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|  | **DEPARTMENT OF VETERANS AFFAIRS**  **Regulation Policy and Management (02REG)**  **Office of the General Counsel** Washington, D.C. 20420 |

## In Reply Refer to: 02REG

Date: January 29, 2014

From: Chief Impact Analyst (02REG)

Subj: Regulatory Impact Analysis (RIA) for RIN 2900-AN94, Caregiver Program.

To: Director, Regulations Management (02REG)

I have reviewed this rulemaking package and determined the following.

1. VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and has concluded that it is an economically significant rule under Executive Order 12866 because it is likely to result in a regulatory action that may have an annual effect on the economy of $100 million or more. In accordance with OMB Circular A-4, a Regulatory Impact Analysis (RIA) was incorporated into the regulatory action and attached to this document.

2. This regulatory action is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of $100 million or more.

Although this regulatory action is a major rule, within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it will not be subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because VA finds that good cause exists under 5 U.S.C. 801(2) to make the regulatory action effective immediately. Certain veterans, servicemembers and their family members have an immediate and urgent need for caregiver assistance and benefits. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulatory action and VA’s Regulatory Impact Analysis (RIA).

3. Attached please find the relevant economic impact documents:

**(Attachment):** Agency’s Regulatory Impact Analysis, dated January 29, 2014

**Approved by:**

Michael P. Shores (02REG)

Chief, Impact Analyst

# Regulation Policy & Management

# Office of the General Counsel

Washington, D.C.

**(Attachment)**

**Regulatory Impact Analysis (RIA) for RIN 2900-AN94**

**Title of Regulation:** AN94(IF) – Caregiver Program

**Background:** This document promulgates Department of Veterans Affairs (VA) final regulations concerning caregivers benefits provided by VA. This rule is necessary to implement Title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, Pub. L. 111-163, which was signed into law on May 5, 2010. The purpose of the caregivers benefits program is to provide certain medical, travel, training, and financial benefits to eligible caregivers of veterans and certain servicemembers who were seriously injured during service on or after September 11, 2001.

*Executive Order 12866 and 13563*

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, and other advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 12866 defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. This rule has been designated a “economically” significant regulatory action under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and followed OMB Circular A-4 to the extent feasible in this Regulatory Impact Analysis. The circular first calls for a discussion of the need for the regulatory action.

*Statement of Need*

This rulemaking is necessary to implement title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, Pub. L. 111-163, which was signed into law on May 5, 2010. The purpose of the caregiver benefits program is to provide certain medical, travel, training, and financial benefits to eligible caregivers of veterans and certain servicemembers who incurred or aggravated a serious injury in the line of duty on or after September 11, 2001.

*Potential Benefits*

Hundreds of seriously injured servicemembers and veterans have caregivers or potential caregivers who may be eligible for the assistance and support services that will be provided under this rulemaking. The purpose of providing Family Caregiver assistance under this law is to benefit eligible veterans whose personal care service needs could be substantially satisfied with the provision of such services by a family member (as defined in the law); and to provide eligible veterans with additional options so that they can choose the setting for the receipt of personal care services that best suits their needs.

*Alternatives*

On May 5, 2010, the President signed into law the Caregivers and Veterans Omnibus Health Services Act of 2010, Pub. Law 111-163.  Title I of the law established 38 U.S.C. 1720G, which requires VA to “establish a program of comprehensive assistance for family caregivers of eligible veterans,” as well as a program of “general caregiver support services” for caregivers of “veterans who are enrolled in the health care system established under [38 U.S.C. 1705(a)] (including caregivers who do not reside with such veterans).”  38 U.S.C.1720G(a)-(b).

The law authorizes assistance for eligible caregivers of veterans and certain servicemembers who incurred or aggravated a serious injury in the line of duty on or after September 11, 2001. It recognizes that many post 9/11 veterans and servicemembers return home with serious injuries that often were fatal in the past.  These veterans present complex recovery and adjustment processes requiring ongoing medical supervision.

VA initially considered a narrow definition of eligibility, but ultimately decided to broaden the program’s eligibility criteria in order to encompass more seriously injured post-9/11 veterans. The law required VA to report on the program’s potential for future expansion to all era veterans, as discussed in this final rule.

