



Elder Law Guys: A year in, what have the new rules on veterans aid meant?

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By the time you read this, the one-year anniversary of the announcement of [the new rules for veterans aid and attendance benefits](#) will be nigh. Implementation of these sweeping changes took place on Oct. 18, 2018.

So, with almost a year under our belt, what do we know now that we didn't know then — and how is it working?

To review, the program provides thousands of dollars monthly to veterans and their spouses who need some type of assistance with their activities of daily living. These services can be provided at home or in a long-term care facility by commercial or family member caregivers.

Why is this important? An extra \$1,000-\$2,000 a month for a senior living on a fixed income who needs long-term care makes a big difference.

According to statistics published by the Department of Veterans Affairs, Pennsylvania is in the top five state populations for active duty military residents — and with the aging of the Vietnam veteran cohort, a large bubble is about to burst on the need for long-term care in a city near you.

Here's what we're seeing so far and some takeaways:

1. The VA has been honoring the grandfathering of gifts or uncompensated transfers to a third party of assets within the new three-year lookback period as long as those were completed prior to Oct. 18, 2018.

This is important for people who will be applying for the program through Oct. 17, 2021 (when the lookback is fully vested). While the VA forms are not exactly what we'd deem accurate to account for the grandfathering or "phasing in," it is doable with precise disclosures of asset transfers.

2. Even for transfers made after the law change, it is important to note that not all gifts will even cause a penalty under the new rule. For example, the new asset test is approximately \$127,000 (not including the value of the residence or car).

While the new "covered asset" calculation is somewhat more complex, consider a simplistic example where a veteran or spouse gives away \$20,000 within the three-year lookback period. It would not create a penalty period for benefits if the claimant's assets were already below the \$127,000 threshold.

On the other hand, let's say the claimant had \$150,000 in countable assets and gave away \$20,000 — a much different result. In the second scenario, the gift would cause an eight-month penalty period as to eligibility.

3. The family home plays an even more important role under the new VA rules. Like Medicaid rules, the residence (and land up to two acres) is considered an exempt asset by the VA. But, unlike Medicaid, the VA does not impose a penalty for giving away the family home before or after the filing of an aid and attendance application; at least according to the rules published in 2018.

Theoretically, this means that a VA applicant or recipient of benefits could give away his or her home even if it is worth hundreds of thousands of dollars without causing a problem. Does this then also mean that someone with several hundred thousand dollars who wants to seek VA benefits could simply purchase a home and gift it to an adult child or a trust to avoid waiting out the three-year lookback period? We shall see how the VA reacts to this type of planning.

4. Finally, unlike Medicaid, the VA has not imposed an "estate recovery" claim against the assets of the decedent to repay the Veterans Administration for benefits paid out during a claimant's lifetime.

No doubt there will be more developments and updates as this monumental change to the system unfolds.

Regardless of the changes, always keep in mind that everyone's situation is different and planning should be done in a comprehensive manner to address all potential issues so that the quest to obtain VA benefits does not negatively affect other concerns such as future Medicaid eligibility or tax planning.

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