

# VA BENEFITS – Changes on the Horizon



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AVOID MISTAKES. PROTECT ASSETS.

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## Today's Program

- ◆ Understanding the Aid and Attendance Program
- ◆ How to utilize and maximize VA benefits in different care settings
- ◆ The new 3 Year lookback for gifts
- ◆ New planning options in light of 3 year lookback for gifts

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## What is Aid & Attendance?

- ◆ Applies to NON-SERVICE connected disability
- ◆ War Time Veteran or Widow/Spouse/Dependent
- ◆ Dollar for Dollar Reimbursement of Out of Pocket Medical and A&A Costs
- ◆ Available in a Wide Range of Care Settings
- ◆ Does not affect other income/non-taxable
- ◆ DOES affect SERVICE connected pension

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### Do you know any of these people?

- ◆ Veteran living at home with help from a visiting family member?
- ◆ Veteran living with a family member other than spouse for help?
- ◆ Spouse of Veteran?
- ◆ Widow of Veteran?
- ◆ Veteran Living in:
  - Independent Living Facility (IL)?
  - Assisted Living or Personal Care Home?
  - Nursing Home?
- ◆ Veteran told they have too much income or assets to qualify for VA benefits?

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### Current Statistics

- ◆ As of September 2012, there were more than 718,000 wartime Veterans in Pennsylvania
- ◆ Only a small fraction ever obtain VA benefits
- ◆ Contributing Factors:
  - Complex Application Process
  - Inaccurate Information from various sources
  - Lack of Available Information and Planning Options
  - Veterans do not know the benefit exists

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### Service Test

- ◆ Service Connected vs. Non-Service Connected Disability
- ◆ War Time Service
  - 90 days with one day active duty during designated period of war time
  - Other than Dishonorable Discharge
  - Did not need to leave "American soil"
- ◆ Referred to as "Aid and Attendance"



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## Wartime Dates of Service

- WWII: December 7, 1941 – December 31, 1946
- Korea: June 27, 1950 – January 31, 1955
- Vietnam: August 5, 1964 – May 7, 1975
- Gulf War: August 2, 1990 - ?
- Obtain DD214 discharge form
- May order for free online



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## VA Medical Testing

- ◆ Medical Test
  - Need regular Aid and Attendance
  - Based on ADL's (Activities of Daily Living)
  - Different qualification depending on living arrangements (home vs. facility care)

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## Financial Tests

- ◆ Income Test
  - Income can be reduced by out-of-pocket medical expenses to a negative number. (IVAP)
- ◆ Asset Test
  - Historical consideration = \$80,000 or less
  - life expectancy calculation
    - This is not a hard and fast limit.

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LIFE EXPECTANCY TABLE FOR NET WORTH DETERMINATIONS  
Effective February 13, 2007

Claimant's Age	Life Expectancy	Claimant's Age	Life Expectancy
30	46.0	63	17.8
31	45.1	64	17.1
32	44.1	65	16.4
33	43.2	66	15.7
34	42.2	67	15.1
35	41.3	68	14.4
36	40.4	69	13.8
37	39.4	70	13.2
38	38.5	71	12.6
39	37.6	72	12
40	36.7	73	11.5
41	35.7	74	10.9
42	34.8	75	10.4
43	33.9	76	9.9
44	33	77	9.3
45	32.1	78	8.9
46	31.3	79	8.4
47	30.4	80	7.9
48	29.5	81	7.5
49	28.7	82	7
50	27.8	83	6.6
51	27	84	6.2
52	26.1	85	5.9
53	25.3	86	5.6
54	24.5	87	5.3
55	23.7	88	5
56	22.9	89	4.7
57	22.2	90	4.4
58	21.4	91	4.1
59	20.6	92	3.8
60	19.9	93	3.5
61	19.2	94	3.2
62	18.5	95 or older	3

