



Paying for Care:

V.A. and Medicaid Benefits

GLEN A. KYLE, J.D., CELA*

**CERTIFIED ELDER LAW ATTORNEY BY THE NATIONAL
ELDER LAW FOUNDATION*

Long-Term Care is Expensive

- In-home caregiver agencies often charge between \$30 and \$34 an hour.
- Private in-home caregivers often charge between \$15 and \$25 an hour.
- Assisted living communities in our area cost \$3,500 to over \$6,000 per month
- Memory care communities in our area cost \$3,500 to over \$7,000 per month
- Nursing Facilities costs between \$8,500 and \$13,000 a month in our area.

Medicare Benefits

- Medicare – is your healthcare. It pays for doctor visits, hospitalizations, medications, lab tests, etc.
- Qualify when you turn 65 or become disabled (2 years after qualifying for SSDI)
- Provides benefit for skilled rehab (often in nursing facility)
 - Maximum benefit is 100 days
- Provides Home Health
 - Occupational Therapy, Physical Therapy, Speech Therapy in home or facility.
 - But does not provide assistance with eating, walking, toileting, transferring, etc.
- Provides Hospice Benefits
 - If Doctor certifies you are likely to pass within 6 months.
 - Provides holistic services that can include medications, medical equipment, CNA support, chaplain services, etc.



Resources to Pay for Care

Income / Social
Security

Assets / Savings /
Investments

Family Support

Home Equity

Long-Term Care
Insurance

Veterans
Administration

EEOICPA (Energy
Employees
Occupational Illness
Compensation Act)

Medicaid
(TennCare)

Veterans Administration – Service-Connected Disability Compensation

➤ Service-Connected Compensation

- Tax free monetary benefit paid to Veterans with disabilities that are result of disease or injury incurred or aggravated during active service.
- Payment amount correlated to disability percentage rating.
 - 50% - free healthcare and prescription meds
 - 70%- Free nursing home care
- No income or asset limits
- Presumptive Service Condition – ex. Agent Orange if Vietnam boots on the ground.

➤ Dependency and Indemnity Compensation (D.I.C.)

- Tax free monetary benefit paid to surviving spouses, children, and parents of deceased service members who died from service-related causes or in the line of duty.
- No income or asset limits
- Surviving spouse
- Child up to age 18 (23 if attending school)
- Parent – if financially dependent on deceased service member or veteran

Veterans Administration Health Care Benefit

- Covers any illness or injury connected to military service
 - Includes exposure to toxic substances
- Places Veterans in one of 8 priority groups
- Groups based on percentage disability rating, income, prisoner of war, purple heart, etc.
- Also, whether boots on ground in Vietnam, Gulf War, or in wars after 9/11

VA Pension

- Not service-related
 - Can't have both, only receive the higher of the two
- Medical – Age 65+ or non-service connected disability
- Financial – net worth & income (IVAP)
- Military Criteria
 - Active Duty (90 days) w/1 during wartime
 - 2 years if entered active service after Sept. 7, 1980.
 - Non-dishonorable discharge



VA Wartime Eligibility Periods

- Mexican Border Period (May 9, 1916 – April 5, 1917 for Veterans who served in Mexico, on its borders, or adjacent waters)
- World War I (April 6, 1917 – November 11, 1918)
- World War II (December 7, 1941 – December 31, 1946)
- Korean conflict (June 27, 1950 – January 31, 1955)
- Vietnam era (November 1, 1955 – May 7, 1975 for Veterans who served in the Republic of Vietnam during that period; otherwise August 5, 1964 – May 7, 1975)
- Gulf War (August 2, 1990 – through a future date to be set by law or Presidential Proclamation)

Monthly pension Rates - 2025

	Basic Improved Pension	Homebound	Aid & Attendance	5% UME Deduction
Single	\$1,413	\$1,727	\$2,358	\$70
Married	\$1,851	\$2,165	\$2,795	\$92
Surviving Spouse	\$948	\$1,158	\$1,515	\$47
Veteran married to Veteran	\$1,851	\$2,165 \$2,478	\$2,795 \$3,108 \$3,740	\$92

