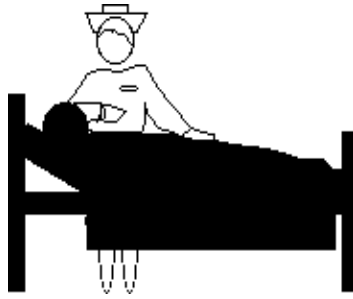

Getting Medicaid to pay for nursing home costs



LEGAL AID SOCIETY
OF MIDDLE TENNESSEE AND THE CUMBERLANDS



Getting Medicaid to pay for Nursing Home Services

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Introduction

MedicAID is the major payer for nursing home care in Tennessee. With nursing home charges reaching \$3,000 or more per month, few families can long support a loved one in a nursing home with only their own funds. MediCARE gives little coverage for skilled nursing care and no coverage at all for ordinary nursing home care. (Medicare is the health insurance program for people who receive Social Security retirement or Social Security disability payments.) Long term care insurance is costly and some policies have serious limitations. Also, someone who already has a medical condition which is likely to put them

in a nursing home will not be able to get such a policy.

Therefore, many Tennesseans facing a need for nursing home care need to know the rules for getting Medicaid in this state. Many people fear that they must give up their home and impoverish their families in order to get Medicaid. That is not so. Medicaid provides important protections for the nursing home patient and the patient's spouse and dependents. This paper gives an overview of Tennessee's Medicaid program for nursing home care.

We wish to thank Pam Ford Wright and the Caregivers Project of West Tennessee Legal Services for their permission to adapt their materials for use by our clients.

WARNING: This paper **is not meant to take the place of legal advice.** All cases are different and need individual attention.

This paper is about Medicaid in Tennessee only. We expect major changes to occur in the Medicaid program. For this reason, it is impossible to know when and how these rules will change.

We do not recommend that you rely solely on the information in this paper to plan for future medical needs. If you are concerned about how these rules apply to your situation, you should consult a lawyer. If you need updated information, contact your local Long-Term-Care Ombudsman (see page 3).

Is Nursing Home Care What The Patient Really Needs?

Don't assume that just because a person needs daily help that nursing home care is what they need. This booklet is mostly about getting Medicaid to pay for nursing home care. **Medicaid pays for nursing home care only when the patient needs care that can only be given in a nursing home.** For this reason, you should make sure that nursing home care is really what is needed before you sign a nursing home contract. Be sure you also consider non-nursing home types of care that might meet the need.

How can you find out what kind of long term care a person needs?

Ask the person's doctor to evaluate their medical needs and recommend the most suitable type of long term care. A doctor, nurse or social worker can judge how much help the person needs taking medicine and doing activities like walking, bathing, and eating. These are called "activities of daily living" or "ADLs". These professionals can then recommend the best type of long term care. Tennessee Options can refer you to professionals who can do this. Call **1-866-836-6678**. It's a free call.

Other Types Of Long Term Care

Care in the patient's own home

Many people who are chronically ill or disabled can stay at home if they get help there. They may need help with their activities of daily living, their medicines, and their other medical needs.

Finding out what's available

Tennessee Options can tell you what in-home services are in your area. Call **1-866-836-6678**. It's a free call.

Paying for in-home care

Several government programs help pay for part-time help with non-medical activities. This includes activities like bathing, dressing, homemaking and errands. Tennessee Options can help you find out if the patient qualifies. Call **1-866-836-6678**. It's a free call.

Health insurance may cover services from medical providers such as home health agencies. Long-term care policies may help pay for some help with activities of daily living.

MediCARE pays for home health services if the patient needs skilled care, such as physical or speech therapy. To find out more, call Palmetto Government Benefit Administrators at 1-800-583-2236.

MediCAID (TennCare) covers medically necessary home health services. If your TennCare plan won't give you services your doctor says are medically necessary, you can appeal. You may want to contact your Legal Services or Legal Aid office to see if they can help with an appeal (see page 14).

Residential homes, assisted living facilities, and homes for the aged

Many Tennesseans receive long term care in a residential home, assisted living facility, or home for the aged. All of these terms describe a home where several people live and receive some assistance in activities such as bathing or eating.

Tennessee's Medicaid program does NOT pay for room and board at a residential home or at an assisted living facility. (Note: A special state program called the Quality Enabling Program can help pay for boarding care in a few homes.)

