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# Paying for nursing home costs with the **CHOICES** program

(CHOICES is part of TennCare Medicaid)



**Legal Aid Society**  
Of Middle Tennessee And The Cumberland



## **Paying for nursing home costs with the CHOICES program**

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## Who pays for nursing home care in Tennessee?

Nursing home costs reach \$4,000 a month or more in Tennessee. Few families can afford this for very long.

CHOICES is the major payer for nursing home care in Tennessee. CHOICES is part of TennCare, the health care program paid for by the state and federal governments.

Many people expect that MediCARE will pay for it if they need nursing home care. MediCARE is the health insurance program for Americans who get Social Security payments. But MediCARE gives little coverage for skilled care in a nursing home. It doesn't pay at all for the non-skilled care most people get in a nursing home.

Long term care insurance can pay for both kinds of nursing home care. But

this insurance is costly. Some policies are very limited in what they pay. Someone who already has a serious health problem usually can't get this insurance.

So Tennesseans who need nursing home care need to know the rules for getting CHOICES here. Many people think they must sell their home before they can get CHOICES. They don't. Many think they will leave their husband or wife poor. That's not true either. The rules now have important protections for husbands or wives and dependents of patients.

This booklet explains the CHOICES rules for getting nursing home care.

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We wish to thank Pam Ford Wright at West Tennessee Legal Services for their permission to adapt their materials for use by others.

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

Don't use just the information in this paper to plan for future medical needs. Need to know how these rules apply to you? Talk to a lawyer. If you need updated information, contact your local Long-Term-Care Ombudsman (see page 3).

This booklet is only about TennCare Medicaid in Tennessee. Major changes were made in the TennCare program in March 2010. It is impossible to know when and how these rules will change again.

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# Is Nursing Home Care What You Really Need?

This booklet is mainly about getting the CHOICES program to pay for nursing home care. But just because a person needs daily help doesn't mean they need a nursing home. Is nursing home care really what you need? Make sure before you sign a nursing home contract. Be sure you also think about other types of care that might meet your need.

## How can you find out what kind of long term care you need?



Ask your doctor to tell you what your medical needs are. A doctor, nurse or social worker can judge how much help you need. Do you need help taking medicine?

Can you walk, take a bath and eat by yourself? These are called "activities of daily living" or "ADLs". These professionals can then tell you the best type of long term care for you. The Area Agency on Aging and Disability can refer you to people in your area who help you figure this out. Call **1-866-836-6678**. It's a free call.

## Other Types Of Long Term Care

### Care in your own home

What if you have a long-term health problem or are disabled? You may need help with activities of daily living, medicines, and other medical needs. Many people like this can stay at home if they get help there.

## Finding out what help is in your area

The Area Agency on Aging and Disability 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

### Non-medical care

Several government programs, including CHOICES, help pay for part-time help with non-medical needs at home. This includes things like bathing, dressing, cleaning and shopping for food.



Do you want to get care in your home not in the nursing home? You can still apply for the CHOICES program. If you meet CHOICES guidelines, it can pay for part-time care in your home. Call and ask us for our booklet about CHOICES and care in your home.

Are you or your spouse a military veteran? Then you may get help from the Veterans Administration. Call the Tennessee Department of Veterans Affairs for more information. This is a state program that helps veterans and their families. You can call them at **615-741-2931**.

Do you already have long-term care insurance? It may also pay for help with activities of daily living in your home.

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## Medical care in the home

Health insurance may cover services from medical staff such as home health agencies.

MediCARE pays for home health visits if the patient needs skilled care. Skilled care includes physical or speech therapy. To find out more about what Medicare covers at home, call SHIP (State Health Insurance Assistance Program) at **1-800-801-0044**. It's a free call.



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

These words describe a home for several people who can't by themselves. They are not kin to each other. They get help with things like bathing or eating. CHOICES can sometimes pay for this help in assisted living.

CHOICES **doesn't** pay for your room and board in these places. MediCARE won't pay room and board at these places either.

**Note:** There is a special state program called the Quality Enabling Program. It can help pay for boarding care in a few homes.

Want to find out about these types of homes? Call the Area Agency on Aging and Disability at **1-866-836-6678**. It's a free call.

## Continuous care facilities

More and more Tennesseans are moving to "continuous care" homes. These places give several different kinds of help. They have apartments or homes for people who can live alone with little or no help. They also have apartments with shared dining rooms and staff to help with housekeeping. Some of these care homes also have nursing services.

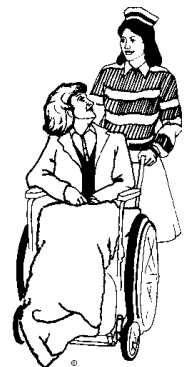
## Your District Long-Term-Care Ombudsman may be able to help

Your Long Term Care Ombudsman is an expert about nursing home care in your community. They can help you find a good place. They also help with complaints about the care patients get. Help from an Ombudsman is **free**.

