

Table of Contents

CHAPTER 1. INTRODUCTION AND UPDATES

- § 1:1 Introduction to guardianship and conservatorship practice in New Jersey
- § 1:2 Forms and procedures for guardianships and conservatorships
- § 1:3 Guardianships of Incapacitated Adults Background Screening Policy
- § 1:4 Pro Bono Policy
- § 1:5 The Supreme Court invites written comments on the Recommendations of the Judiciary Working Group on Elder Justice
- § 1:6 Practice of Elder Law in the age of COVID-19 and Beyond
- § 1:7 Recommendations of the Judiciary Working Group on Elder Justice
- § 1:8 Case citations in this Volume 45
- § 1:9 Client information record
- § 1:10 Elder Law Personal Data Sheet—Single
- § 1:11 —Married
- § 1:12 Guardianship intake form
- § 1:13 Client financial information
- § 1:14 Long term care planning questionnaire—Single
- § 1:15 —Married
- § 1:16 Internal Ethical Review
- § 1:17 The Devolution of the Doctrine of Judicial Deference Given to Administrative Action

CHAPTER 2. DEFINITION AND DETERMINATION OF INCAPACITY

- § 2:1 Definition of incapacitated person
- § 2:2 Test of incapacity
- § 2:3 Effect of determination of incapacity
- § 2:4 Distribution of an incapacitated person's property as intestate property
- § 2:5 Decision-making and functional assessment
- § 2:6 Functional assessment for guardianship determination
- § 2:7 Evaluation of mental functions
- § 2:8 Supportive Decision-Making

CHAPTER 3. PROCEDURES FOR DETERMINATION OF INCAPACITY AND APPOINTMENT OF A GUARDIAN

- § 3:1 Summary of procedures in an action for guardianship of an incapacitated person—Court rules
- § 3:2 —Statutes
- § 3:3 Federal rule for appointment of a guardian ad litem
- § 3:4 Jurisdiction and venue
- § 3:5 Requirement of prima facie case for appointment of a guardian
- § 3:6 Complaint and Affidavit for determination of incapacity and appointment of a guardian—Court Rules, Statutes and Case Law
- § 3:7 Disqualification of Affiant
- § 3:8 Review of Complaint and Notice; Order for Hearing
- § 3:9 Proof of notice of hearing; Appearance of Alleged Incapacitated Person at Hearing; Answer
- § 3:10 Appointment of counsel for alleged incapacitated person
- § 3:11 Appointment of Guardian Ad Litem
- § 3:12 The trial of a guardianship action
- § 3:13 Pro se litigants
- § 3:14 Who may be appointed as guardian
- § 3:15 Appointment of guardian for nonresident incapacitated person with property in New Jersey
- § 3:16 Protective arrangements
- § 3:17 Voluntary dismissal of a guardianship action
- § 3:18 Motion for a new trial
- § 3:19 Rights of an Incapacitated Person: Proceedings for Review of Guardianship
- § 3:20 Filling vacancy in guardianship
- § 3:21 Acceptance and power of attorney; Duties of Guardian
- § 3:22 Surety Bond
- § 3:23 Appeals
- § 3:24 Guardianship estate information sheet
- § 3:25 Questionnaire for proposed guardianship
- § 3:26 Request for medical records
- § 3:27 Review of medical file
- § 3:28 Medication inquiry
- § 3:29 Chancery Division pleading forms
- § 3:30 Notice of motion to intervene in guardianship action and for other relief including disposition of ward's real estate
- § 3:31 Verified complaint—Added Counts To Official Pleading

TABLE OF CONTENTS

	Form—In action for determination of incapacity including request for approval of asset planning and transfer of real estate to caregiver child
§ 3:32	Verified complaint for appointment of substituted guardians—added count to official pleadings form
§ 3:33	Certification of service in action for determination of incapacity
§ 3:34	Affidavit of mailing
§ 3:35	Certification and proof of service
§ 3:36	Answer to verified complaint and cross-claim for appointment of guardian—in addition to official pleading form
§ 3:37	Acceptance and power of attorney for guardianship
§ 3:38	Acceptance and power of attorney for temporary guardianship
§ 3:39	Filing letter for acceptance and power of attorney
§ 3:40	Guardianship Reporting Forms
§ 3:41	Certification of Examining Professional for Guardianship Report of Well-Being
§ 3:42	Guardian Inventory
§ 3:43	Records Request Form—Surrogates' Judiciary Records
§ 3:44	Notice to the Bar—Guardianships of Incapacitated Adults—Required Use of eCourts Guardianship for Post-Judgment Case Management and Monitoring; Relaxation of Court Rule 4.86-1(B)

CHAPTER 4. BONDS AND SURETIES

§ 4:1	Bonds of fiduciaries
§ 4:2	Bond of testamentary guardian
§ 4:3	Bond when property is unsafe or in danger of waste
§ 4:4	Conditions of bonds of guardians of minors and incapacitated persons
§ 4:5	Allowance of expense of procuring surety bond of fiduciary, receiver or assignee
§ 4:6	When fiduciary required to account and give separate security to surety
§ 4:7	Bond upon deposit and withdrawal of funds
§ 4:8	Cases on surety bond issues
§ 4:9	Additional cases on bonds of fiduciaries
§ 4:10	Cases on surety bonds when property is unsafe or in danger of waste
§ 4:11	Certification to decrease guardian's bond
§ 4:12	Order to decrease guardian's bond
§ 4:13	Order discharging guardian's bond

CHAPTER 5. CONSERVATORSHIPS

§ 5:1	Action for the appointment of a conservator
-------	---

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 5:2 Parties to a conservatorship action
- § 5:3 Venue for a conservatorship action
- § 5:4 The conservatorship complaint
- § 5:5 Hearing
- § 5:6 Appointment of conservator—Conservator’s duties and settlement of conservator’s account
- § 5:7 Service of process upon conservators
- § 5:8 Conservator’s bond
- § 5:9 Limitations on appointment of a conservator
- § 5:10 Conservator’s inventory
- § 5:11 Conservator’s management of conservatee’s property
- § 5:12 Termination of conservatorship
- § 5:13 Substituted conservator
- § 5:14 Compensation to conservators
- § 5:15 Chancery Division pleading forms
- § 5:16 Verified complaint for appointment of a conservator—
Sample
- § 5:17 Renunciation for action to appoint conservator
- § 5:18 Consent to appointment of conservator and
renunciation of right to appointment as conservator
- § 5:19 Affidavit of real and personal property in action to
appoint conservator
- § 5:20 Certification of plaintiff in action for appointment of a
conservator
- § 5:21 Certification of service upon interested parties of
complaint for appointment of conservator
- § 5:22 Judgment appointing conservator
- § 5:23 Acceptance and power of attorney for conservatorship
- § 5:24 Certification to increase bond
- § 5:25 Order to increase conservator’s bond

CHAPTER 6. APPOINTMENT OF GUARDIAN FOR PERSON OVER 18 YEARS RECEIVING SERVICES FROM DIVISION OF DEVELOPMENTAL DISABILITIES

- § 6:1 Appointment of a guardian for a person over 18 years
receiving services from the Division of Developmental
Disabilities
- § 6:2 Pleadings and procedures
- § 6:3 Administrative regulations for DDD guardianships—
Philosophy
- § 6:4 Administrative regulations—Authority of Department
of Human Services
- § 6:5 Administrative regulations for DDD guardianships—
Definitions

TABLE OF CONTENTS

§ 6:6	Administrative regulations—Persons covered by regulations
§ 6:7	—Initial screening for need for guardianship services
§ 6:8	—BGS initiates petition
§ 6:9	—Petition for guardianship by closely related persons
§ 6:10	—Petition for Guardianship—Clinical assessment
§ 6:11	Administrative Regulations—Petition for Guardianship—Guardianship assessment report
§ 6:12	—General or limited guardians for DDD guardianships
§ 6:13	—Temporary guardians for DDD guardianships
§ 6:14	Administrative regulations—Procedures for individuals receiving DDD guardianship services without court appointment
§ 6:15	—Procedures for legal actions for the appointment of a guardian
§ 6:16	—Procedure for questioning prospective guardian suitability
§ 6:17	—Review of guardianship status—Procedure
§ 6:18	—Individual receiving guardianship services without court appointment and staff review
§ 6:19	—Court-appointed guardian, staff review
§ 6:20	—Special review of guardianship status
§ 6:21	Forms for guardianship actions—Chancery Division pleading forms
§ 6:22	New Jersey administrative office of the courts pro se materials for legal guardianship of a person receiving services from the Division of Developmental Disabilities
§ 6:23	Administrative regulations—Goals of the Division of Developmental Disabilities
§ 6:24	—Public information, submissions, or requests
§ 6:25	—Philosophy of the Department of Human Services regarding determination of need for guardianship
§ 6:26	—Authority of the Commissioner of the Department of Human Services
§ 6:27	—Definitions for DDD guardianships
§ 6:28	—Confidentiality of DDD records
§ 6:29	—Requirements for DDD client records
§ 6:30	—Public and non-public Division and provider records
§ 6:31	—Photographing, audio, and videotaping of individuals
§ 6:32	—Electronic records
§ 6:33	—Safeguarding DDD records
§ 6:34	—Records held by providers under contract with or licensed by the Department
§ 6:35	—Redaction of records
§ 6:36	—Access to client records

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 6:37 —Release of client records
- § 6:38 —Processing court orders and subpoenas
- § 6:39 —Handling records of deceased individuals
- § 6:40 —Processing records created or held by other entities
- § 6:41 —Copying fees
- § 6:42 Human Rights Committees—Composition, operations and scope
- § 6:43 —Definitions
- § 6:44 Human Rights—Rights of individuals with developmental disabilities
- § 6:45 Membership of the Human Rights Committee
- § 6:46 Orientation and role of the Human Rights Committee
- § 6:47 Meetings of the Human Rights Committee
- § 6:48 General Human Rights Committee functions
- § 6:49 Human Rights Committee procedures
- § 6:50 Human Rights Committee—Conflict of interest
- § 6:51 —Dispute resolution
- § 6:52 Human Rights Committee chairperson
- § 6:53 Minutes of Human Rights Committee meetings
- § 6:54 Agency Human Rights Committee
- § 6:55 Department of Human Services—Determination of eligibility
- § 6:56 Determination of eligibility—Definitions
- § 6:57 —General eligibility
- § 6:58 —Residency
- § 6:59 —Who may apply for DDD services
- § 6:60 —How to apply for DDD eligibility
- § 6:61 —Reapplication
- § 6:62 Eligibility regulations—Determination of an application
- § 6:63 Notice of eligibility determination
- § 6:64 Determination of eligibility—Appeals
- § 6:65 Department of Human Services—DHS Family Support Service System
- § 6:66 DDD placement eligibility standards and criteria
- § 6:67 DDD Community Care Waiver waiting list regulations
- § 6:68 Contribution to Care and Maintenance Requirements
- § 6:69 Standards for private licensed facilities for persons with developmental disabilities
- § 6:70 Protection of individual rights
- § 6:71 Appeal procedures
- § 6:72 Alternate Dispute Resolution Conference and Fair Hearing
- § 6:73 Office of Administrative Law
- § 6:74 Emergent relief

TABLE OF CONTENTS

- § 6:75 Background checks
- § 6:76 Statutory Provision for comprehensive evaluation, functional and guardianship services; primary and secondary evaluation services
- § 6:77 Residential and nonresidential functional services
- § 6:78 County of settlement to be notified of admission of developmentally disabled person to residential functional services
- § 6:79 Guardianship services
- § 6:80 Examination of minor admitted to functional or other services; need for guardian upon reaching majority; application and notice to family
- § 6:81 Minors with a developmental disability receiving residential functional services under order of commitment
- § 6:82 Motion to designate guardian of person over 18 years who is receiving functional or other services; service on county
- § 6:83 Moving papers; contents; definitions
- § 6:84 Determination of appointment of guardian
- § 6:85 Review of persons who received guardianship services without prior judicial review; application for judicial determination; investigation and report by attorney; summary disposition
- § 6:86 Annual report to Governor and Legislature; recommendations
- § 6:87 Appointment of public defender
- § 6:88 Termination or change of guardian; periodic review
- § 6:89 Rules
- § 6:90 Central Registry of Offenders Against Individuals with Developmental Disabilities
- § 6:91 How to apply for guardianship of the person and estate (property) of an individual eligible for services from the Division of Developmental Disabilities (DDD)
- § 6:92 The Stephen Komninos Law
- § 6:93 The Developmentally Disabled Rights Act
- § 6:94 Self-Directed Support Services for Persons With Developmental Disabilities Rights Act

