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Legislative Chair & Judge Advocate  
3rd District Veterans of Foreign Wars  
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Select Committee on Veterans Affairs Public Hearing

Good morning Chairman Maynard, Chairman Hennessey and distinguished members of the Select Committee on Veterans Affairs, my name is Gary E Waterhouse, I am a proud Vietnam Veteran, I served with "H" Company Ranger, 75<sup>th</sup> Infantry assigned to the 1<sup>st</sup> Cavalry Division, and I am pleased to offer testimony this morning supporting legislation that is good for veterans.

**SUPPORT- Raised HB 6480: AN ACT CONCERNING THE IDENTIFICATION OF CONNECTICUT VETERANS ELIGIBLE FOR BENEFITS FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS.**

War time veterans of the United States Armed Forces are generally eligible to receive free medical benefits through the VA health care system. However, the VA can only assist veterans who have registered with it. Using a Department of Social Services' (DSS) database, the VA can determine whether any individuals receiving Medicaid benefits were also eligible for or receiving compensation from the VA. Administered by the Department of Health & Human Services' Administration for Children and Families (ACF), the Public Assistance Reporting Information System (PARIS) is a computer data matching system that helps states identify people who are simultaneously enrolled in state and federal health and social services programs.

Too many veterans lose their entire estates due to long term care nursing facility expenses. It is possible to meld Medicaid benefits and VA healthcare benefits that can save veterans estates and save the state Medicaid costs.

A widely unknown fact in the Veteran Community is that in addition to Medicaid, eligible veterans can receive numerous free medical benefits through the VA health care system such as:

- Outpatient and inpatient medical, surgical, and mental health care (including care for substance abuse)
- Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system
- Emergency care in VA facilities
- Durable medical equipment, prosthetic and orthotic devices, including eyeglasses and hearing aids.

Connecticut could potentially save millions of dollars of state funds by assisting low-income veterans to obtain their medical services from the U.S. Department of Veterans Affairs (VA) rather than through the state Medicaid program.

***Aid and Attendance and Medicaid - New Administrative law decision***

A May 27, 2009 Administrative Law decision in Georgia addresses the impact of Veteran's Administration Improved Pension with Aid and Attendance benefits on Medicaid eligibility. In *MW v. Georgia Department of Human Resources*, reprinted here, concerns a nursing home resident who was the surviving spouse of a veteran and who was receiving Improved Pension with Aid and Attendance from the VA. The VA benefit was comprised of an aid and attendance benefit and a widow's pension.

M.W. applied for nursing home Medicaid but was denied due to excess income resulting from her VA benefits. If the VA benefits were not considered as countable income, M.W. would have been approved for Medicaid benefits. However, although Medicaid excluded the aid and attendance portion of the VA benefit from the applicant's countable income, it included the widow's pension as countable income. Medicaid's denial was reversed by the Administrative Law Judge. The AU reasoned that, with regard to M.W.'s VA benefits, her income exceeded the maximum annual pension rate, and she would have been ineligible for VA benefits, if the VA had not deducted Unusual Medical Expenses (UME) and Continuing Medical Expenses (CMA) from her income. Therefore, the AU concluded that M.W. received VA Improved Death Pension with Aid and Attendance to reimburse her for her out-of-pocket UME and CME. The ALJ noted that, according to Georgia's state Medicaid Manual, UME/CME reimbursements.

The Department of Social Services should adopt regulations in the state Medicaid manual declaring that veterans basic pension be viewed as Unusual Medical Expenses (UME) and Continuing Medical Expenses (CMA) where supportive evidence is available and that special monthly compensation such as "House Bound" and "Aid & Attendance" are not considered as countable income.

