

to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: 38 U.S.C. 1506)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624)

[44 FR 45936, Aug. 6, 1979, as amended at 60 FR 51922, Oct. 4, 1995; 65 FR 16827, Mar. 30, 2000; 66 FR 56614, Nov. 9, 2001; 83 FR 47272, Sept. 18, 2018]

### § 3.278 Deductible medical expenses.

(a) *Scope.* This section identifies medical expenses that VA may deduct from countable income for purposes of three of its needs-based programs: Pension, section 306 pension, and parents' dependency and indemnity compensation (DIC). Payments for such medical expenses must be unreimbursed to be deductible from income.

(b) *Definitions.* For the purposes of this section—

(1) *Health care provider* means:

(i) An individual licensed by a State or country to provide health care in the State or country in which the individual provides the health care. The term includes, but is not limited to, a physician, physician assistant, psychologist, chiropractor, registered nurse, licensed vocational nurse, licensed practical nurse, and physical or occupational therapist; or

(ii) A nursing assistant or home health aide who is supervised by a licensed health care provider as defined in paragraph (b)(1)(i) of this section.

(2) *Activities of daily living (ADLs)* mean basic self-care activities and consist of bathing or showering, dressing, eating, toileting, transferring, and ambulating within the home or living area. *Transferring* means an individual's moving himself or herself from one position to another, such as getting in and out of bed.

(3) *Instrumental activities of daily living (IADLs)* mean independent living activities, such as shopping, food preparation, housekeeping, laundering, managing finances, handling medications, using the telephone, and transportation for non-medical purposes.

(4) *Custodial care* means regular:

(i) Assistance with two or more ADLs; or

(ii) Supervision because an individual with a physical, mental, developmental, or cognitive disorder requires care or assistance on a regular basis to protect the individual from hazards or dangers incident to his or her daily environment.

(5) *Nursing home* means a facility defined in § 3.1(z)(1) or (2). If the facility is not located in a State, the facility must be licensed in the country in which it is located.

(6) *Medical foster home* means a privately-owned residence, recognized and approved by VA under 38 CFR 17.73(d), that offers a non-institutional alternative to nursing home care for veterans who are unable to live alone safely due to chronic or terminal illness.

(7) *Care facility other than a nursing home* means a facility in which a disabled individual receives health care or custodial care under the provisions of paragraph (d) of this section. A facility must be licensed if facilities of that type are required to be licensed in the State or country in which the facility is located. A facility that is residential must be staffed 24 hours per day with care providers. The providers do not have to be licensed health care providers.

(8) *Needs A&A or is housebound* refers to a disabled individual who meets the criteria in § 3.351 for needing regular aid and attendance (A&A) or being housebound and is a:

(i) Veteran;

(ii) Surviving spouse;

(iii) Parent (for parents' DIC purposes); or

(iv) Spouse of a living veteran with a service-connected disability rated at least 30 percent disabling, who is receiving pension.

(c) *Medical expenses for VA purposes.* Generally, medical expenses for VA needs-based benefit purposes are payments for items or services that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline. Medical expenses may include, but are not limited to, the payments specified in paragraphs (c)(1) through (7) of this section.

(1) *Care by a health care provider.* Payments to a health care provider for services performed within the scope of the provider's professional capacity are medical expenses. Cosmetic procedures that a health care provider performs to improve a congenital or accidental deformity or related to treatment for a diagnosed medical condition are medical expenses.

(2) *Medications, medical supplies, medical equipment, and medical food, vitamins, and supplements.* Payments for prescription and non-prescription medication procured lawfully under Federal law, as well as payments for medical supplies or medical equipment, are medical expenses. Medically necessary food, vitamins, and supplements as prescribed or directed by a health care provider authorized to write prescriptions are medical expenses.

(3) *Adaptive equipment.* Payments for adaptive devices or service animals, including veterinary care, used to assist a person with an ongoing disability are medical expenses. Medical expenses do not include non-prescription food, boarding, grooming, or other routine expenses of owning an animal.

(4) *Transportation expenses.* Payments for transportation for medical purposes, such as the cost of transportation to and from a health care provider's office by taxi, bus, or other form of public transportation are medical expenses. The cost of transportation for medical purposes by privately owned vehicle (POV), including mileage, parking, and tolls, is a medical expense. For transportation in a POV, VA limits the deductible mileage rate to the current POV mileage reimbursement rate specified by the United States General Services Administration (GSA). The current amount can be obtained from [www.gsa.gov](http://www.gsa.gov) or on VA's website at [www.benefits.va.gov/pension/](http://www.benefits.va.gov/pension/). Amounts by which transportation expenses set forth in this paragraph (c)(4) exceed the amounts of other VA or non-VA reimbursements for the expense are medical expenses.