CHAPTER 7. LIMITED GUARDIANSHIPS

- § 7:1 The nature of limited guardianship
- § 7:2 Appointment of guardian for persons eligible for and/or receiving services from the Division of Developmental Disabilities
- § 7:3 Chancery Division pleading forms

CHAPTER 8. GUARDIANSHIP OF MINORS

- § 8:1 Scope of this Chapter
- § 8:2 Persons entitled to appointment of a minor
- § 8:3 Appointment when heirs of a minor are nonresidents
- § 8:4 Guardian for minor child of absconding or absent parent
- § 8:5 When appointment of guardian for minor's estate is unnecessary
- § 8:6 Procedures for appointment of guardian for minor
- § 8:7 Who shall be appointed guardian for minor
- § 8:8 Special guardian for consent of a minor to enlist in armed forces
- § 8:9 Bonds for guardian of a minor
- § 8:10 Powers of court and guardians of minors
- § 8:11 Appointment of guardian ad litem for a minor or incapacitated person in negligence and other actions
- § 8:12 Guardian appointed in New Jersey desiring to move a minor to another state with minor ward
- § 8:13 Deposit, investment, and payment of minor's judgment proceeds
- § 8:14 Pleadings for guardianship of a minor
- § 8:15 Complaints for Appointment of Guardian of Minor's Property
- § 8:16 Order for appointment of guardian for minor
- § 8:17 Judgment appointing special guardian for property of nonresident minor
- § 8:18 Minor estate information sheet

CHAPTER 9. TESTAMENTARY GUARDIANS

- § 9:1 Appointment of a testamentary guardian
- § 9:2 Court rules and statutory scheme for appointment of a testamentary guardian
- § 9:3 Determination of fitness of a testamentary guardian of a minor's person
- § 9:4 Bond of testamentary guardian

CHAPTER 10. GUARDIANSHIP OF VETERANS

- § 10:1 The Uniform Veterans Guardianship Law
- § 10:2 Procedures under the Uniform Veterans Guardianship Law
- § 10:3 Fees and costs in guardianships under the Uniform Veterans Guardianship Law

TABLE OF CONTENTS

- § 10:4 Accounting by guardians under the Uniform Veterans Guardianship Law
- § 10:5 Management of estates and property received from sources other than the United States Government
- § 10:6 Appointment and general duties of public guardian of incapacitated veterans
- § 10:7 Veterans benefits
- § 10:8 Department of Veterans Affairs (VA) rules to qualify for long-term care benefits
- § 10:9 Text of Department of Veterans Affairs (VA) rules to qualify for long-term care benefits

CHAPTER 11. SPECIAL MEDICAL GUARDIANSHIPS

- § 11:1 Special medical guardian—Generally
- § 11:2 The role of a court-appointed counsel and guardian ad litem in action for special medical guardian
- § 11:3 Court rules governing special medical guardianship proceedings
- § 11:4 Conclusion of the special medical guardianship proceeding
- § 11:5 Withdrawal of application for a special medical guardian
- § 11:6 Chancery Division pleading forms
- § 11:7 Order Fixing Hearing Date and Appointing Special Medical Guardian
- § 11:8 Verified complaint for special medical guardianship—Pursuant to R. 4:86-12
- § 11:9 Verified complaint in special medical guardianship action
- § 11:10 Judgment appointing temporary special medical guardian
- § 11:11 Special medical guardianship of inmates

CHAPTER 12. THE ADULT PROTECTIVE SERVICES ACT

- § 12:1 Adult Protective Services in New Jersey
- § 12:2 The purpose of the Adult Protective Services Act
- § 12:3 Definitions
- § 12:4 Public awareness program
- § 12:5 Reporting requirements of the Adult Protective Services Act
- § 12:6 Evaluation of abuse reports and judicial intervention
- § 12:7 Determination of need for protective services and referrals

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 12:8 Injunction against caretaker interfering with provision of protective services
- § 12:9 Petition, hearing, and court order authorizing provision of emergency protective services for vulnerable adult refusing or unable to consent
- § 12:10 Petition, hearing, and court order authorizing provision of protective services for vulnerable adult refusing or unable to consent
- § 12:11 Permanent changes in living situation of vulnerable adult
- § 12:12 Petition for guardianship or conservatorship
- § 12:13 Review of protective services order
- § 12:14 Payments for protective services
- § 12:15 Reporting criminal activity of caregiver
- § 12:16 Confidentiality of records
- § 12:17 Central registry for information regarding abuse, neglect, and exploitation of vulnerable adults
- § 12:18 Training program for protective services providers
- § 12:19 Rules and regulations
- § 12:20 Annual reports
- § 12:21 Construction of laws regarding the institutionalized elderly
- § 12:22 New Jersey adult protective service providers
- § 12:23 Area agencies on aging
- § 12:24 Verified complaint under the Adult Protective Services Act
- § 12:25 Petition for protective services
- § 12:26 Additional affidavit supporting proceeding under the Adult Protective Services Act
- § 12:27 Court order under the Adult Protective Services Act
- § 12:28 Checklist form of court order under the Adult Protective Services Act
- § 12:29 Case Law

CHAPTER 13. THE STANDBY GUARDIANSHIP ACT

- § 13:1 The background of the New Jersey Standby Guardianship Act
- § 13:2 Jurisdiction
- § 13:3 Petition for appointment of standby guardian
- § 13:4 Events triggering assumption of standby guardianship
- § 13:5 Determination of incapacity/debilitation
- § 13:6 Forms for applications for kinship legal guardian
- § 13:7 Findings, declarations relative to kinship legal guardianship

TABLE OF CONTENTS

- § 13:8 Definitions relative to kinship legal guardianship and court action
- § 13:9 Jurisdiction, venue
- § 13:10 Rights, responsibilities, authority of kinship legal guardian
- § 13:11 Appointment as kinship legal guardian; contents of petition
- § 13:12 Considerations for appointment as kinship legal guardian
- § 13:13 Court rules
- § 13:14 Kinship Legal Guardianship Notification Act of 2005
- § 13:15 Termination of parental rights and kinship legal guardianship

CHAPTER 14. DUTIES, RESPONSIBILITIES, AND ETHICS FOR GUARDIANS

- § 14:1 Ethics and ethical guidelines for guardians and conservators
- § 14:2 General statutory duties and responsibilities of the court and guardians
- § 14:3 Guardianship forms
- § 14:4 The American Bar Association Model Rules of Professional Conduct
- § 14:5 The New Jersey Rules of Professional Conduct
- § 14:6 The New Jersey Guardianship Monitoring Program
- § 14:7 National Academy of Elder Law Attorneys Aspirational Standards
- § 14:8 The ACTEC commentaries
- § 14:9 The National Guardianship Association's ethics and standards for guardians

CHAPTER 15. HEALTH CARE DECISION MAKING

- § 15:1 Statutory requirements
- § 15:2 Rights and responsibilities of the parties
- § 15:3 Rights and responsibilities of health care institutions
- § 15:4 Dispute resolution
- § 15:5 Decision to forego life-sustaining treatment
- § 15:6 Do Not Resuscitate orders
- § 15:7 Institutional and regional reviewing bodies
- § 15:8 Health care institutions not governed by this act; qualified exemption for providers of emergency care
- § 15:9 Implementation of advance directives

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 15:10 Immunities
- § 15:11 Presumptions
- § 15:12 Effect on insurance
- § 15:13 Recognition of advance directives executed in other states or countries
- § 15:14 Effect on other laws
- § 15:15 Role of special medical guardian
- § 15:16 Pamphlet of the state of New Jersey commission on legal and ethical problems in the delivery of health care
- § 15:17 Sample Health Care Proxy and Health Care Instruction Directive
- § 15:18 Guidelines for the use of do not resuscitate orders (DNR's) and do not hospitalize orders (DNH's) for long term care facilities
- § 15:19 Military advance directives
- § 15:20 Sample durable power of attorney for health care
- § 15:21 Alternate clauses for advance directives
- § 15:22 Patient authorization to permit use and disclosure of protected health information-Short form
- § 15:23 Authorization for release of medical information—Long form
- § 15:24 Advance directives-New Jersey Administrative Code
- § 15:25 Registration of advance directives for mental health care
- § 15:26 Decision-making for the terminally ill
- § 15:27 Physician Orders for Life-Sustaining Treatment [POLST]
- § 15:28 Advance Directives for Mental Health Care
- § 15:29 Form of Psychiatric Advance Directive
- § 15:30 Appendix B for Mental Health Advance Directive
- § 15:31 Covid-19 issues

CHAPTER 16. THE PRUDENT INVESTOR ACT

- § 16:1 Introduction
- § 16:2 Investment and management requirements
- § 16:3 Diversification of investments
- § 16:4 Review of trust assets
- § 16:5 Standard of conduct
- § 16:6 Delegation of functions
- § 16:7 Multiple fiduciaries
- § 16:8 Notice of intent to delegate
- § 16:9 Construction of terms or language
- § 16:10 Trusts covered by Prudent Investment Act

TABLE OF CONTENTS

- § 16:11 Invocation of act; particular language
- § 16:12 Case law
- § 16:13 Expenditures by guardians
- § 16:14 Cases on standards for prudent investing by
fiduciaries
- § 16:15 Cases on diversification of investments
- § 16:16 Cases on investment and management in interest of
beneficiaries

CHAPTER 17. RETURN TO CAPACITY

- § 17:1 Return to capacity
- § 17:2 Partial restoration to allow marriage
- § 17:3 Evaluation for complete restoration from a
guardianship
- § 17:4 Evaluation for complete restoration from
conservatorship
- § 17:5 Partial restoration from guardianship to allow voting
- § 17:6 Partial restoration from guardianship for reproduction
issues
- § 17:7 Partial restoration from guardianship for driving
- § 17:8 Order to Show Cause and Verified complaint—
Restoration to capacity

CHAPTER 18. ACCOUNTING BY GUARDIANS AND CONSERVATORS

- § 18:1 Requirements for accounting by guardians and
conservators
- § 18:2 Contents of complaint for accounting by guardians
and conservators
- § 18:3 Service of accounting by guardians and conservators
- § 18:4 Vouchers in support of allowances
- § 18:5 Audit and report on accounts
- § 18:6 Report of guardian ad litem
- § 18:7 Exceptions to accounting
- § 18:8 Dispensing with accounting by agreement
- § 18:9 Affidavit of accountant's services
- § 18:10 Commission payments
- § 18:11 Notice as to apportionment of commissions
- § 18:12 Affidavit of attorney's services
- § 18:13 Bank inquiry letter
- § 18:14 Correspondence requesting identification of funds
escheated to the state of New Jersey
- § 18:15 Guardian's accounting and inventory forms
- § 18:16 Verified complaint for settlement of interim
accounting by guardian

- § 18:17 Verified accounting for settlement of guardian's interim accounting
- § 18:18 Verified complaint for settlement of final accounting
- § 18:19 Verified accounting for guardian's final accounting
- § 18:20 Summary of accounting
- § 18:21 Commission statement
- § 18:22 Judgment approving first interim accounting
- § 18:23 Judgment approving first and final accounting
- § 18:24 Consent to accounting

