between tier 2 and tier 3). The lack of clear thresholds that are easily understood and consistently applied has contributed to an emphasis on reassessment to ensure appropriate stipend tier assignment. To better focus on supporting the health and wellness of eligible veterans and their Family Caregivers, VA believes it is necessary to base stipend payments on only two levels of need that establish a clear delineation between the amount and degree of personal care services provided to the eligible veteran.

The proposed two levels would be set forth in proposed paragraphs (c)(4)(i)(A)(*1*) and (*2*), and as discussed further below would, subject to certain exceptions, apply to Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(a). The two levels would align with other proposed changes in this rulemaking, which are aimed at targeting PCAFC to those veterans and servicemembers with moderate and severe needs, with the higher level paid to Primary Family Caregivers of eligible veterans with severe needs. Whether the Primary Family Caregiver qualifies for a stipend at the higher level would depend on whether the eligible veteran is determined to be ''unable to self-sustain in the community'' (as that term would be defined in § 71.15). The lower stipend level would apply to all other Primary Family Caregivers of eligible veterans such that the eligibility criteria under proposed § 71.20(a) would establish eligibility at the lower level.

To be determined to be ''unable to self-sustain in the community,'' the eligible veteran must either (1) require 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, and be fully dependent on a caregiver to complete such ADLs; or (2) have a need for supervision, protection, or instruction on a continuous basis. The Primary Family Caregiver of an eligible veteran meeting both of these criteria would also qualify for the higher-level stipend, but we would only require that one of the two criteria be met.

Paragraph (1) of this definition would establish the higher-level criteria for an eligible veteran with physical impairment, and address both the ''amount'' and ''degree'' of personal care services provided by the Family Caregiver. Unlike the eligibility criterion in proposed § 71.20(a)(3)(i), which refers to an eligible veteran requiring personal care services each time he or she completes one or more ADLs (based on the definition of ''inability to perform an activity of daily living''), the higher-level criteria would state that the eligible veteran requires personal care services each time he or she completes three or more ADLs. An eligible veteran needing assistance with three or more ADLs would need personal care services on a more frequent basis, and the Family Caregiver would thus provide a greater amount of personal care services to the eligible veteran. Additionally, to qualify for the higher-level stipend on this basis, the eligible veteran must be fully dependent on the caregiver in three of the specified ADLs. This would mean that the eligible veteran is completely reliant on the caregiver to complete the three specified ADLs (*i.e.,* those ADLs for which the eligible veteran requires personal care services each time he or she completes). As distinguished from a Family Caregiver of an eligible veteran who requires a moderate amount of assistance to complete an ADL, an eligible veteran at

this higher level would require more intensive care, and the Family Caregiver would thus provide a greater degree of personal care services to the eligible veteran. For example, an eligible veteran who has no use of his or her upper and lower extremities may be determined to be unable to self-sustain in the community based on his or her total dependence on a caregiver in dressing and undressing, bathing, and grooming, such that the eligible veteran can complete no steps of those tasks on his or her own. In contrast another eligible veteran may need help with multiple ADLs but be fully dependent on a caregiver only in regard to one. For example, an eligible veteran may be completely reliant on his or her Family Caregiver in regard to his or her mobility, such that he or she is fully dependent on the Family Caregiver every time the eligible veteran walks, transfers, stands, and sits. Because of his or her physical impairment, the eligible veteran may also require a moderate amount of personal care services from his or her Family Caregiver in bathing and toileting, (*e.g.,* needs assistance with washing lower extremities but is independent with upper body washing, and needs assistance with perineal care after bowel movements). Because the eligible veteran can otherwise complete bathing and toileting without assistance (*e.g.,* dress and undress, operate the faucet, and wash and clean himself or herself), the eligible veteran would only require a moderate amount of personal care services for bathing and toileting, such that he or she would be considered fully dependent in only one ADL, and thus not considered unable to self-sustain in the community.

Paragraph (2) of the ''unable to self-sustain in the community'' definition would establish the higher-level criteria for an eligible veteran with a significant cognitive, neurological, or mental health impairment. We would address the ''amount'' and ''degree'' of personal care services provided only by reference to the frequency with which such services are provided by the Family Caregiver. Given the varying types of functional impairment that can give rise to a need for supervision, protection, or instruction, we would not enumerate the specific nature or intensity of personal care services provided. Instead, to qualify for the higher-level stipend on this basis, the eligible veteran must have a need for supervision, protection, or instruction on a ''continuous basis.'' As distinguished from a Family Caregiver of an eligible veteran who requires intermittent supervision, protection, or instruction to maintain their personal safety on a daily basis (who may qualify under proposed § 71.20(a)(3)(ii) based on the definition of ''need for supervision, protection, or instruction''), an eligible veteran at this higher level would require more frequent and possibly more intensive care on a continuous basis, and the Family Caregiver would thus provide a greater amount and degree of personal care services to the eligible veteran. In determining whether an eligible veteran is in need of supervision, protection or instruction on a continuous basis, VA would consider the extent to which the eligible veteran can function safely and independently in the absence of such personal care services, and the amount of time required for the Family Caregiver to provide such services to the eligible veteran consistent with 38 U.S.C. 1720G(a)(3)(C)(iii)(II) and (III), as amended by section 161(a)(4)(B) of the VA MISSION Act of 2018. For example, an individual with dementia who wanders, is unable to re-orient, or engages in dangerous behaviors, may be determined to be unable to function safely and independently in the absence of continuous supervision, protection, or instruction; thus, he or she may be determined to be unable to self-sustain in the community. In contrast, an individual with dementia who only experiences changes in memory or behavior at certain times of the day, such as individuals who experience sundowning or sleep disturbances, may not be determined to have a need for supervision, protection, or instruction on a continuous basis.

We believe these requirements would provide a clear distinction between eligible veterans with moderate and severe needs.

Third, instead of basing the stipend payment on a presumed number of hours of caregiver assistance required by the eligible veteran, we propose to apply a specified percentage of the monthly stipend rate (as that term would be defined in § 71.15). VA has found that calculating stipends based on a set number of hours per week of caregiver assistance as described in current § 71.40(c)(4)(iv)(A) through (C) creates significant confusion and discord among Family Caregivers. These categories of hours were never intended to be equal to the number of hours of caregiving being provided but rather were based on a presumed level of need of the eligible veteran. See 76 FR 26155 (May 5, 2011). Additionally, the stipend is meant to be an acknowledgement of the sacrifices that Primary Family Caregivers make to care for eligible veterans. Id. It is not and never has been VA's intent that the stipend amount directly correlate with a specific number of caregiving hours. See 80 FR 1369 (January 9, 2015). VA recognizes that the reference to a number of hours in the current regulations has caused confusion and is therefore seeking to change the stipend calculation to instead use a percentage of the monthly stipend rate.

The percentages proposed in this rulemaking for purposes of paragraphs (c)(4)(i)(A) and (B), discussed further below, have been developed based on the hours set forth in current paragraphs (c)(4)(iv)(A) through (C) relative to a 40-hour total (*i.e.,* 40 of 40 hours, 25 of 40 hours, and 10 of 40 hours), such that proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*) reference 100 percent, 62.5 percent and 25 percent of the monthly stipend rate, respectively. Proposed paragraphs (c)(4)(i)(A)(*1*) and (*2*) reference 62.5 percent and 100 percent of the monthly stipend rate, respectively, for consistency with the higher percentages in proposed paragraph (c)(4)(i)(B). Based on program experience, we believe these proposed percentages are consistent with the time and level of personal care services needed by an eligible veteran from a Family Caregiver. Also, as previously discussed, we are proposing to shift the focus of the program to those with moderate and severe needs and we believe 62.5 and 100 percent correspond to these thresholds. However, as we implement the proposed new stipend payment methodology, and in particular, the two-level stipend methodology in proposed paragraph (c)(4)(i)(A), we would evaluate whether the percentages should be adjusted to better and more accurately reflect the amount and degree of personal care services provided by Primary Family Caregivers of eligible veterans.

While the changes we are proposing to the PCAFC stipend methodology and levels would result in an increase in stipend payments for many Primary Family Caregivers of legacy participants, for others, these changes may result in a reduction in the stipend amount that they were eligible to receive before the effective date of the rule. To help minimize the impact of such changes, we would make accommodations for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) and (c) (*i.e.,* legacy participants and legacy applicants) to ensure their stipend is not reduced for one year beginning on the effective date of the rule, except in cases where the reduction is the result of the eligible veteran relocating to a new address. To accomplish this, we would restructure paragraph (c)(4)(i), which we would title

''Stipend amount,'' to accommodate and describe the stipend amount for three cohorts of Primary Family Caregivers based on whether the eligible veteran meets the requirements of proposed § 71.20(a); § 71.20(b) or (c); or § 71.20(a) and (b) or (c). These three cohorts would be described in paragraphs (c)(4)(i)(A) through (C), and paragraph (c)(4)(i)(D) would provide an additional special rule for Primary Family Caregivers of legacy participants subject to a stipend decrease because of our proposed changes.

Paragraph (c)(4)(i)(A) would set forth a stipend amount for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(a), that is the new PCAFC eligibility criteria for veterans and servicemembers proposed above. Unless eligible for a higher amount under another subparagraph of paragraph (c)(4)(i), such Primary Family Caregivers would receive a stipend equivalent to 62.5 percent or 100 percent of the monthly stipend rate (*i.e.,* the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12). This would represent the two stipend levels discussed above. The higher stipend level (*i.e.,* 100 percent of the monthly stipend rate) would be applied if the eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15), and the lower stipend level (*i.e.,* 62.5 percent of the monthly stipend rate) would apply for all other Primary Family Caregivers of eligible veterans. The lower level would be described in paragraph (c)(4)(i)(A)(*1*), and the higher level would be described in paragraph (c)(4)(i)(A)(*2*). Veterans and servicemembers who apply for PCAFC on or after the effective date of the rule who are determined to be eligible for PCAFC under proposed § 71.20(a) would be assigned a monthly stipend amount pursuant to paragraphs (c)(4)(i)(A)(*1*) or (*2*).

Paragraph (c)(4)(i)(B) would set forth a stipend amount for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) or (c) (*i.e.,* legacy participants and legacy applicants). The payment rate in paragraph (c)(4)(i)(B) would apply for one year beginning on the effective date of the rule and only if the Primary Family Caregiver is not eligible for a higher amount under another subparagraph of paragraph (c)(4)(i). In proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*) we would maintain the current dependency determination in current paragraphs (c)(4)(i) through (iii) and the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) for the Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) or (c) by referencing the clinical rating in 38 CFR 71.40(c)(4)(i) through (iii) (2019) and the definitions applicable to such section under 38 CFR 71.15 (2019) (*i.e.,* the clinical rating and applicable definitions that were in effect on the day before the effective date of this rule); however, instead of referencing the number of hours per week of caregiver assistance in current paragraphs (c)(4)(iv)(A) through (C) used to calculate the stipend payment, we would apply a percentage of the monthly stipend rate (as that term would be defined in proposed § 71.15). Stipends calculated under proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*) would equate to 100 percent, 62.5 percent, and 25 percent of the monthly stipend rate, respectively, depending on the clinical rating total set forth in current paragraphs (c)(4)(iv)(A) through (C). Under proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*), a clinical rating of 21 or higher would correspond with 100 percent of the monthly stipend rate; a clinical rating of 13 to 20 would correspond with 62.5 percent of the monthly stipend rate; and a clinical rating of 1 to 12 would correspond with 25 percent of the monthly stipend rate.

Recognizing that legacy participants and legacy applicants may also meet the requirements of proposed § 71.20(a), proposed paragraph (c)(4)(i)(C), would set forth the stipend amount for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(a) and § 71.20(b) or (c). Like with proposed paragraph (c)(4)(i)(B), proposed paragraph (c)(4)(i)(C) would apply for one year beginning on the effective date of the rule. Under proposed paragraph (c)(4)(i)(C), if the eligible veteran meets the requirements of proposed § 71.20(a) and § 71.20(b) or (c), the Primary Family Caregiver's monthly stipend would be the amount the Primary Family Caregiver is eligible to receive under proposed paragraph (c)(4)(i)(A) or (B) of this section, whichever is higher. This paragraph would also reference proposed § 71.40(c)(4)(ii)(C)(*2*)(*i*), which as discussed further below, would describe the adjustment of the monthly stipend payments in cases where the amount under proposed paragraph (c)(4)(i)(A) is higher.

In proposed paragraph (c)(4)(i)(D), which we would title ''Special rule for Primary Family Caregivers subject to decrease because of monthly stipend rate,'' we would establish a special rule for Primary Family Caregivers of legacy participants subject to decrease as a result of VA's transition from the combined rate to the new monthly stipend rate. This special rule would state that, notwithstanding the other subparagraphs of paragraph (c)(4)(i), for one year beginning on the effective date of the rule, if the eligible veteran meets the requirements of proposed § 71.20(b) (*i.e.,* legacy participants), the Primary Family Caregiver's monthly stipend would be not less than the amount the Primary Family Caregiver was eligible to receive as of the day before the effective date of the rule (based on the eligible veteran's address on record with PCAFC on such date) so long as the eligible veteran resides at the same address on record with PCAFC as of the day before the effective date of the rule. This paragraph would also reference proposed § 71.40(c)(4)(ii)(B), which as discussed further below, would describe the adjustment of the monthly stipend payments in cases where the eligible veteran relocates to a new address. VA is proposing this special rule to provide legacy participants and their Primary Family Caregivers time to adjust to the proposed changes in PCAFC eligibility and the stipend payment methodology. If a legacy participant chooses to relocate, however, VA believes it is reasonable to no longer apply this special rule. This would include all instances in which a legacy participant relocates, no matter the distance between the old and new addresses and regardless of the potential increase or decrease in the combined rate that would result based on the relocation, even if only a few cents or a few dollars. This is because we do not want to set an arbitrary threshold for when a relocation would result in the ability to maintain the combined rate or transition to the monthly stipend rate. In some metropolitan areas, an eligible veteran may experience a decrease or increase in the combined rate by simply relocating across the street because the new address is in a different geographic area. To maintain consistency for all legacy participants who are subject to the special rule, any relocation would result in a transition to the monthly stipend rate under proposed paragraph (c)(4)(i)(A), (B), or (C). The special rule would be applied based on circumstances on the day before the effective date of the rule and a change to those circumstances would nullify the basis upon which the special rule would be applied. We note that proposed paragraph (c)(4)(i)(D) would apply only to Primary Family Caregivers of legacy participants, not legacy applicants. We believe this is reasonable

as the Primary Family Caregivers of legacy applicants would not be approved until after the effective date of the rule and would not have come to rely on a monthly stipend based on the combined rate.

In the subsequent discussion, we explain how these rules would be applied for purposes of determining the applicable stipend amount for Primary Family Caregivers of legacy participants and legacy applicants. We emphasize that proposed paragraphs (c)(4)(i)(B) through (D)—applicable to the Primary Family Caregivers of legacy participants and legacy applicants—would apply only for the one-year period beginning on the effective date of the rule, after which time all PCAFC stipends would be determined in accordance with proposed paragraph (c)(4)(i)(A). As explained above, we are providing a one-year transition period because it would allow individuals participating in PCAFC as of the day before the effective date of the rule to remain in the program while VA completes a reassessment to determine their eligibility under revised § 71.20(a). We also emphasize, as discussed above, that legacy participants and legacy applicants could be revoked or discharged pursuant to proposed § 71.45 (for reasons other than not meeting the proposed § 71.20(a) eligibility criteria), as discussed elsewhere in this rulemaking, in the one-year period beginning on the effective date of the rule, in which case stipend payments and other Family Caregiver benefits would terminate as set forth in proposed § 71.45.

Upon the effective date of the rule, VA would calculate the monthly stipend rate under proposed paragraph (c)(4)(i)(B) for all legacy participants based on their tier as assigned under current paragraphs (c)(4)(iv)(A) through (C) before the effective date of the rule. It is not VA's intent to reevaluate the clinical ratings of legacy participants based on the dependency determination in current paragraphs (c)(4)(i) through (iii), but rather continue to apply the rating and tier level that applied to each legacy participant as of the day before the effective date of the rule. Thus, VA would apply proposed paragraph (c)(4)(i)(B) to mean that the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) assigned for the legacy participant on the day before the effective date of the rule would continue to be applied for purposes of determining his or her Primary Family Caregiver's stipend amount under proposed paragraphs (c)(4)(i)(B)(*1*) through (*3*). As calculated, the stipend amount for Primary Family Caregivers of legacy participants would correspond to a percentage of the monthly stipend rate (100 percent, 62.5 percent, or 25 percent).

VA would then compare the monthly stipend amount calculated under proposed paragraph (c)(4)(i)(B) to the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule (based on the eligible veteran's address on record with PCAFC on such date). If the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule is higher, then pursuant to proposed paragraph (c)(4)(i)(D), the Primary Family Caregiver would continue to receive that amount so long as the eligible veteran resides at the same address on record with PCAFC as of the day before the effective date of the rule. If the monthly stipend payment under proposed paragraph (c)(4)(i)(B) is not less than the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule, the Primary Family Caregiver would be transitioned to a monthly stipend payment under proposed paragraph (c)(4)(i)(B) effective as of the date of the rule.

For example, if on the day before the effective date of the rule a Primary Family Caregiver is eligible to receive a monthly stipend for a legacy participant who has a clinical rating of 21 or higher under current § 71.40(c)(4)(iv)(A) and lives in locality A, VA would compare that amount to the monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*1*) for locality A (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the locality pay area of locality A). If the monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*1*) is lower, then the Primary Family Caregiver would continue to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule, as long as the legacy participant does not relocate to a new address. If the legacy participant relocates to a different address during the one-year period beginning on the effective date of the rule, the proposed special rule would no longer apply, and the Primary Family Caregiver would transition to a monthly stipend payment determined in accordance with proposed paragraph (c)(4)(i)(A) or (B), as discussed further below.

For legacy applicants, VA would conduct the dependency determination in current paragraphs (c)(4)(i) through (iii) and calculate the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) at the time of evaluating the joint application. However, the clinical ratings would correspond to a percent of the monthly stipend rate as set forth in proposed paragraph (c)(4)(i)(B) and a stipend amount would be assigned accordingly. After the stipend amount is calculated for legacy applicants during VA's evaluation of the joint application, it is not VA's intent to subsequently recalculate the clinical ratings of legacy participants based on the dependency determination in current paragraphs (c)(4)(i) through (iii) in the one-year period following the effective date of the rule. This means that the three-tier clinical rating in current paragraphs (c)(4)(iv)(A) through (C) assigned for a legacy applicant during VA's evaluation of the joint application would continue to apply for purposes of determining his or her Primary Family Caregiver's stipend amount under new paragraphs (c)(4)(i)(B)(*1*) through (*3*) for the one-year period following the effective date of the rule.

