TPC

The Peninsula Center
for Estate and Lifelong Planning
Attorneys and Counselors at Law

461 McLAWS CIRCLE, SUITE 2
WILLIAMSBURG, VIRGINIA 23185
Telephone: (757) 969-1900
Facsimile: (757) 969-1903
www.tpcestate.com

Changes to VA Pension Rules

On October 18, 2018, new rules are going into effect involving VA Pension benefits, which are commonly called "Aid and Attendance" benefits.

The purpose of VA Pension is to provide financial assistance to medically-eligible veterans and their widow(er)s. Unlike Medicaid, which pays for the entire portion of an individual's nursing home costs which the individual cannot afford to pay herself, Pension does not guarantee that the veteran will have sufficient funds to pay for a nursing home. Instead, it provides an additional source of monthly income which can then be used to help the veteran's assets last longer in paying out-of-pocket for long-term care.

To receive Pension benefits, a veteran need not have been injured during his wartime service, but rather is currently disabled (perhaps, due to age) and in need of assistance with activities of daily living, such as bathing, toileting, or feeding oneself. Additionally, to be eligible for VA Pension benefits, the veteran has always needed to have a low financial net worth. In other words, the veteran must have less than a certain amount of monthly income, and less than a certain amount of accumulated assets. If the veteran's income exceeds the eligibility threshold but the veteran has a great deal of medical expenses not reimbursed, the VA will deduct those expenses from the veteran's income in making its eligibility calculation.

Under the old VA rules, a veteran could, without penalty, give away as much of his accumulated assets as necessary in order to reduce his assets and become financially eligible for Pension. The assets could be given to a trustworthy child as an early inheritance or with the hope that the child would help pay for the veteran's care by using that gifted money on the veteran's expenses. Similarly, the assets could be transferred to an irrevocable trust or into an annuity so they were no longer within the veteran's control (thus, making the veteran financially eligible for Pension), but would still be used for the veteran's benefit. Therefore, under the old rules, a veteran with substantial accumulated assets could simply transfer all of those assets away one day and qualify for Pension benefits the next day.

The new rules, however, will impose a penalty on assets which have been given away or transferred for less than their fair market value. This is intended as a way to maintain the purpose of the Pension program: to provide assistance to those who are truly financially needy. Therefore, a penalty period is imposed on veterans who have made transfers for less than fair market value within three years of the veteran becoming eligible for Pension benefits. The length of the penalty period is directly related to the value of assets which were given away.

This new policy impacts asset protection planning strategies, then, as a veteran or surviving spouse must now plan to make any gifts or transfers more than three years before expecting to need Pension benefits. However, though this is a new factor to consider in Pension planning, a "look back period" and penalties on asset transfers are very familiar concepts in long-term care planning, as Medicaid has always had these rules. Because Medicaid planning and VA Pension planning often go hand-in-hand, a long-term care planning attorney should already have considered the ramifications of making gifts and risking a penalty period when advising her clients.

The new VA Pension rules make many other changes regarding eligibility and medical expenses, but the look back period will likely have the most significant impact on the majority of prospective VA Pension recipients. If you have previously engaged in any long-term care planning with the intention of qualifying for Pension benefits, you should talk to a VA Accredited attorney to make sure that these new rules will not impact your current plan, and to revise the plan as needed.