Want to find the long-term-care ombudsman in your area? Their names and phone numbers are on page 19.

In Tennessee, CHOICES pays for 73% of all the care given in nursing homes. To have CHOICES pay for your care in a nursing home, you must:

- Live in a nursing home that takes CHOICES payments, or expect to go into one, and
- Have had or expect to get, medical care for 30 days in a row, and
- Meet CHOICES's care (medical) rules for needing nursing home care, and
- Meet CHOICES's money and property rules.



Do you meet all of these rules? Then CHOICES will pay for your future nursing home care.

## How Do You Apply?

In 2010, Tennessee changed its rules to make it easier to apply.

**Already have TennCare?** Then call your TennCare health plan (MCO) to apply for CHOICES. The number is on your TennCare card.

**Don't have TennCare?** The main place to apply is the Area Agency on Aging and Disability at **1-866-836-**

**6678**. It's a free call. Can't get CHOICES? They can tell you about other programs that may help.



Nursing homes, hospitals and the Tennessee Department of Human Services can also start CHOICES applications.

## The Care (Medical) Application for CHOICES

CHOICES pays for nursing home care only for patients who need help every day.

How does CHOICES decide if you need this? Your doctor or other medical worker fills out a paper. Did you start your application at the Area Agency on Aging and Disability? Then they will contact your doctors about the

paper. The paper is called a **PAE** (Pre-Admission Evaluation). The PAE is sent to the Tennessee Department of Health. They decide if the care you need meets CHOICES's rules.

### What does it take to get CHOICES to pay for your nursing home care?

What if you can no longer live alone? by itself, that's **not** enough to get CHOICES to pay for care in a nursing home.

What if you can't afford a home for the aged or assisted living? That is **not** enough to get CHOICES to pay for care in a nursing home.

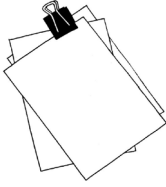
Another part of the care application is called the **PASARR**. The PASARR finds out if you need mental health help. Also, the PASARR shows if that help can or can't be given in a nursing home. The

Tennessee Department of Mental Health and Mental Retardation decides this part of the application. They use help from a local mental health expert.



### If they turn you down on the care application or the money and property application, you can appeal

You have **40 days** to appeal the decision. A family member or friend can appeal for you. If you need help with an appeal, you should call a lawyer. Or, you can contact the local legal aid or legal services office.



## The Money and Property Application for CHOICES

If you already have TennCare, you don't have to do a money and property application.

What if you don't have TennCare? You or your family must answer the questions on the money and property application.

Did you start your application at the Area Agency on Aging and Disability? Then they should help you get the paperwork together for this part. They will send your application to the Tennessee Department of Human Services. That office is also called "DHS."

Or, you can call the Department of Human Services (DHS) directly. Call the DHS office in the county where you are now. To get their phone number, call the **Family Assistance Service Center** at **1-866-311-4287**. It's a free call. Some hospitals also have DHS case workers who take CHOICES applications.

Are you well enough to handle your own money and bills? Then you should take part in the money and property

application. Are you not well enough to handle the paperwork? Then trusted family members or friends can apply for you. They don't need a power of attorney or other legal papers.



DHS will contact you about a time to talk. The DHS CHOICES worker will need to talk with you or the person applying for you. They will go over your money and property papers by phone or in person.

The CHOICES worker looks at three parts of your money and property:

- Your income
- Your property, investments and savings (also called "resources" and "assets")
- Your money or property sold, traded or given away during the 3 or 5 years before you applied. They call this a "transfer."

The CHOICES worker will also look at property you own jointly with someone else. This includes any bank accounts with your name.

### Papers you will need as proof for the money and property part of the application

The Area Agency on Aging and Disability will help you get the papers you need. If you don't want their help on this, tell them. You will need the kinds of proof listed below. If you are married, you will also need the same papers for your husband or wife. If you have children under 18, you will need these papers for them too.

You may not have all these papers together when you talk to the DHS case worker. But you have to turn them in during the next 45 days. If you don't, DHS must turn you down. You will need:

- **ID** that proves who you are. ID can be something like a driver's license, insurance card, Medicare card, library card, voter card, etc. You can't use a Social Security card as your ID.



- **Papers that prove that you (the person needing home and community-based services) are a US citizen.** But, if you're on Medicare, you don't have to prove that you're a citizen. Your family members who don't need TennCare Medicaid do not have to be citizens.

