

**Memory Care 2016**  
**Fairfield Glade Resident Services**  
**July 14, 2016**

**Five Key Points to Ponder Today**

- 1. Find your own quality of life definition.**
- 2. Unless you are very wealthy keep your money - quit giving it away to family and friends.**
- 3. Do not add anyone else's name (other than your spouse) to your bank accounts, investments, property, etc.**
- 4. Review your legal documents every few years to keep them up to date.**
- 5. Don't ask your dentist to perform your heart surgery!**

***Determine your personal definition of quality of life.***

What is the best course for you life as determined by you?

Be as descriptive as you can, and share that information with family, close friends, clergy, health care providers. Write a Letter of Intent (**attachment**) to give your family guidance.

Remember: the definition of "quality of life" not only differs from person to person but it differs from generation to generation.

Someday you are going to die. What is okay for you to die from? What are you willing to endure? There is no right or wrong answer - only what is your answer.

***Figure out how you're going to pay for your health care for the remainder of your life.***

**Medicare/Medicare Alternative Plans:**

The Federally managed insurance program funded with contributions by workers and paid out nationwide according to rules applicable to everyone. Persons who have not paid into the system may be able to purchase Part A Medicare and thereby bring themselves into the system.

1. Nursing Home Coverage
  - (a) 72 hours "admitted" in hospital; not **observation** status
  - (b) Admission to nursing facility must take place within 30 days of leaving hospital
  - (c) "Skilled" care required - not "custodial" care
  - (d) Physician's order required

- (e) Facility must be Medicare approved skilled nursing facility (SNF)
- 2. Coverage Limitations
  - (a) First 20 days in SNF are paid 100% by Medicare
  - (b) Next 80 days in SNF: You or Medicare Supplemental Insurance pays \$161.00 per day, Medicare pays the rest
  - (c) After 100 days in SNF Medicare pays nothing even if you still need skilled care
  - (d) **Few people get all 100 days!**
  - (e) Some home health care, but very limited in scope and duration.
- 3. The differences:
  - (a) Part A - “helps” cover hospital “in patient” care, some skilled nursing home care, hospice, and some home health.
  - (b) Part B - helps with doctors, out patient care and home health.
  - (c) Part C - private HMO, PPO under contract to Medicare (covers Part A, Part B and usually some drugs) e.g., Aetna, Humana, Anthem, etc. \*\*\*
  - (d) Part D - prescription drug coverage run by private insurance companies approved by Medicare.

\*\*\* **Note:** Thirty percent (30%) of people eligible to enroll in alternative plans do so - primarily minorities and low income individuals. ObamaCare is continuing to cut payments to these alternative plans - now by a sum anticipated to be \$200 billion. Nine common problems with Medicare Advantage (alternative) Plans:

1. Care can cost more than it would under original Medicare. In 2016 a plan participant will pay an average of \$220 per year more than a person enrolled in traditional Medicare.
2. Private plans are not stable and may suddenly cease coverage.
3. Members may experience difficulty getting emergency or urgent care.
4. Because plans only cover certain doctors, the continuity of care is often broken when the plan drops a provider.
5. Members have to follow plan rules to get covered care.
6. Members are restricted in their choices of doctors, hospitals, and other providers.
7. It can be difficult to get care away from home.
8. The extra benefits offered often turn out to be less than promised - not all provide drug coverage.
9. People with both Medicare and Medicaid can encounter higher costs.
10. For 2016 the number of these plans have decreased by an average of 4 per region; average premium for 2016 will increase by 13%.

### **Hospice:**

1. Hospice is not a terrible thing.
2. Pain is better controlled.
3. Skilled services can be provided.
4. The feeding tube “issue” is better addressed.
5. Spiritual and emotional support by trained staff is provided.
6. The family is educated throughout the process.
7. Dying can happen in any preferred setting.
8. Care is for any terminal illness.
9. Care can be renewed every 6 months until patient dies.
10. Care can be started even if patient is still active.
11. A patient can reinstate traditional care at any time.
12. Seniors in Medicare alternative plans (which don’t cover hospice) can still tap into traditional Medicare for hospice care.
13. However, not all costs are covered by Medicare; and often a doctor has to be “prompted” to order;