A&A Medical Criteria

– At least one of these must be true for Aid & Attendance:

- You need another person to help you perform daily activities, like bathing, feeding, and dressing, or
- You have to stay in bed—or spend a large portion of the day in bed— because of illness, or
- You are a patient in a nursing home due to the loss of mental or physical abilities related to a disability, or
- Your eyesight is limited (even with glasses or contact lenses you have only 5/200 or less in both eyes; or concentric contraction of the visual field to 5 degrees or less)

IVAP—Income for VA Purposes

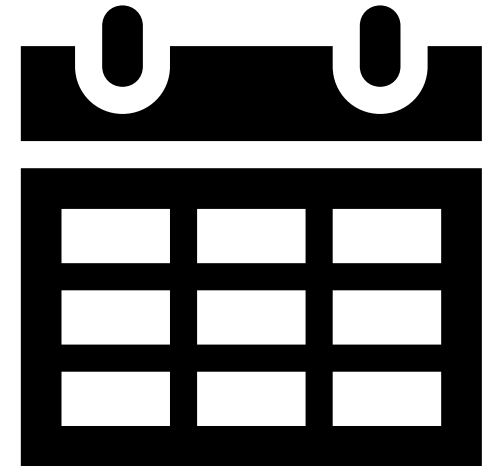
- VA determines the Maximum Annual Pension Rate (MAPR) for your situation.
- VA determines your total *gross* income.
- VA then determines your *countable* income. This is done by subtracting exclusions (unreimbursed medical expenses), minus the 5% UME deduction, provided by law from your gross annual income.
- VA then subtracts your countable income from the MAPR. This difference is your yearly pension entitlement.
- VA divides this amount by 12 and rounds to the nearest dollar. This is the approximate amount of your monthly pension payment. (Note, even the VA says this is the “approximate amount”)

