



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 4
File #: 22-194

Board Meeting Date: 3/22/2022

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Supervisor Warren Slocum, District 4
Subject: Resolution Calling for Restoration of Veterans Family Caregiver Program

RECOMMENDATION:

Adopt a resolution calling for restoration of prior eligibility and benefit standards for the United States Veterans Administration's program for comprehensive assistance for family caregivers.

BACKGROUND:

In 2010, the United States Congress passed the Caregivers and Veterans Omnibus Health Services Act ("Caregiver Act"), which, among other things, established a Program of Comprehensive Assistance for Family Caregivers ("Caregiver Program"). The Caregiver Act defined a veteran eligible for the Caregiver Program as a veteran who has a "serious injury" (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty on or after September 11, 2001 and who is in need of personal care assistance because of an inability to perform one or more activities of daily living (including dressing, bathing, grooming, frequent need to adjust a special prosthetic or orthopedic appliance, toileting, feeding, or mobility or transferring); or who needs supervision or protection based on symptoms or residuals of neurological or other impairment or injury.

The Caregiver Act and Caregiver Program provided for family caregivers of eligible veterans to receive, among other things, healthcare coverage and a monthly stipend based on the Bureau of Labor Statistics' hourly wage for home health aides in the applicable geographic area.

In 2018, the United States Congress passed the VA Mission Act ("Mission Act"), which, among other things, opened eligibility to the Caregiver Program to veterans with serious injuries that were incurred prior to September 11, 2001.

DISCUSSION:

Despite Congress' intent of expanding eligibility for the Caregiver Program, as reflected in the Mission Act, on July 31, 2020, the Veterans Administration ("VA") promulgated a Final Rule (85 Fed.

Reg. 46,226 (July 31, 2020) (“Final Rule”) to implement the Mission Act. The Final Rule added several requirements that effectively narrow eligibility for the Caregiver Program, resulting in veterans who qualified for the Caregiver Program in the past becoming ineligible and preventing those veterans who Congress intended to assist under the Mission Act from qualifying for the Caregiver Program.

As an example: under the Final Rule, to have a “serious injury” that qualifies for the Caregiver Program, the veteran must have a service-connected disability rating of 70% or higher; the veteran must require personal care services each time the veteran completes a single activity of daily living; and the veteran must have a functional impairment that directly impacts the veteran’s ability to maintain the veteran’s personal safety, on a daily basis.

Prior to promulgation of the Final Rule, a “serious injury” did not need to result in a service-connected disability rating of 70% or higher, nor was it necessary that a veteran require assistance each time the veteran completed an activity of daily living. (For example, under the Final Rule, if a veteran requires assistance with dressing 90% of the time owing to an injury but is able to dress without assistance 10% of the time, that injury is not qualifying for the Caregiver Program. Similarly, if a veteran has a functional impairment that directly impacts the veteran’s ability to maintain personal safety on most, but not all, days, that functional impairment is not qualifying for the Caregiver Program.

The Final Rule also effectively reduces stipend benefits for many veterans and family caregivers by deleting reference to the Bureau of Labor Statistics’ hourly wage for home health aides in the applicable geographic area in setting stipend rates.

At its March 14, 2022 meeting, the San Mateo County Veterans Commission voted unanimously to recommend this resolution to the Board of Supervisors, and to inform the Board of the potentially devastating impact continued application of the Final Rule could have on the veterans and their families who reside in San Mateo County. Veterans and family members who lose or who are unable to establish Caregiver Program eligibility are at increased risk of displacement or homelessness; food insecurity; other forms of financial insecurity and heightened emotional hardships.

The San Mateo County Veterans Commission has requested that this Board adopt this resolution calling for the United States Congress and the Veterans Administration to take appropriate actions to restore the eligibility and benefit standards for the Caregiver Program of Comprehensive Assistance for Family Caregivers that existed prior to promulgation of the Final Rule and thereby ensure that Congress’ intent, as set forth in the Caregiver Act and the Mission Act, is carried out.

FISCAL IMPACT:

None.