- **Proof of income**, except for Social Security payments. Does a family member who lives with you work? Then bring proof of their pay (before taxes are taken out) for the last two months.

- **Your last 3 bank statements** for checking, savings and credit union accounts. Also statements of stocks, bonds, IRAs, trust funds, etc.

- **All life insurance policies**

- **Deeds** for all land and houses you own or are buying

- **Title or registration** for all cars, trucks, SUVs, boats, etc., you own or are buying



- **Deeds** for burial spaces

- **Pre-Need burial plans**

- **Proof of money you got as a gift or gave away** in the last 60 months (5 years)

- Proof of anything you have **sold, transferred or given away** in the past 60 months (5 years)

- **If you are married now,**
  - Proof of marriage and
  - Proof of rent, utility bills, house note, property tax and homeowners insurance

## You get separate written decisions on these 2 parts of the application

Are you blind or over age 65? Then DHS must decide about your financial application within 45 days. What if you are under age 65 and disabled?

Then a decision can take as long as 90 days. Separate letters will tell you if you are OK'd for each part.



**What if your money application or care application is not OK'd?** Then the letter should say why. It should also say how to appeal. An appeal is a way to get mistakes fixed. What if you don't understand the letter about your financial application? Then call your CHOICES worker at DHS.

## How DHS decides if your income meets the CHOICES guidelines

How much income do you get each month?" This is one of the first questions they will ask. Some types of income count for getting CHOICES and some don't.

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**Some types of income that DHS does NOT count when you apply**



They include:

- Veterans payments for someone in the household other than the patient
- VA payments for medical costs
- 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

**What income does DHS count?**

DHS counts the other income that comes **in the name of the person** who needs nursing home care. The income they count includes Social Security payments, pensions, dividends, rental income, etc.

**To get CHOICES**, your income that counts must generally be **less than \$2,022** per month (2010 guidelines).

Is your monthly income too high for CHOICES (more than \$2,022)? Don't give up. You may still be able to get CHOICES.

First, ask the nursing home how much the care would cost without CHOICES. This is called the **private pay rate**. Ask them to add in the cost of your medicine and supplies.

Then see if you have enough money coming in each month. Do you have

enough to pay the nursing home and other expenses you may have? If so, you may not need CHOICES at this time.

What if you don't have enough to pay the nursing home without CHOICES? **You may be able to get CHOICES anyway.** This is true even if your income is too high for CHOICES. But, some or all of your income must go into a special kind of trust. It is called a **Qualifying Income Trust**. Income in the trust doesn't keep you from getting CHOICES. But it goes to help pay the cost of your care.

To set up this trust, you need a lawyer trained in elder law. To get names of such lawyers, contact your local Ombudsman (see pages 3 and 19). Or, call your Legal Aid or Legal Services office (see page 20). Or, go to the web site **www.naela.org** on the internet.

**What happens to my income after I am approved for CHOICES?**

A nursing home patient on CHOICES gets to keep \$50 per month for personal needs.

**\$50**

**Note:** If SSI payments are your only income, you can keep \$30 a month for personal needs. A patient who gets an improved Veterans pension will keep \$90 per month for personal needs.

This is what happens to the rest of your income:

- Part of it may go to your husband or wife if you are married

- Part of it goes to any dependent family members living with your husband or wife
- Part of it goes to pay your Medicare and health insurance payments
- Part is set aside to help pay certain medical costs not covered by health insurance (see page 14), and
- The rest is paid to the nursing home. (They call this money the “patient liability.”)



The CHOICES case worker figures out how much of your income goes for what.

### **Income your husband or wife at home can keep after you are approved for CHOICES**

What if a married person is in a nursing home? Then CHOICES lets the husband or wife at home keep certain income. The person at home may keep the higher of:

1. All income paid in her name, **OR**
2. All income paid in her name plus some of the patient’s income. She gets what it takes to **bring her income up to \$1,822** per month. (This is the 2010 amount.) Are her monthly housing costs more than \$546.60 (30% of the \$1,822)? Then she can keep more of the patient’s income. She can keep enough to bring her income up to \$2,739. (This is the 2010 amount.) Housing costs include rent or house payment,

taxes, insurance, lights, heat and water.

What if the patient has dependent family members living with her husband or wife? If she is on CHOICES, she may also have more of her income paid to them.

## **The Property Part of the Money and Property Application**

**Tell DHS about ALL of your property (assets)**



Was any sold or given away in the last 5 years? Be sure to tell your CHOICES worker. You can be charged with a crime if you know but:

- You don’t tell CHOICES about your property (asset) or
- You don’t tell CHOICES about something that was given, sold or traded away or
- You hide important facts about what you own

### **Property CHOICES doesn’t count when you apply:**

**The home does not count if:**

A husband or wife,  
dependent child or  
disabled child lives there.

