

# Table of Contents

## CHAPTER 1. PRACTICE OF ELDER LAW

- § 1:1 History and development of elder law
- § 1:2 Elder law client
- § 1:3 Who are the elderly and why should we help them to protect their assets?
- § 1:4 Understanding the aging process
- § 1:5 Age discrimination
- § 1:6 Elder abuse
- § 1:7 An elderly client's perspective
- § 1:8 Client's autonomy
- § 1:9 Elder law attorneys
- § 1:10 Elder law practice
- § 1:11 Estate planning
- § 1:12 Estate tax planning
- § 1:13 Long term care planning
- § 1:14 Medicaid planning
- § 1:15 Affordable Care Act—Provisions affecting older adults and people with disabilities
- § 1:16 Ethics and the elder law attorney
- § 1:17 Ethical issues—Conflicts of interest between spouses
- § 1:18 —Conflicts of interest between parents and children
- § 1:19 Accomplishing planning goals
- § 1:20 Form of joint representation agreement
- § 1:21 The future of elder law—Key trends
- § 1:22 Seniors and today's marketplace
- § 1:23 Elder Law marketplace
- § 1:24 Resources

## CHAPTER 2. PRACTICE OF SPECIAL NEEDS

- § 2:1 History and development of special needs planning
- § 2:2 Special needs—Overview
- § 2:3 —Office of People with Developmental Disabilities (OPWDD)
- § 2:4 —Special education (IDEA)
- § 2:5 —Early Intervention Program
- § 2:6 Planning for people with special needs
- § 2:7 Supplemental Security Income (SSI) and Medicaid
- § 2:8 Special needs planning issues
- § 2:9 Planning with the caregivers

§ 2:10 Guidelines for parents of a child with special needs

## **CHAPTER 3. PROVIDING SERVICES IN AN ELDER LAW AND SPECIAL NEEDS PRACTICE**

- § 3:1 Introduction
- § 3:2 Client questionnaire—overview
- § 3:3 —Personal information
- § 3:4 —Health and Long Term Care Insurance
- § 3:5 —Documents
- § 3:6 —Financial information
- § 3:7 —Inventory of assets
- § 3:8 —Prior transfers
- § 3:9 —Liabilities
- § 3:10 Consultation—Overview
- § 3:11 —Office accessibility and decor
- § 3:12 Consultation—Virtual meetings
- § 3:13 Electronic notarization
- § 3:14 Consultation—Mental capacity
- § 3:15 —Client’s objectives
- § 3:16 —Note taking
- § 3:17 —Developing a client relationship
- § 3:18 —Communication with the client
- § 3:19 —Communication among family members
- § 3:20 —Prior transfers
- § 3:21 —Advance directives
- § 3:22 —Wills and trusts
- § 3:23 —Engagement agreements/payment of fees
- § 3:24 —Post consultation report
- § 3:25 —Follow up meeting
- § 3:26 Documents
- § 3:27 —Checklists for document assembly
- § 3:28 —Review prior to execution
- § 3:29 —Finalization and execution
- § 3:30 —Storage
- § 3:31 Closing letter
- § 3:32 Working with other professionals
- § 3:33 Working with legal and aging organizations
- § 3:34 Form: Questionnaire (Express Form)
- § 3:35 Form: Questionnaire (Long Form Questionnaire)
- § 3:36 Form: Document Confirmation Letter
- § 3:37 Form: Completed Questionnaire, Post Consultation Letter and Memorandum to the File Summarizing the Consultation

## TABLE OF CONTENTS

- § 3:38 Form: Close Out Letter to Client
- § 3:39 Form: Acknowledgment of Document Receipt
- § 3:40 Medicaid 2026 update

## **CHAPTER 4. MANAGING THE SUCCESSFUL ELDER LAW AND SPECIAL NEEDS PRACTICE**

- § 4:1 Introduction
- § 4:2 Practice management
- § 4:3 Formula for success
- § 4:4 Budget
- § 4:5 Timekeeping
- § 4:6 Timekeeping ratios
- § 4:7 Tracking payments
- § 4:8 Monthly reports
- § 4:9 Monitoring cash flow
- § 4:10 —Accounts receivable
- § 4:11 Team members
- § 4:12 Firm meetings

## **CHAPTER 5. DEVELOPING THE SUCCESSFUL ELDER LAW AND SPECIAL NEEDS PRACTICE**

- § 5:1 Introduction
- § 5:2 Practice development
- § 5:3 Consumers—Drive legal services
- § 5:4 Marketing plan
- § 5:5 Marketing to existing clients
- § 5:6 Marketing to professionals
- § 5:7 Marketing to the public
- § 5:8 Website
- § 5:9 Marketing budget
- § 5:10 Marketing to referral sources
- § 5:11 A changing environment in the legal profession
- § 5:12 The challenges ahead
- § 5:13 Meeting the challenge
- § 5:14 Legal fees

