

VA New Rules: The Good, The Bad and The Ugly

September 28, 2018

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The Department of Veterans Administration finally did it! After years of waiting and making promises (or as some see it, threats), on September 18, 2018, the VA published new amendments to the rules and regulations that govern needs-based VA benefits. These amendments are to take effect on October 18, 2018, providing VA planners just one month to utilize the old rules. The VA's justification for developing, and now publishing these new rules is to "ensure the integrity of the VA's needs-based benefit

programs and the consistent adjudication of pension...claims." The rules establish new requirements for evaluating net worth and asset transfers and will, in fact, create more consistency with regards to decisions regarding approvals for these benefits.

So what exactly do the new amendments provide? First, the VA has set forth a new bright-line net worth amount to qualify for the VA benefits. This net worth amount correlates with the Medicaid community spouse resource limit, and at the start will be \$123,600. Second, and one of the most significant changes, is that there will be a 36-month look-back period for any transfers of assets that the veteran and/or spouse makes over this new bright-line net worth amount. Additionally, income that is not out-weighed by unreimbursed medical expenses will be added to the net worth calculation, rendering it even more important that the veteran and/or spouse have significant unreimbursed medical expenses. Transfers to annuities and/or trusts will be considered transfers for less than fair market value, unless the individual retains control over the annuity or trust, which then makes the annuity or trust part of the individual's net worth. Penalty periods for these types of transfers will be applied, however penalty periods will not exceed five years. The penalty divisor will be the same for any veteran or spouse who makes a transfer within the 36 months, and the 36-month look-back period will start from the date of the actual transfer.

Other parts of the rule provide more clear definitions of what classifies as

unreimbursed medical expenses; what services can be counted as unreimbursed medical expenses when the veteran or spouse resides in an independent facility, and when family members are providing care, and the VA has increased what are considered to be activities of daily living to now include ambulating within the home.

The biggest take-away from these new rules is that it will now be imperative for war-time veterans and surviving spouses to plan for the future, with the help of proper legal guidance, so they can qualify for the Aid and Attendance VA benefit when it is needed; a benefit that is extremely important to many of our most vulnerable, as it pays to those veterans and/or surviving spouses a tax-free, monthly pension to be used to pay for much needed long-term care.

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