

Veteran Aid & Attendance New Rules



JULIAN GRAY ASSOCIATES

ELDER LAW ♦ ESTATE & DISABILITY PLANNING

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Julian E. Gray, Certified Elder Law Attorney

www.GrayElderLaw.com

**954 Greentree Road
Pittsburgh, PA 15220
412-458-6000**

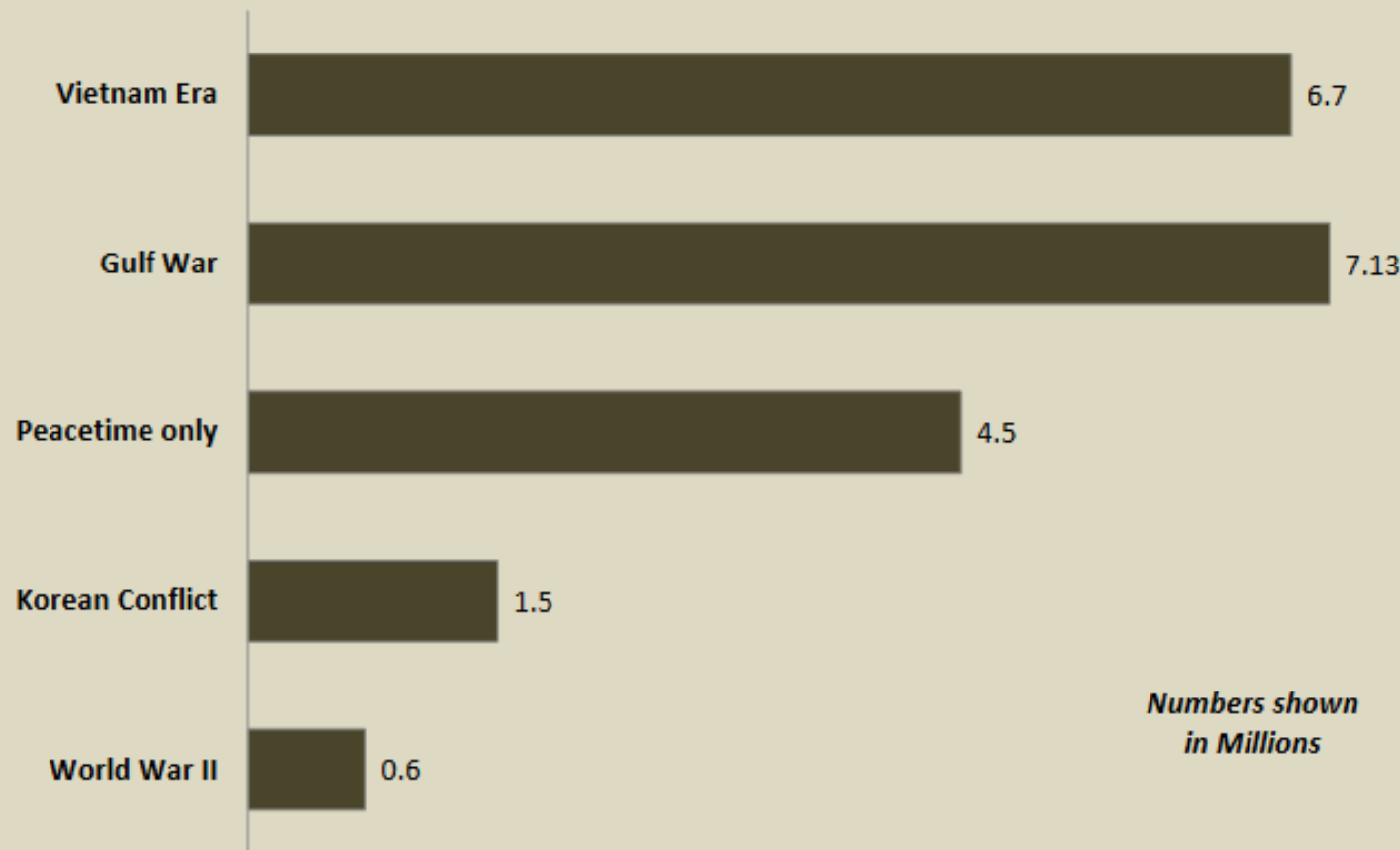
Current Statistics

- ◆ As of September 2018, there were more than 590,765 wartime Veterans in Pennsylvania
- ◆ Only a small fraction ever obtain VA benefits
- ◆ Contributing Factors:
 - Complex Application Process
 - Inaccurate Information from various sources
 - Lack of Available Information and Planning Options
 - Veterans do not know the benefit exists



