

# ***THE LEGAL HANDBOOK FOR TENNESSEE SENIORS***

*2014 Edition*

*An Information & Reference Guide  
for Tennesseans*



Rebecca C. Blair  
The Blair Law Firm  
5214 Maryland Way, Ste. 207  
Brentwood, TN 37027  
Office: (615) 515-4492  
[www.blair-law.com](http://www.blair-law.com)  
[rblair@blair-law.com](mailto:rblair@blair-law.com)

***Brought to you by The Tennessee Bar Association***  
*Produced by the TBA Public Education Committee*

***The Tennessee Bar Association gratefully  
acknowledges the assistance of the many  
volunteers who contributed to this Handbook.***

**The Legal Handbook for Tennessee Seniors would not have been  
possible with out the leadership and commitment of  
2013 – 2014 TBA President Cynthia R. Wyrick of Sevierville.**

The Handbook is a project of the TBA Public Education Committee,  
led by Committee Co-Chair Angelia M. Nystrom of Knoxville.

**TBA Public Education Committee**

Tasha Blakney, Knoxville, Co-Chair  
Angelia Nystrom, Knoxville, Co-Chair  
Katrina Atchley Arbogast, Knoxville  
Shauna Billingsley, Franklin  
Curtis Bowe, Chattanooga  
Mark Castleberry, Knoxville  
Suzanne Cook, Johnson City  
Dan Coughlin, Bristol  
Jacqueline Dixon, Nashville  
Sherie Edwards, Brentwood  
Sam Elliott, Chattanooga  
Brian Frye, Chattanooga  
Greg Grisham, Memphis  
Claudia Jack, Columbia  
Steven King, Memphis  
Megan Livingstone, Spring Hill  
Jason Long, Knoxville  
Rachel Moses, Cookeville  
Wyla Posey, Nashville  
Andy Roskind, Knoxville

**Senior Law Handbook Volunteers**

James Barry, Lebanon  
Barbara Boone, Hendersonville  
John B. Burns, Nashville  
Lee Dickinson, Bethpage  
Donald Farinato, Knoxville  
Sharon Frankenberg, Knoxville  
Kelly Frere, Lenoir City  
Matt Frere, Lenoir City  
Monica Franklin, Knoxville  
Sandra Richardson, Lake City  
Wayne Richardson, Lake City  
Helen Richmond, Knoxville  
Pam Wright, Jackson  
Victoria Tillman, Knoxville

***There are also many other TBA Members who contributed to and continue  
to assist with updates and outreach for this significant project.***

***TBA Access to Justice/Public Education Coordinator  
Liz Todaro provided staff support for this project.***

## **2014 Edition – Tennessee Bar Association**

**This Handbook is not meant as legal advice and is no substitute for qualified legal advice. Readers needing legal assistance are urged to obtain advice on their specific situation from their own legal counsel. This book and any forms and agreements contained in it are intended for educational and informational purposes only and the reader should consult with his or her attorney before acting upon any of the information in the handbook.**

This Handbook describes United States and Tennessee laws and programs, including Social Security, Medicaid and Medicare and gives an overview of such topics as housing options, wills and probate, health care, long term care, nursing homes, continuing care retirement communities, advance directives, powers of attorney, conservatorship and protection of legal rights, legal assistance, age discrimination, elder abuse and a consumer guide. The discussion of these topics is designed for lay persons and explained in clear, easy-to-understand language.

This handbook is based on a number of helpful information guides and resources, including in large part the *Senior Citizens Handbook: Laws & Programs Affecting Senior Citizens in Virginia* Copyright© 2013 by The Virginia State Bar. All rights reserved. Adaptation for Tennessee, Copyright © 2014. The authors and publishers of this Tennessee edition wish to ensure that the information provided is accessible to anyone who needs it, so reprinting is permitted as long as the use is for free educational purposes and informational in nature.

*To obtain additional information about reprinting, please contact the Tennessee Bar Association.*

**Additional copies of this Handbook and updated information may be downloaded from the Tennessee Bar Association's web site at**

**[http://www.tba.org/programs/  
the-2014-legal-handbook-for-tennessee-seniors](http://www.tba.org/programs/the-2014-legal-handbook-for-tennessee-seniors)**

**The Tennessee Bar Association  
221 Fourth Avenue North, Suite 400  
Nashville, TN 37219-2198  
(615) 383-7421**

***February 2014***

## **SECTION ONE:**

### **FINANCIAL ASSISTANCE—SECURING YOUR FUTURE**

#### **I. Social Security 1**

- A. Introduction to Social Security
- B. Eligibility for Social Security Disability
- C. Social Security and Your Retirement Plans
- D. Retirement Benefits
  - 1. Qualifying for Retirement Benefits
  - 2. Calculating Retirement Benefits
  - 3. Retirement Age
    - Early Retirement
    - Delayed Retirement
    - Deciding When to Retire
- E. Benefits for Widows and Widowers
- F. Benefits for Spouses
- G. Benefits for Other Family Members
- H. Benefits for Divorced Spouses
- I. Applying for Benefits
- J. Right to Appeal

- K. Special Rules related to Social Security
  - 1. If you work and get benefits at the same time
  - 2. A special monthly rule
  - 3. Pensions from work not covered by Social Security
  - 4. Leaving the United States
- L. Taxability of Social Security Benefits
- M. Same-Sex Couples & Social Security

## **II. Supplemental Security Income 26**

- A. Introduction
- B. General Eligibility
- C. Income
- D. Penalties
- E. Applying for SSI Benefits
- F. Navigating the Appeals Process
- G. Overpayments

### **III. Pensions and Retirement Accounts** **34**

- A. Introduction
- B. Pension and Retirement Plan Eligibility
- C. Types of Pension Plans
- D. Pension & Retirement Plan Rights
- E. Breaks in Service
- F. Benefits for Workers' Spouses
- G. Protection of Pension and Retirement Funds
- H. Navigating the Appeals Process

### **IV. Veterans Benefits** **41**

- A. Introduction
- B. Eligibility for Aid & Attendance Benefits
- C. TriCare for Veterans
- D. Relationship of VA Income to Social Security  
Administration Benefits
- E. Applying for VA Benefits
- F. Navigating the Appeals Process

### **V. Railroad Retirement Act Benefits** **52**

**VI. Supplemental Nutrition Assistance Program (SNAP): The Food Stamp Program 54**

- A. Introduction
- B. Applying for SNAP (Food Stamps)
- C. Determining Eligibility for SNAP
- D. Navigating the Appeals Process

**VII. Tax Relief 62**

- A. Federal Income Tax
- B. Federal Income Tax Credit
- C. Earned Income Credit
- D. Taxpayers Who Are Blind or Over Age 65
- E. Medical Expenses
- F. Medical Savings Accounts
- G. Sale of Principal Residence
- H. Long-Term Capital Gains and Dividends
- I. Estate and Gift Tax Exemptions
- J. Tennessee Inheritance Tax
- K. Charitable Contributions
- L. Real Property Tax Relief for the Elderly

## **VIII. Reverse Mortgages**

**77**

- A. Introduction
- B. Qualifying for a Reverse Mortgage through HUD
- C. Use of Proceeds and Homeowner Obligations with a HUD Reverse Mortgage
- D. Cost of Reverse Mortgage
- E. Financial Counseling and Other Information Available for Persons Considering Reverse Mortgages
- F. Resources Available for Persons Interested in a Reverse Mortgage



## **SECTION TWO: HEALTH CARE**

### **I. Medicare**

**84**

- A. Introduction to Medicare
- B. Medicare Part A (Hospital Insurance)
- C. Medicare Part B (Medical Insurance)
- D. Medicare Part C (Medicare Health Plans)
- E. Medicare Part D (Prescription Drug Coverage)
- F. Medicare Coverage Choices
- G. “Medicare and You”
- H. Additional Resources for Tennessee Residents: TN's State Health Insurance Assistance Program (SHIP)

### **II. Medicaid & TennCare**

**91**

- A. Introduction to Medicaid
- B. Eligibility
- C. Applying for Medicaid
- D. Resource Limitations
- E. Transfer of Assets
- F. Medicaid and Long-term Care
- G. Navigating the Appeals Process

### **III. TennCare 110**

- A. Introduction to TennCare
- B. Medicaid and TennCare: What's the Difference?
- C. Coverage and Eligibility
- D. Applying for TennCare
- E. Renewal of TennCare

### **IV. Affordable Care Act: What It Means to You 116**

- A. Overview
- B. ACA's Impact on Seniors

### **V. Long-term Care Insurance 121**

- A. Introduction
- B. Considerations When Purchasing a Policy

## **VI. Health Care Considerations With Alzheimer's Disease and Dementia 129**

- A. Introduction
- B. Services Available for Persons Suffering with Alzheimer's and Dementia
- C. Services Available for the Caregiver
- D. Resources for Families
  - Day-to-day Assistance for the Caregiver in the Home
  - Day-to-day Assistance Outside the Home
  - Short-term Assistance for the Caregiver
  - Long-term Assistance
  - Other resources for families
- E. Legal Considerations for Alzheimer's Patients

## **SECTION THREE:**

### **LONG-TERM CARE AND HOUSING FOR SENIORS**

#### **I.     Nursing Homes 137**

---

- A.   Introduction
- B.   Selecting a Nursing Home
- C.   Paying for Nursing Home Care
  - Medicare
  - Medicaid and TennCare
  - Veterans Benefits
  - Private Health and long-term care insurance
  - Personal resources
- D.   Residents' Rights
- E.   Long-term Care Ombudsman Program

#### **II.   Assisted Living Facilities 149**

---

- A.   Introduction
- B.   Regulation
- C.   Paying for Assisted Living
- D.   Choosing an Assisted Living Facility

### **III. Adult Day Care **151****

- A. Introduction
- B. Services Provided
- C. Paying for Adult Day Care

### **IV. Home Care **153****

- A. Introduction
  - Types of Services Available
  - Arranging for Home Care
- B. Choosing a Home Care Provider
  - Questions to Ask
- C. Paying for Home Care

**V. Continuing Care Retirement Communities 160**

- A. Introduction
- B. Types of Continuing Care Retirement Communities
- C. Fees for Continuing Care Retirement Communities
- D. Pros and Cons
- E. Choosing a Continuing Care Retirement Community
- F. Seeking Professional Advice

**VI. Housing Assistance 167**

- A. Landlord-Tenant Issues
- B. Understanding Your Lease
- C. Tennessee Residential Landlord-Tenant Act
- D. Rental Assistance
- E. Utility Assistance
- F. Property Tax Relief

## **SECTION FOUR: PLANNING FOR THE FUTURE**

### **I. Divorce Considerations for the Senior Adult** **174**

### **II. Real Property Transfers** **175**

### **III. Estate Planning Considerations** **178**

#### **A. Wills and Codicils**

- Preparation of your Will
- Changing Your Will
- Dying Without A Will

#### **B. Revocable Trusts (aka “Living Wills”)**

#### **C. Life Insurance**

#### **D. Joint Tenancy Ownership**

#### **E. Charitable Gift Planning**

- Cash Gifts
- Gifts of Appreciated Assets
- Gifts of Retirement Assets
- Charitable Remainder Trust
- Charitable Lead Trust
- Charitable Gift Annuity
- Bequest Under a Will or Revocable Trust

#### **F. Special Needs Trusts**

<b>IV.</b>	<b><u>Probate and Estate Administration</u></b>	<b><u>195</u></b>
A.	Introduction	
B.	The “Personal Representative”	
C.	Estate Administration	
D.	Elective Share of Surviving Spouse & Homestead	
<b>V.</b>	<b><u>Durable Powers of Attorney</u></b>	<b><u>207</u></b>
<b>VI.</b>	<b><u>Durable Powers of Attorney for Healthcare</u></b>	<b><u>208</u></b>
<b>VII.</b>	<b><u>Living Wills</u></b>	<b><u>209</u></b>
<b>VIII.</b>	<b><u>Tennessee Health Care Decisions Act</u></b>	<b><u>211</u></b>



**IX. Conservatorship & Guardianship 213**

- A. Introduction
- B. Guardianship in Tennessee
  - Procedures for Establishment of Conservatorship
  - Who Needs a Conservator?

**X. Funeral Services 217**

- A. Laws Concerning Funeral Homes & Crematoriums
- B. Planning Ahead
- C. Planning at Time of Need
- D. Funeral Service Consumer Guide
- E. Services for Veterans
- F. Other Issues

## **SECTION FIVE: PROTECTION OF LEGAL RIGHTS**

### **I. Working with a Legal Professional 223**

- A. When You Need a Lawyer
- B. Finding a Lawyer
- C. Preparing for the Meeting
- D. Fee Agreements
- E. Resolving a Fee Dispute

### **II. Consumer Protection 234**

- A. Introduction
- B. Contracts and Credit Buying
- C. Credit Cards
  - Credit card finance charges
  - Unsolicited credit cards
  - Lost or stolen credit cards
  - Errors in Billing
- D. Credit Rating
- E. Collection Agencies and Fair Debt Collection
- F. Door-to-Door Sales
- G. Mail Order Merchandise
- H. Telemarketers
- I. Deceptive Sales Practices
  - 1. Bait and switch
  - 2. Pigeon Drop

- J. Home Repairs
- K. Health Quackery
- L. Consumer Remedies

### **III. Discrimination 262**

- A. Age Discrimination
  - Employment
  - Federal Programs
  - Credit
- B. Discrimination Based on Disability

### **IV. Custody And Visitation Issues Relating To Grandchildren 270**

- A. Grandparents Rights with regard to Grandchildren
  - Situations of Abuse or Neglect
- B. Temporary Custody
- C. Grandparent's Rights to Visitation or Custody

**V. Personal Safety and Security**

**279**

- A. Security at Home
- B. Security in Public Places
- C. Security in Banking
- D. Specific Fraud and Scam Concerns for Seniors
  - 1. Charitable Giving Scams
  - 2. Investment Scams
  - 3. Employment Scams
  - 4. Health Care Plan Scams
  - 5. Sweetheart Scams
- E. Avoiding Identity Theft & Other Scams: Safe Use of the Internet & Social Media

## **SECTION SIX: ELDER ABUSE**

- I. **Signs of Elder Abuse** **291**
- II. **Reporting Elder Abuse** **293**
- III. **Resources for an Abused Adult** **294**

## **SECTION SEVEN: RESOURCE DIRECTORY** **295**

## **SECTION ONE:**

### **FINANCIAL ASSISTANCE—SECURING YOUR FUTURE**

#### **I. Social Security**

Social Security is a system enacted by Congress designed to supplement your retirement income. It is not intended to provide your sole source of income—it merely adds to the pension benefits, savings plans and other investments that you will rely on during retirement.

#### **Some important notes:**

The United States Treasury announced that Social Security would no longer be paid by paper checks. Those who began receiving Social Security checks before May of 2011 had until March 1, 2013, to sign up to have payments made by direct deposit. Those who did not sign up to have their Social Security checks direct-deposited by that date will receive their benefits through the Direct Express card program. Since most recipients already received their monthly benefits by direct deposit into their bank accounts, few people should have been affected.

The change applies to Social Security, Supplemental Security Income, Veterans Affairs benefits, and anyone who receives benefits from the Railroad Retirement Board, Office of Personnel Management and Department of Labor (Black Lung).

## **A. Introduction to Social Security**

Different types of benefits are payable under various provisions of the Social Security Act, but when the average person uses the phrase “Social Security benefits,” he or she usually means the Retirement, Survivors, Disability and Health Insurance Program (RSDHI). These are monthly cash benefits paid to you as a retired or disabled worker; to qualified spouses, children, and parents of retired or disabled workers; and to qualified widows, widowers and divorced spouses of workers.

The RSDHI Program is financed largely out of taxes paid by employers and employees. It is an insurance program. Benefits received by you and your dependents have been earned by you through your employment and the taxes collected regularly from your wages. These tax deductions are shown on your paycheck next to the initials “FICA.” The letters “FICA” stand for “Federal Insurance Contributions Act,” which is the official name for the federal laws that established the Social Security program in 1935. These deductions rise periodically. The money collected from this tax goes into trust funds, and current benefits are paid out of these funds.

## **B. Eligibility for Social Security Disability**

To qualify for Social Security disability benefits, you must first have worked in jobs covered by Social Security. Then you must have a medical condition that meets Social Security's definition of disability. In general, the Social Security Administration pays monthly cash benefits to people who are unable to work for a year or more because of a disability.

Benefits usually continue until you are able to work again on a regular basis. There are also a number of special rules, called "work incentives," that provide continued benefits and health care coverage to help you make the transition back to work.

If you are receiving Social Security disability benefits when you reach full retirement age, your disability benefits automatically convert to retirement benefits, but the amount remains the same.

You may want to work with an attorney experienced with handling Social Security Disability claims as you complete your claim and pursue any appeals. An attorney experienced in this area should be well-versed in the information the SSA needs and can help make the best case for your claim. Also, many lawyers that handle SSDI claims take them on a contingency fee basis, so the client does not have to pay an up-front fee, but instead the fee is paid out of the awarded benefits. In these cases, if the claim is not approved, there is typically



no fee owed.

For more information, you may request Social Security Publication No. 05-10029. Or download a copy here:

<http://www.ssa.gov/pubs/EN-05-10029.pdf>

### **C. Social Security and Your Retirement Plans**

Social Security is part of the retirement plan of almost every American worker. If you are among the 90+ percent of workers who are covered under Social Security, you should know how the system works and what you should receive from Social Security when you retire.

### **D. Retirement Benefits**

#### **1. Qualifying for Retirement Benefits**

When you work and pay Social Security taxes, you earn “credits” toward Social Security benefits. The number of credits you need to get retirement benefits depends on when you were born. If you were born in 1929 or later, you need 40 credits (equivalent to 10 years of work).

If you stop working before you have enough credits to qualify for

benefits, the credits will remain on your Social Security record. If you return to work later on, you can earn more credits so that you qualify. No retirement benefits can be paid until you have the required number of credits.

## 2. Calculating Retirement Benefits

Your retirement benefits payment is based on how much you earned during your working career. Higher lifetime earnings result in higher benefits. If there were some years when you did not work or had low earnings, your benefit amount may be lower than if you had worked steadily.

Your benefit payment is also affected by the age at which you decide to retire. If you retire at age sixty- two (the earliest possible retirement age for Social Security), your benefit will be lower than if you wait until later to retire. This is explained in more detail below.

Note: Due to budget cuts, the Social Security Administration is no longer mailing “Your Social Security Statement” to all workers. In order to access your statement, you should create an account at [www.ssa.gov](http://www.ssa.gov) and a copy of the statement will be provided.

In order to create an account, click on “My Social Security” at [www.ssa.gov](http://www.ssa.gov).

### 3. Retirement Age

#### Full retirement age

The “full retirement age” is sixty-five for people who were born before 1938. But because of longer life expectancies, the Social Security law was changed to gradually increase the full retirement age until it reaches age 67. This change affects people born in 1938 and later.

Check the following table to find your full retirement age:

#### Age to receive full Social Security benefits

<u>Year of birth</u>	<u>Full retirement age</u>
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943–1954	66
1955	66 and 2 months

1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

NOTE: People who were born on January 1 of any year should refer to the previous year.

### Early Retirement

You can get Social Security retirement benefits as early as age sixty-two, but if you retire before your full retirement age, your benefits will be permanently reduced, based on your age. For example, if you retire at age sixty-two, your benefit would be about twenty-five percent lower than what it would be if you waited until you reach full retirement age. Some people stop working before age sixty-two. If they do, the years with no earnings will probably mean a lower Social Security benefit when they retire.

Note: Sometimes health problems force people to retire early. If you cannot work because of health problems, you should consider applying for Social Security disability benefits. The amount of the disability benefit is the same as a full, unreduced retirement benefit. If you are receiving Social Security disability benefits when you reach full retirement age, those benefits will be converted to retirement benefits. For more information, see Disability Benefits (Publication No. 05-10029). You can access this publication online at <http://www.ssa.gov/pubs/10029.html>.

### Delayed Retirement

You may choose to keep working even beyond your full retirement age. If you do, you can increase your future Social Security benefits in two ways.

First, each additional year you work adds another year of earnings to your Social Security record. Higher lifetime earnings may mean higher benefits when you retire.

Second, your benefit will increase automatically by a certain percentage from the time you reach your full retirement age until you start receiving your benefits or until you reach age 70. The

percentage varies depending on your year of birth. For example, if you were born in 1943 or later, 8 percent per year will be added to your benefit for each year that you delay signing up for Social Security beyond your full retirement age.

Note: If you decide to delay your retirement, be sure to sign up for Medicare at age 65. In some circumstances, medical insurance costs more if you delay applying for it. Other information about Medicare is available in SSA Publication 05-10043, which can be accessed online at <http://www.socialsecurity.gov/pubs/10043.html>.

### Deciding When to Retire

Choosing when to retire is an important personal decision. Regardless of the age you choose to retire, it is a good idea to contact Social Security in advance to see which month is best to claim benefits. In some cases, your choice of a retirement month could mean higher benefit payments for you and your family.

Generally, you should apply for benefits about three months before the date you want your benefits to start. It may be to your advantage to have your Social Security benefits start in January, even if you do not plan to retire until later in the year. Depending on your earnings and your benefit amount, it may be possible for you to start collecting benefits even though you continue to work. Under current

rules, many people can receive the most benefits possible with an application that is effective in January; but check with Social Security before relying on this to be the case for you.

In deciding when to retire, it is important to remember that financial experts say you will need seventy to eighty percent of your preretirement income to have a comfortable retirement. Since Social Security replaces only about forty percent of preretirement income for the average worker, it is important to have pensions, savings, and investments.

If you are not quite ready to retire, but are thinking about doing so in the near future, you may want to visit Social Security's website to use their convenient and informative retirement planner at <http://www.socialsecurity.gov/retire2/>.

## **E. Benefits for Widows and Widowers**

Widows and widowers can begin receiving Social Security benefits earned by a spouse at age sixty, or at age fifty if they are disabled. And they can take a reduced benefit on one record and later switch to a full benefit on the other record. For example, a woman could take a reduced widow's benefit at age sixty or sixty-two and then switch to her full (100 percent) retirement benefit when she reaches full retirement age. The rules vary depending on the situation, so you

should talk with a Social Security representative about the options available to you.

## **F. Benefits for Spouses**

A spouse who has not worked or who has low earnings can be entitled to as much as one-half of the retired worker's full benefit. If you are eligible for both your own retirement benefits and for benefits as a spouse, Social Security always pays your own benefits first. If your benefits as a spouse are higher than your retirement benefits, you will get a combination of benefits equaling the higher spouse benefit.

If you have reached your full retirement age, and you are eligible for a spouse's or ex-spouse's benefit and your own retirement benefit, you may choose to receive only spouse's benefits and continue accruing delayed retirement credits on your own Social Security record. You may then file for benefits at a later date and receive a higher monthly benefit based on the effect of delayed retirement credits.

If you are receiving a pension based on work where you did not pay Social Security taxes, your spouse's benefit may be reduced. Additional information on pensions from work not covered by Social Security can be found in the Detailed Calculator provided by Social



Security. This can be accessed online at  
<http://www.ssa.gov/OACT/anypia/anypia.html>.

If spouses want to get Social Security retirement benefits before they reach full retirement age, the amount of the benefit is reduced permanently. The amount of reduction depends on when the person reaches full retirement age.

Some examples for illustrative purposes only are:

- If full retirement age is sixty-five, a spouse can get 37.5 percent of the worker's unreduced benefit at age sixty-two;
- If full retirement age is sixty-six, a spouse can get thirty-five percent of the worker's unreduced benefit at age sixty-two;
- If full retirement age is sixty-seven, a spouse can get 32.5 percent of the worker's unreduced benefit at age sixty-two.

The amount of the benefit increases at later ages up to the maximum of fifty percent at full retirement age. Regardless of full retirement age, the amount of the benefit will fall between 32.5 percent and 37.5 percent.

The Social Security Quick Calculator for determining the amount of your spousal benefit, based upon your date of birth and the effective date that you wish to begin receiving benefits, can be accessed online at <http://www.ssa.gov/oact/quickcalc/spouse.html>.

However, if your spouse is taking care of a child who is under age 16 or disabled and gets Social Security benefits on your record, your spouse gets full benefits, regardless of age.

Note: Your current spouse cannot receive spouse's benefits until you (the worker) file for retirement benefits.

## **G. Benefits for Other Family Members**

If you are getting Social Security retirement benefits, some members of your family also can receive benefits. Those who can include:

- Spouses who are age sixty-two or older;
- Spouses who are younger than sixty-two, if they are taking care of a child entitled on your record who is under age sixteen or disabled;
- Former spouses, if they are age sixty-two or older (see Benefits for Divorced Spouses);
- Children up to age eighteen, or up to nineteen if they are full-time students who have not yet graduated from high school; and
- Disabled children, even if they are age eighteen or older.

If you become the parent of a child (including an adopted child) after you begin receiving benefits, you must inform the Social Security office about the child so they can decide if the child is eligible for benefits.

### Maximum family benefits

If you have children eligible for your earned Social Security benefits, each will receive up to one-half of your full benefit. But there is a

limit to the amount of money that can be paid to you and your family—usually 150–180 percent of your own benefit payment. If the total benefits due to your spouse and children are more than this limit, their benefits will be reduced. Your benefit will not be affected.

## **H. Benefits for Divorced Spouses**

There are specific rules governing the impact of divorce on the receipt of Social Security benefits. Even though you are divorced, you may be entitled to collect Social Security retirement benefits on your former spouse's Social Security earnings record if you satisfy the following requirements: (1) you must have been married to that former spouse for at least ten years prior to your divorce, (2) you are at least sixty-two years old, (3) you are currently unmarried, and (4) you are not eligible for an equal or higher benefit on your own Social Security earnings record or on someone else's Social Security earnings record. If you receive retirement benefits on your former spouse's Social Security earnings record, the amount of benefits you get will have no effect on the amount of benefits your former spouse and/or his or her current spouse receive.

Divorce does not necessarily preclude you from receiving survivor's benefits if your former spouse dies. You may be entitled to receive such benefits if the marriage lasted ten years or more. If you are at

least sixty years old, the survivor's benefits you receive will not affect the amount of benefits to which other survivors may be entitled. In the event that you receive survivor's benefits, you are entitled to receive retirement benefits as early as age sixty-two (if you are eligible for such benefits and the amount of retirement benefits you are eligible for is in excess of the survivor's benefits you are currently collecting).

Remarriage before the age of sixty generally precludes you from collecting retirement benefits based on your former spouse's Social Security earnings record unless your subsequent re-marriage ends as a result of divorce, annulment, or death. You may be entitled to collect retirement benefits on your former spouse's Social Security earnings record if your remarriage occurred after your sixtieth birthday.

This is a brief summary of the rules pertaining to the impact of divorce on your ability to collect Social Security benefits on your former spouse's earnings record and is in no way a complete explanation of this topic. For more information and for the specific rules pertaining to your situation, please contact the Social Security Administration at (800) 772-1213 or online at <http://www.ssa.gov/retire2/yourdivspouse.htm>.

## **I. Applying for Benefits**

You can apply for Social Security retirement benefits online at <http://www.socialsecurity.gov>, you can call 1 (800) 772-121 or you can also make an appointment to visit any Social Security office to apply in person.

Depending on your circumstances, you will need some or all of the documents listed below. However you should not delay in applying for benefits because you do not have all the information.

Information needed:

- Your Social Security number;
- Your birth certificate;
- Your W-2 forms or self-employment tax return for last year;
- Your military discharge papers if you had military service;
- Your spouse's birth certificate and Social Security number if he or she is applying for benefits;
- Children's birth certificates and Social Security numbers, if you are applying for children's benefits;
- Proof of U.S. citizenship or lawful alien status if you (or a spouse or child applying for benefits) were not born in the United States; and

- The name of your bank and your account number so your benefits can be deposited directly into your account.

You will need to submit original documents or copies certified by the issuing office.

## **J. Right to Appeal**

If you disagree with a decision made on your claim, you can appeal it. For an explanation of the steps you can take, you can access *The Appeals Process* (Publication No. 05-10041) online at <http://www.ssa.gov/pubs/10041.html>.

You have the right to be represented by an attorney or other qualified person of your choice. For more information, you can access *Your Right To Representation* (Publication No. 05-10075) online at <http://www.ssa.gov/pubs/10075.html>.

**K. Special Rules related to Social Security**

1. If you work and get benefits at the same time

You can continue to work and still receive retirement benefits. Your earnings in (or after) the month you reach your full retirement age will not reduce your Social Security benefits. However, your benefits will be reduced if your earnings exceed certain limits based on your earnings in the months before you reach your full retirement age. (See Age to Receive Full Social Security Benefits, to find your full retirement age.)

Here is how it works:

If you are younger than full retirement age, \$1 in benefits will be deducted for each \$2 in earnings that you have above the annual limit.

In the year you reach your full retirement age, your benefits will be reduced \$1 for every \$3 that you earn over an annual limit until the month you reach full retirement age.

Once you reach full retirement age, you can keep working and your Social Security benefit will not be reduced no matter how much you earn.

If during the year your earnings are higher or lower than you estimated, let the Social Security office know as soon as possible so



that they can adjust your benefits.

If you want more information on how earnings affect your retirement benefit, ask for *How Work Affects Your Benefits* (Publication No. 05-10069), which has current annual and monthly earnings limits.

## 2. A special monthly rule

A special rule applies to your earnings for one year, usually your first year of retirement. Under this rule, you can receive a full Social Security check for any month you earn under a certain limit, regardless of your yearly earnings. If you are self-employed, the work you do in your business is taken into consideration as well.

If you want more information on how earnings affect your retirement benefit, ask for *How Work Affects Your Benefits* (Publication No. 05-10069), which has current annual and monthly earnings limits. It is available at <http://www.ssa.gov/pubs/>.

## 3. Pensions from work not covered by Social Security

If you get a pension from work where you paid Social Security taxes, that pension will not affect your Social Security benefits. However, if you get a pension from work that was not covered by Social Security,

(for example, the federal civil service, some state or local government employment or work in a foreign country), your Social Security benefit may be reduced.

For more information, ask for *Government Pension Offset* (Publication No. 05-10007), for government workers who may be eligible for Social Security benefits on the earnings record of a spouse; and *Windfall Elimination Provision* (Publication No. 05-10045), for people who worked in another country or government workers who also are eligible for their own Social Security benefits. These publications are both available at <http://www.ssa.gov/pubs/>.

#### 4. Leaving the United States

If you are a U.S. citizen, you can travel to or live in most foreign countries without affecting your Social Security benefits. There are, however, a few countries where Social Security payments cannot be sent. These countries are Cambodia, Cuba, North Korea, Vietnam, and areas that were in the former Soviet Union (other than Armenia, Estonia, Latvia, Lithuania, and Russia). However, exceptions can be made for certain eligible beneficiaries in countries other than Cuba and North Korea. For more information about these exceptions, please contact your local Social Security office.

If you work outside the United States, different rules apply in

determining if you can get benefits.

For more information, contact The Department of Social Security to ask for a copy of the publication, *Your Payments While You Are Outside The United States* (Publication No. 05-10137) This publication may be found at <http://www.socialsecurity.gov/pubs/>.

## **L. Taxability of Social Security Benefits**

Many people who get Social Security (Retirement, Survivor & Disability) benefits have to pay income taxes on their benefits. Supplemental Security Income (SSI) benefits, on the other hand, are not taxable.

- If you file a federal income tax return as single, head of household, qualifying widow(er) or married filing separately living apart from your spouse, and your combined income is \$25,000 and above, you may have to pay taxes on part of your Social Security benefits.
- If you file a joint return with your spouse, you may have to pay taxes on part of your benefits if you and your spouse have a combined income that is \$32,000 and above.
- If you are married filing separately and living with your spouse, you probably will pay taxes on your benefits.

Note: Due to budget cuts, the Social Security Administration is no longer mailing “Your Social Security Statement” to all workers. In order to access your statement, you should create an account at [www.ssa.gov](http://www.ssa.gov) and a copy of the statement will be provided. In order to create an account, click on “My Social Security” at [www.ssa.gov](http://www.ssa.gov).

Although you are not required to have federal taxes withheld, you may find it easier than paying quarterly estimated tax payments.

For more information, call the Internal Revenue Service’s toll-free telephone number, (800) 829-3676, to ask for Publication 554, *Tax Information For Older Americans*, and Publication 915, *Social Security Benefits And Equivalent Railroad Retirement Benefits*. Both of these publications may also be found at <http://www.irs.gov/Forms-&-Pubs>.

Note: On the 1040 tax return, your “combined income” is the sum of your adjusted gross income without regard to your Social Security Benefits and certain other adjustments, plus nontaxable interest, plus one-half of your Social Security benefits.

## **M. Same-Sex Couples & Social Security**

On June 26, 2013, the Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. Therefore, Social Security no longer is prevented from recognizing same-sex marriages for purposes of determining entitlement to or eligibility for benefits.

Social Security is now processing some retirement, surviving spouse and lump-sum death payment claims for same-sex couples and paying benefits where they are due. If you are in, or are a surviving spouse of a same-sex marriage or other legal same-sex relationship, the Social Security Administration encourages you to apply right away for benefits.

The SSA is also considering same-sex marriages when processing some claims for Supplemental Security Income (SSI). Marriage may affect your SSI eligibility or payment amount.

Individuals who may be affected by these changes are encouraged to call 1-800-772-1213 (TTY 1-800-325-0778) or contact your local Social Security office to tell us if you are married, separated, or divorced.

The SSA continues to work closely with the Department of Justice, and is developing and implementing additional policy and processing instructions. As they have additional information, they will update

the SSA website. If you have questions about how a same-sex marriage may affect your claim, please call 1-800-772-1213 (TTY 1-800-325-0778) or contact your local Social Security office.

More information, including press releases and instructions, is available on Social Security's website: <http://www.ssa.gov/same-sex-couples/>

The Social Security Administration has also developed a FAQ to help address this issue. It is available on the SSA website: <https://faq.ssa.gov/link/portal/34011/34019/ArticleFolder/407/Same-Sex-Couples>

## **II. Supplemental Security Income**

### **A. Introduction**

Supplemental Security Income (SSI) is a federal program administered by the Social Security Administration, which provides income assistance to aged, blind, and disabled persons who do not own much property or have a lot of income. SSI is a federal income supplement program funded by general tax revenues and not by Social Security taxes. The SSI program provides monthly cash payments to those individuals who meet income and eligibility criteria. Essentially, the program guarantees a certain income to an individual or couple. SSI will provide supplemental payments so that the total income for an individual or couple will equal the guaranteed amount. The SSI program is administered by the Social Security Administration, but it differs from Social Security retirement or disability benefits because you can get SSI even if you have never paid into the Social Security system.

### **B. General Eligibility**

You may qualify for SSI on either the basis of age (sixty-five or older) or physical impairment (blindness or disability). You must be a U.S. citizen or national, or in one of certain categories of aliens. In general, an alien who is subject to an active warrant for deportation

or removal does not meet the citizenship/alien requirement.

Under the SSI program, “blindness” is defined as having central visual acuity of 20/200 or less in the better eye with the use of a corrective lens, or visual field restriction to twenty degrees or less.

“Disabled” is defined as inability to engage in any substantial gainful employment due to a physical or mental impairment, which has lasted or is expected to last for at least twelve months or is expected to result in death. An applicant’s monthly income will affect the determination of whether the applicant is able to engage in substantial gainful employment. In some cases, however, a blind applicant who can work may still qualify for benefits.

