

What Are the Obligations, Risks and Rewards for Your Assisted Living Facility or Independent Living Community to Promote Application for Veterans Benefits?

1. Can anyone assist a veteran in obtaining benefits?

- a. No individual may assist with application for veterans benefits without authority from the Department of Veterans Affairs.
- b. Authority from VA to assist veterans is the equivalent of a "license" from the federal government and is called "accreditation."
- c. Accreditation requires extensive training and, except for attorneys, requires passing a comprehensive exam and maintaining continuing education.
- d. It is a violation of federal law to assist with an application for veterans benefits and not be accredited.
- e. Producing an original approval letter from VA is not adequate evidence of accreditation, since continuing education is a necessary requirement to maintain accreditation. Accreditation can be verified by going to the currently maintained list with the Department of Veterans Affairs at www.accreditedlist.com

2. What does it mean to assist a veteran in obtaining benefits?

- a. It is a misconception that assistance in making application for veterans benefits is principally the process of filling out paperwork and submitting it to the Department of Veterans Affairs.
- b. According to The VA Office of General Counsel, assistance with application also means "providing advice" about a claim for benefits.
- c. "Providing advice" about a veteran's claim for benefits requires accreditation.
- d. Here are some examples of "advice" activities that would require accreditation.
 - providing instruction to a veteran on how to file that veteran's particular claim
 - assisting the veteran with gathering the proper documents and evidence for filing a claim
 - reviewing with the veteran the proper documents and evidence needed for filing the claim
 - helping the veteran realign income in order to qualify for a claim
 - helping the veteran realign assets in order to qualify for a claim
 - helping the veteran to create medical costs to qualify for a claim

3. Can an accredited claim representative use a non-accredited assistant to help with an application?

- a. A non-accredited individual may only provide assistance with one claim for benefits during that non-accredited individual's lifetime.
- b. An exception to this rule allows a paralegal, a law student or a law intern employed by and under the supervision of an accredited attorney to assist with an application.
- c. The veteran must sign a consent letter allowing for this arrangement and that letter must be filed with the application.
- d. There are no other exceptions to allow a non-accredited individual to assist with an application.

4. Can accredited claim representatives receive financial gain from assisting veterans with claims?

- a. Federal law prohibits any accredited individual from charging a fee for assistance with an application for veterans benefits.
- b. The prohibition on charging a fee applies indirectly to non-accredited individuals, since they are not allowed to assist with an application and thus would have no reason to charge a fee.
- c. This prohibition does not apply to legitimate fees, product sales or services that are charged for assistance not related to the filing of the application.
- d. It is important to differentiate between legitimate fees and fees, that for all practical purposes, are simply disguised fees for filing an application.
- e. Examples of disguised fees and services that could be considered unlawful
 - fee for legal opinion from an attorney that determines eligibility for a VA benefit or for an appeal in case of denial of the VA benefit
 - fee for financial analysis that is primarily advice on divesting assets and reducing income to qualify
 - fee for legal advice on divesting assets to qualify for the benefit
 - payment of a finders fee or other gratuity from your facility to a claim representative for a potential resident who qualifies for a veterans benefit
 - requirement for a resident or potential resident -- in return for assistance with the claim for benefit -- to purchase a product, purchase a service or make a donation to an organization that employs the claim representative

5. If a claim representative charges for services or advice not related to an application for benefits, does that representative need to maintain certain standards of conduct?

- a. The VA office of General Counsel has oversight over the activities of accredited individuals.
- b. The office of General Counsel does not allow accredited individuals to use their accreditation for promoting their own businesses.
- c. Assistance with an application for benefits must be independent of the business services of an accredited individual.
- d. It is improper for any accredited individual to require payment for services, advice or products offered by that accredited individual in return for providing assistance with an application for benefits.
- e. In all cases, assistance with an application must be offered with no obligation or strings attached.

6. Why is it so important to follow proper guidelines and use an accredited claim representative who is competent, ethical and knowledgeable.