CHAPTER 19. FIDUCIARY COMMISSIONS TO GUARDIANS AND CONSERVATORS

- § 19:1 Fiduciary commissions, generally
- § 19:2 Income commission
- § 19:3 Corpus commissions
- § 19:4 Final distribution commission
- § 19:5 Allowance for additional corpus commissions for unusual or extraordinary services
- § 19:6 Time to take commissions
- § 19:7 Commission statement
- § 19:8 Certification of guardian in application for additional compensation for care giver
- § 19:9 Allowance for and Certification of guardian of person for compensation and for payments to third persons
- § 19:10 Order approving additional compensation to guardian for personal services to ward

CHAPTER 20. LEGAL FEES IN GUARDIANSHIP PROCEEDINGS

- § 20:1 Court costs and counsel fees, generally
- § 20:2 Allowance of counsel fees
- § 20:3 Legal fees from a fund in Court
- § 20:4 Cases from other jurisdictions
- § 20:5 Legal fee retainer
- § 20:6 Certification of legal services for court-appointed counsel
- § 20:7 Certification of legal services for attorney serving as guardian
- § 20:8 Order for payment of fees of court-appointed attorney
- § 20:9 Order for payment of fees of guardian ad litem
- § 20:10 Retention of private counsel
- § 20:11 Compensation to guardian pendent lite and counsel for guardian pendent lite

TABLE OF CONTENTS

**CHAPTER 21. SALE OR MORTGAGE OF
MINOR'S OR INCAPACITATED PERSON'S
LANDS**

- § 21:1 Action for sale or mortgage of minor's or
 incapacitated person's lands
- § 21:2 Pleadings for action for sale or mortgage of minor's or
 incapacitated person's lands
- § 21:3 Order for sale or otherwise dispose of minor's or
 incapacitated person's lands
- § 21:4 Bond in action for sale or mortgage of minor's or
 incapacitated person's lands
- § 21:5 Confirmation of sale and conveyance in action for sale
 or mortgage of minor's or incapacitated person's
 lands
- § 21:6 Mortgage of lands of minor or incapacitated person
- § 21:7 Costs and expenses of proceedings for the sale or
 mortgage of a minor's or incapacitated person's
 lands
- § 21:8 Disposition of sale proceeds
- § 21:9 Forms of Order to Show Cause
- § 21:10 Specific language for order to show cause approving
 the listing and sale of the real estate
- § 21:11 Notice of motion for approval of contract of sale and
 for confirmation of sale of real estate of
 incapacitated person
- § 21:12 Verified complaint in action for approval of the sale of
 real estate of incapacitated person
- § 21:13 Certification for motion for approval of contract of
 sale and for confirmation of sale of real estate of
 incapacitated person
- § 21:14 Affidavit of real estate appraiser in action for
 approval of sale of real estate of incapacitated
 person
- § 21:15 Affidavit of state certified appraiser supervising
 appraisal
- § 21:16 Affidavit of state certified appraiser reviewing report
- § 21:17 Order approving sale of real estate of incapacitated
 person
- § 21:18 Notice of motion for confirmation of sale of real estate
- § 21:19 Certification in support of motion for confirmation of
 sale of real estate
- § 21:20 Order for confirmation of sale of incapacitated person
- § 21:21 Order to show cause for rescission of deed
- § 21:22 Verified complaint for rescission of deed

CHAPTER 22. INTERSTATE AND INTERNATIONAL GUARDIANSHIP PROCEEDINGS

- § 22:1 Jurisdiction
- § 22:2 National probate court standards for interstate guardianships
- § 22:3 The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act—A National Perspective
- § 22:4 The New Jersey Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act—Scope and effective date
- § 22:5 The New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act—Definitions
- § 22:6 —International Application
- § 22:7 —Scope and Definitions
- § 22:8 —International Application and Communication and Cooperation Between Courts
- § 22:9 —Taking testimony in another state and documentary evidence
- § 22:10 —Determination of jurisdiction
- § 22:11 —Determination of state with significant connection
- § 22:12 —Emergency jurisdiction
- § 22:13 —Exclusive and continuing jurisdiction
- § 22:14 —Appropriate forum
- § 22:15 —When jurisdiction is declined
- § 22:16 —Notice of proceedings
- § 22:17 —Proceedings filed in more than one state
- § 22:18 —Transfer of guardianship or conservatorship to another state
- § 22:19 —Accepting a guardianship or conservatorship transferred from another state
- § 22:20 —Registration of guardianship or conservatorship orders
- § 22:21 —Effect of registration
- § 22:22 —Uniformity of application and construction
- § 22:23 —Transitional provision
- § 22:24 Removal from New Jersey after Appointment of Guardian
- § 22:25 Transfer into New Jersey of Guardianship Established in Another State
- § 22:26 Guardian for property in New Jersey of incapacitated nonresident
- § 22:27 States adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

TABLE OF CONTENTS

**CHAPTER 23. DURABLE FINANCIAL
POWERS OF ATTORNEY**

- § 23:1 The benefits of a durable power of attorney and a summary of the Revised Durable Power of Attorney Act
- § 23:2 The requirements for a durable power of attorney
- § 23:3 Additional provisions of the Revised Durable Power of Attorney Act
- § 23:4 Capacity to sign a power of attorney
- § 23:5 Nonlawyer who holds a Power of Attorney may not engage in the practice of law
- § 23:6 General durable power of attorney—Sample form
- § 23:7 Springing general durable power of attorney—Form
- § 23:8 Digital Assets
- § 23:9 Provision in Power of Attorney for Digital Assets
- § 23:10 Co-agents
- § 23:11 Trust authority

**CHAPTER 24. OFFICE OF THE
OMBUDSMAN FOR THE
INSTITUTIONALIZED ELDERLY**

- § 24:1 Overview of the Office of the Ombudsman for the Institutionalized Elderly
- § 24:2 Overview of the Office of the Ombudsman for the Institutional Elderly
- § 24:3 Prohibition on endangering the welfare of an incapacitated person
- § 24:4 Legislative findings and declarations
- § 24:5 Procedures for report of suspected abuse or exploitation of institutionalized elderly
- § 24:6 Definitions of the act creating the Office of the Ombudsman for the Institutionalized Elderly
- § 24:7 Establishment of the Office of Ombudsman for Institutionalized Elderly
- § 24:8 Duties and powers of the Ombudsman
- § 24:9 Eliciting, receiving, processing, responding to, and disposition of complaints
- § 24:10 Report of suspected abuse or exploitation of institutionalized elderly persons; disclosure of name of reporter; immunity from civil or criminal liability; failure to report; penalties; suits to enforce section
- § 24:11 Investigations
- § 24:12 Release of information relating to elderly abuse investigations; written consent form

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 24:13 Investigations by the Office of the Ombudsman for the Institutionalized Elderly
- § 24:14 Registry of reports
- § 24:15 Duties, recommendations, and annual report of the Office of the Ombudsman for the Institutionalized Elderly
- § 24:16 Volunteers and volunteer programs
- § 24:17 Communications with patients, residents, or clients
- § 24:18 Co-operation and assistance from government agencies
- § 24:19 Confidentiality of information
- § 24:20 Discriminatory, disciplinary, or retaliatory action
- § 24:21 Review of Office of the Ombudsman for the Institutionalized Elderly by the legislature
- § 24:22 Severability
- § 24:23 Suspicion of abuse or exploitation of resident of residential health care facility; report; immunity from liability for report or testimony; notice to ombudsman; evaluation; findings; recommended action; registry
- § 24:24 Case law on Ombudsman reporting requirements
- § 24:25 Legislative findings and declaration
- § 24:26 Endangering welfare of elderly or disabled
- § 24:27 Training course and curriculum; domestic crisis teams
- § 24:28 Authority under regulations for standards for licensure of adult and pediatric day health services facilities

CHAPTER 25. THE PUBLIC GUARDIAN FOR ELDERLY ADULTS

- § 25:1 Overview of the Public Guardian for Elderly Adults Act
- § 25:2 Limitations on actions by the public guardian
- § 25:3 The role of the Office of the Public Guardian under the Registered Guardian Act
- § 25:4 OPG mission statement and governing principles
- § 25:5 Cases

CHAPTER 26. THE REGISTERED GUARDIANSHIP ACT

- § 26:1 The Registered Guardianship Act—Enactment and status
- § 26:2 Legislative findings and declarations
- § 26:3 Requirements of the Registered Guardianship Act

TABLE OF CONTENTS

CHAPTER 27. NURSING HOME RESPONSIBILITIES, RIGHTS, AND ACTIONS

§ 27:1	Legislative findings and declarations
§ 27:2	Application for admission; waiver of rights to and application for Medicare and Medicaid benefits; third party guarantees of payment
§ 27:3	Definitions
§ 27:4	Responsibilities of nursing homes
§ 27:5	Security deposits
§ 27:6	Cause of action upon violation; enforcement; attorney's fees and costs to prevailing plaintiff
§ 27:7	Rights of resident
§ 27:8	Discharge or transfer of resident
§ 27:9	Written notice of rights, obligations and prohibitions; copy to residents; posting
§ 27:10	Violations; actions to enforce and to recover damages
§ 27:11	Agreements or contracts limiting liability to sue for negligence or malpractice—Void; nursing homes or assisted living facilities
§ 27:12	Inapplicability of provisions on medical care or treatment contrary to tenets of nursing home operated by certain religious denominations
§ 27:13	Written explanation to participating nursing homes
§ 27:14	Free-standing special care nursing facility; Medicaid recipient's eligibility to continue to reside
§ 27:15	Regulations on standards for licensure of long-term care facilities—Resident rights
§ 27:16	Mandatory policies and procedures for access to care
§ 27:17	Admissions regulations
§ 27:18	Transfer regulations
§ 27:19	Discharge regulations
§ 27:20	Advisory admission policies and procedures regulations
§ 27:21	Mandatory administrative organization for resident activities regulations
§ 27:22	Mandatory staffing amounts and availability for activities
§ 27:23	Mandatory resident activity services
§ 27:24	Mandatory space and environment for resident activities
§ 27:25	Advisory policies and procedures for resident activities
§ 27:26	Ownership and administration
§ 27:27	Mandatory policies and procedures for staff

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 27:28 Mandatory notification
- § 27:29 Mandatory policies and procedures for residents' accounts
- § 27:30 Mandatory policies and procedures for advance directives
- § 27:31 Mandatory completion of resident assessment and coordination of care plans
- § 27:32 Mandatory communication policies and procedures
- § 27:33 Mandatory resident dental and dietary services
- § 27:34 Regulations for infection control and sanitation
- § 27:35 Mandatory structural organization for medical services; medical services
- § 27:36 Quality of care regulations
- § 27:37 Medical records
- § 27:38 Rehabilitation
- § 27:39 Social work policies, procedures, and services
- § 27:40 Mandatory Staff Posting and Reporting System
- § 27:41 Nurse aides
- § 27:42 Respite care
- § 27:43 Alzheimer's and dementia programs
- § 27:44 Hospital based sub-acute care
- § 27:45 Standards for licensure of long-term care facilities—
Appendix B—Guideline for the management of inappropriate behavior and resident to resident abuse
- § 27:46 —Appendix D—Guidelines for the use of restraints
- § 27:47 Arbitration provisions in admission contracts
- § 27:48 Nursing home claims against third parties, resident's fiduciaries and resident's family members—Cases

CHAPTER 28. CONTINUING CARE RETIREMENT COMMUNITIES

- § 28:1 Continuing care retirement community—Defined
- § 28:2 CCRC regulations
- § 28:3 Purpose of CCRC regulations
- § 28:4 DCA determination for issuance of certificate of authority
- § 28:5 Definitions
- § 28:6 Certification requirement
- § 28:7 When CCRC rules are not applicable
- § 28:8 Letter of nonapplicability
- § 28:9 Application for certification; submission and fees
- § 28:10 Notice of filing
- § 28:11 Order of certification
- § 28:12 Notice of correction