CT should facilitate the use of "Pooled" and "Special Needs Trusts" (SNTs) to help veterans remain eligible for Medicaid. The federal law that supports SNTs is sometimes called OBRA '93. In OBRA '93, the d4 trusts, as they are commonly referred to, carved out certain exceptions for disabled parties, with the exceptions fall into three categories: 1) Trusts established for disabled persons under the age of sixty-five (65) 42 U.S.C. §1396p (d)(4)(A) 2) Income assignment trusts, sometimes referred to as Miller Trusts. 42 U.S.C. §1396p (d) (4) (B) 3) Trusts established for disabled persons with a non-profit association as trustee 42 U.S.C. §1396p (d) (4) (C) This is a Pooled Trust or Special Needs Trusts; PLAN of Connecticut, a not-for-profit trust organization, has the only Connecticut pooled trust. For more information, please visit [www.PLANofCT.org](http://www.PLANofCT.org) or call 860-523-495. PLAN also offers other types of Special Needs Trusts and services. Under OBRA '93, each of these types of trusts is designed as a means of protecting the beneficiary's assets as well as his or her benefits/entitlements.

The money or other property in these trusts is deemed non-countable/unavailable to the beneficiary of the trust for Medicaid purposes and for some other programs such as SSI. A Focus on 42 U.S.C. §1396p (d) (4) (A) and 42 U.S.C. §1396p (d) (4) (C) Special Needs Trusts Congress has provided that these irrevocable trusts for disabled individuals are established according to the following requirements: 42 U.S.C. §1396p (d) (4) (A): (under 65 years)

Connecticut should change its Medicaid application form to identify veterans who may be eligible for assistance from the federal government for their health care costs.

HB 6480 has the potential to maximize veterans' benefits and reduce Medicaid spending for the state of Connecticut.

**State of Washington**  
**Department of Social & Health Services**  
**Health and Recovery Services Administration**

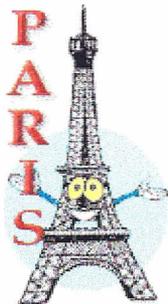
DSHS/ HRSA /Payment Review Program  
Veteran's Benefit Enhancement Project  
PO Box 45511 Phone: 360 725-1020  
Olympia, WA 98504-5511 or 360-725-2077

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# **Veterans Benefit Enhancement**

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State of Washington's Method for  
Using PARIS VA File Data to  
Maximize Veterans Benefits



## MAXIMIZATION OF THE PARIS VETERANS MATCH

### Review State Code for Treatment of Certain Payments Made by Department of Veterans Affairs

Many veterans and survivors of veterans receive monthly payments from Veterans Affairs (VA). Some of these recipients who need the regular assistance of a caregiver receive an increased amount from VA. This additional amount, added to the regular payment amount, is known as an aid and attendance allowance. (A&A)<sup>1</sup> According to [§3705](#) of the State Medicaid Manual, VA allowances for aid and attendance may not be considered **income** for eligibility purposes.

However, CMS has recognized the aid and attendance allowances from VA payments as **third party payments** to be applied toward the cost of Medicaid long term care services when paying claims for long term care services. [[see Estate of Krueger v. Richland County](#), Civil No. 940128 (N.D. 1994)] A person is considered to be in need of aid and attendance if the person "is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person". 38 U.S.C. 1115(1)(E), 1311(c), 1315(g), 1502(b). See also 38 C.F.R. 3.351(b) and (c). Additionally, Veterans Affairs have established regulations to determine the need for an aid and attendance allowance, which include but are not limited to: living in a nursing home, "inability of claimant to dress or undress", and having an "incapacity, physical or mental, which requires care and assistance on a regular basis". See 38 C.F.R. 3.351(c)(2) and 3.352(a). Under the third-party liability payment scheme, a "third party" is broadly defined as "any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan." See 42 C.F.R. 433.136(3). The court in Krueger ruled that

"aid and attendance allowances...are provided based on an assessment of the veteran's physical and medical need for them and, when the veteran is in need of, and in fact does receive, nursing home care, that care substitutes for the purpose for which the aid and attendance allowance was designed. When a veteran is in a nursing home, the aid and attendance allowance is paid to cover the exact same services being paid for by the Medicaid program."