- a. Improperly filed applications from incompetent representatives could result in a demand letters from VA for repayment of all previous benefits and a potential lawsuit from members of the family which might include your organization as a co-defendant.
- b. Following the guidelines for using a properly trained and accredited claim representative allows you to reject those individuals seeking your sponsorship or referral who do not meet the proper standards.
- c. Following the proper guidelines for accreditation and competent assistance protects your residents from unethical and illegal claim representatives who are only interested in selling financial products to your residents with assets.
- d. A properly trained claim representative will also provide advice, where necessary, for understanding and dealing with gifting penalties from Medicaid. Failure to recognize the implications of Medicaid could result in a lawsuit with your organization as a co-defendant.
- e. Using legal and competent claim representatives and following strict guidelines will provide evidence of your non-complicity in the event of a lawsuit.

7. What consequences does your organization risk by sponsoring or referring individuals who are not in compliance with federal law or who are not competent or who fail to meet standards of conduct?

- a. Your liability insurance carrier will not cover you in a lawsuit where you are complicit with the illegal activities of a claim representative.
- b. Your recommending or sponsoring individuals who are violating federal law could result in the cancellation of your liability insurance.
- c. If you rely on HUD guarantees for financing your facility, loss of insurance will severely impact your ability to maintain that financing.
- d. Complaints to the state licensing division or the attorney general will force you to document that you are in compliance for recommending claim services for veterans benefits.
- e. Eventually, certification agencies may require that you act responsibly in recommending or sponsoring claim representatives for VA benefits.
- f. Having your competitors recognized when you are not recognized will result in a competitive disadvantage for you.

Your Potential Liabilities for Promoting Veterans Benefits

Knowledgeable, Efficient and Responsible Claim Representation Is Critical

Violation of Federal or State Laws

Any employees or supervisors of care provider organization providing assistance with veterans claims who are not accredited or are charging fees for helping veterans obtain benefits, are in violation of federal law.

VA Office of General Counsel has ruled that assisting veterans obtain their benefits means "providing advice" for any veteran or surviving spouse for their particular claim. ³ Advice is just that. Handling paperwork or submitting applications does not solely determine the need to be accredited. The need for accreditation starts at a much earlier stage in the process when "advice" is dispensed.

The care provider organization providing assistance is also likely to be in violation of state law, because licensing codes for care providers in most states require compliance with federal law. Such violation could result in complaints to the state licensing division or attorney general and the possible consequences of that.

Currently, there are no specific fines or jail time for failure to comply with federal law regarding veterans claims. This may change. For the past two years, bills have been introduced that will impose these penalties. Assuming congressional advocates continue to file, eventually one of these bills will pass Congress. Here is the wording from the latest version that is now in committee. Note that one governing word is "compensation." Any care provider that is providing advice for veterans benefits for the purposes of compensation -- receiving payment through the Department of Veterans Affairs on behalf of that claimant as a client or resident -- could be construed to be in violation of law even if a direct fee were not charged. The wording of this proposed law also codifies what it means to assist with veterans claims. The wording, "provision of advice on how to file a claim for benefits," determines the point at which someone assists with a claim.

H. R. 1826

SECTION 1. REINSTATEMENT OF PENALTIES FOR CHARGING VETERANS UNAUTHORIZED FEES.

(a) In General- Section 5905 of title 38, United States Code, is amended to read as follows:

‘Sec. 5905. Penalty for certain acts

‘Except as provided in section 5904 or 1984 of this title, whoever commits any of the following acts shall be fined as provided in title 18, or imprisoned for not more than one year, or both:

‘(1) In connection with a proceeding before the Department, the act of soliciting, contracting for, charging, or receiving, or attempting to solicit, contract for, charge, or receive, any fee or compensation in connection for--

‘(A) the provision of advice on how to file a claim for benefits under the laws administered by the Secretary; or

‘(B) the preparation, presentation, or prosecution of such a claim before the date on which a notice of disagreement is filed in a proceeding on the claim.

‘(2) The act of unlawfully withholding from any claimant or beneficiary any part of a benefit or claim under the laws administered by the Secretary that is allowed and due to the claimant or beneficiary.’

