

Table of Contents

CHAPTER 1. INTRODUCTION AND OVERVIEW

- § 1:1 Introduction
- § 1:2 Sources of law
- § 1:3 Overview

CHAPTER 2. LONG-TERM LIVING AND HEALTH CARE OPTIONS

- § 2:1 Introduction
- § 2:2 Home and community-based services
- § 2:3 Adult day centers
- § 2:4 Home and community-based services—Home care for the elderly
 - § 2:5 —Funding through the Older Americans Act
 - § 2:6 —Cost of home based services
 - § 2:7 —Home care through Medicare and Medicaid
 - § 2:8 —Selecting a home health care agency
 - § 2:9 —Regulation of home health agencies in Georgia
- § 2:10 Intermediate care homes
- § 2:11 Long-term care facilities
 - § 2:12 —Administrators
 - § 2:13 —COVID regulations
- § 2:14 Nursing homes
 - § 2:15 —Types of nursing home care
 - § 2:16 —Nursing home population and the cost of care
 - § 2:17 —Federal Nursing Home Reform Act
 - § 2:18 —Quality of care
 - § 2:19 —Georgia Bill of Rights for Residents of Long-Term Care Facilities
 - § 2:20 —Georgia regulation
 - § 2:21 —COVID regulations
 - § 2:22 —Medicare and Medicaid’s impact on quality of care
- § 2:23 Assisted living facilities
 - § 2:24 —Costs
 - § 2:25 —Medicaid funding
 - § 2:26 —Facilities and services provided
 - § 2:27 —Regulation
 - § 2:28 — —Georgia
 - § 2:29 — —Department of Community Health
 - § 2:30 — —Physical design of facilities

- § 2:31 —Eligibility for admission in Georgia
- § 2:32 Personal care homes
- § 2:33 —Medicare and Medicaid funding
- § 2:34 —Georgia regulation
- § 2:35 —Elopement
- § 2:36 —Medication aides
- § 2:37 —Admission
- § 2:38 —Services provided
- § 2:39 —Costs
- § 2:40 —Criticisms
- § 2:41 Private home care providers
- § 2:42 Mixed-care facilities
- § 2:43 —Continuing care retirement communities
- § 2:44 —Continuing care communities—Regulation
- § 2:45 —Multilevel care facilities
- § 2:46 Memory care centers
- § 2:47 Palliative and hospice care
- § 2:48 —Funding
- § 2:49 —Regulation in Georgia
- § 2:50 — —Patient rights
- § 2:51 — —Patient care standards
- § 2:52 Practice pointers
- § 2:53 Impact of COVID-19 on long-term health care
- § 2:54 No patient left alone

CHAPTER 3. CONTRACTING WITH LONG-TERM CARE FACILITIES

- § 3:1 Introduction
- § 3:2 Nursing home admissions agreements: provisions
limiting residents' rights
- § 3:3 Nursing Home Reform Act of 1987 (NHRA): Residents'
Bill of Rights
- § 3:4 Preadmission screening and annual resident review
- § 3:5 Rights to disclosure or notice
- § 3:6 Chemical and physical restraints; restriction from
certain areas
- § 3:7 Right to privacy and confidentiality
- § 3:8 Residents' personal property
- § 3:9 Residents' constitutional rights
- § 3:10 Right to access to the resident
- § 3:11 Quality of life
- § 3:12 Choice of doctors
- § 3:13 Medicaid discrimination and other payment issues
- § 3:14 Georgia "Bill of Rights for Residents of Long-Term
Care Facilities"

TABLE OF CONTENTS

- § 3:15 Bed hold policies
- § 3:16 Involuntary transfer and discharge of resident
- § 3:17 —Notice
- § 3:18 —Rights after
- § 3:19 Arbitration clauses in nursing home admission agreements
- § 3:20 —Enforcement
- § 3:21 —Federal regulations impacting arbitration agreements
- § 3:22 —Georgia case law addressing arbitration agreements
- § 3:23 Least restrictive alternative placement and *Olmstead* compliance
- § 3:24 Assisted living facilities
- § 3:25 Personal care homes
- § 3:26 —Admission agreements
- § 3:27 Continuing care communities
- § 3:28 Practice pointers