MediCARE also does not pay for room and board at a residential home or at an assisted living facility.

To find out about these types of homes, call Tennessee Options at **1-866-836-6678**. It's a free call.

Continuous care facilities

More and more Tennesseans are moving to continuous care facilities. These facilities provide several different levels of assistance. They have apartments or homes for people who can live independently with little or no help. They also include apartments with common dining rooms and a staff to provide help with housekeeping. Some of these facilities also have a full range of nursing services.

Your Long-Term-Care Ombudsman may be able to help

To find out more about the types of long term care available in your community, contact your district Long Term Care Ombudsman. Ombudsmen answer questions about long term care. They can help you find a suitable long-term care facility. They also help with complaints about the care patients are receiving. Their services are free.

To find the long-term-care ombudsman in your area, call the Tennessee Commission on Aging at (615) 741-2056. You can also call Tennessee Options at 1-866-836-6678. It's a free call.



Medicaid

Medicaid is a public program that pays for medical services, including nursing services, for the people who qualify. It is funded by both state and federal governments. In Tennessee, it is called TennCare Medicaid.

Medicaid for people living at home

Medicaid in Tennessee may soon begin to help pay for non-medical services at home to help some people stay out of nursing homes. To find out more about this, call Tennessee Options. Their number is **1-866-836-6678**. It's a free call.



The rest of this booklet is about applying for Medicaid to pay for care in a nursing home.

Medicaid for people who need nursing home care

In Tennessee, Medicaid pays for 70% of all the care provided in nursing homes.

To have Medicaid pay for their nursing home care, a person must:

- Live in a nursing home that takes Medicaid payments, or expect to go into one, and
- Have had or expect to get medical care for 30 days in a row, and
- Meet Medicaid's medical guidelines for needing nursing home care, and
- Meet Medicaid's financial guidelines.

If the person meets all of these requirements, Medicaid will pay for her future nursing home care. It can pay for her nursing home care for 3 months before she applied for Medicaid.

How Do You Apply?

Medical professionals file the application to see if the patient meets Medicaid's medical guidelines. The patient or her family files the financial application.

To make the Medicaid financial application, contact the Tennessee Department of Human Services (DHS) in the county where the patient is now. To get their phone number, call the **Family Assistance Service Center** at **1-866-311-4287**. It's a free call. They can give you the phone number of the closest office.

Some hospitals also have Human Services case workers who take Medicaid applications.

If the patient who needs nursing home care is able to make her own decisions, she should be involved in the Medicaid application process. If the patient is not well enough to handle the paperwork, trusted family members or friends can apply for her. They do not need a power of attorney or other legal authority.

The Medical Application for Medicaid

Medicaid pays for nursing home care only for patients who need **daily nursing services** that, as a practical matter, can **only** be given in a nursing home.

To determine this, the patient's doctor or other medical professional fills out a form called a **PAE** (Pre-Admission Evaluation). The hospital or nursing home sends the PAE to the Tennessee Department of Health. The Department decides whether the patient's medical condition meets Medicaid's guidelines.

The fact that a patient can no longer live alone is **not** enough to get Medicaid to pay for their care in a nursing home.

The fact that a patient cannot afford a residential home, boarding home or

home for the aged is **not** enough to get Medicaid to pay for their care in a nursing home.

Another part of the medical application is called the **PASARR**. The PASARR is used to make sure no one is placed in a nursing home when the major care that they need is mental health treatment. Also, the PASARR is used to find out if the person has a type of mental condition requiring treatment that cannot be given in a nursing home. The Tennessee Department of Mental Health and Mental Retardation decides this part of the application, with help from a local mental health professional.

The Financial Application for Medicaid

While the PAE (medical application) is being done by medical professionals, the patient or family makes the financial application. They apply for Medicaid at the office of the Tennessee Department of Human Services in the county where the patient lives or where the nursing home is located. The Medicaid case worker will ask for financial information from the past three years or, in some cases, from the past five years.

The Medicaid worker looks at three parts of a patient's finances:

- Income
- Assets (also called "resources" and "property")
- Transfers of property or assets made during the three years before the Medicaid application (five years if the transfer is from a trust)

The Medicaid worker will also look at any property the patient holds jointly, including any bank accounts showing the applicant's name.