TABLE OF CONTENTS

§ 28:13	Order of rejection
§ 28:14	Petition for reconsideration
§ 28:15	Automatic certification
§ 28:16	Order of revocation
§ 28:17	Cease and desist orders; injunctions
§ 28:18	Annual report
§ 28:19	Consolidated filing
§ 28:20	Cyclical inspections
§ 28:21	Contents of application for certification
§ 28:22	Form of the application for certification
§ 28:23	Amendment of the application for certification
§ 28:24	Review of requests for amendment
§ 28:25	Public inspection of application for certification
§ 28:26	Copies of the application for certification
§ 28:27	Disclosure statement required
§ 28:28	Contents of disclosure statement
§ 28:29	Form of disclosure statement
§ 28:30	Filing of disclosure statement
§ 28:31	Amendment of the disclosure statement
§ 28:32	Review of request for amendments
§ 28:33	Use of the disclosure statement
§ 28:34	Assistance by provider
§ 28:35	Annual disclosure statement
§ 28:36	General advertising standards
§ 28:37	Specific advertising standards
§ 28:38	General standards
§ 28:39	Notice of rescission
§ 28:40	Deposits and application fees
§ 28:41	Provisions required
§ 28:42	Rescission and removal
§ 28:43	Liquid reserves
§ 28:44	Financial responsibility
§ 28:45	Department's lien
§ 28:46	Escrow requirements
§ 28:47	Provider's collateral
§ 28:48	Bankruptcy or insolvency of provider
§ 28:49	Initial occupancy
§ 28:50	Scope
§ 28:51	Application
§ 28:52	Advertising standards
§ 28:53	Reservation form
§ 28:54	Effective period
§ 28:55	Notice
§ 28:56	Period of validity of certification

- § 28:57 Provision of notice of rights
- § 28:58 Contents of notice of rights
- § 28:59 Cancellation of continuing care agreement
- § 28:60 Transfer, reassignment of resident
- § 28:61 Notices given by resident
- § 28:62 Cases involving continuing care retirement communities

CHAPTER 29. PUBLIC ACCESS TO COURT RECORDS AND ADMINISTRATIVE RECORDS

- § 29:1 Court rules on public access to court records and administrative records
- § 29:2 Definition of court records
- § 29:3 Court records excluded from public access
- § 29:4 Definition of administrative records
- § 29:5 Administrative records excluded from public access
- § 29:6 Intergovernmental exchanges
- § 29:7 Confidential personal identifiers
- § 29:8 Documents improperly submitted to court
- § 29:9 Fees
- § 29:10 Determinations; appeal process
- § 29:11 Sealing of court records
- § 29:12 Unsealing of court records
- § 29:13 Records available only in the form maintained by the Judiciary

CHAPTER 30. MEDICAL AID IN DYING FOR THE TERMINALLY ILL ACT

- § 30:1 Introduction to the New Jersey Medical Aid in Dying for the Terminally Ill Act
- § 30:2 Legislative findings and declarations
- § 30:3 Definitions relating to medical aid in dying for terminally ill patients
- § 30:4 Written request for self-administration of medication; conditions
- § 30:5 Form for valid written request for medication; attestation
- § 30:6 Evaluation by physician prior to issuance of prescription; requirements; self-administration of medication
- § 30:7 Qualification as a terminally ill patient; requirements
- § 30:8 Capacity to self-administer medication; evaluation by physician; referral to mental health care professional; notice

TABLE OF CONTENTS

§ 30:9	Notification of next of kin of request for medication; requirement for prescription; exception
§ 30:10	Requests for medication to attending physician; requirements; physician's actions; rescission
§ 30:11	Residency requirement; request for medication; documentation
§ 30:12	Disposal of unused medication; designation of responsible party
§ 30:13	Reporting of information to the Department of Health; form and manner; confidentiality
§ 30:14	Validity of other agreements or obligations; restricting or conditioning decision to request medication
§ 30:15	Construction of act
§ 30:16	Authorization to take action on behalf of patient
§ 30:17	Immunity; substantial compliance
§ 30:18	Crimes associated with a request for or rescission of a request for medication; penalties
§ 30:19	Claims against estate; costs incurred as a result of self-administration of medication in a public place
§ 30:20	Form; written request for medication
§ 30:21	Cases

CHAPTER 31. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

§ 31:1	Introduction and definitions
§ 31:2	Application of act relative to user's residence in State; inapplicability of act to certain digital assets
§ 31:3	Direction for disclosure of digital assets, for availability of online tools; exceptions
§ 31:4	Terms-of-service agreement; rights of fiduciary or designated recipient; modification of fiduciary's or designated recipients access to digital assets
§ 31:5	Disclosure of digital assets by custodian; procedure
§ 31:6	Disclosure of content of electronic communications of deceased user to personal representative of user's estate
§ 31:7	Disclosure of other digital assets of deceased user to personal representative of user's estate
§ 31:8	Disclosure of content of electronic communications of principal to agent
§ 31:9	Disclosure of other digital assets of principal to agent
§ 31:10	Disclosure of digital assets of account held in trust to trustee that is an original user
§ 31:11	Disclosure of contents of electronic communications

- held in trust to trustee that is not an original user of an account
- § 31:12 Disclosure of other digital assets held in trust to trustee that is not an original user of an account
- § 31:13 Disclosure of digital assets to guardian of incapacitated person; request to suspend or terminate account
- § 31:14 Duties and authority of fiduciaries and designated recipients
- § 31:15 Duties of custodian relating to compliance with act; immunity
- § 31:16 Uniformity of application and construction of act

CHAPTER 32. THE FAMILY MEDICAL LEAVE ACT

- § 32:1 Introduction
- § 32:2 Legislative Purpose and Findings
- § 32:3 Definitions
- § 32:4 Right of employee after advance notice; grounds; certification; second and third opinions on serious health condition; grounds for denial
- § 32:5 Reduced leave schedule
- § 32:6 Display of notice of employees' rights and obligations
- § 32:7 Restoration of position on expiration of leave
- § 32:8 Continuation of group health insurance, group subscriber contract or health care plan, and other employment benefits
- § 32:9 Unlawful violation of rights, withholding of benefits, discharge or discrimination
- § 32:10 Violations; penalty
- § 32:11 Initiation of suit or filing complaint by any person; punitive damages
- § 32:12 Attorneys' fees
- § 32:13 Additional to rights of Temporary Disability Benefits Law
- § 32:14 Prohibition of reduction of benefits in excess of those required by § 34:11B-1 et seq.
- § 32:15 Report of actual and potential costs
- § 32:16 Rules and regulations
- § 32:17 Unpaid leave for victims and family members resulting from an incident of domestic or sexual violence; use of paid leave; notice of need to take leave; documentation or certification; reduction in benefits prohibited; confidentiality
- § 32:18 Cases

TABLE OF CONTENTS

**CHAPTER 33. THE NEW JERSEY
UNIFORM TRUST CODE**

§ 33:1	New Jersey Uniform Trust Code
§ 33:2	Application of Uniform Trust Code
§ 33:3	Definitions
§ 33:4	Knowledge of person or organization
§ 33:5	Governing power of Uniform Trust Code; prevalence of terms of trust; exceptions
§ 33:6	Common law of trusts and principles of equity as supplemental
§ 33:7	Meaning and effect of terms of trust; law governing
§ 33:8	Principal place of administration; duty of trustee; transfer
§ 33:9	Notice; methods; waiver
§ 33:10	Notice to others treated as qualified beneficiaries
§ 33:11	Nonjudicial settlement agreements
§ 33:12	Application of rules of construction
§ 33:13	Authority of representative
§ 33:14	Holder of general testamentary power of appointment
§ 33:15	Guardian of the property; guardian of the person; agent; trustee; personal representative of decedent's estate; parent
§ 33:16	Persons with substantially identical interest regarding particular question or dispute
§ 33:17	Appointment of guardian ad litem or other representative by court
§ 33:18	Creation of trust; methods
§ 33:19	Creation of trust; requirements
§ 33:20	Validity of written trusts not created by will
§ 33:21	Enforcement of trust; purposes
§ 33:22	Charitable trusts; purposes; selection of charitable purpose or beneficiary by court; enforcement
§ 33:23	Void trusts; fraud, duress, or undue influence
§ 33:24	Creation of trust for care of animal; enforcement; use of trust property
§ 33:25	Creation of trust with noncharitable purpose; enforcement; use of trust property
§ 33:26	Termination of trust; proceeding to approve or disapprove modification or termination or trust combination or division
§ 33:27	Modification or termination of noncharitable irrevocable trust; consent; court approval
§ 33:28	Court modification or termination of trust; grounds; distribution of trust property
§ 33:29	Charitable purpose becoming unlawful, impracticable,

GUARDIANSHIPS AND CONSERVATORSHIPS

- impossible to achieve, or wasteful; modification or termination by court; trust provision to distribute property to noncharitable beneficiary
- § 33:30 Insufficient value of trust property; modification or termination of trust
- § 33:31 Mistakes; reformation of trust terms by court to conform to probable intent
- § 33:32 Construction of trust terms by court to conform to probable intent
- § 33:33 Modification of trust terms by court to achieve settlor's tax objectives
- § 33:34 Combination or division of trusts
- § 33:35 Authority of creditor or assignee of beneficiary to reach beneficiary's interest
- § 33:36 Spendthrift provision; validity; effect
- § 33:37 Special Needs Trusts
- § 33:38 Creditor of beneficiary prohibited from compelling distribution subject to trustee's discretion
- § 33:39 Claims of creditors or assignees
- § 33:40 Mandatory distribution of income or principal
- § 33:41 Trust property not subject to personal obligations of trustee
- § 33:42 Capacity requirements
- § 33:43 Revocation or amendment; distribution of trust property
- § 33:44 Powers of settlor
- § 33:45 Judicial proceeding contesting validity of trust; distribution of trust property upon death of settlor; return of distributions
- § 33:46 Accepting or renouncing trusteeship; actions authorized prior to acceptance
- § 33:47 Bond of Trustee
- § 33:48 Co-trustees; powers and duties
- § 33:49 Vacancies; order of priority for filling vacancy
- § 33:50 Resignation of trustee; notice; court approval; liability
- § 33:51 Removal of trustee; grounds
- § 33:52 Duties of trustee who has resigned or been removed; delivery of trust property
- § 33:53 Reimbursement of trustee for expenses
- § 33:54 Administration of trust
- § 33:55 Administration of trust with loyalty and in best interests of beneficiaries; voidable transactions; appointment of special fiduciary
- § 33:56 Impartiality
- § 33:57 Administration of trust as prudent person
- § 33:58 Administrative costs

TABLE OF CONTENTS

§ 33:59	Use of special skills or expertise
§ 33:60	Delegation of duties and powers
§ 33:61	Powers to direct; requirements; liability
§ 33:62	Authority to direct, consent to, or disapprove investment decisions; investment advisers
§ 33:63	Control and protection of trust property
§ 33:64	Recordkeeping; separation of trust property; investment of trust property
§ 33:65	Enforcement and defense of claims
§ 33:66	Duty to Collect Trust Property and Redress Breaches of Trust
§ 33:67	Provision of information to beneficiaries; report by trustee
§ 33:68	Exercise of discretionary power
§ 33:69	General powers of trustee
§ 33:70	Distribution Upon Termination
§ 33:71	Breach of trust; remedies
§ 33:72	Breach of trust; liability for damages; contribution
§ 33:73	Accountability for profit made by trustee; liability for loss or depreciation in value of trust property or lack of profit
§ 33:74	Limitation of action for breach of trust
§ 33:75	Reliance on terms of trust; liability for breach
§ 33:76	Event affecting administration or distribution of trust; liability of trustee for loss
§ 33:77	Enforceability of term of trust relieving trustee of liability for breach; validity of exculpatory terms
§ 33:78	Consent, release, or ratification by beneficiary
§ 33:79	Personal liability of trustee; assertion of claim against trustee in trustee's fiduciary capacity
§ 33:80	Interest as General Partner
§ 33:81	Certification of trust
§ 33:82	Conformity of act provisions with Electronic Signatures in Global and National Commerce Act
§ 33:83	Severability
§ 33:84	Application of Uniform Trust Code
§ 33:85	Cases