Accordingly, upon the effective date of the rule, legacy participants would be assigned a stipend amount under proposed paragraph (c)(4)(i)(B) or (D); and on the effective date of the rule or shortly thereafter, legacy applicants would be assigned a stipend amount under proposed paragraph (c)(4)(i)(B). However, we recognize that legacy participants and legacy applicants may also qualify under the proposed eligibility criteria in proposed § 71.20(a), which would trigger a new stipend payment determination under proposed paragraph (c)(4)(i)(A). The two-level stipend payment methodology in proposed paragraph (c)(4)(i)(A) would be based on whether the eligible veteran is determined to be unable to self-sustain in the community (as such term would be defined in § 71.15) whereas the stipend amounts set forth in proposed paragraphs (c)(4)(i)(B) and (D) would be based on the three-tier clinical ratings in current paragraphs (c)(4)(i) through (iv). Therefore, the new two-level assignment may not directly align with three-tier assignment, and for legacy participants and legacy applicants meeting the new criteria in proposed § 71.20(a), the new two-level assignment may result in a higher or lower stipend payment. For example, a legacy participant whose assigned stipend amount is 62.5 percent of the monthly stipend rate under proposed paragraph (c)(4)(i)(B)(*2*) (because the legacy participant's clinical rating presumes he or she requires 25 hours of caregiver assistance per week), may qualify for the higher 100 percent of the monthly stipend rate in proposed paragraph (c)(4)(i)(A)(*2*) (because he or she is determined to be unable to self-

sustain in the community). Alternatively, a legacy participant whose assigned stipend amount is 100 percent of the monthly stipend rate under proposed paragraph (c)(4)(i)(B)(*1*) (because his or her clinical rating presumes he or she requires 40 hours of caregiver assistance per week), may only qualify for the lower 62.5 percent of the monthly stipend rate in proposed paragraph (c)(4)(i)(A)(*1*) (because the legacy participant is not determined to be unable to self-sustain in the community). Determination of the applicable stipend amount under proposed paragraph (c)(4)(i)(A) for legacy participants and legacy applicants meeting the requirements of proposed § 71.20(a) would be adjudicated during VA's reassessment of legacy participants and legacy applicants under proposed § 71.30(e)(1).

As discussed above with respect to proposed § 71.30(e)(1), legacy participants and legacy applicants would be reassessed by VA within the one-year period beginning on the effective date of the rule to determine whether they meet the requirements of proposed § 71.20(a). If a legacy participant or legacy applicant is found to meet the requirements of proposed § 71.20(a), VA would determine the applicable stipend amount under proposed paragraph (c)(4)(i)(A). If the stipend amount under proposed paragraph (c)(4)(i)(A) (*i.e.,* the two-level stipend) is less than the amount the Primary Family Caregiver was eligible to receive under proposed paragraph (c)(4)(i)(B) or (D) (*i.e.,* the three-tier stipend), under proposed paragraphs (c)(4)(i)(C) and (D), the Primary Family Caregiver would continue to receive the higher stipend under proposed paragraph (c)(4)(i)(B) or (D). If the stipend amount under proposed paragraph (c)(4)(i)(A) is not less than the amount the Primary Family Caregiver was eligible to receive under proposed paragraph (c)(4)(i)(B) or (D), the Primary Family Caregiver would transition to the higher rate in proposed paragraph (c)(4)(i)(A). If the legacy participant or legacy applicant is determined to not meet the requirements of proposed § 71.20(a) pursuant to the reassessment under proposed § 71.30(e)(1), the Primary Family Caregiver of the legacy participant or legacy applicant would continue to receive a stipend pursuant to the rate in proposed paragraph (c)(4)(i)(B) or (D).

As illustrated in this discussion, paragraphs (c)(4)(i)(A) through (D) can apply to the same legacy participant or legacy applicant at different points during the one-year period beginning on the effective date of the rule, and VA would apply the rules of each paragraph depending on the applicable circumstances. For example, the special rule in proposed paragraph (c)(4)(i)(D) would no longer apply if the legacy participant relocates to a new address during the one-year period, but the legacy participant could move before or after a reassessment is conducted under proposed § 71.30. In the scenario where a Primary Family Caregiver is continuing to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule pursuant to proposed paragraph (c)(4)(i)(D), and the legacy participant relocates to a new location prior to being reassessed under proposed § 71.30(e), then the Primary Family Caregiver would be transitioned to the monthly stipend rate under proposed paragraph (c)(4)(i)(B) based on the legacy participant's new geographic location. Upon reassessment, if the legacy participant is determined to meet the requirements of proposed § 71.20(a), VA would compare and apply the higher of the monthly stipend rates in proposed paragraphs (c)(4)(i)(A) and (B) based on the legacy participant's new geographic area of residence. If instead the reassessment is performed before the legacy participant relocates to a new address, and upon reassessment, the legacy participant is determined to meet the requirements of proposed § 71.20(a), VA would compare and apply the higher of the stipend rates in proposed paragraphs (c)(4)(i)(A) and (D). If the stipend rate in proposed paragraph (c)(4)(i)(D) is higher, the Primary Family Caregiver of the legacy applicant would continue to receive that rate until the legacy applicant relocates to a new address. Upon relocating to the new address, the stipend rate in proposed paragraph (c)(4)(i)(D) would no longer apply, and VA would compare and apply the higher of the monthly stipend rates in proposed paragraphs (c)(4)(i)(A) and (B) in accordance with proposed paragraph (c)(4)(i)(C).

Circumstances beyond the reassessments or relocating could also affect monthly stipend payments under these proposed requirements. For example, if the GS rate for grade 4, step 1 is adjusted in January following the effective date of the rule, for Primary Family Caregivers continuing to receive stipend payments pursuant to proposed paragraph (c)(4)(i)(D), VA would again calculate the monthly stipend amount that the Primary Family Caregivers would be eligible to receive under proposed paragraph (c)(4)(i)(A) or (B) (depending on whether the proposed § 71.30(e) reassessment had been completed), and compare that amount to the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule (based on the eligible veteran's address on record with PCAFC on such date). (As noted in one of the examples above, the new comparison between the rates in proposed paragraphs (c)(4)(i)(A) and (D) would occur if the reassessment resulted in a determination that the legacy participant meets the requirements of proposed § 71.20(a) but the Primary Family Caregiver's stipend under proposed paragraph (c)(4)(i)(A) would have been less than what he or she was eligible to receive under proposed paragraph (c)(4)(i)(D).) If the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule is still higher than the new amount calculated under proposed paragraph (c)(4)(i)(A) or (B), as appropriate, then pursuant to proposed paragraph (c)(4)(i)(D), the Primary Family Caregiver would continue to receive that amount so long as the eligible veteran resides at the same address on record with PCAFC as of the day before the effective date of the rule. If the monthly stipend payment under proposed paragraph (c)(4)(i)(A) or (B) is determined to be not less than the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule, the Primary Family Caregiver would be transitioned to a monthly stipend payment under proposed paragraph (c)(4)(i)(A) or (B), as applicable.

Also, we note that once the stipend amount for a Primary Family Caregiver is transitioned from proposed paragraph (c)(4)(i)(D) to another stipend amount under proposed paragraph (c)(4)(i)(A) or (B), the Primary Family Caregiver's monthly stipend payment would not revert back to the amount in proposed paragraph (c)(4)(i)(D).

In short, it is our intent that the stipend amount for the Primary Family Caregivers of legacy participants and legacy applicants generally remain unchanged during the one-year period beginning on the effective date of the rule, unless it is to their benefit, and so long as they do not relocate to a new address. We believe this is fair and reasonable to ensure a transition period for Primary Family Caregivers of eligible veterans who meet the requirements of proposed § 71.20(b) or (c). Primary Family Caregivers of legacy participants in particular have come to rely on the monthly stipend payments based on the combined rate authorized under current paragraph (c)(4). Our proposed changes would allow time for VA to communicate potential changes to

affected individuals and assist them in preparing for any potential reduction in their stipend payment before such changes take effect.

As previously mentioned, we propose to revise current paragraph (c)(4)(ii) to address adjustments to stipend payments and would title it ''Adjustments to stipend payments.'' Specifically, this paragraph would address adjustments resulting from OPM's updates to the GS annual rate at grade 4, step 1, the eligible veteran relocating to a new address, and reassessments under proposed § 71.30.

Paragraph (c)(4)(ii)(A) would state that adjustments to stipend payments that result from OPM's updates to the GS annual rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides, would take effect as of the date the update to such rate is made effective by OPM. This would ensure VA adjusts PCAFC stipend amounts consistent with how the Federal Government makes changes to these salary rates for its employees. The GS pay schedule is usually adjusted annually each January based on nationwide changes in the cost of wages and salaries of private industry workers. See OPM General Schedule Overview, General Schedule Classification and Pay, *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/*. Notification of any increase in the GS rates occurs once the President signs an Executive Order confirming the GS rates. This Executive Order is usually signed in December of every year, and any changes in the GS rates are effective the following January.

Paragraph (c)(4)(ii)(B) would state that adjustments to stipend payments that result from the eligible veteran relocating to a new address are effective the first of the month following the month in which VA is notified that the eligible veteran has relocated to a new address. For example, if an eligible veteran notifies VA on August 15th that they have relocated, the effective date for any resulting changes to the stipend amount would take effect on September 1st. Paragraph (c)(4)(ii)(B) would also state that VA must receive notification within 30 days from the date of relocation. For example, if an eligible veteran relocates on June 15th, VA must be notified by July 15th of their relocation. Furthermore, paragraph (c)(4)(ii)(B) would state that if VA does not receive notification within 30 days from the date of relocation, VA would seek to recover overpayments of benefits under paragraph (c)(4) of this section back to the latest date on which the adjustment would have been effective if VA had been notified within 30 days from the date of relocation, as provided in proposed § 71.47, which is discussed further below. For example, if an eligible veteran relocates to a geographic area with a lower monthly stipend rate (based on the GS rate for grade 4, step 1 in the new locality) on January 15th but does not notify VA until June 15th, VA may seek to recover overpayments of benefits back to March 1st. In this example, VA should have been notified by February 14th such that March 1st would be the latest date on which the adjustment would have been effective, assuming that VA had been notified within 30 days from the date of relocation. We note that VA would not make retroactive payments to account for stipend increases as a result of an eligible veteran's relocation. For example, if an eligible veteran relocates to a geographic area with a higher monthly stipend rate (based on the GS rate for grade 4, step 1 in the new locality) on January 15th but does not notify VA until June 15th, the Primary Family Caregiver's monthly stipend adjustment would take effect on July 1st. We believe it is fair and reasonable to request that VA be notified within 30 days of relocation and would not provide retroactive payments in these circumstances. If relocating to a geographic area with a higher monthly stipend rate (based on the GS rate for grade 4, step 1 in the new locality), it would behoove the eligible veteran or Family Caregiver to notify VA as soon as possible to start receiving the increased stipend payment. Recovery of overpayments would be consistent with the Federal Claims Collection Standards. We note that proposed paragraph (c)(4)(ii)(B) would not modify or expand VA's legal authority to initiate collections, but would help ensure that PCAFC participants are on notice of the potential for collections actions by VA under this paragraph.

Proposed paragraph (c)(4)(ii)(C) would establish how monthly stipends may be adjusted pursuant to reassessments conducted by VA under proposed § 71.30. Proposed paragraph (c)(4)(ii)(C)(*1*) would focus on eligible veterans who meet the requirements of proposed § 71.20(a) only (*i.e.,* eligible veterans in PCAFC who applied on or after the effective date of the rule). In paragraph (c)(4)(ii)(C)(*1*)(*i*), we propose that if a reassessment conducted pursuant to proposed § 71.30 results in an increase in the monthly stipend, then the increase would take effect as of the date of the reassessment. This would arise if, upon reassessment, an eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15), but had not previously been determined to be unable to self-sustain in the community. In paragraph (c)(4)(ii)(C)(*1*)(*ii*), we propose that in the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease would take effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. This would arise if an eligible veteran who had previously been determined to be unable to self-sustain in the community (as that term would be defined in § 71.15), was, upon reassessment, determined to not meet that threshold. We would additionally state that the effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver. Advanced notice of findings would include the basis upon which VA has made the determination to decrease the monthly stipend payment. Additional discussion of VA's proposed advanced notice requirements is below in the context of proposed changes to § 71.45.

In proposed paragraph (c)(4)(ii)(C)(*2*), we would focus on adjustments to monthly stipends pursuant to reassessments conducted by VA under proposed § 71.30(e) for eligible veterans who meet the requirements of proposed § 71.20(b) or (c) (*i.e.,* legacy participants and legacy applicants receiving monthly stipends pursuant to proposed § 71.40(c)(4)(i)(B) or (D)). As discussed above, for legacy participants and legacy applicants meeting the new criteria in proposed § 71.20(a), their two-level assignment (based on whether the eligible veteran is determined to be unable to self-sustain in the community (as that term would be defined in § 71.15)) may not directly align with their three-tier assignment (based on the eligible veteran's clinical rating in current § 71.40(c)(4)(iv)(A) through (C)) and therefore may result in a higher or lower stipend payment upon reassessment. In paragraph (c)(4)(ii)(C)(*2*)(*i*), we propose that if the reassessment results in an increase in the monthly stipend, then the increase would take effect as of the date of the reassessment. Additionally, the Primary Family Caregiver would be paid the difference between the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) of this section and the amount under paragraph (c)(4)(i)(B) or (D) of this section, whichever the Primary Family Caregiver received for the time period beginning on the effective date of the

rule up to the date of the reassessment, based on the eligible veteran's address on record with PCAFC on the date of the reassessment and the monthly stipend rate on such date. For example, if the effective date of the rule is April 1, 2020, and a legacy participant or legacy applicant is reassessed on August 1, 2020, and determined to meet the requirements of proposed § 71.20(a), and the reassessment results in an increase in the monthly stipend payment, the increase would become effective on August 1, 2020, and the Primary Family Caregiver would receive retroactive payment for the increase back to April 1, 2020, based on the address of the eligible veteran as of August 1, 2020. The purpose of providing retroactive payments back to the effective date of the rule would be to recognize that not all legacy participants and legacy applicants would be reassessed at one time, and therefore would be reassessed at different points during the first year following the effective date of the rule. Retroactive payments would ensure that the Primary Family Caregivers of all legacy participants and legacy applicants meeting the requirements of proposed § 71.20(a) receive the benefit of any stipend increase as of the effective date of the rule—regardless of when the reassessment is completed during the one-year period following the effective date of the rule.

The retroactive payment would consist of the difference between the new stipend amount authorized under proposed paragraph (c)(4)(i)(A) and the amount under proposed paragraph (c)(4)(i)(B) or (D), whichever the Primary Family Caregiver received beginning on the effective date of the rule up to the date of the reassessment, except that the amount under paragraph (c)(4)(i)(B) or (D), as applicable, would be based on the address of the eligible veteran and the monthly stipend rate on the date of the reassessment. We believe using the address on record with PCAFC on the date of the reassessment is reasonable because of the significant administrative complexity that would be required to track the relocation of legacy participants and legacy applicants for purposes of these retroactive payments. We have found that eligible veterans and their Family Caregivers frequently relocate, and tracking every address on record with PCAFC in order to calculate prorated retroactive stipend payments based upon differing localities would be overly burdensome. Similarly, we believe using the monthly stipend rate on the date of the reassessment would be reasonable. While we recognize that OPM may adjust the GS rate at some point during the one-year transition period, which could impact the amount of the retroactive payment under proposed paragraph (c)(4)(ii)(C)(*2*)(*i*), we would not delay reassessments in anticipation of an adjustment to the GS rate or undertake an administratively complex process of reconciling previously-made retroactive payments against a new GS rate.

Furthermore, we would state that if more than one reassessment is completed during the one-year period beginning on the effective date of the rule, the retroactive payment would only apply if the first reassessment during the one-year period beginning on the effective date of the rule results in an increase in the monthly stipend payment, and that retroactive payments only apply as a result of the first assessment. Any subsequent reassessment completed after the initial reassessment of a legacy participant or legacy applicant during the first year following the effective date of the rule would likely be based on changes in the circumstances of the legacy participant or legacy applicant, such that retroactive payments back to a date before a previous reassessment would not be warranted.

Furthermore, as previously explained with respect to proposed § 71.30(e)(2), if an individual no longer meets the requirements of proposed § 71.20(b) or (c) before a reassessment is completed, the provisions of proposed § 71.40(c)(4)(ii)(C)(*2*)(*i*) would no longer apply. This means that any retroactive increase that would have been applied had the discharge or revocation not occurred before the reassessment would not be applied.

In proposed paragraph (c)(4)(ii)(C)(*2*)(*ii*), we propose that in the case of a reassessment that results in a decrease in the monthly stipend payment for a legacy participant or legacy applicant who meets the requirements of proposed § 71.20(a), the decreased stipend amount would take effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. We would also state that the effective date of the decrease will be no earlier than 60 days after the date that is one year after the effective date of the rule. Additionally, we would state that on the date that is one year after the effective date of the rule, VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver. Advanced notice of findings would include the basis upon which VA has made the determination to decrease the monthly stipend payment. Additional discussion of VA's proposed advanced notice requirements is below in the context of proposed changes to § 71.45. We recognize that changes to the PCAFC eligibility criteria and stipend determinations would mean that some Primary Family Caregivers of legacy participants and legacy applicants would have their stipends reduced after the one-year transition period. To help minimize the negative impact of such changes, we would not apply the decrease until the end of the one-year period and after a 60-day notice period. For example, if the effective date of the rule is April 1, 2020, and a legacy participant or legacy applicant is reassessed on August 1, 2020, and determined to meet the requirements of proposed § 71.20(a), but the reassessment results in a decrease in the monthly stipend payment, an advanced notice of VA's findings would be provided on April 1, 2021, and the decreased stipend payment would become effective no earlier than May 30, 2021. This paragraph would also apply to any decreases resulting from any additional reassessment(s) that may occur following the initial reassessment of the legacy participant or legacy applicant during the one-year period beginning on the effective date of the rule. We note VA would communicate the results of the reassessment with eligible veterans and Family Caregivers at the time of the reassessments to ensure that the eligible veterans and Family Caregivers receive as much notice as possible in advance of the advanced notice described in proposed paragraph (c)(4)(ii)(C)(*2*)(*ii*).