An individual or couple must satisfy the following asset and income requirements for eligibility: An applicant’s assets must total not more than \$2,000 for an individual or \$3,000 for a couple, after certain deductions and exclusions are made. See the SSI website at <http://www.socialsecurity.gov/SSI/>. An applicant’s income also must fall below specific limits after certain exclusions and deductions. (Income limitations vary within states. Call (800) 772-1213 to obtain information on income limits.)

If your resources are over the eligibility limit, you may spend them down to the resource level required for eligibility. In order to prove you no longer own the resources, you should keep receipts and



other records of the ways you spend down your resources

The following assets are NOT counted for SSI eligibility:

- Your home and the land it is on;
- Household goods and personal property that do not exceed \$2,000 in value (\$3,000 for a couple);
- The full value of your car if it is needed for employment or medical reasons; otherwise, up to \$4,500 in value;
- Life insurance if the face value is \$1,500 or less;
- Money set aside for burial expenses up to \$1,500 (\$3,000 for a couple);
- Burial space for you and immediate family; and
- Property that cannot be sold.

In some cases, SSI recipients are automatically eligible for other low-income assistance programs, such as food stamps. In some states, SSI recipients automatically are eligible for health benefits under the Medicaid program.

## **C. Income**

Your “countable” income cannot exceed the current federal benefit rate in order to qualify for SSI. In 2014, the rates are \$721 per month for individuals and \$1082 for couples. All of these rates will increase in later years. If you qualify, the amount of your monthly SSI benefit will depend on your countable income. Generally, the more income you receive, the less your SSI benefit.

“Income” is money you receive from any source, such as wages, Social Security, pension, and money from friends and relatives. Income also includes free food, clothing, or housing. Some of your spouse’s income may also be counted. Certain types of income, however, are not counted for SSI eligibility:

- The first twenty dollars of most income;
- The first sixty-five dollars a month of earnings from employment;
- One-half of earnings from employment over sixty-five dollars per month;
- Food stamps;
- Shelter you receive from private nonprofit organizations; and
- Most home energy assistance.

You can receive SSI and Social Security retirement benefits at the same time. For example, if you were receiving \$300 per month in Social Security retirement benefits, you could receive \$441 per month in SSI benefits (if you had no other income, lived in a one-person household and owned little countable property). The total for the retirement benefit and the reduced SSI would equal \$741 per month. The first twenty dollars of the Social Security retirement income is not counted. For more particular information (based on where you live), call the Social Security Administration at (800) 722-1213. For more examples, go to [www.ssa.gov/ssi/text-income-ussi.htm](http://www.ssa.gov/ssi/text-income-ussi.htm).

#### **D. Penalties**

Your SSI benefits may be reduced under the following conditions:

- You have unearned income of over twenty dollars a month; this income includes Social Security payments, pension, gifts, and other unearned money;
- You are living in the home of a friend or relative; or
- You live in a nursing home.

Additionally, an unmarried couple living together may be listed by the Social Security Administration as “holding out as husband and

wife.” When this happens, and both persons are receiving SSI, their checks will be reduced, if necessary, so that the two checks together will equal the amount that a couple would receive. There is an SSI eligibility penalty for giving away assets or selling assets for below market value. There is also a Medicaid penalty for giving away assets.

### **E. Applying for SSI Benefits**

You can call the Social Security Administration’s toll-free number, (800) 772-1213 and complete an application over the phone or go to your local Social Security office. If you file an application at a Social Security office, a Social Security representative will assist you with your application.

Other agencies, such as your Area Agency on Aging, may be able to assist you in applying for SSI. Do not delay filing an application if you think you are eligible, because SSI may only be paid from the date of the application. See *What You Need to Know When You Get Supplemental Security Income (SSI)*, Publication Number SSA 05-11011, available at <http://www.ssa.gov/pubs/EN-05-11000.pdf>

## **F. Navigating the Appeals Process**

You should receive a decision from Social Security within sixty days of your application. If you are denied SSI, you may appeal, and you may be represented by a person of your choice at any step in the appeals process. Your representative does not necessarily have to be an attorney. You and your representative will receive notices of all decisions on your claim.

The first step in the appeals process is called the reconsideration. If you are unsatisfied with the initial decision of Social Security, you must ask for the reconsideration within sixty days of the date you receive notice of the initial decision. Do not delay appealing because the process takes a long time. If you have been receiving benefits and you receive notice that your benefits are being reduced or terminated, you must make the request within 10 days so your benefits will continue during the appeal. A Social Security representative will help you with your request.

If you are not satisfied with the result of the reconsideration, you may appeal again and ask for a hearing before an administrative law judge. Many decisions are reversed after the hearing. You must request the hearing within sixty days of the date you receive notice of the reconsideration decision. Again, you should appeal immediately if you are not satisfied. Further appeals of the administrative law judge's decision are to the Appeals Council and to

federal district court. You may want to contact the area Agency on Aging or your local Legal Aid office for assistance with your appeal or questions about SSI.

## **G. Overpayments**

It is not uncommon for SSI recipients to receive a notice from the Social Security Administration that they have been overpaid. Do not panic if you receive such a notice. You may not have to repay the money or you may be able to repay as little as \$10 a month.

You have the right to appeal if you do not believe you were overpaid. If you appeal within thirty days of the date on your overpayment notice, your benefits will continue during the appeal. Even if you did receive the overpayment, you may not have to pay it back if you were without fault in causing the overpayment and you are financially unable to pay it back. You must file a request for waiver of the overpayment with Social Security if you feel the overpayment was not your fault. Your local Legal Aid office may be able to help you get a waiver. Social Security may withhold as little as \$10 per month from your checks, even if you were not at fault. You must talk to a Social Security representative about this.

### **III. Pensions and Retirement Accounts**

#### **A. Introduction**

For many individuals, pension plans and retirement accounts provide an important supplement to savings and Social Security benefits and thus serve as a vital part of retirement income. Consequently, learning about pensions and retirement plans and how they operate may prove to be a valuable safeguard before and at retirement.

A pension or retirement plan allows certain workers to defer compensation in order to earn benefits that are received upon retirement. While law does not require employers to provide pensions or retirement plans, approximately half of all private employers and most government agencies offer some type of plan that pays benefits to those retired persons who meet certain eligibility requirements.

#### **B. Pension and Retirement Plan Eligibility**

A worker must meet eligibility requirements before he or she may participate in a pension or retirement plan. Under the Employee Retirement Income Security Act of 1974 (ERISA), an employee must (with some exceptions) be allowed to begin participation in his employer's pension or retirement plan if he or she is twenty-one years old or older and has worked for that employer for one year or

more. ERISA defines a “year” as a twelve-month period in which the worker has worked at least 1,000 hours. See 29 U.S.C. §1052(a)(3)(Supp. I 2000).

Once an employee becomes eligible to participate in the pension or retirement plan, the worker begins earning pension credits, which serve as the basis upon which benefits are awarded. The rules of the pension or retirement plan will specify how many years of work are required for an employee to become vested. To be “vested” means that you have a legal right to collect the pension or retirement plan benefits when you retire. See 29 U.S.C. §1053. Usually, it takes between five and seven years of service with your employer to become fully vested. A vested employee does not lose the right to receive pension or retirement plan benefits even if he or she switches jobs, is fired for misconduct or has a break in service.

### **C. Types of Pension Plans**

Generally, there are two types of pension or retirement plans: (1) defined benefit plans and (2) defined contribution plans.

A defined benefit plan specifies how much in benefits the plan will “pay out” to a retiree. It is the most common type of plan for larger employers and gives a retired worker a fixed monthly amount as described in the plan.



A defined contribution plan specifies how much money the employer, employee, or both will “pay in” to the plan each year for the employee. With this plan, your contributions are fixed each year, but your benefits may vary according to your past contributions and what those contributions have earned over the years. There are several types of defined contribution plans including the following:

- Profit-sharing plans: employer contributes an amount up to twenty-five percent of participant’s compensation;
- Employee stock ownership plans: employer’s contribution is made in the form of company stock; and
- 401(k) plans.

An employee may elect to defer a portion of his or her income and place the money in an individual profit-sharing plan account. The employer may also contribute to the employee’s individual account.

#### **D. Pension & Retirement Plan Rights**

In 1974, the Employees Retirement Income Security Act (ERISA) was enacted to increase protection for workers’ pension and retirement plans. ERISA sets minimum standards for pension and retirement plans, and guarantees that benefit rights cannot be unfairly denied or taken from the worker. If you work for a private employer that

offers a retirement plan, ERISA requires that plan rules be in writing in the Summary Plan Description (SPD).

The summary should include the following:

- Who is eligible to participate;
- How benefits are determined;
- The age at which you can start receiving benefits;
- Who administers the plan; and
- Claims procedures.

You have the right to receive this information from the plan office within thirty days of your request for it. In addition to your right to the SPD, you are entitled to receive a statement of your “personal benefit account,” which explains how many benefits you have and what benefits you have vested. To be “vested” means that you have a legal right to collect the pension when you retire. Usually, it takes between five and seven years of service with your employer to become fully vested. So, if you leave your place of employment after you are fully vested, all of your benefits are still yours. If, however, you leave before becoming fully vested, you lose the unvested portion of your plan benefits.

Under ERISA, employers are prohibited from discharging an employee for the purpose of preventing the employee from

receiving retirement benefits. If this happens to you, you have the right to file suit in federal court. You will have to prove that the motivating factor for the discharge was the employer's intention to prevent payment of your retirement benefits. You could potentially recover lost wages and benefits, plus attorneys' fees.

#### **E. Breaks in Service**

A break in service (time away from work) may have the effect of canceling retirement benefit credits earned prior to the "break." Therefore, it is important that you learn and understand the break-in-service rule of your pension or retirement plan. Under ERISA, an interruption in employment cannot count as a break in service unless the worker has worked less than 500 hours during the year. If a break in service occurs, the worker loses previously earned credits only if the number of consecutive years of break equals or exceeds the greater of five or the number of years of credited work prior to the break. Fully vested benefits are not lost by any break in service.

#### **F. Benefits for Workers' Spouses**

Most pension and retirement plans must provide for a "joint and survivor annuity." This means that the employee may select to have (1) higher benefits that stop at his or her death or (2) a lesser benefit

that continues for as long as either the worker or his/her spouse is alive. The amount paid to the surviving spouse can be as low as one-half of the amount the couple received while both were living.

The Retirement Equity Act of 1984 (REA) contains several provisions affecting the rights of homemakers, widowed or divorced spouses, as well as those who worked, to receive private pension or retirement benefits after their spouse's death. (Note: The REA is sex-neutral and can help men as well.) The REA requires that both spouses give written consent in a notarized form before survivor's benefits may be waived.

#### **G. Protection of Pension and Retirement Funds**

Under ERISA, a worker is protected from loss of benefits due to the employer's going out of business, acquisition of the worker's company by a new employer, or amendment or termination of the pension or retirement plan. Additionally, ERISA requires the trustees of the benefits plan to do the following:

- Discharge their duties solely in the interest of the pension plan beneficiaries (employees);
- Act carefully, skillfully, prudently, and diligently in administering the pension plan;

- Diversify the pension trust fund investments to avoid large losses; and
- Operate the pension plan in accordance with the plan rules.

The Federal Pension Benefit Guaranty Corporation (PBGC) guarantees payment of vested retirement benefits under most defined benefits plans in certain situations, such as a company's bankruptcy. Benefits above a set level are not insured. (Note: Defined contribution plans do not receive this protection.)

## **H. Navigating the Appeals Process**

If your benefits application is denied, you have the right to be notified, in writing, of the specific reasons for the denial. You also have the right to a full review of the denial by the trustees. If you feel you have been wrongfully denied pension benefits, you should promptly seek legal assistance to determine whether an appeal is in order.

In the event of an appeal, documentation of communications with your pension plan administrator will be very helpful. Therefore, it is very important that all your communications with your pension plan administrator be put in writing and sent via certified mail, return receipt requested.

## **IV. Veterans Benefits**

### **A. Introduction**

Numerous benefits are offered by the Department of Veterans Affairs (VA) to honorably discharged and qualified veterans. Information about veterans benefits may be found at [www.va.gov](http://www.va.gov). Click on "Benefits" and you will be directed to <http://benefits.va.gov/benefits/>.

The Tennessee VA Regional Office is located in Nashville. To contact the Nashville VA Regional Office, go to [www.benefits.va.gov/nashville](http://www.benefits.va.gov/nashville), or you may call 1-800-827-1000, or write to Nashville VA Regional Office, 110 9th Avenue South, Nashville, TN 37203.

In addition to the Regional Nashville Office, the Tennessee Department of Veterans Affairs Field Offices are located in the following cities:

Chattanooga	540 McCallie Ave. Rm 109 (423) 634-7123
Cookeville	580 S. Jefferson Ave., Suite A (931) 526-6929
Dickson	250 Beasley Dr. (615) 441-6224

Dyersburg	439 West McGaughey Street (731) 286-8344
Ft Campbell, KY	5668 Wickam Avenue (931) 431-3784
Jackson	225 Dr. M.L.King Dr. Rm 110 (731) 423-5614
Knoxville	601 So. Concord St., Suite 108 (865) 594-6158
Memphis	VA Medical Center 1030 Jefferson Ave.RM.CEG 22 (901) 577-7673 Ext. 5284
Morristown	1609 College Park Dr. (423) 587-7032
Mountain Home	VA Medical Center (423) 926-1171 Ext 7203
Murfreesboro	VA Medical Center, Alvin C. York Building 7, Room G-39 (615) 225-6930
Nashville	VA Medical Center 1310 24th Ave. South Rm G116/G118 (615) 873-7950 or (615) 873-8048

Nashville

Federal Courthouse Annex  
(615) 695-6385



## **B. Eligibility for Aid & Attendance Benefits**

Aid and Attendance benefits may be available to an eligible war-time veteran and/or the spouse of a deceased eligible war-time veteran. There are income and asset eligibility limitations.

Aid and Attendance (A&A) is an enhanced or special monthly pension benefit paid in addition to basic pension. You may not receive enhanced or special monthly pension without first establishing eligibility for basic VA pension. However, because enhanced pension is based upon a higher income limit, a claimant ineligible for basic pension due to excessive income may be eligible for enhanced pension benefits. A Veteran may be eligible for A&A when:

- The Veteran requires the aid of another person in order to perform at least two activities of daily living, such as bathing, feeding, dressing, attending to the wants of nature, adjusting prosthetic devices, or protection from the hazards of the daily environment; or
- The Veteran is bedridden, and the Veteran's disability or disabilities requires remaining in bed (apart from any prescribed course of convalescence or treatment); or
- The Veteran is a patient in a nursing home due to mental or physical incapacity; or

- The Veteran has corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to five degrees or less.

### Service-Connected Compensation Benefits

To be eligible for service-connected compensation benefits, the veteran must have been disabled by an injury or disease that was incurred in or aggravated by active service while in the line of duty. In limited instances, an additional disability resulting from carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault by VA during treatment may warrant compensation payments as if it was a service-connected disability. The amount of monthly disability compensation payments is based on the severity of the service-connected disability that could range from 10 percent to 100 percent. If a service-connected disability is not serious enough to merit a compensable rating, a non-compensable (0 percent) evaluation is assigned.

A veteran may be eligible for Non-Service Connected (NSC) disability pension benefits if:

- The veteran is permanently and totally disabled so that substantially gainful employment is not possible; and
- The veteran has served ninety continuous days or more on active duty and served at least one of those days during a

period of war; and

- The veteran meets the prescribed income and net worth limitations.

Eligible dependents of a living or deceased veteran may be entitled to an array of VA benefits, to include education, NSC death pension, or dependency and indemnity compensation benefits. Medical care may be provided to the children of in-country Vietnam veterans diagnosed with spina bifida. Eligible dependents qualifying for the Civilian Health and Medical Program (CHAMPVA) can receive reimbursement for most medical expenses. In addition, those dependents who are not covered by Medicare may receive treatment at many VA facilities on a space available basis, after the needs of veterans are met under the CHAMPVA In-House Treatment Initiative (CITI) program. Not all VA facilities participate in the CITI program.

### **C. TriCare for Veterans**

The Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) is a comprehensive health care program in which the Department of Veterans Affairs (VA) shares the cost of covered health care services and supplies with eligible beneficiaries. The program is administered by the Health

## Administration Center

Due to the similarity between CHAMPVA and the Department of Defense (DoD) TRICARE program (sometimes referred to by its old name, CHAMPUS) the two are often mistaken for each other.

CHAMPVA is a Department of Veterans Affairs program, whereas TRICARE is a regionally-managed health care program for active duty and retired members of the uniformed services, their families, and survivors.

In some cases a person may appear eligible for either program. However, if you are the spouse of a military retiree or the spouse of a Servicemember who was killed in action, you are and will always be a TRICARE beneficiary. You cannot choose between the two plans.

## General Program Requirements

To be eligible for CHAMPVA, you cannot be eligible for TRICARE/CHAMPUS, and you must be in *one* of these categories:

- The spouse or child of a Veteran who has been rated permanently and totally disabled for a service-connected disability by a VA regional office; or
- The surviving spouse or child of a Veteran who died from a VA-rated service connected disability; or

- The surviving spouse or child of a Veteran who was at the time of death rated permanently and totally disabled from a service connected disability; or
- The surviving spouse or child of a military member who died in the line of duty, not due to misconduct (in most of these cases, these family members are eligible for TRICARE, not CHAMPVA).

For more information on this program, visit the official benefits website of the U.S. Government: [www.benefits.gov](http://www.benefits.gov).

#### **D. Relationship of VA Income to Social Security Administration Benefits**

Social Security disability or retirement benefits will not be reduced if you receive service-connected compensation benefits. However, if you receive Supplemental Security Income (SSI), your VA benefits will be considered income. Therefore, in order to avoid an overpayment, be sure to report all VA income to the SSA if you receive SSI.

If you are receiving NSC disability pension benefits, you must report all family income, changes in family income, and changes in number of dependents to the VA. VA NSC disability pension benefits are reduced dollar for dollar for family income, including Social Security

disability and retirement benefits. One of the few exceptions to a reduction in NSC disability pension benefits is if you receive SSI benefits.

### **E. Applying for VA Benefits**

To apply for VA benefits, contact your local VA Regional Office (VARO) by telephoning (800) 827-1000, or online at <http://www.va.gov>. All claims for VA benefits may be initiated at any local veterans' state or service organization office serving veterans, but must be filed at the VARO for processing of the claim.

Most veterans must apply for enrollment for VA medical care. Exceptions are (1) veterans with a service-connected disability evaluated as fifty percent or greater, (2) veterans requesting treatment for disabilities held by the military to have been incurred in or aggravated by service but not yet evaluated by the VA within twelve months of service separation, and (3) veterans seeking treatment for a service- connected disability only.

You may apply for Aid and Attendance benefits by writing to the VA regional office having jurisdiction of the claim. That would be the office where you filed a claim for pension benefits. If the regional office of jurisdiction is not known, you may file the request with any VA regional office. You should include copies of any evidence,

preferably a report from an attending physician validating the need for Aid and Attendance. The report should be in sufficient detail to determine whether there is disease or injury producing physical or mental impairment, loss of coordination, or conditions affecting the ability to dress and undress, to feed oneself, to attend to sanitary needs, and to keep oneself ordinarily clean and presentable. In addition, it is necessary to determine whether the claimant is confined to the home or immediate premises. The report should indicate how well the individual gets around, where the individual goes, and what he or she is able to do during a typical day.

A good general source of information is the VA's annual publication, *Federal Benefits for Veterans and Dependents*. The most recent copy of the publication can be found on the VA's website at [http://www.va.gov/opa/publications/benefits\\_book.asp](http://www.va.gov/opa/publications/benefits_book.asp).

## **F. Navigating the Appeals Process**

Should a veteran or other claimant disagree with a determination made on a claim by the VARO, the decision may be appealed to the Board of Veterans' Appeals (BVA or Board) in Washington, DC. A timely notice of disagreement (NOD) must be filed at the VARO to begin the appellate process. After the VARO issues a statement of the case, a timely substantive appeal must be filed to perfect the

appeal to the BVA. Disagreement with a final unfavorable Board decision may be appealed to the United States Court of Appeals for Veterans Claims (Court) with the filing of a timely Notice of Appeal. (See <http://www.vetapp.gov>). In most instances, an unfavorable Court decision may be appealed to the United States Court of Appeals for the Federal Circuit and the United States Supreme Court.

Most major service organizations, such as The American Legion, Disabled American Veterans, Veterans of Foreign Wars, and Vietnam Veterans of America, have offices co-located at the VARO. In addition, some service organizations have service representatives located throughout the state to assist veterans and their dependents. Finally, attorneys may be of assistance, and an attorney is now permitted to charge a fee to assist a claimant with his or her VA appeal, if the claimant's NOD was filed with the VARO on or after June 22, 2007.

More information is available from the State of Tennessee Department of Veterans Services,  
<http://www.tn.gov/veteran/benefitsfed.shtml>



## **V. Railroad Retirement Act Benefits**

The Federal Railroad Retirement Act offers retirement and disability annuities for qualified railroad employees, spousal annuities for their wives and husbands and survivor benefits for the families of deceased employees who were insured under the Act. These programs are administered by the United States Railroad Retirement Board and are very similar to Social Security benefits; eligibility is determined in much the same manner. If both railroad and Social Security benefits are payable, however, the railroad benefits may be reduced.

Also available upon request from the United States Railroad Retirement Board offices is an information pamphlet titled *Railroad Retirement and Survivor Benefits*. This pamphlet describes the retirement and disability annuities provided for employees under the Railroad Retirement Act and the benefits available to their spouses and survivors. Medicare, unemployment and sickness insurance payments, and other benefits paid by the Railroad Retirement Board are described in separate pamphlets.

For more information, contact or visit the following: U.S. Railroad Retirement Board, Railroad Retirement Helpline - (800) 808-0772 or <https://secure.rrb.gov/>

If you will be visiting the RRB office, call ahead for an appointment.

Most RRB field offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday.

Persons who plan to visit an individual representative at any location should telephone, write or send a secure message to the office in advance. Always furnish your social security number and the type of information requested. You may be able to conduct your business by telephone and save a trip.

You can call the Tennessee RRB Help-Line toll free at (877) 772-5772 to obtain automated information about unemployment and sickness benefits, request a letter showing your current monthly annuity rate, request a replacement Medicare card and more. You may also obtain information and do some business on-line with RRB's Benefit Online Services.

TENNESSEE - U.S. Railroad Retirement Board District Office

Location: 233 Cumberland Bend, Suite 104, Nashville, TN 37228

Hours: 9:00 AM - 3:30 PM, Monday through Friday except Federal Holidays

Telephone: (877) 772-5772

## **VI. Supplemental Nutrition Assistance Program (SNAP): The Food Stamp Program**

### **A. Introduction**

Millions of older Americans on fixed incomes have difficulty obtaining food “basics” necessary for a proper diet. If you meet the income guidelines, the SNAP program may be able to help you stretch your food budget. Although it is a federal government program, it is run by state or local agencies. It provides funding for food, as well as plants and seeds to grow food. The program explicitly excludes by regulation such nonfood items as alcoholic beverages, pet food, vitamins, medicines, tobacco, and cigarettes. In Tennessee, as of October 2013, over 1.3 million people received SNAP allotments.

In the following description, whenever “food stamps” are referred to, that term refers to a SNAP allotment.

Many think that the program is only designed to help the desperately poor. This is not true. Anyone can apply for SNAP (not all may be eligible), but you and other people in your household must meet certain conditions. Everyone who is applying in your household must have or apply for a Social Security Number and be either a U.S. citizen, U.S. national or have status as a qualified alien. SNAP allotments can be used like cash to buy eligible food items from

authorized retailers. Authorized retailers will display either the Quest logo or a picture of a Tennessee EBT card.

A SNAP account is established for eligible households and automatic deposits are made into the account each month. In order to enable access to the account, an EBT card is issued, which will debit the account each time that eligible food items are purchased. Recipients of SNAP allotments also may own a car, a home of any value, as well as income-producing property, subject to some restrictions.

As of September 30, 2012, through September 30, 2013, a single person is allowed up to \$1,211 gross income monthly. A couple may make as much as \$1,640 gross income per month, and a family of four may earn up to \$2,498 gross income per month, and still qualify for SNAP allotments. Households may own up to \$2,000 in liquid assets (cash, or cash equivalents, such as savings, CDs, etc.), and households with at least one member who is sixty years or older or is disabled may have liquid assets valued to \$3,250 or less. The Food Stamp Program evaluates only liquid assets. Personal belongings, household goods, furniture, motor vehicles, clothing, life insurance, and burial sites are excludable resources. Households that receive Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or other General Relief (GR) are eligible for SNAP allotments without other limitations applying. There may be limitations for those individuals who receive TANF or SSI but live with

other members of the household who do not receive such assistance.

## **B. Applying for SNAP (Food Stamps)**

There are many ways to apply for SNAP allotments. You can visit your local Tennessee Department of Human Services (DHS), request an application by phone by calling 1-866-311-4287 or ask someone to get an application for you. You can also access the online application at [http://tn.gov/humanserv/adfam/fs\\_5.html](http://tn.gov/humanserv/adfam/fs_5.html). No matter how you complete the application, make sure to fill in the form completely.

If your household has little or no money and needs help right away, let the DHS know. You may be eligible under the “expedited service” rules to receive SNAP benefits within seven days of the application date if you are classified as homeless or are a member of a low-income family.

Because benefits for a month are prorated based on the day of the month the application is filed, it is important to get a signed and dated application to your local agency, even if you can’t come in or stay for an interview that day. If you are unable to visit the office because of age, disability, work hours or transportation difficulties, you may ask an authorized representative to apply for you, or you

may request a telephone interview. You may visit the DHS website to determine if you are eligible by using the prescreening tool available there, at <http://tn.gov/humanserv/adfam/fs-test.pdf>

After you have turned in your application, a worker will hold a confidential interview with you or another member of your household at the DHS office. If no one in your household can go, an adult friend or relative who knows your circumstances may go for you. If you are sixty-five or older, disabled, or suffer other hardships and cannot go to the office, let the office know. A worker may arrange to interview you at home or by telephone. If the worker refuses to interview you at home or by telephone, contact your local legal aid office for assistance.

When you visit the agency, be sure to have verification of the following with you:

- Identification;
- Income, both earned and unearned;
- Shelter expenses—rent or mortgage, taxes, utility bills;
- Medical expenses for any elderly or disabled persons in your household;
- Dependent care expenses; and
- Court-ordered child support.

Having the verifications with you will facilitate the process.

**C. Determining Eligibility for SNAP**

- **Residency.** Applicants must be living in the State of Tennessee to receive food stamps from Tennessee.
- **Age and Relationship.** There are no specific age limits to receive food stamps. Parents and their children 21 years old or younger living together are considered one household. Minors who apply on their own must be living without their parents. Individuals living together and who purchase and prepare food together are treated as one household.
- **Citizenship and Social Security Numbers.** An applicant must be a U.S. citizen, a U.S. National, or a qualified alien to get food stamp benefits. Some legal immigrants are ineligible for food stamp benefits; however, dependents of an ineligible immigrant are often eligible. To be eligible, all food stamp household members must have a social security number or proof of having applied for one.
- **Work.** To receive food stamps, most able-bodied people between 16 and 59 years old must register for work, participate in the Employment & Training Program if offered, accept offers of employment and cannot quit a job. Able-bodied adults without

dependents aged 18 to 59 can receive only a limited number of benefit months in 3 years, unless working 80 hours per month or otherwise determined exempt from the rule.

- **Other Factors.** Strikers must be resource and income eligible before the day of the strike. Most college students must be working an average of 20 hours per week, enrolled in work-study, caring for young dependents or receiving Families First. Felons convicted of certain drug-related offenses are not eligible for food stamps. Individuals disqualified for fraud are ineligible for one year for the first offense, two years for the second offense and permanently for the third. Dependents of disqualified or ineligible individuals may be eligible.
- **Resource Test.** The asset limit is \$2,000 for most households and \$3,250 for households containing a member who is disabled or 60 years of age. Assets not counted are the home the applicant is presently living in and its lot, household goods, income producing property, real estate that is up for sale, cash value of life insurance, personal property, retirement accounts such as IRA and 401k plans, and vehicles with equity value under \$1,500. Other vehicles not counted are those used for family transportation, to go to and from work, to produce income, for subsistence hunting and fishing, as the household's home, to transport a disabled household member and to carry the household's primary source of



heating fuel or water. Countable assets include cash on hand, money in checking, savings accounts, certificates of deposit, stocks, bonds, property not up for sale and lump-sum payments.

- **Income Tests.** The Food Stamp Program does not count scholarships, grants and loans used for tuition and fees, reimbursements, heating assistance, earnings of children age 17 and younger who are in school and most loans. Countable income includes wages, self-employment, public assistance benefits, unemployment benefits, worker's compensation, child support, pensions, social security, and SSI. Households which contain an elderly or disabled member do not have to pass the gross income standards but are subject to the net income standards. (See <http://tn.gov/humanserv/adfam/fs-test.pdf> for an updated chart of income standards for SNAP.)
- **Deductions.** Food stamp rules allow income deductions, including a 20% deduction on earnings, a standard deduction given to all households, dependent care expenses incurred, a shelter/utility deduction for a non-special household not to exceed \$459, and medical expenses over \$35 for elderly or disabled household members.

#### **D. Navigating the Appeals Process**

If you think that your application has been wrongly denied, or that you have not received the right amount of food stamps, you should tell the Food Stamp office right away. If they disagree with you, you have the right to request a review by a hearing officer. You have ninety (90) days from the date you receive the notice regarding your food stamps to request a review by a hearing officer.

You may have a friend or relative attend the hearing with you, or you may wish to obtain the services of a legal aid or private attorney.

In some cases, you can continue to receive your regular allotment of food stamps while you await the hearing officer's decision. If the hearing officer decides in your favor, you will receive the correct amount of food stamps. If the decision is in favor of the Food Stamp office, you will be asked to repay the value of any stamps you were not entitled to receive.

## **VII. Tax Relief**

### **A. Federal Income Tax**

As a caution to the users of this handbook, the federal tax laws are a continuing source of political friction in the United States Congress and are subject to change, so it is important to be sure that you check for current advice and instructions in making your income, estate, gift and other tax-related decisions.

Certain types of income are taxed, while others are not. For example, gifts to you and interest earned on certain municipal bonds are not reportable as taxable income. Salary and wages, payments from a pension plan, and investment income are forms of taxable income. If your income exceeds a certain level, your Social Security payments may be taxable for federal income tax purposes. Included in both IRS Publication 554 and the IRS Form 1040 Instructions is a worksheet that will help you figure whether any part of your Social Security payment is taxable.

When you file an income tax return, you are allowed a personal exemption, unless you are eligible to be claimed as a dependent by someone else. In some instances, you are allowed additional exemptions if you provide primary support for a dependent (such as a parent, child, or grandchild).

Several publications which may be of assistance to you and which

are available online are: Publication 524 (Credit for the Elderly or the Disabled) at <http://www.irs.gov/pub/irs-pdf/p524.pdf>; Publication 554 (Tax Guide for Seniors) at <http://www.irs.gov/pub/irs-pdf/p554.pdf>; Publication 17 (Your Federal Income Tax) at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

## **B. Federal Income Tax Credit**

An individual who (a) is 65 or older, or (b) who is under 65 and who retired with a permanent and total disability and receives taxable disability income (a “qualified individual”), is allowed a credit equal to fifteen percent of that individual’s “Section 22 amount.” An individual’s Section 22 amount equals an initial (or base) amount—generally \$3,750, \$5,000, or \$7,500, depending on age and filing status—reduced by nontaxable Social Security benefits and certain other nontaxable payments received. The base amount must also be reduced by half of adjusted gross income in excess of certain minimum levels. The maximum credit is \$1,125 on a joint return where both spouses qualify and no reductions apply.

This credit will reduce the tax you owe, but it will not result in a refund. Contact your tax advisor or local IRS office if you think you may be eligible for the federal tax credit, or see the IRS publications referenced above.

### **C. Earned Income Credit**

You may be eligible for the Earned Income Credit if you are working and you have a child or grandchild who lives with you. The tax credit is available to anyone who maintains a home for himself and a child who is under the age of nineteen, a student, or permanently and totally disabled. The credit is available only if you have less than the specified level of income. Earned income for this tax credit includes salaries, tips, and earnings from self-employment. Pension and annuity payments are not included. This tax credit may reduce the tax you have to pay and may even result in a refund.

Over time, certain income tax benefits increase because of inflation adjustments. For example, in 2012, the value of each personal and dependent exemption was \$3,800. The standard deduction for married couples filing a joint return was \$11,900, for singles and married individuals filing separately was \$5,950, for heads of household was \$8,700. For tax year 2012, the maximum earned income tax credit (ETIC) was \$5,891 for low and moderate-income workers and working families, and the maximum income limit for the ETIC was \$50,270. The credit varies by family size, filing status, and other factors.

#### **D. Taxpayers Who Are Blind or Over Age 65**

For taxpayers who elect not to itemize their deductions, an additional standard deduction is available for individuals who are blind or over the age of sixty-five. The additional standard deduction is available in addition to the basic standard deduction available to all non-itemizing taxpayers. Individuals who are both blind and over the age of sixty-five may claim two additional standard deductions.

The additional standard deduction for blindness may be claimed if:

- Your central visual acuity does not exceed 20/200 in your better eye with glasses or contact lenses; or
- Your field of vision is limited such that your visual field extends no more than a twenty-degree angle, and you submit a statement from your eye doctor or optometrist certifying the above. Consult your tax preparer for further information about qualifying for the additional standard deduction for blindness.

#### **E. Medical Expenses**

If you itemize your deductions on your tax return, you should consider your medical and dental expenses. The rules are changing if you plan to itemize medical deductions on your 2013 federal tax

return that you will file in 2014. It does not affect income tax returns for the 2012 taxable year filed in 2013.

Beginning Jan. 1, 2013, you can claim deductions for medical expenses not covered by your health insurance that exceed 10 percent of your adjusted gross income. This change affects your 2013 tax return that you will file in 2014.

There is a temporary exemption from Jan. 1, 2013 to Dec. 31, 2016 for individuals age 65 and older and their spouses. If you or your spouse are 65 years or older or turned 65 during the tax year you are allowed to deduct unreimbursed medical care expenses that exceed 7.5% of your adjusted gross income. The threshold remains at 7.5% of AGI for those taxpayers until Dec. 31, 2016. Beginning Jan. 1, 2017, all taxpayers may deduct only the amount of the total unreimbursed allowable medical care expenses for the year that exceeds 10% of your adjusted gross income. For more information, go to [www.irs.gov](http://www.irs.gov).

