

Testimony

Veterans and Military Committee

Thursday, February 2, 2016

Hearing on: HB2175 — Requiring disclosure to veterans in certain materials concerning veterans' benefits.

Chairman Osterman, Committee members, my name is Wayne Bollig, Deputy Director of Veteran Services for the Kansas Commission on Veterans' Affairs Office. Thank you for the opportunity to provide this testimony regarding: HB-2175 — Requiring disclosure to veterans in certain materials concerning veterans' benefits.

HB 2175 is a result of testimony before the Joint Committee on Kansas Security and the Veterans and military Committee last legislative session. Last session the agency was ask to provide information relating to veterans and possible benefits fraud. As part of the briefing I provided information on a practice which the VA calls "Pension Poaching." A practice where less than reputable individuals convince veterans and their family members to shift assets into irrevocable trusts in order to obtain VA non-service connected pensions and aid and attendance. A practice that can harm the veteran, increase the current backlog of claims for truly needy veterans and put a strain on a program that was meant for indigent Veterans that served at least 90 days during a particular wartime period, and who do not have the income to support their daily living and medical needs.

The KCVAO feels this bill is essential in stopping this scam directed toward Veterans and family members who do not actually qualify for a VA pension. While we realize irrevocable trusts in VA pension planning can be a very valuable tool in the right circumstance this is not the goal of the Pension Poacher. These individuals, are known to charge money for assisting with a VA pension claim, take credit card information from Veterans over the telephone, or charge as much as \$10,000 upfront to represent claimants before VA, something that the KCVAO in partnership with veteran

service organizations to at no cost to qualified veterans. According to the VA these Pension Poachers are responsible for creating a large part of the back log of claims in the VA system. The system is being clogged by questionable claims submitted by pension poachers who are preying on veterans, and who are submitting thousands of applications for people for whom this benefit was not intended.

According to the Federal Trade Commission, and the findings of an undercover operation by the Government Accountability Office, nationwide hundreds of financial and estate-planning professionals claim to help veterans obtain the A&A benefit. In reality, they mostly charge fees (as much as \$10,000) to sell annuities and to set up trusts in other people's names. To hide a veteran's assets, so that he or she may qualify for a benefit meant to help the indigent. This money is intended to be used to pay for assisted living, nursing home care or home bound assistance.

While technically placing funds in an irrevocable trust does not violate V.A. rules Medicaid will "look back" at assets for 60 months to see who qualifies for its nursing home aid. While the V.A. has started a three year look back, it is not universally enforced, or may be looked at retroactively both of which can result in issues for the veteran.

Another issue is that these schemes for transferring and hiding assets often backfire on the veteran. For example, because of the VA back log the application for the VA benefit can take as long as six months even going out to a year or more. Worse what happens if the pension and Aid and attendance application is denied, as many are, and the veteran is not be able to touch the money he has put into annuities and trusts for decades without huge penalties. In addition, the transfer of assets could delay or prevent a veteran from qualifying for Medicaid when needed, since Medicaid tracks assets and transfers for the previous five years. And if the VA does decide to look back three years as it has been known to do the veteran or is family is now stuck with large overpayment with no resources to pay it back.

Then there is the matter of ethics. Though it may be technically legal to move assets to hide savings, the A&A benefit was not created to enable veterans to save money for heirs. It exists for veterans and their families who are unable to pay for the care they need now.

Here's how Pension Poaching works. You are a Veteran that served during a wartime period.

You get a call, email, or letter – usually one that you never asked to get – from a company saying that they will help you get “A little known hidden benefit” from the VA. They'll tell you how the qualifications are really easy – 90 days of wartime service – and they'll usually tell you some story of a Veteran whose “benefits” were delayed by the VA and nobody would listen (except, of course, them).

Then they tell you they need to make an appointment with you either with them or an estate attorney and all you have to do is pay a fee ranging from \$1,500 to \$10,000 or more, and they'll take care of the rest. The “rest” includes things like: filing your VA pension application, explain and guide you through any necessary adjustments in your income and assets in order to qualify, selling your annuities, whole/variable life insurance, and other financial products. Once they have your assets locked up they will fill out a form send it in and that is the last you see of them. If your claim is denied where do you go? What do you do? Occasionally they will give you the KCVAO phone number or a VSO phone number to help you unscramble the mess but usually you are on your own.

Why is this a Bad Thing?

1. Nobody should ever – EVER – charge you a fee to file a claim for any kind of VA benefits.

Accredited attorneys and agents can only charge a fee to help a Veteran with their appeal AFTER the Veteran gets a Ratings Decision from the VA – never before.

2. The so-called “Aid and Attendance” – what is actually properly called a Non-Service

Connected Pension or Survivor's Pension is meant for indigent Veterans that served at least 90 days during a particular wartime period, and who do not have the income to support their daily

living and medical needs. It was not meant for wealthy Veterans to use as an estate planning tool.

3. Pension Poachers typically try to convince you to move all of your assets into an irrevocable trust to “qualify” you for the non-service connected pension. Having an irrevocable trust means that you lose all control over your assets – and you can’t get it back. To qualify for a VA pension you also cannot receive any benefit from it. If you need it later sorry not your asset any longer. One mistake often made by the Pension Poacher is when they lock the assets in an irrevocable trust but leads the veteran to believe he can receive benefits either in the form of a payment or a gift from the heirs this automatically invalidates the intent of the trust and creates a back payment situation for the veteran.
4. Pension Poachers are typically not lawyers – and even the ones that are often are not licensed in the State.
5. They won’t help you with any other benefits.

I will be happy to answer any questions you might have.