CHAPTER 34. BILL OF RIGHTS FOR LGBTQI AND HIV+ RESIDENTS OF LONG- TERM CARE

§ 34:1	Summary of Bill of Rights for LGBTQI and HIV+ residents of long-term care
§ 34:2	Definitions concerning resident rights in long-term care facilities

GUARDIANSHIPS AND CONSERVATORSHIPS

- § 34:3 Prohibited actions by staff
- § 34:4 Information included in resident records.
- § 34:5 Confidentiality of certain resident information
- § 34:6 Violations, civil penalties, administrative action
- § 34:7 Training for administrators, staff
- § 34:8 Rules and regulations

Table of Laws and Rules

Table of Cases

Index

Table of Contents

CHAPTER 1. INTRODUCTION TO MEDICAID LAWS, REGULATIONS AND MEDICAID COMMUNICATIONS

- § 1:1 Introduction
- § 1:2 Web site resources
- § 1:3 Medicaid summary for 2025 and Medicare premiums for 2025
- § 1:4 Medicaid Communications (MedComs)
- § 1:5 Medicaid Newsletters
- § 1:6 Streamlining of process to determine Medicaid eligibility

CHAPTER 2. THE NEW JERSEY MEDICAL ASSISTANCE AND HEALTH SERVICES ACT

- § 2:1 Introduction
- § 2:2 Background and overview of the New Jersey Medical Assistance and Health Services Act and amendments
- § 2:3 Definitions utilized in the Medical Assistance and Health Services Act
- § 2:4 Adoption of regulations by the Department of Human Services
- § 2:5 Basic medical care and services under the New Jersey Medical Assistance and Health Services Act
- § 2:6 Personal needs allowance
- § 2:7 Medical assistance to “eligible aliens”
- § 2:8 Bed holds
- § 2:9 Duties of the Commissioner
- § 2:10 Attorney General enforcement of rights against third party for recovery of medical assistance payments
- § 2:11 Lien against estate of Medicaid recipient
- § 2:12 Property held in trust; attachment of lien
- § 2:13 Recording liens and certificates of debt
- § 2:14 Compromise, settlement or waiver of lien; discharge of lien
- § 2:15 Action to determine validity of lien; deposit and bond; discharge prior to adjudication
- § 2:16 Payment of claims; method
- § 2:17 Establishing a Medicaid Accountable Care Organization Demonstration Project
- § 2:18 Unnecessary use of care and services; methods and

GUIDE TO MEDICAID LAWS AND REGULATIONS

- procedures; maintenance of records required for reimbursement
- § 2:19 Enrollment fees or premium charges
- § 2:20 Preparation of comprehensive medical plan
- § 2:21 Eligibility determination
- § 2:22 Penalty
- § 2:23 Penalty for transfer of assets for less than fair market value
- § 2:24 Suspension or disqualification of providers, termination of benefits to recipients; rules and regulations
- § 2:25 Enforcement of Commissioner's decisions; order by civil action
- § 2:26 Admission to skilled nursing or intermediate care facilities; consideration as precondition; crimes and penalties
- § 2:27 Skilled nursing or intermediate care facility applicants; retroactive eligibility and adjusted reimbursement rates
- § 2:28 Skilled nursing or intermediate care facility applicants; retroactive eligibility
- § 2:29 Skilled nursing or intermediate care providers; Medicaid current and prospective qualified applicants; continuity of care upon ceasing to be Medicaid provider
- § 2:30 Skilled nursing and intermediate care facilities; posting of statement; copies for applicants
- § 2:31 Skilled nursing and intermediate care facility bed space; Medicaid eligible persons; report
- § 2:32 Nursing home preadmission screening program; establishment; standards; responsibilities of skilled nursing or intermediate care facilities
- § 2:33 Performance of preadmission screening; availability to private pay individuals; monitoring and rules and regulations
- § 2:34 Pre-admission screening process
- § 2:35 PAS Forms for Mental Health and Addiction Services
- § 2:36 Chief administrator of office providing assistance under New Jersey medical assistance and health services plan to insure distribution of voter registration forms and instructions
- § 2:37 Compliance with National Voter Registration Act

TABLE OF CONTENTS

CHAPTER 3. NJ ADMINISTRATIVE CODE—MEDICAID ONLY PROGRAM— INTRODUCTION, APPLICATION PROCESS AND ELIGIBILITY FACTORS

- § 3:1 Introduction
- § 3:2 Choice of program by applicant
- § 3:3 Living arrangements
- § 3:4 Basic principles of administration
- § 3:5 The application process; definitions
- § 3:6 Responsibilities in the application process
- § 3:7 Policy and procedure on prompt disposition
- § 3:8 Intake policy and procedure
- § 3:9 Application policy and procedure
- § 3:10 Registration procedures and record of inquiries
- § 3:11 Reports to the Commission for the Blind and Visually
Impaired under specified circumstances
- § 3:12 Assignment of pending application for completion of
eligibility determination; process of establishing
eligibility
- § 3:13 Collateral investigation; Case recording
- § 3:14 Recommendation for agency decision; supervisory
review and approval
- § 3:15 Disposition of application
- § 3:16 Retroactive eligibility for Medicaid
- § 3:17 Eligibility factors; general provisions
- § 3:18 Citizenship; requirements
- § 3:19 Citizenship; “alien” status—Documentation
requirements
- § 3:20 Residence requirement
- § 3:21 Change of county residence
- § 3:22 Eligibility of beneficiaries who leave New Jersey
- § 3:23 Medicaid eligibility for individuals who enter New
Jersey in order to secure medical care
- § 3:24 Age requirements
- § 3:25 Disability and blindness factors
- § 3:26 Disability; definitions
- § 3:27 County Welfare Agency responsibility and procedures
- § 3:28 Institutional eligibility
- § 3:29 Medical assistance units

CHAPTER 4. NEW JERSEY ADMINISTRATIVE CODE REGULATIONS FOR THE MEDICAID ONLY PROGRAM— RESOURCES

- § 4:1 Introduction

- § 4:2 Financial eligibility standards; resources
- § 4:3 Countable resources
- § 4:4 Excludable resources
- § 4:5 Resource eligibility standards
- § 4:6 Deeming of resources
- § 4:7 Transfer of resources
- § 4:8 Institutional eligibility; resources of a couple
- § 4:9 Resource assessment
- § 4:10 Trusts

CHAPTER 5. NEW JERSEY ADMINISTRATIVE CODE REGULATIONS FOR THE MEDICAID ONLY PROGRAM— INCOME

- § 5:1 Income; financial eligibility standards
- § 5:2 Determination of countable income
- § 5:3 Income exclusions
- § 5:4 Includable income
- § 5:5 Deeming of income
- § 5:6 Income eligibility standards
- § 5:7 Post-eligibility treatment of income; institutionalized individuals
- § 5:8 Eligibility under life care and pay-as-you-go agreements
- § 5:9 Deeming from sponsor to alien

CHAPTER 6. NEW JERSEY ADMINISTRATIVE CODE REGULATIONS FOR THE MEDICAID ONLY PROGRAM— CASE RECORDS AND FILES

- § 6:1 Purpose and contents of case records
- § 6:2 Forms applicable to the Medicaid only program—
Introduction
- § 6:3 The Medicaid application
- § 6:4 The application for payment of unpaid medical bills
- § 6:5 Medicaid Newsletter on Pre-eligibility Medical Expenses (PEME)

CHAPTER 7. NEW JERSEY ADMINISTRATIVE CODE REGULATIONS FOR THE MEDICAID ONLY PROGRAM— OTHER PAYMENTS

- § 7:1 General provisions

TABLE OF CONTENTS

- § 7:2 Services and service payments
- § 7:3 Burial and funeral expenses

**CHAPTER 8. NEW JERSEY
ADMINISTRATIVE CODE REGULATIONS
FOR THE MEDICAID ONLY PROGRAM—
RESPONSIBILITIES**

- § 8:1 Other agency responsibilities
- § 8:2 Redetermination of medical eligibility
- § 8:3 Notice of county board of social services decision
- § 8:4 Complaints and fair hearings
- § 8:5 Fraudulent receipt of assistance
- § 8:6 Reporting criminal offenses to law enforcement
authorities
- § 8:7 Safeguarding information
- § 8:8 Nondiscrimination in public assistance programs

**CHAPTER 9. NEW JERSEY
ADMINISTRATIVE CODE REGULATIONS
FOR THE MEDICAID ONLY PROGRAM—
MEDICAL ASSISTANCE FOR THE AGED
CONTINUATION**

- § 9:1 General statement
- § 9:2 Initial certification and termination
- § 9:3 Continuation of medical need
- § 9:4 Eligibility for other programs

**CHAPTER 10. NEW JERSEY
COMPREHENSIVE 1115(A)
DEMONSTRATION WAIVER PROGRAM**

- § 10:1 New Jersey Comprehensive 1115(a) Demonstration
Waiver, Introduction
- § 10:2 Managed Long Term Services and Supports [MLTSS]
Summary
- § 10:3 Medicaid Managed Long Term Services and Supports
(MLTSS) details

**CHAPTER 11. DEPARTMENT OF HUMAN
SERVICES ADMINISTRATION MANUAL FOR
THE DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

- § 11:1 Scope, purpose and organization

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 11:2 New Jersey Medicaid beneficiaries
- § 11:3 Provider manuals
- § 11:4 Compliance with the Patient Protection and Affordable Care Act, Health Care and Education Reconciliation Act of 2010, and Federal regulations
- § 11:5 Role of provider in a shared health care facility
- § 11:6 Verification of eligibility for Medicaid or Pharmaceutical Assistance to the Aged and Disabled (PAAD) services
- § 11:7 Services available to beneficiaries eligible for the regular Medicaid and NJ FamilyCare Programs
- § 11:8 Services not covered by the Medicaid program
- § 11:9 Civil rights and observance of religious belief
- § 11:10 Free choice by beneficiary and provider
- § 11:11 Confidentiality of records
- § 11:12 Confidentiality of records; provider and beneficiary certification and recordkeeping
- § 11:13 Integrity of the Medicaid program
- § 11:14 Advance directives

CHAPTER 12. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—FAIR HEARINGS

- § 12:1 Informing individuals of their rights
- § 12:2 Provisions for appeals; fair hearings
- § 12:3 Definitions
- § 12:4 Notices
- § 12:5 Opportunity for fair hearing
- § 12:6 Advance notice of intent to terminate, reduce or suspend Medicaid assistance
- § 12:7 Beneficiary's right to different medical assessment
- § 12:8 Hearing procedures
- § 12:9 Department of Human Services Summary of Appeals Procedures
- § 12:10 New Jersey Office of Administrative Law

CHAPTER 13. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—PROGRAM CONTROLS

- § 13:1 Medical review and evaluation

TABLE OF CONTENTS

§ 13:2 Rewards for information relating to fraud and abuse

CHAPTER 14. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—RECOVERY OF PAYMENTS AND SANCTIONS

§ 14:1 Recovery of payments correctly made

§ 14:2 Sanctions—Special status program

§ 14:3 Authority to adjust, compromise, settle or waive claims, liens, and certificates of debt

§ 14:4 Recoveries involving county welfare agencies

§ 14:5 Estate recovery summary and memorandum

CHAPTER 15. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—AVAILABILITY AND MAINTENANCE OF PROGRAM POLICY ISSUANCES

§ 15:1 Maintenance of public policy issuances

§ 15:2 Availability of material

§ 15:3 Reproduction of policy material

CHAPTER 16. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—THE MEDICAID/NJ FAMILYCARE MANAGED CARE PROGRAM

§ 16:1 Purpose and scope

§ 16:2 Medicaid beneficiaries

§ 16:3 Medicaid/NJ FamilyCare Managed Care Program

CHAPTER 17. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—HOME AND COMMUNITY-BASED SERVICES WAIVER PROGRAMS

- § 17:1 Introduction
- § 17:2 Approved waivers
- § 17:3 Administration of waived programs
- § 17:4 Home and community-based services waivers

CHAPTER 18. DEPARTMENT OF HUMAN SERVICES ADMINISTRATION MANUAL FOR THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES—LIFELINE PROGRAMS