Deductible medical expenses may include, but are not limited to the following:

- Payments of fees to doctors, dentists, surgeons, chiropractors, psychiatrists, psychologists, and nontraditional medical practitioners
- Payments for in-patient hospital care or nursing home services, including the cost of meals and lodging charged by the hospital or nursing home
- Payments for acupuncture treatments or inpatient treatment at a center for alcohol or drug addiction, for participation in a smoking-cessation program and for drugs to alleviate nicotine withdrawal that require a prescription
- Payments to participate in a weight-loss program for a specific disease or diseases, including obesity, diagnosed by a physician but not, ordinarily, payments for diet food items or the payment of health club dues
- Payments for insulin and payments for drugs that require a prescription
- Payments for admission and transportation to a medical conference relating to a chronic disease that you, your spouse or your dependents have (if the costs are primarily for and essential to necessitated medical care). However, you may not deduct the costs for meals and lodging while attending the medical conference



- Payments for false teeth, reading or prescription eyeglasses or contact lenses, hearing aids, crutches, wheelchairs and for guide dogs for the blind or deaf
- Payments for transportation primarily for and essential to medical care that qualify as medical expenses, such as, payments of the actual fare for a taxi, bus, train or ambulance or for medical transportation by personal car, the amount of your actual out-of-pocket expenses such as for gas and oil or the amount of the standard mileage rate for medical expenses, plus the cost of tolls and parking fees
- Payment for health insurance costs (Note: Medicare Part B premiums are deductible; the basic cost of Medicare Part A is not deductible unless voluntarily paid by the taxpayer for coverage).
- A portion of long-term care and nursing home expenses, if the home is necessary for medical care. For more information, contact your local IRS office or your tax advisor, or see Publication 502 (Medical and Dental Expenses), available at <http://www.irs.gov/publications/p502/index.html>.

You may also find IRS Publication 554, *Tax Guide for Seniors*, helpful. This senior tax guide may be found at [www.irs.gov/publications/p554-tax-guide-for-seniors](http://www.irs.gov/publications/p554-tax-guide-for-seniors)

## **F. Medical Savings Accounts**

Individuals eligible for Medicare can choose either the traditional Medicare program or a Medicare Advantage MSA. See additional information under Medicare elsewhere in this handbook.

## **G. Sale of Principal Residence**

Regardless of age, there is an exclusion of up to \$250,000 (or \$500,000, in the case of married taxpayers filing a joint return) of income realized on the sale or exchange of a principal residence by a taxpayer. To be eligible for the exclusion, a taxpayer must have owned the residence and occupied it as a principal residence for at least two years during the five years before the date of sale. The exclusion is not a one-time exclusion, but generally is available no more frequently than once every two years.

For high-income earners, a new Medicare tax may be imposed on unearned income. This new tax is outlined in Section 1402 of the Health Care and Reconciliation Act of 2010 which amended the patient Protections and Affordable Care Act. Information on this tax may be found at <http://www.irs.gov/uac/Newsroom/Net-Investment-Income-Tax-FAQs>.

## **H. Long-Term Capital Gains and Dividends**

A favorable tax rate on long-term capital gains applies to gains on most property disposed of after May 5, 2003. The rates changed on January 1, 2013, and are now as follows for long-term capital gains and qualified dividends:

- Twenty percent for singles with taxable income above \$400,000 and couples above \$450,000;
- Fifteen percent for all other taxpayers, except those in the ten percent or fifteen percent tax brackets;
- Zero percent for taxpayers in the ten percent or fifteen percent tax brackets.

## **I. Estate and Gift Tax Exemptions**

The Federal Estate and Gift Tax exemption has been made permanent at \$5,000,000 for individuals. With adjustments for inflation, the exemption continues to be adjusted: to \$5,120,000 in 2012, to \$5,250,000 in 2013 and to \$5,340,000 for 2014.

### Unlimited marital deduction

There is an unlimited deduction for Estate and Gift Tax purposes for transfers between spouses; however, if the spouse receiving the transfer is not a United States citizen, there are special restrictions for both Estate and Gift Tax purposes.

### Gift tax Annual exclusion

Effective January 1, 2013, a donor (someone giving a gift) may give up to \$14,000 per year to as many recipients as he or she wishes without incurring a federal gift tax. The same exemption amount applies in 2014. Tennessee repealed the state gift tax effective January 2012.

In addition, a person may make what are called “qualified transfers” for the benefit of another individual, which do not count as gifts, without dollar limit, as provided in Section 2503 (e) of the Internal Revenue Code: (a) by making payment as tuition to an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code for the education or training of such individual, or (b) by making payment to any person (provider) who provides medical care (as defined in Section 213(d) of the Internal Revenue Code) with respect to such individual as payment for such medical care.

## **J. Tennessee Inheritance Tax**

Inheritance and estate taxes are imposed on decedents' estates that exceed the maximum single exemption. Inheritance tax is due on the net estate as defined in Tennessee Code Annotated. Estate tax is based on the difference between the inheritance tax and the "state death tax credit" allowed on the federal estate tax return.

Tennessee's exemptions are set forth in the following table:

Date of Death	Amount
1999	\$650,000
2000 & 2001	\$675,000
2002 & 2003	\$700,000
2004	\$850,000
2005	\$950,000
2006 - 2012	\$1,000,000
2013	\$1,250,000
2014	\$2,000,000
2015	\$5,000,000
2016 - no tax for decedents dying in 2016 and thereafter	

A Tennessee Inheritance Tax return is due nine months after death of the decedent. An extension to file of up to one year maybe granted, provided one of the following is attached to the return filed on or before the extended due date:

- Tennessee INH304 *Application for Extension of Time to File Inheritance Tax Return*; or
- Federal form 4768 *Application for Extension of Time to File a Return and/or Pay U.S. Estate Tax*.

Note that an estimated tax should be paid even if the time for filing is extended.

When the return is filed, a Tennessee Inheritance Tax may be due.

Amounts above the exemptions are taxed at the following rates:

First \$40,000	5.5%
Next \$40,000 - \$240,000	6.5%
Next \$240,000 - \$440,000	7.5%
\$440,000 and over	9.5%

For more information, contact the Tennessee Department of Revenue at (615) 532-6438 or <http://www.tn.gov/revenue/contactus.shtml>

## **K. Charitable Contributions**

People who make donations to qualified charitable organizations may be able to receive an income tax deduction for their gifts. If you plan to take an itemized charitable deduction on your income tax return, your donation must go to a qualified charity by Dec. 31. Ask the charity about its tax-exempt status. You can also visit <http://www.irs.gov> and use the Exempt Organizations Select Check tool to check if your favorite charity is a qualified charity. Donations charged to a credit card by Dec. 31 are deductible for the year in which the charge is made to the credit card, even if you pay the bill in the following year.

A donation made by check also counts for the year in which the envelope is postmarked. Gifts given to individuals, whether to friends, family or strangers, are not income tax deductible.

- **What You Can Deduct.** You generally can deduct your cash contributions and the fair market value of most property you donate to a qualified charity. Special rules apply to certain types of donated property, including clothing or household items, cars and boats, works of art, etc. See the IRS publication referenced below.
- **Keep Records of All Donations.** You need to keep a record of any donations you deduct, regardless of the amount. You

must have a written record of all cash contributions to claim a deduction. This may include a canceled check, bank or credit card statement or payroll deduction record. You can also ask the charity for a written statement that shows the charity's name, contribution date and amount.

- When documenting charitable contributions, it is a good idea to keep records together in a safe place. This includes receipts, canceled checks and other documents that support income or deductions you will claim on your tax return. Be sure to store them in a safe place so you can easily access them later when you file your tax return.

For more information about contributions, check out Publication 526 (Charitable Contributions), available at <http://www.irs.gov/pub/irs-pdf/p526.pdf>. The booklet is available on IRS.gov or order by mail at (800) TAX-FORM (829-3676).



Note: Other important changes in the federal tax structure occur frequently and affect individuals, families, businesses, and investors. Tax advisors are often needed to analyze many of the changes.

For information on types of Charitable Contributions that you can make, see the information on “Charitable Gift Planning” in Section 4 of this Handbook.

#### **L. Real Property Tax Relief for the Elderly**

Tennessee counties and cities offer elderly property owners a reduction in the real estate taxes they pay on their primary residence. Call your County Trustee's Office or City Tax Official's Office to obtain an application, which must be filed annually. You must be age 65 or older, totally disabled, a disabled Veteran, or the surviving spouse of a disabled Veteran to qualify.

## **VIII. Reverse Mortgages**

### **A. Introduction**

A “reverse mortgage” is a special type of mortgage that allows a homeowner to convert a portion of the equity in the homeowner’s home into cash. There are various types of reverse mortgages available today, including the United States Department of Housing and Urban Development (HUD) Federal Housing Administration (FHA) Home Equity Conversion Mortgage (HECM), and other products offered by private lenders. Unlike a traditional home equity loan or second mortgage, no repayment is required until the borrowers no longer use the home as their principal residence.

You can receive free information about reverse mortgages by calling AARP at (800) 209-8085, or go to <http://www.aarp.org/revmort>. In addition, there are listed at the end of this section, numerous websites and toll-free telephone numbers to obtain information about reverse mortgages in general.

Also, to access HUD’s frequently asked questions about HUD’s Reverse Mortgages, go to:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/HECM/rmtopten](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/HECM/rmtopten)

## **B. Qualifying for a Reverse Mortgage through HUD**

HUD's Federal Housing Administration requires that the borrower be a homeowner: (a) who is sixty- two years of age or older; (b) who owns his or her home outright (or who has an existing mortgage balance which is low enough that it can be paid off at closing with the proceeds from the reverse mortgage); and (c) who resides in the home. Before obtaining an HECM, you are required to obtain consumer information from a HUD-approved counseling source. You can contact the Housing Counseling Clearinghouse on (800) 569-4287 to obtain the name and telephone number of a HUD-approved counseling agency and a list of FHA-approved lenders within your area.

With a traditional second mortgage or home equity loan, you must have sufficient income versus debt ratio to qualify for the loan, and you are required to make monthly mortgage payments. The HECM is different, in that it pays you and is available regardless of your current income. The amount that you can borrow depends upon your age, the current interest rate, and the current appraised value for your home (or FHA's mortgage limit for your area, whichever is less). Generally, the more valuable your home is, the older you are, and the lower the interest rate, the more that you can borrow.

The borrower's home must be a single-family dwelling or a two-to-four unit property that the borrower owns and occupies.

Townhouses, detached homes, units in condominiums and some manufactured housing are eligible.

### **C. Use of Proceeds and Homeowner Obligations with a HUD Reverse Mortgage**

There are five options available to the homeowner to receive the proceeds of an HECM loan:

1. Tenure—equal monthly payments as long as one borrower continues to live in and occupies the property as a principal residence;
2. Term—equal monthly payments for a fixed period of months selected by borrower;
3. Line of credit—unscheduled payments or in installments, at times and amounts of borrower's choosing, until the line of credit is exhausted;
4. Modified tenure—combination of line of credit with monthly payments as long as borrower remains in the home;
5. Modified term—combination of line of credit with monthly payments for a fixed period of months selected by the borrower.

The homeowner may use the proceeds of the HECM for any legitimate purpose, such as to supplement Social Security or retirement benefits, maintenance of the property, payment of real estate taxes and insurance, medical bills, living expenses, etc.

HECM loans are non-recourse loans, that is, the homeowner is not personally liable to repay the HECM loan; liability is limited to the net sales proceeds from the property. No deficiency judgment may be taken against the homeowner or the homeowner's estate.

Under the HECM loan, the borrower has continuing obligations, such as maintaining the property in good repair, keeping the property properly insured, paying real estate taxes when they are due, and not using the property for any illegal purposes.

The due date for repayment of the HECM is when one of the following occurs:

- (a) When the last borrower dies;
- (b) All borrowers have conveyed their title to the property;
- (c) The property is no longer any borrower's principal residence;
- (d) Because of physical or mental illness, a borrower fails to occupy the property as his or her principal residence for a period of more than twelve consecutive months, and the property is not the

principal residence of another borrower; or

(e) An HECM loan obligation of the borrower is not performed (for example, real estate taxes are not paid, the property is not maintained in good repair, etc.)

#### **D. Cost of Reverse Mortgage**

A homeowner does not need to pay a fee to a planner or loan finder in order to obtain an HECM loan. There have been abusive instances reported in this area, in which “loan finders” or “estate planners” have contacted homeowners and have offered to find a reverse mortgage for the homeowners for a percentage fee (such as five percent to ten percent of the loan amount). This is not necessary and should not be done.

There are, however, significant costs associated with an HECM. They include FHA mortgage insurance, closing costs, interest, and loan service costs. The longer a homeowner keeps an HECM, the lower the total annual loan costs (TALC) will be, because they will be spread over a greater number of years. On the other hand, the longer an HECM is held, the higher the amount of interest will be, because the amount of principal advanced will usually be higher.

**E. Financial Counseling and Other Information Available for Persons Considering Reverse Mortgages**

As mentioned above, HUD requires that a homeowner obtain consumer information from a HUD-approved counseling source. In addition, because of the complexity of reverse mortgages, a homeowner should consult with an experienced attorney before obtaining a reverse mortgage.

**F. Resources Available for Persons Interested in a Reverse Mortgage**

If you do not have access to a computer at home or work, access can be obtained at your local public library, and the library staff will gladly assist you in accessing the Internet.

- HUD's website: <http://www.hud.gov/groups/seniors.cfm>
- National Reverse Mortgage Lender's Association website: <http://www.reversemortgage.org/>
- National Reverse Mortgage Lenders Association consumer information: (866) 264-4466
- AARP consumer information: (800) 209-8085
- AARP Reverse Mortgage web page: <http://www.aarp.org/revmort/>

- HUD Housing Counseling Clearinghouse: (800) 569-4287

Reverse mortgage documents are complex and can be confusing. Consequently, anyone contemplating a reverse mortgage should consult and be counseled by an experienced attorney who is completely independent of the mortgage lender. It is essential that the homeowner or mortgagor understand the contract and its disadvantages, as well as its advantages, before signing.



## **SECTION TWO: HEALTH CARE**

### **I. Medicare**

Medicare is a federal medical benefits program that is financed through the Social Security system and is primarily for the elderly, but also covers some or certain disabled persons.

#### **A. Introduction to Medicare**

Medicare is health insurance for people age sixty-five or older, under age sixty-five with certain disabilities, and any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant).

Medicare publishes an annual handbook, titled “Medicare & You.” It is comprehensive, and is available in print and on-line. To download a digital copy, go to <https://www.Medicare.gov/publications>; this new download option is available for your personal computer and for the iPad, Nook, Sony e-reader, Kindle, and all other e-Reader devices. Additional information may be obtained by calling (800) 633-4227 and following the prompt questions. In addition, the U.S. Department of Health & Human Services is beginning to provide data and comparisons regarding hospitals, nursing homes, physicians, home health care providers, dialysis facilities, and Medicare Plans; these may be found at <http://www.hospitalcompare.hhs.gov>, under Hospital Compare, Nursing Home Compare, Physician Compare,

Home Health Compare, Dialysis Facility Compare, and Medicare Plan Finder.

“Original Medicare” includes the following:

- Part A: covers hospitalizations, skilled care for up to 100 days in a rehabilitation facility, some home health and hospice.
- Part B: covers durable medical equipment, doctor’s visits, home health care and preventative services.
- Part D: Prescription drugs.

OR

- Part C: Medicare Advantage Plans. This is a managed care plan provided by a private company which contracts with Medicare provide your Part A, Part B and other benefits. Many plans also include Part D coverage.

As part of the 2010 Affordable Care Act, in 2013, Medicare now covers the following services:

- Alcohol misuse counseling: One alcohol misuse screening per year for adults with Medicare who use alcohol, but don’t meet the medical criteria for alcohol dependency; if your primary care doctor or other primary care practitioner determines that you’re misusing alcohol, you can receive up to four brief face-to-face counseling sessions per year.

- Cardiovascular disease behavioral therapy: One visit per year with your primary care doctor in a primary care setting, such as a doctor's office, to help lower your risk for cardiovascular disease.
- Depression screening: One depression screening per year in a primary care setting, such as a doctor's office.
- Obesity screening and counseling: If you have a body mass index of thirty or higher, coverage is provided for intensive counseling to help you lose weight. This counseling must take place in a primary care setting, such as a doctor's office.
- Sexually transmitted infections screening and counseling: Screenings are covered for chlamydia, gonorrhea, syphilis, and/or Hepatitis B, when the tests are ordered by a primary care doctor or other primary care practitioner.

## **B. Medicare Part A (Hospital Insurance)**

You usually do not pay a premium for Medicare Part A coverage if you or your spouse paid Medicare taxes while working. This is sometimes called "premium-free Part A." It generally helps cover inpatient care in hospitals and care in a skilled nursing facility, hospice, and home health care.

### **C. Medicare Part B (Medical Insurance)**

If you elect to have Medicare Part B, you pay a premium each month. Most people pay the standard premium amount (which for 2014 is \$104.90). However, if your modified adjusted gross income is above a certain amount, you may pay more. It generally helps cover doctors' services and outpatient care, as well as some preventive services to help maintain your health and to keep certain illnesses from getting worse.

### **D. Medicare Part C (Medicare Health Plans)**

Medicare Health Plans include all Medicare Advantage Plans, Medicare Savings Accounts, and other Medicare health plans. They are generally a health coverage choice run by private companies that have been approved by Medicare and can include Part A, Part B and some prescription drug coverage.

Your out-of-pocket costs in a Medicare health plan depend upon many factors, some of which are: whether the plan charges a monthly premium; whether the plan pays any of your monthly Medicare Part B premium; whether the plan has a yearly deductible or deductibles; how much you pay for each visit or service (co-pays); the type of health care services which you require and how often; and others.

### **E. Medicare Part D (Prescription Drug Coverage)**

Most Medicare Prescription Drug Plans charge a monthly premium, which varies from plan to plan. These plans help cover the cost of prescription drugs. They may also help lower your prescription drug costs and help protect against higher costs in the future.

### **F. Medicare Coverage Choices**

With Medicare, you can choose how you get your health and prescription drug coverage. Below are brief descriptions of your coverage choices.

1. Original Medicare is the program run by the Federal government. It provides your Part A and Part B coverage; however, participants can join a Medicare Prescription Drug Plan to add drug coverage and can buy a Medigap (Medicare Supplement Insurance) policy (sold by private insurance companies) to help fill the gaps in Part A and Part B coverage.
2. Medicare Advantage Plans (like an HMO or PPO) are run by private companies approved by Medicare. They provide Part A and Part B coverage but can charge different amounts for certain services. They may offer extra coverage and prescription drug coverage for an extra cost. Costs for items and services vary by plan. If you want drug coverage with a Medicaid Advantage Plan, you must get it through your plan (in

most cases). Also, with a Medicaid Advantage Plan, you do not need a Medigap policy.

#### **G. “Medicare and You”**

The best resource to learn about Medicare, including any updates to coverage or benefits, is the annual *Medicare and You* (2014). This booklet is mailed annually to Medicare beneficiaries; however, a free version is available to download at [www.Medicare.gov](http://www.Medicare.gov).

The present site is: <http://www.medicare.gov/medicare-and-you/medicare-and-you.html>.

#### **H. Additional Resources for Tennessee Residents: Tennessee's State Health Insurance Assistance Program (SHIP)**

The Tennessee State Health Insurance Assistance Program is a statewide program that provides free and objective counseling and assistance to persons with questions or problems regarding Medicare and other related health insurances.

In Tennessee, SHIP operates through the state's nine Area Agencies on Aging & Disability (AAADs). These agencies offer a variety of services besides SHIP, all aimed at helping persons who are elderly and/or have disabilities to live better lives.

SHIP is funded by the Centers for Medicare and Medicaid Services (CMS), an agency of the federal government under the Department of Health & Human Services.

For more information, see <http://www.tn.gov/comaging/ship.html>

## **II. Medicaid & TennCare**

### **A. Introduction to Medicaid**

Medicaid is a cooperative federal/state program that provides health coverage for lower-income people, families and children, the elderly, and people with disabilities. The program is administered by state agencies, and thus the regulations and eligibility rules governing Medicaid may vary to some extent for each state; however, many of the rules are set by the federal government through the Center for Medicare and Medicaid Services. Those rules may not be changed by the State, unless the State requests and is awarded a “waiver.” Most states offer coverage for adults with children at some income level. Beginning 2014, most adults under age 65 with individual incomes up to about \$15,000 per year will qualify for Medicaid in every state.

Medicaid and Medicare are frequently mistaken for one another. Medicaid is a joint state and federal program for public assistance recipients and other medically indigent adults and children. Medicaid was designed to meet the medical needs of low-income, uninsured individuals; it is a “means-tested” program for low-income people. On the other hand, Medicare is a federal medical benefits program that is financed through the Social Security system and is primarily for the elderly, but also covers some or certain disabled persons.



Medicare is not “means-tested” and is available for all seniors, regardless of their income levels.

## **B. Eligibility**

In Tennessee, when a person qualifies for Supplemental Social Security Income (SSI), then he/she is automatically qualified for Medicaid, or TennCare, as it is called in Tennessee. People who are blind, disabled or age 65 or older, may qualify based on their disability, assets and income.

### Medicaid benefits include:

- Medicare Part B premiums, deductibles, and coinsurance;
- Inpatient hospital services with limitations and deductibles;
- Outpatient hospital and rural health clinic services;
- Nursing home care;
- Physician services;
- Transportation;
- Long-term care alternatives, such as personal care services;
- X-ray and laboratory services;
- Home health care services;

- Clinic services;
- Prescription drugs;
- Medical supplies and equipment in limited circumstances;
- Physical therapy and related services; and
- Emergency hospital services.

Among those people eligible for limited Medicaid benefits are:

- Qualified Medicare Beneficiaries (QMBs)—certain elderly and disabled persons entitled to Medicare Part A whose annual income is at or below the national poverty level and whose resources are very limited. Medicaid will pay the Medicare Part A deductibles and coinsurance and the Part B premiums, deductibles, and coinsurance for QMBs.
- Specified Low-Income Medicare Beneficiaries (SLMBs)—certain elderly or disabled persons entitled to Medicare Part A whose annual income is no greater than 120 percent of the national poverty level and whose resources are very limited. Medicaid will pay the Medicare Part B premium for SLMBs.
- Qualifying Individuals (QIs)—certain elderly or disabled persons entitled to Medicare Part A whose annual income is

greater than 120 percent but no more than 135 percent of the national poverty level and who are not otherwise eligible for Medicaid benefits. Medicaid will pay the Medicare Part B premium for QIs. This benefit is not an entitlement but is available on a first-come, first-served basis, as funds permit.

### **C. Applying for Medicaid**

As of January 1, 2014, you may no longer apply for TennCare through your local Department of Human Services (DHS), although you may use a kiosk to apply at the local office if you do not have a computer. To find your local DHS office so that you may use the kiosk, go to: [http://www.tn.gov/humanserv/st\\_map.html](http://www.tn.gov/humanserv/st_map.html).

To apply from your home computer, you must apply for TennCare through the Health Insurance Marketplace. Apply online at [www.healthcare.gov](http://www.healthcare.gov).

Paper applications are available at <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-for-family.pdf>.

Or you can call them at **1-800-318-2596**. They can mail an application to you or help you apply online.

#### **D. Resource Limitations**

In determining Medicaid eligibility, resources are categorized as either countable or non-countable. Countable assets are used to determine Medicaid eligibility and include those assets for which there is a meaningful possibility that they could be sold or otherwise converted into cash. Among countable assets are bank accounts, stocks, Individual Retirement Accounts, deeds of trust, or real property other than the home. Non-countable assets are those assets which are not counted in determining the resources available to a person for purposes of qualifying for Medicaid treatment. Non-countable assets include the following:

- Your home;
- Personal effects, including clothing, jewelry, and photographs;
- Household furnishings, such as furniture, paintings, appliances, and electronics that are exempt only while being used in the applicant's home;
- One automobile;
- Property essential to the institutionalized person's self-support;
- Some life insurance policies;

- Some burial funds and cemetery plots;
- Some irrevocable trusts and purchases; and
  - 401K and/or IRA (of community spouse).

## **E. Transfer of Assets**

Often people hear that they should give their home to their children “or the nursing home (or State)” is going to take it. Unfortunately, giving away assets may compromise one’s ability to access the Medicaid program. When an individual applies for Medicaid, she must disclose any transfers for less than fair market value. In other words, if the applicant has sold her farm to her children for \$1, then she has made a “transfer for less than fair market value.” The Medicaid agency generally considers the tax-assessed value of real property to be “fair market” value unless the applicant presents other plausible evidence.

If the individual has given away assets during the 5 years preceding the Medicaid application, then the Medicaid agency will deny her Medicaid application. Unfortunately, the penalty period for that transfer will not start ticking until she is “otherwise eligible for Medicaid.” This is due to changes made in the law by the Deficit Reduction Act of 2005, signed into law on February 8, 2006. In order to be “otherwise eligible for Medicaid, the applicant must be in a

nursing home, below \$2,000 in countable assets, and if her income is over the income cap, then she must have a Qualified Income Trust in place.

**There are exceptions to the rules about transferring assets.**

Therefore, before making any transfers of assets, Tennesseans should consult with an attorney who is knowledgeable and experienced in Medicaid law. To find attorneys who are certified as Elder Law Specialists by the Tennessee Commission on Continuing Legal Education and Specialization, go to [www.cletn.com](http://www.cletn.com).

## **F. Medicaid and Long-term Care**

Medicaid is the largest source of payment for long-term care services. Some individuals spend substantial sums of money on long-term care before qualifying for Medicaid. This is often due to the individual's reliance on urban myths, tales of woe and misinformation, often provided by people "in the system." Seeking competent legal counsel is essential to navigating the long-term care maze.

Tennesseans now receive Medicaid long-term care benefits through the CHOICES program.

There are three groups of Medicaid CHOICES.

**GROUP 1 CHOICES:** This is nursing home Medicaid. Medicaid nursing home benefits is an entitlement if the applicant meets the medical and financial criteria. There are an unlimited number of slots for Group 1.

**GROUP 2 CHOICES:** Group 2 pays for some help at home. A person who qualifies for Group 2 may receive \$1,100 from CHOICES to pay toward her assisted living care, if the facility accepts CHOICES. Group 2 is limited to a certain number of people (presently 15,000) for the entire state. People in Group 2 CHOICES must meet the same medical criteria for nursing home placement.

**Group 3 CHOICES:** This third group of Medicaid options provides assistance at home for people who do not meet the criteria for nursing home placement, but who are at risk of nursing home placement. There is presently no enrollment cap.

The chart below shows the services provided in Groups 1-3 of CHOICES:

**BENEFIT LIMITS FOR CHOICES MEMBERS**

<b>Service and Benefit Limit</b>	<b>Group 1</b>	<b>Group 2</b>	<b>Group 3</b>
Nursing facility care	X	Short-term only (up to 90 days)	Short-term only (up to 90 days)
Community-based residential alternatives		X	X
Personal care visits (up to 2 visits per day)		X	X
Attendant Care (up to 1080 hours per calendar year)		X	X



Homemaker services (up to 3 visits per week)		X	X
Home-delivered meals (up to 1 meal per day)		X	X
Personal Emergency Response Systems		X	X
Adult day care (up to 2080 hours per calendar year)		X	X
In-home respite care (up to 216 hours per calendar yr)		X	X
In-patient respite care (up to 9 days per calendar yr)		X	X

Assistive technology (up to \$900 per calendar yr)		X	X
Minor home modifications (up to \$6,000 per project; \$10,000 per calendar year; and \$20,000 per lifetime)		X	X
Pest control (up to 9 units per calendar year)		X	X

***What does Medicaid Choices provide in assisted living?***

Medicaid **Choices 2** provides up to \$1,100 in “care costs” for individuals in assisted living facilities that are providers in the

program. The resident must pay the remaining “room and board” charges of the facility not to exceed \$1,675.20.

***What does Medicaid Choices provide at home?***

Medicaid **Choices 2** also provides care at home if you CHOOSE home rather than nursing home. Medicaid will spend as much money on care as the individual needs until the cost of the in-home care reaches the “cost neutrality cap” which means the cost of the person’s care at home meets or exceeds the cost for the person to go to a nursing home.

Medicaid **Choices 3** provides some limited care for patients that are “at risk” for needing nursing home care but do not fully meet the medical requirements. There is a limit of \$15,000 to be spent on an individual enrolled in Group 3. Generally, a person in Group 3 starts with about 12 hours of care provided by CHOICES per week. CHOICES provides care to “supplement but not replace” the care that family provides.

## **F. Qualification for Medicaid or Choices**

### **How do I qualify for CHOICES or Medicaid if I am single?**

Eligibility for CHOICES/Medicaid has three components. In order to qualify for Medicaid, an applicant must:

- have less than \$2,000 in countable assets,
- qualify medically, and
- have monthly gross income less than \$2,163 (2014) or have a Qualified Income Trust (QIT) sometimes called a “Miller Trust.” The Qualified Income Trust is not an asset preservation trust. It is merely a sieve for income. After the income is deposited to the QIT account, it is then used to pay for the Medicaid recipient’s care or to pay spousal support in some circumstances.

### **Do I have to sell all of my assets and spend all of the money before I qualify for Medicaid or CHOICES?**

No. Under the Medicaid rules, there are certain exempt assets:

- Your home and contiguous property are exempt, for your lifetime, the lifetime of your spouse or the lifetime of a family member who meets certain criteria. The Bureau of TennCare is

prohibited by Tennessee law from putting a lien on your home during your lifetime, unless you incorrectly received benefits to which you were not entitled.

- One automobile
- Your personal property
- Burial plots for you and your family
- A burial fund of \$1,500 or
- A pre-paid irrevocable funeral and burial or cremation plan is exempt as long as it is “reasonable.” In our community, a plan valued at \$8,500+ is considered reasonable.
- The “community spouse’s” retirement account such as an Individual Retirement Account, 401(k), etc.
- Property or assets that are “unavailable” to you for reasons beyond your control.
- Property jointly owned by another party, but he or she refuses to sell the property.
- There may be additional exempt assets depending on your situation.
- Special Needs Trusts approved by federal and Tennessee law, including a “pooled trust.”

**If my husband is in a nursing home, do I have to spend all of our cash assets before he will qualify for Medicaid?**

No. First, you will need a “resource assessment.” When a spouse first enters a nursing home or when there is a disabled spouse in the home, the well spouse, sometimes also called the “community spouse,” may request a “resource assessment.” A resource assessment put on a piece of paper aptly titled “resource assessment” which lists all the assets of both spouses.

**How do I obtain a resource assessment?** If your spouse is in the nursing home, this request may be made by the community spouse’s attorney, you, or the nursing home. The request is made by submitting an application for Medicaid nursing home benefits online. Note that it is often financially advantageous to the community spouse to seek competent legal counsel before submitting the Medicaid application and requesting the Resource Assessment.

If the disabled spouse is at home, then the community spouse may request a resource assessment through the Office On Aging. At one time, couples had to spend down to \$3,000 before accessing Home and Community Based Services. That is no longer the case; however, there have been some issues with education and training of intake personnel. A community spouse seeking CHOICES at home is entitled to a Resource Assessment.

On the resource assessment, the assets of both spouses are listed as either countable or exempt assets. Exempt assets are the home, car, personal belongings, and the community spouse's retirement accounts, etc.. Countable assets are cash, stocks, bonds, non-exempt property, the disabled spouse's retirement accounts, etc.

The countable assets are summed and then the total is divided by 2. The community spouse is allowed to keep one-half of the countable up to a certain amount which changes annually. For 2014, the amount is \$117,240. This is the Maximum Community Spouse Resource Allowance or the Maximum "CSRA." The Minimum CSRA is \$23,448 (2014).

The remaining funds, if any, must be spent down to \$2,000 before the nursing home spouse qualifies financially for Medicaid or CHOICES. These funds may be spent on anything that benefits either spouse.

### **Income and the Medicaid program.**

For a single nursing home Medicaid recipient, he may keep enough of his income to pay his health insurance and retain a \$50 personal needs allowance. The remainder is his "patient liability" and must be paid to the nursing home to defray the cost of his care. If he is receiving CHOICES at home or in an assisted living facility, he keeps

all of his income to pay for his room and board or other expenses.

For a married nursing home spouse, the community spouse may retain all of her income and enough of her husband's income to bring her up to \$1,938.75 called the minimum monthly maintenance needs allowance. She may keep additional funds from his income if she has excess "shelter" needs. Finally, if she (and her attorney) believe she is entitled to more income, she may appeal for a fair hearing. If she can prove that she has "exceptional circumstances that cause significant financial duress," then the fair hearing officer may award her enough of her husband's income to meet her needs.

If the disabled spouse receives services at home, he keeps his income for his home or other expenses.

## **G. Navigating the Appeals Process**

If you have received a denial of CHOICES or nursing home Medicaid, you have a right to appeal. You will receive written notice of the denial, and that written notice will explain how you may appeal. It will provide a telephone number, fax number and address in order for you to let the agency know you appeal the decision. There has been a significant increase in appeals since July 2012 on the issue of medical eligibility. You may find assistance through your local Area on Aging, the Legal Aid Society or private elder law attorneys. There



will be only a limited time to appeal, usually 30 days. You may request an “in person hearing” in a county near you or in Davidson County. If you do not specifically request an in-person hearing, then the fair hearing officer, the State’s attorney, and the State’s witness will be communicating with you by telephone.

The appeal is for a fair hearing. All of the evidence to support your appeal must be presented at that hearing. If you do not win at that hearing, you (or your attorney) may appeal to the Commissioner. If you lose at that level, you are entitled to a hearing in the Chancery Court where you reside. If you reside in a nursing home, the appeal may be held in that county. An appeal may also be held in Davidson County. If you do not win at that level, then you may appeal to the Tennessee Court of Appeals.

Navigating the long-term care maze is hard enough, but when accessing public benefits such as Medicaid is necessary, one needs “all hands on deck.” For specific guidance regarding planning and long-term care, you may wish to contact an attorney who focuses on elder law. As stated previously, you may find Tennessee Elder Law Specialists at [www.cletn.com](http://www.cletn.com), ask your family attorney for a referral or do some research on the Internet. The National Academy of Elder Law Attorneys, [www.naela.com](http://www.naela.com), is a resource for finding elder law attorneys throughout the United States, including Tennessee.

**Some other helpful websites include the following:**

[www.nelf.org](http://www.nelf.org)

[www.Medicare.gov](http://www.Medicare.gov)

[www.cms.gov](http://www.cms.gov)

[www.Medicaid.gov](http://www.Medicaid.gov)

[www.ssa.gov](http://www.ssa.gov)

[www.va.gov](http://www.va.gov)

[www.aoa.gov](http://www.aoa.gov)

[www.disability.gov](http://www.disability.gov)

### **III. TennCare**

#### **A. Introduction to TennCare**

TennCare is the State of Tennessee's Medicaid program that provides health care for 1.2 million Tennesseans and operates with an annual budget of approximately \$9 billion, from both federal and state funds. It is run by the State of Tennessee with oversight from the U.S. federal government. The Centers for Medicare and Medicaid Services (CMS) is the federal department that oversees both Medicare and Medicaid.

#### **B. Medicaid and TennCare: What's the Difference?**

TennCare is one of the oldest Medicaid managed care programs in the country, having begun on January 1, 1994. It is the only program in the nation to enroll the entire state Medicaid population in managed care.

TennCare is for Tennesseans who are eligible for a Medicaid program. You can apply anytime for TennCare Medicaid.

There are several different groups of people that may qualify. And, each group has different income and resource limits, as well as counting the number of people who live in a household.