## **CHAPTER 6. POWERS OF ATTORNEY**

- § 6:1 Powers of attorney—Overview
- § 6:2 —Definition
- § 6:3 —Benefits
- § 6:4 —Acceptance

- § 6:5 —History of statute prior to June 12, 2021
- § 6:6 —Limited powers of attorney
- § 6:7 Statutory short form—Overview
- § 6:8 —Modified statutory short form
- § 6:9 Mental Capacity
- § 6:10 Power of Attorney: Durable
- § 6:11 Springing Power of Attorney—Overview
- § 6:12 Attorneys-in-fact; act jointly or separately
- § 6:13 Powers—Overview
- § 6:14 —Granting or refusing to grant powers
- § 6:15 Enumerated powers—Overview
- § 6:16 —Real estate transactions
- § 6:17 —Chattel and goods transactions
- § 6:18 —Bond, share, commodity transactions
- § 6:19 —Banking transactions
- § 6:20 —Business operating transactions
- § 6:21 —Insurance transactions
- § 6:22 —Estate transactions
- § 6:23 —Claims and litigation
- § 6:24 —Personal and family maintenance
- § 6:25 —Benefits from military service
- § 6:26 —Health care billing and payment matters; records,  
reports and statements
- § 6:27 —Retirement benefit transactions
- § 6:28 —Certain gift transactions
- § 6:29 —Tax matters
- § 6:30 —All other matters
- § 6:31 Delegation of powers
- § 6:32 Expanded powers—Overview
- § 6:33 —Real estate transactions
- § 6:34 —Insurance transactions
- § 6:35 —Estate transactions
- § 6:36 —Trusts
- § 6:37 —Safe deposit boxes
- § 6:38 —Buy/sell agreements
- § 6:39 —Loan and debts
- § 6:40 —Social security and other governmental benefits
- § 6:41 —Medical records
- § 6:42 —Health care agents
- § 6:43 —Retaining professionals
- § 6:44 Making gifts and self-dealing
- § 6:45 Medicaid planning; intent to return home
- § 6:46 Designation of a guardian
- § 6:47 Duties of the attorney-in-fact as a fiduciary

## TABLE OF CONTENTS

- § 6:48 Execution
- § 6:49 Revocation and termination
- § 6:50 Revocation—Notice requirement as to third parties
- § 6:51 Indemnification and hold harmless
- § 6:52 Affidavit of full force and effect
- § 6:53 Practical considerations
- § 6:54 Original documents
- § 6:55 Drafting Checklist for Preparation of Power of Attorney
- § 6:56 Outdated Form: Power of Attorney New York Statutory Short Form (effective September 12, 2010)
- § 6:57 Outdated Form: Power of Attorney New York Statutory Gifts Rider (effective September 12, 2010)
- § 6:58 Form: Expanded Power Provisions
- § 6:59 Form: Affidavit of Full Force and Effect
- § 6:60 Form: Affidavit of “X” Signature
- § 6:61 Form: Revocation of Power of Attorney
- § 6:62 Form: Delegation of powers
- § 6:63 Outdated Form: Durable General Power of Attorney: New York State Statutory Short Form (Pre September 1, 2009)
- § 6:64 Outdated Form: Nondurable General Power of Attorney: New York State Statutory Short Form (Pre September 1, 2009)
- § 6:65 Outdated Form: Durable General Power of Attorney Effective at a Future Time: New York State Statutory Short Form (Pre September 1, 2009)
- § 6:66 Form: Power of Attorney—New York Statutory Short Form

## **CHAPTER 7. HEALTH CARE DECISION MAKING**

- § 7:1 Overview
- § 7:2 Health Care Proxy—Overview
- § 7:3 —Objective
- § 7:4 —Definition
- § 7:5 —Purpose
- § 7:6 —Capacity of the principal
- § 7:7 —Term
- § 7:8 —Execution of Health Care Proxy
- § 7:9 —Contents and form of Health Care Proxy
- § 7:10 —Revocation of Health Care Proxy
- § 7:11 —Selection of a health care agent
- § 7:12 —Successor/alternate agent
- § 7:13 —Commencement of agent’s authority

