

Note the New Changes in VA Claims Procedures

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on July 22, 2009.

It is a sad fact that VA benefits are often underutilized, partly because people do not know they qualify or do not know how to go about obtaining the benefits.

For example, some veterans or their dependants/survivors are unaware that VA benefits may be available to assist with medical bills, including assisted living or nursing home costs. Nevertheless, many elderly people find that they must depend upon the VA to help with such costs.

As the application (or claims) process can be a bit overwhelming, many veterans or their dependants/survivors in assisted living and nursing facilities historically have depended upon facility staff to file the VA claim on their behalf. New laws and regulations, effective June 23, 2008, make this more difficult.

Under the new rules, any individual or entity who represents the veteran or dependant in filing for VA benefits must be a disinterested party. A "disinterested" party cannot be someone with a financial interest in the outcome of the claim. According to the Department of Veterans Affairs, Office of the General Counsel in Washington, D.C., anyone who is likely to benefit financially from the approval of the claim for VA benefits cannot file for said benefits on the claimant's behalf.

For example, if the claimant is paying an assisted-living facility for his/her care, and VA benefits will assist the claimant in making that payment, then the facility is not a disinterested party. This means assisted-living and nursing facility staff may no longer file a claim for VA benefits on a resident's behalf. This is a major change, as many facilities have been doing so for years.

While the new rules eliminate assisted living and nursing facility staff as authorized agents in filing a VA claim, they serve to ensure that attorneys who do so are very well qualified. The rules require annual reporting by attorneys who represent their clients in filing VA claims. Each year, the attorney must provide the VA's Office of General Counsel with information about the courts, bar associations, or governmental agencies to which he/she is admitted to practice, including identification numbers and membership information. Moreover, the attorney must certify in writing that he/she is in good standing to practice before these entities.

Attorneys who represent their clients before the VA must also complete three hours of continuing legal education (CLE) courses within one year of their accreditation by the Department of Veterans Affairs.

The CLE course must be approved by the state bar, and it must cover such topics as the fundamentals of representing a client before the VA, claims procedures, basic eligibility requirements for VA benefits, appeal rights and procedures, and the types of VA benefits available. The attorney must certify in writing that he/she has completed the CLE course.

In addition, the new rules establish uniform standards of conduct for all attorneys who work with the VA. These standards of conduct include honesty, professional competence and diligence in representation. Certain conducts by attorneys are strictly prohibited, such as violating the rules of representation, delays in claims processing, charging fees not allowed by law and improper disclosure of client information. Any violation of these standards may result in suspension or cancellation of the attorney's accreditation by the VA.

What is clear from the above rule changes is that elder law attorneys are by far the most qualified agents to represent their clients in applying for VA benefits. These attorneys know the law, have extensive experience in representation and have met the rigorous requirements imposed by the Department of Veterans Affairs. If a member of your family is a veteran or the dependant/survivor of a veteran, and needs VA to help with medical bills or with the costs of facility care, you should contact an elder law attorney as soon as possible.