CHAPTER 4. FINANCING LONG-TERM HEALTH CARE

- § 4:1 Centers for Medicare & Medicaid Services
- § 4:2 Medicare Modernization Act
- § 4:3 Structure of the Medicare program
- § 4:4 Medicare Part A—Eligibility and benefits
- § 4:5 —Length of coverage for hospitalization
- § 4:6 —Deductibles
- § 4:7 —Skilled nursing care coverage
- § 4:8 —Home health services coverage
- § 4:9 Medicare Part B
- § 4:10 —Benefits
- § 4:11 —Eligibility and premium
- § 4:12 —Limitations on coverage
- § 4:13 Medicare Advantage (Part C)
- § 4:14 —Eligibility
- § 4:15 —Benefits
- § 4:16 —Enrollment in plans
- § 4:17 —Requirements for plan providers
- § 4:18 —Private action to pursue Medicare secondary payer double damages
- § 4:19 Medicare Part D prescription drug benefit
- § 4:20 —Requirements for Part D plans
- § 4:21 —Enrollment in Part D plans
- § 4:22 “Medigap” supplemental insurance
- § 4:23 —Preexisting conditions

- § 4:24 —Standardized Medigap plans
- § 4:25 Medicare health maintenance organizations—
Qualifications
- § 4:26 —Enrollment and coverage
- § 4:27 Medicare efforts to improve patient safety
- § 4:28 Patient Protection and Affordable Care Act of 2010 and
Medicare
- § 4:29 Medicare appeals process
- § 4:30 Medicaid
- § 4:31 —Eligibility and coverage
- § 4:32 — —Categorically or medically needy
- § 4:33 — —Determining eligibility
- § 4:34 —Georgia programs
- § 4:35 —Asset transfers
- § 4:36 —Estate recovery—Federal law
- § 4:37 — —Georgia regulations
- § 4:38 —Patient Protection and Affordable Care Act of 2010
changes
- § 4:39 —Appeals process
- § 4:40 Long-term care insurance
- § 4:41 —Regulation by Georgia Insurance Code
- § 4:42 —Policy requirements in Georgia
- § 4:43 —State and federal incentives to purchase
- § 4:44 —Litigation
- § 4:45 Practice pointers

CHAPTER 5. HEALTH CARE FINANCE FRAUD

- § 5:1 Introduction
- § 5:2 Medicare/Medicaid billing fraud—Federal False Claims
Act
- § 5:3 — —Pleading and burden of proof
- § 5:4 — —Statute of limitations
- § 5:5 — —Qui tam proceedings
- § 5:6 — —Application of Act
- § 5:7 — —Protection for whistleblowers
- § 5:8 —Georgia’s False Medicaid Claims Act
- § 5:9 —Civil penalties
- § 5:10 —Program Fraud Civil Remedies Act
- § 5:11 —Federal criminal prosecutions
- § 5:12 —Georgia Medicaid Fraud Forfeiture Act
- § 5:13 Federal anti-kickback statute
- § 5:14 —Burden of proof
- § 5:15 —Exceptions and safe harbors

TABLE OF CONTENTS

- § 5:16 Federal efforts to combat health care fraud
- § 5:17 Georgia efforts to combat health care fraud
- § 5:18 Patient Protection and Affordable Care Act of 2010 and fraud
- § 5:19 Practice pointers

CHAPTER 6. LONG-TERM CARE FACILITY LIABILITY ISSUES

- § 6:1 Introduction
- § 6:2 Premises liability—"Invitee" status of the resident
- § 6:3 —Tactical advantages of this theory of recovery
- § 6:4 —Falls in long-term care facilities—Nursing homes
- § 6:5 — —Personal care homes
- § 6:6 — —Assisted living facilities
- § 6:7 — —Causes of falls and duty to exercise reasonable care
- § 6:8 — —Elderly access to public facilities
- § 6:9 — —Illustrative cases
- § 6:10 —Criminal acts of third parties
- § 6:11 Apportionment of fault
- § 6:12 Liability of the facility for actions of other residents
- § 6:13 Staff—Vicarious liability of facility for employees
- § 6:14 —Negligent hiring, retention, training, credentialing
- § 6:15 — —Knowledge of employee's propensity to commit act
- § 6:16 — —Special relationship between facility and resident
- § 6:17 — —Investigating claims against facilities
- § 6:18 — —Federal regulation
- § 6:19 —Criminal background checks—Federal law
- § 6:20 — —Georgia Long-Term Care Background Check Program
- § 6:21 — — —Requirements
- § 6:22 — — —Applicants ineligible for hire
- § 6:23 — — —Compliance
- § 6:24 —Adequacy—Federal law
- § 6:25 — —Georgia law—Nursing homes
- § 6:26 — — —Personal care homes
- § 6:27 — — —Assisted living facilities
- § 6:28 — — —Memory care centers
- § 6:29 —Training—Nursing homes
- § 6:30 — —Georgia law—Personal care homes
- § 6:31 — — —Assisted living facilities
- § 6:32 — — —Memory care centers
- § 6:33 Negligence and professional liability claims
- § 6:34 —Examples of professional negligence versus simple negligence