(b) Effective Date- The amendment made by subsection (a) shall apply with respect to acts committed after the date of the enactment of this Act.

Potential Lawsuits

Care service providers that are sponsoring or promoting individuals or organizations to assist in obtaining veterans benefits for the clients or residents of the care provider, could be considered complicit in the event of a lawsuit. Even if innocent, any care provider considered to have deep pockets, is likely to be dragged into a lawsuit by unethical, illegal or fraudulent actions that cause monetary damages to a client or resident of the care service provider.

A full description of unethical, illegal or fraudulent actions is covered further on in this article. Lawsuits that are a result of the care provider being complicit in violating the law could have negative consequences for that care provider. Such actions could affect the organization's liability insurance coverage, certification and mortgage requirements.

Here is a list of violations, unethical behavior, fraudulent actions or incompetent and damaging advice that is quite common among non-qualified individuals or companies offering to help care provider organizations obtain veterans benefits.

1. failing to be accredited
2. using subordinates who are not accredited
3. charging a direct fee
4. charging a disguised fee
5. deliberately discriminating against claimants who have no income or assets
6. fraudulently withholding information with a claim
7. failing to disclose that no fees are required for application
8. making application contingent upon other services
9. charging unreasonable fees for other services
10. failing to acknowledge the consequences of gifting assets
11. failing to educate on the importance of the EVR

Bad Publicity

Providing support for our nation's veterans is a big deal and often catches the attention of the media. Any care provider involved in a lawsuit that resulted from complicity for fraud, unlawful conduct or unethical behavior by someone touting veterans benefits could end up on the local news or in the paper. The country is very sensitive to financial abuse of our veterans.

Insurance, Certification and Mortgage Requirements

General liability insurance policies will not pay for any lawsuits that result from illegal activities. Not only that, but all insurance carriers have the right to cancel insurance if the company perceives added risk from such lawsuits. ⁶ Failure to have insurance or to pay high premiums to other insurers to replace coverage can also create other direct undesirable consequences.

Many care provider facilities rely on HUD 232 loan guarantees. These loans require maintaining general liability insurance. The inability to acquire insurance or having to pay very high premiums in order to maintain a mortgage can have significant financial effects on the operation of a facility.

Some care providers also rely on certification agencies to keep their insurance rates in check. A lawsuit due to complicity with illegal activities would likely affect the certification from these agencies and the insurance coverage.

Requirement for Accreditation

In order for any individual to assist veterans with claims or appeals, Federal law requires that individual to receive authorization from the Department of Veterans Affairs. This is called accreditation. ¹ You can think of accreditation as being a license from the federal government to assist veterans. It is very similar to the requirement for licensing to operate a care provider facility, offer legal advice or sell insurance products.

A non-accredited individual may assist in the preparation of only one claim during that non-accredited individual's lifetime. Assisting with a second claim requires accreditation. ²

There is only one exception to the requirement for accreditation in order to assist a veteran. A paralegal, intern or law student in an accredited attorney's law firm, and operating under the direct supervision of that accredited attorney, may assist in the filing of a claim for veterans benefits. A consent form must be signed by the veteran, allowing for this arrangement, and that consent form must be submitted with the application. No other arrangement for non-accredited individuals is allowed. ¹

For example, an individual not meeting the requirements of the paragraph above, cannot operate under the supervision of an accredited attorney or accredited agent with any of the "advice" activities listed in the paragraph below. To operate as the subordinate of an accredited attorney or accredited agent and assist veterans, without being part of the law firm, is not a lawful activity. To be lawful, the accredited attorney must deal directly with the veteran.