We would also add a note to proposed paragraph (c)(4)(ii)(C)(*2*) explaining that if an eligible veteran who meets the requirements of proposed § 71.20(b) or (c) is determined, pursuant to a reassessment conducted by VA under proposed § 71.30, to not meet the requirements of proposed § 71.20(a), the monthly stipend would not be increased or decreased pursuant to proposed paragraph (c)(4)(ii)(C)(*2*)(*i*) or (*ii*). The effective date for discharge would be no earlier than the date that is 60 days after the date that is one year after the effective date of rule, unless the Family Caregiver is revoked or discharged pursuant to § 71.45 before then. The eligible veteran and Family Caregiver would receive advanced notice of VA's findings one year after the effective date of the rule. We note that VA would communicate the results of the reassessment to eligible veterans and Family Caregivers at the time of the reassessments to ensure that the eligible veterans and Family Caregivers receive

as much notice as possible in advance of the advanced notice described in the proposed note to paragraph (c)(4)(ii)(C)(*2*). Additional discussion of VA's proposed advanced notice requirements is below in the context of proposed changes to § 71.45.

As previously explained elsewhere in this rulemaking, if a legacy participant or legacy applicant is revoked or discharged pursuant to proposed § 71.45 (for reasons other than not meeting proposed § 71.20(a) eligibility criteria) prior to a reassessment or otherwise in the one-year period beginning on the effective date of the rule, or before the end of the 60-day notice period that would be provided in paragraph (c)(4)(ii)(C)(*2*)(*ii*), stipends and other Family Caregiver benefits would terminate as set forth in proposed § 71.45.

The following examples illustrate how the requirements in proposed paragraph (c)(4)(ii)(C)(*2*) would be implemented. We anticipate that most legacy participants and legacy applicants would be reassessed only once during the transition year, but for illustrative purposes below, our examples include multiple reassessments during the transition year. In these examples, we refer to percentages of the ''GS rate for grade 4, step 1'' for clarity, but as noted in the proposed definition of ''monthly stipend rate,'' the monthly stipend would be calculated by dividing the GS annual rate for grade 4, step 1 (for the locality pay area in which the eligible veteran resides) by 12.

Example 1: A Primary Family Caregiver for a legacy applicant who has a clinical rating of 1 to 12 under current § 71.40(c)(4)(iv)(C) would receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*3*) (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). If the effective date of the rule is April 1, 2020 and the legacy applicant is reassessed on August 1, 2020 and determined to meet the requirements of proposed § 71.20(a) but not determined to be unable to self-sustain in the community, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective on August 1, 2020, and receive retroactive payments for the difference between 62.5 percent of the GS rate for grade 4, step 1 and 25 percent of the GS rate for grade 4, step 1 for four months (April–July) based on the legacy applicant's address on record with PCAFC as of August 1, 2020. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy applicant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020 that results in another increase in the monthly stipend amount (*i.e.,* because the eligible veteran is determined to be unable to self-sustain in the community), then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective on November 1, 2020, but would not receive any additional retroactive payment for the difference between 100 percent of the GS rate for grade 4, step 1 and 62.5 percent of the GS rate for grade 4, step 1 for August through October.

Example 2: A Primary Family Caregiver for a legacy applicant who has a clinical rating of 1 to 12 under current § 71.40(c)(4)(iv)(C) would receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*3*) (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). If the effective date of the rule is April 1, 2020 and the legacy applicant is reassessed on August 1, 2020 and determined to meet the requirements of proposed § 71.20(a) and is determined to be unable to self-sustain in the community, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective August 1, 2020, and receive retroactive payments for the difference between 100 percent of the GS rate for grade 4, step 1 and 25 percent of the GS rate for grade 4, step 1 for four months (April–July) based on the legacy applicant's address on record with PCAFC as of August 1, 2020. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy applicant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020, that results in a decrease in the monthly stipend amount (*i.e.,* the eligible veteran is no longer determined to be unable to self-sustain in the community), then the Primary Family Caregiver would continue to receive his or her monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). On April 1, 2021 (one year after the effective date of the rule), VA would provide advanced notice of the decrease to the eligible veteran and Primary Family Caregiver. The new monthly stipend rate in § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) would go into effect no earlier than May 30, 2021 (60 days from April 1, 2021—the date the advanced notice is provided). The effective date of the decrease would be provided in VA's final notice of such decrease.

Example 3: A Primary Family Caregiver for a legacy participant who has a clinical rating of 13 to 20 under current § 71.40(c)(4)(iv)(B) would be eligible to receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*2*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area); however, if that rate is lower than the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule based on the combined rate, then pursuant to proposed § 71.40(c)(4)(i)(D), the Primary Family Caregiver would continue to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule. If the effective date of the rule is April 1, 2020, and the legacy participant is reassessed on August 1, 2020, and determined to meet the requirements of proposed § 71.20(a), but not determined to be unable to self-sustain in the community, then the Primary Family Caregiver would be eligible to receive the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). However, if 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area is lower than the monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule, the Primary Family Caregiver would continue to receive a monthly stipend based on the combined rate. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy applicant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020, that results in an increase in the monthly stipend amount (*i.e.,* the eligible veteran is determined to be unable to self-sustain in the community) and the new monthly stipend rate is higher than the monthly stipend based on the combined rate, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*2*) (*i.e.,* 100 percent of the GS rate for grade 4, step 1 in the applicable locality pay area) effective

November 1, 2020, but would not receive retroactive payments for the difference between 100 percent of the GS rate for grade 4, step 1 and the stipend the Primary Family Caregiver received based on the combined rate (for three months (August–October) or for seven months (April–October)).

Example 4: A Primary Family Caregiver for a legacy participant who has a clinical rating of 1 to 12 under current § 71.40(c)(4)(iv)(C) would be eligible to receive a monthly stipend rate in proposed § 71.40(c)(4)(i)(B)(*3*) (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in the applicable locality pay area); however, because that rate is lower than the amount the Primary Family Caregiver was eligible to receive on the day before the effective date of the rule based on the combined rate, then pursuant to proposed § 71.40(c)(4)(i)(D), the Primary Family Caregiver would continue to receive the same monthly stipend payment he or she was eligible to receive on the day before the effective date of the rule. If the effective date of the rule is April 1, 2020, and the legacy participant lives in locality A on such date, but relocates to a new address in locality B on May 1, 2020, the Primary Family Caregiver of the legacy participant would, pursuant to proposed § 71.40(c)(4)(i)(D), no longer be eligible to receive the stipend he or she was eligible to receive on the day before the effective date of the rule. If VA is notified of the legacy participant relocating on May 15, 2020, then effective June 1, 2020, the Primary Family Caregiver's stipend would be paid in accordance with proposed § 71.40(c)(4)(i)(B)(*3*) in locality B (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in locality B). If the legacy participant relocates to a new address in locality C on July 1, 2020 and notifies VA on July 15, 2020, then effective August 1, 2020, the Primary Family Caregiver's stipend would be paid in accordance with proposed § 71.40(c)(4)(i)(B)(*3*) in locality C (*i.e.,* 25 percent of the GS rate for grade 4, step 1 in locality C). If the legacy participant is reassessed on September 1, 2020, and determined to meet the requirements of proposed § 71.20(a), but not determined to be unable to self-sustain in the community, then the Primary Family Caregiver would transition to the monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) in locality C (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in locality C) effective September 1, 2020, and receive retroactive payments for the difference between 62.5 percent of the GS rate for grade 4, step 1 and 25 percent of the GS rate for grade 4, step 1 in locality C for five months (April–August) because the legacy participant's address on record with PCAFC as of September 1, 2020 is in locality C. If a determination is made and documented by VA pursuant to proposed § 71.30(b), that the legacy participant be reassessed on a more than annual basis, and another reassessment is completed on November 1, 2020 that results in a determination that the legacy participant no longer meets the requirements of proposed § 71.20(a), then the Primary Family Caregiver would continue to receive his or her monthly stipend rate under proposed § 71.40(c)(4)(i)(A)(*1*) (*i.e.,* 62.5 percent of the GS rate for grade 4, step 1 in the applicable locality pay area). Unless another basis for revocation or discharge applies under proposed § 71.45, the Family Caregiver would be discharged under proposed § 71.45(b)(1)(i)(A), discussed further below. In the case of discharge under § 71.45(b)(1)(i)(A), VA would provide advanced notice of its eligibility findings to the eligible veteran and Family Caregiver on April 1, 2021 (one year after the effective date of the rule). Discharge would be effective no earlier than May 30, 2021 (60 days from April 1, 2021—the date the advanced notice is provided). The effective date of discharge would be provided in VA's final notice, and as discussed further below, caregiver benefits would continue for 90 days after the date of discharge in cases of discharge under proposed § 71.45(b)(1).

In proposed paragraph (c)(4)(ii)(D), we would state that adjustments to stipend payments for the first month would take effect on the date specified in proposed § 71.40(d) and that stipend payments for the last month would end on the date specified in § 71.45, as such section would be revised as proposed in this rulemaking. This is similar to language in current paragraph (c)(4)(vi), which address adjustments to stipend payments for the first month and in cases where a Primary Family Caregiver's status is revoked or a new Primary Family Caregiver is designated before the end of a month; however, we would revise the language for clarity and remove the language regarding replacement Primary Family Caregivers. Proposed paragraphs (d)(4) and (5), discussed later in this rulemaking, would address the effective dates of benefits when a Family Caregiver is replaced by a new Family Caregiver.

Current paragraph (c)(4)(vii) states that ''[n]othing 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.'' As previously mentioned, we propose to move this language to paragraph (c)(4)(iii) and would make no edits to the language.

As previously discussed, current paragraph (c)(4)(iv) sets forth three tiers for stipend payments based on a presumed number of hours per week of caregiver assistance, and we propose to replace the current three tiers with two levels for the stipend payments in proposed paragraphs (c)(4)(i)(A)(*1*) and (*2*). Therefore, the current language in paragraph (c)(4)(iv) would no longer be needed and we propose to replace it with a requirement for periodic assessment of the monthly stipend payment.

As discussed above, while VA believes that the monthly stipend rate (*i.e.,* the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12) is generally not less than the annual salary paid to home health aides in the commercial sector, we recognize that may not always be the case. We note that over time, factors such as changes in the health care industry and workforce, the demand for long-term care, and the overall U.S. economy could impact the amount that commercial home health care entities pay individuals to provide services equivalent to those provided by Primary Family Caregivers. Moreover, additional measures of home health aide pay may become available that could help inform VA's analysis of applicable commercial rates. Therefore, VA proposes to revise current (c)(4)(iv) to require that VA, in consultation with other appropriate agencies of the Federal government, periodically assess whether the monthly stipend rate meets the requirements of 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv) (*i.e.,* that to the extent practicable, the stipend rate is not less than the monthly amount a commercial home health care entity would pay an individual to provide equivalent personal care services in the eligible veteran's geographic area or geographic area with similar costs of living). If VA determines that adjustments to the stipend amount are necessary due to a continuing trend, VA would be required to make such adjustments through future rulemaking.

Section 161(a)(3) of the VA MISSION Act of 2018 amended 38 U.S.C. 1720G(a)(3)(A)(ii) to provide additional benefits to Primary Family Caregivers. These expanded benefits consist of: (1) Financial planning services relating to the needs of injured veterans and their caregivers, and (2) legal services, including legal advice and consultation, relating to the needs of injured veterans and their caregivers. See 38 U.S.C. 1720G(a)(3)(A)(ii)(VI)(aa) and (bb), as

amended by Public Law 115–182, section 161(a)(3). To comply with the VA MISSION Act of 2018, we would amend § 71.40(c) by adding new paragraphs (c)(5) and (6) to include these financial planning services and legal services.

In proposed paragraph (c)(5), we would state that Primary Family Caregivers are eligible for financial planning services as that term is defined in proposed § 71.15. As explained in the discussion of our proposed definition for financial planning services, these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities. In this proposed rule, we are not proposing to place a limitation on the number of issues or sessions relating to this benefit for which a Primary Family Caregiver would be eligible, as the amount of financial planning services needed will vary depending on the complexity of the issues being addressed and the needs of the Primary Family Caregiver.

In proposed paragraph (c)(6), we would state that Primary Family Caregivers are eligible for legal services as that term would be defined in proposed § 71.15. As explained in the discussion of our proposed definition of legal services, these services would be provided by entities authorized pursuant to any contract entered into between VA and such entities. In this proposed rule, we are not proposing to place a limitation on the number of issues or referrals relating to this benefit for which a Primary Family Caregiver would be eligible, as the amount of legal services needed will vary depending on the complexity of the issues being addressed and the needs of the Primary Family Caregiver.

We would revise current § 71.40(d) introductory text and (d)(1) and (2) to clarify and revise the effective date of benefits under PCAFC. Current paragraph (d)(1) explains that caregiver benefits are effective as of the date VA receives the signed joint application or on the date on which the eligible veteran begins receiving care at home, whichever date is later; but caregiver benefits are not provided until the Family Caregiver is designated as such. This paragraph further addresses the timeline for designation of a Family Caregiver following VA's receipt of a joint application. As discussed previously, we would revise these requirements and address them in proposed § 71.25, among other requirements pertaining to the PCAFC application process.

Current paragraph (d)(2) states that the stipend is paid for personal care services the Primary Family Caregiver provided in the prior month, and like in current paragraph (d)(1) states that benefits due prior to the Family Caregiver's designation are paid retroactive to the date the joint application is received by VA or the date on which the eligible veteran begins receiving care at home, whichever is later. As previously explained with respect to paragraph (c)(4), we also propose to remove the reference to ''prior month'' in current paragraph (d)(2) in order to allow flexibility depending on administrative needs and requirements. As stated above, VA's current practice is to issue monthly stipends at the end of the month in which services are provided. Therefore, the first sentence of current paragraph (d)(2) would no longer be needed and would be removed. The remaining provisions of current paragraph (d)(2) would be revised and addressed in revised paragraph (d).

We propose to revise paragraph (d) by focusing only on the effective date of benefits under PCAFC and titling it ''Effective date of benefits under the Program of Comprehensive Assistance for Family Caregivers.'' Proposed paragraph (d) would state that except for benefits listed in paragraphs (b)(6) and (c)(3) and (4) of this section (related to beneficiary travel, CHAMPVA, and stipends, respectively), caregiver benefits under paragraphs (b) and (c) of § 71.40 would be effective upon approval and designation under § 71.25(f). We would make this change because it is generally not feasible or practicable to provide certain benefits offered to Primary and Secondary Family Caregivers retroactively. For example, respite care in current § 71.40(b)(1) and (c)(1) and (2) is generally limited in duration, furnished on an intermittent basis, and furnished for the purpose of helping a veteran continue to reside at home. See 38 U.S.C. 1720B. We note, that we do provide respite care if needed during the application process under § 71.25(d); however, it is limited to the period of initial caregiver instruction, preparation and training if participation would interfere with the provision of personal care services to the eligible veteran. Additionally, VA arranges and pays for respite care directly rather than reimbursing an applicant under § 71.25(d), or Family Caregiver under § 71.40(b)(1) and (c)(1) and (2). Furthermore, respite care is generally available to enrolled veterans under 38 U.S.C. 1720B. Similarly, it is not feasible to provide benefits under current paragraphs (b)(2) through (5) retroactively. Monitoring (*i.e.,* wellness contacts as proposed earlier in this rulemaking) under paragraph (b)(2) does not begin until the Family Caregiver is approved and designated. Continuing instruction, preparation and training, and ongoing technical support does not begin until the Family Caregiver has completed their initial training under § 71.25 and is approved and designated. We note, that the Caregiver Support Line is a service available to any caregiver, provided without charge, and provides caregivers with support such as information on assistance available from VA and local Caregiver Support Coordinators. Finally, counseling does not begin until the Family Caregiver is approved and designated because it is arranged by VA using the consult process (*i.e.,* referral to a provider) and not through a reimbursement model. We note that although counseling under § 71.40(b)(5) is provided upon the approval and designation of a Family Caregiver, § 71.50 provides certain counseling, training, and mental health services to certain family members of and caregivers veterans pursuant to 38 U.S.C. 1782. These benefits include consultation, professional counseling, marriage and family counseling, training, and mental health services when necessary in connection with the treatment of a disability for which a veteran is receiving treatment through VA; and a referral to an appropriate community provider when such need is not necessary in the connection with the treatment of a veteran.

Family Caregiver benefits such as beneficiary travel in current § 71.40(b)(6), enrollment in CHAMPVA in current § 71.40(c)(3), and a monthly stipend in current § 71.40(c)(4), can be provided retroactively based on the effective date of benefits specified in proposed paragraphs (d)(1) through (7) based on already-established payment and reimbursement processes. We note that beneficiary travel and CHAMPVA benefits would still be subject to the requirements in 38 CFR part 70 and 38 CFR 17.270 through 17.278, respectively, including application timelines. Proposed § 71.40(d) would state that caregiver benefits under paragraphs (b)(6) and (c)(3) and (4) are effective on the latest of the following dates: The date the joint application that resulted in approval and designation of the Family Caregiver is received by VA; the date the eligible veteran begins receiving care at home; the date the Family Caregiver begins providing personal care services to the eligible veteran at home; in the case of a new Family Caregiver applying to be the

Primary Family Caregiver for an eligible veteran, the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran (such that there is only one Primary Family Caregiver designated for an eligible veteran at one time); in the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran (such that there are no more than two Secondary Family Caregivers designated for an eligible veteran at one time); in the case of a current or previous Family Caregiver reapplying with the same eligible veteran, the day after the date of revocation or discharge under proposed § 71.45, or in the case of extended benefits under proposed § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which such Family Caregiver received caregiver benefits; and the day after the date a joint application is denied. These would be listed in proposed paragraphs (d)(1) through (7).

Proposed paragraphs (d)(1) and (2) would be similar to the first sentence in current paragraph (d)(1) and the second sentence in current paragraph (d)(2) that caregiver benefits are effective as of and retroactive to the date VA receives the signed joint application or on the date on which the eligible veteran begins receiving care at home, whichever date is later; but caregiver benefits are not provided until the Family Caregiver is designated as such. Additionally, as previously explained, we are proposing a new definition for joint application in § 71.15. This definition would describe the requirements for a joint application to be considered complete by VA to include all signatures. Therefore, the phrase ''signed joint application'' in current paragraph (d)(1) would be redundant since it would be encompassed in the proposed definition for joint application. Thus, we would use the phrase ''joint application'' in paragraph (d)(1). Furthermore, we would add new language to clarify that benefits would be based on the date the joint application ''that resulted in approval and designation of the Family Caregiver'' is received by VA. For example, if a joint application is received by VA on July 1st, that results in a denial on August 31st, and another joint application is received by VA on September 30th from the same applicants that results in approval and designation of the Family Caregiver, then the earliest benefits would be effective is September 30th. This is consistent with current practice and would prevent VA from providing benefits at an earlier date based on a previous joint application that did not result in the approval and designation of a Family Caregiver.