You get separate written decisions on the two parts of the application

On your financial application, the Department of Human Services must give you a decision within 45 days if you are blind or over age 65. If you are under age 65 and disabled, a decision can take as long as 90 days.

You will get letters telling you the result of your applications. If your financial application or medical application is not approved, the letter is supposed to say why. It should also tell how you can appeal. If you do not understand the letter about your financial application, call your Medicaid worker at Human Services.

You can appeal if they turn you down on either application

You have **30 days** to appeal the decision. A family member or friend can appeal for the patient. Anyone who needs help with an appeal should consult a lawyer or contact the local legal aid office.



The Income Part of the Financial Application

How much income is too much?

The first thing that a Medicaid case worker must ask about finances is “How much income does the patient receive each month?” Some types of income count for Medicaid and some do not count.

Some of the types of **income that do NOT count include:**

- Veterans benefits for someone in the household other than the patient,
- Tax refunds,
- Energy assistance payments,
- Payments from credit disability insurance policies,
- The first \$20 a month of unearned income, such as Social Security or pension payments.

To qualify, the applicant’s income that does count must be less than

1. The amount Medicaid pays for care in this nursing home PLUS
2. The patient’s regular monthly medical expenses that are not paid by insurance or other payment source.

The amount Medicaid pays for nursing home care is called a “per diem” or “vendor payment rate.” It is different for each nursing home. You can find out a nursing home’s vendor payment rate by calling their business office. You can also get it from the Division of State Audit at (615) 401-7829.

Example:

Goodcare Nursing Facility’s vendor payment for Level I (intermediate care)

is \$128.97 per day, or \$3,922 per month. (That is the highest Level I vendor payment rate in Tennessee until July 2005.) The rate is much higher for Level II (skilled care.) The patient's monthly medical expenses are \$15.

To qualify for Medicaid, the patient's income must be **less than** \$3,937 (vendor payment rate plus monthly medical expenses).

If a patient's income is **too high for Medicaid**, ask the nursing home how much they would charge without Medicaid. This is called the "private pay rate." Ask them to include the projected cost of the patient's medicine and supplies.

If the patient has enough income to pay these expenses, she may not need Medicaid at this time.

What if her income is **less than** the private pay rate plus her medicine? She may qualify for Medicaid even though her income is above the Medicaid guidelines. Planned changes in TennCare will affect how she may qualify. Call the local Ombudsman for help with these applications. (See page 3.)

Income the spouse at home can keep

When a married person is in a nursing home, Medicaid lets the spouse at home keep certain income. She may keep the higher of:

1. All income paid in her name, **OR**
2. All income paid in her name plus as much of the patient's income as it takes to bring her income up to

\$1,562 per month. (This figure will go up slightly July 1, 2005.) And, if her monthly housing costs are more than \$468.60, she can keep more of the patient's income. Housing costs include rent or mortgage, taxes, insurance, and utilities. She can keep enough of the extra housing costs to bring her income up to \$2,378. (This figure may go up January 1, 2006). These amounts go up yearly.

A nursing home patient who has Medicaid may also have an additional allowance paid to dependent family members living with her spouse.

What happens to the patient's income?

A nursing home patient on Medicaid is allowed to keep \$40 per month for personal expenses. The rest of her income is used as follows:

- Part of it may go to her spouse if she is married, as explained above,
- Part of it goes to any dependent family members living with her spouse,
- Part of it goes to pay Medicare and health insurance premiums,
- Part of it is set aside to help pay certain medical costs not covered by health insurance (see page 13), and
- The rest (which is called the "patient liability") is paid to the nursing home.

The Medicaid worker at the Department of Human Services determines how much of the patient's income goes for what.

The Asset Part of the Financial Application

Assets you can keep because Medicaid does not count them:

The home, no matter how much it is worth - The house and its surrounding property do not count if a spouse, dependent child or disabled relative lives there.

Even if no one lives there, its value does **NOT** count if the Medicaid applicant expresses a desire to return home. It does not matter if there is no realistic chance of going home. If the applicant is too sick to express this wish personally, a family member or other person can say it for her.

“Non-liquid, income-producing property,” such as rental property, does not count as an asset. Again, this is true no matter how much it is worth. However, the income from the property does count.