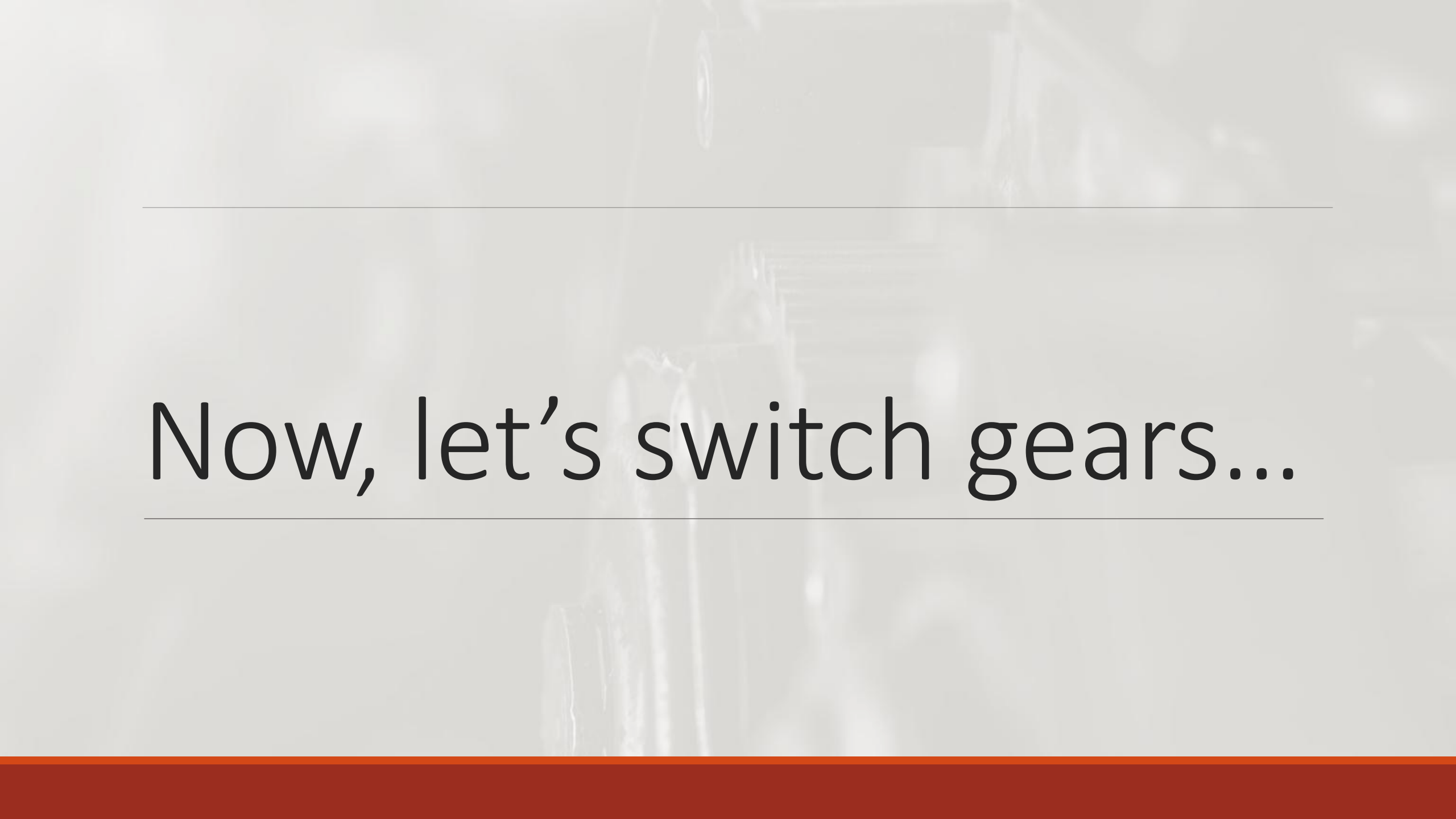
Unreimbursed Medical Expenses

- Best way to lower income.
- Goal is to reduce IVAP to zero or a negative number to maximize the pension benefit.
- Negative IVAP **will not** reduce net worth.
- **Regularly recurring** unreimbursed medical expenses is what the VA is looking for.
- Exception to caregiver licensing requirement:
 - Either assistance with two or more ADLS (like before)
 - Certification by health professional that due to a physical, mental, or cognitive disorder the individual requires [the custodial care]- §3.278(d)(2) and (3)(iv)

3 Year Look-Back & Penalty Period

- Look-Back period: 36 months
- Does not apply to transfers made prior to 18 October 2018
- Only penalizes transfers of “covered assets”
 - Home on less than 2 acres is not a “covered asset”
- Only penalizes transfers of assets that exceed the net worth limit.
- No penalty for transfers that would not have affected eligibility
- Penalty calculation: Asset transferred/MAPR for aid and attendance for a married Veteran (currently \$2,795) = Penalty in months
- Penalty period commences from 1st of the month, following the date of last transfer 38 CFR §3.276
- 5 year cap on the penalty period (Maximum penalizable transfer: \$167,700)
 - If you trigger a penalty of greater than 3 years, you have erred.





Now, let's switch gears...

WHAT IS MEDICAID?

Medicaid and Medicare are often confused because they have such similar names.

MediCare is for your care – it is your health insurance when you turn 65 (or are disabled).

MedicAid is aid for those who need it, it is a needs-based program.

MEDICAID is a federal and state program that helps with healthcare costs for people with low income.

TennCare is Tennessee's Medicaid program.

It is commonly known for providing healthcare to low-income, pregnant women, parents or caretakers of a minor child, children and individuals who are elderly or have a disability.

TENNCARE FOR LONG TERM CARE:

THE CHOICES PROGRAM

What is **CHOICES**?

CHOICES began with *The Long Term Care Community Choices Act of 2008*. Those individuals that meet the financial and medical qualifications may choose to receive long-term care services at home, in a nursing home or in an assisted living facility that accepts CHOICES. There are three Groups in CHOICES.



