



## Elder Law: The VA is at it again

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Hard as it is for us to believe, this is the fifth anniversary of this column. During that period, we have written various columns that we felt were of unique concern to older adults and their families and have appreciated the normally positive feedback we have received. One topic we've written about twice has been that of VA benefits. Once again, it's time to revisit this topic.

As of September 2014, there were about 700,000 wartime veterans in Pennsylvania. Since, statistically, most women outlive men, and the overwhelming majority of veterans of wars prior to the Gulf War were men, you can add a healthy number of wartime veteran widows to that figure.

Veterans (and their spouses) are eligible for an important nonservice connected disability pension program commonly known as "Aid and Attendance." This program provides cash payment to a veteran (or widow) who needs assistance with medical activities of daily living in a home or facility setting.

As VA Accredited Attorneys, we have seen how invaluable this program has been to our aging clients and their families to help them live more comfortably (and frankly, avoid poverty) in their declining years. However, as beneficial as this program is and has been, only a small minority of veterans ever access it. Contributing factors to this limited use are: a complex (and frequently delayed) application process, inaccurate information provided to applicants from various sources both within and outside the government, and relative lack of knowledge that the benefit even exists.

With that having been said, the VA has decided to make it even more difficult for veterans and their families to qualify for aid.

We've written about attempted changes to the law in this column twice as Congress has taken up this issue with formal legislation in as many tries dating back to 2012 — both without success.

However, the VA has realized the political hot potato of disturbing important veterans' benefits through the legislative process and has done an "end around."

On Jan. 25, the VA introduced proposed regulations that would penalize wartime veterans (or their widows) for up to 10 years for making gifts for less than fair market value. These changes include a three-year look-back on asset transfers, the establishment of a 10-year maximum penalty period, and a clear net worth eligibility amount tied to the maximum Community Spouse Resource Allowance established for Medical Assistance purposes (presently \$119,220). (Imagine an example of a veteran paying money toward a grandson's college tuition only to be penalized years later for that support.)

While the topic is too expansive and detailed for complete coverage here, there are a variety of circumstances under the new rules that will disqualify a veteran and his or her family from receiving benefits. Unfortunately, the manner in which the rules are set forth poses a lot of questions and needs refinement or we anticipate a much longer backlog in the VA system. That's not what veterans (and their surviving spouses) need right now, particularly as they continue to age.

To keep these draconian changes from occurring, everyone who cares about a veteran in need of long-term care needs to respond. Public comments must be received no later than Tuesday, and can be sent through [www.regulations.gov](http://www.regulations.gov); or 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 1-202-273-9026. Comments must include that they are in response to "RIN 2900-AO73, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits."

For those who want to plow through the proposed changes, they can be found online at <http://www.regulations.gov>.