Property that cannot be sold - Property is not counted if it is “unavailable” because it cannot be sold.

It may, for example, be “unavailable” because of a problem with the title. Property may be “unavailable” because it is held in the name of an applicant who is mentally incompetent. Persons who are mentally incompetent cannot legally sell their property. However, if the applicant has a conservator or guardian, or has given someone a “durable power of attorney” that allows them to sell the property, then the property may be considered available. The Medicaid worker may ask family members to have themselves appointed

conservator so that the property becomes “available” and can be counted. No one has a legal obligation to accept this responsibility.

Real estate becomes “unavailable” if it has been on the market and has not sold after several months. Such property will not count as long as you keep trying to sell it. If the property does sell, the money from the sale will count. This may cause the nursing home patient to lose Medicaid until enough of the money is spent to qualify again for Medicaid.

A car - One car does not count, no matter how much it is worth.

Burial funds and spaces - A burial plot and headstone do not count. An irrevocable trust designated to pay for burial and funeral expenses does not count. In some cases, Medicaid does not count \$1,500 in a cash burial fund (in a separate account clearly marked for burial expenses) with an additional \$1,500 for a spouse.

Household goods and personal items - Generally, personal possessions are not counted. Some specific items that have great value, such as coin collections, will be counted.

Note: The types of property listed above do not count when you apply. However, the state may take them later as repayment for the money spent on the patient’s nursing home care. The state cannot do this until both the patient and the patient’s spouse have died. (See “The state may take property after the patient’s death” on page 12.)

More About Assets

Jointly owned real estate – Jointly-held real estate will not count **if**:

- It can't be divided easily, or
- One of the joint owners needs the property for a home.

Joint bank account – The total amount of money held in a joint bank account or other jointly-held funds will usually be counted.

Trusts - Many people set up trusts to benefit a disabled loved one. If the disabled person applies for Medicaid, the assets in the trust and the income paid by the trust may be counted for Medicaid eligibility. The property held in certain trusts, however, may not be counted. These include, for example, trusts created by a court and certain trusts created for disabled persons under age 65. To create this type of trust for a loved one, you must get a lawyer who is trained in this type of law.



Get expert legal advice about assets

Medicaid rules about property and other assets are complicated. Contact a lawyer who knows a lot about this area of the law. That's the best way to find out how Medicaid will treat particular investments, trusts, joint savings accounts, annuities, financial notes and other assets.

How Medicaid Treats The Assets It Does Count

Medicaid counts assets belonging to either spouse

If the patient is married, Medicaid counts both her and her spouse's countable assets to decide if she qualifies. It does not matter which spouse owns what or whether an asset is owned jointly or separately.

How much the patient can have in assets that count

To qualify for Medicaid, an unmarried nursing home patient may have no more than \$2,000 in countable assets.

A married patient can have \$2,000 in countable assets for herself; additional assets are set aside for the spouse at home (see "Assets the Spouse At Home Can Keep," on page 10). If both husband and wife are in a nursing home, each of them can have up to \$2,000 in countable assets. These limits apply only to assets that are available and are counted under the Medicaid rules.

What if you have too many countable assets for Medicaid?

A patient with too many assets for Medicaid can spend these assets as she wishes. But, there are penalties for giving away or selling assets for less than a fair price. (See "Important Medicaid Rules about Transferring Assets" on page 11.)

TIP: Even if the patient won't need Medicaid for a while, get a "snapshot assessment" of assets when the patient enters the nursing home.

When you apply, the Medicaid worker must get the total value of all countable assets owned by either spouse on the first day of nursing home care. This figure is needed no matter how long it has been since the patient entered the nursing home. This figure is called the "snapshot assessment." The Medicaid worker at the Tennessee Department of Human Services does the snapshot assessment. The Medicaid worker will also look at what has happened to the patient's assets since she entered the nursing home.

It pays to get the snapshot assessment done at the time the patient enters the nursing home. The snapshot will tell you which of the assets will count and how much must be spent before the patient can get Medicaid. If the patient is married, the snapshot will tell you how much of the assets can be set aside for the spouse at home.

If you feel that the snapshot assessment is incorrect, you can appeal.