CHOICES GROUPS

GROUP 1

Client meets medical and financial criteria for **nursing home care** and chooses to stay in the nursing home or is unsafe to return home.

Medicaid/TennCare pays for the majority of the nursing home care, pharmacy costs and supply costs.

The client must pay a Patient Liability to the nursing home for their share of their costs.

GROUP 2

Client meets the medical and financial criteria for nursing home care and chooses to stay **at home or in an assisted living**.

Medicaid pays for care at home depending on care needs (not to exceed the cost of nursing home care) or \$1,468.40 (2025) per month to an assisted living that accepts CHOICES.

The rate the client must pay for room and board is not supposed to exceed \$2,320.80 (2025). *

GROUP 3

Provides limited care at home for clients “at risk of needing nursing home care.”

Only available to SSI recipients.

HOW TO QUALIFY FOR MEDICAID

3 “TESTS”:
INCOME
MEDICAL
ASSETS



INCOME

■ TO BE ELIGIBLE:

The applicant must have a gross income less than \$2,901 (2025)

OR

The applicant must have a Qualified Income Trust (QIT)

* If the applicant has a spouse, the spouse's income does not count. The spouse is allowed to keep all of his/her income. If the spouse has a low income, he or she may be eligible to keep some of the TennCare recipient's income to allow them to total a net income of \$2,555 (2025). If they need more to pay the household bills, this can also be requested in a fair hearing.

QUALIFIED INCOME TRUST (QIT)

- What is a Qualified Income Trust?

A QIT is a trust (a special bank account) that allows individuals to qualify for TennCare CHOICES benefits when their monthly income is too high to otherwise get those benefits.

This type of trust has a payback provision, meaning when the person passes away, TennCare can recover the funds remaining in the QIT.

It is basically a pass-through account that has provisions on what it can be used for.

- How to get a Qualified Income Trust?

See a Certified Elder Law Attorney.



MEDICAL

***The applicant must pass
a Pre-Admission
Evaluation
(PAE)***

WHAT IS A PAE?

- We describe this as the medical test that an applicant must pass to be eligible for benefits.
- It is primarily based on physical deficits. It does not capture the mental deficits common in persons with Alzheimer's or dementia.
- There is an additional part called a Safety Assessment that can be completed if the person has more cognitive deficits not captured in the PAE.

TennCare Level of Care Acuity Scale

ADL (or related) Deficiencies		Weights					
Functional Measure	Condition	Always	Usually	Usually Not	Never	Max Individual Score	Max Acuity Score
Transfer	Highest value of two measures	0	1	3	4	4	4
Mobility		0	1	2	3	3	
Eating		0	1	3	4	4	4
Toileting	Highest value of three possible questions for the toileting measure	0	0	1	2	2	3
Incontinence care		0	1	2	3	3	
Catheter/ostomy care		0	1	2	3	3	
Orientation		0	1	3	4	4	4
Expressive communication	Highest value of two possible questions for the communication measure	0	0	0	1	1	1
Receptive communication		0	0	0	1	1	
Self-administration of medication	First question only (excludes SS Insulin)	0	0	1	2	2	2
Behavior		3	2	1	0	3	3
Maximum Possible ADL (or related) Acuity Score							21

Skilled Services	
Ventilator	5
Frequent tracheal suctioning	4
New tracheostomy or old tracheostomy requiring suctioning through the	3
Total Parenteral Nutrition (TPN)	3
Complex wound care (i.e., infected or dehiscent wounds)	3
Wound care for stage 3 or 4 decubitus	2
Peritoneal dialysis	2
Tube feeding, enteral	2
Intravenous fluid administration	1
Injections, sliding scale insulin	1
Injections, other IV, IM	1
Isolation precautions	1
PCA pump	1
Occupational Therapy by OT or OT assistant	1
Physical Therapy by PT or PT assistant	1
Teaching catheter/ostomy care	0
Teaching self-injection	0
Other	0
Maximum Possible Skilled Services Acuity Score	5

HOW TO GET A PAE

If the applicant is in a Skilled Rehab or Nursing Home – the facilities that accept TennCare usually have a nurse who can complete and submit the PAE.

