I believe that excluding the facility fee for independent livings that do not provide health care services or custodial care is the result of the VA not fully understanding that the word "Independent Living" is a marketing term and does **not** mean that everyone who is living there does so in order to have the flexibility to live it up while not having to cook meals and do housekeeping.

I strongly encourage you to visit Brenden Gardens at 900 Southwind Road Springfield, IL 62703 (217) 529-4586 or any other independent living facility that is not just a 55 and over community. You will see that some of the folks are living there for the supervision, supportive services and modified environment for seniors and the disabled without which, they could not afford or receive the care they need.

The loss of this benefit to a class of veterans and surviving spouses ("claimants") that generally:

- remain in Independent Living with family members or other 3rd party home care providers because:
    - they cannot afford assisted living or
    - have a spouse who does not need care but cannot provide all the care and supervision the claimant requires without the supportive IADL services an independent living provides or
    - there is no assisted living close enough to the family

would be draconian. These are routinely the most financially needy claimants I have worked with, with family members struggling to keep their parent safe. I understand that in the past some individual VA practioners played fast and loose to get claimants in Independent Living the benefit, but I would suggest that the VA has done a very good job curtailing that issue and the only result of making the proposed changes would be to put many claimants in a state of penury.

The guidance put forth in FAST 12-23 currently allows claimants to deduct their independent living fees if:

- The cost of room and board at a residential facility is a UME if the facility provides custodial care or *the individual's physician states in writing that the claimant must reside in that facility to separately contract for custodial care with a third-party provider* [emphasis added]

It appears that the proposed regulation would remove the ability to have *the individual's physician states in writing that the claimant must reside in that facility to separately contract for custodial care with a third-party provider*. In my experience, removing this wording would result in the loss of the VA benefit to some of the neediest claimants I have assisted, which would be in direct conflict with the stated purpose of the medical expense amendments which is to "help…ensure... that ***only needy claimants receive needs-based benefits***.

Here are a few examples of successful claims under FAST 12-23, one of which I submitted to Congressmen and Senators when trying to get the carve out that currently appears in FAST 12-23:

- Surviving Spouse - her son goes to the Independent Living facility every morning to bath and get his momma dressed for the day. Then her daughter goes over to the facility to help her with lunch. Another daughter visits every evening to assist with dinner – they cannot afford the assisted living in their area and they cannot afford the care services offered by the facility or a private company – the mother pays the son a nominal amount per month to meet the requirement that the Milwaukee PMC has that the caregiver must be paid. How is this rule making sure that ***only needy claimants*** receive this benefit when penalizing families in situations like this?

- A married veteran was on palliative care measures ***only*** at a VA hospital. The hospital was was too far from his home for frequent visits from his wife – and he and his wife wanted to be together at the end of his life. The only place the family could afford for them to be together was Brendan Gardens. Brendan Gardens rehabbed the bathroom at their own expenses to accommodate this dying veteran. He received hospice care and care from his family members, care that could NOT have been safely provided in the family home do to the age of the home, the cost of hiring people to cook balanced nutritious meals and the lack of oversight that being in a facility like Brendan Gardens can provide. 3 months after moving to Brenden Gardens the veteran was taken off of hospice. Last time I spoke to the family was 2 years after he left the VA hospital. They could:

    a. not afford assisted living
    b. not afford Independent Living without the VA benefit
    c. not get the care they needed at home
    d. not get the care he needed at the VA hospital, as evidence by him gaining weight and coming off hospice as opposed to being on palliative measures at the VA hospital

  But they could, with the VA benefit live together in the supportive supervised environment of the independent living, as long as they had the VA benefit – how is this rule making sure that ***only needy claimants*** receive this benefit when penalizing families in situations like this?

- An appeal I work had this pitiful handwritten Statement in support of claim in the original application "The family can't pay her bills. Therefore she is in danger of eviction from her current facility. Her private home attendant will be terminated if Government support is not received." She has $2,300 dollars in assets and $2,224 in monthly income – what assisted living would the VA recommend this ***needy claimant*** live in?