- § 18:1 Purpose and scope
- § 18:2 Applications

CHAPTER 19. NEW JERSEY CARE—SPECIAL MEDICAID PROGRAMS MANUAL

- § 19:1 Introduction
- § 19:2 Case processing—Application
- § 19:3 Verification requirements
- § 19:4 Case transfer
- § 19:5 Redetermination of eligibility
- § 19:6 Post-application client responsibilities
- § 19:7 Retroactive eligibility
- § 19:8 Nonfinancial eligibility factors—General provisions
- § 19:9 —Citizenship
- § 19:10 —State residency
- § 19:11 Income eligibility limits
- § 19:12 Prospective budgeting of income
- § 19:13 Income eligibility; aged, blind, and disabled individuals
- § 19:14 Resource eligibility
- § 19:15 Notice of the county welfare agency decision
- § 19:16 Fair hearings
- § 19:17 Case records

TABLE OF CONTENTS

CHAPTER 20. MEDICAID HOME CARE EXPANSION PROGRAM (HCEP)

- § 20:1 Purpose and scope
- § 20:2 Assessment of need for long-term home care services;
plan of care; monitoring; services within program;
determinations of medical necessity and of cost;
payment
- § 20:3 Services provided under the Home Care Expansion
Program (HCEP)
- § 20:4 Eligibility requirements for the Home Care Expansion
Program (HCEP)
- § 20:5 Application for the Home Care Expansion Program
(HCEP)

CHAPTER 21. HOME CARE SERVICES MANUAL

- § 21:1 Purpose and scope
- § 21:2 Definitions
- § 21:3 Providers eligible to participate
- § 21:4 Out-of-State approved home health agencies
- § 21:5 Limitations on home care services
- § 21:6 Advance directives
- § 21:7 Relationship of the home care provider with the
Medical Assistance Customer Center (MACC) and
the DHSS Long-Term Care Field Office (LTCFO)
- § 21:8 Standards of performance for concurrent and post
payment quality assurance review
- § 21:9 On-site monitoring visits
- § 21:10 Provisions for fair hearings
- § 21:11 Home Health Agency (HHA) Services—Covered home
health agency services
- § 21:12 Home health agency services—Certification of need
for home health services
- § 21:13 —Plan of care
- § 21:14 —Clinical records
- § 21:15 —Basis of payment for home health services
- § 21:16 —Limitations on home health agency services
- § 21:17 Personal Care Assistant (PCA) Services—Purpose and
scope
- § 21:18 Basis for reimbursement for personal care assistant
services
- § 21:19 Covered personal care assistant services
- § 21:20 Certification of need for personal care assistant
services

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 21:21 Personal Care Assistant program—Duties of the registered professional nurse
- § 21:22 —Clinical records
- § 21:23 Basis of payment for personal care assistant services
- § 21:24 Limitations on personal care assistant services
- § 21:25 Prior authorization for personal care assistant (PCA) services
- § 21:26 Private duty nursing (PDN) services—Purpose and scope
- § 21:27 Basis for reimbursement for EPSDT/PDN
- § 21:28 Eligibility for Early and Periodic Screening Diagnosis and Treatment/Private Duty Nursing (PDN) Services
- § 21:29 Limitation, duration and location of EPSDT/PDN
- § 21:30 Nursing assessment for the determination of medical necessity for EPSDT/PDN Services
- § 21:31 Clinical records and personnel files
- § 21:32 Payment for EPSDT/PDN
- § 21:33 Eligibility for managed long-term supports and services (MLTSS)/private duty nursing (PDN) services
- § 21:34 Limitation, duration, and location of MLTSS/PDN services
- § 21:35 Basis for reimbursement for home and community-based services waiver/PDN
- § 21:36 Prior authorization of home and community-based services waiver/PDN
- § 21:37 Home And Community-Based Services Waivers for Blind or Disabled Children and Adults Community Resources for People with Disabilities (CRPD) Waiver Program—Purpose and scope
- § 21:38 Eligibility for Community Resources for People with Disabilities (CRPD) Waiver Program
- § 21:39 Healthcare Common Procedure Coding System (HCPCS)—Introduction

CHAPTER 22. PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED ELIGIBILITY MANUAL

- § 22:1 Introduction
- § 22:2 Definitions
- § 22:3 Scope of services
- § 22:4 Application process
- § 22:5 General eligibility requirements
- § 22:6 Income eligibility requirements

TABLE OF CONTENTS

- § 22:7 Appeal process
- § 22:8 Recoveries and liens

CHAPTER 23. DEPARTMENT OF HUMAN SERVICES—STATEWIDE RESPITE CARE PROGRAM

- § 23:1 Introduction
- § 23:2 Definitions applicable to the Statewide Respite Care Program
- § 23:3 Application process
- § 23:4 Eligibility standards
- § 23:5 Confidentiality and disclosure of information
- § 23:6 Primary and secondary payment
- § 23:7 Qualifications and requirements of sponsors
- § 23:8 Qualifications and requirements for provider agencies
- § 23:9 Fees
- § 23:10 Appeals process

CHAPTER 24. DEPARTMENT OF HUMAN SERVICES—LIFELINE CREDIT PROGRAM/TENANTS LIFELINE ASSISTANCE PROGRAM MANUAL

- § 24:1 Introduction
- § 24:2 Definitions
- § 24:3 Lifeline Credit/Tenants Lifeline Assistance payment
- § 24:4 Responsibilities of the utility companies
- § 24:5 Confidentiality and disclosure of information
- § 24:6 Application process
- § 24:7 General eligibility requirements
- § 24:8 Income eligibility requirements
- § 24:9 Residency requirement and citizenship
- § 24:10 Age and disability
- § 24:11 Lifeline eligibility applications
- § 24:12 Appeal process
- § 24:13 Benefits incorrectly paid

CHAPTER 25. THE SENIOR GOLD PRESCRIPTION PROGRAM MANUAL

- § 25:1 Introduction, scope and purpose
- § 25:2 Definitions
- § 25:3 Special needs trust
- § 25:4 Reimbursements and co-payments

- § 25:5 Drug products
- § 25:6 Application process
- § 25:7 Agency controls
- § 25:8 Application and application renewal process
- § 25:9 Eligibility requirements
- § 25:10 Income standards
- § 25:11 Citizenship and residence
- § 25:12 Effect of receipt of other assistance and pharmaceutical coverage
- § 25:13 Confidentiality and disclosure of information
- § 25:14 Appeal process
- § 25:15 Recoveries, liens and penalties

CHAPTER 26. ADULT DAY SERVICES PROGRAM FOR PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS

- § 26:1 Introduction
- § 26:2 Definitions
- § 26:3 Funding requirements
- § 26:4 Responsibilities of participating agencies
- § 26:5 Scope of services or required services
- § 26:6 Application process
- § 26:7 Eligibility standards
- § 26:8 Confidentiality and disclosure of information
- § 26:9 Appeals process

CHAPTER 27. JERSEY ASSISTANCE FOR COMMUNITY CAREGIVING (JACC)

- § 27:1 Introduction to JACC
- § 27:2 Jersey Assistance for Community Care
- § 27:3 JACC policy memoranda and program instructions

CHAPTER 28. HCFA TRANSMITTAL NO. 64

- § 28:1 Introduction
- § 28:2 Index to HCFA transmittal No. 64
- § 28:3 HCFA 64 § 3257—Transfers of assets and treatment of trusts
- § 28:4 HCFA 64 § 3258.1—Transfers of assets for less than fair market value—General
- § 28:5 HCFA 64 § 3258.2—Transfers of assets for less than fair market value—Effective date
- § 28:6 HCFA 64 § 3258.3—Transfers of assets for less than

TABLE OF CONTENTS

	fair market value—Individuals to whom transfer of assets provisions apply
§ 28:7	HCFA 64 § 3258.4—Transfers of assets for less than fair market value—Look-back date and look-back period
§ 28:8	HCFA 64 § 3258.5—Transfers of assets for less than fair market value—Penalty periods
§ 28:9	HCFA 64 § 3258.6—Transfers of assets for less than fair market value—Treatment of income as asset
§ 28:10	HCFA 64 § 3258.7—Transfers of assets for less than fair market value—Treatment of jointly owned assets
§ 28:11	HCFA 64 § 3258.8—Transfers of assets for less than fair market value—Penalties for transfers of assets for less than fair market value
§ 28:12	HCFA 64 § 3258.9—Transfers of assets for less than fair market value—Treatment of certain kinds of transfers for less than fair market value
§ 28:13	HCFA 64 § 3258.10—Transfers of assets for less than fair market value—Exceptions to application of transfer of assets penalties
§ 28:14	HCFA 64 § 3258.11—Transfers of assets for less than fair market value—Transfers of assets and spousal impoverishment provisions
§ 28:15	HCFA 64 § 3259.1—General
§ 28:16	HCFA 64 § 3259.2—Effective date
§ 28:17	HCFA 64 § 3259.3—Individuals to whom trust provisions apply
§ 28:18	HCFA 64 § 3259.4—Individual's assets form only part of trust
§ 28:19	HCFA 64 § 3259.5—Application of trust provisions
§ 28:20	HCFA 64 § 3259.6—Treatment of trusts
§ 28:21	HCFA 64 § 3259.7—Exceptions to treatment of trusts under trust provisions
§ 28:22	HCFA 64 § 3259.8—Application of trust provisions would work undue hardship
§ 28:23	Increase in Penalty Divisor

CHAPTER 29. INSTITUTIONAL LIENS FOR PATIENTS IN PSYCHIATRIC FACILITIES

§ 29:1	Introduction and definitions
§ 29:2	Role of county adjuster
§ 29:3	Contents of final judgment of commitment
§ 29:4	Determination of ability to pay and payment arrangements
§ 29:5	Extinguishment of liens

CHAPTER 30. HEARING AID ASSISTANCE TO THE AGED AND DISABLED

- § 30:1 Introduction
- § 30:2 Definitions
- § 30:3 Application process
- § 30:4 Eligibility standards
- § 30:5 Recoveries for benefits incorrectly paid
- § 30:6 Appeal process

CHAPTER 31. TRAUMATIC BRAIN INJURY FUND

- § 31:1 Introduction to Division of Disability Services regulations
- § 31:2 Definitions
- § 31:3 General requirements
- § 31:4 Administration of the Traumatic Brain Injury Fund
- § 31:5 Expenditures for the Traumatic Brain Injury Fund
- § 31:6 Eligibility criteria for services and supports for the Traumatic Brain Injury Fund
- § 31:7 Application process for the Services and Supports of the Traumatic Brain Injury Fund
- § 31:8 Approval and denial of supports/services for the Traumatic Brain Injury Fund
- § 31:9 Service coordination under the Traumatic Brain Injury Fund
- § 31:10 Responsibilities of Traumatic Brain Injury Fund case managers
- § 31:11 Payments for supports/services for the Traumatic Brain Injury Fund
- § 31:12 Eligible supports and services for the Traumatic Brain Injury Fund
- § 31:13 Ineligible Supports and Services for the Traumatic Brain Injury Fund
- § 31:14 Emergency services for the Traumatic Brain Injury Fund
- § 31:15 Revenue and reporting of expenditures for the Traumatic Brain Injury Fund

TABLE OF CONTENTS

**CHAPTER 32. THE 2012
REORGANIZATION OF DEPARTMENT OF
HEALTH AND SENIOR SERVICES AND
AMENDING LAWS AFFECTING ELDER LAW,
DISABILITY SERVICES, NURSING HOME
AND HEALTH CARE FACILITIES AND
MEDICAID**

§ 32:1 Introduction

**CHAPTER 33. QUALIFIED INCOME
TRUSTS**

§ 33:1 Qualified Income Trusts and Medically Needy
Coverage

§ 33:2 Qualified Income Trust

§ 33:3 —Frequently Asked Questions

§ 33:4 —Template

§ 33:5 DMAHS memo to banks

§ 33:6 Medicaid Memo on What Medicaid Applicants Need to
Tell a Bank When Establishing a Qualified Income
Trust