Some of the groups TennCare Medicaid covers are:

- People who get an SSI check (Supplemental Security Income);
- People who have gotten both an SSI check and a Social Security check in the same month at least once since April 1977 AND who still get a Social Security check;
- Women who need of treatment for breast or cervical cancer;
- A person who:
  - Lives in a nursing home and has income below \$2,163 (2014) per month, or
  - Gets other long term care services that TennCare pays for.
- Single parents or caretakers of a minor child (The child must live with you and be a close relative.);
- Two-parent families with a minor child living at home when one of the parents:
  - Has lost their job or had their work hours cut, or
  - Has a health or mental health problem expected to last 30 days (DHS will need proof from your doctor)
- Children under age 21; and
- Women who are pregnant;

Applicants can complete an online screening to determine likely eligibility for Medicaid. Applications are done through county Department of Human Services (DHS) offices, or using an online application. (More information see the “Resources” section.)

### **C. Coverage and Eligibility**

Those who qualify for TennCare are known as “TennCare enrollees.”

TennCare enrollees are primarily low-income; and generally include children, pregnant women, parents of minor children and the elderly or those with a disability.

There are two (2) kinds of TennCare: TennCare Medicaid and TennCare Standard.

To be eligible for TennCare as a new applicant, you must qualify for TennCare Medicaid. DHS staff can answer your questions and explain how to qualify. They can also tell you what information they'll need from you to help them decide if you're eligible. If you think you might be eligible or have questions, call the Family Assistance Service Center at (866) 311-4287.

TennCare Standard is only available for children under age 19 who are already enrolled in TennCare Medicaid and who lack access to group health insurance through their parents' employer, or their time of eligibility is ending and they don't qualify anymore for TennCare Medicaid.

DHS will determine if they qualify for TennCare Standard. For more information, contact the Family Assistance Service Center at (866) 311-4287.

#### **D. Applying for TennCare**

In order to apply for TennCare, there are specific steps to follow. First, contact the Department of Human Services (DHS) in your county. Eligibility for TennCare and other Medicaid programs is decided by the Department of Human Services. All 95 counties have a DHS office and their contact information is available on the DHS website and in the phone book.

Second, get an application. You must apply for TennCare through the Health Insurance Marketplace. Apply online at [www.healthcare.gov](http://www.healthcare.gov). You can call 1-800-318-2596 and have one sent to you, or download one from the website, which is <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-for-family.pdf>.

If you do not have a computer and/or internet access, you can apply at a kiosk at your local DHS office.

Finally, you will need to submit your completed application. Once you have submitted your application, you will be contacted as any other information is needed.

## **E. Renewal of TennCare**

You must renew your TennCare every year. When it's time for you to renew, you'll get a letter from TennCare. Included with the letter will be pages you must complete and return to DHS. The letter will tell you when your pages are due to DHS. DHS will use the information you give them to see if you can keep TennCare.



#### **IV. Affordable Care Act: What It Means to You**

The Affordable Care Act is legislation seniors need to understand so they don't make unnecessary changes to their health care due to lack of information or as a result of individuals looking to take advantage of the confusion surrounding the legislation.

***Seniors who already have health insurance provided by Medicare do not need to do anything.*** They are already covered and their benefits will not change whether they are enrolled in traditional Medicare or a Medicare Advantage Plan. Seniors age 65 and older without health care coverage should still enroll in Medicare through [www.medicare.gov](http://www.medicare.gov).

##### **A. Overview**

The Affordable Care Act (ACA), signed into law on March 23, 2010, aims to provide greater access to health care coverage, improve the quality of services delivered and reduce the rate of increase in health spending. The ACA provides new ways to help hospitals, doctors and other health care providers coordinate care for patients so that health care quality is improved and unnecessary spending reduced.

## **B. ACA's Impact on Seniors**

### **1. Medicare Benefits Expanded**

Under the ACA, Medicare benefits will not be reduced or taken away, but rather are expanding. Medicare beneficiaries will save, on average, about \$4,200 over the next 10 years due to lower drug costs, free preventive services and reductions in the growth of health spending. Also, Private Medicare Advantage (MA) plans are not going away. As of September 2013, 29 percent (15 million) of Medicare beneficiaries were enrolled in a MA plan.

### **2. Free Preventive Services and Annual Wellness Visit**

Medicare recipients are eligible to receive many preventive services with no out-of-pocket costs. These include flu shots, tobacco use cessation counseling, as well as no-cost screenings for cancer, diabetes and other chronic diseases. Seniors can also get an annual wellness visit so they can talk to their doctor about any health concerns.

### **3. Medicare Premiums**

The Medicare Part B premium for 2012 was \$99.90, only a few dollars more than the premium that most beneficiaries had been paying. In addition, the Part B annual deductible decreased by \$22 to \$140. The 2013 Part B monthly premium – \$104.90 – is also lower than previously projected by the Medicare trustees. Also, the

Medicare Part D premium and deductible will not increase in 2014.

#### 4. Prescription Drugs

For the Medicare Part D prescription drug program, Medicare beneficiaries who fall into the coverage gap, known as the "donut hole," automatically receive a discount on prescription drugs. Each year, beneficiaries pay a reduced cost for brand name and generic drugs in the coverage gap. In 2020, the donut hole will be closed.

In 2013, Medicare beneficiaries in the donut hole will receive a 52.5 percent discount on brand-name drugs and a 21 percent discount on generic drugs. Seniors who reached the donut hole will save, on average, about \$1,209 per beneficiary.

Nearly four million people with Medicare who were in the donut hole in 2010 received a one-time, tax-free \$250 rebate from Medicare to help pay for prescription drug costs.

#### 5. Improvements for Medicare Advantage Plan Members

Medicare Advantage plans cannot charge enrollees more than traditional Medicare for chemotherapy administration, skilled nursing home care and other specialized services.

Starting in 2014, the health care law provides additional protections for Medicare Advantage plan members by limiting the amount these plans spend on administrative costs, insurance company profits and

items other than health care to 15 percent of their Medicare payments.

## 6. Medicare Fraud, Waste and Abuse

The Affordable Care Act includes new resources and tools to protect taxpayer dollars by preventing fraud in Medicare and Medicaid, building on the efforts of the Department of Health and Human Services and the Justice Department. In the last three years, the government recovered over \$14.9 billion from individuals and companies seeking fraudulent payments. These efforts have been strengthened by tougher penalties for people who steal from Medicare and more law enforcement to identify criminals abusing the law and beneficiaries.

Other measures include supporting technology to prevent fraud before it happens. Examples are preventing fraudulent payments from going out in the first place vs. trying to recapture the money and working with the Senior Medicare Patrol program, which educates seniors and their friends and neighbors about how to stop Medicare fraud.

## 7. Medicare Delivery System and Payment Reforms

The ACA establishes the Center for Medicare and Medicaid Innovation to test new ways of delivering care that are intended to improve quality while reducing the rate of growth in Medicare

spending. Examples include programs to reduce unnecessary hospital readmissions by coordinating care and services for patients when they leave the hospital.

Other provisions provide for the development of Accountable Care Organizations, bundled payments and patient-centered medical homes – all intended to provide higher-quality, coordinated care for beneficiaries.

The ACA also provides bonus payments to primary care physicians for certain services.

For more information go to the National Committee to Preserve Social Security and Medicare at [www.ncpssm.org](http://www.ncpssm.org).

## **V. Long-term Care Insurance**

### **A. Introduction**

Long-term care, which may be needed at any age, encompasses a broad spectrum of medical and support services for people who have lost some capacity to function on their own as a result of a medical condition, chronic illness or disability. Long-term care can be provided in a variety of settings, including nursing homes, assisted living facilities, adult day health care centers and at home.

As our population ages, more people are becoming aware of the need for long-term care insurance ("LTCI"). Almost unheard of twenty years ago, LTCI has since become a valuable tool for people looking to complete their estate plans. A good long-term care policy will provide funds to pay for your care in the event you are disabled and need services related to activities of daily living.

Currently, the average nursing home stay in the United States is 2.4 years. Nearly 75% of all nursing home patients stay less than 3 years, and 42% stay less than 1 year. However, 13% stay longer than 5 years.

You should consider purchasing LTCI if you have assets in excess of \$75,000 (not including the primary residence), you have an annual retirement income of at least \$30,000 for a couple and \$25,000 for an individual, you are able to make premium payments without

having to make lifestyle changes, and you can absorb possible premium increases without financial strain.

You should purchase a benefit period that is as long as you can afford without being uncomfortable with the premium. If you purchase a longer benefit period and then determine that the premium is too high to be comfortable, then you can always reduce the benefit period. However, if you purchase a shorter benefit period and then determine that you want a longer benefit period, the insurance company will likely require that you basically start over in the underwriting process by answering new medical questions and submitting to an assessment again. Additionally, you will have to pay the premium for the longer benefit period at your age at the time of the change in the policy. Accordingly, increasing benefits is expensive, and if you have developed health problems, it may be impossible.

The cost of long-term care varies throughout the nation. A person purchasing LTCI should purchase coverage sufficient to cover, at a minimum, the average cost of care per day or per month in his or her area or in the area in which he or she believes that he or she may be living at the time the long term care is needed.

Premium costs for LTCI are the same for men and women but are based on the age of the insured at the time of the purchase of the policy, and are generally increased based on the features of the

policy. Features of a LTCI policy that determine cost include the daily benefit, the elimination period, the benefit length, any inflation riders, and level of care.

You are never too young to think about LTCI. While policies are available for persons ages 18 and up, most policies are sold to persons in the 40-84 age range. If a potential insured has not purchased a LTCI policy by the age of 40, the pre-retirement age (40's and 50's) is the best time to purchase LTCI because premiums are lower, and health is generally better.

Some potential purchasers worry about buying at younger ages and then experiencing large rate increases that make LTCI unaffordable. However, many of the top companies offer a limited pay option with a corresponding rate guarantee. For example, the 40-year old purchasing LTCI may purchase a policy that will be paid up in ten years along with a corresponding ten-year rate guarantee.

Applicants for individual policies must qualify medically for LTCI coverage. Progressive conditions such as Parkinson's disease, Alzheimer's, AIDS, multiple sclerosis, muscular dystrophy, ALS, and psychiatric disorders will cause an applicant to be uninsurable. As a general rule, applicants for LTCI must be ambulatory and must not need help with ADL's such as bathing, dressing, eating, toileting, transferring and continence.



Heart disease, cancer or mild stroke generally will be acceptable risks if there has been an acceptable recovery period, usually between two and five years, depending on the insurance company. Adult-onset diabetes and hypertension generally will be acceptable risks if they can be controlled with medication. Also, people who take antidepressants for situational depression (i.e., for death of a spouse or child) are generally acceptable risks if their health is otherwise good. Some insurance carriers will accept certain health problems for the payment of additional premium or will make alternate benefit offers such as a longer elimination period or a limit to the benefit period.

The younger a person is, the better the chance that he or she will qualify for LTCI. According to The Journal of Risk and Insurance, 2001, Vol. 68, No. 2, P. 229 (Leon, et al., “In Sickness and in Health: An Annuity Approach to Financing Long Term Care and Retirement Income”), 12 to 23% of people who apply for LTCI at age 65 do not qualify, and 20 to 31% who apply at age 75 do not qualify. Therefore, it is wise to apply for LTCI at the youngest age possible.

## **B. Considerations When Purchasing a Policy**

When looking for a LTCI policy, there are ten features that you should consider:

1. Level of Care. While most people think of nursing home care when they think of LTCI, there are generally more desirable alternatives, including skilled and non-skilled care in the home, an assisted living facility or an adult day care center. A good policy will cover care both in a nursing home and in other settings, as well.
2. Guaranteed Renewable. A good policy will be “guaranteed renewable” meaning that it cannot be cancelled as long as the premiums are being paid. Generally, the rates can only increase if they are increased on a “class” basis—not on a policy-by-policy basis.
3. Prior Hospitalization Requirement. With strict hospital admission requirements set by Medicare and private health insurers, LTCI should not require doctors to admit patients to the hospital in order to satisfy a “prior hospitalization” requirement.
4. Daily Benefit versus Monthly Benefit. A good LTCI policy will pay a flat amount for care either on a per day or per month basis. Because some days will require more care at a greater cost than others, it is best to find a policy that pays a monthly benefit since it will pay if care for a particular day exceeds the normal daily benefit.
5. Benefit Period/ Benefit Maximum. The “benefit period” refers to the amount of time that an insurance company is obligated to pay benefits under an LTCI policy. The “benefit maximum” refers to the amount of money that an insurance company is obligated to pay

under a policy. Most companies provide “benefit maximum” policies, which pay benefits until the “benefit maximum” is met. Afterwards, the insured will pay for care from his or her own funds.

6. Restoration of Benefits. Most good LTCI policies have benefit restoration periods. After benefits have been paid for a short-term illness, the insured must be recovered for a period of time in order for benefits to be restored for a later claim.

7. Joint Policy Option. The joint policy option allows married couples or families to purchase joint benefit periods. They can be structured a number of ways:

a. Spouses can share a benefit period at a lower premium than the two separate benefit periods would cost. If one spouse dies without using his or her benefit, then that benefit can be passed to the surviving spouse at a reduced premium.

b. Spouses with separate benefit periods can access each other’s benefit period for an increased premium, meaning, if spouses each purchase a five year benefit period and one spouse dies after using only one year of the benefit period, then the surviving spouse has nine years of benefit remaining.

c. Spouses with separate benefit periods can purchase an additional benefit period equal to the primary benefit to share, first-come-first served. If spouses each purchase a five-year

benefit period, then they can jointly purchase an additional five years of coverage.

d. The insured can select up to three immediate family members to be on the same policy, with all sharing one deductible. If the applicant dies or fails to pay the premium, then ownership of the policy may be transferred to the next named family member on the policy.

8. Elimination Period. The elimination period is the waiting period, or number of days that the insured must pay out of his or her pocket before the insurance company begins paying benefits under the policy. The longer the elimination period, the greater the potential out-of-pocket costs; however, if the elimination period is longer, the premiums will likely be considerably lower.

9. Waiver of Premiums. Most LTCI policies will waive premiums after a specified time, usually expressed in days of benefit payments paid out for care. Many policies offer the “dual waiver” meaning that premiums are waived for both spouses when one spouse starts receiving benefits.

10. Inflation Protection. The most important feature to consider when looking into LTCI is inflation protection. The policy should have some sort of provision to help the benefits keep pace with inflation.

These are just some of the many features to consider when looking at long-term care insurance. For more information, you should speak with your local insurance agent or your financial advisor.

Additionally, you can request information on long-term care insurance from your local office on Aging or the AARP.

## **VII. Health Care Considerations With Alzheimer's Disease and Dementia**

### **A. Introduction**

Alzheimer's Disease (Alzheimer's) is a type of dementia. "Dementia" is the term used to describe a serious decline in intellectual function, including memory, the ability to think, and behavior. The primary organ affected by this disease is the brain, specifically the areas involving cognitive function and memory function. Mild memory problems, including difficulty recalling names or retrieving information, are seen with normal aging. Memory may be affected by multiple small strokes, Parkinson's Disease and a variety of medical illnesses and medications.

In 2012, estimates put the number of Americans suffering from Alzheimer's at 5.4 million. The prevalence of this disease rises with age, with approximately 12.5 percent of older Americans (age sixty-five and older) having the disease, and with nearly fifty percent of people aged eighty-five and older having the disease. Alzheimer's disease is the sixth leading cause of death in the United States.

Alzheimer's and related dementia have a tremendous impact on the spouse and on the family caregivers (who are often referred to as the "hidden victims" of the disease). Alzheimer's indeed affects the entire family. It is important that caregivers get support because the

stress of caring for someone with Alzheimer's often is mentally and physically draining for caregivers. When the caregivers become ill, they no longer are able to care for the patient, resulting in institutionalization of Alzheimer's patients.

### Symptoms

The onset of Alzheimer's usually is gradual, beginning with minor memory problems and progressing to significant memory loss. Alzheimer's also may cause visio-spatial difficulties, poor judgment, personality changes or other evidence of impaired brain function. In turn, this decline in mental function leads to behavioral and emotional changes, loss of ability to care for oneself, and ultimately death due to physical deterioration. Alzheimer's affects each individual differently. Therefore, the number and degree of symptoms, as well as the course of the disease, may vary from person to person. Eventually, Alzheimer's leaves its victims totally unable to care for themselves. Symptoms you may notice in an individual with Alzheimer's include problems remembering recent events; difficulty in performing familiar tasks; confusion; personality and behavioral changes; impaired judgment; and difficulty in finding words, in finishing thoughts or in following directions. Be particularly alert for depression, which often occurs early and is hidden or "masked" in Alzheimer's patients. If it is suspected, seek professional help.

## **B. Services Available for Persons Suffering with Alzheimer's and Dementia**

If you suspect that someone you know has Alzheimer's, it is important to contact your family physician or other health care provider for a physician referral. A comprehensive evaluation involving physicians, nurses, neurologists, and social workers can assist families in developing comprehensive plans of care for patient and family. Medical professionals also can evaluate the patient for other medical problems that may be causing or contributing to the dementia. It is important to have one primary care physician. That physician can provide continuing care for the person with Alzheimer's, and in providing that care, treat other illnesses that arise, prescribe medications, answer questions, and provide caregiver support. When needed, the caregiver may seek a second opinion from a physician specially trained in managing Alzheimer's disease. A physician may also suggest that you consult a geriatric psychiatrist to help manage the behavior, depression and personality changes that often accompany the disease. Nurses involved with Alzheimer's patients or Alzheimer's support group members can teach family members the ongoing practical care of a person with Alzheimer's.

A family may also want to consult an attorney experienced in medical assistance law, a local legal aid program or the Tennessee



Commission on Aging and Disability to receive advice on their rights to government financial support through Medicare, Medicaid, Social Security, disability, or veteran's benefits.

### **C. Services Available for the Caregiver**

Caregivers for the Alzheimer's patient will need support and assistance in giving that care. There are many people who can help—family and friends, health care professionals, the Alzheimer's Association Chapter, and others. Specialized programs and services can make life easier and more enjoyable for the caregiver and the person with Alzheimer's. For example, individuals with Alzheimer's may forget or refuse to eat. Meals on Wheels is a helpful program, but someone may have to be at home to accept delivery and supervise the eating. It is important that an individual with Alzheimer's receives help from people who are trained to help those with Alzheimer's.

### **D. Resources for Families**

The job of caring for a person with Alzheimer's can be overwhelming. It is important that the caregiver take an occasional break from hands-on caregiving. Remember that asking for help will allow you to care for your loved one longer. There are several

options for the caregiver to have some time away from caregiving. These options provide for care for the Alzheimer's patient for a few hours, a few days, or even on a permanent basis.

#### Day-to-day Assistance for the Caregiver in the Home

If you would like the Alzheimer's patient to remain in the home, you may contact visiting nurses, home health aides, and paid companions to provide service in the home. These individuals provide services that may include health care, personal care, shopping, cooking, or housework. Make sure that the person providing the home care is familiar with Alzheimer's so that they can provide special care.

#### Day-to-day Assistance Outside the Home

Adult day care programs provide people with Alzheimer's several hours a day of structured recreation and mental stimulation. In an adult day care program, people with Alzheimer's can interact with others, exercise, listen to music, and engage in other activities. These activities can give them an opportunity to enjoy life and can be extremely beneficial to the patient and the family.

### Short-term Assistance for the Caregiver

Certain hospitals, nursing homes and residential facilities offer short-term stays for the Alzheimer's patient. This service, often called "respite care," provides full-time care of the Alzheimer's patient within the facility for a period of days or weeks. When the Alzheimer's patient is in respite care, the caregiver has a chance to take a vacation or just get some relief from the stress of caregiving.

### Long-term Assistance

As Alzheimer's disease advances and symptoms worsen, the family of the Alzheimer's patient may have to decide to make other living arrangements for the patient. Placing a family member in a nursing home or other long-term facility for any reason is a difficult decision, and yet, at some point, it may be the most responsible decision that can be made. Some nursing homes specialize in the care of persons with Alzheimer's, offering so-called Alzheimer's or Special Care Units. A word of caution: be certain the facility that you choose is in fact one of substance with high-quality personnel. It may be beneficial for you to actually visit the facility and observe it in action. If a person with Alzheimer's is terminally ill, he or she may be accepted in a hospice program.

### Other resources for families

Alzheimer's affects families physically, emotionally, financially, and socially. Many families find that other problems become magnified under the stress of caregiving and that they need help, support, or advice in areas not directly related to the illness. Although you may receive support from families, neighbors and clergy, it may be advisable to seek outside assistance.

The Alzheimer's Association often receives phone calls from families of Alzheimer's patients who have questions about protecting the future security of the patient and/or his family. The Alzheimer's Association has chapters and peer support groups in cities across the country and provides the support families need. In addition to providing support and guidance, chapters offer educational literature, consumer information and workshops for caregivers and professionals. There also is a MedicAlert and Safe Return program that creates a file with photographs of the Alzheimer's patient, which can be of assistance if the patient becomes lost. If you or someone that you know has Alzheimer's disease or a related dementia, please call the Alzheimer's Association for more information about education and support groups and other programs, (800) 272-3900, or go to the Alzheimer's Association website at <http://www.alz.org>. Also, go to the National Institutes of Health National Institute on Aging Alzheimer's Disease Education

and Referral Center at <http://www.nia.nih.gov/alzheimers>.

The United States government now has a website, primarily for caregivers, at <http://www.alzheimers.gov>.

### **E. Legal Considerations for Alzheimer's Patients**

As soon as Alzheimer's is suspected, the family and the patient should meet with a knowledgeable attorney to plan for legal and financial complications. This is important because during the early stages of the disease, the Alzheimer's patient may be capable of participating in legal and financial planning to protect the future management of his or her life and assets. When meeting for a legal consultation, it may be helpful to have the following documents: executed wills and trusts, prior tax returns, health and life insurance policies, pension information, deeds, mortgages, bank accounts and information about other financial investments. For more information, visit the Tennessee Commission on Aging and Disability website on Alzheimer's Disease at <http://www.tn.gov/comaging/alzfirst.html>

### **SECTION THREE: LONG-TERM CARE AND HOUSING FOR SENIORS**

#### **I. Nursing Homes**

##### **A. Introduction**

A nursing home is a facility designed for people who are not in an acute phase of illness. Nursing home residents do not need the level of care that a hospital provides, but they do require continuous nursing and other health-related services on an inpatient basis. Such care might be needed as a result of aging or because of prolonged illness or injury. Nursing homes provide care on a 24-hour basis, 365 days per year. The scope of their services includes nursing care, custodial care and rehabilitative care (including physical, occupational and speech therapy) as well as specialized care, such as care for people suffering from Alzheimer's disease. In addition, nursing homes provide their residents with social, recreational and spiritual activities.

Nursing homes are regulated by both Tennessee and federal laws. All nursing facilities in Tennessee must be licensed under state law and inspected regularly. The inspections (called "surveys") are done by the Department of Health. The survey results must be made available at the facility for residents and prospective residents (and their families) to examine. More than eighty percent of nursing homes participate in Medicare or Medicaid, and thus are required to meet

federal certification standards on quality of care, quality of life and residents' rights.

Many people are involved in providing services to the residents of nursing homes. They include:

**Administrative Staff**

The Administrator, Director of Admissions, Director of Personnel and Finance Director

**Medical Director**

Physician responsible for overseeing the delivery of medical care to all residents in the nursing home

**Nursing Staff**

The Director of Nursing (who is a registered nurse), the Assistant Director of Nursing, Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Certified Nurses Aides (CNAs). Generally, the Director of Nursing and Assistant Director of Nursing supervise the work of the nursing staff. The RNs and LPNs provide medical treatments, administer medications, and document the medical care that is provided. The CNAs provide custodial care to patients (e.g., bathing, feeding and toileting.)

### **Therapists**

Physical, occupational, recreational and speech therapists who help residents maintain their physical and functional status

### **Social Services Staff**

Social workers who help residents cope with emotional and psychological issues and who assist with discharge planning

### **Activities Director**

Staff member who provides therapeutic recreational programs that are designed to meet the assessed needs of the nursing home residents

### **Dietary Staff**

Food service director and dietary assistants: the food service director is responsible for managing the meals program and seeing to it that the dietary needs of the residents are met. Dietary assistants are involved in the preparation and delivery of meals.

## **B. Selecting a Nursing Home**

Multiple factors come to bear when choosing a nursing home. Do the facility services and capabilities meet the individual's needs? Does the facility participate in Medicare and Medicaid? Are the



residents well cared for? Is the facility clean? Are residents' rooms comfortable with adequate light and ventilation? Are meals appetizing? Is there an activities program that is stimulating and varied? Are the buildings and grounds well maintained? Are there any problems? The list of questions can be long, and finding answers is not easy.

One of the best resources the Federal Government has provided with regard to how to find and compare nursing homes, how to pay for nursing home care, how to identify alternatives to nursing home care and where to go for help is *The Medicare Guide to Choosing a Nursing Home with Nursing Home Checklist*, which can be accessed at <http://www.Medicare.gov/pubs/pdf/02174.pdf> or may be obtained by calling (800) 633-4227.

The Medicare Program has also instituted a Five-Star Quality Rating System, which ranks Medicare- participating nursing homes on a scale of one to five stars, with one star being the lowest ranking ("much below average") and five stars being the highest ranking ("much above average"). There is one overall rating for each nursing home and a separate rating for each of the following sources of information: health inspection results, quality measures and staffing

levels. There has been controversy regarding the limitations, design and methodology of the Five-Star Quality Rating System (e.g. data may not be accurate or up-to-date). Medicare suggests that one can make an informed decision about selecting a nursing home by using the Five-Star Quality Rating System, together with other information such as talking to one's doctor, visiting the nursing home and talking to its staff and contacting the state Long-Term Care Ombudsman or State Survey Agency.

### **C. Paying for Nursing Home Care**

The cost of nursing home care depends on a number of factors: the kind of care that an individual needs, the level of services provided and where one lives. Sources of payment for nursing home care include Medicare, Medicaid, long term care insurance and personal resources.

## **Medicare**

Medicare is a federal program of insurance that provides for medical insurance and skilled medical care for people who are sixty-five and older, some disabled persons and individuals with end-stage renal disease. Generally, Medicare does not pay for nursing home care.

The Medicare benefit for nursing home care is very limited:

Medicare will only pay for a certain number of days of care in a skilled nursing facility per period of illness if you qualify for Medicare benefits. This limited benefit is provided under Medicare Part A.

There are deductibles and coinsurance amounts that must be paid, and there may be conditions for qualification.

Some Medicare Advantage Plans offer limited skilled nursing facility care if the care is medically necessary. You may have to pay some of the costs.

The official Medicare website contains useful information about paying for nursing home care. See <http://www.Medicare.gov>, or call (800) MEDICARE ((800) 633-4227); TTY/TTD (877) 486-2048.

## **Medicaid and TennCare**

Medicaid is a program jointly administered by the Federal Government and the state that pays for certain health services and nursing home care for people who meet the financial need criteria.

Generally, eligibility for Medicaid is based on a person's income and available assets.

Not all nursing homes will accept Medicaid, although many do. An individual should confirm that the nursing home he or she selects will continue to serve a resident whose funding source may switch from private or Medicare funds to Medicaid funds.

Note: More information about paying for nursing home care with Medicare or Medicaid funding can be found in Section Two of this Handbook.

## **Veterans Benefits**

The Veterans Administration (VA) may provide assistance for nursing home expenses for some veterans. Assistance also may be available to some children and surviving spouses of veterans. In order to receive these benefits, however, one must choose a nursing home that is under contract with the Veterans Administration. Contact your local VA office for more information.

See Section 1 of this Handbook for more information on Veteran's Benefits.

## **Private Health and long-term care insurance**

Some private health insurance plans provide for limited nursing home coverage. If an individual is covered by private insurance policies, talk with the carrier or insurance agent to find out whether the policy covers nursing home care. Most private insurance policy coverage is contingent upon the physician's documentation of the need for skilled nursing care.

Long-term care insurance policies can help pay for many types of long-term care, including nursing home care. The coverage and the cost vary widely across policies. The Medicare program website contains useful information about long-term care insurance (<http://www.Medicare.gov>).

## **Personal resources**

Personal resources are, of course, a source of funding for nursing home care. Any agreement between a nursing home and a prospective resident (or the resident's family) for the provision of care in return for payment of some kind is a contract, and all written agreements should be read and understood before being signed. Guarantors, responsible parties or cosigners for these contracts are bound to make good the debts of the nursing home resident should he or she be unable to pay. A person, such as a son or a daughter,

who is considering becoming a guarantor or responsible party should take special care to understand exactly what obligations he or she may have to assume.

#### **D. Residents' Rights**

When a person enters a nursing home, he or she must comply with reasonable rules of the facility and respect the rights of staff and other residents. A person does not, however, surrender his basic civil rights upon being admitted to a nursing home. While institutional care may place limitations on a nursing home resident's privacy and lifestyle, the resident should expect care that is compassionate, dignified and of high quality.

Nursing home residents have the right to:

- A safe and clean living environment
- Privacy
- Information
- Exercise their civil rights
- Participate in or refuse treatment

- Voice grievances without retaliation
- Manage personal finances
- Adequate and appropriate medical and nursing care
- Be free of physical and chemical restraints
- Take part in community activities
- Be treated with courtesy and respect
- Private visits and unrestricted communications
- Not to be transferred or discharged from the home
- Be free from physical, verbal, mental, and emotional abuse

## **E. Long-term Care Ombudsman Program**

The Tennessee Long-Term Care Ombudsman Program provides assistance to elderly residing in nursing homes, homes for the aged, assisted care living facilities, and adult care homes. The Ombudsman is available to help residents and their families resolve questions or problems and will advocate for solutions to problems for qualified residents of long-term care facilities. When residents and families cannot resolve their problems through consultation with the facility staff or governmental agencies involved, they should contact their District Ombudsman. The Ombudsman works with many agencies and may be able to help resolve questions or concerns that involve state and federal agencies administering services to the elderly. Concerns can include quality of care, financial information, resident rights, admissions, transfer, and discharge. Also included are questions regarding nursing homes, homes for the aged, assisted care living facilities, Medicaid, and Medicare.

The Ombudsman takes time to listen to the concerns of the resident. Residents can share concerns about their situations or other personal concerns. \*The Ombudsman will keep these matters confidential. The Ombudsman will assist in trying to resolve concerns and problems and can also explain resident rights and responsibilities.

For more information, visit these websites:



<http://www.tn.gov/comaging/ombudsman.shtml>

<http://www.tn.gov/comaging/documents/6981%20Ombudsman%20Poster2.pdf>

## **II. Assisted Living Facilities**

### **A. Introduction**

The term "assisted living" is used to describe any group residential program that is not licensed as a nursing home and that provides personal care and support services to people who need help with daily living activities as a result of physical or cognitive disability.

Support services provided may include general oversight and assistance with activities of daily living such as eating, dressing / grooming, toileting, bathing and transferring from one position to another. Services may also support instrumental activities of daily living, such as meal preparation, administering medications, grocery shopping , managing finances, housework and transportation.

Generally, assisted living combines housing, personal services, and light medical care. The facilities support those individuals too frail to live alone, but too healthy to utilize most of the medical services provided in a nursing facility.

Assisted living facilities may be free-standing, near or integrated with nursing homes, as components of continuing care retirement communities, or at independent housing complexes. Assisted living options may range from one-bedroom apartment units to free-standing two-story homes.

## **B. Regulation**

Assisted living facilities, unlike nursing homes, are not regulated by the federal government. They are regulated by the State of Tennessee and licensed by the Department of Health. In order to be admitted to an assisted living facility, residents must be screened to determine whether they are medically appropriate for assisted living.

In addition to assisted living facilities, the State of Tennessee licenses homes for the aged. The major difference between the two is that homes for the aged do not administer light medical care. By law, residents of homes for the aged will require less personal assistance than residents of assisted living facilities.

## **C. Paying for Assisted Living**

Private funds pay for the majority of assisted living services. Some assisted living services may be paid for by Veterans Affairs. Long term care insurance policies may, in some cases, cover assisted living as an "alternative care benefit". It is important to note that neither Medicare nor Medicaid pay for assisted living expenses.

## **D. Choosing an Assisted Living Facility**

Choosing an assisted living facility can be a difficult decision. It is important to visit several communities and to talk with residents and staff. A careful comparison should be made of fees and services offered by different facilities.

For more information, including things to consider when selecting a facility, refer to the “Nursing Home” section of this Handbook.

### **III. Adult Day Care**

#### **A. Introduction**

Adult day care programs offer a variety of daytime services for impaired older adults. Individuals who participate in adult day care programs attend on a regular, planned basis. Most adult day care centers are open 8-10 hours a day on weekdays and there is a trend toward weekend service as well. Adult day care centers work to assist the older adult to remain living in the community at the highest level of independence possible. Many participants and their family caregivers are able to delay or avoid use of more costly in-home and nursing home care by using adult day care. Admission requirements and procedures vary somewhat across centers, but all require that the applicant have a personal physician or clinic with whom care can be coordinated.

## **B. Services Provided**

Adult day care services are designed to assist both the participant and the family. Adult day care centers provide health maintenance services, therapeutic activities, personal care, and emotional support to participants.

Older persons may benefit from the special care if they are physically impaired, socially isolated, mentally confused, in need of personal care help, have limited ability to function independently in the community, or generally need supervision. Family caregivers benefit from adult day care as well. Knowing their family member is safe at the day care center gives employed caregivers peace of mind while at work.

## **C. Paying for Adult Day Care**

Although many adult day care participants pay for care out-of-pocket, most centers use sliding fee scales or offer scholarships to serve those who need financial assistance. Most long-term care insurance policies cover adult daycare, and worker's compensation policies have paid adult daycare costs for those with work-related disabilities. Medicare and Medicaid do not pay for adult day care.

## **IV. Home Care**

### **A. Introduction**

Home care refers to a variety of services performed at a person's home by an outside agency. It enables elderly persons requiring part-time medical or personal care to remain in their homes and thereby avoid the higher priced nursing home care. "Home health care" is the term used by Medicare when referring to specific medical services rendered in the patient's home, which are reimbursed by Medicare. Many additional services are available to homebound elderly that are not covered by Medicare, however. The term "home care" refers to this broader range of services.

#### Types of Services Available

The types of services that are available fall into two categories: skilled services and home support services.

Skilled services include part-time nursing care, physical therapy, speech therapy, occupational therapy, medical supplies and equipment. For example, a nurse may come to the house periodically to change the dressing on a wound, adjust a catheter, or give an injection. The physical therapist may come to review exercises with a patient recovering from a hip fracture. The cost varies depending on the length of the visit and the type of care.

Some of the expense may be covered by Medicare, Medicaid or health insurance.

A homebound senior citizen may also receive home support services, such as homemaker services and home chore services. These programs offer assistance with the activities of daily living. A homemaker or home health aide will help the patient with bathing, grooming, and dressing. The aide may also assist with meal preparation, grocery shopping, and light housekeeping. A home chore service provides house cleaning, household repairs and yard work. These services are usually not covered by Medicare or Medicaid but some programs may offer limited at-home recovery programs. Sometimes religious or civic organizations may offer limited services free of charge or for reduced fees. Home care may be an optional extra in a long-term care insurance policy.

The Commission on Aging and Disability offers a limited range of home services through its OPTIONS for Community Living program. You can get information about these services and other information about community services by calling (866) 836-6678 (1-866-TENNOPT).