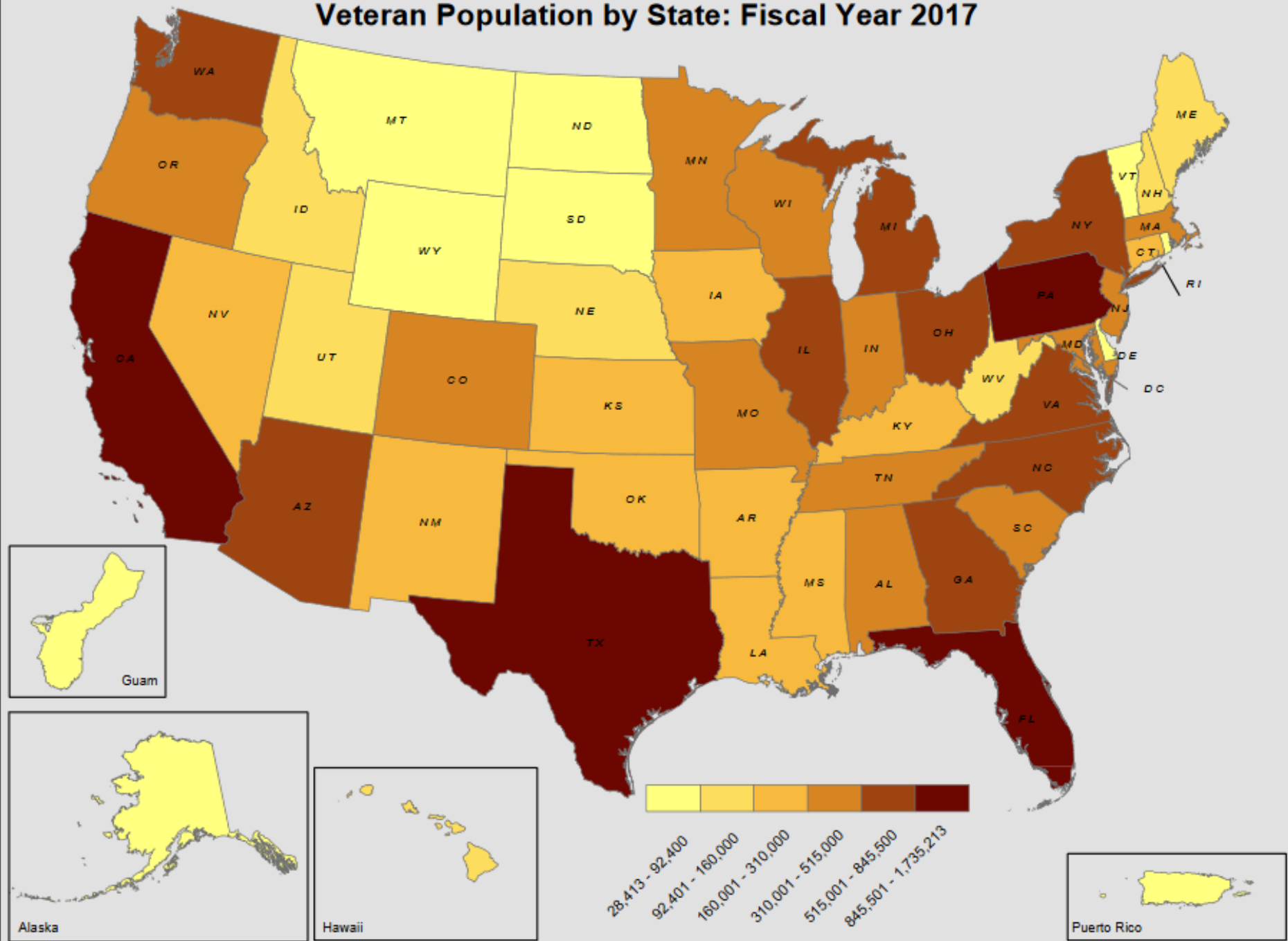
Department of Veterans Affairs: Veteran Period of Service Statistics at a Glance