Proposed paragraph (d)(3) would address situations where the Family Caregiver may be institutionalized during the application process and does not begin providing personal care services to the eligible veteran until a later date. This would ensure that benefits are provided no earlier than the date that the Family Caregiver actually begins providing personal care services to the eligible veteran at home. This would also be consistent with the requirement that would be established in proposed § 71.25(f), which would condition approval and designation on the Family Caregiver providing the personal care services required by the eligible veteran.

Proposed paragraphs (d)(4) and (5) would address situations where an eligible veteran submits a new joint application with a different caregiver. In this situation, if approved, the replacement Family Caregiver would not begin to receive caregiver benefits until the day after the date of revocation or discharge of the replaced Family Caregiver. The effective date of benefits for the replacement Family Caregiver under these paragraphs would not be affected by a previous Family Caregiver's receipt of extended benefits. Accordingly, we propose to remove current § 71.45(b)(4)(ii) and (iii), which currently ensure there is no overlap in caregiver benefits in cases of replacement caregivers. Current paragraph (b)(4)(ii) explains that benefits for a Primary Family Caregiver who is revoked will terminate the day before the date a new Primary Family Caregiver is designated in the instance that the new Primary Family Caregiver is designated within 30 days after the date of revocation. Current paragraph (b)(4)(iii) further explains that 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, the benefits for the revoked Family Caregiver will terminate the day before the date the new Family Caregiver is designated. We would remove these paragraphs and instead allow for some benefit overlap in the case of extended benefit periods for Family Caregivers who have been revoked or discharged and a new Family Caregiver is designated. However, we still want to ensure that on any given day, no more than three Family Caregivers are designated for an eligible veteran, with no more than one Family Caregiver designated as a Primary Family Caregiver and no more than two Family Caregivers designated as a Secondary Family Caregiver for an eligible veteran for consistency with the proposed changes to § 71.25(a)(1) (which would require that ''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 and no more than two serving as Secondary Family Caregivers''). Proposed paragraph (d)(4) would provide that in the case of a new Family Caregiver applying to be the Primary Family Caregiver for an eligible veteran, the specified benefits would be effective for the new Primary Family Caregiver no earlier than the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran. For example, if a Primary Family Caregiver requests discharge from PCAFC as of July 1st under proposed § 71.45(b)(3), discussed further below, and receives a 30-day continuation of benefits pursuant to proposed § 71.45(b)(3)(iii)(A), discussed further below, the Primary Family Caregiver would receive 30 additional days of stipend benefits and other PCAFC benefits such as CHAMPVA, if applicable, through July 31st. If a new Family Caregiver applies and is designated as the new Primary Family Caregiver, the earliest possible effective date for benefits for the new Primary Family Caregiver would be July 2nd. Should the new Primary Family Caregiver be designated as the Primary Family Caregiver on July 2nd, the previous Primary Family Caregiver would still receive a stipend payment and other PCAFC benefits through July 31st. Similarly, proposed paragraph (d)(5) would provide that in the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, benefits would be effective for the new Secondary Family Caregiver no earlier than the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran. See the discussion in proposed § 71.45 regarding those instances in which we would provide extended benefits following revocation or discharge.

Proposed paragraph (d)(6) would address the situation where a current or

previous Family Caregiver reapplies and is approved and designated to be a Family Caregiver again for the same eligible veteran. Because we would provide 30- or 90-day extended benefit periods to Family Caregivers who are discharged for specified reasons (under proposed § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv)), if a previous Family Caregiver reapplies, they may already be receiving caregiver benefits for 30 or 90 days, and may have already received a lump sum stipend payment to cover such extended benefit period. Current Family Caregivers who are reapplying would also still be receiving caregiver benefits. In these situations, benefits resulting from the new joint application would begin the day after the date of revocation or discharge under § 71.45, or in the case of extended benefits under proposed § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which the Family Caregiver received caregiver benefits. For example, if a Primary Family Caregiver requests to be discharged as of September 30 under proposed § 71.45(b)(3) and receives 30-day continuation of benefits pursuant to proposed § 71.45(b)(3)(iii)(A), the Primary Family Caregiver would receive 30 additional days of stipend benefits and other PCAFC benefits such as CHAMPVA, if applicable, through October 30. If the Primary Family Caregiver submits a new joint application with the same eligible veteran, the earliest the Primary Family Caregiver may begin to receive benefits would be October 31 (*i.e.,* the day after the last date on which the Family Caregiver received caregiver benefits, which in this case would be 30 days from September 30).

Proposed paragraph (d)(7) would address the situation where more than one joint application is received by VA from the same veteran or servicemember. In this situation, the specified benefits would be effective no earlier than the day after the date of the denied joint application. We have found that the submission of multiple joint applications from the same veteran or servicemember results in a significant loss of efficiency through unnecessary duplication of resources and we believe this requirement would reduce the incentive for a veteran or servicemember, and individuals who apply to be his or her Family Caregiver, from submitting multiple joint applications before the first joint application received by VA is adjudicated.

§ 71.45 Revocation and Discharge of Family Caregivers

We would amend § 71.45 by restructuring and revising current paragraphs (a), (b), and (c), and adding new paragraphs (d), (e), and (f). These proposed changes are discussed in detail below.

The process for revocation and the extension of benefits to caregivers after revocation are described in current § 71.45. Current § 71.45 delineates between whether the revocation is initiated by the Family Caregiver, the eligible veteran or his or her surrogate, or VA. We propose to revise current § 71.45 to distinguish between revocation and discharge from PCAFC and would thus revise the title of this section to reflect that this section concerns ''Revocation and Discharge of Family Caregivers.''

As explained in each of the proposed paragraphs of § 71.45 below, we propose to distinguish between revocation and discharge. The term ''revocation'' is used in current § 71.45 in reference to all cases of removal from PCAFC, and is consistent with the terminology used in the governing statute (see 38 U.S.C. 1720G(a)(9)(C)(ii)(II), which refers to VA ''suspending or revoking'' a Family Caregiver's approval and designation). By referring to this process as ''revocation,'' it can be perceived by eligible veterans and Family Caregivers as punitive or corrective in nature. While some removals are the result of fraud or safety concerns, in most situations, revocation is based on improvement in the eligible veteran's condition such that the Family Caregiver is no longer needed, or is requested by the Family Caregiver or eligible veteran. In these and other situations, we believe it is appropriate to use term ''discharge,'' rather than ''revocation.'' The term ''discharge'' is commonly used in healthcare settings to describe the process that occurs when a patient no longer meets the criteria for the level of care being provided or when a patient is transferred to another facility or program to receive care. We believe this term is appropriate in situations where a Family Caregiver is removed from PCAFC due to the eligible veteran no longer meeting the eligibility requirements of the program (*e.g.,* based on improvement in the eligible veteran's condition), the death of the eligible veteran or Family Caregiver, institutionalization of the eligible veteran or Family Caregiver, or by the request of either the Family Caregiver or the eligible veteran, and we would revise § 71.45 accordingly. We would continue to use the term ''revocation'' in instances in which a Family Caregiver is removed from PCAFC ''for cause'' (to include instances of fraud, abuse, or safety concerns), noncompliance with program requirements, and certain cases of VA error. Revocation would apply to removals based on a VA error or a deliberate action or inaction on the part of the eligible veteran or Family Caregiver.

Additionally, with certain exceptions, we propose to add requirements for VA to provide a 60-day advanced notice in cases of revocation or discharge under this section. As discussed above in the context of proposed § 71.40, 60-day advanced notice requirements would also apply before a stipend payment is decreased as a result of a reassessment. While current § 71.45 provides a period of extended benefits in certain cases of revocation, it does not set forth measures to ensure advanced notice and an opportunity to contest VA's findings before a stipend decrease or revocation are effective. We believe providing advanced notice and opportunity to contest VA's findings before benefits are reduced or terminated would benefit both VA and eligible veterans and Family Caregivers. Although eligible veterans and Family Caregivers have the opportunity to dispute decisions made under PCAFC through the VHA clinical appeals process, we have heard concerns from former PCAFC participants who feel like they unfairly had their stipend decreased, were wrongly revoked from PCAFC, or lacked an opportunity to provide input into VA's clinical determinations surrounding stipend payments and revocation. By adding a requirement for advanced notice before stipend payment decreases and certain revocations and discharges, it is our hope that communication between VA and eligible veterans and their Family Caregivers would improve, and that PCAFC participants would have a better understanding of VA's decision-making process. The 60-day time frame would also provide the eligible veteran and Family Caregiver time to adapt and plan for a lower stipend payment or removal from PCAFC, as well as the opportunity to provide additional information to VA regarding its findings prior to VA issuing a final notice of its decision. We believe 60 days before a stipend is decreased or a Family Caregiver is revoked or discharged is an appropriate period of time for providing notice, as it would give eligible veterans and Family Caregivers a sufficient opportunity to dispute VA's findings, as appropriate, but would also ensure that benefits are not provided by VA for an

extended period of time when the participants are determined to be eligible at a lower stipend amount or no longer eligible for PCAFC. We would deviate from providing a 60-day advance notice in certain situations in proposed § 71.45, to include instances in which revocation is initiated by VA for cause (in proposed paragraph (a)(1)(i)), discharge based on death or institutionalization of the eligible veteran or Family Caregiver (in proposed paragraphs (b)(1)(i)(B) and (b)(2)), and discharge based on the request of the Family Caregiver or eligible veteran (in proposed paragraphs (b)(3) and (4)). We emphasize here that adding such advanced notice requirements would not affect the clinical nature of PCAFC or the benefits provided thereunder. PCAFC is a clinical benefit program and decisions under 38 U.S.C. 1720G are considered medical determinations (38 U.S.C. 1720G(c)(1)), and thus not appealable to the Board of Veterans' Appeals (38 CFR 20.104(b)). As such, 38 U.S.C. 1720G(c)(1) makes clear that all decisions made by VA under 38 U.S.C. 1720G affecting the furnishing of assistance or support are considered medical determinations and are thus only appealable through the VHA clinical appeals process.

We propose to revise current paragraph (a), which describes the process for revocation requested by a Family Caregiver, to instead address all instances of revocation under revised § 71.45. We would thus revise paragraph (a) by titling it ''Revocation of the Family Caregiver'' and adding new paragraphs (a)(1)(i)(A) through (D), (a)(1)(ii)(A) through (E), (a)(1)(iii), (a)(2)(i) through (iv), and (a)(3). As discussed further below, we propose to address discharge requested by a Family Caregiver in proposed paragraph (b)(3) of this section, and our discussion of that proposed paragraph outlines how we would revise the language in current § 71.45(a).

Proposed paragraph (a)(1), which we would title ''Bases for revocation of the Family Caregiver,'' would describe the bases for revocation of the Family Caregiver. In new paragraph (a)(1)(i), which we would title ''For Cause,'' we would explain that VA would revoke the designation of a Family Caregiver for cause when VA determines any of the following: The Family Caregiver or eligible veteran committed fraud under this part; the Family Caregiver neglected, abused, or exploited the eligible veteran; personal safety issues exist for the eligible veteran that the Family Caregiver is unwilling to mitigate; or the Family Caregiver is unwilling to provide personal care services to the eligible veteran or, in the case of the Family Caregiver's temporary absence or incapacitation, fails to ensure (if able to) the provision of personal care services to the eligible veteran. These would be listed in new paragraphs (a)(1)(i)(A) through (D). We believe it is appropriate to revoke a Family Caregiver's designation when it is based on fraud committed by the eligible veteran or Family Caregiver in order to maintain the integrity of PCAFC and ensure benefits are provided only to individuals who qualify for them. The other bases of revocation in paragraph (a)(1)(i) would list instances in which we believe revocation of the Family Caregiver's designation is warranted because the eligible veteran may be harmed or in an unsafe situation. As discussed further below, and in current § 71.45(b)(3) and (c), if the eligible veteran's safety is suspected to be at risk, VA will also take action to ensure his or her welfare. We note that the bases for revocation in proposed paragraph (a)(1)(i) are already covered by current § 71.45(b)(4)(i), which addresses fraud committed by the Family Caregiver and abuse and neglect of the eligible veteran by the Family Caregiver; § 71.45(b)(4)(iv), which addresses a Family Caregiver abandoning or terminating his or her relationship with the eligible veteran; and (c), which addresses other instances in which the eligible veteran or Family Caregiver no longer meet the requirements of part 71. In this rulemaking we propose to delineate and better distinguish these bases of revocation from other bases of revocation and discharge under revised § 71.45. For example, instead of referring just to a Family Caregiver's fraud, we would also reference fraud by the eligible veteran because both the eligible veteran and Family Caregiver must meet the requirements of 38 CFR part 71 to participate in PCAFC and receive benefits; thus, we believe it was an oversight to hold only Family Caregivers to this standard. We believe the addition of the eligible veteran would ensure that VA continues to be a good financial steward of the taxpayer's dollar by only providing benefits to individuals who are eligible for PCAFC. For example, if an eligible veteran performs a fraudulent action such as misrepresenting his or her need for personal care services, we believe it would be appropriate to revoke participation in PCAFC. Furthermore, the joint application is signed by both the eligible veteran and Family Caregiver and we believe that both parties are jointly responsible for being truthful with regard to their participation in PCAFC, and that fraud on the part of either the eligible veteran and Family Caregiver should not be tolerated. In addition to a Family Caregiver's abuse or neglect of an eligible veteran, we would also reference exploitation of the eligible veteran because abuse, neglect, and exploitation are commonly used together in the health care industry and by Federal and State agencies charged with protecting vulnerable populations. We note that these terms overlap such that neglect and exploitation may be considered types of abuse; however, because exploitation is so commonly tied to vulnerable populations, we propose to update our terminology in acknowledgement that the population being served by PCAFC is a vulnerable population. We also believe it is important to distinguish for purposes of revocation for cause those Family Caregivers who are unwilling to or fail (if able) to mitigate personal safety issues for the eligible veteran or provide personal care services to the eligible veteran. Unlike Family Caregivers described in other proposed paragraphs of this section, who are subject to revocation and discharge for other reasons, Family Caregivers meeting the criteria in proposed paragraphs (a)(1)(i)(C) and (D) pose a significant risk to the well-being of eligible veterans.

In new paragraph (a)(1)(ii), which we would title ''Noncompliance,'' we would state that except as provided in proposed § 71.45(f), VA would revoke the designation of a Family Caregiver when the Family Caregiver or eligible veteran are noncompliant with the requirements of part 71. Under this paragraph, noncompliance would mean: The eligible veteran does not meet the requirements of proposed § 71.20(a)(5), (6), or (7); the Family Caregiver does not meet the requirements of § 71.25(b)(2); failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to § 71.30; failure of the eligible veteran or Family Caregiver to participate in any wellness contact pursuant to § 71.40(b)(2); or failure to meet any other requirement of this part except as provided in paragraph (b)(1) or (2) of this section. These would be listed in new paragraphs (a)(1)(ii)(A) through (E). We believe it is appropriate to revoke the Family Caregiver's designation in these instances because noncompliance with the requirements of part 71 would be the direct result of a deliberate action or inaction on the part of the eligible veteran or Family Caregiver.

Terminating benefits in these instances would ensure that VA continues to be a good financial steward of the taxpayer's dollar by only providing benefits to individuals who are eligible for PCAFC. These provisions would also help ensure compliance with statutory and regulatory requirements, such as preventing duplicative personal care services (pursuant to current § 71.20(e) and proposed § 71.20(a)(5)), the eligible veteran receiving care at home (pursuant to current § 71.20(f) and proposed § 71.20(a)(6)), the eligible veteran receiving ongoing care from a primary care team (pursuant to current § 71.20(g) and proposed § 71.20(a)(7)), the Family Caregiver being a family member (as defined in 38 U.S.C. 1720G(d)(3) and pursuant to § 71.25(b)(2)), and participation in reassessments and wellness contacts in proposed § 71.30 and revised § 71.40(b)(2), respectively. With the exception of proposed paragraphs (a)(1)(ii)(C) and (D), these bases of revocation are already covered by current § 71.45(b)(4)(iv) and (c), but in this rulemaking we propose to delineate and better distinguish them from other bases of revocation and discharge under this section. Failure to meet the requirements of proposed § 71.20(a)(5), (6), and (7), and § 71.25(b)(2) would require deliberate non-compliance or other willful action or inaction that would result in either the eligible veteran or Family Caregiver no longer meeting the requirements of part 71. For example, this would include instances where the personal care services that would be provided by the Family Caregiver are provided to the eligible veteran by or through another person or entity, the eligible veteran refuses to receive care at home or ongoing care from a primary care team, or the Family Caregiver is no longer a family member or someone who lives with the eligible veteran. As previously discussed regarding proposed §§ 71.30 and 71.40(b)(2), we propose for participation in reassessments and wellness contacts to be mandatory, so we would add additional bases of revocation based on an eligible veteran's or Family Caregiver's failure to participate in either because such failure would result from deliberate action or inaction. Proposed paragraph (a)(1)(ii)(E) would authorize revocation in instances that the eligible veteran or Family Caregiver fail to meet any other requirement of part 71, except as set forth in proposed paragraphs (b)(1) and (2). We believe the other paragraphs of revised § 71.45, as proposed here, would account for all bases of revocation or discharge; however, we included this catch-all category in case there is a requirement under part 71 that is not otherwise accounted for to ensure that we have a clear basis to revoke a Family Caregiver's designation if the eligible veteran or Family Caregiver are found to be out of compliance with the requirements of part 71. We believe revocation on this basis would be appropriate to ensure that PCAFC is provided only to eligible veterans and Family Caregivers who meet the requirements of part 71. If we find that this basis for revocation is frequently relied upon, then we would consider proposing additional specific criteria for revocation or discharge under this section in a future rulemaking. For the aforementioned reasons, we believe revocation is reasonable if any of the requirements of proposed paragraphs (a)(1)(ii)(A) through (E) are met. We note that legacy participants and legacy applicants meeting the requirements of proposed § 71.20(b) and (c), respectively, would not be subject to proposed § 71.20(a), and their Family Caregivers therefore would not be revoked under proposed paragraph (a)(1)(ii)(A), but could be revoked based on paragraphs (a)(1)(ii)(B) through (E) during the one-year period beginning on the effective date of the rule. The Family Caregivers of legacy participants and legacy applicants could also have their designation revoked pursuant to proposed paragraphs (a)(1)(i) and (iii).