In this case, the value of the house and the property around it don’t count.



**OR**

The **equity** is under \$506,000 (2011 number) and the patient wishes to go home. It doesn't matter if there is no real chance of going home. What if the applicant is too sick to say this? A family member or other person can say it for her.

**Does the patient have more than \$506,000 equity (2011 number) in her home?** Then talk to a lawyer who knows this area of the law. Ask if it is a good idea to take out a home equity loan. This could cut her equity down below \$506,000.

**“Non-liquid, income-producing property,”** such as rental property, doesn't count when you apply. Again, this is true no matter how much it is worth. BUT, the income from the property does count.



**Property that cannot be sold**  
CHOICES does not count property if it is “unavailable” because it can't be sold.

It may, for example, be “unavailable” because of a problem with the **title**. Property may be “unavailable” because the person who owns the property has a mental disability and does not know what they are doing. An owner who does not know what they are doing can't legally sell their property. But, what if the owner has a conservator or guardian? What if she gave someone “durable power of attorney” that lets them sell the property? Then the property may be “available” and CHOICES may count it.

What if there is **no conservator**? The CHOICES worker may ask family members to become the conservator. This would make the property “available” to be counted by CHOICES. **No one has to become a conservator.**

Real estate becomes “unavailable” if it **hasn't sold** after several months on the market. This property won't count as long as you keep trying to sell it. If the property does sell, the money from the sale will count. It may cause you to lose CHOICES for awhile. After enough of the money is spent, you can get CHOICES again.

**A car** - One car doesn't count, no matter how much it is worth.

**Burial funds and spaces** - A burial plot and headstone don't count.

**An irrevocable trust** set up to pay for burial and funeral expenses doesn't count. Did the person applying for CHOICES set it up? Then the irrevocable burial trust must be \$6,000 or less. What if a funeral home set it up? Then the burial trust can be any fair market value.



In some cases, CHOICES doesn't count \$1,500 in a cash burial fund. The money must be in a separate account clearly marked for burial costs. Also, CHOICES doesn't count up to \$1,500 for a spouse's burial fund.

**Household goods and personal items**  
- Generally, CHOICES does not count personal belongings. But, CHOICES may count some things that have great value, such as coin collections.

**Note:** CHOICES does not count the types of property listed above **when you apply**.

**But, they may take the property after you and your husband or wife die.** This pays CHOICES back for the money spent on the patient's nursing home care. (See "The state may take the patient's property after her death" on page 15.)

### **Jointly-owned savings, property and trusts**

**Joint bank account** – CHOICES usually **counts** all money in a joint bank account or other jointly-held funds. A joint account has more than one person's name on it.

**Jointly-owned real estate** won't count **if:**

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

**Trusts** - Sometimes families put money in a trust to take care of a disabled person. Or the trust may be set up by a legal guardian or court. What happens if the disabled person applies for CHOICES? Then CHOICES may count the money in the trust and the income from the trust. But, CHOICES may not count certain trusts. Need to make a trust that CHOICES doesn't count? Then see a lawyer who knows about CHOICES and trusts.

### **Get expert legal advice about property**

CHOICES rules about property and other assets are confusing. Contact a

lawyer who knows a lot about this area of the law. That's the best way to find out if CHOICES counts investments and trusts. Also ask about joint savings, annuities, financial notes and other assets.



## **How CHOICES Treats The Property It Does Count**

### **CHOICES counts property that belong to either spouse**

To see if a married patient qualifies, CHOICES counts property that belongs to both the husband and wife. It doesn't matter which spouse owns what. It doesn't matter if property is owned jointly or separately.

### **How much the patient can have in property that counts**

Is it an unmarried nursing home patient? Then to get CHOICES, she can have no more than \$2,000 in property that counts.

To get CHOICES, a married patient can have \$2,000 in countable assets for herself. Her spouse at home can have much more property (see "Property the Husband or Wife At Home Can Keep" on page 11). What if both husband and wife are in a nursing home? Then each of them can have up to \$2,000 in countable property. These amounts apply only to property that is available and that CHOICES counts.



## What if you have too much in property that counts for CHOICES?

If you have too much property for CHOICES, you can **spend** the property as you wish. But, giving away or selling property for less than a fair price can cause problems. (See “Important CHOICES Rules about Transferring Savings or Property” on page 12.)

**TIP: Married? When you first enter a nursing home, get a CHOICES “snapshot assessment” of assets. Do this even if you don’t need CHOICES yet.**



Applying for CHOICES? The CHOICES worker needs to know how much a countable property is worth. This must be how much it is worth on the first day of nursing home care. They need this number no matter how long the patient has been there. This number is called the “snapshot assessment.”