Defining Assistance with a Claim

The Department of Veterans Affairs, Office of General Counsel, is responsible for issuing accreditation authority and providing oversight for compliance. It should be noted that accreditation is not required to educate veterans about their benefits. It is a commonly held misconception that accreditation is only required at the point where an application is submitted. This is not true. Accreditation is required at an earlier stage. The Office of General Counsel has ruled that the need for accreditation begins when an individual advises a veteran about that veteran's particular claim for benefits. ³ For example, advice with a claim might include any one or all of the following activities:

- providing instruction to a veteran on how to file that veteran's particular claim
- assisting the veteran with gathering the proper documents and evidence for filing a claim
- reviewing with the veteran the proper documents and evidence needed for filing the claim
- helping the veteran realign income in order to qualify for a claim
- helping the veteran realign assets in order to qualify for a claim
- helping the veteran to create medical costs to qualify for a claim

Charging a Fee

Federal law prohibits any accredited individual from charging a fee for assistance with veterans claims. ^{4,5} The law does allow accredited attorneys and accredited agents to charge a fee after a notice of disagreement has been filed. The maximum amount of the fee is prescribed by law.

This prohibition only applies to accredited individuals. However, this does not mean that non-accredited individuals can charge a fee. Non-accredited individuals are prohibited from helping

veterans with any part of the claims process. Therefore, there would be no reason for them to charge a fee as they are not allowed to help veterans with claims.

This prohibition on charging fees does not apply to legitimate fees that are charged for advice or services not related to the actual filing of the claim. For example, many accredited attorneys will charge for pre-filing consultations where they cover legal issues related to the needs of veteran households filing a claim. Unfortunately, legitimate advice is often disguised and turns out to be nothing more than advice relating to the application for a claim.

Sometimes reimbursement will be paid to the accredited individual helping with the claim by a third-party entity. VA does allow, in certain instances, an accredited individual to be paid by a third party to file the claim. If the third-party does not benefit financially from the outcome of the claim and written certification is provided by the accredited individual filing the claim that the third party is not benefiting in any way financially from the claimant, then indirect filing fee payments by third parties are allowed. This written certification and a copy of the fee agreement must be sent to the Office of General Counsel within 30 days after application is made. ⁵

Most indirect or third-party payments for filing claims are not lawful. This is because the individual or organization paying to facilitate the application on behalf of the veteran does have a financial interest in the outcome of the claim. In addition, the requirement for certification of no financial benefit and the fee agreement are never sent to the Office of General Counsel.

Here is another example. An individual assisting with a claim may be paid a finders fee for placing the veteran or surviving spouse with a caregiving company. Although common practice, this arrangement is simply a disguised fee for assisting with the claim and not an example of the third-party exemption mentioned above. On the other hand, using the same example, if a finders fee were paid to an individual who had been educating the public about veterans benefits, but who did not provide specific advice on claims nor was involved in the claim at all, this would be allowable in those states where it is legal.

Compliance Obligations of Accredited Individuals

The Office of General Counsel has made it clear through numerous communiqués with individuals becoming accredited that the use of accreditation for promoting one's business will result in the loss of accreditation authority.

Because VA does not want accredited individuals to mix solicitation for their business services with assisting for a claim, it would also be improper for any accredited individual to make payment for that individual's business services contingent upon providing assistance with a claim. The veteran or surviving spouse must know that assistance with the claim is always free.

In some instances, accredited individuals, assisting with claims, not only make that assistance contingent upon offering their business services but they charge exorbitant fees for their services. It is not uncommon to hear of instances where fees of \$10,000 to \$20,000 were charged for only a few hours of work. Applicants pay these unreasonable fees because they are led to believe the application process is extremely difficult and in order to get the benefit they must use the unique expertise of the person who is extorting them.

Understanding an Application for Pension (Aid and Attendance)

A pension award is dependent upon three things: 1) income, 2) assets and 3) medical expenses. An original application for pension is simply an estimate of these three factors that, if the proper conditions are met, starts a benefit flowing. The actual benefit is determined, retroactively at the beginning of each year, when the actual income, actual assets and actual medical expenses are determined from the previous year. If these three factors are not the same as estimated with the original application, the benefit will be adjusted.

Additional income can be provided from the previous year if income and medical expenses allow for a greater benefit. Additional income can also be provided in the future to adjust for new income and medical expenses. The occurrence of new disqualifying assets, new disqualifying income or underestimating medical expenses can also result in a termination of benefits going forward or a demand from VA for repayment of all previous benefits.