### **Department of Veteran’s Affairs:**

1. Veterans benefits cover a wide range of services: home health care, adult day care, assisted living, nursing home, and respite care.
2. The resource limit (countable assets) for VA **pension** benefits (benefits awarded to low income war-time vets) is much greater than for Medicaid benefits; there is no penalty look back period for eligibility purposes, and there is no estate recovery for VA benefits properly paid. Eligibility is done pursuant to calculations on a case by case basis so it is possible for a veteran to retain even more than the typical resources; the Vet may receive a benefit called Aide & Attendance if the Vet is housebound or need the assistance of another person.
3. There is no “means tested” application for VA **compensation** benefits which are awarded for service-connected disabilities.
4. **Don’t forget about “presumptive” illnesses.** The VA is continuously evaluating illnesses and diseases of veterans for relationship to terms and venues of service. If a vet served in a certain place at a certain time, then gets a certain illness, the presumption is the illness was caused by that service. For example, any veteran who served in or “around” Vietnam between February 28, 1961 and May 7, 1975 is assumed to have been exposed to Agent Orange. Common illnesses which have been associated with Agent Orange exposure are Type II Diabetes, prostate cancer, Parkinson’s disease, and Ischemic heart disease.
5. A veteran who is “incompetent” for VA purposes is not necessarily what is typically considered incompetent. In fact, a veteran who is

seeking a higher disability rating may be asked to sign a statement declaring him/herself incompetent.

6. Don't waste your time contacting the VA unless you have this:

**Form DD214**

Called the "Verification of Military Service" and also known as your "separation paper" this is the most important document that a veteran will need. He/she must have it to obtain veteran's benefits, VA medical care, the GI Bill, VA loans, and VA provided funeral and burial services.

10. **Because of the potential conflicts between VA planning and Medicaid planning major changes have been proposed by the VA, which may take effect in 2017:**

(a) There will be a 3 year lookback for transfers made prior to application, and such transfers would result in a 10 period of ineligibility.

(b) Vet can keep personal residence but only a maximum of 2 acres immediately around the home.

(c) Amount of assets that can be retained would mirror that of the Medicaid guidelines.

**Railroad Retirement:**

1. The Railroad Retirement Board pays retirement benefits through annuities based on a tier system, and the rising age guidelines mirror those for social security. Disability benefits are also offered.
2. Specific information regarding available benefits can be found at the official website at [www.rrb.gov](http://www.rrb.gov).
3. Benefits are typically awarded through an in-person interview process conducted at one of the Board's field offices, however, if you cannot physically go to a field office an in-person interview can be scheduled at an alternate location by appointment. The area field office for Tennessee is in Nashville. The application process can now also be started online at the Board's website.

**EEOICPA, (Energy Employees Occupational Illness Compensation Program)**

**RECA (Radiation Exposure Compensation Act)**

1. Many people have received (or will be entitled to receive) money to compensate them (or, qualifying survivors) because the worker became ill due to employment in a facility in which they were exposed to radiation, beryllium, or silica due to nuclear weapons production and/or testing.

2. The Department of Labor (DOL) administers the claims; the Department of Energy (DOE) works on behalf of the claimant to make sure that all relevant documentation is provided to support claims.
3. In the eastern part of the United States benefits are typically referred to as EEOICPA benefits; in the western states benefits are typically paid out under RECA. It is possible that some people were exposed in both regions.
4. These funds may come in the form of lump sum payments (up to \$250,000), and/or may be paid out for on-going caregiving expenses. For example, if a person suffers from Parkinson's disease and Parkinson's dementia those are treated as two different conditions which may result in many hours of home health care.
5. Some of the covered facilities for EEOICPA include 10 in the area of Oak Ridge, TN; BERMET in Bessemer City, NC (a beryllium vendor); The University of North Carolina in Chapel Hill (a beryllium vendor and beryllium research facility); BWX Technologies in Lynchburg, VA (uranium recovery facility, beryllium vendor, downblending enriched uranium obtained from the government of Kazakhstan until 2001).
6. **Why is this complex program so important for seniors?**  
 Payments made through EEOICPA and RECA are completely **exempt** when making application for Medicaid benefits. They are also exempt from estate recovery if Medicaid benefits were paid while the recipient was living and the client lives in an estate recovery state.

**Reverse Mortgages:** The fancy name is an FHA HECM (Home Equity Conversion Mortgage).

- The Pitch:**
- You can turn home equity into cash.
  - You don't have to pay monthly mortgage payments
  - You don't have to meet income requirements
  - You can use the money for whatever you want.

**The Reality?**

- This is still one of the most expensive ways to borrow money and it can be risky.
- Interest is charged on the outstanding balance, which is not being paid down, so compounding interest is more beneficial to the lender rather than to the homeowner.
- In addition to typical mortgage fees (appraisal, survey, legal fees, recording costs, title insurance), "service fee set-asides" can be applied by the lender to cover the on-going costs of serving the loan and is deducted from the available loan proceeds. Example: 80 year old woman obtains fixed rate (5.06%) line of

credit on her \$300,000 home. Available principal = \$183,000; fees & costs = \$10,132; net loan = \$172,868.