Effective August 2004, the State of Washington implemented a policy change to treat aid and attendance payments to long term care Medicaid recipients as a third-party resource. While aid and attendance is not considered income when determining eligibility and client participation for long term care services, the

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<sup>1</sup> VA also pays a lesser additional benefit, known as housebound allowance, to some veterans and surviving spouses who are need a lower level of care

portion of VA benefit constituting an A&A allowance is applied to offset and reduce the state payment for long term care services provided to a recipient of VA aid and attendance.

## Partnership with State Veterans Services Office

Together, the Department of Social and Health Services and the Washington Department of Veteran's Affairs identify veterans receiving Medicaid benefits (especially long term care benefits) and review their benefit structure. In some cases, clients have full long term care coverage, either through VA, TRICARE<sup>2</sup> or CHAMPVA<sup>3</sup>. In other cases, additional benefits are identified, such as aid and attendance allowance and prescription drug coverage, of which the veteran or family members are not aware.

Department of Social and Health Services (DSHS) partnered with Washington State Veteran's Affairs (WDVA) through two (2) performance based contracts, which measure savings resulting from VA benefits and ensure sustainability. The focus of these contracts are outreach, enrollment and advocacy of VA benefits to expand the number of Medicaid clients receiving VA benefits and maximize the VA benefits to which they are entitled.

One contract between DSHS and the WDVA addresses the need to review current VA benefits for Medicaid recipients and facilitate the enhancement of benefits for clients not receiving maximum entitlement, as well as a plan to identify new applicants who may be entitled to VA benefits.<sup>4</sup> The other contract pertains to VA medical benefits and the enrollment of Medicaid recipients into the VA health care system.<sup>5</sup> Also there are Medicaid recipients potentially eligible for but not receiving VA benefits. The work to identify these clients and facilitate VA claims will require an agreement and contract separate from the current

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<sup>2</sup> TRICARE is the Department of Defense's worldwide health care program for active duty and retired uniformed services members and their families. TRICARE consists of TRICARE Prime, a managed care option; TRICARE Extra, a preferred provider option; and TRICARE Standard, a fee-for-service option. TRICARE For Life is also available for Medicare-eligible beneficiaries age 65 and over (effective Oct. 1, 2001). See the [TRICARE, Military Health System website](#) for more information.

<sup>3</sup> Families of veterans who have a 100 percent, permanent disability, or of veterans who died from a service-connected disability, may be covered by CHAMPVA as long as they are not eligible for TRICARE.

<sup>4</sup> see Appendix A for a copy of this contract (Interlocal Agreement)

<sup>5</sup> See the VA [Health Eligibility Center](#) site for more information. All veterans are potentially eligible for VA medical care, but this effort focuses on veterans who are receiving aid and attendance allowance or service-connected compensation at a 50% disability rating or higher. These veterans need not obtain a prescription from a VA doctor to receive drugs and medicines from VA, but can have their own doctor provide a prescription to the VA pharmacy. See 38 USC 17.1712(d).

Performance Based Agreement that enhances benefits for those that are already eligible for and receiving some VA related monetary benefits.

When an increase in housebound/aid and attendance award is necessary, WDVA initiates the process of increasing the entitlements. For the majority of these clients, WDVA acts in the legal capacity of Client Representative. This authorizes WDVA staff to represent the claimant throughout the VA Adjudication process. Claims are developed and processed more expeditiously in this manner. Staff associates within the Seattle VA Regional Office assume the role of “attorney in fact” in regards to VA claims representation. WDVA has access to the Master VA file, which allows for review of client records and assistance to more participants.

Direct VA benefit services and representation increases the awards to the maximum amount possible under law and decreases the amount of time it takes to receive a favorable rating. DSHS will thereby realize an increase in client participation for long term care services, and a correlating decrease in state reimbursement, at the earliest possible date.