Nutritious home-delivered meals are available to home bound senior citizens through programs like "Meals on Wheels." Meals are

delivered once a day, five to seven days a week. Most programs can accommodate special diets. The cost is modest and most programs have a sliding scale fee based upon one's ability to pay. This program varies from place to place and local information can be obtained by contacting your Area Agency on Aging.

Other home care and support services may be provided by programs in your community. Typical community-based services include the following: transportation, case management, information and referral, legal services, adult day care, congregate meal sites, home delivered meals, senior centers, respite care, and telephone outreach. Contact your local Area Agency on Aging for available community-based services.

### Arranging for Home Care

Home care is available through hospitals, public health departments, Area Agencies on Aging and private agencies. If the home care follows a hospitalization, frequently the hospital discharge planner will assist you in coordinating the services you need.

Your family doctor may be able to help develop a plan for home health care and recommend agencies to contact. If you anticipate reimbursement from Medicare, Medicaid, or insurance, a doctor's certification of medical need is essential. Other sources of



information include: Area Agencies on Aging, adult day care centers, and local religious organizations, such as Jewish or Catholic Family Services. The National Association for Home Care & Hospice has an agency locator on their website at <http://www.nahcagencylocator.com/>

## **B. Choosing a Home Care Provider**

You can determine the caliber of a Medicare-certified home care provider by reviewing its Medicare Survey Report. Contact your state's insurance counseling program for assistance in obtaining this document. Many states require home care providers to earn a license to operate. In order to obtain a license, facilities must meet basic legal and operating standards imposed by the state department of health. Contact your state health department to obtain information on its licensed providers. Additionally, you should inquire about the accreditation of the home care provider. Several professional organizations have established standards to define quality in home care services, and many home care providers voluntarily seek accreditation from these organizations to signify that they have met national standards for quality care.

Some patients, who have been diagnosed with a terminal illness, may choose to receive Medicare-certified hospice services in lieu of

routine Medicare services. A hospice provider can offer services beyond home health services, such as homemaker services, respite care, counseling and limited coverage of prescription drugs.

### Questions to Ask

The National Association for Home Care suggests asking the following questions in choosing a home care provider:

- How long has the provider been serving the community?
- Does the provider supply literature explaining its services, eligibility requirement, fees, and funding sources?
- How does this provider select and train its employees? Does it protect its workers with written personnel policies, benefits packages, and malpractice insurance?
- Are nurses or therapists required to evaluate the patient's home care needs? If so, what does this entail? Do they consult the patient's physicians and family members?
- Does the provider include the patient and family members in developing the plan of care?
- Is the patient's course of treatment documented, detailing the specific tasks to be carried out by each professional

caregiver? Does the patient and family receive a copy of this plan, and do the caregivers update it as changes occur? Does this provider take time to educate family members on the care being administered to the patient?

- Does this provider assign supervisors to oversee the quality of care patients are receiving in their homes? If so, how often do these individuals make visits? How can the patient and his or her family members call with questions or complaints? How does the agency follow up on and resolve problems?
- What are the financial procedures of this provider? Does the provider furnish written statements explaining all of the costs and payment plan options associated with home care?
- What procedures does this provider have in place to handle emergencies? Are its caregivers available 24 hours a day, seven days a week? How does this provider ensure patient confidentiality?

### **C. Paying for Home Care**

Medicare may help pay for home health care provided certain conditions are met (see *Section Two* of this Handbook). You will have to pay for the costs that Medicare does not cover, including the difference, if any, between what Medicare considers "reasonable" and the actual cost. Medicare does not cover the cost of full-time nursing care at-home, meals delivered to your house or homemaker services. However, in some circumstances, Medicare will pay for intermittent use of a home health aide, occupational therapist, medical social services, and medical supplies and equipment.

Although in the past, home health care was not usually offered as part of private insurance plans, many insurance companies are beginning to offer the coverage. You need to check the coverage under your policy and also check with the home health agency to make sure they will accept private insurance.

While reimbursement may be available for skilled services received in the home, this is seldom the case for home support services such as a homemaker or an aide. Some agencies have received federal, state or local government funds to provide these services to senior citizens meeting specified eligibility requirements. You should check with your local Area Agency on Aging or the individual home health agency to see if you qualify.

## **V. Continuing Care Retirement Communities**

### **A. Introduction**

Continuing Care Retirement Communities, also known as CCRCs, offer mature adults the ability to 'age in place' without ever having to move for health reasons. Whereas most traditional retirement communities offer only independent living and assisted living, CCRCs provide a continuum of care that includes everything from independent and assisted living to memory care and skilled nursing. Continuing care offers the convenience of having healthcare and support services in one primary location where seniors can easily transition from one residential care setting to another.

In Tennessee, there are 24 Continuing Care Communities. More information is available in the Resources section.

### **B. Types of Continuing Care Retirement Communities**

CCRCs differ in the amount of health care they offer their residents. What is sometimes referred to as a "Type A" or "extensive" facility will provide food, housing, medical services and nursing care, and assisted living care for the remainder of the retiree's life, frequently even after you have exhausted your financial resources. It can be thought of as a form of self-insurance, spreading the risk of

catastrophic health care costs among all residents in the CCRC so that no one will face financial ruin. Because of the guaranteed health care, Type A facilities are the most expensive.

"Type B" or "modified" retirement communities offer the same services as the Type A facilities but without the health care guarantee. For example, a Type B facility may provide 15 days of nursing care per year. After you use up your 15 days, you must pay a daily charge for the nursing care. In the event you run out of money, the facility is not contractually obligated to provide for your care.

In the "Type C" or "fee for service" community, residents have priority access to the nursing unit, but they must pay for the services received. Moreover, Type C facilities generally do not include meals or personal care assistance as part of their package. Consequently, they are the least expensive.

### **C. Fees for Continuing Care Retirement Communities**

A Continuing Care Retirement Community charges two fees - a onetime entry fee followed by a monthly maintenance fee. The entry fee will range depending on whether it is a Type A, B, or C facility, the size of the living unit, and the amenities associated with the community (such as swimming pool or golf course). The monthly maintenance fee will also range based on these factors and may be

increased from year to year as inflation dictates.

Residents meet the monthly fee with Social Security and pension income, while the funds for the entry fee are often obtained from the sale of the retiree's home. An alternative used by some CCRCs is to offer a reduced entry fee, accompanied by proportionally higher monthly fees.

#### **D. Pros and Cons**

Security and flexibility are two reasons for joining a CCRC. With increased life expectancies, many elderly persons experience two stages in their retirement years. The younger elderly are capable of independent living and community involvement. For this age group, the social and recreational features are attractive. Dependency and declining health characterize the second stage of retirement. The CCRC is equipped to keep you in your apartment as long as possible. Housekeeping and dietary services (offered by the Type A and B facilities) handle the day-to-day living activities you may no longer be able to do for yourself. Transportation to shopping areas is often provided. Most importantly, a nursing facility is located on the premises if and when skilled or custodial care becomes necessary. The support systems of a CCRC enable various gradations of living along the independent/dependent continuum tailored to the

individual's needs. In addition, some life care contracts may even include care for you even after you exhaust your financial resources.

There are some drawbacks to living in a Continuing Care Retirement Community. The most obvious is the cost. The entry fees are so expensive that should you join a CCRC and later find you do not like it, the bulk of your life savings is gone and you cannot afford to move elsewhere. Some senior citizens do not desire a community as homogeneous as CCRCs tend to be. Finally, there have been a few instances where, due to fraud or mismanagement, CCRCs have gone bankrupt.

#### **E. Choosing a Continuing Care Retirement Community**

Initially, you must determine whether or not communal living is for you. You should visit each CCRC you are considering and determine what the entrance requirements for each are. You should also inquire about rules and policies. A visit ought to include a night in the guesthouse as well as a couple of meals in the dining room.

Ask questions about the services available. How many meals are included in the contracts? Is service available to the resident's apartment if it is needed? Is the kitchen willing to prepare meals to fit a prescribed diet?



You should tour the grounds and buildings, paying close attention to the layout, appearance, upkeep, and security. Within the apartment you should look for the usual features, which concern prospective renters or homeowners, along with looking for an emergency call system. You should engage the residents and staff in conversation. Are the people friendly? How do they interact? Are there many social activities? Is there a library? Are there recreational facilities?

You should insist upon visiting the nursing unit. This is essential for the Type A facilities, as health care constitutes a significant portion of the services you will be purchasing. Does the health care facility provide a full range of services, such as annual or routine physical exams, dental care, physical/occupational/speech therapy, prescription drugs and/or eye care? What is the limit to the health and medical care coverage that is included in the regular fees? What is the community's policy for transferring residents from apartment and independent living units to nursing home facilities? What is the policy for returning residents to their apartments or independent living units? You should observe the manner of the staff. Are they calm or frantic? What about the patients? Are they groomed and dressed? Are the halls clean and free of odor? Finally, the visit should include a trip into town to see the nearby churches, stores and recreational opportunities.

## **F. Seeking Professional Advice**

More important than the physical layout of a retirement community is the insurance/ services package you will be buying. You must remember that you are buying a contract and not real estate. To this end, you should carefully read the contract and have your lawyer read it. You should have in writing all fees and the corresponding services to be rendered by the provider. Clarify whether services such as housekeeping, linens and personal laundry, telephones, parking and transportation are included. You should ask the facility for its fee-hike history. You should see what the refund policy is in the event a resident dies prematurely or chooses to leave the community. Nonrefundable entry fees tend to be lower. However, retirees wishing to leave an estate for their heirs may want to look for a CCRC offering a refundable (or partially refundable) entry fee.

You and your lawyer should also scrutinize several annual reports and balance sheets of the CCRC. You should ask if an actuarial study has been done and request a copy of the report. Even more so than a financial disclosure statement, an actuarial study will reveal whether the facility will be able to meet its obligations several years down the road. In addition, you might inquire if the CCRC has been accredited by the American Association of Homes and Services for the Aging (AAHSA).

Continuing Care Retirement Communities are increasing in popularity as evidenced by the long waiting lists for admission at some of the more established facilities. Careful planning, coupled with wise shopping, can make this form of housing and health care a successful alternative for many senior citizens.

## **VI. Housing Assistance**

### **A. Landlord-Tenant Issues**

As you make the transition into senior citizen status (and assuming you will not desire or need long-term care facilities), the housing accommodations that once met your needs may no longer serve your best interest. Some people prefer to avoid the physical and financial requirements of home ownership and instead rent a residence or apartment. There are several rights and duties of both a landlord and a tenant in Tennessee. Here are some guidelines.

### **B. Understanding Your Lease**

A “lease” is an agreement between the owner of property, the “landlord,” and a person who wants to use the property for a period of time, the “tenant.” The lease may be oral or written; however, a written lease is much better and safer. Oral leases are not preferred because they are only as good as the recollection of the parties who enter into them. If either a landlord or a tenant fails to remember any term of an oral lease or disagrees with the other party’s recollection of the terms of the lease, there is nothing in writing to consult in which to resolve such a matter.

An example of an oral lease is a tenant telling a landlord that he or she will pay \$500 a month for the apartment and the landlord

saying, “Fine, it’s yours,” and accepting the first rent payment and delivering the keys to the property. Generally, the term of an oral lease is the same as the period of time for which the tenant pays the rent, up to one year. For example, if the tenant pays rent each month under an oral agreement, the term of the lease is only one month. This is called a month-to-month tenancy. If the tenant pays rent once every three months, the term of the lease is three months.

A written lease is a contract signed by both the landlord and the tenant that spells out the rights and responsibilities of both the landlord and the tenant. Although there are no special terms needed to create a lease, a standard lease should include the names of the parties, a description of the premises, the length of the lease, the amount of rent and security deposits due, if any, and the signatures of the landlord and tenant. Any oral promises and agreements must be written into the lease, or they will not be binding. Any subsequent change to the written lease must also be in writing and signed or initialed by both the landlord and the tenant. Although the landlord must provide the tenant a copy of the written lease within one month, it is best to insist on a copy signed by the landlord prior to paying rent and before moving in. Before signing a lease, you should read it carefully, fully understand the contents, and agree with the contents. If you are not satisfied with the terms of your lease, it may be wise to consult an attorney.

For more information, see  
<http://www.tn.gov/consumer/documents/LandlordTenantBrochure.pdf>

### **C. Tennessee Residential Landlord-Tenant Act**

Tennessee Code Annotated Title 66 Chapter 28 contains the Uniform Residential Landlord and Tenant Act. It states the landlord shall:

- Comply with requirements of applicable building and housing codes materially affecting health and safety;
- Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- Keep all common areas of the premises in a clean and safe condition; and
- In multi-unit complexes of four (4) or more units, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection subject to § 66-28-401(3).

By statute, the Landlord Tenant Act only applies in counties that have a population greater than 68,000. These Tennessee counties are: Anderson, Blount, Bradley, Davidson, Greene, Hamilton, Knox, Madison, Maury, Montgomery, Putnam, Rutherford, Sevier, Shelby,

Sullivan, Sumner, Washington, Williamson, and Wilson. Tenants in these counties can file a complaint with the Tennessee Consumer Affairs Division. More information is available on their website <http://tn.gov/consumer/>

Filing a complaint does not result in a home visit. Consumer Affairs will attempt to contact the landlord to help mediate the situation. If the landlord agrees to mediation, then mediation can occur. If a landlord does not agree to mediation, then legal action is the standard response.

#### **D. Rental Assistance**

Housing Choice Voucher (Section 8) is a rental subsidy program funded by the federal government. The program is designed to supplement the rent payments of low-income families and individuals who qualify. An advantage of the program is that an elderly tenant can live in the apartment or house of his or her choice and may even be able to get help paying for the place where he or she already lives. The program is not available everywhere in Tennessee. To find out if Section 8 assistance is available in your area and, if so, how to apply, contact your local DHS or housing authority, or Area Agency on Aging. You will be referred to the Tennessee Housing Development Agency (THDA) for your area.

To qualify for assistance, your income must be within the specific limit for your locality. The limit differs in different areas of the state. The limit also depends on household size. Eligibility for a housing voucher is determined by the THDA based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status. The THDA office serving your community can provide you with the income limits for your area and family size.

During the application process, THDA will collect information on family income, assets, and family composition and will verify this information with other local agencies, your employer and bank, and will use the information to determine program eligibility and the amount of the housing assistance payment.

If THDA determines that your family is eligible, they will put your name on a waiting list, unless it is able to assist you immediately. Once your name is reached on the waiting list, THDA will contact you and issue to you a housing voucher.

## **E. Utility Assistance**

The Low-Income Home Energy Assistance Program (LIHEAP) is a federally funded grant program created by the Omnibus Reconciliation Act of 1981. The program aims to assist low income



households, primarily those who pay a high proportion of household income on home energy, in meeting their immediate energy needs. In Tennessee, LIHEAP is administered through a network of 19 local agencies that reach all 95 counties.

Applicants must meet income eligibility. Income eligible households are those at or below 150% of the U.S. Poverty Guidelines.

Application, along with all necessary verifications, must be submitted through the designated LIHEAP agency in the applicant's county of residence. LIHEAP is a one-time assistance offered to help defray heating and cooling expenses, as long as funding is available. LIHEAP assistance does not go directly to the client or applicant; rather direct payments are made through the LIHEAP agency to the local utility company or energy supplier.

For more information or further assistance with the application process, please contact your local LIHEAP agency. A complete list of agencies is available at this website:

<http://www.thda.org/DocumentCenter/View/4366>.

You can also download a copy of the LIHEAP application here:

<http://www.thda.org/DocumentCenter/View/4365>

If you do not have a telephone or cannot afford the one you have, the local telephone company in your area may waive or reduce many of the service connection charges through the “Link-Up America”

program, if you are in a low-income household. Go to <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers>, or call the Federal Communications Commission at (888) 225-5322, or your local telephone company.

## **F. Property Tax Relief**

State of Tennessee Property Tax Relief Program For Elderly Homeowners eligibility:

- Must be 65 or older on or before December 31, 2013.
- Must provide evidence of age.
- Must own and use the property on which you live as your primary residence.
- Combined 2011 income of the applicant, applicant's spouse and all co-owners of the property cannot exceed \$27,800. (Annual income from all sources. Refer to information regarding income sources.)

## **SECTION FOUR: PLANNING FOR THE FUTURE**

### **I. Divorce Considerations for the Senior Adult**

When an older person divorces, there are a myriad of special considerations not necessarily applicable to younger couples, as well as other factors unique to the marital relationship. The first step is to obtain a lawyer knowledgeable about divorce considerations for senior adults. When you meet with your lawyer, if you are overwrought or upset, it is also advisable to have a relative or friend accompany you to the lawyer's office, but to preserve attorney-client privilege, you alone should meet with the lawyer in private.

You should first discuss the fee arrangement to assure that you will be able to afford that particular lawyer. If you cannot afford the fee, you should contact your local legal aid office. You must be completely honest with your lawyer. You will need to know your monthly living expenses, the family income, all assets and how titled, whether there are any agreements between you and your spouse, existing medical insurance, whether there are Social Security or other retirement benefits and whether or not they are in pay status, and the names and status of all credit accounts, including utilities.

If you do not have this information, your lawyer will help you obtain it. If you are interested in learning more about divorce, you may go to the Tennessee Supreme Court website at JUSTICE FOR ALL

website at <http://www.justiceforalltn.com/>

## **II. Real Property Transfers**

Many senior citizens who own real estate, especially those who are retired, attempt to sell or give away their property for various reasons. Some persons want the additional income. Other persons want to help their families avoid paying heavy estate taxes on the property after they die. These people usually have sufficient assets to be subject to federal estate taxes. For 2013, the exemption amount was \$5.25 million for each person (\$5 million exemption adjusted for inflation). In 2014, the exemption amount is \$5.34 million.

Senior adults who wish to transfer their property for any reason, or change a title in any way (for example, by adding a name to a deed), should consider several things before doing so:

- If you deed your property to a child or someone else as a gift, you may not be eligible for Medicaid coverage for long-term nursing home care for some period of time, depending on the value of the property, and the terms of the transfer.
- If you deed your home to a child or someone else and do not keep your name on the deed, that person can force you to move out of your home.

- If you want to add another name to your deed so that each of you has an equal share and the right of survivorship, the deed must be explicit. For example, the deed must say, “As joint tenants with right of survivorship,” or if the other person named in the deed is your spouse, the deed must say, “as tenants by the entirety,” or “John Doe and wife, Jane Doe,” or vice-versa.
- If you add another name to your deed so that each of you becomes a joint tenant with rights of survivorship, or if you are tenants by the entirety, remember that you cannot sell the property later without the other person’s permission. Also, upon your death, the property automatically will belong to the other person if that person has survived you, regardless of what you may provide in your will.
- If you want to give your property to another, but keep the right to live in it for the rest of your life, your deed to the other person must specifically reserve a “life estate” to you or the right to live on and use the property for your lifetime.
- Depending on the value of the property transferred, you may be making a gift which may use up part of your lifetime gift tax exemption.
- If you have equity value in your property because the property’s value exceeds any liens against the property, you may borrow against the equity by obtaining a “home equity

loan.” You will be required to put a mortgage on your property. Many of these programs allow you to borrow and repay the loan as your needs permit, as long as the loan balance never exceeds a certain limit. A less common way to borrow against your equity is the “reverse mortgage” (See the Reverse Mortgages information in Section 1 of this Handbook.) If you have equity value in your property, you can borrow against this equity and receive monthly income. You will have to put a mortgage on your home. The loan fees, interest rates, restrictions, and fees paid to professionals (e.g., attorneys, appraisers, and surveyors) can vary widely. Before entering either a home equity loan or a reverse mortgage, make sure you have a complete understanding of all the costs and rules.

- If you co-sign or guarantee a note for a relative or friend, the lender may enforce the note against you. If the note is not paid, the lender may sue you and place a lien against your assets, including your home. The lender may force sale of your home to satisfy the lien. This is especially true if you have, by means of a deed of trust or mortgage, put up your house as security for the other person’s loan.
- You should consult an attorney knowledgeable in real estate before you do anything that may affect your interest in your home or other real property.

### **III. Estate Planning Considerations**

The term “estate planning” refers to the organizing and ordering of an individual’s property, called an “estate,” so that it is transferred at death to the beneficiaries of an individual’s choice in the most efficient manner. Estate planning also may involve planning for an individual’s possible disability. It involves a coordinated effort by you and your professional advisors (attorney, accountant, insurance agent, financial advisor, certified financial planner and others) to minimize death taxes and expenses of death or disability, and to provide for your beneficiaries in the way that you intend. An effective estate plan is accomplished through the preparation of certain legal documents and devices such as wills, trusts, powers of attorney, and advance medical directives.

#### **A. Wills and Codicils**

A will is a written document stating your directions for the distribution of your assets after your death. Generally, a will lists your individual beneficiaries and what part of your estate you wish to give each of them. Your will also should name an executor, the person who will be responsible for administering your estate.

A will allows you to personalize the distribution of your property. If you do not make a will, your estate will be distributed by a court-appointed executor according to Tennessee law, which may run

contrary to your intentions. Persons you intend to exclude may be entitled to your assets. A will can make estate administration proceed more quickly and smoothly. For larger estates, a properly drafted will can significantly reduce estate and capital gains taxes.

### Preparation of your Will

With some minimal advance planning, a will is relatively simple and inexpensive to have prepared.

To make a valid will in Tennessee, generally the following requirements apply:

The maker of the will, called the testator (for a male) or testatrix (for a female), must be at least

- 18 years of age;
- The maker of the will must be of "sound mind" at the time the will is prepared;
- The will must be in writing and signed by the maker; and
- The will must be witnessed by at least two people who will not receive any property under the will. The witnesses must sign their names at the end of the will in the presence of the testator. (If the will is entirely in the handwriting of the testator, this is called a holographic will, which is a valid will in Tennessee.) A holographic will does not need to be witnessed;



However it must be signed and dated and indicate that it is intended to be a will.

While the law does not require that you use a lawyer to write your will, it is recommended that you consult an attorney to help you prepare the will because improper will drafting can cause needless expense.

Prior to meeting with a lawyer, you should ask if the lawyer has a questionnaire you can complete. If not, the lawyer will likely ask you for the following:

- A list the family, friends, and/or organizations to whom you wish to leave property. The list should include the full names and addresses of each recipient.
- A list of all the property you own and how it is titled, including real property, such as land or a home and tangible personal property, such as jewelry, cars, boats, and art. Intangible personal property, such as bank accounts, stocks and bonds should also be listed.
- You should also decide how your property will be divided among the recipients. For example, you may want to have your property split equally among your children. You should consider alternative recipients in case you outlive your first choices. For example, you might name your grandchildren as alternates in the event one or more of your children does not

survive you.

You will also choose an executor (also called a “personal representative”) to administer your estate and distribute your assets. You may choose your surviving spouse, or in the event that your spouse is not alive or able, then one or more of your children, or perhaps a trusted friend or relative. People with larger estates sometimes ask a bank or trust company to serve as executor.

Note: Some of your property may not be distributed by will. Items such as insurance proceeds, pension and IRA benefits, and annuity funds typically will be distributed by beneficiary designations. When you set up an account such as these, you choose the beneficiary. You can name or change a beneficiary by contacting the company in charge of your account. Those beneficiary designations will control distribution and will be unaffected by the terms of your will.

### Changing Your Will

You should review your will from time to time, especially if your circumstances change significantly. For example, you may need to change your will if you move to a new state or get married, remarried or divorced, or if there is any other major change in your

personal or financial situation, such as the birth of a child or grandchild or an increase or decrease in net worth. A good rule is to review your will annually.

You can change your will by making a new will or signing an amendment, known as a codicil, to your existing will. If you wish to revoke your previous will, you should destroy it after execution of the new one in order to avoid the confusion produced by the existence of more than one will. You should be careful not to write on a current or existing will. Erasing or marking through parts of a will may invalidate the entire will or have other undesirable consequences. If you need to amend the will, use a codicil or have a new will drafted.

Generally, divorce or annulment of your marriage does not entirely revoke your will. It only revokes those provisions pertaining to your former spouse. However, it is still a good idea to reconsider the terms of your will in this situation.

### Dying Without A Will

If you die without a will, you are said to have died “intestate.” If you have not left a valid will or trust, or have not transferred your property in some other way, Tennessee law will determine how your property will be distributed. An administrator will be appointed to collect your assets, pay debts collectible against you, pay your

funeral and burial expenses, and then distribute the remainder of your possessions to persons specified under fixed rules of Tennessee law. Tennessee's intestacy laws will give property to the surviving spouse if the decedent had no children.

If a decedent had a spouse and one child, then the estate is divided equally between them. If there was a spouse and more than one child, then the spouse gets 1/3 and the remaining 2/3 is divided among the children.

If a decedent died without a spouse, then the estate is distributed to the children (or their issue by representation). If there are no issue, then the estate is distributed to the parents, or if not living, to brothers and sisters (or their issue, by representation). If there are no brothers or sisters (or nieces or nephews), then the property passes ½ to maternal grandparents and ½ to paternal grandparents. If there are no relatives, then the property goes to the State.

## **B. Revocable Trusts (aka “Living Wills”)**

A revocable trust is a document created by an individual (the “grantor” or “trustor”) for the purpose of managing the grantor’s assets. The trust agreement appoints a trustee who holds title to the trust property and performs the management of the trust. The grantor, alone or with the grantor’s spouse, typically serves as trustee of the trust as long as he or she is competent to do so. Since the trust is revocable, the grantor can change any of the trust terms or revoke the trust during his or her lifetime.

At the grantor's death, or in the event of the grantor's incapacity, the trust becomes irrevocable. If the grantor was serving alone as trustee, a successor trustee is appointed according to the terms of the trust agreement. The successor trustee then is responsible for distributing the trust assets, or retaining the assets in trust, as directed by the trust agreement. The assets that are held or received by the trust can remain in trust indefinitely, subject to certain tax and other limitations. Therefore, the grantor can keep a trust in place for a spouse, children, grandchildren, or great-grandchildren.

Many people prefer revocable trusts because the terms of the trust do not become public at the grantor's death, and the assets held in the trust do not pass through probate. If you are interested in using a trust in your estate plan you should seek the advice of an attorney to draft a trust instrument that suits your particular needs and circumstances.

### **C. Life Insurance**

Many people have life insurance policies. Most policies will be payable to the beneficiary named on a beneficiary designation form, to a trust or to the policy holder's estate. They will be payable on death and will pass outside of probate if there is a named beneficiary. If you have not named a beneficiary, or if the proceeds are payable to your estate, then they will pass under your will, or through intestate administration, at your death. Proceeds are not taxable income to your beneficiaries; however, they are included in your estate for estate and inheritance tax purposes.

### **D. Joint Tenancy Ownership**

Joint tenancy ownership is where two or more people hold title to an asset together. However, unlike other forms of joint ownership, upon the death of one of the owners the entire interest passes automatically to the surviving joint tenants. Actually, the full name for joint tenancy is Joint Tenancy with Right of Survivorship (JTWROS). Right of survivorship means that whoever dies last owns the whole property; in Tennessee, the instrument creating the joint tenancy must clearly state that it is with right of survivorship.

Because property in joint ownership with survivorship does not pass through probate, some people may be tempted to use joint ownership with survivorship to distribute their estates with the idea

of sparing their families the expense and delay of probate proceedings. Joint ownership can complicate your affairs while you are still living, however, since control over jointly held property is limited. Joint ownership gives another person equal control over your property. Adding names to a title or deed may negatively affect your eligibility for tax credits and government benefits. Your assets could be subject to claims of the joint owners creditors'. Also, it may contradict your plan for division at death. Before considering joint ownership in your estate plan, you should consult an attorney for advice and assistance.

#### **E. Charitable Gift Planning**

Each year, thousands of people contribute their time, talents and money to America's charitable, religious, educational, cultural, service, and healthcare related organizations. Indeed, private philanthropy is the foundation of every charitable endeavor. Our tax laws recognize the role of charitable organizations in meeting public needs that are a benefit to society. As a result, these laws provide incentives to encourage charitable gifts.

When doing your estate planning, you should talk to your attorney about whether charitable giving is an option for you to consider. With gifting during life, it is possible for you to see the real impact

that your gifts make in the life of an organization that you hold dear. In addition to outright cash gifts and gifts of appreciated assets, you may want to consider the benefits of life income gifts, which allow you to make a gift to a charitable organization and receive payments for life. Additionally, you may want to consider a bequest from your Will or Revocable Trust that will be payable upon your death.

There are a number of ways to make charitable gifts, and the following are just a few of the options that are available.

### Cash Gifts

Gifts of cash, usually made by check, are the most popular form of charitable giving. Cash gifts are attractive to many people because they are simple to make, immediately effective, and easily earmarked for the current needs of an organization. All cash contributions may be deducted up to fifty percent (50%) of a donor's adjusted gross income.

### Gifts of Appreciated Assets

Gifts of assets that have increased in value since their purchase are often very attractive options when considering making a gift during life. If you sell stocks, bonds, mutual funds or real property that have appreciated in value, then you will have a taxable capital gain. If those same assets are gifted to a charitable organization, then



those gifted assets are deductible at their full fair market value if they have been held for longer than twelve months, as long as the fair market value of the gifted asset does not exceed thirty percent (30%) of your adjusted gross income. If it does exceed the thirty percent (30%) limit, then excess deductions can be carried forward into as many as five additional tax years.

### Gifts of Retirement Assets

Today, many Americans have large amounts of retirement savings in tax-qualified retirement plans. When an individual dies with a large accumulation, a beneficiary who is neither a spouse nor a charity can be left with a tax burden that consumes most of the gift.

Unpaid retirement benefits at death are part of a decedent's taxable estate when passing to a beneficiary other than a surviving spouse or charity. Also, when relatives are named as beneficiaries of retirement assets, those beneficiaries are required to pay tax on the retirement assets upon receipt. Thus, after the taxes are paid on the assets, the inheritance will be considerably less than the original amount. If those same retirement assets are bequeathed to a tax-exempt organization, then the tax-exempt organization does not have to pay income tax on the assets.

Also, retirement benefits that were accumulated free of income tax during an individual's life are subject to income tax, whether received by an individual or by his or her heirs, including the spouse (i.e., pre-tax IRA contributions). Such benefits are free of income tax only if they are paid over to a charitable beneficiary.

If you think a gift of retirement assets may be appropriate for you, please consult with your financial advisor or attorney.

### Charitable Remainder Trust

A Charitable Remainder Trust is an irrevocable trust that holds and invests assets for the benefit of one or more non-charitable income beneficiaries and for one or more charitable remaindermen. The Charitable Remainder Trust allows you and a charity to share income and remainder interests, by setting up a gift to charity while retaining an interest for a spouse or other relatives. Charitable Remainder Trusts will generally be set up so that you can contribute assets to provide income during a specific period of time (i.e., your lifetime or a period not to exceed 20 years). After the expiration of the term, the remaining assets will be turned over to a charity.

Charitable Remainder Trusts are generally attractive, as they can be funded with a wide array of assets, including bonds, mutual funds, stock and real estate. They are most beneficial for people who want to receive income while fulfilling charitable giving goals. For example, if a person sells an appreciated asset like real estate, then that person will pay capital gains tax on the sale. If that same property is transferred to a Charitable Remainder Trust, then the Trustee can sell the property, with no gift, estate, or capital gains taxes for the donor. The Trustee can then set up an investment that will provide an income stream, which will be subject to ordinary income taxes and capital gains. At the death of the last beneficiary or at the end of the trust period, then trust terminates, and the amount remaining is distributed to the named charity.

There are two types of Charitable Remainder Trusts: (1) the Annuity Trust; and (2) the Unitrust.

With an Annuity Trust, the income that is paid out to the beneficiary is a fixed percentage (not less than 5% or more than 50%) of the fair market value of the assets. The Annuity Trust is best used with assets that will be able to generate the required income and which do not fluctuate greatly in value. The income to the beneficiary is fixed and will not grow as the income base grows. Consequently, the income may not keep up with inflation.

The Unitrust is more flexible than the Annuity Trust; however, it is a riskier option. With a Unitrust, you receive a fixed percentage (not less than 5% or more than 50%) of the value of the assets in the trust, but the assets are valued annually, with you receiving a fixed percentage of the current fair market value. You will benefit from any growth in the investment, but there is no guarantee that the growth will occur. Additionally, the Unitrust allows for additions to the asset base, whereas the Annuity Trust does not. The Unitrust has greater potential to keep up with inflation because income payments will increase if the investment base grows in value; however, if the value of the assets falls due to market conditions, the income will also decrease.

### Charitable Lead Trust

A Charitable Lead Trust is similar to a Charitable Remainder Trust in that it is an irrevocable trust. However, instead of benefitting non-charitable beneficiaries and a charitable remainderman, the Charitable Lead Trust allows you to place assets in a trust that will benefit a charitable organization for a set period of time and then ultimately pass to your heirs. You pay a discounted gift tax when transferring assets to the trust, and the trust's beneficiaries will ultimately receive any remaining assets free of estate tax. You can specify a set number of years during which a guaranteed amount or a fixed percentage of the value of the assets in the trust will be paid to a charitable organization. When the trust terminates, the remainder is paid to the named non-charitable beneficiaries.

### Charitable Gift Annuity

A Charitable Gift Annuity allows you to donate assets to a charitable organization in exchange for an annuity contract while also providing a charitable deduction at the time of the gift. You then receive income based on your life expectancy as determined by the IRS Life Expectancy Tables. The total expected income determines what portion of the initial gift is tax deductible. Then, the charity receives the remainder of the donated assets after your death (or after the death of the second beneficiary if it is a two-life annuity).

The Charitable Gift Annuity is beneficial if you need income, want an immediate tax deduction, and wish to support a single charity. The Charitable Gift Annuity is attractive because the annuity contract is administered by the charity. It is a “set it and forget it” option in most instances. With the gift annuity, you donate the assets directly to the charity, which is responsible for providing you with annuity income.

It is less appropriate for you if you do not need income but want an immediate tax deduction, wish to support multiple charities, or want to create a family legacy. The drawback to the Charitable Gift Annuity is its lack of flexibility. First, not all charities offer gift annuities. If a charity offers a gift annuity program, you cannot change the charity you wish to benefit once the gift annuity is established, and you cannot benefit multiple charities. Finally, the Charitable Gift Annuity is not appropriate if you want to donate real estate or other special assets.

#### Bequest Under a Will or Revocable Trust

Charitable bequests can also be made under a Will or Revocable Trust, which means that nothing is paid until after death. A bequest can be a specific dollar amount, a specific asset, or a percentage of

your estate. It can also be payable to the charitable organization if, for example, your spouse or your child predeceases you.

With a bequest, you have the comfort of knowing that you can amend or revoke the bequest if your circumstances or family needs change. You also have the comfort of knowing that a bequest costs you nothing during your lifetime.

#### **F. Special Needs Trusts**

A special needs trust is created by a family member or other person for the benefit of a disabled beneficiary using the beneficiary's own money or money to be received through an inheritance. In order to receive distribution from the trust and also continue the beneficiary's eligibility for government benefits such as Medicaid, a special needs trust is used to hold the beneficiary's money. Upon the death of the beneficiary, the trust must reimburse Medicaid expenditures made on behalf of the disabled beneficiary before the trust can be disbursed to any other surviving beneficiaries of that trust or any heirs of the disabled decedent. When a special needs trust is established for a disabled individual using the disabled individual's own funds, it is frequently the result of a lawsuit recovery or settlement, or the disabled individual is the beneficiary of an estate or an insurance policy. Based on the federal law that permits the use of special needs trusts, special needs trusts are also called "(d)(4)(A) trusts."

