

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

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.”

Cite for electronic submittals: www.regulations.gov/#!docketDetail;D=VA-2015-VBA-0003

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The proposed rule mentions that these changes are being made to address the Intent of Congress, however, the only documentation I have been able to locate that could be interpreted as the Intent of Congress on this subject were to GOA reports –

- GOA 12-540 which calls for policy changes to limit transfer of assets as a means to qualify for the pension and
- GOA 12-153 which calls for better outreach and marketing because elderly veterans may not be aware of their potential eligibility for enhanced monthly benefits

This rule appears to have cherry picked the intent of congress to mean restricting the benefit to the point where elderly veterans will not be eligible until they are medically qualified for Medicaid in a Nursing Home, resulting in a significant restriction of the current program and, should this pass, essentially removing the need to do any outreach to our elderly wartime veterans on this benefit.

Examples of Changes:

The table below shows the effect of some of the most draconian changes:

Current Program	Proposed Rule AO73
<p>1. Medical Criteria Regarding Assisted Living - Those who are in assisted living because they physically or mentally need the assistance of another person with activities of daily living and have a doctor's recommendation meet the Medical Criteria</p>	<p>1. Medical Criteria Regarding Assisted Living - – you must need the assistance of another person with at least 2 activities of daily living that <i>do not include medication reminders, meal preparation, transportation or housekeeping</i>. This will be devastating to veterans with memory loss or dementia and other ailments which make it unsafe for them to live alone.</p> <p>Often the reason a person is no longer safe at home is because they cannot cook their own meals or manage their medications safely. Refusal of the VA benefit to folks in this situation will force them into skilled nursing on Medicaid years earlier than if they continued to have access to the VA funds in the same manner they do today. In fact, the VA is proposing to change the requirements to assistance to match those for Medicaid, which means you are not eligible for the program until medically, you are nursing home eligible – saving the VA hundreds of thousands of dollars, costing States millions and forcing veterans into higher care situations when the program as it stands today allows them to age safely in the less restrictive environment of an assisted living, independent living or at home with supportive services.</p>

2. Treatment of Independent Living – in 2012 the VA regulations around independent living were changed to require the assistance of another person with to ADLs, excluding medication reminders, meal preparation, transportation or housekeeping – this change resulted in a significant reduction in annual applications but ensured that only those veterans who truly needed the medical support of a supervised environment would receive the benefit.

2. Treatment of Independent Living Facilities – **excluded entirely** – What is an independent Living Facility? For all intents and purposes, an independent living facility is the same as an assisted living except instead of a set level of care required the care level purchased and what provider they use to purchase the care is up to the resident and their family. They are modified for the disabled and set up for family and 3rd party caregivers to assist the residents while providing a secure and supervised environment. Independent Living facilities generally provide **at a minimum:** Meals, Safety Checks, Room checks when a Resident does not show up for meals, on-call staff, supervision and they alert family members or appropriate the medical assistance when something is amiss with the resident. Our poorest veterans choose Independent living facilities, coupled with outside services and family care, as the cost is substantially lower than assisted living care – making this the only financially feasible alternative. The stories of these veterans and the care their families are providing to them before they go to work and on their way home are heart-warming – and would be impossible if this support was pulled from them. The VA states that veterans and surviving spouses receive, on average, \$12,920 and \$10,588 respectively from the VA. The FY 2011 average Medicaid contribution for the disabled is \$18,518. Not only will the care of the veteran and their spouse will suffer as they are forced to do without or forced into nursing homes early, the State budgets will suffer. Since 80% of all assisted living and independent living residents are veterans or surviving spouses of veterans, this change will greatly impact this industry as well. Prior to VA FAST LETTER 12-23 (FAST 12-23), veterans and surviving spouses in Independent Living only needed a physician recommended they live in Independent Living because they needed assistance with at least two activities of daily living (ADLs) due to their disabilities, not just for convenience. These ADLs **included** what the VA classify began classifying as **Independent Activities of Daily Living (IADLs) in FAST 12-23:** medication reminders, meal preparation, housekeeping or transportation. With FAST 12-23, the VA **excluded** those in Independent Living from using IADLs to qualify for the benefit. It is important to note that **Medicaid does provide support to those who just need IADL support outside of nursing homes and this VA regulation is attempting to deny benefit until you meet the Medicaid defined criteria for living in a nursing home.**