The CHOICES worker at DHS does the snapshot assessment. AND looks at what has happened to your property and money since you went into the nursing home.

It pays to get the snapshot assessment when you first go into the nursing home. The snapshot tells you which property will count. It also tells how much must be spent before you can get CHOICES. The snapshot will also tell you how much the husband or wife at home can keep.

If you think there is a mistake in the snapshot assessment, you can appeal.

## Property and Savings The Husband or Wife At Home Can Keep

Are you married and applying for CHOICES in a nursing home? Then your husband or wife at home can keep:

- **Any property that CHOICES does not count, and**
- The **highest** of the following amounts:
  - ◇ Is this property that brings in income? For example, is it a house you rent to someone? The at-home husband or wife can keep enough to bring their income up to \$1,822 per month. In some cases, your husband or wife could keep more. Many times, this rule lets your husband or wife at home keep all of the property.
  - ◇ **OR** \$21,912 (amount for 2011)
  - ◇ **OR** One-half of the total property and savings in the “snapshot assessment,” up to \$109,560 (amount for 2011)
  - ◇ **OR** An amount set by a court or administrative law judge. Does the husband or wife have special needs, like high medical expenses? In these cases, judges may set a higher amount.



## What the nursing home patient can keep

You must spend your share of the countable property down to \$2,000. Then you can get CHOICES.

## Examples:

1. Mr. A enters the nursing home. On that day, he and his wife have a home, car and \$60,000 in savings. Mrs. A can keep the home and the car because they don't count. She can keep \$30,000 as her half of the savings. Mr. A must spend \$28,000 of his \$30,000 before he can get CHOICES.

What if Mr. and Mrs. A's income together are less than \$1,822 per month? She should ask to keep all of the property. She may need all \$60,000 to produce at least \$1,822 in monthly income. But, she must have a fair hearing before CHOICES will let her keep this much.

2. Mr. and Mrs. B have \$25,000 in savings when Mrs. B enters the nursing home. Mr. B will keep \$21,912, leaving Mrs. B with \$3,088. She becomes asset-eligible for CHOICES when she has spent her \$3,088 down to \$2,000.

## Important CHOICES Rules About Transferring Savings or Property

Giving away income, countable savings or property or a home can cause problems. So can selling or buying property, in some cases. This is called a "transfer." If your countable property or savings are transferred, you can be kept off CHOICES for awhile. This can happen **if**:

1. The transfer was made during the 5 years before you applied for CHOICES (3 years, if the transfer

was done before February 8, 2006), **and if**

2. You got less than fair market value, **and if**
3. You can't prove that getting CHOICES was **NOT** the reason you made the transfer.

Usually, these rules apply to transfers **made by either the patient or their husband or wife**. What if the at-home husband or wife gives away property? Then the nursing home patient may lose CHOICES for a while.

### Examples of transfers of assets that may make the nursing home patient lose CHOICES for a time:

- A patient has money in a joint bank account. The other owner of the account takes the money.
- A patient's husband gave the couple's granddaughter \$12,000 three years ago.
- A patient gave her son her home a month before entering a nursing home.

## Penalties

How long the patient can't have CHOICES is called the "penalty period." The CHOICES worker sets the length of the penalty time like this. First he takes the value of the property that was transferred. He subtracts any payment you got for it. Then he divides by \$3,874. The answer is the number of months you can't have CHOICES. There is no upper limit to how long the penalty period can be.



**The penalty rules changed February 8, 2006.** They changed how far back CHOICES looks for transfers and when the penalty period starts. If you transferred money or property before this date, see the penalty rules below. If you transferred money or property on or after February 8, 2006, see the penalty rules after that on this page.

### Penalty rules for money or property transferred **BEFORE** Feb. 8, 2006

**Example:** Mr. J gives \$10,000 to his son in August 2005. He goes into a nursing home in October 2005. The penalty period will be 3 months (\$10,000 divided by \$3,874). The 3 months begin when he made the transfer, which was August. The penalty period stops at the end of October. CHOICES won't pay for his care during October.

#### There is **NO** penalty if:

- The property was sold for a fair price (fair market value) **OR**
- The property was transferred to your husband or wife. This is because all countable-type property of married couples are counted, no matter which one owns them. **OR**
- The property was transferred to your child of any age who is blind or disabled. **OR**
- The property was transferred more than 3 years before you applied for CHOICES. But a transfer to or from a **trust**, must happen sooner. Was it a transfer from a trust? Then it must have happened more than 5 years



before you applied for CHOICES. **OR**

- The property was transferred to a special trust for a disabled person under age 65. **OR**
- Qualifying for CHOICES was **NOT** the reason for the transfer. This can be hard to prove. **OR**
- The penalty would cause “undue hardship” for the nursing home patient. This is hard to prove.



