

# United States Senate

WASHINGTON, DC 20510

February 5, 2018

Michael Shores  
Director  
Office of Regulation Policy and Management  
Department of Veterans Affairs  
810 Vermont Ave. NW  
Washington DC 20420

Dear Mr. Shores,

We write this comment in response to the January 5, 2018, Federal Register notice seeking comments as to how the Department of Veterans Affairs can purportedly improve the Program of Comprehensive Assistance for Family Caregivers (Caregivers Program). We offer the following recommendations and comments regarding any potential changes being considered to the Caregivers Program. We want to strongly caution the agency against considering any modifications to eligibility that would lead to any decrease in benefits provided or number of beneficiaries served. Given our concern regarding eligibility, in particular, we tailor our recommendations and comments to that topic.

**1. Should VA change how “serious injury” is defined for the purposes of eligibility?**

**a. Should the severity of injury be considered in determining eligibility to ensure VA is supporting family caregivers of Veterans most in need? If so, how should the level of severity be determined?**

If Congress intended to scale-back eligibility for the Program based on the type of injury, it would have specified it in statute. The severity of the injury is assessed not by artificially grouping the type or cause of injury, but by its impacts on the veteran and the resulting caregiving needs. The Senate Report for P.L. 111-163, the Caregiver and Veterans Health Services Act of 2009, specifically expressed that eligibility be grounded in the veterans’ need for personal care services based on their ability to perform the independent activities of daily living or in their need for supervision or protection as a result of neurological or other impairments. These qualifications are not necessarily related to the type or mechanism of the injury, but rather the veteran’s ability to perform daily activities and other important functions without help.

Further, we do not support restrictions on eligibility absent congressional approval. It is VA’s job to implement the laws as Congress writes them, not to artificially narrow the law in regulations. As evidenced by our including an expansion of eligibility to veterans in the pre-9/11 service eras in the Caring for our Veterans Act of 2017, and requiring studies on expanding the program to veterans of all eras in the enactment of the first caregivers legislation, expanding eligibility for the Caregivers Program is a priority for the Senate Committee on Veterans’ Affairs. If the Committee intended to scale-back eligibility for the Program based on the type of injury, it would have done so prior to advancing legislation expanding the number of eligible individuals.

**b. How should VA define veterans who are most in need?**

The Department should not attempt to create such a definition. Focusing on a purported scale of need is outside the intent of the law as written. Any new criteria based on this would artificially limit the eligible population when these types of restrictions appear nowhere in the statute. When we know that there are already few options for the delivery of care for severely disabled and injured veterans, we should seek to expand their care options not restrict them. Further, it is not the Department's purview to create such artificial restrictions, contrary to current law. Rather, VA is obligated to request sufficient funds and other resources to fulfill its obligations under the law. Instead of attempting to limit eligibility or support, we expect the Department to submit a comprehensive budget request sufficient to cover all eligible veterans and caregivers, with services of the quality the American people demand for our veterans, and to prepare for future expansion of the program as clearly indicated by this Committee and the veteran community.

**c. Should eligibility be limited to only those veterans who without a family caregiver providing personal care services would otherwise require institutionalization? If so, how should this be determined?**

Limiting eligibility to include only those veterans who would otherwise require institutionalization is antithetical to the principles of the original caregiver's program which was designed to help ease the burdens on caregivers who can provide a better environment and outcomes, not to supplant institutionalization. In fact Congress specifically rejected a criteria of limiting eligibility to only those veterans who would otherwise require institutionalization in developing the final Caregivers and Veterans Omnibus Health Services Act.

VA is already obligated to provide institutional care for veterans in need of such care and who meet one of the following criteria: a service-connected disability rating of seventy percent or more; a need for nursing home care for a service-connected disability; or a rating of sixty percent when either unemployable or permanently and totally disabled.

The intent of the law was not to replace institutionalization but support family members willing to sacrifice and provide the opportunity for the veteran to receive care at home. The law was designed to help keep veterans in the most safe, appropriate setting for their health and care needs. The need for institutionalization is not synonymous with the severity of illness or injury, and takes into consideration a number of factors that are not necessarily the same as a caregiver situation and would therefore be arbitrary if applied to Caregivers eligibility.

We are concerned that this solicitation's focus on eligibility, combined with the administration's recent concerns regarding "fiscal constraints" as noted in its recent redline document to Committee on Veterans' Affairs on the Caring for Veterans Act of 2017, and emphasis on focusing resources on "Veterans who need it most", amounts to an attempt to justify cuts or changes to the Program at the expense of our most vulnerable veterans rather than an opportunity to assess the Program's strengths and weaknesses. We urge the administration to consult with Congress on the nature of these issues before moving forward with any modifications to eligibility.

Sincerely,



Jon Tester



Patty Murray



Bernard Sanders



Sherrod Brown



Richard Blumenthal



Mazie K. Hirono



Tammy Baldwin



Robert P. Casey, Jr.



Richard J. Durbin