



**DEPARTMENT OF VETERANS AFFAIRS**

**8320-01**

**38 CFR Part 71**

**RIN 2900-AQ96**

**Home Visits in Program of Comprehensive Assistance for Family Caregivers  
During COVID-19 National Emergency**

**AGENCY:** Department of Veterans Affairs

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is revising its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) to relax the requirement for in-person home visits during the National Emergency related to Coronavirus Disease-2019 (COVID-19). This change is required to ensure the safety and well-being of veterans, caregivers, and VA clinical staff.

**DATES:** Effective Date: This rule is effective on **[Insert date of publication in the FEDERAL REGISTER]**.

Comment Date: Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

**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-AQ96, Home Visits in Program of Comprehensive Assistance for Family Caregivers During COVID-19 National Emergency.” 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:**

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 (PCAFC) for 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 (PGCSS), pursuant to 38 U.S.C. 1720G(b), which

is available to caregivers of covered veterans of all eras of military service. VA implemented PCAFC and 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 interim final rule relates to PCAFC.

VA is adding a new § 71.60 to title 38, CFR, to provide flexibility in the mode by which VA conducts PCAFC home visits for the duration of the National Emergency related to COVID-19 declared by the President on March 13, 2020 (the COVID-19 National Emergency). COVID-19 is a new disease that causes respiratory illness in people and can spread from person to person. Many individuals and communities across the country have taken steps to reduce the spread of COVID-19, including isolating individuals diagnosed with the disease and implementing physical distancing measures. The priority goal in the VA response to COVID-19 is the protection of veterans, their caregivers, and VA staff. To reduce the risk of exposure to and transmission of COVID-19 to individuals involved in PCAFC, as well as members of their households and others with whom they come into contact who may be affected, VA is relaxing PCAFC home visit requirements as set forth in this interim final rule. This is especially important given the vulnerable population of veterans served by PCAFC. Pursuant to § 71.60, VA will have flexibility to conduct home visits through means other

than in-person visits, including videoconference or other available telehealth modalities. Section 71.60 will only apply to home visits under part 71 and will not apply to other parts of title 38, CFR.

This interim final rule has an immediate impact on the mode by which VA completes the initial home-care assessments required by 38 CFR 71.25(e). Section 71.25(e) sets forth the requirement for an initial home-care assessment prior to approval and designation of a Family Caregiver under PCAFC. Section 71.25(e) currently requires “a VA clinician or a clinical team [to] visit the eligible veteran’s home to assess the caregiver’s completion of training and competence to provide personal care services at the eligible veteran’s home, and to measure the eligible veteran’s well being.” Pursuant to § 71.60, a VA clinician or clinical team is no longer required to conduct an in-person visit in the eligible veteran’s home to satisfy this requirement for the duration of the COVID-19 National Emergency.

Section 71.60 may also impact the home visit requirements proposed by VA on March 6, 2020 in RIN 2900-AQ48, Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments Under the VA MISSION Act of 2018. 85 FR 13356. The proposed rule references a home visit in proposed § 71.25(e) with respect to the initial home-care assessment, specifies that reassessments under proposed § 71.30 may include a visit to the eligible veteran’s home, and proposes to require an annual home visit in proposed § 71.40(b)(2) for purposes of wellness contacts. For the duration of the COVID-19 National Emergency, § 71.60 will authorize VA to complete these home visits through means other than an in-person visit to the

eligible veteran's home, such as videoconference or other available telehealth modalities.

### Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B), to publish this interim final rule without prior notice and the opportunity for public comment, and under 5 U.S.C. 553(d), to dispense with the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Secretary finds that it is contrary to the public interest to delay issuance of this rule for the purpose of soliciting prior public comment because there is an immediate and pressing public health risk for veterans, caregivers, and clinical staff involved in PCAFC home visits, as well as members of their households and others with whom they come into contact who may be affected. Mandating an in-person visit to an eligible veteran's home through PCAFC could increase the risk of exposure to and transmission of COVID-19, and it is critical that VA have immediate flexibility to conduct home visits through other means. For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest and is accordingly issuing this rule as an interim final rule. The Secretary will consider and address comments that are

received within 30 days after the date that this interim final rule is published in the *Federal Register* and address them in a subsequent *Federal Register* document announcing a final rule incorporating any changes made in response to the public comments.

The APA also requires a 30-day delayed effective date, except for “(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d). For the reasons stated above, the Secretary finds that there is also good cause for this interim rule to be effective immediately upon publication. It is in the public interest for VA to have flexibility to utilize alternative modalities to conduct required home visits during the COVID-19 National Emergency, and this will be facilitated by an immediate effective date. Additionally, this rule relieves a restriction by expanding the modes by which the home visits can be completed. Instead of requiring such visits to be completed through in-person visits to the eligible veteran’s home, for the duration of the COVID-19 National Emergency, PCAFC home visits can be completed through other means, including videoconference or other available telehealth modalities. By relieving a restriction and because any delay in implementation of § 71.60 would be contrary to the public interest under 5 U.S.C. 553(d)(1) and (3), respectively, this interim final rule is exempt from the APA's delayed effective date requirement.

### Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

### Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This interim final rule provides flexibility in the modes by which VA conducts PCAFC home visits for the duration of the National Emergency related to COVID-19 and does not affect small businesses. 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 Orders 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 not a 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 From FY 2004 Through Fiscal Year to Date."

This interim final rule is considered an EO 13771 deregulatory action. Details on the estimated cost savings of this interim final rule can be found in the rule's economic analysis.

#### 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 interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

## 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, or designee, 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. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on June 3, 2020, for publication.

***Consuela Benjamin,***  
Regulation 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 amends 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 continues to read as follows:

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

2. Add § 71.60 to read as follows:

§ 71.60 Home Visits During COVID-19 National Emergency.

Notwithstanding the requirements in this part, for the duration of the National Emergency related to COVID-19 declared by the President on March 13, 2020, VA may complete visits to the eligible veteran's home under this part through videoconference or other available telehealth modalities.

[FR Doc. 2020-12359 Filed: 6/4/2020 8:45 am; Publication Date: 6/5/2020]