## **IV. Probate and Estate Administration**

### **A. Introduction**

Probate is the process where a decedent's assets are collected; the debts, taxes and costs of administration are paid; and any balance is distributed to the beneficiaries or intestate heirs. Probate is usually a formal process before a court, but it can also be an informal process requiring little court supervision. There are different types of probate proceedings, and each will be discussed in this section.

The standard type of probate proceeding is common form probate. This is what most people think of when they reference a probate proceeding. Common form probate is the most frequently occurring type of formal probate proceeding and is the most structured.

The first step with a common form probate is to determine whether or not the decedent had any testamentary instruments – that is, a will, codicils, revocable living trusts, etc. If the decedent did not leave any testamentary instruments, then she will have died "intestate" and the laws of intestacy control the distribution of her estate. If the decedent left a will, then she died "testate" and the distribution of her estate is subject to the terms of her will. It should be noted that a will is not effective until it is admitted to probate by the court of proper jurisdiction.



## **B. The “Personal Representative”**

The "personal representative" is the person responsible for administering the estate. Personal representative is the generic term. Where a will nominates a personal representative, the proper term is "executor" (for a male) and "executrix" (for a female). Where a personal representative is not named by the decedent, the title “administrator” is used for a male and "administratrix" for a female. The personal representative has a fiduciary duty to the beneficiaries and/or heirs of the estate, and must act impartially and in good faith towards all those interested in the administration.

## **C. Estate Administration**

The personal representative must determine the nature and the extent of the decedent’s assets very early in the process. The makeup of the decedent’s assets will have an impact on the administration throughout the course of the proceeding, and influence how the personal representative proceeds and what options are available to her. Additionally, the personal representative must bring all probate assets owned by the decedent under the control of the estate. The personal representative has a fiduciary duty to safeguard all assets brought under her control. A "probate asset" is owned by the decedent individually and does not automatically transfer to someone else. An example of a probate asset would be a bank account titled solely in the name of a

decedent. Another example would be a life insurance policy payable to the decedent's estate. "Nonprobate assets" transfer in accordance with the governing terms of the asset itself. The intervention of the probate court is not required with nonprobate assets. An example of a nonprobate asset would be a bank account that pays on death ("POD") to a named individual. Another example would be a life insurance policy payable to the children of the decedent.

Likewise, information regarding debts and obligations of the decedent should be established very early in the process. The personal representative should be careful when contemplating the payment of debts. If the estate is "insolvent" – meaning that the debts exceed the assets – then a specialized proceeding must be instituted. Even if the estate is not insolvent, the personal representative must carefully assess the claims sought by claimants and, when appropriate, must require that a formal claim be filed against the estate.

A personal representative is responsible for providing creditor notice. Creditors and prospective creditors of an estate can receive notice in two ways. First, "published notice" is required in a common form probate if the estate is open within one year of the date of death. Second, a personal representative has a statutory duty to provide "actual notice," which is in the form of a direct mailing, to all "known creditors" and to all "reasonably ascertainable creditors" of an estate. Potential creditors that receive actual notice,

generally speaking, have four months from the date of first publication of the creditor notice to file a claim against the estate. Creditors not receiving actual notice must file a claim within one year of the date of death, absent improper behavior on the part of the personal representative. Claims for taxes, however, are not subject to the one-year statutory limit, and the personal representative may need to give special consideration to any amounts sought by the Bureau of TennCare. The preceding discussion pertains only to unsecured claims of an estate. A secured claim is handled differently and generally must be paid; otherwise, the asset securing the debt can be reclaimed by the creditor.

Tennessee Code Annotated Section 71-5-116(c)(2) states that an estate may not be closed until a release or waiver is obtained from the Bureau of TennCare if the decedent is over the age of 55 at the time of death. This is true irrespective of whether or not the decedent was a recipient of TennCare during his or her lifetime. As a practical matter, personal representatives often apply for a TennCare Release from the Bureau of TennCare as many courts require this document before an estate can be closed. Additionally, if the decedent owned real property, a title attorney will likely require a TennCare Release as part of the documentation required for the sale of the real property. If the decedent was a recipient of TennCare, then the personal representative must address the amount sought by the Bureau of TennCare.

An inventory is a list of the decedent's assets initially known to exist

---

to the personal representative. An inventory should be filed within 60 days of the appointment of the personal representative. An accounting is a chronology of the finances of an estate; that is, the assets coming into the hands of the personal representative and distributions that are made by the personal representative. In essence, it is a "sophisticated checkbook" that accounts for every penny related to the estate. Depending on the length of the administration, multiple accountings may be required. The statutory requirements of filing an inventory and making accountings can be waived. However, even if the formal inventory and accountings are waived, the personal representative should be diligent and complete in her recordkeeping. Additionally, even if a formal inventory and accounting are not required by the court, it is best for the personal representative to provide an informal accounting to the residuary beneficiaries of the estate. Generally speaking, keeping the beneficiaries updated and informed promotes a harmonious administration.

The personal representative is responsible for tending to the tax obligations of the decedent. It is possible that the personal representative may need to file a number of different tax returns. An inheritance tax return must be filed for almost all estates. This is true because an estate cannot be closed unless tax clearance is obtained from the Tennessee Department of Revenue. Tax clearance can be obtained either through the filing of an inheritance tax return, or if the gross estate, including adjustments for lifetime

taxable gifts, is less than \$100,000, a waiver can be sought. Gift tax reporting can impact the inheritance tax return, so the personal representative must be mindful of both reported and unreported taxable gifts made during the decedent's lifetime. Additionally, the personal representative is responsible for making sure that all income tax obligations of the decedent have been satisfied, including the final personal income tax return and any income earned during the course of the administration.

After all taxes, debts and costs of administration have been paid, the remaining assets may be distributed pursuant to the decedent's will or if none, the laws of intestate succession. The personal representative should obtain a receipt from each beneficiary setting forth the fact that they have received all to which they are entitled from the estate.

Every probate proceeding is unique. It is difficult to predict what the personal representative and parties interested in the estate will encounter throughout the process. The tasks discussed above provide a general overview of the tasks required in most estates, but it is quite likely that there will also be numerous other tasks for the personal representative to handle.

As noted earlier in this section, common form probate is not the only type of probate proceeding. The Small Estates Act authorizes an abbreviated probate proceeding when certain types of tangible personal property (e.g., furniture, clothing, etc.) or intangible

property (e.g., stocks, cash, etc.) aggregating to less than \$25,000 can be collected by the "Affiant" and distributed to the proper parties after the payment of debts. The Affiant is the person who files the appropriate paperwork with the court and tends to the handing of the small estate.

A muniment of title proceeding, which primarily addresses the distribution of real property, is another abbreviated probate proceeding that can be appropriate in certain situations. A "limited probate proceeding" may be appropriate, which is why it is always important to consider the unique facts of an estate before filing anything with a court.

For some decedents, there is no need for any type of formal probate proceeding. For example, if all of a decedent's assets pass by operation of law (i.e., all of the assets are nonprobate), then there may be no need for court supervision. A common example is when a married couple does not utilize wealth transfer tax planning. In that situation, careful planning can result in all of their assets being owned jointly with right of survivorship or with assets paying automatically to the surviving spouse. In those situations, there likely is no need to go to the probate court, because everything passes to the surviving spouse at the death of the first. Having said this, even if no formal probate proceeding is required, the surviving spouse must contemplate if other action is required, such as filing an estate tax return to elect "portability." ("Portability" is an estate planning technique authorized under the Internal Revenue Code

whereby a surviving spouse can use a predeceased spouse's estate tax exemption, but that is true only if affirmative steps are taken by the surviving spouse.)

#### **D. Elective Share of Surviving Spouse & Homestead**

Tennessee law provides certain special rights for a spouse in addition to their general rights under the law of descent and distribution or under a decedent's Will. Under T.C.A. § 31-4-101, for decedents dying after December 31, 1997, the surviving spouse or an intestate estate, or a surviving spouse who elects against the decedent's Will, has a right of election, to take an elective share amount equal to the value of the decedent's net estate, which is determined based upon the number of years the surviving spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the surviving spouse were married to each other:	The elective share percentage is:
Less than 3 years	10% of net estate
3 years but less than 6 years	20% of net estate
6 years but less than 9 years	30% of net estate
9 years or more	40% of net estate

Under T.C.A. § 31-3-101(b), if the decedent and the surviving spouse were married to each other more than once, the number of years that the decedent and spouse were married is to be combined. The years do not have to be consecutive but may be separated by divorce. All years married are counted toward the total number of years for determining the elective share.

The decedent's net estate is defined as all of the decedent's real property and personal property subject to disposition under the terms of the decedent's Will or by intestate succession, reduced by funeral and administrative expenses, secured debts, homestead, year's support, and exempt property, but not including claims of unsecured creditors incurred after April 1, 1977.

Once the surviving spouse's elective share has been calculated, a second calculation is required. The second calculation is the value of each asset included in the decedent's gross estate for Tennessee Inheritance Tax purposes that passed to the surviving spouse. If the amount of the second calculation is greater than the amount of the first calculation, then the surviving spouse is not entitled to further payment from the decedent's estate. If the second calculation is less than the first calculation, then the surviving spouse is entitled to the



difference between the first calculation and the second calculation.

In order to elect against the decedent's Will or elect against the intestate share, a surviving spouse must file a Petition for Elective Share. Under T.C.A. § 31-4-102, an action to claim an elective share must be commenced within (9) months from the date of the decedent's death.

In addition to the right to an elective share, the surviving spouse has the right to exempt property, homestead and year's support. Pursuant to T.C.A. § 30-2-101, for any decedent dying on or after January 1, 1998, a surviving spouse of an intestate decedent or a spouse who elects against the decedent's Will is entitled to certain exempt property having a fair market value (in excess of any indebtedness and other amounts secured by any security interests in the property) which does not exceed Fifty Thousand Dollars (\$50,000). Exempt property includes tangible personal property normally located in, or used in and about, the principal residence of the decedent and not primarily used in a trade or business or for investment purposes, and a motor vehicle or vehicles not primarily used in a trade or business. Any action to set aside exempt property must be commenced within nine (9) months following the date of death of the decedent as set forth in T.C.A. § 31-4-102.

The surviving spouse is also entitled to homestead. T.C.A. § 31-1-104(a) provides as follows:

“Unless the homestead has been converted to cash by order of the court pursuant to § 30-2-209, and distributed outright and in fee, the homestead exempt in the possession of or belonging to each head of a family shall, upon that person’s death, any provision by Will to the contrary notwithstanding, go to the surviving spouse during the surviving spouse’s natural life, with the products thereof, for the surviving spouse’s own use and benefit and that of the surviving spouse’s family who reside with the surviving spouse, and, upon the surviving spouse’s death, any provision by Will to the contrary notwithstanding, it shall go to the minor children of the decedent, free from the debts of the father, mother or children. Upon the death of the minor child or children, or their arrival of age, the land may be sold, and the proceeds distributed among the heirs of the deceased head of a family as if the head of the family had died intestate...”

In order to claim homestead, the surviving spouse is not required to elect against the Will of the decedent. It must be claimed within nine (9) months of the decedent’s death.

Finally, the surviving spouse is entitled to year's support, as set forth in T.C.A. § 30-2-102. The surviving spouse is entitled to a reasonable allowance in money out of the estate for such surviving spouse's maintenance during the period of one (1) year after the death of the spouse, according to the previous standard of living, taking into account the estate of the deceased spouse. The court may consider the totality of the circumstances in fixing the allowance for year's support, including assets that may have passed to the spouse outside of probate. The year's support allowance is payable to the surviving spouse unless the court finds that it would be just and equitable to make a division of the allowance between the spouse and any unmarried minor children. The year's support is the absolute property of the surviving spouse and cannot be used to satisfy the claims against the estate. In order to obtain the year's support, a surviving spouse must elect against the Will before the year's support can be claimed. This application must be made within nine (9) months of the decedent's death.

## **V. Durable Powers of Attorney**

A Power of Attorney ("POA") is a document that authorizes someone to make decisions on your behalf with respect to finances, property, and related matters. The person executing the POA is known as the "principal." The person named in the POA to act on behalf of the principal is known as the "attorney-in-fact." A POA is an important document for everyone to have. If a person does not have a POA and is unable to make decisions, then the only alternative is a conservatorship, which is a formal proceeding before a court. A conservatorship is much more costly and involved than a POA.

Generally speaking, a POA is quite broad in its scope, authorizing numerous acts including, but not limited to, the following: dealing with taxing authorities; procuring insurance; dealing with banks; and making gifts. It is important for a principal to carefully consider the actions the attorney-in-fact is authorized to make. The attorney-in-fact should act only with the principal's best interests in mind. Also, the POA should contain the appropriate language to make it "durable" so that the POA survives the incapacity of the principal. If a POA is not durable then it becomes ineffective at the principal's incapacity.

Alternatively, a POA can be limited in scope. In fact, some POA documents are limited for one-time transactions, such as the authorization to sign a title as part of the purchase of a motor vehicle or the authorization to complete a real estate transaction.

Given the current state of the law, the majority of POAs are effective immediately. That means that upon signing of the POA the attorney-in-fact is authorized to act on behalf of the principal. A POA can be "springing," meaning that it takes effect only if the principal is deemed to be incompetent by a licensed physician, but given health privacy laws this option can be problematic to implement, and is seldom seen nowadays.

## **VI. Durable Powers of Attorney for Healthcare**

Each of us has the right to make our own decisions with respect to our health care. However, what happens when we are not able to speak for ourselves? This situation can be addressed by a Health Care Power of Attorney, which is a document that allows someone that we nominate to make health care decisions for us. The person signing the Health Care Power of Attorney is the "principal." The person authorized to act on the principal's behalf is the "attorney-in-fact." Through the Health Care Power of Attorney, the principal can authorize the attorney-in-fact to make numerous decisions for the principal, including, but not limited to, choices with respect to the scope of treatment and the handling of the body after the death of the principal.

## **VII. Living Wills**

The Tennessee Right to Natural Death Act was enacted in 1985. The legislative intent of the Act is set forth at Tennessee Code Annotated Section 32-11-102 and reads in part:

The general assembly declares it to be the law of the state of Tennessee that every person has the fundamental and inherent right to die naturally with as much dignity as circumstances permit and to accept, refuse, withdraw from, or otherwise control decisions relating to the rendering of the person's own medical care, specifically including palliative care and the use of extraordinary procedures and treatment. The general assembly further declares that it is in the public interest to facilitate recovery of organs and/or tissues for transplantation and to provide mechanisms for individuals to express their desire to donate their organs and/or tissues.

This "fundamental and inherent right" is expressed through a document known as a Living Will. Any competent adult may execute a Living Will that becomes effective upon the loss of competency. A "competent person" is defined as "an individual who is able to understand and appreciate the nature and consequences of a decision to accept or refuse treatment." A Living Will must be in writing, and the writing should be "substantially in the form" set forth in Tennessee Code Annotated Section 30-11-105.

The execution of a Living Will signifies that it is the person's intent

that his or her life shall not be artificially prolonged if a physician has determined that there is no reasonable medical expectation of recovery irrespective of the use or discontinuance of medical treatment implemented for the purpose of sustaining life. In addition to terminating artificial means to sustain life, the suggested statutory form of the Living Will allows the person to decide whether or not he or she wishes to withhold artificially provided food, water, and other nourishment so that the individual may pass more quickly. However, note that pain-alleviating medication is still administered. Additionally, a Living Will can express a person's organ donation preference. Lastly, it is advisable to include cremation wishes in a Living Will rather than other documents, such as a will, since a Living Will is more easily accessible and oftentimes part of a patient's medical file.

## **VIII. Tennessee Health Care Decisions Act**

The Health Care Decisions Act ("HCDA") was enacted in Tennessee in 2004. The Act provides options and guidance for both patients and health care professionals with respect to medical treatment. The HCDA was implemented to make health care decision forms readily available and easy to execute for patients and also to aid health care providers.

In addition to a number of verbal instructions, the HCDA also authorizes the Board for Licensing Health Care Facilities to develop and issue appropriate model forms for advance directives that are consistent with the Act. As a result, certain forms are now easily available and are easily executed (i.e., either with two witnesses or with a notary public).

Perhaps the most commonly seen form created as a result of the HCDA is the Advance Care Plan. The Advance Care Plan is a thorough advance medical directive allowing health care decisions to be made on a person's behalf. The Advance Care Plan can be thought of as a detailed Living Will, and can include the designation of an agent to make health care decisions.

The Appointment of Health Care Agent form is another document created in connection with the HCDA. The Appointment of Health Care Agent can be thought of as a remedial Health Care Power of Attorney. The Appointment document names an individual to make health care decisions, but is much less detailed than a Health Care



## Power of Attorney.

The HCDA embraces the concept of a surrogate – that is, an individual other than the patient's agent or guardian authorized to make health care decisions for the patient. The Appointment of Surrogate Form allows a physician to name a surrogate to take his or her place to make health care decisions when appropriate.

Another document that may be of interest to patients is the Physician Orders for Scope of Treatment ("POST"). A POST can only be signed by a medical professional after meeting with the patient. The POST should accompany the patient when transferred or discharged, and can include instructions for resuscitation or the waiver of resuscitation – which is also known as a "DNR" or do not resuscitate. (The Tennessee statute previously dealing with a patient's decision regarding a do not resuscitate instruction to medical providers was revoked. Likewise, the corresponding "DNR" form can no longer be executed, but any DNR forms executed prior to the repeal of the statute are still effective.)

## **IX. Conservatorship & Guardianship**

### **A. Introduction**

Conservatorship or guardianship involves the court appointment of a person to have care and custody of another person (the incapacitated person) who is incapacitated and unable to provide for his own personal needs or to manage his financial affairs. A conservator or guardian is a person who is given the legal right to care for another person and/or person's property.

### **B. Guardianship in Tennessee**

The Public Guardianship for the Elderly Program was established in 1986 by the Tennessee General Assembly. The primary purpose of the program is to provide conservatorship services to persons 60 years of age and older who are unable to manage their own affairs and who have no family member, friend, bank or corporation willing and able to act on their behalf. This service is available in all 95 counties of the state, through district public conservators located at the nine Tennessee Area Agencies on Aging and Disability.

Individuals receiving services through the program may be unable to make decisions regarding their finances or needed medical care; frequently, they need assistance in obtaining the basic necessities of life. District public conservators help clients by providing assistance which enables them to remain in the least restrictive environment

while preserving personal dignity.

The guidelines for the program are found in the Tennessee Commission on Aging and Disability's Policies and Procedures for Programs on Aging.

(<http://www.tn.gov/comaging/polman2010.shtml>)

In addition to supervision by the Area Agencies on Aging and Disability and oversight by local courts, local programs are monitored annually by the state program coordinator, a staff member of the Tennessee Commission on Aging and Disability. The program is designated public sector, with some fees generated by court award based upon a sliding scale fee employed when the resources of a client indicate this to be appropriate. In no instance does a client who meets SSI low-income standards pay a fee. The Tennessee Commission on Aging and Disability adopted a suggested sliding fee scale for guidance in those instances when a fee is awarded.

#### Procedures for Establishment of Conservatorship

Normally, any interested adult person may file a petition with the Court for the appointment of a conservator of an incapacitated person. The person filing the petition is not necessarily the person who will be appointed the conservator. The individual for whom conservatorship is sought has the right to a notice of the proceeding and a right to a hearing on the question of his or her capability. The Court may appoint an attorney or guardian ad litem to represent the

interests of the alleged disabled person. If the Court finds the person incapacitated and in need of the protection, supervision, or assistance of the Court, it will appoint a conservator. The alleged disabled person has the right to appeal this decision to a higher court. Where appropriate, the Court should appoint a "limited" conservator for a person who suffers from only a mild disability or partial incapacity. This appointment can preserve many of the person's legal rights.

### Who Needs a Conservator?

Conservatorships deprive the incapacitated or disabled person of many civil rights. Thus, before you begin conservatorship proceedings, you should be certain such steps are absolutely necessary. If the proposed ward already executed a durable power of attorney so that someone is already willing and available to assist him or her then a conservatorship is likely not necessary. You should carefully consider whether the proposed ward is able to make decisions concerning his or her personal or business affairs.

Someone may need a conservator when:

1. Due to disability, the person has difficulty making decisions that keep him or her from harm, and the person refuses or is unable to accept assistance or support services

(such as money management or home care services) to protect him or her from harm, or

2. Help is being provided but is not protecting the person from harm, or

3. The person has not previously chosen an individual to act on his/her behalf, or the individual chosen has not acted in his/her best interests, and

4. The person's health and well-being are in imminent danger, and decisions about medical treatment, placement, and/or finances must be made.

For more information on conservatorship, contact your local Area Agency on Aging or Legal Aid Office. *See the RESOURCES SECTION in this Handbook for a list of these offices in Tennessee.*

## **X. Funeral Services**

### **A. Laws Concerning Funeral Homes & Crematoriums**

By statute and regulations, the federal government and State of Tennessee have created procedures to be followed by providers of funeral services. For example, itemized price information must be given over the telephone and confirmed in writing if requested. The required written confirmation is quite detailed and should be requested. The legal requirements governing cemeteries and crematoriums vary, and the funeral director is obligated by law to give you the correct information about your particular case. For example, because embalming is not required by law, the funeral director can require that the casket be kept closed. If cremation is desired, a casket is not required. You do not have to purchase any goods or services you do not want.

You may direct questions to the membership organization for funeral directors (Board of Funeral Directors and Embalmers).

#### **Mailing Address:**

Board of Funeral Directors and Embalmers / Burial Services Sections  
Davy Crockett Tower  
500 James Robertson Pkwy.,  
Nashville, TN 37243-1144  
Phone: 615-741-5062

Information on filing a complaint is available on the Tennessee Board of Funeral Directors & Embalmers website:

<http://www.tn.gov/regboards/funeral/complaint.shtml>

## **B. Planning Ahead**

Planning before the time of need or before the funeral has many advantages. Your wishes concerning your funeral can be specified to eliminate confusion and differences of opinion among survivors. The funeral expenses can be paid in advance, either in full or in installments, to eliminate financial burden at the time of need. Many funeral homes will agree to furnish goods and services at a set price, no matter when you die. These arrangements can be funded through a trust or by specially designed insurance policies. Cemetery lots can be purchased in advance and an appropriate monument can be secured. Any directions regarding the use of your body for medical research or for organ donations can be given to the funeral establishment of your choice.

Individuals who will be responsible for arrangements should be made aware that you have completed these details. If arrangements have been made with a particular funeral home, they can be transferred to another on request. You can always change or cancel the arrangements.

### **C. Planning at Time of Need**

When making funeral arrangements at the time of need, the funeral director will need certain information about the deceased, such as the following:

- Full Name, Date of Birth, Place of Birth
- Social Security Number
- Occupation
- Father's Name
- Mother's Maiden Name
- Marital Status
- Education Level
- Attending Physician
- Newspapers for Obituary Insert Place Service is to be Held  
Minister to Officiate
- Church Affiliation
- Cemetery Plot Information
- Military Discharge Information and Serial or Service  
Number
- Names of Pallbearers and



- Services and merchandise to be furnished

Be sure that this information is given to those people who will make the arrangements and/or the funeral home of choice. Most funeral homes will provide a mortuary planning sheet free of charge.

#### **D. Funeral Service Consumer Guide**

Be aware of pre-arranged funeral plans that do not specify exactly what you will receive.

A Federal Trade Commission Funeral Rule enables you to get the information you need to make decisions. You have the right to information regarding the costs of individual items and services, and if you inquire in person, the funeral home must provide a written price list of goods and services. Be sure to shop around and note whether or not the various plans guarantee a fixed price.

Be aware of claims delivered by dishonest salespersons. Especially be aware of salespersons who claim that the decedent ordered additional goods/items that you must now pay for. Always insist on proof that the decedent did order the goods.

## **E. Services for Veterans**

Anyone who was a member of the military at the time of death or honorably discharged from the military is eligible for benefits. You should inquire about the following items:

- Pension for widow or minor children; and
- Burial in National Cemetery; and
- Burial flag to drape casket; and
- Grave marker to mark grave of a veteran. (After 1980, a veteran must have served at least 24 months of active service or have been a Persian Gulf War veteran to be eligible for a marker.)

You may also want to contact the *Volunteer State War Era Veterans Honor Guard* to assist with the services. Their information can be found on their website at <http://milhonors.com/ceremony.htm>.

## **F. Other Issues**

### Social Security

Claims by your executor or heirs should be filed as soon as possible with your nearest Social Security office. You should inquire about the following items:

- Lump sum benefit death payment for surviving spouse or minor child. Life pension to widow over 60 years of age;

- Pension to widows with dependent children;
- Monies available to widows, widowers, divorced wives, and divorced husbands age 60 and older, if they are disabled;
- Pension to decedent's minor children; and
- Medicare.

Social Security ceases at death so checks should be returned to your local office or to the return address on the envelope in which the check is sent explaining the situation. Be sure to keep a copy of the check and forwarding letter. If direct deposit is being used, the bank will, upon notification, notify Social Security and refund any necessary payments.

### Miscellaneous

Other benefits such as retirement and life insurance will vary. Information on such items should be obtained directly from the source paying the retirement or insurance benefits. Be sure to check with the decedent's employer for any death benefits that may be available.

## **SECTION FIVE: PROTECTION OF LEGAL RIGHTS**

### **I. Working with a Legal Professional**

#### **A. When You Need a Lawyer**

Older persons may face problems with Social Security, SSI, Medicare, Medicaid, pensions, housing, consumer issues, guardianship, age discrimination, wills and probate, and long term care. They also may need assistance with planning through advance directives and durable powers of attorney. An attorney may be most valuable in providing help with such issues.

Because early consultation with an attorney can prevent serious problems later on, you should consider consulting a lawyer for the following situations:

- Before signing a contract to buy or sell a home or other real estate;
- Making a will;
- Signing written contracts with major financial consequences;
- When planning your estate;
- When you are planning for a major life change, such as a marriage or managing a serious or chronic medical condition;
- When you are faced with a serious contractual or consumer dispute;

- When you are sued or want to sue someone;
- When accidents occur involving personal injury or property damage; and
- When you have problems accessing government benefits to which you are entitled.

An attorney can also provide valuable help with problems involving landlord-tenant disputes, divorce, and child custody.

## **B. Finding a Lawyer**

If you do not have a family lawyer, you may wish to consult friends and relatives for recommendations. You can also check with your local Agency on Aging, your local bar associations or the AARP or the Alzheimer's Association.

If you cannot afford an attorney, state and local bar associations may have information about pro bono programs, which operate for the good of the public and do not charge attorney's fees.

There are a number of resources available for those who cannot afford to pay for legal representation. Also, the Tennessee Elder Law Hotline of Southeast Tennessee Legal Services in Chattanooga accepts toll-free calls from seniors. Legal advice for simple matters is provided directly over the phone. For those matters which cannot be resolved by phone, referrals are made to local attorneys. The phone number for the hotline is 1-800-836-0128.

In Jackson, the West Tennessee Legal Services hotline phone number is 1- 800-499-1602. The hotline number for Rural Legal Services of Tennessee in Oak Ridge is 1-800-262-6817. In Shelby County and Southwest Tennessee, Memphis Area Legal Services can be reached at (901) 523-8822.

Finding the right lawyer will require research. But be aware that your legal issue might call for prompt action. Some legal claims have a statute of limitations—the time within which a lawsuit must be filed—or other deadlines that may be critical. In these cases you may only have a limited time to take legal action, so don't delay.

Remember that phone book listings are paid advertising, and even though there are restrictions on the claims and statements lawyers can make in their ads, advertising in general involves hype and self-promotion. Helpful ads will tell you what types of services the lawyer provides and where the lawyer is located. If you already know and trust a lawyer, you can ask that lawyer to assist you or to refer you to another lawyer who has the background and experience you need.

The Internet is another source of information about lawyers. Many law firms have websites that advertise their services and fees. When searching online, you should narrow your search to lawyers licensed in your area of the state. In most cases, you will want to choose a lawyer who is familiar with the courts and legal community in your geographic area. To access Martindale Hubbell ratings of lawyers, go to <http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx>.

Martindale Hubbell's ratings are for ethics and legal ability.

### Selecting and working with a lawyer

Finding a lawyer with the background and experience your legal matter requires is critical. The "right lawyer" is the person who has experience handling matters similar to yours, and who is prepared to take action at once. An experienced lawyer knows how to act immediately, effectively and efficiently. Hiring a lawyer based on price alone may result in wasted expense and time.

Be sure the lawyer you select is knowledgeable about the area of law that is involved in your matter. Lawyers have different focuses in their practice. Some, for example, have more experience drafting contracts or wills and representing estates. Others have experience handling personal injury cases, such as car accidents. Many lawyers practice law for an entire career and never set foot in a courtroom, because their work is primarily drafting documents and giving advice. Other lawyers focus on trial work and therefore are comfortable and experienced in appearing before judges and juries. It is very important that you find a lawyer who is versed in the area of law that you need.

Once you've made a list of lawyers who may be suitable for your legal issue, you may want to contact the Tennessee Board of Professional Responsibility (TBPR) to check each lawyer's public

disciplinary record. If you speak to someone at the TBPR, ask if the lawyer has ever had any public disciplinary action taken, when and why. Also, ask if the lawyer has reported that he or she has malpractice insurance. A search on the TBPR's website will provide the same information: <http://www.tbpr.org/>

Select from your list one lawyer with whom you want to meet. Call the lawyer's office and ask for an initial consultation. At the outset, before disclosing any confidential information, be sure to determine that the lawyer does not have a conflict-of-interest regarding your particular case.

Also, prior to you meeting, find out if there is an initial consultation fee involved. Some lawyers offer a free initial consultation; others do not. If your initial consultation does not meet your needs, you can schedule another meeting with a different lawyer.

### **C. Preparing for the Meeting**

You may be able to save time and money if you are prepared for your first meeting with the lawyer. If a lawyer asks to see the papers involved in your matter or case before meeting with you, send or fax copies of the papers as quickly as possible so the lawyer has time to review them before your meeting.

Write a short summary of your matter or case, including facts and

---



dates and a list of questions you want answered. During the consultation, ask if the lawyer has handled matters similar to yours before. Also, if he or she is willing to take the case, ask what services will be provided, and what the fee and other costs will be. You should also ask if the lawyer will personally handle your case or if other members of the firm will be involved. A lawyer should be able to explain the primary legal concerns in your matter or, if you have a case, the strengths and weaknesses of your case. But be wary of any lawyer who guarantees results. If you don't understand everything the lawyer tells you, ask for an explanation in simpler terms. Find out how much time the lawyer expects to spend preparing documents to handle your matter or long he or she expects your case to take and what may be involved. Lastly, decide if you feel comfortable working with this lawyer.

#### **D. Fee Agreements**

Lawyers consider several factors in setting their fees. Lawyers who are highly experienced in a particular area of law might charge more than lawyers who are not. A higher fee might be preferable if you feel the lawyer's special skills and experience will yield better and faster results. Lawyers also consider how complicated a case is and the amount of time it will take. A trial may take only a half-day, but background research, interviewing witnesses and other trial preparation can take days, months or years. Sometimes unexpected

things occur that complicate the case further and end up resulting in higher legal fees.

There are several different kinds of legal fees:

- **Hourly fee**—With an hourly fee, the lawyer charges a dollar amount for each hour worked. Hourly fees may vary significantly from lawyer to lawyer, and are not always indicative of the experience a lawyer has in an area of law. A lawyer with more experience who charges a higher fee might save you money in the long run, because the lawyer can produce the same result in a shorter amount of time.
- **Fixed or Flat fee**—This type of fee is usually charged for routine, legal matters such as real estate closings or uncontested divorces. If you agree to a fixed-fee service, make sure you find out if there are extra costs for additional services such as clerical assistance or copying.
- **Contingency fee**—This type of fee is commonly charged in personal injury, medical malpractice, workers' compensation and other cases involving a lawsuit for money damages where you are the injured party. A contingent fee means that you will pay the lawyer a certain percentage of the money you receive if you win the case or if you settle out of court. If you lose, the lawyer does not receive a contingency fee. However, win or lose, you likely will be required to pay costs of preparing and trying the case, which can be quite high. Sometimes the lawyer

may pay those additional costs out of your portion of any settlement or award. Therefore, you need to get an estimate of what the lawyer thinks the court costs and other expenses may be and establish whether the lawyer's share is paid before or after the other expenses are deducted. Make sure all these obligations are set out in a written fee agreement.

Regardless of the type of fee charged, the lawyer should provide you with a written engagement letter that outlines his or her fee and the services that will be rendered. An engagement letter is an "employment agreement," between the lawyer and you, and it should be in writing. The agreement should specify exactly what legal services the lawyer is providing for you, as well as the fees and expenses you will be expected to pay.

The agreement should also spell out your obligations as a client (for example, you agree to be truthful and cooperative, to abide by the agreement, and to pay your bills on time). Further, it should explain the lawyer's billing practices and state whether the lawyer is going to add interest or other charges to unpaid amounts.

Even if your case is unsuccessful and you do not recover any money in a contingent fee case, some lawyers might require you to pay miscellaneous costs, such as a court reporter's charges for recording testimony at depositions and trial, word processing charges, copying and facsimile charges, expert or consultant fees, filing fees and other

court costs, investigator's fees, postage and courier fees, service of process fees, travel expenses for the lawyer while traveling on your behalf, and witness fees and mileage charges for witnesses who appear at trial or depositions. These are just some examples. You need to find out clearly what expenses the lawyer anticipates will be associated with your legal matter and whether the lawyer expects you to pay these costs directly in advance or if the lawyer will be willing to deduct them from any settlement or verdict in the case.

You should ask for an itemized receipt of all fees you pay your lawyer. You can tell your lawyer that all costs over a certain amount you must approve in advance. Also, make sure your lawyer agrees to consult with you before committing to any large expenses or costs, such as hiring an expert witness or consultant.

The agreement should also spell out how the fees are going to be paid. Most clients choose to be billed monthly. Your lawyer may ask you to post a certain amount of money in his or her trust account to start work on your case. This is called a "retainer." Funds held in trust remain your property until the lawyer works on the case and can draw against these funds. The lawyer should provide you monthly statements that itemize time spent on your case and money withdrawn from your account. The lawyer may require you to advance more fees, to be held in trust, as the case progresses.

If you have a billing dispute with your lawyer or you cannot afford to pay your legal bill, contact your lawyer to discuss the problem and

try to resolve the issues. Hopefully you can reach agreement or set up an alternative payment arrangement. However, in the event that you cannot resolve the fee dispute with the lawyer, you and the lawyer may submit the dispute to the Tennessee Fee Dispute Resolution Program, which is outlined in the next portion of this section.

### **E. Resolving a Fee Dispute**

Fee matters are not ordinarily a basis for discipline of a lawyer because they usually do not involve questions of ethical or professional misconduct. In some cases they do, however, and in those cases where the attorney is found at fault discipline will follow.

Some fee disputes may be the result of an overcharge by the attorney. Others, however, result from a lack of understanding by the client of the basis for the fee and the factors that go into the charge made by a lawyer for services. The lawyer may be at fault because of a failure to make the client aware of what is involved. Clients are often reluctant or embarrassed to discuss fees with their lawyers. They should not be.

