



May 9, 2017

The Honorable David Shulkin
Secretary of Veterans Affairs
United States Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Re: VA Review of the Family Caregiver Program

Dear Secretary Shulkin:

I want to thank you for the work you and your team have done over the last three weeks reviewing the Family Caregiver Program (the “Program”). As you know, Wounded Warrior Project (“WWP”) led the charge for the creation of the Program in 2010 and has worked with VA and Congress to address challenges with implementation. We remain deeply committed to making the Program as effective as possible as we address the needs of those who care for the most seriously injured veterans of the post-9/11 generation.

As you continue to review the program, we ask you to take into account the following considerations. Please note that this is not an exhaustive list and that we will continue to work with you, your staff, and the greater community to identify challenges and create improvements.

- 1. Consistency and Transparency in Eligibility Determinations.** We have seen significant variations from location to location in eligibility and tier level determinations and also in the type of notification provided to caregivers and veterans. We hope to work with VA to create mechanisms for consistency and transparency. At a minimum, veterans who are revoked or who have their tier level adjusted should receive a detailed explanation of rationale in the context of 38 C.F.R. § 71. Such explanation must be sufficiently detailed to allow the veteran to use it to challenge the determination.
- 2. Enhance the Appeals Process.** One essential mechanism for consistency and fairness is a meaningful appeals process in which veterans can challenge erroneous eligibility and tier level determinations. Despite the widespread allegations of wrongful revocations that gave rise to this review, in our experience, successful appeals through the VHA system have been extremely rare. Given the nature of the Program, adjustments should be made to the clinical appeals process for review of eligibility and tier level determinations.



These adjustments include: (1) providing the same due process and appellate rights that exist in the VBA context; (2) continuing benefits until appeals are resolved; (3) allowing the veteran to present private medical opinions; (4) allowing the veteran to appear for a personal hearing to bring forth additional evidence; and (5) allowing the veteran to provide sworn testimony under the guidance of an accredited representative.

- 3. Ensure Meaningful Consultation with the Medical Care Team.** The law and regulations are clear that decisions about eligibility and tier level should be made by the veteran's medical care team. Nonetheless, caregivers and veterans have reported that caregiver support coordinators ("CSCs") wield strong influence over medical care teams, and that, in some cases, CSCs make decisions on their own. Safeguards must be established to ensure that the medical care team is more than a rubber stamp in the decision making process, and that medical care team involvement is transparent to the veteran and caregiver.
- 4. Require Communication with Caregivers.** Caregivers must be present and involved in assessments that give rise to change in tier level or revocation. Especially where mental health challenges are involved, caregivers can provide the insight necessary to reach correct and comprehensive conclusions. Nonetheless, we have heard many accounts of caregivers who were not allowed to participate. One account from a survey WWP conducted in 2014 is below:

My husband was interviewed by his VA physician, but I was not allowed to go in and assist him and help him remember things and help give an accurate picture of his functioning and health. His physician had only seen him a couple of times, we were told this was the reason he was going in for an interview/assessment. The assessment was supposed to provide the understanding of my warrior's needs. Since I was not there, and my warrior does not recall the entire interview, I do not know if the doctor really got a good understanding of the situation.

Although this account is dated, we continue to hear similar stories of this nature, especially in certain localities.

- 5. Review Revocations and Tier Reductions.** We know you are aware of the many veterans and caregivers who have reported erroneous determinations, and that is why you are conducting this review. Given these reports, in the interest of fairness, we ask for review of all revocations and tier reductions that have taken place since program inception. We understand that this would place a significant workload on program staff and therefore propose a triaged approach in which cases where tier 3 veterans were completely revoked



are addressed first. An adjustment this dramatic should be extremely rare and suggests irregularities.

6. **Improve Transition Services.** As Program stipends were not intended to be a permanent benefit in all situations, there will certainly be cases where veterans are no longer eligible for the Program due to changed circumstances. Where this occurs, VA should provide transition services and education regarding health care options, employment possibilities, and vocational training. CSCs should be provided with a comprehensive list of transition services available in their community through VA, state veterans agencies, and the private and nonprofit sectors.

7. **Extend the Moratorium on Revocations until the Review is Complete.** We understand the moratorium expired yesterday but that your review will continue for several months. As problems with the program have already been acknowledged, we should not allow caregivers to be removed from the program until those problems are fixed.

Caregivers provide a vital service, often giving up careers and opportunities in order to care for our nation's heroes, and we owe it to them to provide the support they need. We look forward to continuing to work with you, your staff, and the greater community to address these issues and others that arise through the course of our conversations.

Sincerely,



Lt. Gen. Michael S. Linnington (ret.)
Chief Executive Officer
Wounded Warrior Project