Denial of Pension Benefits after an Initial Award

Pension is not an entitlement like Social Security. An award for pension is dependent upon the veteran or surviving spouse meeting the requirements of income, assets and medical expenses on an ongoing basis. If VA finds out that a pension recipient does not meet any one of these three requirements, the pension recipient becomes ineligible at that point. Recipients of pension are required to report any changes immediately to VA. Very few of them do.

Unfortunately, ineligibility can be created even from the initial application. There are numerous instances where VA has determined the recipient of pension monies was ineligible from the beginning and had to repay amounts of \$60,000 or more to VA. Sometimes this happens because information was withheld by the applicant. Sometimes this happens when the person helping with the filing of a claim does it wrong or also withholds information in order to get the claim approved. Oftentimes this happens when an exempt asset such as the home is no longer exempt and counts as a disqualifying asset.

The Importance of the EVR

VA requests information on the three factors that affect pension benefits with a document called the EVR -- Eligibility Verification Report. The EVR is sent out in January of every year and must be completed and returned by March 31. Failure to complete the EVR will result in the benefit being terminated. Completing the EVR with the wrong numbers could result in termination or reduction of future benefits or could result in VA demanding repayment of the previous years' benefits.

Most veterans or surviving spouses receiving pension, do not understand the importance of the EVR. This document often will identify disqualifying assets, income or medical expenses. As an example, a home that is not occupied will often be rented and rent money will be reported. This will cause VA to investigate and possibly deny the benefit from the point at which the home was no longer an exempt asset. A demand for repayment of all monies paid from the point at which the home was no longer exempt will be made by VA. Another instance might be that estimated medical expenses with the original application resulted in a maximum benefit for the previous year. For various reasons, the actual medical expenses were much less. This could result in a significant reduction in future benefits or even result in VA demanding back all or a portion of the money paid for the previous year. Oftentimes, payment of pension income will

result in a surplus of household income. This will show up as additional assets on the EVR and may result in denial of benefits. These are only a few examples.

Improper, Fraudulent or Unlawful Claim Practices

Here are some of the more common improper, fraudulent or unlawful claim practices from individuals or companies helping veterans receive their benefits.

Failure to Be Accredited

The requirement for accreditation has been discussed above. Remember, the need for accreditation starts when an individual advises a veteran or surviving spouse about his or her particular benefit.

Using Subordinates Who Are Not Accredited

Accredited attorneys can only subordinate assistance with a claim to paralegals, interns or law students in the firm. There are many instances of accredited attorneys allowing non-accredited individuals under their supervision -- other than those mentioned above -- to assist or provide advice with claims. This is not lawful. There is no provision for accredited agents or accredited service officers of a VSO to subordinate the claim process to any other non-accredited individuals.

Charging a Direct Fee

It is unlawful to charge a fee for assisting with an application for veterans benefits. Although this rule only applies to accredited individuals, non-accredited individuals cannot lawfully assist with an application and therefore would not be able to charge a fee.

Charging a Disguised Fee

Just because the person charging the fee says it is for some other reason than helping with a claim, if the preponderance of the advice or services given is for filing an application, then this is nothing more than a disguised filing fee. Likewise, fees paid by a third-party to an accredited individual to process a claim for a veteran are in most cases not lawful. To be lawful, the third party must have no financial interest in the outcome of the claim. Examples of disguised fees and services that could be considered unlawful.

- fee for legal opinion from an attorney that determines eligibility for a VA benefit or for an appeal in case of denial of the VA benefit
- fee for financial analysis that is primarily advice on divesting assets and reducing income
- fee for legal advice on divesting assets to qualify for the benefit
- payment of a finders fee or other gratuity from your facility to a claim representative for a potential resident who qualifies for a veterans benefit
- requirement for a potential resident to purchase a product or purchase a service in return for assistance with a claim for benefit

Deliberately Discriminating against Claimants Who Have No Income or Assets

Discrimination sometimes occurs with applicants who do not need or do not desire additional business services from the accredited claim representative or do not desire to purchase products from the representative. These nonpaying applicants are only given partial claim support or even ignored, and as a result, never get their claim filed or approved.