Source: Department of Veterans Affairs

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## Current Maximum Rates

- ◆ Married Veteran: \$2,085/month
- ◆ Single Veteran: \$1,759/month
- ◆ Veteran Spouse: \$1,381/month
- ◆ Veteran Widow: \$1,130/month
- ◆ *Divorce from Veteran severs benefits!*

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## Wide Range of Care Options

- ◆ Available for In Home Care
    - Home Health Agency
    - Family Caregivers
  - ◆ Assisted Living Facilities / Personal Care Homes
  - ◆ Skilled Nursing Facilities
- 
- ◆ Must still meet Income / UME test
  - ◆ Must still meet Asset Test

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## Reasons For Change

- ◆ U.S. Congress instituting 3 year lookback rule
- ◆ Perceived abuse of existing rules (i.e. over-resourced applicants displacing needy)
- ◆ Inappropriate planning techniques (financial products sold to seniors for commissions)
- ◆ Uncoordinated planning (i.e. gifts made to expedite VA eligibility affect Medicaid eligibility)

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## S1982 / HR2189

- ◆ § 902 of S1982
- ◆ Disposal of a “covered resource” for less than fair market value which reduces corpus of estate of claimant or spouse.
- ◆ A “lookback” of 36 months prior to VA application submission.

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## S1982 Transfers

- ◆ May include the transfer to an annuity, trust or other financial instrument or investment, which the Secretary believes should be “consumed” for Veteran’s maintenance.
- ◆ Notice mixing of legal and financial items
- ◆ “Consumption” means ????

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## S1982 Penalties

- ◆ Monthly penalty calculation
- ◆ Total uncompensated value of uncompensated transfers
- ◆ Divide by Maximum improved pension payable to claimant
- ◆ Maximum penalty of 36 months

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## S1982 Penalty (con't)

- ◆ Consecutive rather than concurrent penalties for multiple transfers
- ◆ Surviving spouse may continue serving penalty for her eligibility
- ◆ Effective 1 year after enactment
- ◆ Hardship Waiver provisions
- ◆ Regulations forthcoming

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## Vs. Medicaid gift rules

- ◆ OBRA 1993 set the standard for MA
- ◆ DRA 2005 extends to 5 years
- ◆ "Otherwise eligible" for start of penalty
- ◆ VA appears to start upon transfer
- ◆ VA much lower penalty divisor
- ◆ 2 VA offices in PA vs. 66 CAO's

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### Planning Example

- Sam Smith Income: \$1,400/month
- Cost of Home Care: \$ 500/month
- Living on \$900/month
- Would like more care at home but can't afford and agency cannot wait for VA approval
- Hires child/family member at \$900/month
- Invoice Sam until VA approves claim

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### Planning Example (con't)

- Resulting VA benefit is \$1,800/month
- Income Tax Free
- Direct Deposited Monthly
- Retroactive to Filing Date – pays child arrears and stops contract with child caregiver
- Begins receiving 3x care/month (\$1,500)
- Net income from \$900 ↑ \$1,700/month

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### “Lookback” Example

- Married Veteran gives children \$50,000 and applies for VA benefits within 3 years.
- VA divides gift by maximum benefit (\$2,000)
- Resulting penalty is 25 months
- Maximum penalty is 3 years (36 months)
- What if you can't wait for penalty ?
- What if you need help now ?

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## “Lookback” Planning

- Veteran lives in PCH and has \$150,000
- Gift will cause delay of benefits
- Calculate maximum asset retention
- Calculate UME's vs. income
- Annuitize portion of savings to increase income
- VA does not count as gift and no delay in benefits

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## What if the claimant dies?

- Claimant may die after approval but before payment, OR
- Claimant dies while claim pending
- Consider substitution of claimant
  - VA Form 21-0847
- Children / facility as creditors

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## Fully Developed Claims

- Expedite Claims
- Why Use Attorneys?
  - Examine all relevant factors
  - Sale of Home
  - Excess Resources
  - Seek Maximum Benefits

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Thank you !  
Questions?

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