NY ELDER LAW AND SPECIAL NEEDS PRACTICE

- § 7:14 —Decision making by agent
- § 7:15 —Agent’s right to receive information
- § 7:16 —Provider’s obligations
- § 7:17 —Individual as a health care provider
- § 7:18 —Immunity
- § 7:19 —Creation and use of Health Care Proxies in Residential Health Care Facilities (“RHCFs”)
- § 7:20 —Special proceeding to settle disputes concerning creation or implementation of Health Care Proxy
- § 7:21 —Effect of Health Care Proxy outside New York
- § 7:22 —Planning
- § 7:23 —Organ and tissue donation
- § 7:24 Health Care Proxy—Distinguished from DNR orders
- § 7:25 Health Care Proxy—Out of State
- § 7:26 —Orthodox Jews
- § 7:27 —Catholic Health Care Proxy
- § 7:28 Substituted judgment for the intellectually disabled
- § 7:29 Family Health Care Decisions Act
- § 7:30 The Caregiver Advise, Record and Enable Act
- § 7:31 Patient Self Determination Act
- § 7:32 Living Will—Overview
- § 7:33 —Definition
- § 7:34 —Purposes
- § 7:35 —Catholic Medical Directive
- § 7:36 —Distinguished from the Health Care Proxy
- § 7:37 —Execution
- § 7:38 —Review and revocation
- § 7:39 Palliative Care Information Act
- § 7:40 Medical Aid in Dying Act
- § 7:41 Do Not Resuscitate (DNR) orders—Overview
- § 7:42 —Institutional DNR orders
- § 7:43 —Non-hospital DNR orders
- § 7:44 Medical Orders for Life-Sustaining Treatment (MOLST)
- § 7:45 Medical authorization
- § 7:46 Medical Aid in Dying
- § 7:47 Case histories—Prior to 1991 Health Care Proxy legislation
- § 7:48 —*Eichner v. Dillon*
- § 7:49 —*Matter of Storar*
- § 7:50 —*Westchester County Medical Center (O’Connor)*
- § 7:51 —*Matter of Quinlan*
- § 7:52 —*Cruzan v. Missouri Department of Health*
- § 7:53 —*Elbaum v. Grace Plaza of Great Neck and Grace Plaza of Great Neck v. Elbaum*

TABLE OF CONTENTS

- § 7:54 —Post 1992 Health Care Proxy Legislation
- § 7:55 —*Matter of May v. Wartburg Health Care Center*
- § 7:56 —Terri Schiavo
- § 7:57 —Jahi McMath
- § 7:58 —Marlise Munoz/Jahi McMath
- § 7:59 Form: New York Health Care Proxy
- § 7:60 Checklist for New York Health Care Proxy
- § 7:61 New York Living Will
- § 7:62 Values History
- § 7:63 Form: Health Care Proxy for Orthodox Jews
- § 7:64 Form: Medical Orders for Life-Sustaining Treatment (MOLST)
- § 7:65 Form: MOLST Legal Requirements Checklist for Individuals with Developmental Disabilities
- § 7:66 Form: HIPAA Compliant Authorization for Release of Medical Information and Confidential HIV-Related Information

**CHAPTER 8. GUARDIANSHIPS—ARTICLE 81 AND ARTICLE 83**

- § 8:1 Overview—Article 81 guardianships
- § 8:2 —Legislative findings and purpose
- § 8:3 —Standards for the appointment of a guardian
- § 8:4 Definitions
- § 8:5 Jurisdiction
- § 8:6 Venue
- § 8:7 Who may commence a proceeding
- § 8:8 Initiation of proceeding
- § 8:9 —Petition
- § 8:10 Court evaluator
- § 8:11 Legal counsel
- § 8:12 Judiciary/Fiduciary appointments—Part 36 Court Appointees
- § 8:13 Hearing
- § 8:14 —Burden and quantum of proof
- § 8:15 —Hearing preference; time for decision
- § 8:16 Record of the proceedings: sealing of records
- § 8:17 Findings
- § 8:18 Dispositional alternatives
- § 8:19 —Dismissal
- § 8:20 —Protective arrangements and single transactions
- § 8:21 —Special guardian
- § 8:22 Appointing a guardian
- § 8:23 Nomination of a guardian

