

A program for veterans' medical expenses gets an overhaul

October 29, 2018 10:00 AM

Three years ago, the column addressed the [proposed rule changes](#) by the Department of Veterans Affairs to the extremely beneficial program typically referred to as “aid and attendance.” In short, this program provides a cash payment for unreimbursed medical expenses for veterans and their spouse or widow in a monthly amount not to exceed \$2,169 (indexed for inflation).

This benefit relates to a disability that is not service connected. That becomes very helpful as a person ages and needs assistance with activities of daily living whether living at home or in a facility such as a personal care home or skilled nursing facility.

As of September 2017, Pennsylvania [ranks in the top five states](#) in the country for veteran population as well as having a high number of vets over age 65, according to the Department of Veterans Affairs.

The new rules make sweeping changes to the way the aid and attendance program has operated for several decades. The effect will be to provide more concrete rules but also to delay eligibility when certain activities occur.

How did we get here?

Changes to benefits for veterans are a controversial political topic. Congress tried twice to introduce legislation to accomplish this in the past few years, only to get bogged down. So, the VA decided to go outside the traditional Congressional law-making process and simply issued new regulations published in the Federal Register on Sept. 18 (with an effective date of Oct. 18).

This monumental change did not occur without advance consideration by VA personnel and input from many stakeholders across the nation. Frankly, as attorneys practicing in this area, we think the government agency did a pretty good job of identifying existing problems and providing a more reliable process to determine eligibility.

Here are some highlights:

1. There is now an identifiable asset resource limit (\$123,600) and a formula for determining eligibility based purely on the numbers. The VA borrowed some ideas from the Centers for Medicare and Medicaid Services, which administers the Medicaid program serving a similar population of elderly people with long-term disabilities. The resource limit for veterans benefits mirrors the community spouse resource allowance

applicable to married Medicaid recipients.

2. There are clarifications to the assets counted toward the resource limit mentioned above as well as exemptions for items like the personal residence, automobiles and other similar exempt items.

3. Joint bank accounts no longer will reduce the net worth of the VA applicant proportionally to the number of account owners. For example, in the past, a VA applicant with \$100,000 in his bank account could reduce his countable resources to \$50,000 by simply adding his adult child to the title of the bank account. This change is in line with the rule for Medicaid eligibility.

4. The most significant change is that for the first time in history, the VA is now imposing a 36-month look-back period for gifts or uncompensated transfers to a third party. The maximum penalty is five years. So, in the future, a VA applicant will have to disclose any gifts within the three-year period prior to the filing of the VA application. There is a monthly penalty divisor of \$2,169 (indexed annually for inflation). This means for every \$2,169 given away, the VA applicant will be ineligible for benefits. Some simple math tells us that if a person has given away more than about \$78,000, it would be wise to simply wait out the 36-month review period to avoid possibly being penalized up to five years! Note that this is less restrictive than the 60-month look-back period applicable to Medicaid gifts.

The information provided by the Department of Veterans Affairs will take some time to digest and interpret. Considering that this country is on the verge of the aging of the Vietnam veteran population of over 6 million, this is a good time to understand the importance of advance planning for aid and attendance eligibility.

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