In proposed paragraph (a)(1)(iii), which we would title ''VA error,'' we would explain that except as provided in proposed § 71.45(f), VA will revoke the designation of the Family Caregiver if the Family Caregiver's approval and designation under part 71 was authorized because of an erroneous eligibility determination by VA. An example of such an error would be the mistaken designation of a Family Caregiver who is not a family member of the eligible veteran and who does not reside with the eligible veteran, when such error was an oversight by VA and not due to fraud or dishonesty on the part of the veteran or caregiver. It is VA's current practice to revoke the designation of a Family Caregiver when VA discovers that caregiver benefits were provided under part 71 as a result of an erroneous VA eligibility determination. These revocations are initiated by VA under current § 71.45(c) on the basis that the eligible veteran or Family Caregiver no longer meet the requirements of part 71. The current regulatory language does not explicitly capture revocations based on VA error (because the eligible veteran or Family Caregiver may have never met the requirements of part 71), so we would make this basis of revocation explicit in proposed paragraph (a)(1)(iii). We believe revocation on this basis would be appropriate to ensure that VA continues to be a good financial steward of the taxpayer's dollar by only providing benefits to individuals who are eligible for PCAFC.

We propose to add a new paragraph (a)(2), which we would title ''Revocation Date,'' to provide the effective dates for revocation for cause, non-compliance, and VA error. In proposed new paragraph (a)(2)(i), we would explain that if VA determines that the Family Caregiver or eligible veteran committed fraud under this part, the date of revocation will be the date the fraud began. If VA cannot identify when the fraud began, the date of revocation would be the earliest date that fraud is known by VA to have been committed, and no later than the date on which VA identifies that fraud was committed. For example, if VA determines that an eligible veteran or Family Caregiver committed fraud on the joint application when it was submitted, then the date of revocation would be the date of the joint application since the fraud was identified as having commenced during the application process prior to approval. If VA determines that the Family Caregiver or eligible veteran committed fraud at some later point following the approval and designation of the Family Caregiver, VA may determine the date of revocation to be the date on which the fraud is identified as having commenced. VA already makes fraud determinations and terminates benefits immediately in instances of fraud pursuant to current § 71.45(b)(4)(i) and (c). However, this has not been done consistently, with some facilities seeking to terminate benefits on the date the fraud commenced, and others seeking to terminate benefits when the fraud is discovered by VA. This proposed new paragraph would clarify the date of revocation when fraud is identified as having commenced sometime before it was actually discovered (*e.g.,* during the application process or at a later point before VA actually learns of it). Making the revocation effective retroactively would, as discussed further below, create an overpayment, allowing VA to initiate collections for benefits provided after the fraud commenced. We believe this is reasonable because fraud generally involves willful action taken to misrepresent facts and had such facts been accurately reported, benefits

would not have been provided in the first place. VA believes it is appropriate to remove a Family Caregiver's designation retroactively, if applicable, and recover overpayments because it adheres to fiscal stewardship. Additionally, VA has the authority to revoke a Family Caregiver's designation retroactively and recover overpayments to the date of revocation but has not consistently sought to apply this authority, and this proposed rule would clarify VA's authority. Furthermore, VA OIG has identified fraud as a program risk because of inaccurate program eligibility determinations and we are seeking to mitigate this risk by making explicit VA's authority to revoke a Family Caregiver's designation retroactively. VA OIG Report, Program of Comprehensive Assistance for Family Caregivers: Management Improvements Needed, Report No. 17–04003–222, dated August 16, 2018, p. 11.

Proposed new paragraph (a)(2)(ii) would set forth the effective date of revocation for all of the other ''for cause'' bases in proposed paragraphs (a)(1)(i)(B) through (D). In proposed new paragraph (a)(2)(ii), we would state that the date of revocation will be the date VA determines any of the criteria in proposed paragraphs (a)(1)(i)(B) through (D) has been met. In these instances, VA will revoke the Family Caregiver's approval and designation immediately upon such a determination. We believe this is appropriate as such knowing or willful actions clearly do not support the health and well-being of PCAFC participants. This would be generally consistent with the current regulation, which provides that ''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 [part 71].'' 38 CFR 71.45(c). Additionally, where VA determines that the Family Caregiver abused or neglected the eligible veteran, benefits also terminate immediately. Id. at § 71.45(b)(4)(i). Under proposed paragraphs (a)(2)(i) and (ii), VA would not provide advanced notice prior to the revocation or any extension of benefits. Because of the egregious nature of the actions that would support revocation for cause, we believe benefits should be terminated immediately. However, if the eligible veteran or Family Caregiver disagrees with VA's revocation for cause under this section, he or she would still have the opportunity to appeal the revocation through VHA's clinical appeals process.

In proposed paragraph (a)(2)(iii), we would state that in the case of revocation based on noncompliance under proposed paragraph (a)(1)(ii), revocation takes effect as of the effective date provided in VA's final notice. We would state that the effective date of revocation will be no earlier than 60 days after the date VA provides advanced notice of its findings to the eligible veteran and Family Caregiver. Advanced notice of findings would include the specific program requirements with which the eligible veteran or Family Caregiver are out of compliance. The 60-day advanced notice would provide the Family Caregiver or eligible veteran the opportunity to redress noncompliance prior to VA's issuance of a final notice of revocation, to the extent possible. Therefore, we would not provide a period of extended benefits in cases of revocation for noncompliance. If the Family Caregiver or eligible veteran does not come into compliance prior to VA's issuance of a final notice, then the Family Caregiver would forgo continued participation in PCAFC. Like with revocation for cause, if the eligible veteran or Family Caregiver disagrees with VA's revocation for noncompliance under this section, he or she could appeal the revocation through VHA's clinical appeals process.

In proposed paragraph (a)(2)(iv), we would explain that if VA determines the approval and designation of a Family Caregiver under this part was the result of VA error, the date of revocation would be the date of the error. If VA cannot identify when the error was made, the date of revocation would be the earliest date that the error is known by VA to have occurred, and no later than the date on which the error is identified. For example, if VA determines that an error was made on the date the joint application was received by VA, then the date of revocation would be the date the joint application was received since the error was identified as having occurred on that date. If VA determines that the error occurred at some later point following the approval and designation of the Family Caregiver, but cannot determine when it occurred, the date of revocation would be no later than the date on which the error is identified. We believe this would be reasonable to prevent VA from providing any more benefits to a Family Caregiver who is not eligible for PCAFC. As previously discussed with revocation due to fraud, VA has the authority to revoke a Family Caregiver's designation retroactively, if applicable, and recover overpayments. Like with other bases of revocation discussed above, if the eligible veteran or Family Caregiver disagrees with VA's determination regarding VA error, he or she could appeal the revocation through VHA's clinical appeals process.

In proposed paragraph (a)(3), which we would title ''Continuation of Benefits,'' we explain that caregiver benefits would continue for 60 days after the date of revocation in the case of VA error under proposed paragraph (a)(1)(iii) and that such benefits would be considered an overpayment. Paragraph (a)(3) would also state that VA will seek to recover overpayment of benefits under this paragraph as provided in § 71.47. This extended period of benefits would give the Family Caregiver time to adjust before benefits are terminated. In such cases, the Family Caregiver may have come to rely on the benefits that were authorized as a result of a VA error. However, this continuation of benefits would be an overpayment and thus subject to collection so we would allow a Family Caregiver to opt out of receiving the 60-day extension of benefits. As discussed below with respect to proposed § 71.47, collection of overpayments made under PCAFC occurs under existing procedures and authorities. Therefore, in the case of an overpayment under proposed paragraph (a)(3), the Family Caregivers would receive a notice of rights and obligations pursuant to a collection.

We propose to address all instances of Family Caregiver discharge in a revised paragraph (b) and would title it ''Discharge of the Family Caregiver.'' Therefore, the language in current paragraph (b) would be addressed in other paragraphs of this section or removed altogether. Current paragraphs (b)(1) and (2) would be addressed in proposed paragraph (b)(4)(i), current paragraph (b)(3) would be addressed in proposed paragraphs (b)(4)(iii) and (c), current paragraph (b)(4) would be addressed in proposed paragraphs (b)(4)(iv), (e), and (f), and current paragraphs (b)(4)(i) and (iv) would be addressed in proposed paragraphs (a)(1)(i) and (ii) and (a)(2). We would remove current paragraphs (b)(4)(ii) and (iii) and address the effective date of benefits for newly designated Family Caregivers in proposed § 71.40(d)(4) and (5), as discussed above.

We propose to revise paragraph (b) to establish all bases under which a Family Caregiver may be discharged due to: the eligible veteran no longer meeting the requirements of § 71.20 (except as specified elsewhere), and the eligible veteran's death or institutionalization; the death or institutionalization of the Family Caregiver; the request of the Family Caregiver; and the request of the eligible veteran or surrogate. These

would be provided in revised paragraphs (b)(1) through (4), respectively, as discussed further in this rulemaking.

In revised paragraph (b)(1), which we would title ''Discharge due to the eligible veteran,'' we would explain that except as provided in proposed § 71.45(f), the Family Caregiver will be discharged from PCAFC on the bases set forth in proposed paragraphs (b)(1)(i)(A) and (B). Paragraph (b)(1)(i)(A) would address discharge in cases where the eligible veteran is no longer eligible under proposed § 71.20 because of improvement in the eligible veteran's condition or otherwise. We would add an exception in this paragraph for those sections in proposed § 71.20 that would result in revocation of the eligible veteran's Family Caregiver due to noncompliance with proposed § 71.20(a)(5), (6), or (7), and for the circumstances described in proposed paragraph (b)(1)(i)(B). Other reasons that an eligible veteran would no longer be eligible under proposed § 71.20 would include, a change in the eligible veteran's service connection rating such that the eligible veteran no longer meets the criteria for a serious injury (as such term would be defined in proposed § 71.15), it would no longer be in the best interest of the individual to participate in PCAFC, or the eligible veteran no longer meets the requirements of proposed § 71.20(b) or (c) (*e.g.,* based on a change in the Primary Family Caregiver). We note that legacy participants and legacy applicants would be considered to meet the requirements of proposed § 71.20 for one year beginning on the effective date of the rule, and therefore their Family Caregivers would not be discharged under proposed paragraph (b)(1)(i)(A) within the one-year period beginning on the effective date of the rule, so long as they continue to meet the definitions of legacy participant and legacy applicant in proposed § 71.15. The Family Caregivers of legacy participants and legacy applicants could, however, be discharged based on other bases of discharge under proposed § 71.45(b) during the one-year period beginning on the effective date of the rule. Discharges by VA under proposed paragraph (b)(1)(i)(A) are already covered in current § 71.45(c) when an eligible veteran ''no longer meets the requirements of [part 71],'' including instances in which ''having the Family Caregiver is no longer in the best interest of the eligible veteran'' and when ''revocation is due to improvement in the eligible veteran's condition.'' We propose to characterize these removals as ''discharges,'' as discussed above, to more accurately characterize them in the context of PCAFC as a clinical benefit program. We believe this term is more appropriate in situations where a Family Caregiver is removed from PCAFC due to the eligible veteran no longer meeting the eligibility requirements of the program (*e.g.,* based on improvement in the eligible veteran's condition).

Additionally, a Family Caregiver would be discharged upon the death or institutionalization of the eligible veteran. These bases of discharge would be listed in proposed paragraph (b)(1)(i)(B). We note that discharge due to the eligible veteran in proposed paragraph (b)(1)(i)(A) would be based on a VA determination; however, discharge due to the death or institutionalization of the eligible veteran in proposed paragraph (b)(1)(i)(B) would primarily be based on VA receiving notification of the death or institutionalization of the eligible veteran. This is because, in the absence of notification, VA may not become aware of the death or institutionalization of an eligible veteran until a reassessment or monitoring (*i.e.,* wellness contact in proposed § 71.40(b)(2)) is conducted, which could be up to 180 days later. The frequency of reassessments in proposed § 71.30 would be annually, unless there is a clinical determination to conduct reassessments on a more or less frequent basis, and monitoring (*i.e.,* wellness contacts) in proposed § 71.40(b)(2) would be a minimum of once every 180 days. Thus, we would add a note to proposed paragraph (b)(1)(i)(B) stating that VA must receive notification of the death or institutionalization of an eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization of the eligible veteran. Furthermore, we would add that notification of institutionalization must indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization. This information would be relevant for purposes of establishing the discharge date in proposed paragraph (b)(1)(ii)(B), discussed further below. Notification to VA is essential to avoiding overpayments of benefits to the Family Caregiver that would subsequently be collected by VA.

Discharges by VA under proposed paragraph (b)(1)(i)(B) are already covered in current § 71.45(c), which specifically accounts for cases of ''death, or permanent institutionalization.'' As previously explained regarding proposed § 71.15, we would define institutionalization, and the bases of institutionalization set forth in VA's proposed definition of that term in proposed § 71.15 would be applied for purposes of discharge under proposed paragraph (b)(1)(i)(B). Because those bases are consistent with our current understanding of ''institutionalization'' under current § 71.45(c), discharge based on institutionalization under proposed paragraph (b)(1)(i)(B) would be generally consistent with our current practices. However, as discussed above in the context of proposed paragraph (b)(1)(i)(A), we propose to characterize these removals as ''discharges,'' to more accurately characterize them in the context of PCAFC as a clinical benefit program.

Proposed paragraph (b)(1)(ii), which we would title ''Discharge Date,'' would describe the discharge date for a Family Caregiver discharged due to the eligible veteran. In proposed paragraph (b)(1)(ii)(A), we would explain that in the case of discharge pursuant to proposed paragraph (b)(1)(i)(A), the discharge would take effect as of the effective date provided in VA's final notice. The effective date of the discharge would be no earlier than 60 days after VA provided advanced notice of its findings to the eligible veteran and Family Caregiver that the eligible veteran does not meet the requirements of § 71.20. Advanced notice of findings would include the basis upon which VA has made its determination that the individual is no longer eligible. The 60-day time frame prior to the effective date for discharge coupled with a 90-day timeframe for continued caregiver benefits after the date of discharge proposed in paragraph (b)(1)(iii), would permit the eligible veteran and Family Caregiver a reasonable adjustment time to adapt and plan for discharge from the program. The 60-day time frame would also give the eligible veteran and Family Caregiver the opportunity to provide additional information prior to VA issuing a final notice.

In proposed paragraph (b)(1)(ii)(B), we would explain that discharge pursuant to proposed paragraph (b)(1)(i)(B) would be effective the earliest of the following dates, as applicable: Date of death of the eligible veteran; date that institutionalization begins, if it is determined that the eligible veteran is expected to be institutionalized for a period of 90 days or more; or the date of the 90th day of institutionalization. These would be listed in proposed paragraphs (b)(1)(ii)(B)(*1*) through (*3*). In the case of an eligible veteran's death that is not preceded by institutionalization, the date of discharge would be the date of the

eligible veteran's death. We would explain that when it is determined that an eligible veteran is expected to be institutionalized for a period of 90 days or more, the eligible veteran and Family Caregiver will be discharged as of the date that institutionalization begins. Otherwise, we would explain that the Family Caregiver would be discharged on the 90th day of the eligible veteran being institutionalized. However, if the eligible veteran dies before the 90th day of institutionalization, the discharge would be effective on the date of the eligible veteran's death. We recognize that proposed paragraphs (b)(1)(ii)(B)(*2*) and (*3*) may appear to create an incentive for individuals to not notify VA if it is known at the time institutionalization begins that the eligible veteran is expected to be institutionalized for a period of 90 days or more; however, we note that there would be separate provisions for revocation due to fraud and associated retroactive revocation, as appropriate. Additionally, we believe that such notification (as would be required in proposed paragraph (b)(1)(i)(B)) is nonetheless important to ensure the well-being of eligible veterans. For instance, in a situation where it is known in advance that an eligible veteran will be institutionalized at a future date, notification would allow VA to take appropriate steps to ensure that the eligible veteran continues to receive appropriate care until the date of institutionalization. VA would not provide 60-day advance notice prior to discharge as a result of the death or institutionalization of the eligible veteran. We believe that death or institutionalization is a fact rather than a VA determination that would warrant an advanced 60-day notice. Thus, the date of discharge would be based on the applicable date in proposed paragraph (b)(1)(ii)(B). Additionally, VA would proactively provide notification to all PCAFC participants through an initial notification upon approval and designation of a Family Caregiver and regular notifications outlining the date of discharge should the eligible veteran die or be institutionalized. Furthermore, to the extent the eligible veteran or Family Caregiver disagrees with a discharge by VA pursuant to paragraphs (b)(1)(i)(B) and (b)(1)(ii)(B), the eligible veteran or Family Caregiver, as applicable, would still have the opportunity to appeal the discharge pursuant to VHA's clinical appeals process.

In new paragraph (b)(1)(iii), which we would title ''Continuation of Benefits,'' we would explain that caregiver benefits will continue for 90 days after the date of discharge in cases of discharge based on paragraph (b)(1)(i). While continuing benefits for 90 days after discharge is not contemplated under the authorizing statute, we have provided a 90-day extension of benefits under current § 71.45(c) in cases of revocation ''due to improvement in the eligible veteran's condition, death, or permanent institutionalization,'' as we believe it is an appropriate and compassionate way to interpret and enforce the law. 76 FR 26156 (May 5, 2011). We believe that this extended period of benefits supports Family Caregivers during their transition out of PCAFC. Particularly in the case of an unexpected death of an eligible veteran, the extended benefits period provides for a period of adjustment following their discharge from PCAFC and is generally consistent with current § 71.45(c).

In new paragraph (b)(2), which we would title ''Discharge due to the Family Caregiver,'' we would describe discharge due to the death or institutionalization of the Family Caregiver. Proposed paragraph (b)(2)(i) would state that, except as provided in § 71.45(f), a Family Caregiver will be discharged due to the death or institutionalization of the Family Caregiver. The term ''institutionalization'' in this paragraph would be defined in proposed § 71.15 and applied accordingly. Similar to the death or institutionalization of the eligible veteran, VA would primarily rely on receiving notification of the death or institutionalization of the Family Caregiver. This is because, in the absence of notification, VA may not become aware of the death or institutionalization of a Family Caregiver until a reassessment or monitoring visit (*i.e.,* wellness contact) is conducted, which could be up to 180 days later. The frequency of reassessments in proposed § 71.30 would be annually, unless there is a clinical determination to conduct reassessments on a more or less frequent basis, and monitoring visits (*i.e.,* wellness contacts) in proposed § 71.40(b)(2) would be a minimum of once every 180 days. Thus, we would add a note that VA must receive notification of the death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization of the Family Caregiver. Furthermore, we would add that notification of institutionalization must indicate whether the Family Caregiver is expected to be institutionalized for 90 or more days from the onset of institutionalization. This information would be relevant for purposes of establishing the discharge date in proposed paragraph (b)(2)(ii), discussed further below. This would be similar to the proposed note in proposed paragraph (b)(1)(i)(B). Notification to VA is essential to avoiding overpayments of benefits to the Family Caregiver that would subsequently be collected by VA. Additionally, notification would allow VA to take appropriate steps to ensure that the eligible veteran is safe and continues to receive appropriate care in the absence of the Family Caregiver.