## Prepare PARIS VA File Data

### Importing VA File

It's important to understand and identify the differences between veterans **pension**, which is based on financial need, and **compensation**, which is a non-needs-based benefit based on degree of disability or service-connected death. For this reason, it may be helpful to split the two character “Entitlement Code” (starting at element position 467 in the VA File) into two distinct fields or columns. The first position of the Entitlement Code designates the period of service (e.g., WW I, WW II, Vietnam, etc.); the second position the type of benefit (compensation, pension for veteran, pension for survivor, DIC for survivor, etc.). By assigning a distinct code for the VA benefit type, it is easier to group those clients receiving like benefits, which will be helpful in identifying those who are eligible for an increased payment.

## Join State Client Data with VA File Records

While the VA File provides a list of individuals associated with state benefits and active VA claims, it does not necessarily provide all the data needed to ascertain which clients should be receiving a greater amount from VA.

It is helpful to add state client data to the VA File, such as **financial responsibility** (i.e. whether the individual is a direct recipient of state benefits, non-applying spouse, ineligible parent, non-member, etc.), **marital status** and **living arrangement** (e.g., at home, in a nursing facility, assisted living, etc.). This information could be retrieved from the state database and compiled with VA File

data after the VA File is received. Alternatively, this state data could be included with the state information that is sent to PARIS for data match (a better solution). Element positions 70-127 of the submitted state information allow space for state optional data such as this.

If possible, collect individual client VA income figures from the state database, to compare with income amounts provided by Veterans Affairs. This provides an opportunity to identify those clients with unreported and underreported VA income. Also, this provides a more precise basis for measurement of cost savings due to identification of VA income.

## **Use PARIS VA File and State Data to Maximize Veterans Benefits**

### **Assemble Groups of Clients Entitled to VA Benefit Increases**

With the PARIS VA File and state data, one can sort out the various groups of clients that should be receiving greater monthly payments from Veterans Affairs. For example:

- Recipients of long term care services should receive an additional aid & attendance allowance with their VA benefit.** (Aid and attendance entitlement is represented in element position 229 of the VA File). This is an additional amount that should be considered as a third party payment, to offset Medicaid payment for long term care services. Aid and attendance is available to both veterans and surviving spouses, and to those receiving pension or compensation (including widow's DIC). Any long term care recipients from the PARIS VA File not coded for aid and attendance should be referred to the state or local Veterans Service Office for an enhancement claim. The exceptions to aid and attendance entitlement include: those not married, receiving VA pension, and residing in a nursing facility (they will receive only \$90 per month payment); and those receiving 10-20% service-connected compensation (there is no aid and attendance payment available for this group).
- Long term care recipients not living in a nursing facility should not be receiving the reduced \$90 / month VA pension.** There may be many clients receiving only \$90 / month pension that do not reside in a nursing facility, but continue to receive this reduced payment because Veterans Affairs believes them to be institutionalized. This applies to those eligible for VA pension only, not to those clients entitled to compensation, who should continue to receive their compensation rate regardless of living arrangement. These clients not in nursing facilities receiving reduced pensions need to be referred to the state or local Veterans Service Office for enhancement claims.

- **Some clients have a VA claim for benefits, but are receiving zero payment.** The PARIS VA File provides a Change Reason code (element position 430) which may indicate the reason for non-payment of VA benefits, including Failure to file an Income Questionnaire, Excessive Net Worth, and Whereabouts Unknown. The state or local Veterans Service Office can help determine which clients are correctly not receiving any payment, and file reinstatement claims for the others.
  
- **Some veterans are receiving compensation based on a low degree of service-connected disability, but now have a worsened condition.** By collecting diagnostic data from Medicaid medical, institutional, and possibly pharmaceutical claim history, one can compile condition and disease profiles for these veterans receiving lower service-connected compensation rates and long term care services. This may be especially helpful when considering those veterans with Vietnam service, because there are ten diseases presumed by VA to be service-related for compensation purposes for veterans exposed to Agent Orange and other herbicides during that period.<sup>6</sup>

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<sup>6</sup> See **Federal Benefits for Veterans and Dependents** (2004 Edition), Benefit Programs, Disability Compensation. [PDF file](#), [Web page version](#).