- When the borrower permanently leaves the home - for whatever reason - then everyone in the home must leave if they can't pay off the loan. Non-borrower spouse, disabled child, adult sibling who has always lived there - everybody finds a new place to live.
- If the homeowner doesn't maintain the home or keep up with property tax and insurance payments, or makes an innocent transfer (such as attempting to deed the home into a popular estate planning tool called a revocable trust) then the note can become due. For this reason a "modified" income qualification test is now being applied to applications.
- The mortgage funds can dramatically and negatively affect TennCare and Supplemental Security Income. So, if you're low on funds and need long term care but are not sick enough to qualify for assistance under the new TennCare acuity scale, where will you turn to for cash to pay for your care if you have already used the equity in your home?

### **Renting Use of the Senior's Property**

Many people own homes that can be used as an income stream even though the owner is living on the property.

1. Leasing acreage for crops, livestock, hunting purposes, ancillary business. (e.g., garage or outbuilding space for small engine repair, beauty salon, or other small business)
2. Leasing space on the property for other persons (e.g. camping units, mobile home, etc.)
3. Leasing space in the home to another dweller (basement apartment, garage apartment)
4. Leasing road frontage or highway view to billboards or other commercial display.
5. Leasing or selling mineral rights.
6. Sharing services with another individual. (For example, two seniors who live in the home and share caregiving and other household expenses)

Many of these options may involve zoning issues, or other contract or legal issues, so check on those possibilities.

### **The Family Personal Care Agreement:**

In times past, when multi-level generations lived in one household, it was typical for an adult child (usually a daughter) to care for an aging parent. We don't live in that world anymore. Today, adult children who want to care for an aging parent often have to change their employment status in order to do so. Many parents don't want to be a burden to their children who lead very busy lives. And, in some families, placing parents in a confidential relationship with one child raises the suspicions and assumptions of other family

members. The answer can be the use of a personal care agreement.

The personal care agreement identifies the parties - who takes care of whom; outlines the caregiving tasks to be performed; states how much will be paid to the caregiver, and at what intervals, etc. Agreement does not have to be long and complicated, but must be complete. And, it's TennCare compliant if done correctly and in writing.

**Just pay everything out of your private, personal accounts/assets.**

You'll have more money in your pocket if you quit giving it away. Even if you do not intend to give it away it may be depleted anyway if:

- (a) you add your family members to your accounts and that other family member gets into financial difficulties.
- (b) you purchase products sold on T.V, or through the newspaper offering free meals for great deals.
- (c) you purchase financial products that are not the best product for you but are a result of a hard sale.
- (d) you make decisions without getting the "whole" story, e.g., rearranging your assets for VA qualification only to learn you've made yourself ineligible for TennCare/Medicaid.
- (e) you hire someone to help you at home but you make the mistake of paying that person in cash. **Don't go to jail for someone else!**

Only add someone else's name to your money/real estate if they are your spouse or the name is being added using the protection of a Power of Attorney document. And, be sure that your legal planning documents are current; review them with the lawyer who prepared them every few years. **And, get advice from the right sources. Sometimes you need to have a "team" - a lawyer, a CPA and a financial advisor who are all talking with one another.**

***Money You Have to Ask For - and, qualify financially to get.***

**A. Medicaid:**

This is a federal welfare program. For those people who need it - and qualify - it is an important program. But, the application process is invasive, choice of room placement is not guaranteed, the government "chooses" your medication, and only basic needs are covered.

A person has to be both financially needy and medically needy to qualify for it. States can either distribute Medicaid funds through the federal program, or through the state's own program that has been approved by the federal government. Since 1994 Tennessee has been operating under the program called "TennCare."

CHOICES Group 1 = TennCare in a nursing facility

CHOICES Group 2 = TennCare for persons who meet nursing facility level of care, but receive services instead through HCBS (home and community based services). There is a maximum number of dollars available and it does not provide 24/7.

CHOICES Group 3 = Persons who are not sick enough to be in a nursing home but are “at risk” of having to go into a nursing home if they are not given some assistance. Provides very limited assistance and is now only available to people already receiving SSI.

There are two main sets of criteria for determining if a person is eligible to receive TennCare assistance: Medical Need and Financial Need. Both must be satisfied to qualify for benefits.

1. Tennessee is a “least costly alternative state” meaning that the State will provide assistance benefits in the setting (facility or home) that is cheapest for the State.
2. Tennessee is an “Income Cap” state meaning that gross guaranteed income cannot exceed \$2,199.00 per month (2016 figure) without the use of a Qualified Income Trust. “Miller Trust” The income of the at-home spouse is not counted.
3. Countable resources (assets other than income) cannot exceed \$2,000 **for the applicant spouse.**
4. A number of assets are exempt, but that list is becoming smaller as TennCare tightens its rules.
5. Giving away assets (by either husband or wife) within 60 months prior to application for less than fair market return on the asset will render applicant ineligible for benefits.