#### What if you made a transfer that could cause problems?

Try to get the property back. If you get the property back, there will be no penalty period. (Is it property CHOICES counts? Then you must sell it for a fair price. You must also spend any money above the \$2,000 money and property guideline for getting CHOICES.)

### Penalty rules for money or property transferred **ON** or **AFTER** Feb. 8, 2006

**Example:** Mr. J gives \$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 \$3,874). The 3 months don't start until:

- Mr. J is in a nursing home (or getting Home and Community-Based Services)
- **AND** he has less than \$2,000 left in money and property that CHOICES counts.

Then he starts 3 months of nursing home care that CHOICES **won't** pay for.

**There is NO penalty if:**

- The property was sold for a fair price (fair market value) **OR**
- The property was transferred to the husband or wife. This is because all assets of married couples are counted, no matter who owns them **OR**
- The property was transferred to your child of any age who is blind or disabled **OR**
- The property was transferred more than **5 years before you applied and met the rules** for CHOICES. This is also true for money transferred to or from a trust. **OR**
- The property was transferred to a special trust for a disabled person under age 65 **OR**
- Qualifying for CHOICES was **NOT** the reason for the transfer. This can be hard to prove. **OR**
- The penalty would cause “undue hardship” for the nursing home patient. This is hard to prove.



**What if you made a transfer that could cause problems?**

You can try to get the property back. If you get the property back, there will be no penalty period.

(Is it property CHOICES counts? Then you must sell it for a fair price. You must also spend any money



above the \$2,000 money and property guideline for getting CHOICES.)

**Special Rules About Transferring The Home**



There is **NO** penalty if your home is transferred to:

- Your husband or wife
- **OR** your child **IF**:
  - ◊ The child lived in the home
  - ◊ AND gave care that kept you out of a nursing home
  - ◊ AND this happened the last 2 years before you went into the nursing home
- **OR** your child who is under 21, or blind, or permanently and totally disabled,
- **OR** your brother or sister who
  - 1) has equity in the home and
  - 2) lived there the whole year before you went into the nursing home.

Making these OK transfers can keep the State from taking the property for a while longer after you die. (See “The State May Take the Patient’s Property After Her Death,” on page 15.)

**IMPORTANT:** Always get the advice of a lawyer. Do this before you transfer money or property that might affect if you can get CHOICES. And don’t get just any lawyer. The lawyer needs to know this area of the law well.

### **If they turn you down on the care application or the money and property application, you can appeal**

An appeal is a way to get mistakes fixed. The letter turning you down should say why. It should also tell you how to appeal. You have **40 days** to appeal the decision. A family member or friend can appeal for you. If you need help with an appeal, you should call a lawyer. Or, you can contact the local legal aid or legal services office.

### **The State May Take the Patient's Property After Her Death**

Generally, the State tries to get paid back from money and property you leave when you die. They try to get back the cost of CHOICES care you got after age 54. They also try to get back the cost of nursing home care the State paid for. But they can only do this after you die. It's the law. This law is called Estate Recovery.



Sometimes the law lets your money and property stay in your family awhile longer after you die. But the people you leave things to must do the right paperwork. If they don't, the State will take your money and property anyway. Make sure the people you leave things to know to contact TennCare Medicaid when you die. They must get a Release paper from TennCare Medicaid. To find out more about this, keep reading.

### **When the State should NOT try to get paid back when you die**

The State can't take things you leave that don't have to go through probate court. Examples would be life insurance money or a life estate. But the person in charge of your things must get a Release paper from TennCare Medicaid. Only then can they give your things to the people you left them to.

What if the things you leave DO have to go through Probate Court? The State still may not try to get paid back if:

- You leave very little money or property when you die.
- Or your care didn't cost TennCare Medicaid much money.

But the person in charge of your things must get a Release paper from TennCare Medicaid. Only then can they give your things to the people you left them to.

### **Your things can stay in the family longer if you can leave them to certain relatives**

By law, the relatives listed below can have your money or property when you die. The State won't try to get paid back until they die or the child reaches age 18. The law calls these people "exempt" family members:

- Your husband or wife
- Or a child of yours of any age **IF** they were blind or disabled before age 21
- Or your child under age 18

Remember: The family member still must get a Release paper from TennCare Medicaid after you die.

## Special rules sometimes let your HOME stay in your family longer

Giving your home to certain family members lets it stay in your family longer. Then State will not come after the home when you die. But this is true only if the family member gets a Release paper from TennCare Medicaid. Then State won't take the home until the family member dies or the child reaches age 21.



Your home is protected longer like this if you give it to your husband or wife.