In proposed paragraph (b)(2)(ii), which we would title ''Discharge Date,'' we would explain that the Family Caregiver would be discharged from PCAFC as of the earliest of the following dates: The date of death of the Family Caregiver; the date that the institutionalization begins, if it is determined that the Family Caregiver is expected to be institutionalized for a period of 90 days or more; or the date of the 90th day of institutionalization. These would be listed in proposed paragraphs (b)(2)(ii)(A) through (C) and applied in the same manner as described above regarding proposed paragraph (b)(1)(ii)(B). Again, we recognize that proposed paragraphs (b)(2)(ii)(B) and (C) may appear to create an incentive for individuals to not notify VA if it is known at the time institutionalization begins that the Family Caregiver is expected to be institutionalized for a period of 90 days or more; however, separate provisions for revocation due to fraud and retroactive revocation may be applied in such cases, as appropriate. VA would not provide a 60-day advanced notice of discharge as a result of the death or institutionalization of the Family Caregiver. We believe that death or institutionalization is a fact rather than a VA determination that would warrant an advanced 60-day notice. Thus, the date of discharge would be based on the applicable date in proposed paragraph (b)(2)(ii). Additionally, VA would proactively provide notification to all PCAFC participants through an initial notification upon approval and designation of a Family Caregiver and regular notifications outlining the date of discharge should the Family Caregiver die or be institutionalized. Furthermore, as noted above with respect to discharges under proposed paragraph (b)(1)(i)(B), to the extent the eligible veteran or Family Caregiver disagrees with a discharge by VA pursuant to paragraphs (b)(2)(i) and (ii), the eligible veteran or Family Caregiver,

as applicable, can appeal pursuant to VHA's clinical appeals process.

Current § 71.45(c) provides an extended period of benefits for 90 days in cases where ''revocation is due to improvement in the eligible veteran's condition, death, or permanent institutionalization'' (with certain exceptions). While the references to ''death'' and ''permanent institutionalization'' are not specific to the eligible veteran, that is how VA has applied the current regulations, such that there is currently no extended period of benefits in cases of a Family Caregiver's death or institutionalization. In paragraph (b)(2)(iii), which we would title ''Continuation of Benefits,'' we would continue with current practice in cases of a Family Caregiver's death, but continue caregiver benefits for 90 days after the date of discharge in paragraph (b)(2)(ii)(B) or (C) as a result of the Family Caregiver's institutionalization. Providing 90 days of extended benefits in cases of the Family Caregiver's institutionalization would support the Family Caregiver during their transition out of PCAFC at a time when they may be particularly vulnerable as a result of the institutionalization, especially if it is unexpected. As previously explained, while continuing benefits for this period of time is not contemplated under the authorizing statute, we have provided these benefits for an extended period of time under the current regulations pursuant to other bases of revocation, as we believe it is an appropriate and compassionate way to interpret and enforce the law. 76 FR 26156 (May 5, 2011). However, we would not provide a continuation of benefits when discharge is due to the death of the Family Caregiver. We believe it is reasonable to discontinue benefits and discharge a Family Caregiver as of the date of the Family Caregiver's death. We note that any benefits owed to the Family Caregiver prior to his or her death would continue to be provided as is our current practice (*e.g.,* the monthly stipend for Primary Family Caregivers provided in the current or previous month). The same rationale that supports an extended period of benefits in other instances of discharge (*e.g.,* to support the Family Caregiver as he or she transitions out of PCAFC) does not apply in cases of the Family Caregiver's death.

In new paragraph (b)(3), which we would title ''Discharge of the Family Caregiver by request of the Family Caregiver,'' we would describe discharge of the Family Caregiver by request of the Family Caregiver and in paragraph (b)(3)(i) we would explain that except as provided in proposed § 71.45(f), a Family Caregiver would be discharged at the request of the Family Caregiver for discharge of his or her caregiver designation. Paragraph (b)(3)(i) would further provide that the request may be made verbally or in writing and must provide the present or future date of discharge. We would also explain that if the discharge request is received verbally, VA will provide to the Family Caregiver written confirmation of receipt of the verbal discharge request and the effective date of discharge. We would also state that VA will notify the eligible veteran verbally and in writing of the request for discharge and the effective date of discharge. In proposed paragraph (b)(3)(ii), which we would title ''Discharge Date,'' we would state the date of discharge will be the present or future date of discharge provided by the Family Caregiver. Such paragraph would further provide that if the request does not include an identified date of discharge, VA would contact the Family Caregiver to request a date. If unable to successfully obtain this date, discharge would be effective as of the date of the request. We believe this is reasonable as in such circumstances VA would be unable to know if the Family Caregiver is continuing to provide personal care services to the eligible veteran after the request for discharge is received. We note that if VA's efforts to contact the Family Caregiver to obtain a date of requested discharge are subsequently successful, VA would correct the date of discharge to reflect the past or future date the Family Caregiver identifies as the date the caregiver did or will cease to provide personal care services to the eligible veteran. However, in the case that VA in unable to successfully obtain a date of requested discharge, using the date of the request for discharge rather than a future date would prevent VA from having to recover an overpayment if the Family Caregiver stops providing personal care services prior to a future date assumed by VA.

Most of the language in proposed paragraphs (b)(3)(i) and (ii) would be generally consistent with current § 71.45(a) and our current practices. However, we would allow caregivers to make a discharge request verbally as well as in writing, because we often receive verbal revocation requests from Family Caregivers, and the current regulation does not address whether the Family Caregiver is able to request revocation verbally. It currently states that the Family Caregiver may request revocation in writing but does not require it be in writing and does not explicitly prohibit a verbal request. 38 CFR 71.45(a). We now propose to clarify that we will accept a request for revocation in writing or verbally. We have found that written requests sent via mail can be time consuming for Family Caregivers and there is potential for such requests to get lost in transit. Requiring written notification can be burdensome on the Family Caregiver and can result in delays in VA receiving such requests, creating the potential for overpayment of caregiver benefits. Allowing the Family Caregiver to request discharge verbally would improve efficiency and result in less burden on Family Caregivers. In proposed paragraph (b)(3)(i), we would clarify that in instances when we receive a verbal revocation request from the Family Caregiver, we would provide to the Family Caregiver written confirmation of receipt of the verbal revocation request, as we would want to document receipt of the verbal request. The current language in § 71.45(a) states that VA will notify the eligible veteran verbally and in writing of the request for revocation, and that would also be included in new paragraph (b)(3)(i).

Other language in current § 71.45(a) would either be removed or addressed in other sections of revised § 71.45. In particular, the current language in § 71.45(a) concerning the Family Caregiver's transition to alternative health care coverage and mental health services would be addressed in proposed paragraph (e). Additionally, the current language that ''[a]ll caregiver benefits will continue to be provided to the Family Caregiver until the date of revocation,'' would be addressed in proposed paragraph (a)(2). We note that this language would not be provided in proposed paragraph (b) which addresses discharge of the Family Caregiver (to include a Family Caregiver's request for discharge) because as discussed below, Family Caregivers generally would receive continuation of benefits after the date of discharge.

Additionally, current § 71.45(a) states that the date of revocation is the present or future date provided by the Family Caregiver. It does not, however, specify the applicable revocation date when the Family Caregiver does not provide one. Therefore, for the reasons outlined above, in proposed paragraphs (b)(3)(i) and (ii), we would clarify that in these cases, VA would contact the Family Caregiver to request that a date be provided, and specify that if the Family Caregiver does not provide a date, discharge would be effective as of the date of the request by the Family Caregiver.

In proposed paragraph (b)(3)(iii), which we would title ''Continuation of Benefits,'' we would set forth periods

for extended benefits in cases of discharge requested by the Family Caregiver. Proposed paragraph (b)(3)(iii)(A) would explain that, except as provided for in paragraph (b)(3)(iii)(B) of this section, caregiver benefits will continue for 30 days after the date of discharge. We believe 30 days is a reasonable period of time for a Family Caregiver to receive extended benefits following discharge. This is the same period of extended caregiver benefits under current § 71.45(b)(4) in cases where an eligible veteran or surrogate requests revocation of the Family Caregiver. Current § 71.45(a) does not provide a period of extended benefits for a Family Caregiver requesting revocation, but we believe that adding one would support Family Caregivers as they transition out of PCAFC and would remedy the current inequity between current § 71.45(a) and (b)(4). Currently, if a Family Caregiver and eligible veteran both desire for the Family Caregiver's designation to be revoked, the Family Caregiver may or may not receive a 30-day period of extended benefits, depending only on which of them—the Family Caregiver or eligible veteran—makes the revocation request. We have found that in many cases, it is a mutual decision for the Family Caregiver's designation to be revoked. We would remedy this inequity and promote consistency by adding a 30-day period of extended benefits for the Family Caregiver in instances of both a Family Caregiver's and eligible veteran's or surrogate's request for discharge.

In proposed paragraph (b)(3)(iii)(B), we would describe the process for continuing benefits for a Family Caregiver requesting discharge due to DV or IPV, as those terms would be defined in proposed § 71.15. In proposed paragraph (b)(3)(iii)(B), we would explain that benefits would continue for 90 days after the date of discharge in instances where the Family Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver when any of the following can be established: The issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran; a police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (*e.g.,* physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist, or counselor. We have found that oftentimes, a caregiver may remain in a DV or IPV situation due to financial concerns. They may choose to not leave such a situation because doing so would result in financial insecurity, including loss of caregiver benefits such as the stipend payment and health care benefits. We propose to extend caregiver benefits for a period of 90 days after discharge in such instances where there is DV or IPV perpetrated by the eligible veteran against the Family Caregiver and the designated Family Caregiver requests removal from the Program. We do not want to encourage caregivers to remain in such situations and we believe that continuing to provide caregiver benefits for a period of 90 days is reasonable as this would help to mitigate concerns about the loss of the monthly caregiver stipend and health care benefits after the caregiver transitions away from his or her caregiver responsibilities. The 90-day period of extended benefits would also give the caregiver time to seek alternative health care coverage and mental health services, as needed, before caregiver benefits are discontinued. We believe 90 days is reasonable, as it is consistent with the extension of caregiver benefits that we provide to caregivers in other circumstances under current § 71.45(c). In order to provide this extended benefit period, we would require that at least one of the following be provided as documentation that the request for discharge is due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver: Issuance of a protective order, to include interim, temporary and/or final protective orders; police report indicating DV or IPV or a record of an arrest related to DV or IPV; or documentation of disclosure of DV or IPV to a treating provider (*e.g.,* physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, IPVAP Coordinator, therapist, or counselor. These would be listed in new paragraphs (b)(3)(iii)(B)(*1*) through (*3*). We would require this documentation to ensure that individuals do not take advantage of these continued benefits and that we are being good stewards of the taxpayers' dollars. We note that the disclosure of DV or IPV can be to clinical staff through counseling, routine care, or otherwise. Additionally, we note that the terminology used for protective orders may vary by state (*e.g.,* order of protection, restraining order, injunction for protection), and we intend for this proposed paragraph to include any such order issued pursuant to state law for the protection of a victim of DV or IPV.

In revised paragraph (b)(4), which we would title ''Discharge of the Family Caregiver by request of the eligible veteran or eligible veteran's surrogate,'' we would describe discharge of a Family Caregiver by request of the eligible veteran or eligible veteran's surrogate. Current paragraph (b) describes revocation in instances in which the eligible veteran or eligible veteran's surrogate requests revocation of a Family Caregiver's designation. Currently, such requests must be made in writing, and VA will notify the Family Caregiver of such request and review the request within 30 days. Family Caregiver benefits currently continue for 30 days after the date of revocation unless an exemption applies such as fraud, abuse, neglect, abandonment, and certain replacement caregivers. See current § 71.45(b)(1) through (4). In revised paragraph (b)(4), we would use some of the language from current paragraphs (b)(1) through (3) of § 71.45 but further update it. We would also incorporate portions of current paragraph (b)(4) of § 71.45, but other provisions of current paragraph (b)(4), including (b)(4)(i) through (iv) would be addressed elsewhere in § 71.45 or removed as discussed further above.

In proposed paragraph (b)(4)(i), we would state that except as provided in § 71.45(f), the Family Caregiver will be discharged from PCAFC by request of the eligible veteran or the eligible veteran's surrogate, and that the discharge request may be made verbally or in writing and must express an intent to remove the Family Caregiver's approval and designation. We would further state that if the discharge request is received verbally, VA will provide to the eligible veteran written confirmation of receipt of the verbal discharge request and effective date of discharge. VA would also notify the Family Caregiver verbally and in writing of the request for discharge and the effective date of discharge. We believe allowing discharge requests to be made verbally or in writing is necessary because we often receive verbal revocation requests from individuals, including the eligible veteran or eligible veteran's surrogate. For example, there have been instances when the veteran or surrogate informs us of a request to remove the designation of the eligible veteran's

designated Primary Family Caregiver and apply with a different Family Caregiver. Under the current regulations, we are unable to process or confirm this request for discharge until the veteran or surrogate provides the request in writing. We have found that written requests sent via mail can be time consuming for eligible veterans and eligible veterans' surrogates, and there is potential for such requests to get lost in transit. Requiring written notification can be burdensome on the eligible veteran or eligible veteran's surrogate and can result in delays in VA receiving such requests, creating the potential for overpayments of benefits. Allowing eligible veterans and eligible veterans' surrogates to verbally request discharge would improve efficiency and result in less burden on eligible veterans and eligible veterans' surrogates.

In proposed paragraph (b)(4)(ii), which we would title ''Discharge Date,'' we would state that the date of discharge will be the present or future date of discharge provided by the eligible veteran or eligible veteran's surrogate. Such paragraph would further provide that if the request does not provide a present or future date of discharge, VA will ask the eligible veteran or eligible veteran's surrogate to provide one, and if VA is unable to successfully obtain this date, discharge would be effective as of the date of the request. As stated above with respect to proposed paragraphs (b)(3)(i) and (ii), we believe that making discharge effective the date of the request is reasonable because VA would be unable to know if the Family Caregiver is continuing to provide personal care services to the eligible veteran after a request for discharge is received. We note that if VA's efforts to contact the eligible veteran or eligible veteran's surrogate to obtain a date of requested discharge is subsequently successful, VA would correct the date of discharge to reflect the past or future date the eligible veteran or eligible veteran's surrogate identifies as the date the Family Caregiver did or will cease to provide personal care services to the eligible veteran. However, in the case that VA is unable to successfully obtain a date of requested discharge, using the date of the request rather than a future date would prevent VA from having to recover an overpayment if the Family Caregiver stops providing personal care services prior to a future date assumed by VA.

In revised paragraph (b)(4)(iii), which we would title ''Rescission,'' VA would allow the eligible veteran or eligible veteran's surrogate to rescind the discharge request and have the Family Caregiver reinstated if the rescission is made within 30 days of the date of discharge. This would be generally consistent with language in current paragraph (b)(3). However, we would remove the language stating that VA will review the request for revocation and that the review will take no longer than 30 days. VA has found that it is not uncommon for an eligible veteran to request discharge of his or her Family Caregiver as a result of an argument followed by a request to rescind the request a few days later. Therefore, VA believes it may not always be necessary or appropriate to conduct a review as a result of a request by an eligible veteran or his or her surrogate. Instead of referring to a formal review, proposed paragraph (b)(4)(iii) would refer to a 30-day period for an eligible veteran or eligible veteran's surrogate to rescind the discharge request. Additionally, to the extent VA believes a formal review or other intervention is required, VA could conduct a wellness contact under proposed § 71.40(b)(2) or reassessment under proposed § 71.30, as appropriate. Additionally, we would add that if the eligible veteran or eligible veteran's surrogate expresses a desire to reinstate the Family Caregiver more than 30 days from the date of discharge, a new joint application would be required. This is consistent with current practice.

In revised paragraph (b)(4)(iv), which we would title ''Continuation of Benefits,'' we would provide for 30 days of continued caregiver benefits after the date of discharge as we believe this is fair, reasonable, and compassionate, and allows for a period of transition out of the PCAFC for the caregiver. Additionally, providing caregiver benefits for 30 days after the date of discharge would be consistent with the current transition period following revocation initiated by the eligible veteran or eligible veteran's surrogate. See current § 71.45(b)(4) which provides for 30 days of caregiver benefits after the date of revocation except in limited circumstances as set forth in current § 71.45(b)(4)(i) through (iv).

As discussed above, other provisions of current § 71.45(b) not addressed in proposed paragraph (b)(4) would be addressed in other paragraphs of this section. For example, proposed paragraph (f) would address situations where there are multiple bases of revocation or discharge like in current § 71.45(b)(4), proposed paragraph (c) would address the safety and welfare of eligible veterans like in current § 71.45(b)(3), assistance regarding the Family Caregiver's transition to alternative health care coverage and mental health services addressed in current § 71.45(b)(4) would be addressed in proposed paragraph (e), and current § 71.45(b)(4)(i) and (iv) would be addressed in proposed paragraphs (a)(1)(i) and (ii) and (a)(2) in the context of revocation.

We propose to revise paragraph (c), which currently describes the process for revocation by VA and extension of benefits in limited circumstances. Current paragraph (c) explains that VA may revoke a Family Caregiver's designation immediately if the eligible veteran or Family Caregiver no longer meets the requirements of part 71 or if VA makes the clinical determination that having the Family Caregiver is no longer in the best interest of the eligible veteran. Additionally, current paragraph (c) explains that VA will, if requested by the Family Caregiver, assist him or her in transitioning to alternative health care coverage and mental health services. Current paragraph (c) also explains that if VA revokes the Family Caregiver's designation due to improvement in the eligible veteran's condition, death, or permanent institutionalization, VA will provide the Family Caregiver with continued benefits for 90 days unless any of the conditions in current paragraphs (b)(4)(i) through (iv) of this section are met, and that bereavement counseling may be available pursuant to 38 U.S.C. 1783. Further, current § 71.45(c) provides that if VA suspects the eligible veteran's safety is at risk, VA may suspend the caregiver's responsibilities and remove the eligible veteran from the home or take any other appropriate action, prior to making a formal revocation.