Fraudulently Withholding Information with a Claim

Many of the accredited individuals who are assisting with applications have a financial interest in the outcome of the claim. As such, some of these people will deliberately withhold information that would disqualify the veteran in order to get the claim approved. This can be a huge disaster for claimants who are receiving the benefit and at some future date receive a demand letter from VA for repayment of all benefits from the initial application date. Sometimes this repayment can amount to \$50,000, \$70,000 or even \$100,000.

Failure to Disclose That No Fees Are Required for Application

Individuals charging fees for other services must notify those they are helping that the fee being charged is not for the application for benefits. In addition, any applicant has the right to know that he or she does not have to pay any money or buy any product or service in return or for help with an application.

Making Application Contingent upon Other Services

VA does not want accredited agents or accredited attorneys to make assistance with a claim contingent upon any business services that the accredited agent or accredited attorney offers.

Charging Unreasonable Fees for Other Services

This unethical practice has been discussed above. Some states are taking note of this and California in particular has passed a law prohibiting the charging of unreasonable fees for assistance in conjunction with applying for government benefits -- particularly veterans benefits.

Failure to Acknowledge the Consequences of Gifting Assets

VA frowns on gifting assets to qualify for the benefit. However, this practice is not prohibited and is often used. Gifted assets create a penalty for Medicaid if the five-year gifting look back period has not been met. It is often likely that applicants for pension may eventually have to go to a nursing home and apply for Medicaid because their income, even with VA benefits, is insufficient to cover that cost. If this occurs within the five-year look back period, Medicaid will assess a penalty. The penalty consists of a number of months for which Medicaid will not pay the difference between the private pay rate of the nursing home and the income of the potential Medicaid beneficiary.

Failure to plan for a Medicaid penalty can wreak havoc on the family if the gifted assets have been spent. Any claim representative engaging in asset gifting must also provide advice on how to deal with a potential Medicaid penalty.

REFERENCES

1. Code and Regulation Pertaining to the Need for Accreditation

Title 38 USC § 5901. Prohibition against acting as claims agent or attorney

Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.

Title 38 CFR § 14.629. Requirements for accreditation of service organization representatives; agents; and attorneys.

(b) Accreditation of Agents and Attorneys.

(1) No individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose.

(i) For agents, the initial accreditation process consists of application to the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, an affirmative determination of character and fitness by VA, and a written examination.

(ii) For attorneys, the initial accreditation process consists of application to the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, and a determination of character and fitness. The General Counsel will presume an attorney's character and fitness to practice before VA based on State bar membership in good standing unless the General Counsel receives credible information to the contrary.

(c) Representation by Attorneys, Law Firms, Law Students and Paralegals.

(1) After accreditation by the General Counsel, an attorney may represent a claimant upon submission of a VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative."

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under §14.631(a), if the claimant's written consent is furnished to VA. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. The written consent must include the name of the veteran, or the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable VA file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable VA records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. The signed consent must be submitted to the agency of original jurisdiction and maintained in the claimant's file. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings before a Member or Members of the Board at VA field facilities, the consent must be presented to the presiding Member of the hearing.

2. Authorization for One Claim Only

38 CFR § 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A power of attorney executed on VA Form 21–22a, "Appointment of Attorney or Agent as Claimant's Representative," and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the agency of original jurisdiction where the claim is presented. The power of attorney identifies to VA the claimant's appointment of representation and authorizes VA's disclosure of information to the person representing the claimant.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

(1) The number of accredited representatives, agents, and attorneys operating in the claimant's geographic region;

(2) Whether the claimant has unsuccessfully sought representation from other sources;

(3) The nature and status of the claim; and

(4) Whether there exists unique circumstances which would render alternative representation inadequate.

(c) Persons providing representation under this section must comply with the laws administered by VA and with the regulations governing practice before VA including the rules of conduct in §14.632 of this part.

(d) Persons providing representation under this section are subject to suspension and or exclusion from representation of claimants before VA on the same grounds as apply to representatives, agents, and attorneys in §14.633 of this part.