- § 6:35 —Distinction—Expert affidavit and testimony
- § 6:36 — —Statute of limitations
- § 6:37 Common long-term care injuries
- § 6:38 —Preventability
- § 6:39 —Falls
- § 6:40 —Physical restraints
- § 6:41 —Hospital acquired infections and other preventable conditions
- § 6:42 —COVID-19
- § 6:43 Public Readiness and Emergency Preparedness (PREP) Act
- § 6:44 Negligence per se
- § 6:45 —Claims based upon federal law
- § 6:46 Other claims based upon Georgia law
- § 6:47 Various federal law claims—Federal quality of care standards
- § 6:48 —Nursing Home Reform Act
- § 6:49 —False Claims Act
- § 6:50 Long-term care ombudsman
- § 6:51 Protections for Alzheimer’s and dementia patients
- § 6:52 Georgia Bill of Rights for Residents of Long-Term Care Facilities
- § 6:53 Georgia Remedies for Residents of Personal Care Homes Act
- § 6:54 Transfers from assisted living and personal care home facilities
- § 6:55 Breach of contract claims
- § 6:56 Tortious interference with contract claims
- § 6:57 Managed care
- § 6:58 —Features of programs
- § 6:59 —Utilization review process
- § 6:60 —Medicare health maintenance organizations
- § 6:61 —Georgia regulation of plans
- § 6:62 Practice pointers—Investigation of claims
- § 6:63 —Preservation of evidence; spoliation
- § 6:64 —Arbitration clauses in admission contracts
- § 6:65 —Discovery and the peer review privilege in Georgia
- § 6:66 —Impact of Georgia’s 2013 Evidence Code on long-term care facility litigation

CHAPTER 7. RESOLVING PERSONAL INJURY CLAIMS FOR THE ELDERLY CLIENT

- § 7:1 Overview

TABLE OF CONTENTS

§ 7:2	Medicare secondary payer statute
§ 7:3	—Conditional payments
§ 7:4	— —Recovery
§ 7:5	Medicare reimbursement claims—Priority of Medicare right of reimbursement over other claims
§ 7:6	—Impact of a compromise settlement
§ 7:7	—Notification of Medicare of potential primary payers
§ 7:8	—Reporting obligations of liability insurance carriers
§ 7:9	—Notification to Medicare of potential personal injury claims
§ 7:10	—Notification to Medicare of settlement of personal injury claims
§ 7:11	—Strengthening Medicare and Repaying Taxpayers Act of 2013 (SMART Act)
§ 7:12	—Medicare Secondary Payer Recovery Portal (MSPRP)
§ 7:13	—Options after receiving Medicare’s final recovery demand
§ 7:14	Medicare set-aside trusts—Workers’ compensation settlements
§ 7:15	—Third-party liability personal injury cases
§ 7:16	— —Proposed federal regulations
§ 7:17	— —Future medical expenses
§ 7:18	Medicaid reimbursement claims—Federal law
§ 7:19	—Georgia law
§ 7:20	—Notification to state of personal injury claims and settlements
§ 7:21	—Impact of <i>Ahlborn</i>
§ 7:22	Settling claims for incapacitated adult
§ 7:23	Special needs trusts
§ 7:24	—Types
§ 7:25	—Approval process
§ 7:26	— —Social Security Administration
§ 7:27	— —Georgia Department of Community Health
§ 7:28	—Resources excluded by the Social Security Administration
§ 7:29	—Resources excluded by the State of Georgia
§ 7:30	Practice pointers

CHAPTER 8. ABUSE OF THE ELDERLY

§ 8:1	Introduction
§ 8:2	Undue influence
§ 8:3	—Proof
§ 8:4	—Gifts
§ 8:5	—Deeds
§ 8:6	Wills—Capacity to execute