*Estimate of Potential Program Costs*

At the time the Interim Final rule was being drafted, VA started developing the Regulatory Impact Analysis (RIA) to determine the economic impact of the rulemaking. One critical element of the economic impact that would impact or affect the potential costs associated with this rulemaking was the caregiver stipend payments/rates. To compute the caregiver stipend rates VA used data from the FY2009 BLS on hourly wage rates for home health aides as well as the most recent Consumer Price Index for All Urban Consumers (CPI-U). Based on historical trends, VA projected that the BLS wage rates for home health aides would increase each year by a small percentage, resulting in an increase in the amount of stipend paid to each Primary Family Caregiver.  The actual BLS 2011 wage rates, however, did not increase in some geographic areas of the United States, but remained the same. In addition, the actual BLS 2011 wage rates reflected some dramatic decreases in the hourly wages of home health aides in various geographic areas of the United States.  Application of the actual 2011 BLS hourly wage rate for all Primary Family Caregivers’ stipends would have resulted in decreases in monthly stipend payments for 34% of approved Primary Family Caregivers, the largest decrease being more than $6.00 per hour.  VA never intended that Primary Family Caregivers should be subject to decreased stipend payments from year to year due to decreased BLS rates or a decreased CPI rate.  Therefore, VA changed the stipend calculation to use the most recent data from the BLS on hourly wage rates for home health aides as well as the most recent Consumer Price Index for All Urban Consumers (CPI-U), unless using this most recent data for a geographic area would result in an overall BLS and CPI-U combined rate that is lower than that applied in the previous year for the same geographic area in which case the BLS hourly wage rate and CPI-U that was applied in the previous year for that geographic area will be utilized to calculate the Primary Family Caregiver stipend. This revision ensures that Primary Family Caregivers will not unexpectedly lose monetary assistance upon which they had come to rely.  This is the fairest result for all Family Caregivers, and best effectuates the original intent.

As a result, the actual average hourly wages that were paid out to enrolled caregivers in FY2011, FY2012 and FY2013 were lower than VA had projected in the Interim Final rule’s Regulatory Impact Analysis (RIA). This adjustment to the stipend calculation would have yielded a decrease to the total stipend cost of the caregiver program. However, in FY2012 and FY2013, VA experienced significantly higher caregiver caseloads than projected in the IF’s RIA. Consequently, the increased caregiver caseloads resulted in an increase to the total stipend costs of the program and are reflected in more detail below.

To project the best possible economic impact of this rulemaking, taking into consideration the increased caregiver caseload, VA obtained updated program data, actual implementation caseloads and costs since implementation of the caregiver program and revised the Interim Final rule’s RIA to reflect actual program costs for FY2011 through FY2013 and the projected estimated costs of the caregiver program for FY2014 and FY2015.

*Summary of Actual Costs for the Caregiver Program in FY2011 through FY2013 and Projected Estimated Costs for FY2014 and FY2015*

The total costs associated with this rulemaking are estimated to be $344.8 million in FY2014 and $401.7 million in FY2015. Fiscal years 2011 through 2013 reflect actual total costs of the program since implementation of the caregiver program. Although, the increased caregiver caseload impacted all aspects of the caregiver program since the Interim Final rule’s RIA was developed, VA did not exceed the total program costs that were authorized for appropriation for the caregiver program and did not exceed the costs reflected in the FY2013 and FY2014 President’s budget. Estimated costs and revised projections in this this RIA are based on the best reasonably obtainable and available implementation costs of the entire program. This analysis sets forth the basic assumptions, methods, and data underlying the analysis and discusses the uncertainties associated with the estimates. As VA develops more program data and becomes more cognizant of the cost of caregiver benefits, VA will make appropriate adjustments in the amount of funds requested for future fiscal years.



*Caregiver Support Salaries*

As of the publication of the interim final rule (May 2011), the total caregiver support salary costs for FY2011 was approximately $11.3 and the projected costs to fund the caregiver support salaries will remain consistent through FY15. The slight increases are a result of within-grade-increases. In order to meet the requirements of P.L. 111-163, adequate staffing support must be available. There are currently 215 full-time equivalent (FTE) Caregiver Support Coordinator (CSC) positions in the field and the projected cost increases have been limited to cover within-grade-increases.



*Caregiver Stipend Payments*

Individuals designated as the eligible Veteran’s primary family caregiver are eligible to receive a monthly stipend from VA as an acknowledgement of the sacrifices they make to care for seriously injured eligible Veterans. The monthly stipend is not intended to replace career earnings or be construed to create an employment relationship between VA and caregivers. Family caregivers report that the stipend is the cornerstone of the Program of Comprehensive Assistance for Family Caregivers. The stipend helps to alleviate financial distress experienced by many primary family caregivers.

During the eligibility evaluation, the clinical treatment team assigns the Veteran or Servicemember a tier level based on his or her level of dependency. The tier level is then converted into hours in order to determine the stipend payment as follows: the primary family caregiver of an eligible Veteran assessed at Tier 1 is paid a stipend equivalent to the eligible Veteran requiring 10 hours per week, the primary family caregiver of an eligible Veteran assessed at Tier 2 is paid a stipend equivalent to the eligible Veteran requiring 25 hours per week, and the primary family caregiver of an eligible Veteran assessed at Tier 3 is paid a stipend equivalent to the eligible Veteran requiring 40 hours per week. Stipend amounts (based on these tier levels and hours) are comparable to the salary of a home health aide providing equivalent personal care services in the geographic area of the eligible Veteran.