We would revise paragraph (c) to state that if VA suspects the eligible veteran's safety is at risk, VA may suspend the caregiver's responsibilities and facilitate appropriate referrals to protective agencies or emergency services if needed, to ensure the welfare of the eligible veteran, prior to initiating discharge or revocation. This would be similar to the language in the last sentence of current paragraph (c) and the last sentence of current paragraph (b)(3); however, we would replace the phrase ''remove the eligible veteran from the home if requested by the eligible veteran or take other appropriate action'' with ''facilitate appropriate referrals to protective agencies or emergency services if needed,'' and we would replace the phrase ''prior to making a formal revocation'' with ''prior to discharge or revocation.'' We believe the language in proposed paragraph (c) better describes the appropriate protocol and response when VA suspects the eligible veteran's

safety and welfare is at risk because VA does not have the authority to remove an eligible veteran from the home. Rather, VA refers to local or state protective service agencies and emergency services with authority to remove and place an eligible veteran in a safe setting. Also, we would maintain consistency with the proposed changes in this section by replacing ''prior to making a formal revocation'' with ''prior to discharge or revocation.''

Other portions of current § 71.45(c) are addressed in other proposed paragraphs of this section. For example, the determination that the eligible veteran no longer meets the requirements of part 71, and the improvement in the veteran's condition, death, or institutionalization are addressed in proposed paragraphs (a)(1) and (b)(1). The language in current paragraph (c) regarding VA revocation when the Family Caregiver no longer meets the requirements of part 71 would be addressed in proposed paragraphs (a)(1) and (b)(2). Additionally, the current language in paragraph (c) relating to revocation in the instance that having the Family Caregiver is no longer in the best interest of the eligible veteran would be addressed in proposed paragraph (b)(1)(i). Furthermore, the language in current paragraph (c) relating to bereavement counseling and assistance with transitioning to alternative health care coverage and mental health services would be addressed in proposed in new paragraph (e).

In new paragraph (d), we would state that VA will seek to recover overpayments of benefits provided under this section, as provided in proposed § 71.47. We believe recovery of overpayments of benefits would be reasonable, is within VA's authority, and would ensure we are being a good steward of the taxpayer's dollar. Overpayments may result in cases of revocation for fraud pursuant to the revocation date in proposed paragraph (a)(2)(i) if fraud is determined to have commenced sometime before VA actually learned of it. Overpayments may also result pursuant to the discharge dates in proposed paragraphs (b)(1)(ii)(B) and (b)(2)(ii) if VA is not informed of an eligible veteran's or Family Caregiver's death or institutionalization in a timely manner. Additionally, overpayment may result due to VA error under proposed paragraph (a)(2)(iv), including after a Family Caregiver has already been revoked or discharged under proposed paragraph (a)(3). For example, if a Primary Family Caregiver is revoked on July 1st, but due to a VA error, stipend payments continue to be provided to the Primary Family Caregiver for an additional 60 days, VA would recover the overpayments back to the date of revocation (July 1st) as well as back to any previous date on which the error is known to have been made. In addition to overpayments that result in a caregiver being erroneously approved and designated as a Family Caregiver under proposed paragraph (a)(1)(iii), overpayments can also result from other VA errors. For example, if a Primary Family Caregiver is discharged pursuant to proposed paragraph (b)(1)(i)(B) and receives an additional 90 days of benefits, but as the result of a VA error, the Primary Family Caregiver continues to receive a monthly stipend payment beyond the 90 days, VA would recover the overpayments that should not have been made. We note that proposed paragraph (d) would not modify or expand VA's legal authority to initiate collections but would help ensure that PCAFC participants are on notice of the potential for collections actions by VA under this section.

In new paragraph (e), we would state that VA will, if requested and applicable, assist the Family Caregiver in transitioning to alternative health care coverage and mental health services. This would be consistent with similar language in current § 71.45(b)(4) and (c). Also, new paragraph (e) would state that in cases of death of the eligible veteran, bereavement counseling may be available under 38 U.S.C. 1783. This would be consistent with similar language in current § 71.45(c).

In new paragraph (f), which we would title ''Multiple bases for revocation or discharge,'' we would explain that in the instance that a Family Caregiver may be both discharged pursuant to any of the criteria in paragraph (b) of this section and have his or her designation revoked pursuant to any of the criteria in paragraph (a) of this section, the Family Caregiver's designation would be revoked pursuant to paragraph (a). If VA finds that a situation warrants revocation of a Family Caregiver's designation, VA would revoke the Family Caregiver's designation and discontinue benefits as set forth in proposed paragraph (a) regardless of whether there may be another reason to discharge the Family Caregiver under proposed paragraph (b). For example, if an eligible veteran or Family Caregiver is requesting discharge under proposed paragraphs (b)(3) or (4) in order to avoid being revoked for fraud under proposed paragraph (a)(1)(i)(A), VA would revoke the Family Caregiver designation pursuant to proposed paragraph (a)(1)(i)(A) and the revocation would be effective on the date set forth in proposed paragraph (a)(2)(i), not the discharge date specified by the eligible veteran or Family Caregiver in their request for discharge. Similarly, if a Family Caregiver requests discharge from PCAFC or an eligible veteran requests that a Family Caregiver be discharged from PCAFC, but VA also determines the Family Caregiver ceased to provide personal services because of the Family Caregiver's unwillingness to provide personal care services prior to the requested discharge date, VA would revoke the Family Caregiver's designation pursuant to proposed paragraph (a)(1)(i)(D) and the revocation would be effective on the date set forth in proposed paragraph (a)(2)(ii), not the discharge date specified by the eligible veteran or Family Caregiver in their request for discharge. In these situations, the Family Caregiver would receive benefits only until the date of revocation. Another example is the determination of whether the institutionalization of a Family Caregiver would result in discharge under paragraph (b)(2) or revocation under paragraph (a)(1)(i)(D). The determining factor would be if the Family Caregiver, if able to, has taken measures to ensure the personal care services of the eligible veteran are adequately addressed through alternative means (referenced in proposed paragraph (a)(1)(i)(D)). We note that depending on the circumstances, the Family Caregiver may not be able to take such measures such as in the case of emergency hospitalization in which the Family Caregiver is incapacitated, in which case VA would discharge the Family Caregiver in accordance with proposed paragraph (b)(2), as appropriate.

Additionally, we would also explain in proposed paragraph (f) what basis of revocation would apply in the instance that there are multiple bases of revocation. If the designation of a Family Caregiver may be revoked pursuant to proposed paragraph (a)(1)(i) and proposed paragraph (a)(1)(ii) or (iii), the designation of the Family Caregiver would be revoked pursuant to proposed paragraph (a)(1)(i). For example, if VA can revoke the Family Caregiver's designation because of noncompliance, but the Family Caregiver is also found to have committed fraud in his or her application for benefits under this part, VA would revoke the Family Caregiver's designation pursuant to proposed paragraph (a)(1)(i)(A) instead of proposed paragraph (a)(1)(ii). In such circumstances, the revocation would be effective on the date of the Family

Caregiver's application pursuant to proposed paragraph (a)(2)(i), not after a period of 60 days advanced notice as would be the case for revocation based on noncompliance pursuant to proposed paragraph (a)(2)(iii). We believe this is fair and equitable and ensures VA continues to be a good steward of the taxpayer's dollar. In the instance that the designation of a Family Caregiver may be revoked under proposed paragraphs (a)(1)(ii) and (iii) of this section, the designation of the Family Caregiver would be revoked pursuant to proposed paragraph (a)(1)(iii). For example, if the eligible veteran or Family Caregiver fail to participate in reassessments or monitoring visits (*i.e.,* wellness contacts), but VA also discovers an error in the initial eligibility determination, such that the individuals were never eligible for PCAFC, VA would revoke the Family Caregiver's designation based on proposed paragraph (a)(1)(iii) and benefits would be terminated retroactively back to the date of the initial eligibility determination.

Moreover, we would also explain in proposed paragraph (f) what basis of discharge would apply in the instance that there are multiple bases of discharge. While VA may receive simultaneous requests or notifications for discharge for more than one discharge reason; we do not think this will happen frequently. Nonetheless, under such circumstances, we would apply whichever discharge reason is more favorable to the Family Caregiver because we believe this is the most supportive to the Family Caregiver. For example, if the eligible veteran notifies VA that he or she wants to have the Family Caregiver discharged on July 7th pursuant to proposed paragraph (b)(4) of this section which would result in 30-day extension of benefits to the Family Caregiver, but the Family Caregiver also notifies VA that he or she wants to be discharged from PCAFC on July 7th due to DV or IPV pursuant to proposed paragraph (b)(3)(iii)(B), then VA would discharge the Family Caregiver pursuant to proposed paragraph (b)(3)(iii)(B) so long as DV or IPV is established, and the Family Caregiver would receive a 90-day extension of benefits.

§ 71.47 Collection of Overpayment

In § 71.47, we propose a new section to address VA's collection of overpayments made under PCAFC and the authority relied upon by VA for collection activity. Overpayments are most likely to occur based on the requirements of current and proposed §§ 71.40 and 71.45. However, because it is difficult to identify all possible scenarios under which an overpayment may be issued, § 71.47 will serve as a ''catch-all'' to ensure VA does not inadvertently preclude itself from taking collection activity against other overpayments not otherwise explicitly provided for in part 71. Under proposed § 71.47, any collection activity would be conducted in accordance with the FCCS. VA follows FCCS in its collection activities. Proposed § 71.47 would ensure PCAFC collection is consistent with existing procedures and authorities. FCCS also authorizes VA to analyze its collection activities and make case-by-case determinations on individual debts as appropriate. By way of example, FCCS authorizes VA to terminate collection of a debt for which the costs of recovery will exceed collections. Additionally, FCCS authorizes VA to forego collection action for *de minimis* debts. We anticipate certain overpayments may be nominal, and FCCS permits VA the flexibility to make determinations on collection activities in accordance with applicable law, rule, and policy.

Technical Edits

We would make a technical edit to §§ 71.10 through 71.40, and 71.50. We would remove the statutory authority citations at the end of each of these sections and amend the introductory ''Authority'' section of part 71 to include the statutory citations listed in these sections that are not already provided in the ''Authority'' section of part 71 to conform with publishing guidelines established by the Office of the Federal Register. We note that current §§ 71.20 and 71.30 include a citation to 38 U.S.C. 1720G(a)(2) and 1720G(b)(1), (2), respectively. However, we would reference 38 U.S.C. 1720G, not specific subsections and paragraphs. We would also add a reference to 31 U.S.C. 3711, which pertains to collections; 38 U.S.C. 5302, which pertains to waiver of benefits overpayments; and 38 U.S.C. 5314, which pertains to the offset of benefits overpayments. These references would be added for purposes of proposed § 71.47, Collection of Overpayment.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not conduct or sponsor the collection of information, unless it displays a currently valid control number from the Office of Management and Budget (OMB). This proposed rule contains provisions that would constitute a revised collection of information under 38 CFR 71.25, which is currently approved under OMB Control #2900–0768. The revised collections of information will be submitted to OMB for approval and also made available to the public for comment through a separate **Federal Register** (FR) document that will be published in the **Federal Register**. The FR document will provide the public with an opportunity to comment on the revised information collections associated with this proposed rulemaking. A final FR document will also be published in the **Federal Register** if and when the revised collections of information are approved by OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. We note that caregivers are not small entities. However, this proposed rule may directly affect small entities that we would contract with to provide financial planning services and legal services to Primary Family Caregivers; however, matters relating to contracts are exempt from the RFA requirements. We do not anticipate this proposed rule would have a significant economic impact on a substantial number of small entities. Any effects on small entities would be indirect. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Order 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is an economically significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48

hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

This rulemaking is likely to be considered an E.O. 13771 regulatory action if finalized. VA has determined that the net costs are $755.5 million over a five-year period (FY2020–FY2024) and $146 million per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits.

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Caregivers program, Claims, Health care, Health facilities, Health professions, Mental health programs, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 28, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 is revised to read as follows:

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.

■ 2. Amend § 71.10 by revising paragraph (b) and removing the authority citation at the end of the section.

The revision reads as follows:

§ 71.10 Purpose and scope.

* * * * *

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

■ 3. Amend § 71.15 by:

■ a. Removing the definition of ''Combined rate'';

■ b. Adding in alphabetical order definitions for ''Domestic violence (DV)'', ''Financial planning services'', and ''In need of personal care services'';

■ c. Redesignating in proper alphabetical order the definition of ''In the best interest'' and revising it;

■ d. Revising the definition of ''Inability to perform an activity of daily living (ADL)'';

■ e. Adding in alphabetical order definitions for ''Institutionalization'', ''Intimate partner violence (IPV)'', ''Joint application'', ''Legacy applicant'', ''Legacy participant'', ''Legal services'', and ''Monthly stipend rate'';

■ f. Removing the definition of ''Need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'';

■ g. Adding in alphabetical order definitions for ''Need for supervision, protection, or instruction'' and ''Overpayment'';

■ h. Revising the definitions of ''Primary care team'' and ''Serious injury'';

■ i. Adding in alphabetical order a new definition of ''Unable to self-sustain in the community''; and

■ j. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 71.15 Definitions.

* * * * *

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.

* * * * *

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.

* * * * *

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 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 number 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 [EFFECTIVE DATE OF FINAL RULE] and for whom a Family Caregiver(s) is approved and designated on or after [EFFECTIVE DATE OF FINAL RULE] so long as the Primary Family Caregiver approved and designated for the veteran or servicemember on or after [EFFECTIVE DATE OF FINAL RULE] 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 [EFFECTIVE DATE OF FINAL RULE] 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 [EFFECTIVE DATE OF FINAL RULE] so long as the Primary Family Caregiver approved and designated for the eligible veteran as of the day before [EFFECTIVE DATE OF FINAL RULE] (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after [EFFECTIVE DATE OF FINAL RULE] 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 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.

* * * * *

Primary care team means one or more VA medical professionals who care for a patient based on the clinical needs of the patient.

* * * * *

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.

* * * * *

■ 4. Revise § 71.20 to read as follows:

§ 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 on the date specified in a future **Federal Register** document, on or before May 7, 1975; or

(iii) Effective two years after the date specified in a future **Federal Register** document as described in paragraph (a)(2)(ii) of this section, 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 will not be simultaneously and regularly provided by or through another individual or entity.

(6) The individual receives care at home or will do so if VA designates a Family Caregiver.

(7) The individual receives ongoing care from a primary care team or will do so if VA designates a Family Caregiver.

(b) For one year beginning on [EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy participant.

(c) For one year beginning on [EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under this part if he or she is a legacy applicant.

■ 5. Amend § 71.25:

■ a. By revising paragraph (a);

■ b. In paragraph (c)(1) introductory text, by removing the phrase ''a VA primary care team'' and adding in its place ''VA''; and

■ c. By revising paragraphs (c)(1)(i) and (ii), (c)(2), (e), and (f); and

■ d. By removing the authority citation at the end of the section.

The revisions read as follows:

§ 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 submit 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 and no more than two serving as Secondary Family Caregivers.

(2)(i) Upon receiving such application, VA (in collaboration with the primary care team to the maximum extent practicable) will perform the evaluations required to determine the eligibility of the applicants under this part, and if eligible, determine the applicable monthly stipend amount under § 71.40(c)(4). Notwithstanding the first sentence, VA will not evaluate a veteran's or servicemember's eligibility under § 71.20 when a joint application is received to add a Secondary Family Caregiver for an eligible veteran who has a designated Primary Family Caregiver.

(ii) Individuals who apply to be Family Caregivers must complete all necessary eligibility evaluations (along with the veteran or servicemember), education and training, and the initial home-care assessment (along with the veteran or servicemember) so that VA may complete the designation process no later than 90 days after the date the joint application was received by VA. If such requirements are not complete within 90 days from the date the joint application is received by VA, the joint application will be denied, and a new joint application will be required. VA may extend the 90-day period based on VA's inability to complete the eligibility evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is solely due to VA's action.

(3)(i) Except as provided in this paragraph, joint applications received by VA before [EFFECTIVE DATE OF FINAL RULE] will be evaluated by VA based on 38 CFR 71.15, 71.20, and 71.25 (2019). Notwithstanding the previous sentence, the term ''joint application'' as defined in § 71.15 applies to applications described in this paragraph.

(ii) Joint applications received by VA on or after [EFFECTIVE DATE OF FINAL RULE] will be evaluated by VA based on the provisions of this part in effect on or after [EFFECTIVE DATE OF FINAL RULE].

(A) VA will deny any joint application of an individual described in § 71.20(a)(2)(ii), if such joint application is received by VA before the date published in a future **Federal Register** document that is specified in such section. A veteran or servicemember seeking to qualify for the Program of Comprehensive Assistance for Family Caregivers pursuant to § 71.20(a)(2)(ii) should submit a joint application that is received by VA on or after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii).

(B) VA will deny any joint application of an individual described in § 71.20(a)(2)(iii), if such joint application is received by VA before the date that is two years after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii). A veteran or servicemember seeking to qualify for the Program of Comprehensive Assistance for Family Caregivers pursuant to § 71.20(a)(2)(iii) should submit a joint application that is received by VA on or after the date that is two years after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii).

* * * * *

(c) * * *

(1) * * *

(i) Whether the applicant can communicate and understand the required personal care services 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 performing the required personal care services without supervision, in adherence with the eligible veteran's treatment plan in support of the needs of the eligible veteran.

(2) Complete caregiver training and demonstrate the ability to carry out the specific personal care services, core competencies, and additional care requirements.

* * * * *

(e) *Initial home-care assessment.* VA will visit the eligible veteran's home to assess the eligible veteran's well-being and the well-being of the caregiver, as well as the caregiver's competence to provide personal care services at the eligible veteran's home.

(f) *Approval and designation.* VA will approve the joint application and designate Primary and/or Secondary Family Caregivers, as appropriate, if the applicable requirements of this part are met. Approval and designation is conditioned on the eligible veteran and designated Family Caregiver(s) remaining eligible for Family Caregiver benefits under this part, the Family Caregiver(s) providing the personal care services required by the eligible veteran, and the eligible veteran and designated Family Caregiver(s) complying with all applicable requirements of this part, including participating in reassessments pursuant to § 71.30 and wellness contacts pursuant to § 71.40(b)(2). Refusal to comply with any applicable requirements of this part will result in revocation from the program pursuant to § 71.45, Revocation and Discharge of Family Caregivers.

§ 71.30 [Redesignated as § 71.35 and Amended]

■ 6. Redesignate § 71.30 as § 71.35 and remove the authority citation at the end of the section.

■ 7. Add a new § 71.30 to read as follows:

§ 71.30 Reassessment of Eligible Veterans and Family Caregivers.

(a) Except as provided in paragraphs (b) and (c) of this section, the eligible veteran and Family Caregiver will be reassessed by VA on an annual basis to determine their continued eligibility for participation in PCAFC under this part. Reassessments will include consideration of whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A).

Reassessment may include a visit to the eligible veteran's home.

(b) Reassessments may occur more frequently than annually if a determination is made and documented by VA that more frequent reassessment is appropriate.

(c) Reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary.