In a few cases, you can give your home to your child or brother or sister. Here's when giving your home to your child or brother or sister keeps it in the family longer:



- **IF** you give it to your child who lived in the house with you and gave you care that kept you out of a nursing home. This had to be for the 2 years before you needed home or community-based care or nursing home care.
- **OR** if you give it to your child who is under 21, or blind, or permanently and totally disabled.
- **OR** if you give it to your brother or sister who:
  - Made payments on the home (they have equity)
  - And lived there the whole year before you started getting home and community-based care or nursing home care.

**Important:** Before giving your home to them, see a lawyer who knows Medicaid transfer law. If this isn't done right, it can cause tax and other problems for your family.

You might be able to keep other property for your family longer by making transfers that don't cause a waiting time (penalty). See pages 13-14 in this booklet. **BUT**, this may cause your family to have to pay higher taxes. Or, it could cause other serious problems. See a lawyer before you make these transfers too.

## What if you leave things to someone who isn't one of the relatives listed above?

The State will try to get paid back, unless it would cause a hardship. Would it be a hardship for people you leave things to if they didn't get your things? If they prove a hardship, then the State won't take your money or property. **Hardship** means the person you left your money and property to would:

- Lose their main income,
- Or have to go on Food Stamps or Families First,
- Or be seriously hurt. Hurt means:
  - Hurting their health **OR**
  - Losing the place where they live **OR**
  - Losing their food money **OR**
  - Leaving them no way to pay for medical needs **OR**
  - Losing their income.

Here's an example. You own a family farm. You plan to leave it to your grown child. The child makes a living running the farm. If the State takes the farm, your child will lose his main income.

To find out more about proving hardship, contact the TennCare Estate Recovery office. Their free phone number is **1-866-389-8444**.



What if your family needs help proving that TennCare Medicaid should not take your money or property? **OR** if someone says your child can only have your savings and property if he was disabled before age 18, not age 21? State law says age 18, and Federal law says age 21. If Federal and State laws are different, Federal law wins. Talk to a private lawyer. Or ask Legal Aid or Legal Services if their lawyers can help you for free. Their phone numbers are on page 20.



### **Make sure your family members know to get a Release from TennCare Medicaid**

Are you leaving things to someone the law lets keep your money and property until they die or reach 21? Make sure they know to fill out a TennCare Request for Release paper. They can get it from the probate court or from the internet at: <http://www.state.tn.us/tenncare/forms/releaseform.pdf>. They must send it in with proof that they are someone who has the right to your money and property. If the State agrees,

they will get a paper called a Release. Then the State won't try to get paid back right after you die.

### **How the State gets paid back**

Most of the time, the State tries to get paid back from money and property you leave when you die.

The probate court can tell the State to take money from your bank accounts. The judge can order your property to be sold through the court. The judge may also give your family a chance to buy your home first, for a fair price. The State must tell your family if they plan to take your money or property. What if they take your money or property without sending a letter? Your family can appeal if the State shouldn't have taken it.

The State can only get back as much as TennCare Medicaid spent for your Home and Community-Based Services and nursing home care. What if the property sale brings in more money than TennCare Medicaid spent? The rest of the money goes to anyone you owe money to or left money to.

### **Will my family have to pay if I don't leave enough property to pay the State back?**



**NO.** Your family does **NOT** have to pay out of their own pockets. But, your family may get collection letters saying they do have to pay. It would be smart to show these letters to a private lawyer who knows estate law or Medicaid law.

## How Medicare and CHOICES work together

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



With CHOICES, patients don't have to pay Medicare co-pays and deductibles. Medicare and CHOICES pay the

patient's doctor and hospital bills. CHOICES pays the patient's nursing home bills that Medicare does not pay. The patient should pay nothing.

CHOICES won't pay for medicine for patients with MediCARE. They must sign up for a Medicare Part D drug plan. This is true unless they have "creditable" coverage from another insurance plan that pays for drugs.



## How can you pay health care expenses that Medicare and CHOICES don't cover?

### Tell the CHOICES worker at DHS about medical expenses that CHOICES does not cover

Some medical expenses are never paid by CHOICES or other insurance.

Common examples are hearing aids, false teeth and most eyeglasses. When you have this kind of medical cost, tell the CHOICES worker at DHS. They can cut how much of your income goes to the nursing home. That leaves some of your income to help pay for these expenses. CHOICES rules call these expenses "Item D" expenses.



**Important Note:** Nursing home patients on CHOICES should **not** be charged for basic supplies and over-the-counter drugs, like aspirin or vitamins. These are called "cost items". They are already paid for by CHOICES payment to the nursing home.