To compute the caregiver stipend rate VA changed the stipend calculation to use the most recent data from the BLS on hourly wage rates for home health aides as well as the most recent Consumer Price Index for All Urban Consumers (CPI-U), unless using this most recent data for a geographic area would result in an overall BLS and CPI-U combined rate that is lower than that applied in the previous year for the same geographic area in which case the BLS hourly wage rate and CPI-U that was applied in the previous year for that geographic area will be utilized to calculate the Primary Family Caregiver stipend. This revision ensures that family caregivers will not unexpectedly lose monetary assistance upon which they had come to rely.  This is the fairest result for all family caregivers, and best effectuates our original intent.

To project the potential caregiver caseload for FY2014 and FY2015, VA used actual enrolled caregiver caseloads and program data since implementation of the program in FY2011. Based on this data, VA projects a caregiver caseload of 16,159 in FY2014 and 19,392 in FY2015. These caseloads are based on a 37 percent growth rate in FY2014 and a 20 percent growth rate in FY2015. The FY2014 percent is the average from the FY2011 and FY2013 caseload increased percentages and the FY2015 percent assumes a 17% decline from the FY2014 growth percent rate. The caregiver caseload increased by 20 percent from FY2011 to FY2012 and by 53 percent from FY2012 to FY2013. The average of these two years is 37 percent. Since implementation of the program, there was a significant increase in the first two and half years, but recent data reflects a slightly decreasing trend in new applications and newly enrolled caregivers. Therefore, VA estimates a 17 percent growth rate decline in FY2015. VA assumes that the caregiver caseloads will decrease moderately in the out years, but will always have a constant and static enrollment rate as service-members are discharged from military service with serious injuries and are in need of caregiver services. VA experienced a pent-up demand for caregiver benefits in the first two years of the program. VA assumes that the caregiver caseload will plateau and ultimately decline in the out years to a lower annual number. The remaining cost estimates discussed here are based on these trends and VA’s experience that certain caregiver benefits (including respite care, mental health services, travel benefits, CHAMPVA, and oversight) were and are being underutilized compared to the stipend payments. As a result, VA does not anticipate the cost of providing certain benefits to increase from FY 2014 to FY 2015.



*Respite Care*

Respite care is a distinct component of the array of long-term care services available to eligible Veterans who experience functional impairments from chronic conditions. Veterans seeking respite services under 38 U.S.C., section 1720B must be enrolled in VHA health care. Respite care is ordinarily provided for no more than 30 days per year. Veterans and caregivers in need of more hours of respite care may receive those services or may find their care needs are better met through other VA home and community-based services.

Respite care is available in a variety of settings. For example, respite care can be provided at home, in a VA Community Living Center, through a VA-contracted community skilled nursing home, or through a VA-operated or VA-contracted community Adult Day Care Program. In-home community respite care providers include, but are not limited to: National Family Caregiver Programs offered by Area Agencies on Aging and Aging & Disability Resource Centers through contracts with VA; state licensed or approved home health agencies through contracts with VA; adult day care services; and, alternative options for respite care as approved by VA’s Office of Geriatrics & Extended Care.

The Program of Comprehensive Assistance for Family Caregivers offers respite care to caregivers in the application process if the family member’s participation in required caregiver core curriculum training would interfere with the provision of personal care services to the Veteran or Servicemember. For approved family and general caregivers, 38 U.S.C., section 1720G (a)-(b), as added by section 101(a) of

P.L. 111-163, also authorizes respite care benefits for eligible Veterans and caregivers, when clinically indicated, recognizing the special needs of this group of caregivers. The CSC and PACT or primary care team, assess the eligible Veteran and caregiver for their level of need for respite care services. When a determination of the need for respite care services is made, the Respite Care Coordinator, or the identified designee, secures the services and develops an individualized service plan for respite care identifying the amount of time, type of care, and care setting for respite care services.

For approved family caregivers participating in the Program of Comprehensive Assistance for Family Caregivers, in FY 2011, VA obligated $1,308,502, in

FY 2012, VA obligated $2,966,776; and in FY 2013 VA obligated $4,256,535 for respite care services.



*Mental Health Services*

Under the Program of Comprehensive Assistance for Family Caregivers, both primary and secondary family caregivers are eligible to receive mental health services. These services may include psychotherapy, support groups, and education, but do not include medication management or psychiatric inpatient hospitalization. Section 1720G (a)(3)(A), as added by section 101(a) of P.L. 111-163, enables qualified family caregivers to access mental health services regardless of whether or not need is related to the eligible Veteran’s treatment plan. In addition to receiving mental health services as a VA benefit through this formalized program, caregivers may access many other supportive counseling options such as: various telephone supports offered by local VA staff or through the national Caregiver Support Line, supportive counseling services offered by CSCs, and community resources. For approved family caregivers participating in the Program of Comprehensive Assistance for Family Caregivers, in FY 2011, VA obligated $6,600, in FY 2012, VA obligated $312,807; and in FY 2013, VA obligated $843,161 for mental health services.