(d) Failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to this section will result in revocation pursuant to § 71.45, Revocation and Discharge of Family Caregivers.

(e)(1) If the eligible veteran meets the requirements of § 71.20(b) or (c) (*i.e.,* is a legacy participant or a legacy applicant), the eligible veteran and Family Caregiver will be reassessed by VA within the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE] to determine whether the eligible veteran meets the requirements of § 71.20(a). This reassessment may include a visit to the eligible veteran's home. If the eligible veteran meets the requirements of § 71.20(a), the reassessment will consider whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A).

(2) Notwithstanding paragraph (e)(1) of this section, a reassessment will not be completed under paragraph (e)(1) if at some point before a reassessment is completed during the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE] the individual no longer meets the requirements of § 71.20(b) or (c).

■ 8. Amend § 71.40 by revising paragraphs (b)(2), (c) introductory text, and (c)(4), adding paragraphs (c)(5) and (6), revising paragraph (d), and removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 71.40 Caregiver benefits.

* * * * *

(b) * * *

(2) Wellness contacts to review the eligible veteran's well-being, adequacy of personal care services being provided by the Family Caregiver(s), and the well-being of the Family Caregiver(s). This wellness contact will occur at a minimum of once every 180 days, and at least one visit must occur in the eligible veteran's home on an annual basis. Failure of the eligible veteran and Family Caregiver to participate in any wellness contacts pursuant to this paragraph will result in revocation pursuant to § 71.45, Revocation and Discharge of Family Caregivers.

* * * * *

(c) *Primary Family Caregiver benefits.* VA will provide to Primary Family Caregivers all of the benefits listed in paragraphs (c)(1) through (6) of this section.

* * * * *

(4) Primary Family Caregivers will receive a monthly stipend for each month's participation as a Primary Family Caregiver.

(i) *Stipend amount.* (A) Except as provided in paragraph (c)(4)(i)(C) of this section, if the eligible veteran meets the requirements of § 71.20(a), the Primary Family Caregiver's monthly stipend is the amount set forth in paragraph (c)(4)(i)(A)(*1*) or (*2*) of this section.

(*1*) The Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.625.

(*2*) If VA determines that the eligible veteran is unable to self-sustain in the community, the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00.

(B) Except as provided in paragraph (c)(4)(i)(C) of this section, for one year beginning on [EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(b) or (c), (*i.e.,* is a legacy participant or a legacy applicant), the Primary Family Caregiver's monthly stipend is calculated based on the clinical rating in 38 CFR 71.40(c)(4)(i) through (iii) (2019) and the definitions applicable to such paragraphs under 38 CFR 71.15 (2019). If the sum of all of the ratings assigned is:

(*1*) 21 or higher, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00.

(*2*) 13 to 20, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.625.

(*3*) 1 to 12, then the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 0.25.

(C) For one year beginning on [EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(a) and (b) or (c), the Primary Family Caregiver's monthly stipend is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) or (B) of this section, whichever is higher. If the higher monthly stipend rate is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) of this section, the stipend rate will be adjusted and paid in accordance with paragraph (c)(4)(ii)(C)(*2*)(*i*) of this section.

(D) *Special rule for Primary Family Caregivers subject to decrease because of monthly stipend rate.* Notwithstanding paragraphs (c)(4)(i)(A) through (C) of this section, for one year beginning on [EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(b), the Primary Family Caregiver's monthly stipend is not less than the amount the Primary Family Caregiver was eligible to receive as of the day before [EFFECTIVE DATE OF FINAL RULE] (based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on such date) so long as the eligible veteran resides at the same address on record with the Program of Comprehensive Assistance for Family Caregivers as of the day before [EFFECTIVE DATE OF FINAL RULE]. If the eligible veteran relocates to a different address, the stipend amount thereafter is determined pursuant to paragraph (c)(4)(i)(A), (B), or (C) of this section and adjusted in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Adjustments to stipend payments.*

(A) Adjustments to stipend payments that result from OPM's updates to the General Schedule (GS) Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides take effect as of the date the update to such rate is made effective by OPM.

(B) Adjustments to stipend payments that result from the eligible veteran relocating to a new address are effective the first of the month following the month in which VA is notified that the eligible veteran has relocated to a new address. VA must receive notification within 30 days from the date of relocation. If VA does not receive notification within 30 days from the date of relocation, VA will seek to recover overpayments of benefits under this paragraph (c)(4) back to the latest date on which the adjustment would have been effective if VA had been notified within 30 days from the date of relocation, as provided in § 71.47.

(C) The Primary Family Caregiver's monthly stipend may be adjusted pursuant to the reassessment conducted by VA under § 71.30.

(*1*) If the eligible veteran meets the requirements of § 71.20(a) only (and does not meet the requirements of § 71.20(b) or (c)), the Primary Family Caregiver's monthly stipend is adjusted as follows:

(*i*) In the case of a reassessment that results in an increase in the monthly

stipend payment, the increase takes effect as of the date of the reassessment.

(*ii*) In the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

(*2*) If the eligible veteran meets the requirements of § 71.20(b) or (c), the Primary Family Caregiver's monthly stipend may be adjusted as follows:

(*i*) In the case of a reassessment that results in an increase in the monthly stipend payment, the increase takes effect as of the date of the reassessment. The Primary Family Caregiver will also be paid the difference between the amount under paragraph (c)(4)(i)(A) of this section that the Primary Family Caregiver is eligible to receive and the amount the Primary Family Caregiver was eligible to receive under paragraph (c)(4)(i)(B) or (D) of this section, whichever the Primary Family Caregiver received for the time period beginning on [EFFECTIVE DATE OF FINAL RULE] up to the date of the reassessment, based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on the date of the reassessment and the monthly stipend rate on such date. If there is more than one reassessment for an eligible veteran during the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE], the retroactive payment described in the previous sentence applies only if the first reassessment during the one-year period beginning on [EFFECTIVE DATE OF FINAL RULE] results in an increase in the monthly stipend payment, and only as the result of the first reassessment during the one-year period.

(*ii*) In the case of a reassessment that results in a decrease in the monthly stipend payment and the eligible veteran meets the requirements of § 71.20(a), the new stipend amount under paragraph (c)(4)(i)(A) of this section takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after the date that is one year after [EFFECTIVE DATE OF FINAL RULE]. On the date that is one year after [EFFECTIVE DATE OF FINAL RULE], VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

Note to paragraph (c)(4)(ii)(C)(2): If an eligible veteran who meets the requirements of § 71.20(b) or (c) is determined, pursuant to a reassessment conducted by VA under § 71.30, to not meet the requirements of § 71.20(a), the monthly stipend payment will not be increased under paragraph (c)(4)(ii)(C)(*2*)(*i*) of this section or decreased under paragraph (c)(4)(ii)(C)(*2*)(*ii*) of this section. Unless the Family Caregiver is revoked or discharged under § 71.45 before the date that is 60 days after the date that is one year after [EFFECTIVE DATE OF FINAL RULE], the effective date for discharge of the Family Caregiver of a legacy participant or legacy applicant under § 71.45(b)(1)(ii) will be no earlier than 60 days after the date that is one year after [EFFECTIVE DATE OF FINAL RULE]. On the date that is one year after [EFFECTIVE DATE OF FINAL RULE], VA will provide advanced notice of its findings to the eligible veteran and Family Caregiver.

(D) Adjustments to stipend payments for the first month will take effect on the date specified in paragraph (d) of this section. Stipend payments for the last month will end on the date specified in § 71.45.

(iii) *No employment relationship.* 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.

(iv) *Periodic assessment.* In consultation with other appropriate agencies of the Federal government, VA shall periodically assess whether the monthly stipend rate meets the requirements of 38 U.S.C. 1720G(a)(3)(C)(ii) and (iv). If VA determines that adjustments to the monthly stipend rate are necessary, VA shall make such adjustments through future rulemaking.

(5) Primary Family Caregivers are eligible for financial planning services as that term is defined in § 71.15. Such services will be provided by entities authorized pursuant to any contract entered into between VA and such entities.

(6) Primary Family Caregivers are eligible for legal services as that term is defined in § 71.15. Such services will be provided by entities authorized pursuant to any contract entered into between VA and such entities.

(d) *Effective date of benefits under the Program of Comprehensive Assistance for Family Caregivers.* Except for paragraphs (b)(6) and (c)(3) and (4) of this section, caregiver benefits under paragraphs (b) and (c) of this section are effective upon approval and designation under § 71.25(f). Caregiver benefits under paragraphs (b)(6) and (c)(3) and (4) are effective on the latest of the following dates:

(1) The date the joint application that resulted in approval and designation of the Family Caregiver is received by VA.

(2) The date the eligible veteran begins receiving care at home.

(3) The date the Family Caregiver begins providing personal care services to the eligible veteran at home.

(4) In the case of a new Family Caregiver applying to be the Primary Family Caregiver for an eligible veteran, the day after the effective date of revocation or discharge of the previous Primary Family Caregiver for the eligible veteran (such that there is only one Primary Family Caregiver designated for an eligible veteran at one time).

(5) In the case of a new Family Caregiver applying to be a Secondary Family Caregiver for an eligible veteran who already has two Secondary Family Caregivers approved and designated by VA, the day after the effective date of revocation or discharge of a previous Secondary Family Caregiver for the eligible veteran (such that there are no more than two Secondary Family Caregivers designated for an eligible veteran at one time).

(6) In the case of a current or previous Family Caregiver reapplying with the same eligible veteran, the day after the date of revocation or discharge under § 71.45, or in the case of extended benefits under § 71.45(b)(1)(iii), (b)(2)(iii), (b)(3)(iii)(A) or (B), and (b)(4)(iv), the day after the last date on which such Family Caregiver received caregiver benefits.

(7) The day after the date a joint application is denied.

■ 9. Revise § 71.45 to read as follows:

§ 71.45 Revocation and Discharge of Family Caregivers.

(a) *Revocation of the Family Caregiver*—(1) *Bases for revocation of the Family Caregiver*—(i) *For Cause.* VA will revoke the designation of a Family Caregiver for cause when VA determines any of the following:

(A) The Family Caregiver or eligible veteran committed fraud under this part;

(B) The Family Caregiver neglected, abused, or exploited the eligible veteran;

(C) Personal safety issues exist for the eligible veteran that the Family Caregiver is unwilling to mitigate;

(D) The Family Caregiver is unwilling to provide personal care services to the eligible veteran or, in the case of the Family Caregiver's temporary absence or incapacitation, fails to ensure (if able to)

the provision of personal care services to the eligible veteran.

(ii) *Noncompliance.* Except as provided in paragraph (f) of this section, VA will revoke the designation of a Family Caregiver when the Family Caregiver or eligible veteran is noncompliant with the requirements of this part. Noncompliance means:

(A) The eligible veteran does not meet the requirements of § 71.20(a)(5), (6), or (7);

(B) The Family Caregiver does not meet the requirements of § 71.25(b)(2);

(C) Failure of the eligible veteran or Family Caregiver to participate in any reassessment pursuant to § 71.30;

(D) Failure of the eligible veteran or Family Caregiver to participate in any wellness contact pursuant to § 71.40(b)(2); or

(E) Failure to meet any other requirement of this part except as provided in paragraph (b)(1) or (2) of this section.

(iii) *VA error.* Except as provided in § 71.45(f), VA will revoke the designation of a Family Caregiver if the Family Caregiver's approval and designation under this part was authorized as a result of an erroneous eligibility determination by VA.

(2) *Revocation date.* All caregiver benefits will continue to be provided to the Family Caregiver until the date of revocation.

(i) In the case of revocation based on fraud committed by the Family Caregiver or eligible veteran under paragraph (a)(1)(i)(A) of this section, the date of revocation will be the date the fraud began. If VA cannot identify when the fraud began, the date of revocation will be the earliest date that the fraud is known by VA to have been committed, and no later than the date on which VA identifies that fraud was committed.

(ii) In the case of revocation based on paragraphs (a)(1)(i)(B) through (D) of this section, the date of revocation will be the date VA determines the criteria in any such paragraph has been met.

(iii) In the case of revocation based on noncompliance under paragraph (a)(1)(ii) of this section, revocation takes effect as of the effective date provided in VA's final notice of such revocation to the eligible veteran and Family Caregiver. The effective date of revocation will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver.

(iv) In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, the date of revocation will be the date the error was made. If VA cannot identify when the error was made, the date of revocation will be the earliest date that the error is known by VA to have occurred, and no later than the date on which VA identifies that the error occurred.

(3) *Continuation of benefits.* In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, caregiver benefits will continue for 60 days after the date of revocation unless the Family Caregiver opts out of receiving such benefits. Continuation of benefits under this paragraph will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in § 71.47.

(b) *Discharge of the Family Caregiver*—(1) *Discharge due to the eligible veteran*—(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers when VA determines any of the following:

(A) Except as provided in paragraphs (a)(1)(ii)(A) and (b)(1)(i)(B) of this section, the eligible veteran does not meet the requirements of § 71.20 because of improvement in the eligible veteran's condition or otherwise; or

(B) Death or institutionalization of the eligible veteran. *Note:* VA must receive notification of death or institutionalization of the eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization. Notification of institutionalization must indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization.

(ii) *Discharge date.* (A) In the case of discharge based on paragraph (b)(1)(i)(A) of this section, the discharge takes effect as of the effective date provided in VA's final notice of such discharge to the eligible veteran and Family Caregiver. The effective date of discharge will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver that the eligible veteran does not meet the requirements of § 71.20.

(B) For discharge based on paragraph (b)(1)(i)(B) of this section, the date of discharge will be the earliest of the following dates, as applicable:

(*1*) Date of death of the eligible veteran.

(*2*) Date that institutionalization begins, if it is determined that the eligible veteran is expected to be institutionalized for a period of 90 days or more.

(*3*) Date of the 90th day of institutionalization.

(iii) *Continuation of benefits.* Caregiver benefits will continue for 90 days after the date of discharge.

(2) *Discharge due to the Family Caregiver*—(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers due to the death or institutionalization of the Family Caregiver. *Note:* VA must receive notification of death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization. Notification of institutionalization must indicate whether Family Caregiver is expected to be institutionalized for 90 or more days from the onset of institutionalization.

(ii) *Discharge date.* The date of discharge will be the earliest of the following dates, as applicable:

(A) Date of death of the Family Caregiver.

(B) Date that the institutionalization begins, if it is determined that the Family Caregiver is expected to be institutionalized for a period of 90 days or more.

(C) Date of the 90th day of institutionalization.

(iii) *Continuation of benefits.* Caregiver benefits will continue for 90 days after date of discharge in paragraph (b)(2)(ii)(B) or (C) of this section.

(3) *Discharge of the Family Caregiver by request of the Family Caregiver*—(i) *Request for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers if a Family Caregiver requests discharge of his or her caregiver designation. The request may be made verbally or in writing and must provide the present or future date of discharge. If the discharge request is received verbally, VA will provide the Family Caregiver written confirmation of receipt of the verbal discharge request and the effective date of discharge. VA will notify the eligible veteran verbally and in writing of the request for discharge and the effective date of discharge.

(ii) *Discharge date.* The date of discharge will be the present or future date provided by the Family Caregiver or the date of the Family Caregiver's request for discharge if the Family Caregiver does not provide a date. If the request does not include an identified date of discharge, VA will contact the Family Caregiver to request a date. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(iii) *Continuation of benefits.* (A) Except as provided in paragraph (b)(3)(iii)(B) of this section, caregiver benefits will continue for 30 days after the date of discharge.

(B) If the Family Caregiver requests discharge due to domestic violence (DV) or intimate partner violence (IPV) perpetrated by the eligible veteran against the Family Caregiver, caregiver benefits will continue for 90 days after the date of discharge when any of the following can be established:

(*1*) The issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran.

(*2*) A police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or

(*3*) Documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (*e.g.,* physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist or counselor.

(4) *Discharge of the Family Caregiver by request of the eligible veteran or eligible veteran's surrogate*—(i) *Request for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Caregivers if an eligible veteran or the eligible veteran's surrogate requests discharge of the Family Caregiver. The discharge request may be made verbally or in writing and must express an intent to remove the Family Caregiver's approval and designation. If the discharge request is received verbally, VA will provide the eligible veteran written confirmation of receipt of the verbal discharge request and effective date of discharge. VA will notify the Family Caregiver verbally and in writing of the request for discharge and effective date of discharge.

(ii) *Discharge date.* The date of discharge will be the present or future date of discharge provided by the eligible veteran or eligible veteran's surrogate. If the request does not provide a present or future date of discharge, VA will ask the eligible veteran or eligible veteran's surrogate to provide one. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(iii) *Rescission.* VA will allow the eligible veteran or eligible veteran's surrogate to rescind the discharge request and have the Family Caregiver reinstated if the rescission is made within 30 days of the date of discharge. If the eligible veteran or eligible veteran's surrogate expresses a desire to reinstate the Family Caregiver more than 30 days from the date of discharge, a new joint application is required.

(iv) *Continuation of benefits.* Caregiver benefits will continue for 30 days after the date of discharge.

(c) *Safety and welfare.* If VA suspects that the safety of the eligible veteran is at risk, then VA may suspend the caregiver's responsibilities, and facilitate appropriate referrals to protective agencies or emergency services if needed, to ensure the welfare of the eligible veteran, prior to discharge or revocation.

(d) *Overpayments.* VA will seek to recover overpayments of benefits provided under this section as provided in § 71.47.

(e) *Transition and bereavement counseling.* VA will, if requested and applicable, assist the Family Caregiver in transitioning to alternative health care coverage and mental health services. In addition, in cases of death of the eligible veteran, bereavement counseling may be available under 38 U.S.C. 1783.

(f) *Multiple bases for revocation or discharge.* In the instance that a Family Caregiver may be both discharged pursuant to any of the criteria in paragraph (b) of this section and have his or her designation revoked pursuant to any of the criteria in paragraph (a) of this section, the Family Caregiver's designation will be revoked pursuant to paragraph (a). In the instance that the designation of a Family Caregiver may be revoked under paragraph (a)(1)(i) and paragraph (a)(1)(ii) or (iii) of this section, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(i). In the instance that the designation of a Family Caregiver may be revoked under paragraphs (a)(1)(ii) and (iii) of this section, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(iii). In the instance that a Family Caregiver may be discharged under paragraph (b)(1), (2), (3), or (4) of this section, the Family Caregiver will be discharged pursuant to the paragraph most favorable to the Family Caregiver.

■ 10. Add § 71.47 to read as follows:

§ 71.47 Collection of overpayment.

VA will collect overpayments as defined in § 71.15 pursuant to the Federal Claims Collection Standards.

§ 71.50 [Amended]

■ 11. Amend § 71.50 by removing the statutory authority citation at the end of each section.

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