



December 12, 2018

VIA ELECTRONIC SUBMISSION

Director
Office of Regulation Policy and Management (00REG)
Department of Veterans Affairs
810 Vermont Avenue NW, Room 1063B
Washington, DC 20420

Re: Notice of Request for Information on the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers (PCAFC)
Docket ID: VA-2018-VACO-0001

Comments of Volunteers of Legal Service

Volunteers of Legal Service (“VOLS”) appreciates the opportunity to submit these comments in response to the Notice of Request for Information on the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers (“PCAFC”) by the Department of Veterans Affairs (“VA”) in the above-captioned docket.¹

We submit this comment to answer the VA’s request for information in their quest to fulfil the mandate of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 or the VA MISSION Act of 2018 (“MISSION Act”). The MISSION Act expands on the PCAFC program in a number of important ways, including the requirement that expanded services include “the provision of grants” for “legal services...related to the needs of injured veterans and their caregivers.” This mandate has been codified at 38 U.S.C. § 1720G(a)(3)(A)(ii)(VI)(bb). In their request for information, the VA advances a series of questions related to legal services, 83 Fed. Reg. at 60968. This comment seeks to address those specific questions. As a preliminary

¹ 83 Fed. Reg. 60966 (November 27, 2018).

matter, we would like to state that we support the implementation of a program which would provide free, broadly accessible legal services to PCAFC veterans and their caregivers through grants to non-profit legal services providers and their pro bono partners in the private bar. These services should cover a broad range of civil legal issues, and should cover both advice and counsel cases as well as provide full representation matters where warranted. There should not be any arbitrary limits placed the numbers of times veterans and caregivers who qualify should be able to access these benefits.

Organization Background and Expertise

The mission of VOLS is to develop projects to provide pro bono civil legal services to benefit low-income people in New York City. Since 1984, VOLS has identified areas of legal need, created projects to meet these needs, and recruited and trained volunteer lawyers to provide the needed legal services. By providing pro bono legal services to people in need in our city, we strive to fulfill the highest aspirations of the legal profession. VOLS projects serve these vulnerable New York City populations: children, the elderly poor, claimants denied unemployment insurance benefits, incarcerated mothers, immigrant high school students and low-income micro-entrepreneurs. We conduct active outreach to the New York City legal community to encourage pro bono work by lawyers. We strive to provide pro bono legal assistance when and where it will be most accessible to our clients, in settings familiar to them, instead of requiring people in desperate need to come to us. We do this by working closely with hospitals, schools, senior centers, and other community organizations, and by integrating pro bono legal assistance into the array of services these organizations already provide.

With over two decades of collective legal services experience, the VOLS Elderly Project staff and our pro bono attorney volunteers provide free legal advice, information, document drafting, and other services to low-income New York City residents aged 60 and over, and to the social workers and advocates who assist them. These services include direct counseling on critical issues involving housing, government benefits, and consumer debt, and the drafting and execution of wills, powers of attorney, and other essential life-planning documents. The Elderly Project emphasizes outreach to underserved populations with the goal of helping vulnerable seniors stay in their homes. A key aspect of our success is our ability to combine social work resources already available to seniors with pro bono legal services. We work closely with senior centers, share information and communicate regularly by e-mail with over 600 social workers and other advocates in the elder services community, and have a roster of dozens of volunteer lawyers who provide free legal services to our clients.

Our Elderly Project Director, Peter Kempner, has deep ties to the veterans' service community. After spending 10 years as a staff attorney and government benefits specialist in Brooklyn Legal Services' HIV/LGBTQ Unit, in 2011, he helped create Legal Services NYC's Veterans Justice Project. That project provides wrap around civil legal services to veterans, active duty service members and their families. In 2013, he became Legal Services NYC's citywide Coordinator of Veteran Litigation. In 2015, he became the Director of the Veterans Justice Project and Deputy Director of the Housing Unit at Brooklyn Legal Services. He partnered with Services & Advocacy for GLBT Elders ("SAGE") to help create their SAGEVets program, which serves older LGBTQ veterans. He is an adjunct clinical professor at New York Law School where he created and has taught their Veterans Clinic since 2015. Mr. Kempner is

one of the leading voices in New York on the civil legal needs of the veterans. He has lectured extensively on veterans issues for the New York State Bar Association, the New York City Bar Association, at law schools and legal services providers throughout New York, has been called on to give expert testimony on numerous occasions to the New York City Council and to draft model legislation for the Council's Veterans Committee.

The Need for Legal Services

Free civil legal services for low income Americans have existed since the late 1800s, when the Legal Aid Society was established in New York City in 1876. Since that time, programs have proliferated and the national Legal Services Corporation ("LSC") was created in 1974, which provides federal grants to legal services providers throughout the nation. Over the course of the past decade, a number of programs focused on providing legal services to veterans, active duty service members and their families have been created in existing legal services programs to meet the needs of veterans returning home from the wars in Iraq and Afghanistan. These programs have also provided services which aim to address the veterans' homelessness crisis. In 2010, the website StatesideLegal.org was launched, with a grant from LSC, which is a clearinghouse for legal help for military members, veterans and their families. Through a series of email lists and conferences, a national network of legal services providers focused on veterans services regularly interact, share knowledge and best practices to serve the veteran community. For a comprehensive list of legal providers the VA should look to StatesideLegal.org and americaserves.org.

