

## Veterans Administration Proposes Rules to Make It More Difficult for War Veterans to Qualify for Financial Assistance

Result: War Veterans Will Be Excluded or Have Existing Benefits Taken Away

### What:

Wartime veterans and their surviving spouses, who are disabled or over the age of 65, may be entitled to a tax-free benefit called **Pension with Aid and Attendance** provided by the Department of Veteran Affairs (VA).

The benefit is designed to provide financial aid to help offset the cost of long-term care for those who need assistance with the daily activities of living such as bathing, dressing, eating, toileting, and transferring. In order to qualify, veterans (and/or their spouses) must demonstrate financial as well as care needs (certified by a physician). The program supplements the income of applicants, it does not make up the shortfall in care costs as Medicaid does.

The VA has proposed a new rule (Proposed Rule *AO73 - Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits*) which dramatically changes the benefit program effectively denying the benefit to war veterans who might qualify under current rules and possibly cutting off benefits to those who already have them. The stated intention of the rule change is to implement a 3 year look back period to eliminate wealthy veterans transferring assets to qualify for the VA's Basic Pension with Aid and Attendance. This is similar to Medicaid and is not unreasonable. However, the bulk of the rule is dedicated to making it more difficult for veterans and their surviving spouses to qualify for this benefit.

Whether intended or not by the VA, the proposed rule effectively drives veterans off the VA's Basic Pension with Aid and Attendance Benefit and onto Medicaid in Skilled Nursing Homes... a much more expensive proposition for States and the Federal government than the current Basic Pension with Aid and Attendance program.

Here are some of the proposed changes:

1. **Medical Criteria Regarding Assisted Living** - – Activities of daily living (these are clearly defined in the care community) **will no longer include medication reminders, meal preparation, transportation or housekeeping** as the VA attempts to winnow down the approved activities of daily living to match those required by Medicaid by their nursing home clients. This will be devastating to veterans with memory loss, dementia, blindness and other ailments which make it unsafe for them to live alone due to their need for medication management, meal preparation and active supervision for safety because they are unable to perform routine tasks of daily living – forcing them to live in unsupported environments or move to a nursing home. Current rules require assistance with activities of daily living AND require a recommendation of physician – this change is an attempt to remove approved activities of daily living from the current program, not to mitigate any abuse of the current regulations.
2. **Treatment of Independent Living Facilities** – **excluded entirely** because the VA now only wants to pay for “medical benefits” as opposed to benefits for care. Our poorest veterans choose Independent living facilities coupled with outside services and family care as the only non-nursing home alternative – the VA states that the average annual payment received is expected to be \$12,920 for veterans and \$10,588 for

surviving spouses in 2016. In FY 2011, the last year for which figures are available, total national Medicaid spending per individuals with disabilities was \$18,518. The care of the veteran will suffer as they are forced into nursing homes at state expense. Current rules allow war veterans to live in independent living facilities that provide supervision and medical support as needed if a physician recommends that this sort of care is required due to physical or mental disabilities.

3. **Net Worth calculation** - The VA proposes to use the Medicaid Community Spouse figure as the maximum asset figure currently \$119,220. However, the VA's proposed rule modifies the Medicaid formula which effectively reduces the maximum asset figure which will disqualify many veterans. The current formula is clear and straightforward.
4. **Grandfather Clause** - There is no grandfather clause in these regulations – as a result, someone who is currently receiving the benefit in Memory care because they need supervision or in Independent Living because they need assistance with a shower and dressing, who notified the VA of a change in the cost of their facility fee, as they are required to do, would be at risk of having their claim ended because they would not meet the new requirements in effect if this proposed rule passes without a grandfather clause. This is just one of the many examples of when a person would lose the benefit if there is no grandfather clause.

These are just some of the many changes proposed by the VA which will effectively close off benefits to war-time veterans. For more details go to: [www.elderbenefitsconsulting.com/proposedvaregao73.html](http://www.elderbenefitsconsulting.com/proposedvaregao73.html)

**When:**

Comments are due no later than March 24, 2015.

Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to: Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW. Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO73, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits."

<http://www.regulations.gov/#!documentDetail;D=VA-2015-VBA-0003-0001>

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