- § 8:7 —Undue influence
- § 8:8 — —Proof
- § 8:9 Undue influence in creation of trusts
- § 8:10 Duress
- § 8:11 Fraud
- § 8:12 —Proof
- § 8:13 —Voidable contracts
- § 8:14 Georgia Disabled Adults and Elder Persons Protection Act
- § 8:15 Long-term Care Facility Resident Abuse Reporting Act
- § 8:16 Georgia statutory protection of the elderly: criminal penalties
- § 8:17 Telemarketing scams
- § 8:18 Unfair or deceptive trade practices
- § 8:19 Financial exploitation of elderly or incapacitated adults by broker-dealers or financial advisors
- § 8:20 Practice pointers

CHAPTER 9. MENTAL INCAPACITATION AND DEATH WITHOUT PLANNING

- § 9:1 Introduction
- § 9:2 Informed consent
- § 9:3 Informed consent and the right to refuse medical treatment—Georgia law
- § 9:4 —Refusal of life support treatment
- § 9:5 — —Do not resuscitate orders
- § 9:6 — — —Statutory requirements
- § 9:7 Substituted judgment
- § 9:8 —Who can substitute judgment for incapacitated person
- § 9:9 —Emergency guardianships
- § 9:10 Guardianship
- § 9:11 —Appointment of guardian
- § 9:12 —Rights of ward
- § 9:13 —Petition for appointment of guardian
- § 9:14 —Selection
- § 9:15 —Termination
- § 9:16 Conservatorship—Appointment of conservator
- § 9:17 —Rights of ward
- § 9:18 —Petition for appointment of conservator
- § 9:19 —Selection of conservator
- § 9:20 —Termination
- § 9:21 Uniform Adult Guardianship and Conservatorship Proceedings Jurisdiction Act

TABLE OF CONTENTS

- § 9:22 —Jurisdiction of guardianship and conservatorship proceedings
- § 9:23 —Transfer of guardianships and conservatorships
- § 9:24 —Registration of foreign guardianships and conservatorships in Georgia
- § 9:25 Disclaiming inheritances
- § 9:26 Intestacy

CHAPTER 10. PLANNING FOR INCAPACITATION

- § 10:1 Introduction
- § 10:2 Georgia Advance Directive for Health Care Act
- § 10:3 Georgia Psychiatric Advance Directive Act
- § 10:4 Substituted judgment
- § 10:5 Advance directives for health care
- § 10:6 —Powers of health care agents
- § 10:7 —Obligations of health care providers to comply with the advance directive
- § 10:8 —Medicare and Medicaid
- § 10:9 Living wills (effective prior to July 1, 2007)
- § 10:10 Durable power of attorney for health care (effective prior to July 1, 2007)
- § 10:11 Financial power of attorney (effective prior to July 1, 2017)
- § 10:12 Financial power of attorney—Execution (effective prior to July 1, 2017)
- § 10:13 —Revocation (effective prior to July 1, 2017)
- § 10:14 —Donative transfers by agent (effective prior to July 1, 2017)
- § 10:15 Georgia Power of Attorney Act—Overview
- § 10:16 —Application
- § 10:17 —Execution of powers of attorney; effectiveness
- § 10:18 —Powers of agent
- § 10:19 —Duties of agent
- § 10:20 —Termination of powers of attorney
- § 10:21 —Statutory form
- § 10:22 Trusts
- § 10:23 —Revised Georgia Trust Code of 2010
- § 10:24 —Creation
- § 10:25 —Termination
- § 10:26 —Types
- § 10:27 —Irrevocable
- § 10:28 —Self-settled
- § 10:29 —Supplemental/special needs

- § 10:30 Ethics and elder law practice
- § 10:31 —Protecting assets from Medicaid
- § 10:32 —Attorney-client relationship
- § 10:33 —Determining who the client is
- § 10:34 —Attorney's fees paid by third party
- § 10:35 —Confidential information
- § 10:36 —Representing the incapacitated client
- § 10:37 —Acting as personal representative or trustee for client
- § 10:38 —Planning for attorney's incapacitation
- § 10:39 —Attorney referrals and fee sharing
- § 10:40 —Rules of Professional Conduct
- § 10:41 Practice pointers