**Even if you have no money you may not get TennCare to help with long term care expenses.** You have to be “medically needy” to get Medicaid. TennCare went to an “acuity scale” scoring system as of July 1, 2012, which means that a person has to be very sick to qualify. (see acuity scale)

6. You pay down your resources and your monthly income for your care, and the government pays a portion, but . . . who else must pay? Tennessee is not yet a filial responsibility state, but, through changes in how benefits are obtained more and more family are having to personally step in and foot the bill.

More and more states are becoming “**filial responsibility**” states, meaning that children will be required to contribute to cost of care before Medicaid steps in. (Tennessee actually has this law on the books; as soon as the federal government tells us we have to do this then our law is already in place. T.C.A. §71-5-115.)

- (a) Known as filial support laws, family support laws, financial support laws, indigent support laws, “poor laws”
- (b) Presently, 30 states have some form of filial support law that addresses the duty of an adult child to provide financial support to an indigent parent.
- (c) Of those, at least 12 impose some sort of criminal penalty for failing to support a financially needy family member.

There is no federal recognition of marital agreements for Medicaid/TennCare eligibility purposes, nor is there consideration for separate property ownership between a husband and wife.

### ***Dementia: Why it matters what kind you have.***

It’s easy to assume dementia, and hard to diagnose it. People use the words “dementia” and “Alzheimer’s” interchangeably, however, Alzheimer’s is only one form of dementia. There are now numerous recognized types of dementia. (**attachment**)

A proper diagnosis can determine treatment of symptoms, qualification for certain health care and mental benefits, and prediction of decline.

Proper diagnosis can also be helpful when doing estate planning and/or long term care planning.

- Everything has a “code.” You want your code to fit somewhere.
- Symptoms of dementia can sometimes be controlled.
- Chemical “restraint” may keep the term “combative” off of the medical chart.

### ***Who/What determines mental incapacity?***

(People are not mentally incapacitated just because other people think they are.)

Most people think it’s the doctor who decides.

Some people think if you act “strange” you’ve lost capacity.

**It is the court order** that is produced through T.C.A. §34-3-107. (Order Appointing

Conservator) that legally determines incapacity.

That's it. A physician's letter, statement, evaluation, report, etc. are all **evidence** of incapacity, but not a legal determination.

How do we know this? Because in this state we have a presumption of capacity, T.C.A. §34-6-207(2)(c), and we expressly tell the Principal that his/her health care decisions can override those made by any appointed agent. T.C.A. §34-6-205.

§68-11-1812(b): An individual is presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate.

***Not everyone loves Powers of Attorney.***

1. The **Social Security Administration** does not recognize Powers of Attorney or court appointed Conservators. There are two very different types of appointments that allow a person to speak with, or receive benefits from, the Social Security Administration on behalf of someone else. The form for both of these appointments can be completed online at [www.ssa.gov](http://www.ssa.gov).
  - (a) **Representative:** This is signed by the claimant (the senior) and gives permission for someone else to communicate with the SSA on behalf of the senior. The senior has to have capacity to sign this form. (Form SSA-1696-U4)
  - (b) **Representative Payee:** This is the process through which an individual, financial institution, facility or organization is appointed by the SSA to actually receive the SSA monthly payments for someone else. This is done when the recipient - for whatever reason - cannot handle the benefits on their own. The representative must file a detailed annual accounting with the SSA to show how the funds are being spent. (Form SSA-11)

It is always easier to try to deal with Social Security benefits without having to use one of the above appointments. If the benefit is going directly into a bank account it's often easier to use the POA document to then control the bank account, and/or to arrange transfers of funds to another, more secure, bank account.

2. The **Department of Veterans Affairs** does recognize court appointments; the VA wants the person speaking for the veteran,

making inquiry for the veteran, or receiving benefits for the veteran to be one of the following:

- (a) **Third Party Authorization.** Veteran can give consent to provide information to a third party. (VA Form 21-0845)
- (b) **Claimant's Representative.** Allows someone else to assist the veteran with a claim. This can be an organization (Form 21-22) or an individual (Form 21-22a).
- (c) **Federal Fiduciary.** This is the process through which an individual or legal entity actually receives the veteran's benefits. Files an annual accounting. (VA Form 21-0792)

A veteran who is "incompetent" for VA purposes is not necessarily what we know as incompetent. In fact, a veteran who is seeking a higher disability rating may be asked to sign a statement declaring him/herself incompetent.

- 3. The **Railroad Retirement Board** does not recognize POA's. The RRB will consider a court-appointed representative, but does not have to use the same person the court appointed for RRB purposes.

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