If the applicant is in a hospital – the hospital may have a nurse or a social worker who can complete and submit the PAE.

If the applicant is at home or an assisted living or the above are not available – Contact the local Area Agency on Aging and Disability (AAAD)

In East Tennessee – East Tennessee Human Resource Agency (ETHRA) 1-866-836-6678

In South East Tennessee – Southeast Tennessee Human Resource Agency (SETHRA) 1-800-852-6155

ASSETS



ASSETS: WHAT YOU OWN

EXEMPT ASSETS

- Homestead & contiguous property (touching)
- 1 vehicle
- Personal belongings
- Burial Plots
- Irrevocable pre-paid funeral/burial or cremation plans
- Farm equipment (if being used in farming the land)

COUNTABLE ASSETS

- Additional vehicles
- Checking & Savings accounts
- Cd's, Annuities, Stocks, Bonds, etc.
- Cash value of life insurance policies
- Retirement accounts

* If married, this includes everything for both spouses regardless of the titling.

FOR A SINGLE PERSON TO QUALIFY FOR TENNCARE:

- ✓ Must have income < \$2,901 or a QIT
- ✓ Must pass a PAE
- ✓ Must have less than \$2,000 in countable assets





FOR A MARRIED PERSON TO QUALIFY FOR TENNCARE:

The spouse who is applying for TennCare benefits must:

- ✓ Have income less than \$2,901 or a QIT
- ✓ Pass a PAE
- ✓ Have less than \$2,000 in countable assets

The Community Spouse:

- ❖ Is allowed to keep half of the countable assets up to a maximum of \$157,920
- ❖ At a minimum may keep \$31,584 of the countable assets
- ❖ Is allowed to keep all of his/her income
- ❖ May get to keep some of their spouse's income if their income is less than \$2,555 or the household bills are in excess of what they can afford with their income only

TENNCARE RESOURCE ASSESSMENT

- A Resource Assessment is only required for Married couples.
- The Medicare Catastrophic Coverage Act of 1998 amended the Medicaid Income and Asset limit rules so the community spouse does not become impoverished as a result of their spouse gaining Medicaid eligibility.
- The Medicaid rules that govern the special treatment of the community spouse's income and allocated assets are referred to as the Spousal Impoverishment Policy.
- The Resource Assessment is a snapshot of the couple's countable assets at the time of the 1st period of continuous confinement...

*If the person is in a nursing facility or a hospital =
date of admission*

*If the person is at home or in an assisted living =
effective date of an approved PAE*



GIFTING

- TennCare has a 5 year look back for gifts or transfers.
- When you apply, you must attest that you have disclosed all gifts in the last 5 years from the date of application. If you try to hide gifts, it could lead to federal imprisonment.
- For couples, it doesn't matter if the spouse who is not applying gave the gift, any gift from either spouse is countable.

GIFTING

Frequently Asked Questions

- **What is a considered a gift by TennCare?**

Any transfer for less than fair market value.

- **Is tithing considered a gift?**

Technically, yes. But so far TennCare has not gone there.

- **What about birthday, Christmas, graduation, or wedding gifts?**

Yes, these are all considered gifts. TennCare usually does not question \$100 or less.

- **So, what if they have given a gift(s)?**

The easiest way to cure the gift is for the person who received it to return it, if able.

- **What if they can not return the gift(s)?**

Then the total of the gifts given is considered in a penalty period during which TennCare will not help the person, if they are applying for Group 1 (Nursing home).

If they are applying for Group 2/HCBS, TennCare just will not approve the person if they have given gifts, until it has been 5 years since the last gift.

*Only implemented if the person is applying for CHOICES
Group 1 (nursing home).*

The person must be "otherwise eligible but for the gift."