(as of 9/30/2017)



NOTE: Categories are not mutually exclusive. Veterans may serve in multiple periods.

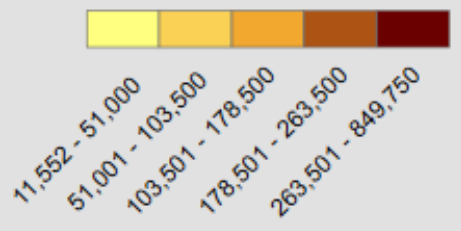
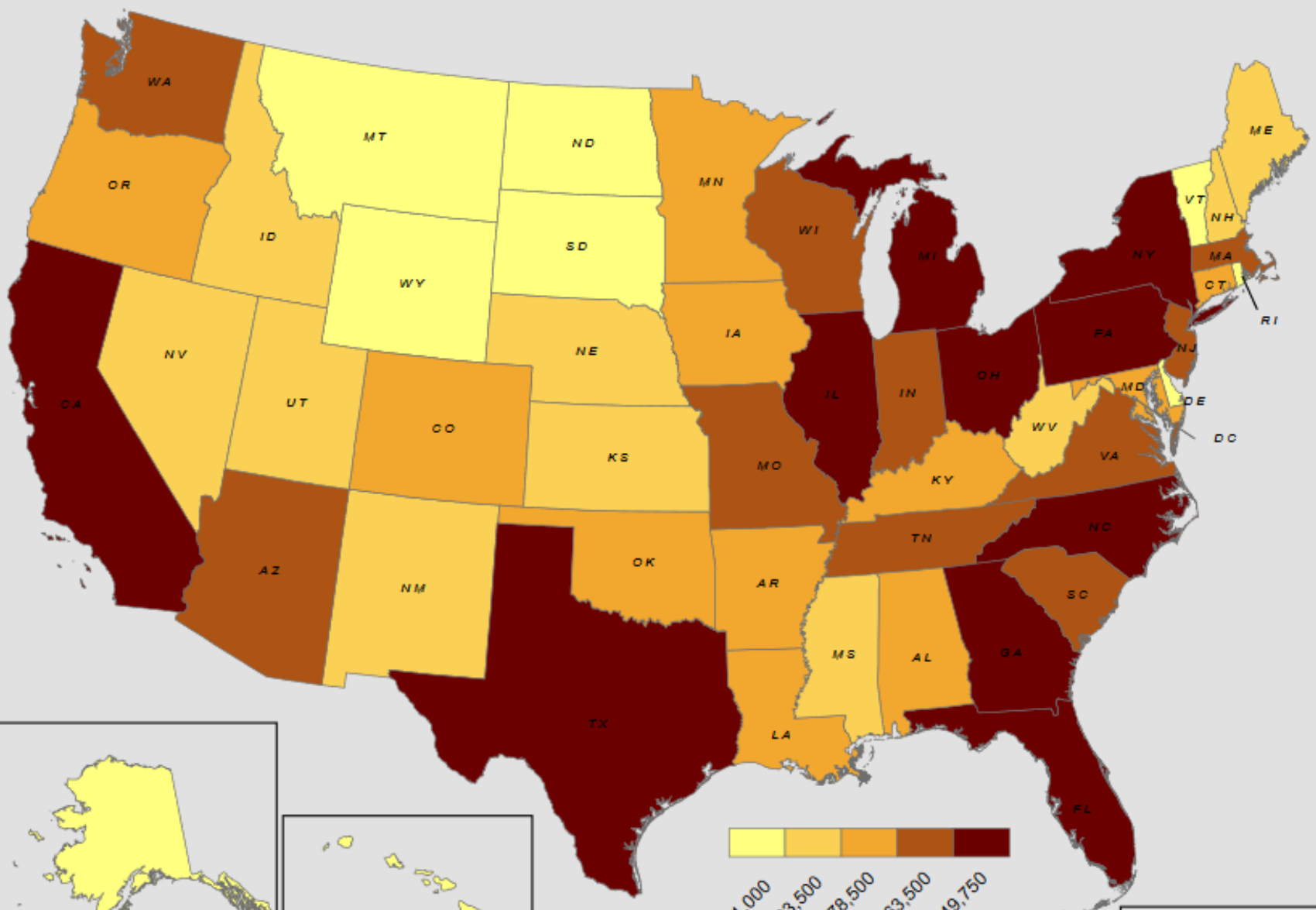
Veteran Population by State: Fiscal Year 2017



