Elder Law Update

VA BENEFITS:
UPDATE IN PENSION BENEFITS

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Why is this relevant to your practice?

- You are estate planning attorneys
- Your clients are getting older
- In order to properly plan for your client’s needs you need to be aware of how your planning effects long term care benefits
- Knowing about the benefits makes you a better planner
- Identifying your client’s future needs makes you a better attorney and a better resource for your client’s needs
- You can no longer assume that your clients (regardless of their net worth) won’t need benefits to pay for the rising costs of long term care
VA Benefits Basics
Non-Service Connected Disability Pension

- Pension v. Compensation
- Federally funded and regulated
- Rules are same throughout the U.S.
- Pays up to $2,230/month for a married Veteran
- Pays directly to Veteran to reimburse for any type of care – skilled, home, assisted living, memory care
- Needs-based benefits – evaluates income and net worth to determine eligibility
Old v. New Rules Basics

- Big changes
- Old planning strategies won’t work
- Evaluates income and assets to determine eligibility - unchanged
- Service Requirements are the same
- Net Worth limitations
  - New hard line asset limitations
  - Differs from old loose rules – which is good for planners
  - Transfer penalty up to 36 months now in effect
- Care Expenses to reduce income are expanded
- New planning strategies with other public benefits are available
VA Pension Benefits

- Eligibility: 90 days continuous active duty
- Wartime period service requirement: 1 day only
  - World War II (December 7, 1941 – December 31, 1946)
  - Korean conflict (June 27, 1950 – January 31, 1955)
  - Gulf War (August 2, 1990 – through a future date)
- Provides benefits for surviving spouses (if not remarried)
## 2019 VA Benefits Rates
### Non-Service Connected Disability Pension

<table>
<thead>
<tr>
<th></th>
<th>Single Veteran</th>
<th>Married Veteran</th>
<th>Surviving Spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Pension</td>
<td>$1,127</td>
<td>$1,477</td>
<td>$756</td>
</tr>
<tr>
<td>Housebound</td>
<td>$1,378</td>
<td>$1,727</td>
<td>$924</td>
</tr>
<tr>
<td>Aid &amp; Attendance</td>
<td>$1,881</td>
<td>$2,230</td>
<td>$1,209</td>
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VA Income Analysis

- To determine amount of benefit VA looks at IVAP (Income for VA Purposes)
  - Monthly Recurring Income - Monthly Recurring Medical/Care Expenses = IVAP

Example:
- $2,900 Income (Family Income) - $5,000 Care Expenses = ($2,100) IVAP
- VA Pays Full Amount if IVAP less than or equal to Benefit Rate

If IVAP is positive, VA will pay the difference

Example: $2,900 Income (Family Income) - $2,000 Care Expenses = $900 IVAP
- VA pays $1,330 at Aid & Attendance level of care for married Vet
Care Expenses

- Approved Care Expenses to Reduce IVAP
  - Assisted Living
  - In-home care (can include family caregivers, but beware)
  - Skilled Nursing (should evaluate with Medicaid benefits)
  - Medicare Premiums (and Supplements)
  - Prescriptions
  - Supplies (depends, etc.)
  - Nutritional Supplements (Ensure, Vitamins, Etc.)
  - Independent Living (under certain circumstances)
- More liberal than old rules, but still uncertain
VA Net Worth

- Net Worth = FMV of all property owned by claimant and dependents + Annual Income

- Currently: $127,061 cap for everyone
  - Increase from prior $80,000 cap
  - In 2018, equal to maximum CSRA Amount ($123,600)
  - Increases every year with SS COLA
  - Same for single or married, regardless of age and life expectancy
  - Annual Income reduced by Care Expenses

- Does NOT include value of house + 2 acres, multiple cars
VA Asset Transfers

- 36 month “look back” period
- Does not apply to transfers made prior to October 18, 2018
- Only “Covered Assets” that are transferred will be penalized
  - “Covered Asset”: An asset that was part of the claimant’s net worth and if not transferred would have caused net worth to be over the $127,061 cap
- Transfers of Covered Assets into Annuities or Irrevocable Trusts will be penalized if over the Net Worth Cap
- Prior planning techniques with transfers to Annuities and Irrevocable Trust must wait through the look back period before applying
Example of Covered Assets