If you feel your attorney has overcharged you for services, you may review the fee agreement, if one was signed. Check to see if the fee was a flat fee or non-refundable. If it was not, ask your attorney for an itemized bill, to see what work was done. You may also request a

copy of your file. If the charges seem to be for unnecessary work or work that was not done, then you should write or meet with your lawyer to work out the fee dispute. If you're still unable to work out the matter with your attorney, you may contact a local fee dispute committee.

Where the parties are not able to reach an understanding and there is a controversy over fees, the matters, like any other dispute over the value of services, may be resolved by court action. As an alternative to court, the Nashville, Memphis, Knoxville, Chattanooga, Bristol and Washington County Bar Associations have Fee Dispute Committees, which are prepared to consider complaints concerning alleged excessive fees and have established procedures, which frequently lead to a resolution of the dispute. The complaints in these cases should be submitted directly to the appropriate bar association.

Please note that fee dispute mediation is not a service that all Bar Associations provide, and varies from county to county. Many counties do not offer fee mediation. In such a case, you may wish to seek legal advice from a different attorney as to your options for filing suit for breach of contract for services not rendered.

For more information, see the Tennessee Board of Professional Responsibility at <http://www.tbpr.org/consumers/feedisputes.aspx>

## **II. Consumer Protection**

### **A. Introduction**

Consumers of all ages are vulnerable to the fast pitch and hard sell of the professional salesperson. Today, we also face the impersonal, but no less effective, pitch of the television, radio or internet advertiser. With such pressures being exerted against us, it can be very difficult to make intelligent buying decisions.

Even though consumer protection legislation and court decisions in favor of consumer rights are on the increase, your best protection is to be a well-informed, careful buyer. Smart consumers know their legal rights, are cautious of product exaggerations, and are unafraid to demand satisfaction for the price of their purchase. This section is designed to help you be an alert consumer who is less likely to be taken advantage of by fast-talking salespeople or misleading advertising.

### **B. Contracts and Credit Buying**

Almost every purchase you make as a consumer involves entering into a contract between you, the buyer, and a merchant, the seller. If you have ever bought a car, hired a worker to do repairs, or purchased a pair of shoes using a credit card, you have entered into a contract.

Contracts most often come into the picture for consumers when the

---

seller extends credit for purchase of an item or service, with payment delayed or spread out over a period of time. This arrangement is commonly known as “buying on time” or “buying on credit.” In effect, the store, dealer, or company from which you are buying extends a loan in the amount needed to purchase the item or service. You, in turn, agree to pay back that money, plus a finance charge of some kind.

Whenever you buy on credit, make sure you know how much your total cost will be. Know how long you will have to make payments and be sure you can meet them. The Federal Truth-in-Lending Act requires persons and businesses who extend credit to tell consumers what that credit will cost in the long run. When you buy on credit, the seller must tell you the actual finance charge (the price you pay for the privilege of paying over time in installments, which is added to the cash price) and the annual percentage rate of interest on the purchase you wish to make. Lenders who fail to disclose this information may be sued by their customers for twice the amount of the finance charge—from a minimum of \$100 to a maximum of \$1,000—plus court costs and attorney’s fees. If lenders are convicted of willfully or knowingly disobeying the law, they can be fined up to \$5,000 or be imprisoned for one year, or both.

Federal truth-in-lending laws also grant the right to cancel certain contract in writing within three days, if the contract requires that the consumer’s home be used as collateral or if a lien on the home could result from the contract, as in a home improvement or home repair



agreement. Consult with an attorney before signing such a contract.

Before signing any sales contract, ask yourself these questions:

- Do I know what I'm buying?
- Do I understand to my satisfaction what the contract says and what my obligations will be under it?
- Can I get the same item elsewhere at a better price?
- If the purchase is for credit, am I satisfied with the price I am paying for the loan?
- What kind of protection do I have for guarantees and warranties? (Buying something "as is" means there is no warranty or guarantee about the product at all.)
- Should I have the contract reviewed by an attorney?

#### Basic Contract Dos and Don'ts

- DO insist that the salesperson let you take home a copy of the contract before you sign it.
- DO show the contract to a lawyer if you have any questions about any provision of the contract.
- DO insist that all promises (guarantees and warranties) be put in writing; otherwise, they may not be enforceable.

- DO keep copies of all contracts, payment records, and complaint letters in a safe place.
- DO ask your agent or the seller to include the following provision in the document if you have any questions about contract terms:

“This contract is contingent upon the approval of my attorney, and the contingency shall continue in effect until (DATE) .”

- DON'T deal with any salesperson who refuses to let you take home a filled-in contract before you sign it.
- DON'T sign anything unless you have had time to read it carefully or have it read to you, and you fully understand what it says.
- DON'T ever sign a contract with blank spaces that are to be filled in later by the salesperson.

## **C. Credit Cards**

### Credit card finance charges

If you have a credit card from a department store, bank, gas company or financial institution, you are normally required to pay a monthly finance charge based on the unpaid balance of your account. All issuers of credit cards give a period of time within which, if they receive payment in full, no finance charge will apply (unless used for a cash advance). If charges are not paid in full before the due date, interest charges may be assessed on new purchases, as

well as the last balance-due amount.

### Unsolicited credit cards

It is illegal for a card issuer to send you a credit card unless you ask or apply for one. A card issuer, however, may send you an application for a card or a new card to replace an expired one without your request.

### Lost or stolen credit cards

If your credit card is ever lost or stolen, the most you will have to pay for unauthorized charges is fifty dollars (\$50.00) on each card, even if someone runs up several hundred dollars' worth of charges before you report a card missing. In any event, your risk on lost or stolen credit cards is limited. You do not have to pay for any unauthorized charges made after you notify the card company of loss or theft of your card, so keep a list of your credit card numbers and notify card issuers immediately if a card is lost or stolen.

Please note that many of the protections for lost or stolen credit cards do NOT apply to debit cards.
---

### Errors in Billing

If you think your credit card bill is wrong or you want more information about it, notify the creditor, in writing, within sixty days after the bill was mailed and keep a copy of your letter. Be sure to

include:

- Your name and account number,
- A statement that you believe the bill contains an error and an explanation of why you believe there is an error, and
- The suspected amount of the error.

While you are waiting for an answer, you do not have to pay the disputed amount or any minimum payments or finance charges that apply to it. You are still obligated to pay all parts of the bill that are not in dispute.

The creditor must acknowledge your letter within thirty days unless your bill is corrected before then. Within two billing periods, but in no case more than ninety days, the creditor must correct your account or explain why the bill is correct.

If the creditor made a mistake, you do not have to pay any finance charges on the disputed amount. The creditor must credit your account for the full amount in dispute or partially correct your account and explain what you still owe. You then have the time usually allowed on the account to pay any balance. If no error is found, the creditor must promptly send you a statement of what you owe. In this situation, the creditor may include any accumulated finance charges and any minimum payments you missed while you were questioning the bill.

If you still are not satisfied, you should notify the creditor within the

---

time you have to pay your bill (and keep a copy of your letter); however, the creditor's obligations have now been fulfilled, except for requirements regarding your credit rating.

Once you have written about a possible error, the creditor may not give out information to other creditors or credit bureaus or threaten to damage your credit rating. Before answering your letter, the creditor may not take any collection action on the disputed amount or restrict your account because of the dispute. A creditor can, however, apply the disputed amount against your credit limit.

After your bill has been explained, if you do not pay within the time allowed for payment, and even if you still disagree and have expressed your disagreement in writing, the creditor can report your account as delinquent and begin collection proceedings. If this is done, the creditor also must report that you have challenged your bill and provide you, in writing, the name and address of each person and/or organization to whom your credit information has been given. When the matter is settled, the creditor must advise each person or organization given credit information of the outcome.

This is a federal law and it applies to personal, family, and household debts, such as money owed for the purchase of a car, for medical care, or for charge accounts.

#### **D. Credit Rating**

If you learn that your credit has been damaged, you are authorized under the Fair Credit Reporting Act to request from the credit-reporting agency an accurate report showing any information transmitted about your credit standing. If you challenge the information, the agency must reinvestigate and if it still is not resolved, you may file a protest that will remain in the report. You are entitled to sue for damages, attorney's fees, and investigation costs if the agency does not comply.

You are entitled to receive one free credit report every twelve months from each of the nationwide consumer credit reporting companies: Equifax, Experian, and TransUnion. This free credit report can be requested through <http://www.annualcreditreport.com> or by calling (877) 322-8228. It is good planning to request a free annual credit report from a different one of these agencies every four months throughout the year. Be wary of Internet or telemarketing programs that purport to provide a "free" credit report but require a fee, credit card number or other commitments.

## **E. Collection Agencies and Fair Debt Collection**

When you are paying for a product or service on time and get behind on your payments, the loan company or bank may refer your debt to a collection agency.

Federal law prohibits abusive, deceptive and unfair debt collection practices. This law is intended to ensure that debt collections are fair and not harassing. The law does not, however, cancel legitimate debts.

The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect from you.

Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and then try to collect them.

The FDCPA covers personal, family, and household debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage. The FDCPA doesn't cover debts you incurred to run a business.

A debt collector may not contact you at unreasonable times or places, such as before 8 AM or after 9 PM, unless you agree to be contacted outside of these hours. Also, collectors may not contact

you at work if they're told (orally or in writing) that you're not allowed to get calls there.

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter—even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide, after contacting the debt collector that you don't want the collector to contact you again, tell the collector—in writing—to stop contacting you.

When advising a collector to not call you, be sure you make a copy of your letter. Send the original by certified mail, and pay for a "return receipt" so you'll be able to document what the collector received. Once the collector receives your letter, they may not contact you again, with two exceptions: a collector can contact you to tell you there will be no further contact or to let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter to a debt collector you owe money to does not get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you to collect the debt.

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you don't have an attorney, a collector may contact other people—but only to find out your address, your home phone number, and where you work.



Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse or your attorney.

Every collector must send you a written “validation notice” telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don’t think you owe the money.

If you send the debt collector a letter stating that you don’t owe any or all of the money, or asking for verification of the debt, that collector must stop contacting you. You have to send that letter within thirty (30) days after you receive the validation notice. If the collector sends you written verification of the debt, like a copy of a bill for the amount you owe, then they may begin contacting you again.

Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, debt collectors may not:

- Use threats of violence or harm;
- Publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- Use obscene or profane language; or repeatedly use the

telephone to annoy someone.

- Make false statements. Debt collectors may not lie when they are trying to collect a debt. For example, they may not:
  - Falsely claim that they are attorneys or government representatives;
  - Falsely claim that you have committed a crime;
  - Falsely represent that they operate or work for a credit reporting company;
  - Misrepresent the amount you owe;
  - Indicate that papers they send you are legal forms if they aren't; or
  - Indicate that papers they send to you aren't legal forms if they are.

Debt collectors also are prohibited from saying that:

- You will be arrested if you don't pay your debt;
- They will seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- Legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

Debt collectors may not:

- Give false credit information about you to anyone, including a credit reporting company;
- Send you anything that looks like an official document from a court or government agency if it isn't; or
- Use a false company name.

Unfair practices. Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- Try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt—or your state law—allows the charge;
- Deposit a post-dated check early;
- Take or threaten to take your property unless it can be done legally; or
- Contact you by postcard.

If a debt collector is trying to collect more than one debt from you, the collector must apply any payment you make to the debt you select. Equally important, a debt collector may not apply a payment to a debt you don't think you owe.

If you don't pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe, and allows the creditor or collector to get a garnishment order against you, directing a third party, like your bank, to turn over funds from your account to pay the debt.

Wage garnishment may also happen when your employer withholds part of your compensation to pay your debts. Your wages usually can be garnished only as the result of a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

Many federal benefits are exempt from garnishment under most circumstances, including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Service Members' Pay
- Military Annuities and Survivors' Benefits
- Student Assistance
- Railroad Retirement Benefits

- Merchant Seamen Wages
- Longshoremen's and Harbor Workers' Death and Disability Benefits
- Foreign Service Retirement and Disability Benefits
- Compensation for Injury, Death, or Detention of Employees of U.S. Contractors Outside the U.S.
- Federal Emergency Management Agency Federal Disaster Assistance

But federal benefits may be garnished under certain circumstances, including payment of delinquent taxes, alimony, child support or student loans.

If you think a debt collector has violated the law, you have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to \$1,000, even if you can't prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

Report any problems you have with a debt collector to your state Attorney General's office (<http://www.tn.gov/attorneygeneral/>) and

the Federal Trade Commission (<http://www.ftc.gov> or call (877) 382-4357). Your Attorney General's office can help you determine your rights under your state's law.

For more information

To learn more about credit-related issues, go to <http://www.mymoney.gov>, the U.S. government's portal to financial education.

## **F. Door-to-Door Sales**

Even the most strong-willed customer occasionally falls prey to an enterprising door-to-door salesperson. But if the “magic spell” cast by the salesperson wears off as soon as he is away from your door with your money or a sales contract, there is something you can do about it.

Tennessee law and Federal Trade Commission (FTC) rules allow you a three-day cooling-off period to decide whether to cancel your purchase of goods or services made via a home solicitation. If you do decide to cancel the sale or to rescind the contract, you must send or deliver a written notice to the company or business before midnight of the third business day after the date of the transaction.

All door-to-door sales are required to be accompanied by a written contract which has an easily detachable form explaining how you can cancel. This form should be captioned in bold type “BUYER’S RIGHT TO CANCEL” and in duplicate, so you can keep a copy for yourself. All you should have to do is sign and date the form, tear it off, and send it to the seller, preferably by certified mail. If the contract does not have the detachable form, you may still cancel by writing the seller. Your notice or cancellation must be sent in by midnight of the third business day after signing the contract. If you mail the cancellation, it must be postmarked by the third business day.

The FTC rules require you to sign and date one copy of a notice of cancellation form, which you should receive from the salesperson,

along with copies of the sales contract or receipt of sale. You should consider sending the notice of cancellation or written letter of cancellation by certified mail, return receipt requested. Keep a copy of the notice for your records and as proof that you sent it.

Once the merchant receives the notice letter of cancellation, he or she has ten days to refund any money received, return any documents that you have signed, return any goods or property that you have traded in, and inform you whether he or she will pick up or let you keep any items that were left with you. Products left with you must be available to the seller in the same condition as you received them. It is not your responsibility, though, to ship the items back to the dealer or pay postage expenses for such shipping. The seller must either pick up items left with you, or if you agree to ship them, the seller must pay the return postage expenses. If the seller fails to demand possession of the items within twenty days after cancellation or revocation, the goods become the property of the buyer without any obligation to pay for them.

Tennessee law and the FTC rules do not cover cash purchases under twenty-five dollars.



## **G. Mail Order Merchandise**

If you order merchandise by mail, federal regulations require the seller to ship the merchandise to you within the time limits stated in its ad or brochure or within thirty days if the seller has not specified a delivery period. If the merchandise is not so shipped, e.g., because it is temporarily out of stock, you have the right to cancel your order and have your money refunded within seven days of your cancellation. In a credit transaction, the seller has one billing cycle to adjust your account. If the seller notifies you that he or she cannot ship the merchandise in the stated time or within thirty days, you may cancel the order and get your money back, agree to the new shipping date, or not answer, in which case the seller can assume you agree to the shipping delay. If you do not give your express consent to a shipping delay of more than thirty days, the seller must return your money at the end of the first thirty days of the delay. These regulations do not apply to magazine subscriptions, serial deliveries such as “monthly” items (except for the initial shipment), mail-order seeds and growing plants, cash on delivery or credit orders for which your account is not charged prior to shipment.

### Unordered merchandise

You do not have to pay for merchandise that you have not ordered or otherwise requested, and it is illegal for the sender to pressure you to return it or to send you a bill. It is illegal for a merchant to

send unordered merchandise other than free samples and merchandise mailed by charitable organizations requesting contributions.

Any problems relating to mail order dealers or unordered merchandise should be referred in writing to your Postmaster (or local Postal Inspector) and to: Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (or <http://www.ftc.gov/bcp/index.shtml>).

## **H. Telemarketers**

Just about everyone who owns a telephone has received calls promoting products, services, investment opportunities or contests. Although many telephone offers are legitimate, telemarketing fraud costs consumers billions of dollars a year. Federal rules and common sense can protect you from telephone scams and overly intrusive sales calls.

Under FTC rules, telemarketers may call only between 8 AM and 9 PM. They must tell you immediately who they are and what they are selling—before they make their pitch. You can stop unwanted calls from telemarketers by telling them not to call back. If they do, they are breaking the law.

Before you pay anything, a telemarketer must tell you the total cost of the products or services offered and any restrictions on getting or using them, and whether a sale is final or nonrefundable. A telemarketer may never withdraw money from your checking account without your express, verifiable authorization. It is also illegal for telemarketers to misrepresent information about whatever they are selling, including prize-promotion schemes.

Telephone scam artists may cold-call individuals listed in a directory or on a mailing list. In more elaborate schemes, advertisements or direct mail pieces invite you to call a certain phone number to claim a prize or to make a purchase. Be skeptical of any deal that sounds too good to be true, and make sure sellers are trustworthy before

you hand them your money.

Here are some ways to avoid being victimized by telephone fraud:

- Resist high-pressure sales tactics. Legitimate businesses respect the fact that you are not interested.
- Do not send money—cash, check, or money order—to anyone who insists on immediate payment.
- Keep information about your bank accounts and credit cards to yourself unless you know with whom you are dealing.
- Hang up if you are asked to pay for a prize. Free is free.
- Take your time. Ask for written information about the product, services, investment opportunity, or charity that is the subject of the call.
- Before you respond to a phone solicitation, talk to a friend, family member, or financial advisor. Your financial investments may have unexpected consequences for people you care about.

You can fight telephone fraud by reporting scam artists to the Tennessee Office of Consumer Affairs at (800) 342- 8385. You can also register your phone number with The National Do Not Call Registry (<http://www.donotcall.gov> or (888) 382-1222). Once you register your phone number, telemarketers covered by the National Do Not Call Registry have up to thirty-one days from the date you register to stop calling you.

For more information about consumer protection under the Telemarketing Sales Rule, write:

Bureau of Consumer Protection Federal Trade Commission Public Reference, Room 130, Washington, DC 20580, or go to <http://www.ftc.gov/bcp/index.shtml>

## **I. Deceptive Sales Practices**

Unscrupulous dealers and businesses have many ways of getting you to part with your hard-earned cash. If not careful, you could find yourself paying unreasonably high interest rates for a credit purchase, or you may be stuck with a piece of shoddy merchandise that you were told was “a steal” at the price you paid for it.

Unfortunately, bargains and deals that sound too good to be true usually are, and unwary buyers can end up paying for a costly lesson in consumer education.

Scam artists use dozens of cons to fleece unsuspecting individuals. Some of these schemes involve products and services that are commonly purchased by senior citizens. The following are a couple of the more common schemes that you should guard against.

### **1. Bait and switch**

The store or business employing the bait-and-switch technique usually advertises some attractive bargain that is “available in limited quantities” to get you into the store. Once you are there, the sales

people try to get you to buy a more expensive item in the same line of merchandise, often by downgrading the bargain model that drew you to the store in the first place. Frequently, the more expensive item is overpriced.

## 2. Pigeon Drop

The pigeon drop is a technique used to rob people—particularly elderly persons—of their savings. Usually a pleasant person introduces him or herself and says that he or she has recently found a large amount of money. The person offers to share the found money with you if you will put up some of your own money to show good faith. After you deliver the agreed-upon amount in an envelope, the “nice” person then distracts you and switches the envelope containing your money with one containing paper, or takes the envelope and promises to deliver your windfall “later” or “tomorrow.” Tomorrow never comes. These cons sometimes sound believable, but they never are. When in doubt, call your local police or sheriff's department to see whether they know of a scheme that is being used to victimize others in the community.

## **J. Home Repairs**

Whenever you need to hire someone to work on your home, use caution and shop around. You do not have to hire the first contractor that you find. Get two or three written estimates to see who is offering the best bargain. Also, check references before you hire. Inquire about past complaints or potential problems with a business by contacting the Better Business Bureau in your locality.

After you decide on a contractor, insist that your agreement be put in writing. If you do not get all the important things in writing, you are asking for trouble later on. Items such as price and guarantees of the work to be done should be on paper and signed so that you can avoid arguments after the work is completed. Agree in advance that full payment is not due until the work is completed.

If you plan to pay for the work in installments and the contractor or loan company requires a deed of trust (mortgage) on your home as collateral, remember: you have three business days after you make the agreement in which to cancel, if the work has not begun during that time; and if you get behind on your payments, the contractor or loan company can foreclose on the deed of trust, which may result in the loss of your home.

If the contractor is not paid after completion of his work, he can file a document known as a “materialmen’s lien.” If you receive notice that a lien has been filed against your property, consult an attorney.

If you have a dispute with your contractor regarding payment for his work, be certain to obtain a release of all liens placed on your property before you make the final payment. If the contractor refuses, consult an attorney before making any further payments. If you do not have an attorney, the state and local bars can help through lawyer referral services or by directing you to the nearest Legal Aid office.

#### **K. Health Quackery**

If you have ever been tempted to spend money on products advertised as miracle cures, do not feel embarrassed. Each year, Americans spend billions of dollars on bogus health products and treatments. Tragically, some people are persuaded to buy the useless products rather than to seek effective, proven medical treatment.

In order to avoid being a victim of “health quackery,” beware of the following:

- Promises of a “quick and painless” cure;
- Extraordinary promises such as a claim that a single remedy will cure all diseases;
- Testimonials of “satisfied users” which lack any substantive medical support;



- Products which are described as “alternatives” (some alternative therapists and healers do not follow accepted scientific protocol) and
- “Scientific breakthroughs” which the promoter claims have been overlooked by the medical community.

If medical science has not found a cure for an ailment, then you should be very wary about buying a product advertised to cure it. Remember, if it sounds too good to be true, it probably is.

#### **L. Consumer Remedies**

When something goes wrong with a product you have bought, or a repair job is poorly done (on a house, car, or anything else), you may seek satisfaction in several ways. A thoughtfully prepared complaint made directly to the business, either in person or in writing (keep a copy), can be an extremely effective way of solving a consumer problem—especially when that complaint is made to the proper authority. You can successfully resolve many problems by this method alone.

Complaints are most effective when accompanied by receipts and other documents that help explain your case. If you are contacting the store or business by mail, send your complaint letter by certified or registered mail, return receipt requested and keep a copy for your records. Never send originals of any receipt, contract or

documentation. If you are making your complaint in person, try to remain calm, but be firm and make sure what you are told makes sense to you.

If taking your complaint directly to the store or business does not produce the satisfaction you are seeking, bring the matter to the attention of the Better Business Bureau in your community or contact the Tennessee Office of Consumer Affairs at (800) 342- 8385.

In some areas, law schools and radio and television stations handle consumer complaints at no charge to you as a public service to the community. These services can be extremely helpful.

Consumer protection laws may give you additional remedies, such as the ability to cancel certain types of contracts on your own. The Tennessee Department of Human Services Adult Protective Services also investigates suspected financial exploitation of seniors. For information, call the toll-free hotline 1-888-APS-TENN (1-888-277-8366).

### **III. Discrimination**

#### **A. Age Discrimination**

There are federal laws prohibiting discrimination against anyone because of his or her age. The age discrimination laws cover employment, federal programs, and obtaining credit.

These matters can be complicated, and thus, you may wish to consult a person skilled in the field of age discrimination or an attorney who handles this type of case.

#### Employment

The Age Discrimination in Employment Act prohibits workplace age discrimination against individuals who are at least 40 years old. While there is generally no upper age limit, employers may set mandatory retirement policies for executives sixty-five and older who are entitled to pensions of \$44,000 or more.

Discrimination in employment can take many forms. It can occur in job advertisements, recruitment, application and hiring, termination, demotion, or denial of employment. If you believe you are being discriminated against because of your age, you should file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discrimination. To assist you in determining whether or not the EEOC is the correct agency to assist you, you may use its EEOC Assessment System at

<http://www.eeoc.gov/employees/howtofile.cfm>. If you file a complaint, the matter will be investigated, then discussed and settled, or, if necessary, a lawsuit may be filed. Federal employees should file complaints with the Office of Personnel Management.

In Tennessee, you may contact the EEOC by calling 1-800-669-4000.

### Federal Programs

If you believe you are being discriminated against because of your age in any program receiving financial assistance from the United States government, you must contact in person or complain in writing to the federal agency that is financing the program. This is an administrative proceeding, and the agency must reply in 180 days. If the agency does not reply within 180 days, you may bring suit in federal court to stop the prohibited action once you have given thirty days' advance notice to the Secretary of Health and Human Services, the U.S. Attorney General, and the person or party you are taking action against. It probably will be necessary to obtain assistance in making the complaint.

### Credit

The Equal Credit Opportunity Act forbids discrimination against an applicant for credit, not only on the basis of age, but also on the basis of sex, marital status, receipt of public assistance benefits,

race, color, national origin or religion.

A creditor wants to make sure that you are both willing and able to repay your debt. Normal items of inquiry include your personal income, your expenses, outstanding debts, and credit history. A creditor may also ask your age, but the use of this information is controlled under the Equal Credit Opportunity Act. Your age may not be used as the basis for a decision to deny or decrease credit if you otherwise qualify. A creditor may ask you about your income, but continually denying credit to applicants without good cause or arbitrarily discounting income is forbidden.

You have a right to know whether an application is accepted or rejected within thirty days of filing. If you have suffered adverse credit actions, such as a denial or revocation of credit, a change in terms of an existing credit arrangement, or a refusal to grant credit in substantially the terms requested, you have sixty days from the time the creditor notifies you of adverse action to request the reason in writing. The creditor must give you a statement of reason within thirty days of the receipt of your request.

If credit has been denied either wholly or partly because of information contained in a consumer credit report, you may request a free copy in writing within sixty days of the initial action. Try to renegotiate the terms or otherwise solve the problem. If the problem has not been resolved to your satisfaction, and you believe the adverse action was taken for a non-permissible reason, you may

bring suit to recover actual damages, attorneys' fees, court costs, and punitive damages in an amount not greater than \$10,000.

If you believe you are being discriminated against on the basis of your age by denial of an application for credit in a loan or a purchase, or for more detailed information or help, you should contact the Federal Trade Commission, Division of Credit Practices, Consumer Response Center, Suite 240, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. Their toll free numbers is (877) 382-4357.

## **B. Discrimination Based on Disability**

There are federal and state laws that prohibit discrimination against individuals based on disability. Generally speaking, federal law defines an "individual with a disability" in three ways.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable

accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities.

Accommodations vary depending upon the needs of the individual applicant or employee.

Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview, while
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels, while

- A blind employee may need someone to read information posted on a bulletin board and while
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if it imposes an “undue hardship.” Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer’s size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and whether the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual’s needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers medical examinations and inquiries.



Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential. With limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

If you believe you have been discriminated against because of a disability, you should contact the Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, DC 20507, (202) 663-4900 (voice) or (202) 663-4494 (TDD) or contact your local EEOC office.

There is an information kit issued by the EEOC that describes the rights of an individual with a disability. Contact the Publication Distribution Center at (800) 669-3362 (voice) to request the kit, or go to <http://www.eeoc.gov>.

Further information regarding any of the above laws or other laws protecting individuals with disabilities may be obtained from Tennessee Committee for Employment of People with Disabilities , Citizens Plaza Building, 2nd floor 400 Deaderick Street , Nashville, TN 37243-1403 . Telephone: (615) 313-4891.

#### **IV. CUSTODY AND VISITATION ISSUES RELATING TO GRANDCHILDREN**

The traditional thought is that grandchildren are one of the greatest joys in a grandparent's life. After all, you have the opportunity to spoil them and send them back home to their parents.

Unfortunately, for some grandparents this storybook description does not apply. In some cases, parents are unwilling or unable to care for the children, and grandparents must try to step in for safety reasons. In other situations, grandparents and their own children develop problems in their relationship, and the children try to cut the grandparents out of the grandchildren's lives.

##### **A. Grandparents Rights with regard to Grandchildren**

Just what are your rights as a grandparent in Tennessee? Tennessee does have laws in place which address the issue of grandparent rights, and grandparents may sometimes obtain court-ordered visitation with their grandchildren. (For purposes of the law, a grandparent is a biological grandparent, the spouse of a biological grandparent, or the parent of an adoptive parent.). The primary statutory law, which is what is passed by the Legislature, is found at TCA §§ 36-6-306 and 36-6-307. While there are rights provided by these statutes, it is important to understand that under the United States Constitution parents generally have the right to raise their children without anyone telling them how they should do it. Just

because a grandparent or someone else might do a better job raising the children does not mean that they can interfere unless there is an actual danger to the child. There is also no absolute right for grandparents to be able to visit with their grandchildren. In short, the rights of grandparents are generally very limited.

### Situations of Abuse or Neglect

We will first consider the issue of situations where your grandchildren may be abused or neglected in the custody of their parents. If you believe that your grandchildren's parents are actually doing such a poor job parenting them that your grandchildren are not safe in their care, then you can consider filing a dependency and neglect action in the juvenile court in the county where your grandchildren reside seeking to be awarded temporary custody of them. If at all possible, you should retain a lawyer to assist you. In a dependency and neglect matter, the parents of a child are appointed counsel if they cannot afford an attorney, and an attorney will be appointed to represent the best interest of the children (called a guardian ad litem), but grandparents are not entitled to have a lawyer appointed for them.

Grandparents may also consider contacting the Department of Children's Services if they believe their grandchildren are in danger in their parents' care. The toll free number to use when reporting abuse or neglect which is occurring in Tennessee is 1-877-237-0004.

The Department cannot reveal who contacted them, so your identity will remain confidential. The Department will investigate the allegations made, and if they believe that your grandchildren are being abused or neglected, they will take court action to remove them from the parents' home. The Department must first try to place the children with relatives, so you should make sure that the Department and the guardian ad litem know that you are willing to serve as a custodian for your grandchildren if they are taken from their parents. You should also attend all hearings and request the opportunity to attend all meetings held by the Department with the parents, if you want to be sure that your voice is heard. (You may not always be permitted to attend the meetings held by the Department but you should still make the request.) Again, if you can afford an attorney to assist you, it is generally best that you hire one.

## **B. Temporary Custody**

Grandparents should also note that if they are granted temporary custody in cases of abuse or neglect, courts must generally work toward the goal of providing services to the parents, which will allow them to regain custody of their children at the earliest possible time. In situations where the parents do regain custody, the grandparents may then wish to seek grandparent visitation if satisfactory arrangements for contact cannot be worked out with the parents.

### **C. Grandparent's Rights to Visitation or Custody**

On the other hand, you may be in a situation where your grandchildren are not abused or neglected in the care of their parents but your relationship with your grandchildren's parents has deteriorated to the point that they are trying to cut you out of your grandchildren's lives. In that case, you might consider filing a petition for grandparent visitation in the circuit or chancery courts in the county where your grandchildren reside. In some counties the general sessions court also has jurisdiction over these types of cases, and the clerk of court can tell you whether they do. Additionally, if the parents of your grandchildren were not married to one another, you may also file your petition in the juvenile court for the county where your grandchildren reside. If you can afford an attorney, it is far better for you to hire one to assist you as the issue of grandparent visitation is a complex one.

One or more of the following circumstances must be present before grandparent visitation can be ordered by the court: 1) one of the child's parents is deceased; 2) the child's parents are divorced from one another, are legally separated, or were never married; 3) one of the child's parents has been missing for 6 months or more; 4) the court of another state has ordered grandparent visitation; 5) the child resided in the home of the grandparent for a period of 12 months or more and was subsequently removed from the home by

the parent or parents; or 6) the child and the grandparent maintained a significant existing relationship for a period of 12 months or more immediately preceding severance of the relationship, this relationship was severed by the parent for reasons other than abuse or presence of a danger of substantial harm to the child, and severance of the relationship is likely to occasion substantial emotional harm to the child.

In considering whether to award grandparent visitation, the court must first find that there would be danger of substantial harm to the child if the relationship ceases between grandparent and grandchild. As a general rule, it will be the grandparent who has the responsibility for proving to the court that the danger exists; however, if the child has lived with the grandparent for 12 months or more, or if one of the child's parents is deceased and the grandparent seeking visitation is the parent of that deceased child, then the danger is presumed, and it is up to the parent(s) to prove that there would not be harm if the relationship was severed.

If a grandparent must prove that there would be danger of substantial harm to their grandchild if visitation ceases, the court will consider the following factors in deciding whether the danger exists:

- 1) whether the child had a significant existing relationship with the grandparent such that loss of the relationship is likely to cause severe emotional harm to the child;
- 2) whether the grandparent functioned as a primary caregiver such that cessation of the relationship could interrupt provision of the daily needs of the child;
- 3) the grandparent had a significant relationship with the child and loss of the relationship presents a danger of other direct or substantial harm.

When considering whether the grandparent had a substantial relationship with the child, the court will presume one exists if the child resided with the grandparent for at least 6 consecutive months, the grandparent was a full-time caretaker of the child for a period of at least 6 consecutive months, or the grandparent had frequent visitation with the child for a period of not less than 1 year.

A grandparent does not have to present expert witness testimony, such as from a doctor or psychologist, in order to prove that there is a significant relationship between grandparent and grandchild or that their grandchild would be in danger of substantial harm if the relationship between them is severed. Rather the court will look at the facts of each case to make that determination and conclude whether it is reasonable to believe that this is the case.



Once the court finds that a significant relationship existed, and that there would be a danger of substantial harm to the child if that relationship ceased (or the law presumes those things to be the case in the circumstances stated above), the court must then determine whether grandparent visitation is in the best interest of the child.

In determining whether visitation is in the best interest of the child, a court will consider the following: 1) the length and quality of the prior relationship between the child and grandparent; 2) the existing emotional ties of child to grandparent; 3) the preference of the child if the child is found to have sufficient maturity to express a preference; 4) the effect of the hostility between grandparent and the parent of the child manifested before the child, and the willingness of the grandparent, except in the case of abuse, to encourage a close relationship, between the child and parent or parents, or guardian or guardians; 5) the good faith of the grandparent in filing the petition; 6) if the parents are divorced, the time-sharing arrangement that exists between the parents with respect to the child; 7) if one parent is deceased or missing, the fact that the grandparent requesting visitation is the parent of the deceased or missing person; 8) any unreasonable deprivation of the grandparent's opportunity to visit with the child by the child's parents or guardians, including denying visitation of the minor child to the grandparent for a period exceeding 90 days; 9) whether the grandparent is seeking to maintain a significant relationship with the child; 10) whether awarding visitation will interfere with the parent-

child relationship; and 11) any court finding that the child's parent or guardian is unfit.

A grandparent may also still seek visitation with their grandchild if that child is adopted by a stepparent or other relative. If the grandchild is adopted by an unrelated person, the grandparent is prohibited from seeking visitation with the child.

Once visitation is ordered, both the parents and grandparents retain the right to later seek to modify that visitation.

In the case of *Lovelace v. Copley*, the Tennessee Supreme Court provided guidance to the courts about addressing requests for modification. The good news for grandparents is that once you have grandparent visitation established, it is difficult for the parents to have it decreased or taken away. The court has ruled that a party wishing to modify a grandparent visitation order must first show that there has been a material change of circumstances since the last order was entered. If the court finds that there has been a material change, then the court must also find that the modification sought would be in the best interest of the child. Of course, this also means that grandparents who want to have more visitation with their grandchildren than originally provided by the court also must also show to the court that there has been a material change, and that increased visitation time would be in the best interest of their grandchild.

