

# SPOTLIGHT ON ELDER LAW

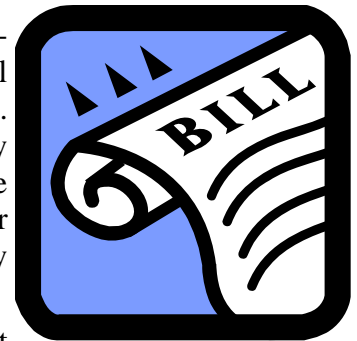
NEWS AFFECTING TENNESSEE SENIORS, PEOPLE WITH DISABILITIES, AND THEIR FAMILIES

## TBA Fights Proposed Change to Estate Recovery Rules

Summer 2005

The Elder Law section of the Tennessee Bar Association has actively opposed proposed legislation to expand TennCare's estate recovery statute. Estate recovery is one way in which our Medicaid system, TennCare, attempts to recoup monies paid out for nursing home care. Federal law requires each state to have an estate recovery program. However, the definition of "estate" is based on the law of each state.

In Tennessee, our estate recovery statute, Tennessee Code Annotated §71-5-116 presently limits estate recovery to *probate* assets. However, House Bill 2323/Senate Bill 2307, proposes a vast expansion of the estate recovery statute. Keep in mind that federal law does *not* require the State to take estate recovery beyond probate assets. The proposed bill would allow the bureau of TennCare to recover against assets held as tenants by the entirety, joint tenants with or without right of survivorship, tenants in common, life estate, living trust or any other arrangement.



Why is this proposed change a problem for Tennessee? After all, one might argue, if the State pays for a person's long-term care in a nursing home, shouldn't the State be repaid? This is a thorny issue, but we have a long history in our country of passing something along to the next generation to give them a bit of a "leg up." When folks have qualified for Medicaid, they have usually spent most, if not all, of their assets before qualification. Their only remaining asset may be their home. Some people have made arrangements to avoid probate and therefore avoid estate recovery in order to pass their home on to their children.

If the statute is expanded, we are very concerned that we will see an increase in complete transfers of the home to children. This puts an elder at risk of losing her home to the child or to the child's creditors. We have seen cases where a parent transferred a home and then the child put the parent on the street. We are also concerned that there will be an increase in "Medicaid divorces" and uncertainty as to whether or not property has clear title.

It is this last issue, i.e. an increased risk of clouded title to real property, that has gotten the attention of our General Assembly. Action has been deferred to the Judiciary Committee on the house bill (HB 2323), and in the Senate, the bill has been assigned to the General Health and Welfare subcommittee. Thankfully, it appears that no changes will be made during this legislative session. We will continue to keep you informed of any future developments, and we appreciate the efforts of the TBA.

**Contact info for your state senator or representative is on the General Assembly website:**

**<http://www.legislature.state.tn.us/>**



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## Medicare News: A Part D Calendar

We are quickly approaching the January 1, 2006 start date for the new Medicare Part D prescription drug program. The following is a calendar of what Medicare beneficiaries can expect:

**May 2005:** SSA will begin sending notices to about one-half of the Medicare beneficiaries to inform them that they may be eligible for a low-income subsidy to assist with their Medicare Part D premiums and co-payments. The notice will also include an application form.

**July 1, 2005:** SSA offices and state Medicaid agencies will begin making eligibility determinations on applications for the low-income subsidy. Applications will also be taken on-line and by telephone.

**Fall 2005:** Parties outside the federal government will also have responsibilities to implement Part D. For example:

Employers will have to send notices to the individuals for whom they provide health insurance, the insurance provides a drug benefit that is “actuarially equivalent” to the Part D benefit.

**October 15, 2005:** CMS will send information to all Medicare beneficiaries describing the Part D plans that will be available to them.

**November 15, 2005 - May 15, 2006: “Initial enrollment” period for the Part D program for all beneficiaries.** Existing beneficiaries who enroll after May 15, 2006, will have to pay a penalty for late enrollment unless they can show that they had creditable drug coverage under another drug plan.

**January 1, 2006:** Medicare Part D prescription drug program commences.



## Local Seminars on Part D

The Social Security Administration in cooperation with the Offices on Aging and St. Mary's Outreach Program will sponsor several community education seminars on Medicare Part D.

**Blount County:** June 16 at 10:30 a.m. to 11:30 a.m., Everett Senior Center.

**Knox County Kick-Off:** June 9, 2005 at the John O'Connor Center. Call 546-6262 for seminar time.

**Sevier County:** July 6, 2006, 1 p.m.—2 p.m. at the Sevier County Senior Center (453-8080).

**Loudon County:** July 7, 2005 at 12 p.m., Loudon County Senior Center (458-5445).

## A Great Resource: The Sevier County Service Directory

Thanks to Lisa Yarber, Director of the Sevier County Senior Center, and her assistant, Ruth Jones, Sevier County now has a senior service directory! This is exciting news for Sevier County seniors and their families. The volume of information in this directory is amazing.

The first section of the directory contains simple but thorough discussions of topics that interest seniors such as living wills, reverse mortgages, and long term care insurance.

However, the bulk of the directory is a list of public and private agencies and organizations that provide services to seniors including: adult day care/respice, activities, assistance for homebound seniors, prescription drug assistance, community education programs and more.

The best news is that this directory is **FREE!** You may obtain a copy from the Sevier County Office on Aging, 1220 West Main Street, Sevierville, Tennessee. You may call Ruth or Lisa at 865-453-8080, and for \$5, they will mail a copy to you.



*Did you know that you qualify for Medicare at 65 even if you do not retire and receive Social Security retirement income?  
Keep in mind that you must enroll to receive benefits.*

## Strolling Knoxville's Greenways

Ready for a summer stroll? Check out Knoxville's beautiful greenways! Our personal favorite is the Third Creek Greenway. We bike this greenway from the Bi Lo in Bearden to Tyson Park, and if we are especially energetic, we continue to Calhoun's on the River for refreshments. A list of Knoxville's greenways is available at the following websites: [www.ci.knoxville.tn.us/greeways](http://www.ci.knoxville.tn.us/greeways); [www.townoffarragut.org/greenways.htm](http://www.townoffarragut.org/greenways.htm); [www.knoxcounty.org/parks/greenwaytrails.php](http://www.knoxcounty.org/parks/greenwaytrails.php).

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See our Elder Law Seminar  
Schedule posted on our  
website:

www.hillfranklin.com

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## What's New At The Social Security Administration?

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Do you know someone who is disabled and would like to know more about obtaining benefits? The Social Security Administration website, [www.ssa.gov](http://www.ssa.gov), has a plethora of information regarding benefits and how to obtain benefits.

One of the "best" tools is the **Benefits Eligibility Screening Tool (B.E.S.T.)**. You answer a series of questions to find out if you are eligible for any of the programs administered by Social Security. It is simple and very user-friendly. The B.E.S.T. home page is located at <http://best.ssa.gov/index.cfm>. Another helpful tool from Social Security is the **Disability Starter Kit**. If you or someone you know plans to apply for disability, you may obtain the disability Starter Kit at [http://www.ssa.gov/disability/disability\\_starter\\_kits.htm](http://www.ssa.gov/disability/disability_starter_kits.htm).