Source: Department of Veterans Affairs, Data Governance and Analytics, Veteran Population Projection Model (VetPop), 2016 as of 9/30/2016

Prepared by the National Center for Veterans Analysis and Statistics

Veteran Population 65 Years and Older by State: Fiscal Year 2017



Do you know any of these people?

- ◆ Veteran living at home with help from a visiting family member?
- ◆ Veteran living with a family member other than spouse for help?
- ◆ Spouse of Veteran?



Do you know any of these people?

- ◆ Widow of Veteran?
- ◆ Veteran Living in:
 - Independent Living Facility (IL)?
 - Assisted Living or Personal Care Home?
 - Nursing Home?
- ◆ Veteran told they have too much income or assets to qualify for VA benefits?



Service Test

- ◆ Service Connected vs. Non-Service Connected Disability
- ◆ War Time Service
 - 90 days with one day active duty during designated period of war time
 - Other than Dishonorable Discharge
 - Did not need to leave “American soil”
- ◆ Referred to as “Aid and Attendance”



Wartime Dates of Service

- WWII: December 7, 1941 – December 31, 1946
- Korea: June 27, 1950 – January 31, 1955
- Vietnam: August 5, 1964 – May 7, 1975
- Gulf War: August 2, 1990 - ?
- Obtain DD214 discharge form
- May order for free online



Sweeping new rules for Aid and Attendance

- ◆ Effective October 2018
- ◆ Much like Medicaid rules



Some Highlights

- ◆ 3 year gift lookback
- ◆ Penalties for transfers
- ◆ Net Worth Test
- ◆ Allowable Medical Expenses



3 year gift lookback

- ◆ Reduces last minute planning
- ◆ Transfers prior to 10/18/18 will be grandfathered



Penalty imposed for gifts

- ◆ Up to 5 years
- ◆ \$2,320/month
- ◆ Begins to run first day of month after last transfer



Net Worth Test

- ◆ \$127,061 in 2019
- ◆ House/car exempt
- ◆ Income/Medical expenses included



Allowable Medical Expenses

- ◆ IL now confirmed
- ◆ MD, PA, CNP or CNS
- ◆ 2 ADLS OR
- ◆ Supervision for cognitive or physical limitations



Care Facilities

“By not mentioning any particular facility type in the title, we hope to avoid the impression that we are not allowing payments made to certain facilities based on the name of the facility.” – Dept.of VA



What's in a Name?

“[W]e are focusing on the care that the individual receives within the facility and the need for the individual to be in the facility rather than the facility name.”

