

SPOTLIGHT ON ELDER LAW

NEWS AFFECTING TENNESSEE SENIORS, PEOPLE WITH DISABILITIES, AND THEIR FAMILIES

The Deficit Reduction Act of 2005 Impacts Seniors

Spring-Summer 2006

On February 8, 2006, the Deficit Reduction Act of 2005 (DRA) ushered in new rules affecting many Tennessee seniors who may need nursing home care in the future. This is a brief overview of major changes that may affect you or someone you know.

The Medicaid look-back period is now 60 months. When a patient applies for Medicaid, she must now reveal all transfers which occurred during the five years preceding the application. (The old rule was 36 months.)

The penalty period now begins ticking after the patient is “otherwise eligible” for Medicaid. Prior to the DRA, a penalty period for a gift (or transfer for less than fair market value) began ticking on the date of the gift. The penalty period is a time of ineligibility during which the patient must pay for her care. Now, the penalty period begins ticking only after the patient is spent down to \$2,000, she is in a nursing home, and she applies for Medicaid. This new rule applies to transfers made after the date of the enactment, February 8, 2006.



Thus, if you made a gift to your children prior to that date, the old rule will apply. For example, assume Sally gave \$11,000 to her daughter on December 1, 2005 before the effective date of the DRA. Sally entered a nursing home on April 1, 2006. The penalty period for that gift expired on March 1, 2006 under pre-DRA law. (The Medicaid penalty period is calculated by dividing \$3394 into the amount of the gift.)

However, assume that Ted makes a gift of \$11,000 on March 1, 2006 to his son (i.e., after the DRA effective date). Then Ted had a stroke and enters a nursing home. He has less than \$2,000, meets the Medicaid medical criteria, and his income is below the income cap. Ted applied for Medicaid on April 1, 2006. Ted will not qualify for Medicaid until about July 15, 2006 because the penalty period for the gift only begins ticking after Ted is “otherwise eligible” for Medicaid. Who will pay for Ted’s care during the 3.2 months?

Rounding down of a penalty period is no longer allowed. In the past, the State rounded down when calculating a penalty period. Now, the State may not round down. For example, if the penalty period is 3.2 months, the State may not round down to three months.

The State must be a beneficiary on the patient’s annuity. If a nursing home patient on Medicaid has an irrevocable annuity, the State must be designated as a beneficiary after the community spouse or a disabled child. At the patient’s death, the State will be reimbursed from any remaining annuity principal.

Home equity must be less than \$500,000. This change will not affect very many folks in east Tennessee since most patients have less than \$500,000 in home equity. Presently, the Medicaid agency determines the equity value of the home by looking at the tax assessor’s value. As long as that value is under \$500,000, the home is exempt for the patient’s lifetime. *Continued on page 2*→

In this issue:	
Seniors and Summer Heat.....	2
Driving Safely.....	3
Part D user-friendly website.....	4

The Deficit Reduction Act of 2005 and You *continued from page 1*

The Long-Term Care Insurance Partnership Program is available to all 50 states. The partnership program is presently available in four states: California, Connecticut, Indiana and New York. Here's how it works: The State puts a stamp of approval on long-term care insurance policies that meet certain criteria. If you purchase a State approved long-term care insurance policy, and if the benefit is exhausted, then you may apply for and qualify for Medicaid, and retain assets up to the amount paid out of the policy. So, if you purchase a long-term care insurance policy that pays out \$100,000 for your care, then after it is exhausted, you may apply for Medicaid and retain \$100,000 in liquid assets. Tennessee has not joined this partnership, but hopefully, this program will be available in our state.

This list is merely a summary of a complex law. We will continue to keep you informed of developments in the ever-changing landscape of long-term care.



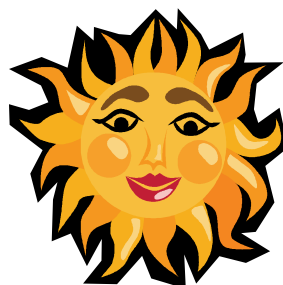
Seniors and Summer Heat

The flowers are blooming in east Tennessee, and everyone enjoys being outside during the summertime. But that summertime sun and heat holds risk -- such as heat exhaustion or stroke- that may strike seniors more often than the general population.