3. VA Office of General Counsel Website -- Frequently Asked Questions about Accreditation http://www4.va.gov/ogc/accred_faqs.asp

Question: In a law office with attorneys and paralegals working under the supervision of a single Department of Veterans Affairs (VA) accredited attorney, who needs to apply for VA accreditation using a VA Form 21a?

Response: Accreditation means the authority granted by VA to representatives, agents, and attorneys to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits. 38 C.F.R. § 14.627(a). Without accreditation, an individual may not independently assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.

VA regulations allow interns, paralegals, and law students to assist in preparation, presentation, and prosecution of claims for VA benefits of claimants for benefits, but only under the direct supervision of the attorney of record, and with the specific written consent of the claimant. 38 C.F.R. § 14.629(c)(3). VA does not accredit these individuals. With the written consent of the claimant, attorneys affiliated or associated with the attorney of record may assist in the representation of the claimant, and may do so without the requirement for direct supervision by the attorney of record. 38 C.F.R. § 14.629(c)(2).

Thus, in a law firm where several attorneys and paralegals work on VA claims for a single accredited attorney properly appointed on a VA Form 21-22a as the attorney of record, each attorney must be accredited if their work involves assisting claimants in the preparation, presentation, and prosecution of claims for veterans benefits. Paralegals may assist the attorney

of record subject to the written consent of the claimant but may not independently provide representation to claimants.

Question: If an attorney's practice consists solely of advising clients that they might be eligible for benefits and referring them to a recognized service organization or accredited agent or attorney, does the attorney need to be accredited?

Response: No. As a general rule, an attorney's practice of advising veterans about VA benefits not involving a specific claim does not require accreditation. Aside from regulating admission to practice before the Department, VA's accreditation authority is generally limited to regulating the conduct of individuals in assisting claimants with the preparation, presentation, and prosecution of claims for benefits and reviewing the fees and expenses charged for representation in proceedings before the Department. Reviewing a veteran's records, researching available VA benefits, and advising a veteran as to potential benefits before he or she decides to file for a benefit is not part of the preparation, presentation, or prosecution of a claim, and as such, is outside VA's accreditation authority. Accordingly, accreditation is not required for such consultation by attorneys.

Question: If an attorney works with pension benefit clients and advises clients as to eligibility requirements, but does not file the application for them, do they need to be accredited?

Response: Yes. In answering this question, we assume that (1) a "pension benefit client" means a veteran not currently receiving VA pension but one who has expressed intent to file for such benefit, and (2) that the advice provided includes those acts in making the claim ready for filing, but not the actual filing of the claim. Here, the advice constitutes preparation of a claim and therefore requires accreditation. This is because the advice is given in regards to a specific application for benefits rather than general advice not related to a specific claim. The difference is significant in that the purpose of VA's accreditation program is to ensure that claimants for VA benefits receive qualified assistance in preparing and presenting their claims.

Question: Is VA accreditation required to assist a veteran in preparing his or her claim?

Response: Yes. Accreditation means the authority granted by VA to assist claimants in the preparation, presentation, and prosecution of claims for benefits. 38 C.F.R. § 14.627(a). Unaccredited individuals may provide other services to veterans so long as they do not assist in the preparation, presentation, and prosecution of claims for benefits.

Question: I am providing pro bono representation to a veteran. Does this require VA accreditation?

Response: Yes. Our intent is that attorneys will apply for accreditation for any new representation as indicated by the filing of a VA Form 21-22a after June 22, 2008. The claim and a VA Form 21-22a may be filed while the accreditation application is pending. VA Regional Offices (RO) have been instructed to accept such filings and communicate to the attorney the need for accreditation. Although representation without accreditation is not permissible, the RO will hold the VA Form 21-22a (permitting the claimant to have his or her choice of representation) until the accreditation application has been processed.

Attorneys who initiated representation on a claim prior to the June 23, 2008 effective date of the new rules, need not seek accreditation for representation provided on that claim. Initiation of a representation before the effective date of the new rules would be indicated by appointment on a VA Form 21-22a or an attorney's letterhead.