(i) *Example.* In February 2013, a veteran drives 60 miles round trip to a VA medical center and back. The veteran is reimbursed \$24.90 from the Veterans Health Administration. The POV mileage reimbursement rate specified by

GSA is \$0.565 per mile, so the transportation expense is \$0.565/mile \* 60 miles = \$33.90. For VA needs-based benefits purposes, the unreimbursed amount, here, the difference between \$33.90 and \$24.90, is a medical expense.

(ii) [Reserved]

(5) *Health insurance premiums.* Payments for health, medical, hospitalization, and long-term care insurance premiums are medical expenses. Premiums for Medicare Parts A, B, and D and for long-term care insurance are medical expenses.

(6) *Smoking cessation products.* Payments for items and services specifically related to smoking cessation are medical expenses.

(7) *Institutional forms of care and in-home care.* As provided in paragraph (d) of this section.

(d) *Institutional forms of care and in-home care.* This paragraph (d) applies with respect to claims for a medical expense deduction for institutional forms of care or in-home care received on or after October 18, 2018 that VA has not previously granted.

(1) *Hospitals, nursing homes, medical foster homes, and inpatient treatment centers.* Payments to hospitals, nursing homes, medical foster homes, and inpatient treatment centers (including inpatient treatment centers for drug or alcohol addiction), including the cost of meals and lodging charged by such facilities, are medical expenses.

(2) *In-home care.* Payments for assistance with ADLs and IADLs by an in-home attendant are medical expenses as long as the attendant provides the disabled individual with health care or custodial care. Payments must be commensurate with the number of hours that the provider attends to the disabled person. The attendant must be a health care provider unless—

(i) The disabled individual needs A&A or is housebound; or

(ii) A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that, due to a physical, mental, developmental, or cognitive disorder, the individual requires the health care or custodial care that the in-home attendant provides.

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(3) *Care facilities other than nursing homes.* (i) Care in a facility may be provided by the facility, contracted by the facility, obtained from a third-party provider, or provided by family or friends.

(ii) Payments for health care provided by a health care provider are medical expenses.

(iii) The provider does not need to be a health care provider, and payments for assistance with ADLs and IADLs are medical expenses, if the disabled individual is receiving health care or custodial care in the facility and—

(A) The disabled individual needs A&A or is housebound; or

(B) A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that, due to a physical, mental, developmental, or cognitive disorder, the individual needs to be in a protected environment.

(iv) Payments for meals and lodging (and other facility expenses not directly related to health care or custodial care) are medical expenses if:

(A) The facility provides or contracts for health care or custodial care for the disabled individual; or

(B) A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that the individual must reside in the facility (or a similar facility) to separately contract with a third-party provider to receive health care or custodial care or to receive (paid or unpaid) health care or custodial care from family or friends.

(e) *Non-medical expenses for VA purposes.* Payments for items and services listed in paragraphs (e)(1) through (4) of this section are not medical expenses for VA needs-based benefit purposes. The list is not all-inclusive.

(1) *Maintenance of general health.* Payments for items or services that benefit

or maintain general health, such as vacations and dance classes, are not medical expenses.

(2) *Cosmetic procedures.* Except as provided in paragraph (c)(1) of this section, cosmetic procedures are not medical expenses.

(3) *Meals and lodging.* Except as provided in paragraph (d) of this section, payments for meals and lodging are not medical expenses.

(4) *Assistance with IADLs.* Except as provided in paragraph (d) of this section, payments for assistance with IADLs are not medical expenses.

*CROSS REFERENCES:* For the rules governing how medical expenses are deducted, see § 3.272(g) (regarding pension) and § 3.262(1) (regarding section 306 pension and parents' DIC).

(Authority: 38 U.S.C. 501(a), 1315(f)(3), 1503(a)(8), 1506(1))

(The Office of Management and Budget has approved the information collection requirement in this section under control numbers 2900-0002, 2900-0004, and 2900-0161.)

[83 FR 47272, Sept. 18, 2018]

**§ 3.279 Statutory exclusions from income or assets (net worth or corpus of the estate).**

This section sets forth payments that Federal statutes exclude from income for the purpose of determining entitlement to any VA-administered benefit that is based on financial need. Some of the exclusions also apply to assets (pension), also known as net worth or the corpus of the estate (section 306 pension and parents as dependents for compensation). VA will exclude from income or assets any amount designated by statute as not countable as income or resources, regardless of whether or not it is listed in this section.

Program or payment	Income	Assets (corpus of the estate)	Authority
(a) COMPENSATION OR RESTITUTION PAYMENTS:			