

UT Law 2015 Estate Planning, Guardianship and Elder Law Conference

VA Look-Back: What do Proposed Changes Mean to You and Your Clients?

By Victoria L. Collier, CELA, Lawyers with Purpose, LLC

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Introduction

Since 2012 Senators Wyden and Burr have been submitting various bills to be approved by Congress that would impose a three-year look back period for veterans benefits claimants who transfer assets and then apply for the improved pension benefit. See S. 3270/H.R. 6171 (112th Congress) and S. 748/H.R. 2341 (113th Congress), each of which died in session.

Support and encouragement for the bills was born out of the Government Accountability Office Report, GAO-12-540, May 15, 2012 wherein it made the following recommendations, "Congress should consider establishing a look-back and penalty period for pension claimants who transfer assets for less than fair market value prior to applying, similar to other federally supported means-tested programs." Senate hearings were then held in July 2012, followed by the submission of the aforementioned bills.

The Veterans Administration, growing impatient for bills to pass, took it upon itself to publish new proposed laws on January 23, 2015 in Federal Register Vol. 80, No. 15, Part IV, 38 CFR Part 3, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits. Pursuant to administrative law procedures, the VA was required to provide a public comment period, which it did for 60 days, expiring on March 24, 2015. Eight hundred and eighty-three (883) public comments were recorded by March 24th, overwhelming the VA.

Prior to any final rules, the VA must acknowledge and respond to each comment submitted. The VA anticipates the final rules to be published during fiscal year 2016, which could be as early as October 1, 2015.

Bullet Point Changes to the Laws

§3.274 - Establish bright-line net worth standard of \$119,220; includes income and assets

§3.275 - Exempt home place only up to 2 acres of land; sale proceeds are an asset

§3.276 - Pre-application asset transfers

- Presumption that transfers were made to qualify for VA benefits
- 36 month look-back
- Up to 10 year penalty
- Penalty begins month after last transfer
- No partial cures; cures must be made within 60 days of application

§3.278 - Deductible Medical Expenses

- Home Health Care deductible expenses capped at national average rate; currently \$21/hour
- Independent Living Facilities not a deductible medical expense (difficult to obtain exceptions apply)

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