These examples are representative of the stories I hear **every day**. Without the VA benefit, people in these circumstances would be forced into skilled nursing on Medicaid and if not Skilled Nursing eligible yet, they could be forced into unsafe living situations when a perfectly acceptable, supervised, supportive, affordable alternative is, **and has been**, available to them in the past. Obviously, Skilled Nursing on Medicaid would be a much more costly alternative for taxpayers and taking away this much needed benefit and leaving claimants at risk would be unconscionable. Not only should these changes not be made, the VA should NOT require that if the caregiver is a family member that they must be paid. It is a meaningless and arduous accounting task that is burdensome to these families that are doing all they can to keep their parents safe.

It is my understanding that most practioners in the VA benefits area will not handle Independent Living cases because of the strict requirements of FAST 12-23 – since I know that these are the

**most needy of claimants**, I have welcomed them and pursued many appeals in this area. At least once a month I hear "you can't get the VA benefit in Independent living".

Since 10/26/2012 when FAST 12-23 was issued, I have successful assisted 111 claimants to receive the benefit while living in Independent Living using the above guidelines.

| Awards granted to claimants in Independent Living since 10/26/2012 | |
|---|---|
| Assets at time of application | Number of claimants |
| $10,000 or less | 44 |
| $10,001 – $20,000 | 8 |
| $20,001 – $30,000 | 12 |
| $30,001 – $40,000 | 9 |
| $40,001 – $50,000 | 6 |
| $50,001 – $60,000 | 14 |
| $60,001 – $70,000 | 8 |
| $70,001 – $80,000 | 6 |
| >$80,000 | 1 |
| Appeals, unsure of original application assets | 3 |

As you can see 44 of the claimants had less than $10,000 in assets – these are ***clearly*** needy claimants.

Focusing on only those with less than $20,000 as the loss of this benefit would likely result in placement in a Skilled Nursing facility on Medicaid within short period of time:

There were 10 Veterans with Spouse, 20 single veterans and 22 Surviving Spouses if they all received the maximum benefit, they annual payout for 2015 would, using the VA average annual payment rates for Veteran and survivor pension ($12,920 and $10,588) be $620 ,536 per annum to assist this group. If they were all in skilled nursing, with Medicaid contributing an average of $3,000 per each of the 52 individuals, the cost to the US tax payer would be $1,872,000 per annum an **increase of 1,251,464 or 202%**.

If we assume the sample above is a representative sample and apply this analysis to the analysis in

## Impact Analysis on AO73-Proposed Rule

| **Income Deductions for Medical Expenses** | | | **Applicants with less than $20,0001 forced into Skilled Nursing on Medicaid** | |
|---|---|---|---|---|
| **Fiscal Year** | **Caseload** (-)** | **(Savings) ($000)** | **40% of applicants assumed to have less than $20,001 in assets- Medicaid immediate** | **Cost of Medicaid for one year at average $3,000 per month ($000)** |
| 2016 | (1,829) | ($21,593) | 725.00 | $30,845 |
| 2017 | (3,354) | ($42,425) | 1,329.51 | $56,564 |
| 2018 | (4,630) | ($62,829) | 1,835.32 | $78,084 |

| | | | | |
|---|---|---|---|---|
| 2019 | (5,694) | ($83,001) | 2,257.08 | $96,028 |
| 2020 | (6,589) | ($103,313) | 2,611.86 | $111,122 |
| **5-Year Total** | | **($313,160)** | | **372,646** |

** Because VSOs and VA employees routinely tell claimants that they cannot receive the benefit if they are in Independent Living, I believe the case load estimate maybe significantly overstated

In addition, by denying families the ability to care for their loved ones in a less costly environment, ***the remaining 60% with assets above $20,000 will also be forced into nursing homes on Medicaid faster than they otherwise would be***.

I am sure if the figures for Awards granted to individuals in Independent Living pre Fast 12-23 and post FAST 12-23 were compared, you would see that you have solved the fraud issue and that only **truly** financially and physically needy claimants are currently being granted the VA benefit.

In summary, a knee jerk reaction to the term independent living would have a dramatic effect on our poorest veterans and the middle class without meeting one of the primary goals of the proposal, to ensure ***only needy claimants receive needs-based benefits***.