Assets The Spouse At Home Can Keep

When a married person applies for Medicaid in a nursing home, the spouse at home can keep:

- **Any assets that do not count** under Medicaid rules as described above, **and**
- The **highest** of the following amounts:

Enough of the income-producing assets to bring the at-home spouse's income up to \$1,562 per month (more in some cases); many times, this rule allows the spouse at home to keep all of the assets; **or** \$19,020 (figure for 2005);

or One-half of the total assets in the "snapshot assessment," up to \$95,100 (figure for 2005);

or An amount set by a court or administrative law judge; judges may set a higher amount for a spouse who has extraordinary needs, such as high medical expenses.

When the nursing home patient has spent her share of the countable assets down to \$2,000, then she is "asset-eligible" for Medicaid.

Examples:

1. Mr. and Mrs. A have these assets on the day Mr. A enters the nursing home: a home, a car, and \$60,000 in savings. Mrs. A can keep the home and the car because they do not count. She can automatically keep \$30,000 as her half of the savings. Mr. A must spend \$28,000 of his \$30,000 before he can get Medicaid.

If Mrs. A's income and Mr. A's income combined are less than \$1,562 per month, she should ask to keep all of the assets. She will need all \$60,000 to generate at least \$1,562 in monthly income. However, she will need to have a fair hearing before Medicaid will allow her to keep this.

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2. Mr. and Mrs. B have \$25,000 in savings when Mrs. B enters the nursing home. Mr. B will keep \$19,020, leaving the patient, Mrs. B, with \$5,980. She becomes asset-eligible for Medicaid when she has spent her \$5,980 down to \$2,000.

Important Medicaid Rules About Transferring Assets

Transferring (giving away) income, countable assets or a home can cause a patient to be kept off Medicaid for a period of time. This can happen **if**:

1. The transfer is made during the three years before she applies for Medicaid, (five years if the transfer is made to or from a trust), **and if**
2. She got less than fair market value, **and if**
3. She cannot prove that she made the transfer for a reason other than to get Medicaid.

Generally, these rules apply to transfers made by either the patient or her spouse. If the at-home spouse gives away property, the nursing home patient may lose Medicaid for awhile.

Examples of transfers of assets that may cause the patient to be kept off Medicaid for a time:

- An applicant has money in a joint bank account. The other owner of the account withdraws the money.
- An applicant's husband gave the couple's granddaughter \$12,000 three years ago.
- An applicant transferred the title of her home to her son a month before entering a nursing home.

The period during which the patient cannot get Medicaid is called the "penalty period." It is calculated by dividing the value of the transferred property (minus any payment received for it) by \$3,394. The result is the number of months the patient cannot get Medicaid. There is no limit to how long the penalty period can be.

Example:

Mr. J gives away \$10,000 to his son in August. He goes into a nursing home in October. The penalty period will be 3 months (\$10,000 divided by \$3,394). The three months begins in August and ends in October. Medicaid will not pay for his care during the month of October.

There is NO penalty if:

- The property was sold for a fair price (fair market value).
- The property was transferred to the spouse. This is because all of a couple's assets are counted, regardless of who owns them.
- The property was transferred to your child of any age who is blind or disabled.
- The property was transferred more than 3 years before the applicant applied for Medicaid. But, a transfer to or from a trust, must have been done more than 5 years before the Medicaid application.
- The property was transferred to a special trust for a child or for a disabled person younger than 65.
- The property was transferred for a reason other than to qualify for Medicaid. This can be hard to prove.

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- The penalty would cause “undue hardship” for the nursing home patient (this is hard to prove).

Important: If you made an improper transfer, you can try to get the property back. If you get the property back, there will be no penalty period.



Special Rules About Transferring The Home

There is **NO** penalty if you transfer the patient’s home to:

- The spouse, **or**
- A child who lived in the home and gave care that enabled the parent to stay out of a nursing home for two years before the parent entered a nursing home, **or**
- A child who is under 21, or blind, or permanently and totally disabled, **or**
- A brother or sister who has an equity interest in the home and has lived there at least one year immediately before their sibling entered a nursing home.

A family may want to make transfers that will not be penalized to avoid having the property taken by the state after the nursing home patient dies. (See “The State May Take Property After the Patient’s Death,” below.)

IMPORTANT: Always get the advice of a lawyer who knows this area of the law well before you transfer assets that might affect Medicaid eligibility.