4. Code Pertaining to the Charging of Fees

Title 38 USC § 5902. Recognition of representatives of organizations

(b)

(1) No individual shall be recognized under this section—

(A) unless the individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

(B) unless, with respect to each claim, such individual has filed with the Secretary a power of attorney, executed in such manner and form as the Secretary may prescribe.

Title 38 USC § 5904. Recognition of agents and attorneys generally

(c)

(1) Except as provided in paragraph (4), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which a notice of disagreement is filed with respect to the case. The limitation in the preceding sentence does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court.

5. Regulation Pertaining to Charging Fees and to the Third-Party Exemption

Title 38 CFR § 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) Applicability of rule. The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) Who may charge fees for representation. Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized under §14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with §14.631 of this part in his or her individual capacity as an accredited agent or attorney.

(c) Circumstances under which fees may be charged. Except as noted in paragraph (c)(2) and in paragraph (d) of this section, agents and attorneys may charge claimants or appellants for representation provided: after an agency of original jurisdiction has issued a decision on a claim or claims, including any claim to reopen under 38 CFR 3.156 or for an increase in rate of a benefit; a Notice of Disagreement has been filed with respect to that decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in §14.631 and the fee agreement requirements in paragraph (g) of this section.

(d) Exceptions —(1) Chapter 37 loans. With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under

chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) Payment of fee by disinterested third party. (i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: "I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid."

(g) Fee agreements. All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

(i) The name of the veteran,

(ii) The name of the claimant or appellant if other than the veteran,

(iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant,

(iv) The applicable VA file number, and

(v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement that does not clearly specify that VA is to pay the agent or attorney out of past-due benefits or that specifies a fee greater than 20 percent of past-due benefits awarded by VA shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of the agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. Only fee agreements and documents related to review of fees under paragraph (i) of this section and expenses under §14.637 may be filed with the Office of the General Counsel. All documents relating the adjudication of a claim for VA benefits, including any

correspondence, evidence, or argument, must be filed with the agency of original jurisdiction, Board of Veterans' Appeals, or other VA office as appropriate.

6. Sample Provisions of an Assisted Living Liability Insurance Policy

SeniorPro Insurance

(8) EXCLUSIONS

The following exclusions shall be applicable to all Coverage Sections, unless specifically indicated to the contrary.

We are not obligated to defend or pay any **Damages**, **Defense Costs** or **Medical Payments** on account of any **Claim**:

(i) for, based on or arising out of any deliberately dishonest, malicious, criminal or fraudulent act or omission or any wilful violation of law by an **Insured**; provided, however, this exclusion shall not apply to any **Insured** that did not commit, participate in, or have knowledge of any such act, omission or violation of law described in this exclusion; and except for **Personal Injury** as may be defined and covered under Insuring Agreement B.II;

(p) for, based upon, or arising out of any actual or alleged violation of any federal, state or local antitrust law, or any agreement or conspiracy to restrain trade;

(s) for, based on, arising out of or related to:

1. the restitution of **Damages** and expenses paid to the **Insured** for services and goods; and
2. future royalties or future profits, disgorgement of profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
3. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
4. fines, sanctions or penalties or awards deemed uninsurable pursuant to any applicable law; or
5. punitive or exemplary **Damages**, unless insurable by law in the applicable venue that most favors coverage for such punitive or exemplary damages;
6. **Defense Costs** incurred by the **Insured** to comply with a demand for equitable relief, even if such compliance is compelled as a result of **Damages**.
7. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.

(22) CANCELLATION

This **Policy** may be cancelled by you by mailing written notice to us stating when, not less than sixty (60) days thereafter, cancellation shall be effective.

We may cancel this **Policy** for non-payment of premium by the **Insured**, by mailing written notice to you at the address shown in the Declarations, stating when, not less than ten (10) days thereafter, cancellation shall be effective.

We may also cancel this **Policy** upon the **Occurrence** of a change in risk that substantially increases any hazard **Insured** against, upon the violation of any of the terms or conditions of this **Policy** by any **Insured**, or upon the failure to comply with any loss control recommendation, by mailing written notice to you at the address shown in the Declarations, stating when, not less than ten (30) days thereafter, cancellation shall be effective.