CHAPTER 11. THE FINAL CHAPTER: PLANNING FINANCIAL SECURITY FOR THE END OF LIFE AND FOR SURVIVORS

- § 11:1 Introduction
- § 11:2 Probate issues—Estate taxes
- § 11:3 —Probating a will in Georgia
- § 11:4 —Forms of probate in Georgia
- § 11:5 —Avoidance of probate
- § 11:6 Joint accounts
- § 11:7 Payable on death bank accounts and securities
- § 11:8 Life insurance
- § 11:9 —Impact of paying life insurance into the estate
- § 11:10 —Income taxes on life insurance proceeds
- § 11:11 —Gifting a life insurance policy
- § 11:12 —Trusts
- § 11:13 Joint tenants with right of survivorship
- § 11:14 Trusts to avoid probate—Revocable trusts
- § 11:15 —Grantor-retained annuity trusts and grantor-retained unitrusts
- § 11:16 Taxes
- § 11:17 —Federal
- § 11:18 — —Estate tax
- § 11:19 — —Gift tax
- § 11:20 —Georgia estate tax
- § 11:21 —Exemptions and deductions—Income tax
- § 11:22 — —Estate and gift tax
- § 11:23 —Beneficiaries—Income taxes
- § 11:24 — —Trusts
- § 11:25 — — —Marital trusts
- § 11:26 — — — —Credit shelter trusts

TABLE OF CONTENTS

§ 11:27	— — — — Marital deduction trusts
§ 11:28	— — — — — Non-deductible terminable interests
§ 11:29	— — — — — Creation
§ 11:30	— — — — — Qualified terminable interest property (QTIP) trusts
§ 11:31	— — — — — Requirements
§ 11:32	— — — — — Qualified domestic trust (QDOT)
§ 11:33	— — — — Charitable
§ 11:34	— — — — — Remainder annuity trusts
§ 11:35	— — — — — Lead trusts
§ 11:36	— — — — Spendthrift
§ 11:37	— — — — — Sprinkling trusts
§ 11:38	— — — — — Five and five rule
§ 11:39	Wills
§ 11:40	— Testamentary capacity
§ 11:41	— Requirements for execution in Georgia
§ 11:42	— Probate in Georgia
§ 11:43	— Disputed paternity
§ 11:44	— Marriage or childbirth after execution of will
§ 11:45	— “Anti-lapse” statute
§ 11:46	— Simultaneous death
§ 11:47	— Transfers to minors
§ 11:48	Funeral arrangements
§ 11:49	— Prepaid funeral contracts
§ 11:50	— Funeral societies
§ 11:51	— Regulation of funeral and crematory industries
§ 11:52	Duties of attorneys who represent guardians or conservators

CHAPTER 12. FORMS

§ 12:1	Open Records Act request
§ 12:2	Violation of certain rights guaranteed to nursing home residents—Interrogatories
§ 12:3	Wrongful death—Complaint
§ 12:4	—Answer
§ 12:5	—Interrogatories
§ 12:6	—Complaint—COVID
§ 12:7	Negligent care—Complaint
§ 12:8	—Answer
§ 12:9	Assault and battery—Complaint
§ 12:10	—Answer
§ 12:11	—Interrogatories
§ 12:12	Breach of duty in hiring employees—Complaint
§ 12:13	—Answer

- § 12:14 Wrongful transfer and bodily injury—Complaint
- § 12:15 —Answer
- § 12:16 —Interrogatories
- § 12:17 Breach of fiduciary duty and fraud—Complaint
- § 12:18 Violation of right to refuse consent to medical treatment—Complaint
- § 12:19 —Answer
- § 12:20 Assisted living facility—Complaint
- § 12:21 Expert affidavit pursuant to O.C.G.A. § 9-11-9.1
- § 12:22 Preservation of evidence letter
- § 12:23 Notice to Medicare of claim
- § 12:24 Request to Medicare for itemized statement of benefits
- § 12:25 Notice to Medicare of settlement
- § 12:26 Georgia “do not resuscitate” order (statutory form)
- § 12:27 Georgia advance directive for health care (statutory form)
- § 12:28 Georgia psychiatric advance directive
- § 12:29 Georgia financial power of attorney form (statutory form effective July 1, 2017)
- § 12:30 Agent’s certification as to validity of power of attorney and agent’s authority (statutory form effective July 1, 2017, under Georgia Uniform Power of Attorney Act)
- § 12:31 Refund of federal estate tax—Complaint
- § 12:32 —Answer
- § 12:33 Interrogatories to witness to will
- § 12:34 Appeal of determination that trust assets are available for purposes of determining Medicaid eligibility—Complaint
- § 12:35 Transfer under the Georgia Transfers to Minors Act (statutory form)

APPENDIX

Appendix A. Georgia and Federal Statutes and Regulations Regarding Residents’ Rights

Table of Laws and Rules

Table of Cases

Index