The State May Take Property After The Patient’s Death

When a nursing home patient gets Medicaid, the state may put a “lien” on her property. This allows the state to repay itself for the nursing home expenses by taking the property after her death. The state will not put a lien on a home where a spouse or disabled child lives. The state will not try to collect repayment until after the death of the patient, the spouse and any disabled child. The state will also not collect repayment if it would create a hardship. Hardship may, however, be hard to prove.

If you expect the patient to need Medicaid for nursing home care, you might be able to avoid this problem by transferring property in a way that will not be penalized. However, such a transfer may cause your family to have to pay high taxes or create other serious difficulties. Before transferring property, you should always get advice from a lawyer who knows this area of the law.

How Medicare and TennCare Medicaid work together



A patient with both Medicare and TennCare Medicaid can see her usual Medicare doctor. The doctor does not have to be signed up for the patient's TennCare insurance plan.

With TennCare Medicaid, patients don't have to pay

Medicare co-pays and deductibles. Medicare and TennCare Medicaid pay the patient's doctor and hospital bills. TennCare Medicaid pays the patient's nursing home bills that Medicare does not pay. TennCare Medicaid also pays for the patient's prescription drugs. The patient should pay nothing.

How can the patient pay medical expenses that Medicare and TennCare Medicaid don't cover?

Tell the Medicaid worker about medical expenses that TennCare Medicaid does not cover

Some medical expenses are never covered by Medicaid, TennCare or other insurance. The most common examples are hearing aids, dentures and most eyeglasses. When the patient has this kind of medical expense, the Medicaid worker at the Tennessee Department of Human Services can reduce the amount of the patient's income that goes to the nursing home. That frees up some of the patient's income to help pay for these expenses. Medicaid rules call these expenses "**Item D**" expenses.



Important Note: Nursing home patients on TennCare Medicaid cannot be charged for their prescription

drugs. TennCare must cover all their medically necessary drugs. What if TennCare won't pay for a prescription and the doctor cannot prescribe a drug TennCare usually covers? You should file an appeal. To appeal, call TennCare Solutions at **1-800-878-3192**. They can start the TennCare appeal process for you. They can also ask the drug store to give the patient a 3-day supply of the prescribed drug.



Important Note: Medicaid patients should also **not** be charged for certain basic supplies and legend drugs, such as aspirin or vitamins. These are "cost items" which are paid for by Medicaid's payment to the nursing home.

**Help with
TennCare Medicaid problems
TennCare Consumer Advocacy Line**

They help with problems getting urgently needed medical care under TennCare Medicaid. Call:

1-800-722-7474
313-9972 (Nashville area)

Español: 1-800-254-7568
227-7568 (Nashville area)

TTY/TDD: 1-800-722-7647
313-9240 (Nashville area)

**TennCare Partners Information
and Advocacy Line**

1-800-758-1658 or
(615) 242-7339 (Nashville)

They help with problems getting mental health care or drug and alcohol treatment under TennCare.

**TennCare Solutions
1-800-878-3192**

Call them if TennCare is not paying for all of a TennCare Medicaid patient's prescription medicines. They can start the TennCare appeal process for you. They can also try to fix the problem without having to start an appeal.

Free Legal Help

Some of these programs give free help with TennCare or Medicaid problems.

Legal Aid of East Tennessee

Knoxville	(865) 637-0484
Johnson City	(423) 928-8311
	1-800-821-1312
Morristown	(423) 587-4850
Chattanooga	(423) 756-4013
	1-800-572-7457
Cleveland	(423) 479-8577
	1-800-445-3219

**Legal Aid Society
of Middle Tennessee and the Cumberland**

1-800-238-1443 (free call)

Offices in: Nashville, Clarksville, Columbia, Cookeville, Gallatin, Murfreesboro, Oak Ridge and Tullahoma

Memphis Area Legal Services

Memphis	(901) 523-8822
Covington	(901) 476-1808
	1-888-207-6386

West Tennessee Legal Services

Jackson	(731) 423-0616
Dyersburg	(731) 285-8181
Huntingdon	(731) 986-8975
Selmer	(731) 645-7961

Legal Assistance for the Elderly

1-800-362-9276

Southeast Tennessee Legal Services

423-756-0128 ext 104

**Aging Services for the Upper
Cumberlands**

931-432-4210