Many medications often taken by seniors deplete the body of fluids. Some of those medications are used to treat heart disease or high blood pressure. Add to that nature's cooling system...i.e., perspiring, and you have a perfect formula for dehydration. Dehydration can lead to confusion (remember those desert mirages in the movies?), damage to major organs, and even death.

Older adults who suffer from Alzheimer's, stroke, or other brain disease usually do not realize when they are thirsty, and therefore, they drink less. In addition, seniors' bodies are not able to regulate temperature as readily as a younger person.

If you are a caregiver or concerned neighbor, friend, or family member of a frail senior, be sure to check him frequently during the summer. Make sure he is drinking plenty of fluids, his home is reasonably cool, and his mental state is normal for him. Sudden confusion, fever or behavioral changes may be a sign of heat exhaustion and dehydration and should be treated immediately by a healthcare professional.



Driving Safely As We Age

For everyone, a driver's license is a symbol of independence. However, for seniors, and their families, safe driving is often a source of family tension and conflict. Older adults have unique limitations if they suffer a mental or physical disability. Seniors often realize that their driving reflexes aren't as fast as they used to be.

Families are concerned about how to protect the seniors they care about from causing injury to themselves and others. The first step is to keep the line of communication open by initiating conversations about safe driving habits. Take several trips with your loved one to observe their driving habits. There are different levels of warning signs to watch for:

- **Minor warning signs include:** Decrease in confidence while driving, incorrect signaling, scrapes or dents on the car or garage.
- **More serious indicators:** Failure to notice traffic signs, near misses, confusion at exits.
- **Warning signs that require immediate action by the family are:** confusing the gas and brake pedals, or stopping in traffic for no apparent reason.

Many states have special departments to help older adults with their driving concerns. The specific goal is to help older adults keep driving safely if they want to, and to provide transportation resources if they decide to stop driving. An excellent resource for Tennesseans is <http://www.tennessee.gov/safety/driverimprovement.htm>.

If it is clear that your family member can no longer drive safely but is unwilling to relinquish the car keys, what do you do? Talk to his family doctor and ask him to complete the Request For Special Examination form that can be printed out at www.tennessee.gov/safety/driverimprovement.htm. The doctor mails this form to the Department of Safety, Driver Improvement Section. The address is located at the top of the form. Once the Department of Safety reviews the request, action taken against these drivers is then based on the completed medical report. Sometimes driving privileges may be suspended or restrictions may be added. Often, the drivers are required to submit to a re-evaluation of their driving license.

Depending upon the assessment results, different choices may be pursued. There is no general rule and sometimes stopping someone from driving may be the only solution. However, preventing a person from driving too early can cause a person's overall health to decline prematurely. In this case, some other suggestions may be more agreeable:

- Take a classroom refresher course. In Knoxville, The John T. O'Conner Senior Citizens Center at 611 Winona St. offers refresher driving courses. It is a two day course that involves 8 hours of instruction. Call 523-1135 or 524-4577 for more information.
- Order the AARP Driver Assessment Guide, "Older Driver Skill Assessment and Resource Guide: Creating Mobility Choices." (stock # D14957) Write to AARP Fulfillment, PO Box 96796, Washington, DC 20090-6796. The stock number must be specified when ordering. Allow 4 to 6 weeks for delivery.
- In Knoxville, call the Office on Aging, 524-0319 for public transportation options.
- In Sevierville, call the Office on Aging at 453-8080 for information on public transportation.

Ultimately, families must treat the senior with respect and understanding. Letting go of those keys is a difficult step and a substitute method of transportation should be available so that the senior is able to retain some feeling of independence.



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Medicare Part D-A New Helpful Internet Tool

Have you tried to use the government's website for Medicare Part D only to get kicked off at the very end? For many clients, this has been an exercise in frustration.

Help has arrived! The Coalition to Advance Prescription Drug Education has created a website that can help you sort through your choices: **www.carxe.org**. This website has the same information as the government's website, but the CaRxE Benefit gateway allows you to save your search. It does not (yet) suffer from the same overload problems as the medicare website.

If you need assistance in researching your options, you may make an appointment with our assistant, Cathy Sorrell. Remember the deadline to sign up for Part D is May 15, 2006.