§ 33:7 Medicaid Communication

**CHAPTER 34. ASSISTED LIVING
REGULATIONS**

§ 34:1 Standards for licensure of assisted living residences,
comprehensive personal care homes and assisted
living programs

§ 34:2 General provisions

§ 34:3 Definitions

§ 34:4 Residents' rights

§ 34:5 General requirements—Types of services provided to
residents

§ 34:6 —Ownership

§ 34:7 —Personnel

§ 34:8 —Staffing requirements

§ 34:9 —Policy and procedure manual

§ 34:10 —Resident transportation

§ 34:11 —Written agreements

§ 34:12 —Reportable events

§ 34:13 —Posted notices

§ 34:14 —Maintenance of records

§ 34:15 —Admission and retention of residents

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 34:16 —Involuntary discharge
- § 34:17 —Notification requirements
- § 34:18 —Interpretation of services
- § 34:19 —Referral and transfer agreements
- § 34:20 —Managed risk agreements
- § 34:21 Resident care policies
- § 34:22 Financial arrangements and full disclosure
- § 34:23 Personal needs allowance
- § 34:24 Resident assessments and care plans
- § 34:25 Health care assessment and health service plan
- § 34:26 General and health service plans
- § 34:27 Health care services
- § 34:28 Provision of health care services
- § 34:29 Nursing services—Qualifications of professional nurses
- § 34:30 —Nurse staffing requirements
- § 34:31 Qualifications of personal care assistants
- § 34:32 Certification of medication aides
- § 34:33 Minimum personal care assistant staffing
- § 34:34 Dining services—Qualifications of dietitians
- § 34:35 —Provision of meals
- § 34:36 —Designation of a food service coordinator
- § 34:37 —Responsibilities of dietitians
- § 34:38 —Requirements for dining services
- § 34:39 —Commercial food management services
- § 34:40 Pharmaceutical services—Qualifications of pharmacists
- § 34:41 —Provision of pharmaceutical services
- § 34:42 —Supervision of medication administration
- § 34:43 —Administration of medications
- § 34:44 —Certified medication aide program
- § 34:45 —Designation of a pharmacist
- § 34:46 —Storage and control of medications
- § 34:47 Resident activities
- § 34:48 Social work services
- § 34:49 Emergency medical procedures
- § 34:50 Emergency plans and procedures
- § 34:51 Drills and tests
- § 34:52 Resident records
- § 34:53 Physical plant—Scope
- § 34:54 Restrictions
- § 34:55 Ventilation
- § 34:56 Exit access passageways and corridors; automatic fire detection system; fire suppression systems; interior finish requirements

TABLE OF CONTENTS

§ 34:57	General residential unit requirements
§ 34:58	Community space; laundry equipment
§ 34:59	Dietary department
§ 34:60	Administration and public areas
§ 34:61	Fire extinguishers; sounding devices; telecommunications
§ 34:62	Housekeeping, sanitation, safety, and maintenance
§ 34:63	Infection prevention and control services
§ 34:64	Employee health and resident policies and procedures for infection prevention and control
§ 34:65	Alzheimers/dementia programs
§ 34:66	Standards for respite care services
§ 34:67	Standards for respite care services
§ 34:68	Quality services
§ 34:69	Comprehensive personal care home—Eligibility for conversion
§ 34:70	—Physical plant
§ 34:71	Prohibition of resident discharge on conversion of facility; combination of license categories; supplemental security income recipients
§ 34:72	Assisted living programs
§ 34:73	Case citations

CHAPTER 35. CASE LAW AND FINAL AGENCY DECISION UPDATES

§ 35:1	“Short-term annuities” purchased by applicants for nursing home Medicaid cannot be treated as an “available resource” that prevent Medicaid eligibility
§ 35:2	Medicaid applicant who was assessed a 10-year penalty period cannot “relitigate” her application by filing a second application after some transferred assets were returned
§ 35:3	Firefighter Allowed to Change Pension Beneficiary to Special Needs Trust for Disabled Son
§ 35:4	Distributions from Special Needs Trust Considered in Calculation for Child Support
§ 35:5	Medicaid Applications Properly Denied Despite Contention of Abandonment by Power of Attorney
§ 35:6	Only state Medicaid agency could make Medicaid eligibility determinations
§ 35:7	Medicaid Agency Requirement That Applicants Use Its Form to Designate Authorized Representative Was Allowed
§ 35:8	Alimony Not Modified to Permanent Status For Ex- Spouse of Special Needs Children

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 35:9 Community Spouse Annuity Was Not Countable Asset for Medicaid Applicant Spouse
- § 35:10 Promissory Notes by Medicaid Applicants Did Not Meet Criteria to Be Excluded as Countable Resources
- § 35:11 U.S. Supreme Court Denies Certification in Idaho Case Allowing to Recover from Community Spouse's Estate Funds From Sale of Home Once Owned by Medicaid Recipient Spouse
- § 35:12 Provision in an annuity requiring the owner or beneficiary of the annuity to agree to the amount paid to the state as remainder beneficiary is merely a verification provision, not an authority to consent, so the annuity is not a transfer for less than fair market value for purposes of Medicaid eligibility
- § 35:13 North Dakota statute under which the annuity had been deemed countable violates and is preempted by federal Medicaid law
- § 35:14 New Jersey Appellate Division agrees with appellants' contention that because the Director of DMAHS failed to establish either an "emergency" or "other unforeseeable circumstances" justifying the Division's untimely rejection of the ALJ's decision in appellants' favor, the Division's decision must be set aside and the decision of the ALJ deemed adopted
- § 35:15 Appellate Division affirmed Agency decision finding that monthly expenses do not rise to the level of exceptional circumstances warranting an increase in her minimum monthly maintenance needs allowance (MMMNA)
- § 35:16 Veterans pension benefits may not be counted as income for the purposes of Medicaid eligibility if the benefit is the result of unusual medical expenses
- § 35:17 Medicaid Applicant Not Entitled to Undue Hardship Waiver of Transfer Penalty
- § 35:18 Division of Medical Assistance and Health Services acknowledges the validity of gift/annuity planning
- § 35:19 Irrevocable, non-assignable, non-transferable, actuarially sound annuity naming State of New Jersey as first remainder beneficiary to the extent of Medicaid benefits paid for the institutionalized spouse, purchased by the community spouse prior to a Medicaid application, cannot be treated as a resource
- § 35:20 Monthly payments to a community spouse from a single premium immediate annuity (SPIA) purchased with the community spouse resource allowance (CSRA) after the eligibility date must be

TABLE OF CONTENTS

- treated as income in post-eligibility calculation of a community spouse's monthly income amount (CSMIA)
- § 35:21

Outright gifts to an adult disabled child are considered exempt transfers even after the child reaches age 65 and disability benefits are converted to retirement benefits
- § 35:22

An outright gift to an adult disabled child is an exempt transfer under federal and State Medicaid regulations
- § 35:23

County Board of Social Services is not required to recognize a Family Part Order for non-dissolution support where no factual hearing was held by the Family Part and where Medicaid was not given notice and an opportunity to be heard
- § 35:24

A Medicaid applicant has the burden of proving that money in a joint account was not available to him (Pennsylvania court decision)
- § 35:25

Ohio high court rules that interspousal transfer of home prior to Medicaid eligibility is improper
- § 35:26

Medicaid applicant with care agreement assessed transfer penalty because rate was too high
- § 35:27

State cannot modify penalty period unless all transferred assets are returned
- § 35:28

Court remands to SSA to consider whether the temporary misuse of an SNT dooms it forever
- § 35:29

Assisted living resident may proceed with breach-of-contract claim against long-term care insurer (California case)
- § 35:30

Medicaid applicant not required to exhaust administrative remedies before filing § 1983 claim
- § 35:31

Court rules administrator of decedent's estate lacks standing to appeal Medicaid denial (Connecticut case)
- § 35:32

A Massachusetts appeals court rules that the son of a nursing home resident who breached his fiduciary duty to his mother by transferring assets to himself is not liable to the nursing home for his mother's unpaid bill because he did not owe the nursing home a fiduciary duty
- § 35:33

Nursing home can pursue breach-of-contract claim against resident's son (New York case)
- § 35:34

Medicaid applicant's transfers under personal service agreement are uncompensated
- § 35:35

Guardianship funds must go to estate to reimburse Medicaid claim
- § 35:36

Medicaid applicant can appeal decision that has not yet been enforced

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 35:37 Medicaid recipient cannot bring claim to require state to deduct guardianship fees from income (New York case)
- § 35:38 State can impose second penalty period on same transfers of assets
- § 35:39 Nursing home has standing to pursue Medicaid appeal on resident's behalf (North Dakota case)
- § 35:40 Lien against Medicaid recipient's property doesn't attach until it is recorded
- § 35:41 Medicaid applicant's loan to grandson not improper transfer
- § 35:42 Payments to caregiver subject Medicaid applicant to penalty period (Michigan case)
- § 35:43 Medicaid applicant who reapplied instead of appealing is not entitled to retroactive benefits
- § 35:44 Lack of personal care agreement makes reimbursements to relatives an improper transfer
- § 35:45 A New Jersey appeals court rules that an in-home Medicaid waiver recipient's gift of her house to her daughter does not fall under the caregiver exemption because the reason the mother was not in a nursing home was due to the in-home Medicaid benefits she received, not her daughter's care
- § 35:46 A New Jersey appeals court rules that the state has the right to recover improperly paid Medicaid costs from the probate estate of a woman who was under guardianship, despite the estate's claims that the funds were properly paid and that the recovery violates federal anti-lien provisions
- § 35:47 An administrative law judge in New Jersey rules that a disabled Medicaid applicant is entitled to additional time to provide documentation to support his application and that the Medicaid agency is required to assist him
- § 35:48 A New Jersey appeals court holds that a need-based credit applied to the accounts of residents of an assisted living facility counts as income for Medicaid eligibility purposes
- § 35:49 A New Jersey appeals court rules that the monthly stipend a Medicaid recipient's spouse receives from an annuity is income that counts towards her minimum monthly maintenance needs allowance (MMMNA)
- § 35:50 A New Jersey appeals court determines that the caretaker child exception does not apply to a Medicaid applicant who transferred her house to her daughter because the daughter did not provide continuous care for the two years before the Medicaid applicant entered a nursing home

TABLE OF CONTENTS

- § 35:51 Committee on the Unauthorized Practice of Law’s Opinion 53, “Non-Lawyer Medicaid Advisors (Including ‘Application Assistors’) and the Unauthorized Practice of Law”
- § 35:52 A New Jersey appeals court rules that a Medicaid applicant who made transfers failed to rebut the presumption that those transfers were for a purpose other than to qualify for Medicaid even though an administrative law judge found evidence that the applicant transferred the money to employ a live-in aide
- § 35:53 A New York appeals court holds that a Medicaid applicant who transferred money when she was in good health and two years before entering a nursing home presented enough evidence to rebut the presumption that she transferred the money in order to qualify for Medicaid
- § 35:54 A U.S. district court rules that a nursing home can proceed with its case against the sons of a resident who transferred the resident’s funds to themselves because the fraudulent transfer claim survived the resident’s death
- § 35:55 Medicaid applicant’s claim against the state for an injunction declaring him eligible for benefits is mooted by the applicant’s death even though the claim includes three months’ retroactive benefits
- § 35:56 A federal court in New Jersey rules that a nursing home resident’s lawsuit challenging the state Medicaid agency’s interpretation of the caregiver exemption from the transfer of asset rules is moot because ultimately the agency withdrew its admittedly erroneous interpretation and awarded the benefits that were sought
- § 35:57 A U.S. district court in New Jersey denies a Medicaid applicant a preliminary injunction for the second time, holding that the state properly counted her late husband’s assets as an available resource because her husband was still living at the time of her Medicaid application
- § 35:58 An Ohio appeals court rules that a deceased Medicaid recipient’s life estate does not extinguish at death for the purposes of Medicaid estate recovery, so the state may place a lien on the property
- § 35:59 A federal district court in Ohio rules that a federal lawsuit by a Medicaid applicant against the state agency that imposed a penalty period due to the purchase of a spousal annuity is barred by *res judicata* because the applicant did not appeal the final agency decision