**Important Note:** Nursing home patients who **only** have CHOICES, but not Medicare, **cannot be charged for their prescription drugs.**

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

Nursing home patients with MediCARE may need some drugs that Medicare Part D doesn't cover. Ask your doctor to help you file an "exception" to get your medicine covered. You can get help with Medicare Part D problems from the State Health Insurance Program (SHIP) by calling **1-877-801-0044**.

**Free calls to an ombudsman for information on care in  
nursing homes, assisted living and homes for the aged  
1-866-836-6678**

Debby Morrell, Long-Term Care Ombudsman  
Legal Aid of East Tennessee  
311 West Walnut St.  
PO Drawer 360  
Johnson City, TN 37605-0360  
Phone: 423-928-8311, ext. 27  
Fax: 423-928-9488  
E-Mail: dmorrell@laet.org

Cindy Troyer, Long-Term Care Ombudsman  
East Tennessee Human Resource Agency  
9111 Cross Park Drive, Suite D-100  
Knoxville, TN 37923-4517  
Tel: 865-691-2551 ext. 4223  
Fax: 865-531-7216  
E-Mail: ctroyer@ethra.org

Trudy Mott, Long-Term Care Ombudsman  
Partnership for Families, Children, and Adults  
225 East Eighth St. (37402-2202)  
PO Box 11398  
Chattanooga, TN 37401-2398  
Tel: 423-755-2877  
Fax: 423-755-2755  
E-Mail: tmott@partnershipfca.com

Marie C. Ferran, Long-Term Care Ombudsman  
Aging Services for the Upper Cumberland  
1225 South Willow Avenue  
Cookeville, TN 38506-4194  
Tel: 931-432-4210  
Fax: 931-432-6010  
E-Mail: eldlaw@twlakes.net

Sally Pitt, District Long-Term Care Ombudsman  
Patti Bedwell, Long-Term Care Ombudsman  
Mid-Cumberland Human Resource Agency  
Union High Resource Center  
600 Small Street, Suite 102D  
Gallatin, TN 37066  
Tel: 615-452-5259 **or** 615-452-1687  
Fax: 615-452-5259  
E-Mail: spitt@mchra.com

Rick Lucas, Long-term Care Ombudsman  
South Central Tennessee AAAD  
807 South Main St. (38401-3307)  
PO Box 1346  
Columbia, TN 38402-1346  
Tel: 931-490-5914  
Fax: 931-380-1493  
E-Mail: rlucas@sctdd.org

Marchell Gardner, Long-Term Care Ombudsman  
Northwest Development District  
206 White St. (38237-1308)  
Martin, TN 38237-1308  
PO Box 963  
Martin, TN 38237-0963  
Tel: 731-587-4213 ext. 239  
Fax: 731-587-9031  
E-Mail: mgardner@nwthra.org

Amanda Scott, Long-Term Care Ombudsman  
Senior Citizens Law Project  
210 West Main St. (38301-6114)  
**or** PO Box 2066  
Jackson, TN 38302-2066  
Tel: 731-426-1312  
Fax: 731-426-1362  
E-Mail: amanda@wtls.org

Sandra Smegelsky, Long-Term Care Ombudsman  
Metropolitan Inter-Faith Association  
910 Vance Avenue (38126-2911)  
**or** PO Box 3130  
Memphis, TN 38173-0130  
Tel: 901-527-0208 ext. 215  
Fax: 901-523-1266  
E-Mail: ombudsman@mifa.org

## **For help with TennCare or CHOICES problems**

Call the Tennessee Community Services Agency or your local Legal Services or Legal Aid office. They may be able to help you. Their help is free.

**Tennessee Community Services Agency** 1-800-758-1638

### **Free Legal Help**

Some of these programs give free help with TennCare and CHOICES problems. None of these programs can help with every case But many of them sometimes help with appeals or tell you where else you can get help.

#### **Legal Aid of East Tennessee**

Knoxville	(865) 637-0484
Johnson City	1-800-821-1312
Cleveland	1-800-445-3219

#### **Legal Aid Society of Middle Tennessee and the Cumberlands**

1-800-238-1443 (free call)

Offices in: Nashville, Murfreesboro  
or Tullahoma offices

Visit us on the internet: [www.las.org](http://www.las.org)

#### **Memphis Area Legal Services**

Memphis (901) 523-8822

#### **West Tennessee Legal Services**

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

**Aging Services for the Upper Cumberlands** 931-432-4210

This booklet is not meant to take the place of legal advice. Each case is different and needs individual attention. We updated this booklet in February 2011. The law may change from time to time.

## **Legal Aid Society**

of Middle Tennessee and the Cumberland

**1-800-238-1443**

It's a free call.

On the internet at **[www.las.org](http://www.las.org)**