While a variety of programs exist, there is common agreement that none of the programs

are sufficient to meet the tremendous need for civil legal services for low income Americans. According to the Legal Services Corporation's 2017 Justice Gap Report, 86% of civil legal problems reported by low-income Americans received inadequate or no legal help, and 71% of low-income households experienced at least one civil legal problem in the past year. A variety of sources fund this work, including grants from all levels of government, private donations, support from foundations and other philanthropic organizations. Currently the only source of VA funding for civil legal services is through community based organizations in receipt of a grants from the VA's Supportive Services for Veterans Families ("SSVF") program. Many of these providers subcontract with legal services organizations to support their mission of addressing veteran homelessness. The SSVF program is limited to veterans who are homeless or who are at imminent risk of homelessness and the services provided are time limited. The SSVF program does not target the same population of veterans who will be eligible for legal services through PCAFC.

The inclusion of legal services in the MISSION Act recognizes the tremendous need for legal services and an acknowledgment that those who sacrificed the most for all of us should not be forced to face civil legal needs without an assistance of an attorney. Veterans and their caregivers enrolled in PCAFC should be provided these services free of charge and without a limit or cap on services. These services should also be as accessible as possible. Services can be provided on site at VA Medical Centers and Vets Centers via medical legal partnerships; funding should support both telephone hotlines and online portals for services; and providers should be encouraged to find new and innovative ways of reaching veterans and caregivers eligible for services. Given the needs of the population, the funding of providers who have the capacity to do

home visits for families will be essential.

Legal Services Delivery Models

We also believe that the VA should create a grants program that recognizes that there are multiple delivery models for civil legal services. The program should support the direct delivery of legal services by established providers, whose full time staff provide representation to veterans in need; it should support clinical programs run by local law schools who use student advocates to provide legal services to veterans; and lastly the VA should support programs that tap into the private bar and provide attorneys in private practice the ability to give back to those who have served and sacrificed by providing pro bono legal services.

We would like to draw the VA's attention to this last delivery model in particular. Supporting programs which facilitate pro bono service from the private bar has a multiplier effect and can have the greatest impact for clients. There must be recognition that attorneys seeking to provide pro bono legal services to veterans and their caregivers must be properly trained, supervised and supported in this work. Funding organizations that facilitate and support pro bono models would be a cost effective means to reach as many PCAFC families as possible.

Legal Issues Facing PCAFC Veterans and Caregivers

Much like other disabled individuals with fixed incomes, PCAFC veterans and their caregivers face a host of civil legal issues. These include the ability to maintain safe and affordable housing through representation in eviction proceedings and foreclosure actions as well as actions which can ensure that veterans live in habitable and accessible dwellings. These

veterans and caregivers also face family law issues, consumer debt issues, and often need legal assistance in addressing access to benefits programs. The benefit programs include those administered by local and state departments of social services, benefits through the Social Security Administration, state and federal health insurance programs and benefits from the VA itself. Because the VA and other government agencies may be adversarial to the veterans and their caregivers in an access to benefit matter, it is important that the legal services being provided to the veterans and their caregivers are independent from these agencies and be members of the public interest and private bar.

Another critical legal issue facing PCAFC veterans and their caregivers is the need to prepare and execute advance directives and other life planning documents. Thinking about what will happen if you become sick or pass away is a very difficult topic for most people, and this may be especially true for veterans with severe service connected disabilities. Planning ahead ensures that veterans' wishes are clear and that they are carried out by the people they trust the most. If veterans do not have the proper documents in place, their caregivers might not be able to take care of their important affairs, and state law will dictate who gets to make their medical decisions for them and will say who receives their property after their death.

Funding legal services to prepare and execute durable powers of attorneys for veterans will allow caregivers to do banking transaction, sign leases, apply for benefits, file claims, pay bills and take care of other financial transactions on behalf of their veterans, who may be unable to take care of these tasks on their own due to their service connected disability. Funding legal services to prepare medical advanced directives like living wills and health care proxies will ensure that disabled veterans who are unable to make medical decisions on their own will be able

to express their wishes in advance and be able to empower their caregiver to make important medical choices in the event of incapacity. Lastly, providing counsel to prepare a last will and testament as well as forms which appoint an agent for the disposition of a veteran's remains after they pass away will ensure that deceased service connected veterans will be afford dignity and can rest knowing that their final wishes are being carried out by the individuals they designate.

Conclusion

Thank you for considering these comments as the VA studies this important area and seeks to implement the mandate of the MISSION Act to provide legal services to veterans and their caregivers receiving services through the PCAFC program.

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Volunteers of Legal Service