CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

650 Harrison Street • 2nd Floor .San Francisco, CA 94107 • 415-974-5171 • 800-474-1116 • Fax 415-777-2904

March 23, 2015

Director, Regulation Policy and Management (02REG)
Department of Veterans Affairs
810 Vermont Avenue, NW. Room 1068
Washington, D.C. 20420

Re: RIN 2900-AO73, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits

Dear Sir/Madam:

On behalf of California Advocates for Nursing Home Reform, I am submitting comments on the above-referenced proposed regulations, RIN 2900-AO73, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits.

California Advocates for Nursing Home Reform (CANHR) is a statewide nonprofit organization based in San Francisco, that for the past 32 years has been dedicated to improving the choices, care and quality of life for California's long term care consumers and the prevention of elder financial and institutional abuse. One of the major quality of life issues for disabled wartime veterans and their surviving spouses is the ability to remain at home or in the community, rather than in an institution. The VA Aid and Attendance program is one of the few programs designed to provide financial aid to help offset the cost of long-term care for those who need assistance with the activities of daily living such as bathing, dressing, eating, toileting, and transferring. Unfortunately, these proposed regulations would result in denying access to these benefits, rather than expediting them.

VA Lacks Statutory Authority

The Department of Veterans Affairs lacks statutory authority to impose a look back period and transfer penalties as proposed by § 3.276. The General Accounting Office's May 2012 report, "*Veterans' Pension Benefits: Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits*" – the report that presumably led to these proposed regulations -

noted "… having a clearer statutory basis for this regulatory effort may help ensure that the regulations, should they be finalized, would be more likely to withstand potential legal challenges in the court." No congressional proposals to establish such rules have been signed into law. The VA submits that it has "broad authority" to implement these regulations in the absence of specific statutory guidance. However, it does not. That obligation lies with Congress. Both the Medicaid statutes and the SSI statutes on which some of these regulations are based were passed by Congress. A statute authorizing the Department of Veterans Affairs to promulgate such regulations has not passed. Thus, the implementation of these regulations without Congressional authority will not only invite litigation, it will guarantee such litigation.

The Proposed Regulations Will Invite Abuse

The executive summary states that the revised rules "would reduce opportunities for financial advisors to provide advice for the restructuring of assets." This conclusion indicates a lack of awareness of the problem. By complicating the application process even more than it is now to the degree that applicants will have to submit 3 years worth of income and assets documentation, the terms of gifts, trusts, annuities, deeds, and whatever other information the VA deems important to determine whether a transfer constituted a transfer of a covered asset, the regulations create a new market for VA "benefits consultants" and estate planning attorneys. Unfortunately, those most in need will be denied benefits because they will be unable to afford the hourly rate of these new "VA benefit experts." Instead of proposing any rules to outlaw or punish the predators who take advantage of veterans and their spouses, the Department of Veterans Affairs has chosen to punish the veterans.

Proposed § 3.274 is Unduly Restrictive

The net worth limit imposed under §3.274 is a one-size-fits-all test that fails to consider the amount of care and cost of care that the veteran would need; fails to consider important spousal asset and income protections that are built into the Medicaid spousal impoverishment laws and that should be built into these; and establishes a net worth limit that would cause impoverishment rather than prevent it.

Proposed § 3.275 would Act to Deny Benefits to Rural Wartime Veterans

This proposed rule, that would limit a lot size to two acres unless the additional acreage is not marketable, is arbitrary and capricious and would end up denying benefits to those wartime veterans who reside in rural areas where large lots are most common. Instead, the VA should consider the size of lots in the immediate area where the veteran resides.

Proposed Rule § 3.278 – Limitations on Medical Expenses

• Limiting the amount that can be deducted for payment to in home caregivers and restricting the ability to deduct medical expenses is contrary to federal law.

• The narrow definition of "custodial care" in this rule will disqualify many veterans who need care, but may not meet the proposed definition. Current policy allows for the deduction of facility fees as long as a physician certifies that the applicant/beneficiary has a medical condition warranting that level of care. This should remain the policy.

In summary, these proposed regulations will not help expedite claims processing at the Veterans Administration offices – already under fire for thousands of delayed claims- since it will require three years of documentation and enormous amounts of paper. If the goal is to deny claims and ask questions later, hoping that the veteran will die before getting any relief, these proposed regulations would be successful. We urge you to reconsider these onerous and harmful regulations.

Thank you for consideration of these comments.

Sincerely,

Patricia L. McGinnis

Patricia L. McGinnis
Executive Director