This means:

- They have passed the PAE
- They have gross income < \$2,901 or a QIT
- They have \$2,000 or less in countable assets

Then TennCare divides the total gift by the PENALTY DIVISOR of \$8,580 per month (\$286 per day).

(The PENALTY DIVISOR is supposed to represent the average monthly cost of nursing home care.)

The resulting number is the Penalty Period = length of time (months or days) that TennCare will not help the person.

This is especially difficult because they had to be spent down to \$2,000 to start the Penalty Period...so how do they pay?

PENALTY PERIOD FOR GIFTS

EXCEPTIONS TO THE GIFTING RULE

Transfers between spouses before Application

- Primarily use this exception for the home to protect the home from Estate Recovery.
- Transfer the home to the well spouse and update the well spouse's Will with a SNT for the spouse who is applying for benefits.
- This protects the spouse's benefits if the well spouse dies first.

Transfers to a disabled child

- Primarily use for home and or monetary assets.
- Have to prove the child is disabled: proof of SSDI, SSI is usually sufficient.
- Rather than transfer the asset to the disabled child outright, we usually put it into a specific type of trust for them, so it won't affect their means tested benefits.

Transfers of a homestead to a caregiver child

- Primarily use this exception for the home.
- Have to prove that the child and the applicant lived in the home together for 2 years immediately preceding the application (proof of residence of both).
- Have to prove that the parent needed nursing home level of care and that the child's care kept them from requiring nursing home care.
- Requires an approved PAE over that time or a physician certified letter (we have a form we use).



ESTATE RECOVERY

Occurs after both spouses
have passed away.

TennCare can only recover
from an asset if the person
who received benefits
owned an interest in the
asset when he/she died.

TennCare can only recover
up to the amount they paid
for the person's care
(\$8,580/mth).

The background of the image is a repeating pattern of puzzle pieces, each featuring a stylized silhouette of a person in a suit. A hand is shown in the foreground, placing one of these puzzle pieces into a larger assembly. The puzzle piece being placed is white with a grey silhouette, while the others are grey with white silhouettes. The hand is positioned at the bottom center, with fingers visible as it fits the piece into place.

PUTTING THIS ALL TOGETHER

*THE PRIORITY SHOULD
ALWAYS BE MAKING SURE
PEOPLE CAN GET THE CARE
THEY NEED WHEN THEY
NEED IT.*

PROTECTING THE HOME

- **Transferring the home to the well spouse, disabled child or caregiver child.**

WHEN: Before Application for benefits

**Must prove the disabled or caregiver child exception.*

- **Child/family purchase percentage in the home (joint ownership with rights of survivorship).**

WHEN: Best if done before the application but can be done later

**TennCare does not currently recover from assets titled this way, but the rule could change.*

- **Irrevocable Trust**

WHEN: 5 years before application, because it is a transfer for less than fair market value.

**Giving up control of the asset.*

- **Life Estate**

WHEN: 5 years before application, because it is a transfer for less than fair market value.

**Giving away ownership of home, retaining the right to live there until death.*





CURING THE GIFTS

- Give the asset or money back.
- Sign a Medicaid compliant Promissory Note and pay the person back over time.
- If the person needs to spend down, we sometimes utilize a strategy called a Gift & Annuity plan and the gift can be calculated into this plan.

GIFT & ANNUITY PLAN:

- Only if the person is in a nursing home applying for Group I!
- Before the application with the attorney advisement, the person can give gift(s) of property, money, etc. of about half of his/her assets.
- Then with the other half they purchase a Medicaid compliant Annuity, that turns it into a stream of payments over time.
- Then we tell TennCare that they did it and show that they are “otherwise eligible but for the gift” to get the Penalty Period started.
- The annuity payment is calculated so it pays exactly the amount they need above their income to private pay for the nursing home during the Penalty Period.

Glen A. Kyle, J.D., CELA*

**Certified Elder Law Attorney by the National Elder Law Foundation*



FRANKLIN & KYLE
ELDER LAW

4931 Homberg Drive
Knoxville, TN 37919

www.franklinkyle.com

Office Phone: 865.588.3700