



Elder Law: Congress likely to change Veterans Affairs benefits this year

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While only a small percentage of the millions of veterans and their families use the Aid and Attendance benefit offered by the Department of Veterans Affairs, it is clearly a vital program for those in need of medically related assistance with their daily activities.

While this program is financially "means" tested, there is currently no penalty for applicants who divested themselves of assets and subsequently applied for benefits.

But because of perceived abuse of the program generated by a Government Accounting Office report, a Senate bill was introduced into the Congress in 2012 that imposed a three-year "lookback" period for uncompensated transfers prior to the filing of the VA application. The bill did not get traction, but was replaced in 2013 by a new House bill that contains similar provisions (H.R. 2189).

The bill passed the House on Oct. 28 (404 to 1) and was referred to the Senate for review. While most bills take time to become actual law, it appears from the movement of this bill that legislation may be forthcoming in 2014 that will drastically affect veterans and their family members who use the Aid and Attendance benefit.

The language contained in the bill, if made into law, will make the following changes:

Improvement of claims processing -- A commission will be appointed to address the issue of claims backlog. Anyone who has dealt with the VA can understand the frustration with delays in processing claims and communication on the status of a pending claim. While some claims are resolved in 30 days, the average is usually many months. This legislation mandates that all claims will be approved or denied with 125 days of application. While four months is not exactly fast, at least it gives the applicant some hope.

In an effort to keep applicants informed of pending claims without waiting on hold on the telephone for lengthy periods of time (or being able to get through at all), a section of the bill directs "the Secretary to maintain on the VA website publicly accessible information concerning pending and completed claims of compensation for a veteran's service-connected disability or death."

Pension (aka Aid and Attendance) -- The bill also provides "that if a veteran eligible for a pension for service or for a non-service-connected disability, or the spouse of such veteran, disposes of a resource that was part of such veteran's estate for less than its fair market value within three years before applying for such pension, the Secretary shall deny or discontinue the pension payment for months beginning on the date of such disposition and ending when the uncompensated value of such resource is reached."

This language appears to mean that the VA pension program will soon review financial transactions of an applicant much like the federal/state Medicaid long-term care services program (i.e. nursing home care). Given the budget constraints on government, it was inevitable that this gifting ability would be restricted.

Assuming H.R. 2189 becomes law (or something similarly drafted), how will it affect applicants? You can anticipate the VA looking to the rules used by the Centers for Medicare & Medicaid Services, which currently imposes a five-year look-back period for asset transfers prior to application for long-term care benefits.

For illustrative purposes, Pennsylvania currently penalizes a Medicaid applicant one month of long-term care payment coverage for about every \$8,400 given away during the five years preceding the application. This is based on the average daily cost of nursing home care in the commonwealth.

In contrast, it appears that the measuring device to be used by the VA in arriving at its penalty divisor will depend upon the current maximum pension with Aid and Attendance benefit (for a married veteran in 2014, that's slightly over \$2,000 a month). Using that logic, a gift will create four times the penalty period for the VA benefit than the Medicaid benefit would.

Some simple math will tell you that if an applicant gives away more than \$72,000 (36 months x \$2,000), he/she would probably be better off just waiting three years to apply for VA benefits and not have to even disclose the gift in month 37. While there will probably be exceptions and planning techniques to counter the imposition of transfer penalties, the existence of this potential new rule should not be ignored.

A side effect of a proposed three-year look-back rule is that it may actually delay the processing of VA claims.

The VA already has a notorious reputation related to claims backlogs, and the processors are not reviewing three years of financial records on each claim. Imagine the increased workforce needed to review all these records.

So when might all this take place? Never? Not likely.

Given the status of our economy, our aging population and political pressure to eliminate "gaming" the system, it is inevitable that the VA will impose a financial look-back period for applicants. That said, the bill also currently provides for the "grandfathering" of applications made prior to the implementation of the new rule. Those wishing to take advantage of the present law may want to investigate their options quickly.