	<p>The FAST 12-23 change did not raise a lot of eyebrows – in fact, since it stopped some abuses that were going on in 55 and over communities (which are not independent living facilities), it was not seen as a bad thing at all.</p> <p>However, to completely exclude Independent Living as a choice for our neediest veterans and their surviving spouses from this benefit, essentially because they cannot afford more expensive accommodations, is reprehensible.</p>
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<p>How Proposed Regulation RIN 2900-AO73 will Remove most Independent Living Facilities as Unreimbursed Medical Expenses</p>	
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<p>Under the current regulation: FAST 12-23 The cost of room and board at a residential facility is a UME if</p> <ol style="list-style-type: none"> 1. the facility provides custodial care to the individual, or 2. 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. <ul style="list-style-type: none"> • A facility provides custodial care if it assists the individual with two or more ADLs. • If the facility does not provide the claimant custodial care, or the claimant's physician does not prescribe care by a third-party provider in that facility, VA will not deduct room and board paid to the facility but will deduct the cost of any medical or nursing services obtained from a third-party provider. 	<p>Proposed paragraph §3.278 (b)(8) would define “assisted living, adult day care, or similar facility.” As follows:</p> <ol style="list-style-type: none"> 1. the facility must provide individuals with custodial care; or 2. the facility may contract with a third-party provider to provide such care.
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Many lower cost Independent Livings provide Meals, Housekeeping, Transportation, Safety Checks and Supervision while keeping costs down for Seniors by having personal care done by 3rd Party Home Care Agencies or family members. This additional care is arranged by the resident and/or the families. This often results in residents being able to arrange for a higher level of care at a lower price than an assisted living.

The proposed regulation will remove this choice from our veterans and their surviving spouses as the facility will only count as an unreimbursed medical expense if facility staff or a 3rd party the facility contracts provides the care. That is not a feasible alternative in all States as it would convert them to the higher cost operating model of an assisted living and it is not a feasible alternative for the veterans and surviving spouses who need this lower cost alternative.

<p>3. Net Worth calculation - Uses a clear formula of Income minus Medical Expenses times a life expectancy factor to determine if the applicant has too many assets to receive the benefit. Although it is a simple math formula, the VA and financial planners have worked hard to make veterans think you can't have more than \$80,000 in assets. In 2014 only 40 claims were settled where the applicant had more than \$80,000 in assets.</p>	<p>3. Net Worth calculation - The VA proposes to use the Medicaid Community Spouse figure as the maximum asset figure currently \$119,220. The veteran's net worth would equal all assets except a primary residents <i>PLUS the claimant's annual income</i>. As a result, a veteran with \$50,000 in annual income would only be eligible for benefits once his assets were below \$69,200 – despite his Memory Care fee being \$6,000 per month versus the \$140,000 in assets he would be allowed to have under the current method. The VA is using their current practice of denying everyone who has more than \$80,000 and making them go through the appeal process to claim they do not have a current Net Worth test, to <i>appear</i> reasonable by adopting the Medicaid asset limit but then promptly reducing the Medicaid limit by income. In addition, the VA benefit does not, as Medicaid does, result in the entire cost of the assisted living shortfall being covered.</p>
<p>4. Financial Test – VA asks for disclosure of Income and Assets for the NEXT 12 months in the application. Then the VA interfaces with the IRS looking at the last tax return filed and queries veterans about the changes.</p>	<p>4. Financial Test – VA proposes that individuals submit the last 3 years of financial data. The VA somehow believes that this will reduce backlog. The VA could very easily ask veterans to explain any changes in income or transfer of assets in the last three years and verify with the IRS as they do now.</p>

<p>5. Current VA regulations state that you must be in compliance with the regulations in effect at the time the claim is adjudicated.</p>	<p>5. 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.</p>
<p>6. Treatment of IRAs</p>	<p>6. Treatment of IRAs - The VA reiterates its policy of counting IRA assets as Net Worth and again as Income when funds are withdrawn. In many instances, this treatment bars wartime veterans who invested in IRAs from receiving the benefit. For example, a veteran with \$50,000 in IRA assets will have every withdraw count as income even though it was previously counted as an asset while a veteran with \$50,000 in cash would not have any impact to the income calculation when the funds are withdrawn – because the buying power of an IRA withdraw is potential less than a cash withdraw, due to the fact that the IRA withdraw may have a tax liability associated with it, this is doubly harmful to the wartime veteran.</p>

<http://www.regulations.gov#!/docketBrowser;rpp=25;po=0;dct=PR%25BN%25BFR%25BSR%252BO%25BPS;np=3;D=VA-2015-VBA-0003>

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