- Dept. of Veteran Affairs



Planning options

- ◆ More Advance Planning when IL/PCH on horizon
- ◆ Still some last minute planning available
- ◆ Should be part of comprehensive plan



Current Maximum Rates

- ◆ Married Veteran: \$2,230/month
- ◆ Single Veteran: \$1,881/month
- ◆ Veteran Spouse: \$1,447/month
- ◆ Veteran Widow: \$1,209/month
- ◆ *Divorce from Veteran severs benefits!*

Wide Range of Care Options

- ◆ Available for In Home Care
 - Home Health Agency
 - Family Caregivers
 - ◆ Assisted Living Facilities / Personal Care Homes
 - ◆ Skilled Nursing Facilities
-
- ◆ Must still meet Income / UME test
 - ◆ Must still meet Asset Test

Covered Assets - Example #1

- ◆ Vet's net worth on date of application (07/01/2019) is \$115K (\$90K assets, \$25K income).
- ◆ Vet gifted \$30K to his son on 06/01/2019.
- ◆ Had Vet not made gift, his net worth would have been \$145K (\$90K assets, \$25K income, and \$30K gift).
- ◆ Covered asset = \$17,939...the difference between the Net Worth Limit (\$127,061) and what Vet would have had (\$145K) but for the gift.
- ◆ Gift of Covered asset amount will incur a penalty

Covered Assets - Example #2

- ◆ Vet's net worth is \$125K (\$100K assets, \$25K income).
- ◆ Vet gifts \$50K to son on 06/01/2019.
- ◆ Vet applies for VA Pension on 07/01/2019.
- ◆ Vet's application for VA Pension is approved w/out penalty b/c the gift was not from assets over the net worth limit (i.e. "covered assets").

Penalty Period

- ◆ Penalty period based on the monthly MAPR for A&A for a married veteran (\$2,230 - 2019).
- ◆ Penalty begins month after transfer made
 - ✓ Unlike current Medicaid rules, for VA claimant doesn't have to be "otherwise eligible" for benefits for penalty to start. VA rule is similar to how penalty operated under pre-DRA 2015 Medicaid rules)
- ◆ There is a 5-year cap on the penalty period.
- ◆ Penalty period is rounded down.

Penalty Period - Example

- ◆ Recall Covered Asset Example #1 where Vet gifted \$30K to son on 06/01/2019 resulting in a penalty based on covered assets of \$17,939.
- ◆ Penalty for gift of \$17,939 = 8 months.
$$\$17,939 \div \$2,230 = 8.04 \text{ months (round down)}$$
- ◆ The penalty starts on 07/01/2019 (month after gift made) and runs for 8 months.

Exceptions to Transfer Penalty

- ◆ The result of fraud or unfair business practice.
- ◆ Transfer to a trust f/b/o a child incapable of self support prior to 18 provided no circumstances that veteran, veteran's spouse, or surviving spouse can benefit.
- ◆ Transfers from assets under the Net Worth Limit (\$127,061 -2019).
- ◆ Transfer of a non-covered assets (e.g. house, car(s), other personal effects, and assets below the Net Worth Limit).

Curing/Return A Gift

- ◆ May be a partial or total cure.
- ◆ Cure must be made before the claim was filed or w/in 60 days of the notice of a penalty.
- ◆ Evidence of the cure must be received by the VA no later than 90 days after notice of decision.

Jointly Owned Assets

- ◆ After 10/18/2018, creating a joint account **will not** decrease the value of an asset.

Annuities

- ◆ Under certain circumstances VA will treat annuities as a transfer for less than FMV.
- ◆ 38 C.F.R. § 3.276(a)(5)(ii)(a) annuity means a financial instrument that provides income over a defined period of time for an initial payment.
- ◆ Annuity rules are generally aimed at immediate annuities that do not have a cash surrender value.

Immediate Annuities

- ◆ If the annuity can be liquidated for cash surrender value, then generally countable as net worth and no VA transfer penalty.
- ◆ If applicant purchased an immediate annuity w/in the 3-year look-back (but after 10/18/2018) that cannot be liquidated, then a VA transfer penalty could apply if the amount invested is deemed a covered asset.
- ◆ Also applies if a spouse purchased an annuity.

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“Ask Julian: The Legal Show”



Julian will answer common questions covering topics related to caring for aging parents, inheritance, Wills, Trusts, Estate Planning and much more!

You can find it on the **iHeart Radio app** or wherever you listen to your favorite podcasts!

Thank you !
Questions?

julian@GrayElderLaw.com