More information about Lovelace v. Copley can be found on the Tennessee Supreme Court's website:

[http://www.tncourts.gov/sites/default/files/lovlacen\\_opn.pdf](http://www.tncourts.gov/sites/default/files/lovlacen_opn.pdf)

## **V. Personal Safety and Security**

Very often, senior citizens may be especially vulnerable to crimes against their person and/or their property. This means that you should be especially alert and take steps to protect yourself and your property. A good starting point in locating resources to help you in protecting yourself against crime is by contacting the community resource department of your local police or sheriff's department. Your local police or sheriff's department will be able to tell you about their own crime prevention programs for seniors.

Crime prevention is everyone's responsibility, not just a job for law enforcement. Seniors can learn how to protect themselves from crime by following these simple, common sense suggestions.

The tips in this section should make it tougher for criminals to work in your neighborhood:

### **A. Security at Home**

- Never open your door automatically. Always confirm who is there. Install and use a peephole.
- Lock your doors and windows. (Three quarters of the burglaries involving older persons involved unlocked doors and windows.) Keep your garage doors locked.
- Vary your daily routine.

- Use “Neighbor Watch” to keep an eye on your neighborhood. A concerned neighbor is often the best protection against crime because suspicious persons and activities are noticed and reported to police promptly.
- Do not leave notes on the door when going out.
- Notify trusted neighbors and the police when going away on a trip.
- Cancel deliveries such as newspapers and arrange for someone to mow the lawn, if need be.
- Arrange for your mail to be held by the Post Office, or ask a trusted neighbor to collect it for you.
- Be wary of unsolicited offers to make repairs to your home. Deal only with reputable businesses.
- Keep an inventory with serial numbers and photographs of resalable appliances, antiques and furniture. Leave copies in a safe place.
- Do not hesitate to report crime or suspicious activities to your local police or sheriff’s department.
- Install deadbolt locks on all your doors.
- Keep your home well lit at night, inside and out; keep curtains closed.
- Ask for proper identification from delivery persons or strangers. Do

not be afraid to ask. If they are legitimate, they will not mind. Never let a stranger into your home.

- If a stranger asks to use your telephone, do not allow that person to come inside your home. If you believe that there is an actual emergency, offer to place the call for him or her yourself.
- Do not hide your keys under the doormat, under a potted plant, or in other conspicuous places.
- Never give out information over the phone indicating you are alone or that you will not be home at a certain time.
- When you are gone for more than a day, make sure your home looks and sounds occupied. Use an automatic timer to turn on lights, radio, or TV when you are gone for an extended time.
- If you arrive at home and suspect a stranger may be inside, do not go in. Leave quietly and call 911 to report the crime.

## **B. Security in Public Places**

- If you are attacked on the street, make as much noise as possible by calling for help or blowing a whistle. Do not pursue your attacker. Call 911 and report the crime as soon as possible.
- Avoid walking alone at night. Try to have a friend accompany you in high-risk areas, even during the daytime.

- Always plan your route and stay alert to your surroundings. Walk confidently.
- Have a companion accompany you.
- Stay away from buildings and doorways; walk in well-lighted areas.
- Have your key ready when approaching your front door.
- Do not dangle your purse away from your body. (Many crimes against the elderly are purse snatchings and street robberies.)
- Do not carry large, bulky shoulder bags; carry only what you need. Better yet, sew a small pocket inside your jacket or coat. If you do not have a purse, no one will try to snatch it.
- While shopping, carry your purse very close to you—do not dangle it from your arm. Never leave your purse in a shopping cart. Never leave your purse unattended.
- Do not carry any more cash than is necessary. Many grocery stores now accept checks and automatic teller cards instead of cash.
- Do not display large sums of cash and use debit cards or checks where possible.
- Always keep your car doors locked, whether you are in or out of your car. Keep your gas tank full and your engine properly maintained to avoid breakdowns.
- If your car breaks down, pull over to the right as far as possible, call

for assistance, raise the hood, and wait INSIDE the locked car for help. Avoid getting out of the car and making yourself a target before police arrive.

- At stop signs and traffic lights, keep the car in gear.
- Travel well-lit and busy streets. Plan your route.
- Don't leave your purse on the seat beside you; put it on the floor, where it is more difficult for someone to grab it, or keep it locked in the trunk.
- Lock bundles or bags in the trunk. If interesting packages are out of sight, a thief will be less tempted to break in to steal them.
- When returning to your car, look around the car, and check the front and back seats before entering.
- Never pick up hitchhikers.

### **C. Security in Banking**

- Mailed checks may be vulnerable to theft or fraud. Avoid this by using direct deposit whenever possible. Direct deposit, sends your money directly from the government or other payer to the bank of your choice. And, at many banks, free checking accounts are available to senior citizens. Your bank has all the information.
- Never withdraw money from your bank accounts for anyone



except yourself. Be wary of con artists and get-rich-quick schemes.

- You should store valuables in a bank safe deposit box.
- Never give your money to someone who calls on you identifying himself as a bank official. A bank will never ask you to remove your money.
- Be very suspicious when someone approaches you with a get-rich-quick-scheme involving some or all of your savings.
- If you have been swindled or conned, or if someone has attempted to swindle or con you, report the crime to your local Police or Sheriff's Department or District Attorney's office. Con artists count on their victims' reluctance to admit they have been duped. If you delay, you help them get away. Remember, if you never report the crime, criminals are free to cheat others again and again, and you have no chance of ever getting your money back.

### Specific Fraud and Scam Concerns for Seniors

The following items require particularly close scrutiny and care:

1. Charitable Giving Scams: Seniors are often targets of frauds involving "look-alike" charities and appeals that fraudulently associate themselves with police and public safety organizations (badge fraud). Individuals may get more information from the Tennessee Department of Consumer Affairs

(<http://www.tn.gov/consumer/>) to determine if a charity is properly registered and can get specific information about how the funds are spent.

2. Investment Scams: Seniors are subject to a variety of frauds including “get-rich-quick” schemes aimed at increasing their income with various stocks, bonds, and other options. Some will involve limited partnerships, reverse mortgages and offshore accounts. Some will involve so-called “Ponzi Schemes.” If it appears too good to be true, it usually is.

3. Employment Scams: Low-income seniors are particularly subjected to ploys that promise large income from work-at-home plans and home-based businesses.

4. Health Care Plan Scams: Seniors facing mounting health care costs are the targets of various health plans and promotions that promise to supplement or cover health costs, including medications that are not covered by Medicare or Medicaid. In some cases, the “plans” are merely discount clubs or restrictive policies that afford little protection or coverage.

5. Sweetheart Scams: Seniors with few social contacts often are subjected to frauds involving social clubs, “dance clubs,” and dating services. In many cases they are required to pay ongoing fees and dues to participate, and, in some cases, these social contacts take advantage of the senior by taking money and property.

#### **D. Avoiding Identity Theft & Other Scams: Safe Use of the Internet & Social Media**

The internet has become an important part of our daily lives. Computers, cell phones, email and social media help us stay in constant communication with people we know and love and sometimes with people we do not know. Along with the benefits of these connections come some risks, including predators and con artists. While these examples refer to the internet, email and social media, many risks are similar with telemarketers and even mail solicitations.

Unfortunately, many of these crimes go unreported, because victims do not realize what has happened until they feel it is too late, they do not know who to report the crime to, the perpetrator may be someone the victim knows, or the senior is embarrassed that they were duped by the scam.

Every age group has unique vulnerabilities in addition to general risks in using the internet, and Seniors are no different. In many cases, individuals are not immediately aware when they have been taken advantage of, so it is vitally important for seniors to become involved in their own protection both online and offline. This information is intended to help you and your loved ones avoid identity theft, credit card fraud and other online schemes.

Protect your personal information. Be careful about giving your personal information, especially over the phone or online as you can never be sure whom you are speaking with.

Learn more about websites and companies trying to solicit you before making any transactions or revealing personal information.

Never trust a link sent to you by someone you do not know, or that looks unusual, even if it is from someone you do know. By clicking the link, you may be taken to a site that LOOKS like your bank or credit card company but is not. Instead of clicking on a link in an email, search for the website address using a search engine and use the information on that site to report the information you received. (Most bank and credit card companies have a specific link on their true websites for reporting suspected fraud.) If you are still in doubt, call the number on the back of your card or on your statement and speak to a representative.

Similarly, pop-up browsers replicating websites you visit or virus-scanning software may try and fool people into clicking to downloading programs. Sometimes these ask for payment information or they may download a tracking virus onto the victim's computer.

Trust your instincts and check with a trusted family member or friend if you are in doubt about anything. If something seems too good to be true, it probably is.

Be aware that what happens online can be reproduced and spread very easily. Nothing online is ever private.

If you have a personal computer, consider using services that block or reduce spam.

Try and limit online dealings to a few trusted vendors or use one specific credit card for all online or phone purchases. (Be cautious about using debit cards as they may not offer all of the protection of a credit card and they may provide easier access directly to your bank account.)

If you have an email or other online accounts, make sure they are all password protected. Be creative with your passwords. Don't ever include birth dates or social security numbers in your passwords and stay away from generic passwords like ABCD or 1234.

Be aware of the most common online scams targeting Seniors. Financial scams targeting seniors have become so prevalent in recent years, especially with an increased use of email and other anonymous internet-based communication. In many of these scams, the goal of the scammer is to get personal information, such as full name, social security number, credit card or bank account information and related passwords and security questions, so they can access accounts and steal or commit fraud.

Always be aware about sharing any of this information and check

accounts carefully and regularly.

Never trust an email that asks for your personal or account information. These are called “phishing scams” and they can seem very convincing. No bank, the IRS or reputable company is going to send you an email asking you to correct or update information, validate your identity or enter your password.

Never respond to, or even open an email, with a deal that seems too good to be true, unless it is from a company that you know well and expect to get these kinds of offers from.

Scams frequently create a false sense of urgency, so you will react quickly, without thinking. (Messages such as “if we do not hear from you by tomorrow, your account will be closed” or “this offer won’t last.” Usually, no date is listed, just “tomorrow.”)

Never believe that someone you do not know is trying to give you money or share a windfall with you. (The scam requires the victim to provide bank account information, so the scammer can transfer the funds.)

Some scams try and sound like they are coming from family or friends in need, either traveling overseas, in the hospital, arrested or otherwise experiencing some immediate, dire and unusual circumstance that requires you wire or otherwise send money. Trust your instincts and confirm any emergency before sending money.

Enjoy technology safely & with confidence. There is absolutely no

reason a senior citizen (or any experienced adult) cannot learn to use and rely on their computer, cell phone, email and social media to stay in touch with loved ones, learn about interesting topics and otherwise stay connected. Just as with any technology use, it must be done with caution, trusting your instincts and sometimes consulting someone with additional expertise.

## **SECTION SIX: ELDER ABUSE**

The term “abuse” is used to describe the act of intentionally hurting someone. Elder abuse, which includes “adult abuse,” “adult exploitation” and “adult neglect,” can take many forms. It may be sexual abuse, financial exploitation, emotional abuse, or confinement. Elder abuse may involve physical violence against an older person. It may also involve the deliberate neglect by a caregiver of the medical, health, and nutritional needs of a vulnerable older person.

Elderly persons are frequently reluctant to report abuse.

Currently in Tennessee, only 1 in 23 cases of elder abuse is reported. The problem is complicated because elder abuse, neglect and exploitation are frequently hidden problems that are difficult to address. In many cases, the victim lives with someone who controls access to the outside world, finances, meals, medication and everything else. Bruises go unnoticed, and the behavioral signs aren't witnessed, so the abuse continues. More than two-thirds of elder abuse perpetrators are family members.

Elder abuse is often made evident by the following signs:

- Unusual or unexplained bruises and injuries;
- Signs of confinement;
- Poor hygiene;



- Dehydration;
- Fear;
- Withdrawal;
- Anxiety and
- Hesitation to talk openly.

Additionally, the following caregiver behaviors may indicate that a person is abusing or neglecting an older person:

- Not permitting seniors to speak for themselves and indifference or anger toward an older person;
- Previous history of alcohol or drug problems;
- Threatening or insulting the older person;
- Isolating the senior from family and friends.

Financial exploitation may be indicated by:

- Unusual activity in bank accounts, such as the withdrawal of large sums of money;
- Exploiter having a power of attorney, when the older person does not need one or was not competent to have given one;
- A refusal by the exploiter to spend money on the older person for health or welfare;

- Checks and other documents being signed, when the older person is unable to write;
- The loaning by the older person of a large sum of money without adequate documentation;
- Hiding the older person from view.

## **II. Reporting Elder Abuse**

There are laws that protect the elderly from abuse. These laws are of little use, however, if incidents of abuse remain unreported. If you are aware of any signs of abuse in a neighbor, friend or relative, or if you believe that you are the victim of abuse, you should immediately contact your local adult protective services office at the Department of Human Services or your Area Agency on Aging for help.

A toll-free, statewide Elder Abuse Hotline is available at 1-888-APS-TENN, or 1-888-277-8366. If you suspect the abuse of an elderly person in a nursing home or long term care facility, you should contact your local or state Ombudsman. See the RESOURCES section for a list of these offices in Tennessee.

### **III. Resources for an Abused Adult**

#### Preventing Abuse

It is important to remember that abuse is not the victim's fault, though they may feel that way.

Seniors can help protect themselves from abuse by taking the following precautions:

- Become aware of resources for seniors in your community.
- Do not be isolated; stay in touch with as wide a range of people as possible.
- Make regular visits to a trusted physician and let him or her know your concerns and desires regarding possible health or social problems.
- Consider using community resources rather than depending on individual caregivers if you feel vulnerable to exploitation.
- Put your wishes in writing regarding finances and personal care.
- Do not sign anything that you do not understand. Get help from a lawyer, social worker or other adviser.

For more information, visit

<http://www.tn.gov/comaging/elderabuse.html>

## **SECTION SEVEN: RESOURCES**

### **Area Agencies on Aging, OPTIONS for Community Living and State Health Insurance Assistance Program (SHIP)**

Tennessee *Area Agencies on Aging* plan and provide programs and services for older Tennesseans, as well as those with disabilities. The programs range from caregiver support services, community resources, insurance assistance and general information. The offices are divided into nine areas by counties served.

#### **Aging Commission of the Midsouth**

2670 Union Avenue Extended, Suite 1000

Memphis, TN 38112-4416

[www.agingcommission.org](http://www.agingcommission.org)

(901)576-4100

Counties: Fayette, Lauderdale, Shelby, Tipton and the city of Memphis

#### **East Tennessee AAAD**

9111 Cross Park Drive, Ste D-100

Knoxville, TN 37923-4517

(865)691-2551

[www.ethra.org](http://www.ethra.org)

Counties: Anderson, Blount, Campbell, Cocke, Grainger, Hamblin, Jefferson, Knox, Loudon, Monroe, Morgan, Scott, Sevier, Union

**First Tennessee AAAD**

207 N. Boone Street  
Johnson City, TN 37601-1213  
(423)928-0224

[www.ftaaad.org](http://www.ftaaad.org)

Counties: Carter, Greene, Hancock, Hawkins, Johnson, Sullivan,  
Unicoi, Washington

**Greater Nashville AAAD**

501 Union Street, 6<sup>th</sup> floor  
Nashville, TN 37219-1705  
(615) 862-8828

[www.gnrcaaad.org](http://www.gnrcaaad.org)

Counties: Cheatham, Davidson, Dickson, Houston, Humphreys,  
Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale,  
Williamson, Wilson

**Northwest AAAD**

124 Weldon Drive  
Martin, TN 38237-0963  
(731)587-4213

[www.nwtdhira.org](http://www.nwtdhira.org)

Counties: Benton, Carroll, Crockett, Dyer, Gibson, Henry, Lake,  
Obion, Weakley

**South Central Tennessee AAAD**

101 Sam Watkins Road  
Mount Pleasant, TN 38474-4024  
(931)379-2929

[www.sctdd.org](http://www.sctdd.org)

Counties: Bedford, Coffee, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Perry, Wayne

**Southeast Tennessee AAAD**

1000 Riverfront Parkway  
Chattanooga, TN 37402  
(423)266-5781

[www.setaad.org](http://www.setaad.org)

Counties: Bledsoe, Bradley, Grundy, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, Sequatchie

**Southwest AAAD**

102 East College Street  
Jackson, TN 38301-6202  
(731)668-6403

[www.swtdd.org](http://www.swtdd.org)

Counties: Chester, Decatur, Hardeman, Hardin, Haywood, Henderson, McNairy, Madison

**Upper Cumberland AAAD**

1225 S. Willow Avenue  
Cookeville, TN 38506-4194  
(931)432-4111

[www.ucdd.org](http://www.ucdd.org)

Counties: Cannon, Clay, Cumberland, DeKalb, Fentress, Jackson,  
Macon, Overton, Pickett, Putnam, Smith, VanBuren, Warren, White

**Tennessee Commission on Aging & Disability**

500 Deaderick Street, 8<sup>th</sup> floor  
Nashville, TN 37243  
(615)741-2056

[www.state.tn.us/comaging](http://www.state.tn.us/comaging)

## **OPTIONS FOR COMMUNITY LIVING**

The *OPTIONS for Community Living* is a state funded program that was created to provide elderly, as well as adults with disabilities, home and community based service choices. An individual must be a resident of Tennessee, at least eighteen (18) years of age and older and must meet Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) limitation requirements. OPTIONS programs include homemaker services, personal care and home delivered meals. The program is provided through local area agencies on aging.

**OPTIONS for Community Living                      1-866-836-6678**

## **TENNESSEE STATE HEALTH INSURANCE ASSISTANCE PROGRAM (SHIP)**

The *Tennessee State Health Insurance Assistance Program (SHIP)* offers free and objective counseling to people regarding Medicare and related health insurances.

**SHIP Hotline    1-877-801-0044**



## **LEGAL SERVICES OFFICES**

The *Legal Aid Society* is a private, non-profit organization that provides free legal services to people with low income. They do not take criminal cases - only civil cases – and usually consist of cases regarding advocacy/benefits, health and aging and housing. They have 8 offices that serve 48 Tennessee counties and they are divided into three geographical areas.

### **West Tennessee Legal Services**

[www.wtls.org](http://www.wtls.org)

#### **Main Office**

210 West Main Street  
Jackson, TN 38301  
(731)423-0616  
(800) 372-8346

#### **Dyersburg Office**

208 East Church Street  
Dyersburg, TN 38024  
(731)285-8181

#### **Huntingdon Office**

113 West Paris Street  
Huntingdon, TN 38344  
(731)986-8975

#### **Selmer Office**

141 West Third Street  
Selmer, TN 38375  
(731)645-7961

**Legal Aid Society of Middle Tennessee and the Cumberland**

[www.las.org](http://www.las.org)

**Main Office**

300 Deaderick Street

Nashville, TN 37201

(615)244-6610

Counties served: Davidson

**Clarksville Office**

120 Franklin Street

Clarksville, TN 37040

(931)552-6656

Counties served: Cheatham, Dickson, Houston, Humphreys,  
Montgomery, Robertson, Stewart

**Columbia Office**

104 West 7<sup>th</sup> Street

Columbia, TN 38402

(931)381-5533

Counties served: Giles, Hickman, Maury, Marshall, Lawrence, Lewis,  
Perry, Wayne

**Cookeville Office**

9 South Jefferson Avenue, Ste 102

Cookeville, TN 38501

(931)528-7436

Counties served: Clay, Cumberland, DeKalb, Fentress, Jackson,  
Overton, Pickett, Putnam, Van Buren, White

**Gallatin Office**

650 North Water Avenue

Gallatin, TN 37066

(615)451-1880

Counties served: Macon, Smith, Sumner, Trousdale, Wilson

**Murfreesboro Office**

526 N. Walnut Street

Murfreesboro, TN 37130

(615)890-0905

Counties served: Cannon, Rutherford

**Oak Ridge Office**

226B Broadway

Jackson Square

Oak Ridge, TN 37831

(865)483-8454

Counties served: Anderson, Campbell,  
Claiborne, Morgan, Roane, Scott, Union

**Tullahoma Office**

123 NW Atlantic Street

Tullahoma, TN 37388

(931)455-7000

Counties served: Bedford, Coffee, Franklin, Grundy, Lincoln, Moore,  
Warren

**Legal Aid Services of East Tennessee**

[www.laet.org](http://www.laet.org)

**Johnson City Office**

311 W. Walnut, Suite 100  
Johnson City, TN 37604  
(423)928-8311

**Chattanooga Office**

535 Chestnut Street,  
Suite 360  
Chattanooga, TN 37402  
(423)756-4013

**Family Justice Center**

400 Harriet Tubman  
Knoxville, TN 37915  
(865)215-6830

**Erlanger Health System eHLP**

975 East Third Street  
Chattanooga, TN 37403  
(423)778-7807

**Knoxville Office**

502 S. Gay Street, Suite 404  
Knoxville, TN 37902  
(865)637-0484

**Maryville Office**

307 Ellis Avenue  
Maryville, TN 37801  
(865)981-1818

**Morristown Office**

1001 West Second North Street  
Morristown, TN 37814  
(423)587-4850

## **OTHER LEGAL ASSISTANCE ORGANIZATIONS**

### **On-Line Tennessee Justice**

<http://www.onlinetnjustice.org/> (internet only)

### **Tennessee Legal A-Z**

1-888-253-4259 (statewide, telephone only)

### **Tennessee Justice for All, List of Resources by County**

<http://www.justiceforalltn.com/resources-location/map-view>

(internet only)

### **Legal Information for Tennesseans**

[www.legalinfotn.org](http://www.legalinfotn.org) (internet only)

### **Southeast Tennessee Legal Services**

<http://www.selegal.org>

29 Patten Parkway

Chattanooga, TN 37402

(423) 756-0128

### **Tennessee Justice Center**

301 Charlotte Avenue

Nashville, TN 37201

(615) 255-0331

[www.tnjustice.org](http://www.tnjustice.org)

The *Tennessee Justice Center* seeks justice for Tennessee's vulnerable population through the courts, in administrative proceedings and before legislative bodies.

**Community Legal Center**

<http://www.clcmemphis.com/clients.html>

910 Vance Memphis, TN 38126

901.543.3395

Legal Assistance for the working poor

**Southern Migrant Legal Services**

311 Plus Park Blvd, Suite 135 \* Nashville , TN 37217

615-750-1200

866-721-7828

<http://www.trla.org/office/nashville-smls>

**ABA Homefront - Military and Veterans**

[Projecthttp://www.americanbar.org/portals/public\\_resources/aba\\_home\\_front.html](http://www.americanbar.org/portals/public_resources/aba_home_front.html)

**Stateside Legal - Legal help for military members, veterans and their families**

<http://www.statesidelegal.org/> (internet only)

### ***The State Long-Term Care Ombudsman Program***

This program provides assistance to elderly residing in nursing homes, homes for the aged, assisted care living facilities, and adult care homes. The Ombudsman is available to help residents and their families resolve questions or problems and will advocate for solutions to problems for qualified residents of long-term care facilities. When residents and families cannot resolve their problems through consultation with the facility staff or governmental agencies involved, they should contact their District Ombudsman. The Ombudsman works with many agencies and may be able to help resolve questions or concerns that involve state and federal agencies administering services to the elderly. Concerns can include quality of care, financial information, resident rights, admissions, transfer, and discharge. Also included are questions regarding nursing homes, homes for the aged, assisted care living facilities, Medicaid, and Medicare.

#### **State Long-Term Care Ombudsman**

TN Commission on Aging & Disability  
500 Deaderick Street, Ste 825  
Nashville, TN 37243-0860  
(615)741-2056

#### **Aging Commission of the South**

910 Vance Avenue  
Memphis, TN 38126-2911  
(901)527-0208  
Counties served: Fayette, Lauderdale, Shelby, Tipton

**East Tennessee**

9111 Cross Park Drive, Suite D-100

Knoxville, TN 37293

(865)691-2551

Counties served: Anderson, Blount, Campbell, Claiborne, Cocke, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, Union

**First Tennessee**

311 West Walnut Street

Johnson City, TN 37605-0360

(423)794-2488

Counties served: Carter, Greene, Hancock, Hawkins, Johnson, Sullivan, Unicoi, Washington

**Greater Nashville**

600 Small Street, Suite 102D

Gallatin, TN 37066

(615)452-5259

Counties served: Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, Wilson

**Northwest Tennessee**

206 White Street

Martin, TN 38237-1308

(731)587-4213

Counties served: Benton, Carroll, Crockett, Dyer, Gibson, Henry, Lake, Obion, Weakley



**South Central**

101 Sam Watkins Boulevard  
Mt Pleasant, TN 38474  
(931)379-2926

Counties served: Bedford, Coffee, Franklin, Hickman, Lawrence,  
Lewis, Lincoln, Marshall, Maury, Moore, Perry, Wayne

**Southeast Tennessee**

225 East Eighth Street  
Chattanooga, TN 37401  
(423)755-2877

Counties served: Bledsoe, Bradley, Grundy, Hamilton, McMinn,  
Marion, Meigs, Polk, Rhea, Sequatchie

**Southwest Tennessee**

210 West Main Street  
Jackson, TN 38301-6114  
(731)426-1312

Counties served: Chester, Decatur, Hardeman, Hardin, Haywood,  
Henderson, McNairy, Madison

**Upper Cumberlands**

1225 South Willow Avenue  
Cookeville, TN 38506-4194  
(931)432-4210

Counties served: Cannon, Clay,  
Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett,  
Putnam, Smith, Van Buren, Warren, White

## **OTHER TENNESSEE RESOURCES**

### **Tennessee Department of Human Services**

1000 Second Avenue North

Nashville, TN 37202

(615)532-4000 and (888)277-8366 Adult Protective Services

[www.tn.gov/humanserv](http://www.tn.gov/humanserv)

Services and assistance for adults who are mentally and physically impaired. Agency investigates alleged abuse of elderly and disabled in residential homes as well as in a facility.

### **Nurse's Aide Elderly Abuse Registry**

Tennessee Department of Health

1-800-778-4504

[www.tn.gov/health](http://www.tn.gov/health)

Maintains a registry of aides who have abused an older adult. Caller must enter a social security number to check if someone is on the registry list.

### **Tennessee Respite Coalition**

1-888-579-3754 toll free

Provides relief to family caregivers through a statewide respite hotline, voucher program, volunteer respite and senior companion program.

### **Mental Health America**

(615)269-5355 or 1-866-535-3825

Services include support group, in home caregiver training and educational programs for family members of those affected by mental illnesses.

**Tennessee Disability Pathfinder**

(615)322-8529 ext 10 OR 1-800-640-4636

[www.familypathfinder.org](http://www.familypathfinder.org)

Free information and referral service for persons with disabilities, family members and service providers.

**Tennessee Department of Veterans Affairs**

312 Rosa L. Parks Avenue

Nashville, TN 37243

(615)741-2931

[www.tn.gov/veteran](http://www.tn.gov/veteran)

Provides assistance to Tennessee Veteran's and their families

**Tennessee Property Tax Relief Program**

1700 James K. Polk Building

505 Deaderick Street

Nashville, TN 37243-1402

(615)747-8858

[www.comptroller.tn.gov](http://www.comptroller.tn.gov)

A program that may provide property tax relief to eligible senior citizens and disabled individuals.

**Board for Licensing Health Care Facilities**

Tennessee Department of Health

27 French Landing Ste 501

Nashville, TN 37243

(615)741-7221

[www.tn.gov/health](http://www.tn.gov/health)

Responsible for maintaining the requirements for licensure and has the authority to remove or suspend a license as well as carrying out unannounced surveys in licensed facilities.

### **Tennessee Bar Association**

221 Fourth Avenue North, Suite 400

Nashville, TN 37219

(615)383-7421 or toll free 800-899-6993

[www.tba.org](http://www.tba.org)

### **Tennessee Health Care Association**

2809 Foster Avenue

Nashville, TN 37210

(615)834-6520

[www.thca.org](http://www.thca.org)

Professional association for long term care facilities including nursing homes. Also publishes a free guide for long term care facilities.

### **Tennessee Hospital Association**

5201 Virginia Way

Brentwood, TN 37027

(615)-256-8240

[www.tha.com](http://www.tha.com)

The Association's mission is to lead members in advocacy for and support of community based hospitals.

**Tennessee Human Rights Commission**

312 Rosa L. Parks Avenue

23<sup>rd</sup> floor

Nashville, TN 37243

(615)741-5825

(800)251-3589

Independent state agency responsible for enforcing the Tennessee Human Rights Acts and the Tennessee Disabilities Act which prohibit discrimination in housing, employment and public accommodations.

**Tennessee Division of Consumer Affairs**

500 James Robertson Parkway

Nashville, TN 37243-0600

(615)741-4737

(800)342-8385

**OTHER RESOURCES**

**Financial Assistance:**

**Social Security Administration**

1-800-772-1213

[www.ssa.gov](http://www.ssa.gov)

Call for Medicare handbook, replacement cards, change of address, or to apply for Part D extra help.

**Pensions Rights Center**

1350 Connecticut Avenue NW

Washington, DC 20036

(202)296-3776

[www.pensionrights.org](http://www.pensionrights.org)

**Pro Seniors Inc. Mid American Pension Rights**

1-866-735-7737

[www.proseniors.org](http://www.proseniors.org)

Free advice about pension law and rights, finds lost pensions, investigates benefit denials, assists surviving spouses search for pensions.

**Department of Labor**

Pension and Welfare Benefits

Frances Perkins Building

200 Connecticut Avenue NW

Washington, DC 20210

(866)487-2365

[www.dol.gov](http://www.dol.gov)

**Health Care:**

**Alzheimer's Association**

225 North Michigan Avenue  
Suite 1000 Floor 17  
Chicago, IL 60601  
1-800-272-3900

[www.alz.org](http://www.alz.org)

Provides referrals to local support groups, educational materials and helpline.

**Mid South Chapter – Alzheimer's Association 1-800-272-3900**

**American Hospital Association**

155 North Wacker Drive  
Chicago, IL 60606  
(312)422-3000

[www.aha.org](http://www.aha.org)

Represents hospitals, healthcare networks and their patient's individual communities.

**Medicare**

1-800-638-6833

[www.medicare.gov](http://www.medicare.gov)

**QSource Medicare Beneficiary Protection Program**

1-800-528-2655

[www.qsource.org](http://www.qsource.org)

Individuals are able to submit quality of care concerns (i.e. file a complaint about a Medicare provider) or ask Medicare coverage questions.

**Eldercare Locator**

1-800-677-1116

[www.eldercare.gov](http://www.eldercare.gov)

Toll free help identifying community resources for seniors nationwide. This is a public service of the U.S. Administration on Aging.

**Center for Medicare and Medicaid Services**

Department of Health and Human Services

7500 Security Boulevard

Baltimore, MD 21244

(410)786-3000 or 877-267-2323

[www.cms.gov](http://www.cms.gov)

**CAPS (Children of Aging Parents)**

1-800-227-7294

[www.caps4caregivers.org](http://www.caps4caregivers.org)

Program provides newsletter, helpful links, online support groups and referrals to caregiver support groups.

**Compassion and Choices**

PO Box 101810

Denver, CO 80250

(800)247-7421

[www.compassionandchoices.org](http://www.compassionandchoices.org)

Improves care and expands the choices available at the end of life.



**National Council on Alcoholism and Drug Dependence, Inc.**

217 Broadway, Suite 712  
New York, NY 10007  
(212)269-7797  
[www.ncadd.org](http://www.ncadd.org)

**Long Term Care:**

**American Association of Homes and Services for the Aging (AAHSA)**

2519 Connecticut Avenue NW  
Washington, DC 20008-1520  
(202)783-2242

[www.nia.nih.gov](http://www.nia.nih.gov)

Provides older people with services and information on housing, healthcare and community involvement.

**American Health Care Association**

1201 L Street NW  
Washington, DC 20005  
(202)842-4444

[www.ahcancal.org](http://www.ahcancal.org)

A professional association representing nursing homes, assisted living and sub acute care facilities. May be contacted for educational and consumer materials on long term care.

**Legal Information:**

**Commission on Law and Aging**

American Bar Association

740 15<sup>th</sup> Street NW  
Washington, DC 20005-1009  
(202)622-8690  
[www.americanbar.org](http://www.americanbar.org)

**National Senior Citizens Law Center**

1444 Eye Street NW, Suite 1100  
Washington, DC 20005  
(202)289-6976  
[www.nscclc.org](http://www.nscclc.org)

Protects and advocates for rights of lower income adults

**National Academy of Elder Law Attorneys**

1577 Spring Hill Road  
Suite 220  
Vienna, VA 22182  
(703)942-5711  
[www.naela.org](http://www.naela.org)

Professional organization for attorneys specializing in elder and special needs law.

**Bureau of Consumer Protection**

Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580  
(202)326-2222  
[www.ftc.gov](http://www.ftc.gov)

Works to prevent fraud, deception and unfair business practices.

**Equal Employment Opportunity Commission**

220 Athens Way Suite 350

Nashville, TN 37228

(800)669-4000

[www.eeoc.gov](http://www.eeoc.gov)

Enforces Federal laws which make it illegal to discriminate against a job applicant due to race, color, religion, sex, national origin, age, disability or genetic information.

**National Center on Elder Abuse**

c/o University of California - Irvine

Program in Geriatric Medicine

101 The City Drive South

200 Building

Orange, CA 92868

(855)500-3537

[www.ncea.aoa.gov](http://www.ncea.aoa.gov)

National resource for information on elder abuse, neglect and exploitation.

**Aging**

**AARP**

601 E Street NW  
Washington, DC 20049  
(202)939-3910

Offers drivers safety and tax assistance along with advocacy for the disabled.

**National Council on Aging**

1901 L Street NW, 4<sup>th</sup> floor  
Washington, DC 20036  
1-800-373-4906

[www.ncoa.org](http://www.ncoa.org)

Provides a national voice for older Americans and the community organizations that serve them to help find jobs, improve health, live independently and remain active in their communities. Publications available on many subjects (for a cost if mailed). Has a benefits checklist to check for available assistance with utilities, meals, medical and in-home services at [www.benefitscheckup.com](http://www.benefitscheckup.com).

**American Society on Aging**

575 Market Street, Suite 2100  
San Francisco, CA 94105-2869  
(415)974-9600

[www.asaging.org](http://www.asaging.org)

Develops leadership, knowledge and skills to address the challenges and opportunities of a diverse aging society.

**National Institute on Aging**

31 Center Drive, MSC 2292

Bethesda, MD 20892

(800)222-2225

[www.nia.nih.gov](http://www.nia.nih.gov)

Free publications on various topics related to health and aging.

**National Family Caregivers Association**

1-800-896-3650

Education and support information for caregivers of elderly, chronically ill or disabled individuals.

**Meals on Wheels Association of America**

413 N. Lee Street

Alexandria, VA 22314

(888)998-6325

[www.mowaa.org](http://www.mowaa.org)

National organization composed of and representing local community based senior nutritional programs. These programs provide over one million meals to seniors each day.

**Administration for Community Living**

Atlanta Federal Center

61 Forstyth Street SW, Suite 5M69

Atlanta, GA 30303

(404)562-7600

[www.acl.gov](http://www.acl.gov)

Believes all Americans should be able to live at home with community supports.