Prior to the passage of P.L. 111-163, VA provided counseling and other services under 38 U.S.C., section 1782 to family members of Veterans (and other individuals) if the treatment was in support of the clinical objectives of the eligible Veteran’s treatment plan. These services include consultation, professional counseling, marriage and family counseling, training, and mental health services as are necessary in connection with the Veteran’s treatment. These services continue to be provided to eligible individuals, including family and general caregivers, in support of furthering the objectives of the Veteran’s medical treatment plan.



*VACO Program Office Funds*

The costs to fund VACO level FTE in the Caregiver Support Program (CSP) will remain consistent through FY15. The increases are a result of within-grade-increases. The Caregiver Support Program VACO is currently fully staffed with 11 FTE employees.



*VACO Travel*



*Lodging/Mileage/Meal Per Diem (Veteran Inpatient & Outpatient Visits)*

Lodging/Mileage/Meal Per Diem were authorized for family caregivers in P. L. 111-163. However, these services are being underutilized compared to the increase in the number of newly approved caregivers. Assuming the current Lodging and Mileage utilization trends remain consistent, costs are expected to increase by $300,000 in FY2014 and remain the same in FY2015.



*Healthcare Coverage (CHAMPVA)*

CHAMPVA is a comprehensive health care benefit program in which VA shares the cost of certain health care services and supplies with eligible beneficiaries. The program is administered by VA’s Purchased Care at the Health Administration Center where CHAMPVA applications are processed and eligibility determinations are made to authorize benefits and process medical claims. Approved primary family caregivers of eligible Veterans participating in the Program of Comprehensive Assistance for Family Caregivers can enroll in CHAMPVA if they are not eligible for TRICARE and not entitled to care or services under a health plan contract such as Medicare, Medicaid, worker’s compensation, or insurance policy or contract. If eligible, primary family caregivers may receive CHAMPVA benefits in one of two ways:

• Primary family caregivers may receive services through community-based providers who accept assignment. In this case, primary family caregivers pay the CHAMPVA annual deductible and required cost shares for services when using these community-based providers.

• Primary family caregivers may access CHAMPVA services through the CHAMPVA In-House Treatment Initiative (CITI) program, if providers and space are available within the VA health care system and the VAMC is a CITI participating provider. Local VA facilities are not required to participate in the CITI program.

At the end of FY 2013, 3,686 primary family caregivers were covered under CHAMPVA.

For approved primary family caregivers participating in the Program of Comprehensive Assistance for Family Caregivers, in FY 2011, VA obligated $120,391, in FY 2012, VA obligated $2,608,255; and in FY 2013 VA obligated $6,429.000 for qualified primary family caregiver receiving CHAMPVA services.



*Caregiver Oversight*

Ongoing support and monitoring are provided to approved family caregivers and Veterans and Servicemembers participating in the Program of Comprehensive Assistance for Family Caregivers through home visits. Home visits ensure that the primary family caregiver has the required training, resources, and support to provide safe and effective care for the Veteran or Servicemember, and if necessary, to generate appropriate referrals for the Veteran or Servicemember and/or family member. An initial home visit occurs prior to approval. Once approved, ongoing home visits are completed quarterly, unless otherwise clinically indicated as determined by the Veteran’s treatment team. Initial home visits and annual home visits are conducted by VA clinical staff. VA facilities can choose to provide quarterly home visits using community agencies. Therefore, the costs are broken down into VA costs and contract costs.





*Accounting Statement and Table*

As required by OMB Circular A–4, in the table below, VA has prepared an accounting statement showing the classification of transfers, benefits and costs associated with the provisions of this rulemaking. Some portions of the analysis rely upon assumptions that may change, due to the unpredictability of catastrophic and severe injuries resulting from military service and combat during war. The analysis for this rulemaking sets forth the basic assumptions, methods, and data underlying the analysis and discusses the uncertainties associated with the estimates. As VA develops claims data and becomes more cognizant of the cost of caregiver benefits, VA will make appropriate adjustments in the amount of funds requested for future fiscal years.



*Identification of Duplicative, Overlapping, or Conflicting Federal Rules*

There are no duplicative, overlapping, or conflicting Federal rules identified with this regulatory action.

**Submitted by:**

Laura Taylor, LSCSW, National Director, Caregiver Support Program

Care Management and Social Work Services, 10P4C

VHA

Washington, DC

January 29, 2014