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 35:60 A Delaware appeals court rules that a nursing home properly billed a resident at the private pay rate before the resident's Medicaid application was approved and that the resident's daughter is personally responsible for paying the nursing home
- § 35:61 A Michigan appeals court rules that the state may recover Medicaid benefits paid to a recipient before the recipient received notice about the potential for estate recovery
- § 35:62 Reversing a lower court decision, the Sixth Circuit Court of Appeals holds that assisted living residents applying for Medicaid benefits are not entitled to retroactive benefits
- § 35:63 A U.S. district court dismisses a claim by a nursing home against the state for failing to evaluate a nursing home resident's Medicaid eligibility in a timely manner because the nursing home did not change the resident's status to permanent
- § 35:64 A New York appeals court rules that a Medicaid applicant successfully rebutted the presumption that transfers to her daughter made one and two years before entering a nursing home were for purposes other than to qualify for Medicaid based on evidence that the money was used to help her grandson purchase a house
- § 35:65 A New York appeals court rules that a Medicaid applicant did not rebut the presumption that her transfers were made in order to qualify for Medicaid because she did not show a pattern of making large transfers in the past
- § 35:66 The U.S. Court of Appeals for the Sixth Circuit rules that a case by the family of a Kentucky Medicaid recipient challenging the state's adherence to federal law regarding spousal annuities rather than to a less restrictive state regulation is dismissed because federal law preempts the state regulation
- § 35:67 A federal appeals court affirms a lower court's ruling that a beneficiary's interest in two predecessor trusts were not available resources for purposes of the Connecticut Medicaid plan
- § 35:68 A U.S. district court holds that a group of Medicaid applicants who received a preliminary injunction on their request for a post-default notice do have standing to receive summary judgment on the claim because they demonstrated that they were injured by not receiving the notice
- § 35:69 A U.S. district court in Connecticut rules that a husband who became ineligible for Medicaid benefits

TABLE OF CONTENTS

- during a redetermination and then transferred assets to his wife during the period of ineligibility was properly assessed a penalty period when he reapplied for Medicaid benefits
- § 35:70 Nebraska's highest court rules that the state can recover non-medical expenses, such as room and board, from a Medicaid recipient's estate
- § 35:71 A U.S. district court rules that a group of Medicaid applicants do not have a private right of action to sue the state for not issuing Medicaid eligibility determinations with 45 days and that the applicants were not denied due process by the delay
- § 35:72 A federal district court dismisses a Medicaid applicant's claim that the state improperly attributed his estranged wife's assets to him, explaining that the applicant was over the state's \$2,000 asset limit without taking his wife's assets into account
- § 35:73 An Oregon appeals court holds that an adult foster care facility that accepted a Medicaid recipient is not entitled to damages from the recipient's estate for unjust enrichment after it was determined that the recipient qualified for Medicaid based on fraud
- § 35:74 A New York appeals court rules that a bank's claim against a Medicaid recipient's property has priority over the state's claim for Medicaid recovery because the bank's lien was filed first
- § 35:75 A U.S. district court reverses a previous decision and grants a preliminary injunction to a group of Medicaid applicants who argued they are entitled to a post-default notice before their Medicaid application is considered abandoned
- § 35:76 A U.S. district court holds that a Medicaid applicant who was denied Medicaid benefits after transferring assets to her children in exchange for a promissory note may proceed with her claim against the state because Medicaid law confers a private right of action and the Eleventh Amendment does not bar the claim
- § 35:77 A Florida appeals court rules that a Medicaid hearing officer had jurisdiction to hear a Medicaid recipient's argument that the state was applying an unpromulgated rule adversely to Medicaid applicants
- § 35:78 A Florida court of appeals rules that Medicaid's anti-lien provision does not apply to a Medicaid lien imposed on a Medicaid recipient's property after the recipient dies

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 35:79 DHS Orders, Decisions and Opinions—Update for Selected Medicaid Final Agency Decisions and Cases for 2015 through December 2016
- § 35:80 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions For 2017 through July 2018
- § 35:81 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions Post July 2018
- § 35:82 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions March 2019 to June 2020
- § 35:83 Additional Case Updates for 2020:
- § 35:84 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions July 2020 to July 2021
- § 35:85 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions August 2021 through July 2022
- § 35:86 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions August 2022 through July 2023
- § 35:87 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions August 2023 through July 2024
- § 35:88 Selected Medicaid Final Agency Decisions and Superior Court of New Jersey Appellate Division Decisions August 2024 through July 2025

CHAPTER 36. UNAUTHORIZED PRACTICE OF LAW

- § 36:1 Opinion 53—Non-Lawyer Medicaid Advisors (Including “Application Assistors”) and the Unauthorized Practice of Law

CHAPTER 37. UNIFORM TRUST CODE

- § 37:1 Introduction—Table of Contents
- § 37:2 General Provisions and Definitions
- § 37:3 Scope
- § 37:4 Definitions
- § 37:5 Knowledge
- § 37:6 Default and Mandatory Rules
- § 37:7 Common Law of Trusts; Principles of Equity
- § 37:8 Governing Law
- § 37:9 Principal Place of Administration

TABLE OF CONTENTS

§ 37:10	Methods and Waiver of Notice
§ 37:11	Others Treated as Qualified Beneficiaries
§ 37:12	Nonjudicial Settlement Agreements
§ 37:13	Rules of Construction
§ 37:14	Representation: Basic Effect
§ 37:15	Representation by Holder of General Testamentary Power of Appointment
§ 37:16	Representation by Fiduciaries and Parents
§ 37:17	Representation by Person Having Substantially Identical Interest
§ 37:18	Appointment of Representative
§ 37:19	Methods of Creating Trust
§ 37:20	Requirements for Creation
§ 37:21	Written Trusts Created in Other Jurisdictions
§ 37:22	Trust Purposes
§ 37:23	Charitable Purposes; Enforcement
§ 37:24	Creation of Trust Induced by Fraud, Duress, or Undue Influence
§ 37:25	Trust for Care of Animal
§ 37:26	Noncharitable Trust Without Ascertainable Beneficiary.
§ 37:27	Modification or Termination of Trust; Proceedings for Approval or Disapproval
§ 37:28	Modification or Termination of Noncharitable Irrevocable Trust by Consent
§ 37:29	Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively
§ 37:30	Modification or Termination of Charitable Trust (Cy Pres)
§ 37:31	Modification or Termination of Uneconomic Trust
§ 37:32	Reformation to Correct Mistakes
§ 37:33	Construction to Conform Trust Terms to Probable Intent of Settlor
§ 37:34	Modification to Achieve Settlor's Tax Objectives
§ 37:35	Combination and Division of Trusts
§ 37:36	Rights of Beneficiary's Creditor or Assignee.
§ 37:37	Spendthrift Provision
§ 37:38	Exceptions to Spendthrift Provision
§ 37:39	Discretionary Trusts; Effect of Standard
§ 37:40	Creditor's Claim Against Settlor
§ 37:41	Overdue Distribution
§ 37:42	Personal Obligations of Trustee
§ 37:43	Capacity of Settlor of Revocable Trust
§ 37:44	Revocation or Amendment of Revocable Trust

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 37:45 Settlor's Powers; Powers of Withdrawal
- § 37:46 Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property
- § 37:47 Accepting or Declining Trusteeship
- § 37:48 Trustee's Bond
- § 37:49 Co-Trustees
- § 37:50 Vacancy in Trusteeship; Appointment of Successor
- § 37:51 Resignation of Trustee
- § 37:52 Removal of Trustee
- § 37:53 Delivery of Property by Former Trustee
- § 37:54 Reimbursement of Expenses
- § 37:55 Duty to Administer Trust
- § 37:56 Duty of Loyalty
- § 37:57 Duty of Impartiality
- § 37:58 Duty of Prudent Administration
- § 37:59 Costs of Administration
- § 37:60 Duty to Use Special Skills
- § 37:61 Delegation by Trustee
- § 37:62 Powers to Direct
- § 37:63 Authority to direct, consent to, or disapprove investment decisions; investment advisers
- § 37:64 Control and Protection of Trust Property
- § 37:65 Recordkeeping and Identification of Trust Property
- § 37:66 Duty to Enforce and Defend Claims
- § 37:67 Duty to Collect Trust Property and Redress Breaches of Trust
- § 37:68 Duty to Disclose and Discretion to Periodically Report
- § 37:69 Discretionary Powers
- § 37:70 General Powers of Trustee
- § 37:71 Distribution Upon Termination
- § 37:72 Remedies for Breach of Trust
- § 37:73 Damages for Breach of Trust
- § 37:74 Damages in Absence of Breach
- § 37:75 Limitation of Action Against Trustee
- § 37:76 Reliance on Trust Instrument
- § 37:77 Event Affecting Administration or Distribution
- § 37:78 Exculpation of Trustee
- § 37:79 Beneficiary's Consent, Release, or Ratification
- § 37:80 Exculpation of Trustee
- § 37:81 Interest as General Partner
- § 37:82 Certification of Trust
- § 37:83 Electronic Records and Signatures
- § 37:84 Severability Clause
- § 37:85 Application to Existing Relationships

TABLE OF CONTENTS

- § 37:86 Amendment of N.J.S.A. 3B:14-37—Protection of persons assisting or dealing with fiduciary
- § 37:87 Statutes Repealed
- § 37:88 Statement accompanying legislation

CHAPTER 38. IRREVOCABLE D(4)(A) SPECIAL NEEDS TRUSTS AND SUPPLEMENTAL BENEFIT TRUSTS

- § 38:1 Introduction to Establishment of an Irrevocable d(4)(A) Special Needs Trust
- § 38:2 HCFA Transmittal 64
- § 38:3 New Jersey Administrative Code Provisions for Trusts
- § 38:4 SSI Program Operations Manual System [POMS]—SI 01120.201—Trusts established with the assets of an individual on or after 1/1/00
- § 38:5 SSI Program Operations Manual System [POMS]—SI CHI01120.201—Trusts
- § 38:6 SSI Program Operations Manual System [POMS]—SI ATL01120.201—Trust Property
- § 38:7 SSI Program Operations Manual System [POMS]—POMS—SI 01120.202—Development and Documentation of Trusts Established on or After 01-01-00
- § 38:8 SSI Program Operations Manual System [POMS]—SI NY01120.203 Exceptions to Counting Medicaid Trusts Legal Guardians
- § 38:9 —SI 01120.203—Exceptions to Counting Trusts Established on or after 1/1/00
- § 38:10 —SI 01120.204 Notices for Trusts Established on or after 1-1-00 notices

CHAPTER 39. ABLE ACT ACCOUNTS

- § 39:1 Introduction
- § 39:2 The New Jersey ABLE Act
- § 39:3 NJ ABLE
- § 39:4 Medicaid Communication No. 19-09

CHAPTER 40. MEDICAID FORMS

- § 40:1 PA-4
- § 40:2 PA-5
- § 40:3 Application for NJ FamilyCare Aged, Blind, Disabled Programs (includes Voter Registration Opportunity and Authorized Representative Form)
- § 40:4 Notice of Privacy Practices

GUIDE TO MEDICAID LAWS AND REGULATIONS

- § 40:5 NJ FamilyCare Aged, Blind, Disabled Programs—
2025
- § 40:6 Medicaid Communication No. 25-01
- § 40:7 Medicaid Communication No. 25-02
- § 40:8 Medicaid Communication No. 25-03
- § 40:9 Medicaid Communication No. 25-04
- § 40:10 Medicaid Communication No. 25-05
- § 40:11 Medicaid Communication No. 25-06
- § 40:12 Other Services & Resources

APPENDIX

Appendix A. Selected Medicaid Communications and
Decisions

Table of Laws and Rules

Table of Cases

Index