- Veteran has $110,000 in total assets, $12,000 in income
  - Total Net Worth = $122,000
  - Transferred $50,000 on 11.01.18
  - Applied for VA benefits 11.15.10
  - Veteran will be approved

- Amount transferred was not from assets over the net worth limit (“Covered Assets”) so no penalty is assessed
Example of Covered Assets 2

- Veteran has $115,900 and annual income of $0 at the time of the VA application
- Veteran gifted $30,000 prior to applying and after 10.18.18
  - If $30,000 hadn’t been transferred before application, net worth would have been $145,900 and would have been excessive
  - Covered asset amount is $18,839.00 ($145,900 - $127,061) and will incur a penalty
- Veteran can gift homestead into an irrevocable trust without penalty and still maintain tax exemptions
- Veteran can gift non-covered assets into an irrevocable trust without penalty as long as the asset doesn’t make the Veteran exceed the Net Worth Cap
Penalty Period for Transfer of Covered Assets

- Penalty period based on maximum benefit for Aid and Attendance for Married Vet ($2,230)
  
  - $18,839/$2,230 = 8.447 months (VA will round down to an 8-month penalty period from the date of the transfer)

- Maximum 5-year penalty period

- If penalty period is more than 36 months then wait to month 37 to apply

- If apply before 36 month look-back period and penalty period is more than 36 months then have to wait the full penalty period before benefit will pay
Exceptions to Transfer Penalty

- Beware!!!
- Fraud or unfair business practices
- Transfer to a trust established for a child incapable of self-support prior to 18
- Transfer of assets less than $127,061 net worth cap
Transfers no longer allowed

- Purchase of an annuity
  - Defined as “a financial instrument that provides income over a defined period of time for an initial payment of principal”
  - The uncompensated value is equal to the amount transferred
Trusts

- Irrevocable Trusts – still ok for some things
  - Transfer into an irrevocable trust will be penalized if Covered Assets are transferred
    - House – not a covered asset (no cap)
    - Acreage – limited to 2 acres
    - Assets less than Net Worth Cap

- Revocable Living Trusts - Transfers into a Revocable Living Trust are considered assets and part of net worth
Medicaid Rules Refresher

- Medicaid is federally funded and State regulated
- Needs-based. Income and Asset evaluation to determine eligibility
- 5 year look back period
- Covers mostly skilled nursing
- Waiting period for non-skilled nursing care (Star + Plus Waiver)
- Eligibility Requirements
  - $2,000 individual assets
  - $25,284 - $126,400 married asset range
Case Study #1 Facts

- George (89) and Betty (85)
  - Sally
  - Bobby
  - Chuck (disabled before 18)
- Live at home alone
- Betty diagnosed with Alzheimer’s disease
- George is sole caregiver until ...
- George falls – goes to hospital
  - Admitted 3 midnights
  - Discharged for rehabilitation (SNF)
Cost of Care

- Stay in Skilled Nursing ~ $6,000+/month
  - Medicaid Coverage
  - VA Benefits
- Move to Assisted Living ~ $5,000/month
  - Star+Plus Waiver
  - VA Benefits
- Home with Care ~ $14,500/month ($20/hour)
  - Community Attendant Services
  - VA Benefits
Case Study
George and Betty’s Gross Income

- George SS: $1,200
- George Pension: $1,100
- Betty SS: $600

Total Income: $2,900/month
George and Betty’s Assets

- House & 4 Acres: $ 250,000.00
- George IRA: $ 50,000.00
- Betty IRA: $ 60,000.00
- JTWROS Account: $ 15,000.00
- Life Insurance $ 10,000.00 cash value
How to Plan Options

- Spend down
  - Medicaid v. VA
- Revocable Trusts
- Transfers
- Owning real property options
- Identify needs of clients
What not to do....

- Powers of Attorney – Standard Form is insufficient to plan
- Transferring Assets – Don’t do it!
  - No annual gifting
  - No sale of residence without analysis
  - No annuities
  - Careful about revocable trusts
What to do....

- Rely on resources and stay up to date on current issues within HHSC and VA
- Add language to POAs
- Assess long-term needs of clients
- Identify future needs and eligibility for public benefits
- Join NAELA or know when to refer to the experts