

# Find free legal help and social services in Tennessee



A program of Tennessee Alliance for Legal Services

[www.help4tn.org](http://www.help4tn.org)

---

## Estate Recovery

### What Is Estate Recovery?

Estate recovery is a tool used to reimburse TennCare after the death of a TennCare recipient for the payments made by TennCare to provide the recipient with nursing home or other or other long-term care. Federal law requires TennCare to recover these costs through estate recovery by applying the value of the property left by the deceased to costs incurred by the State to provide care.

---

### How Does Estate Recovery Work?

After the beneficiary dies, TennCare files a motion with the probate court to recover from the estate. TennCare does not have any official process for conducting estate recovery and may leave some properties alone for years or go after them right away regardless of value or location. Estate recovery will not take place until after the death of the beneficiary. The “estate” is the property, belongings, money, and other assets owned by the individual immediately before death, but the “estate” does not include assets passed outside of probate, like trusts or insurance policies.

---

### When Can Estate Recovery Be Delayed Or Deferred?

Estate Recovery may not be pursued immediately after a recipient’s death if:

1. The recipient is survived by a spouse;
2. The recipient is survived by a child under the age of 21; or
3. The recipient is survived by a child who is blind or disabled.

Under these circumstances, TennCare will delay estate recovery until the surviving spouse dies, the surviving child turns 21, or the surviving disabled child dies. To request a deferral, **a Request for Release must be submitted to TennCare**

. **TennCare will not do it for you.** If approved, TennCare must file the Release with the Probate Court.

The Request for Release form is found at:

[www.tn.gov/content/dam/tn/tenncare/documents/releaseform.pdf](http://www.tn.gov/content/dam/tn/tenncare/documents/releaseform.pdf)

---

## What Exceptions Apply To Estate Recovery?

TennCare will not pursue Estate Recovery if the estate qualifies for an “undue hardship” exception. This exception includes:

1. The property of the estate is the sole income-producing asset of the survivors. (i.e. a family farm or other family business);
2. A sibling of the deceased beneficiary who lived in the beneficiary’s home and provided care to the beneficiary for at least 1 year before the beneficiary was admitted to the nursing home or long-term care facility and then continued to live in the home after the beneficiary was admitted; or
3. A child of the deceased beneficiary who lived in the beneficiary’s home and provided care to the beneficiary for at least 2 years before the beneficiary was admitted to the nursing home or long-term care facility and then continued to live in the home after the beneficiary was admitted.

Undue hardship ends when the child or sibling of the deceased beneficiary no longer lives in the home. The only exception is the income-producing asset, which TennCare will never attempt to recover if they approve the undue hardship. **You can request an undue hardship exception by submitting an Undue Hardship Request to TennCare. TennCare will not do it for you.** Contact TennCare to have them send you the Estate Recovery Undue Hardship Request form.

---

## How Can I Avoid Estate Recovery?

Many TennCare beneficiaries want to save their homes and property to pass them on to their children. TennCare can look back at all of your property and asset transfers for the 5 years before you applied for TennCare. Property and asset transfers for less than the fair market value of the property or asset can make you ineligible for TennCare. This can be tricky, and you should talk to an estate planning lawyer before taking any action.

---

Printed: August 19, 2022

<http://www.help4tn.org/senior-services/legal-information/long-term-care-housing/estate-recovery>

©Find free legal help and social services in Tennessee