- § 8:24 Foreign guardian for an incapacitated person not present in New York State
- § 8:25 Who may be guardian
- § 8:26 Duties of the guardian
- § 8:27 —General
- § 8:28 —Property management
- § 8:29 —Personal needs
- § 8:30 Powers of guardian—Property management
- § 8:31 —Enumerated powers regarding property management
- § 8:32 —Required information when authority to transfer property is sought
- § 8:33 —Notice requirements
- § 8:34 —Court considerations before approving transfers
- § 8:35 —Required findings if court grants the application to transfer
- § 8:36 —Personal needs
- § 8:37 —Enumerated powers over personal needs
- § 8:38 Provisional remedies
- § 8:39 —Temporary guardian
- § 8:40 —Injunction
- § 8:41 —Temporary restraining order
- § 8:42 Notice of pendency: real property
- § 8:43 Commission of the guardian
- § 8:44 Bond for guardians
- § 8:45 Designation of clerk to receive process
- § 8:46 Guardian’s commission
- § 8:47 Compensation of a guardian
- § 8:48 Effect of appointment of a guardian on the incapacitated person
- § 8:49 Withholding or withdrawing life sustaining medical treatment
- § 8:50 Initial report by the guardian
- § 8:51 —Property management
- § 8:52 —Personal needs
- § 8:53 Guardian’s annual report
- § 8:54 —Personal needs
- § 8:55 —Property management
- § 8:56 —Other activities and information
- § 8:57 —Change in powers
- § 8:58 Serving and filing the annual report
- § 8:59 Examination of initial and annual reports
- § 8:60 Intermediate and final report
- § 8:61 Final report; decree of discharge
- § 8:62 Removal of guardian

## TABLE OF CONTENTS

- § 8:63 Discharge of guardian: modification of guardian's powers
- § 8:64 Withdrawal of a guardianship
- § 8:65 Withdraw/ Discontinue an Article 81 Hearing
- § 8:66 Resignation of guardian: suspension of guardian's powers
- § 8:67 Vacancy in guardian's office
- § 8:68 Education requirements—Guardian
- § 8:69 —Court evaluator
- § 8:70 —Court examiner
- § 8:71 Compliance
- § 8:72 Proceedings to discover property withheld
- § 8:73 Advance planning
- § 8:74 Medicaid planning; guardianships
- § 8:75 Counsel fees for petitioner
- § 8:76 Proceedings upon the death of an incapacitated person
- § 8:77 MHL Article 83: Multi-state guardianship
- § 8:78 Incapacitated person and criminal action
- § 8:79 Article 81 guardianships—Forms
- § 8:80 —Order to Show Cause to Appoint a Guardian
- § 8:81 —Petition
- § 8:82 —Court Evaluator's Report
- § 8:83 —Order appointing temporary guardian of the person and property
- § 8:84 —Order and Judgment Appointing Guardian of the Person and Property
- § 8:85 —Oath and Designation of Guardian
- § 8:86 —Commission of Guardian
- § 8:87 —Initial Report of Guardian
- § 8:88 —Annual Inventory and Account
- § 8:89 —Decree Upon Approving Accounts
- § 8:90 —Informational Alert to Guardians Regarding Training
- § 8:91 —Affirmation As to Nursing Home Placement
- § 8:92 —Order Authorizing Nursing Home Placement
- § 8:93 —Affirmation of Attorney Services
- § 8:94 —Provisional order to transfer guardianship
- § 8:95 —Final order confirming transfer and terminating the guardianship

## **CHAPTER 9. GUARDIANSHIPS—ARTICLE 17A**

- § 9:1 Article 17A Guardianships—Overview
- § 9:2 When is it appropriate for Article 17A Guardianship to be commenced?

- § 9:3 Supported Decision Making
- § 9:4 Article 81 over Article 17A
- § 9:5 Article 17A Guardianships—Re-visited & Re-Examined
- § 9:6 —Application to the court—Petition
- § 9:7 —Service of Process
- § 9:8 —Standby and Alternate Standby Guardians
- § 9:9 —Special Needs Trusts
- § 9:10 —Hearing
- § 9:11 —Contested 17A Guardianship
- § 9:12 —Duration
- § 9:13 —Bonding Requirements; Investment of Guardianship Funds
- § 9:14 —Annual Accounts
- § 9:15 Article 17A Guardianships Petitions for Withdrawals from a 17A Guardianship or Special Needs Trust
- § 9:16 Article 17A Guardianships—Modifications to the Order
- § 9:17 —Limited Guardian of the Property
- § 9:18 —Guardians for an Intellectually Disabled Individual authorized to make End of Life Medical Decisions
- § 9:19 —Multi-State Guardianships
- § 9:20 —Non-Profit corporations
- § 9:21 —Petition for Appointment of Guardian (SCPA Article 17-A)
- § 9:22 —Petition for Appointment/Confirmation of Standby Guardian (SCPA Article 1757)
- § 9:23 —Annual Account of Non-Bonded Guardian
- § 9:24 —Annual Account of Bonded Guardian
- § 9:25 —Request for Information Form OCFS-3909

## **CHAPTER 10. SOCIAL SECURITY AND SUPPLEMENTAL SECURITY INCOME**

- § 10:1 Overview
- § 10:2 Retirement age requirements
- § 10:3 Earnings requirements for benefits; necessary credits
- § 10:4 Earning requirement for credits
- § 10:5 Retirement after age 65
- § 10:6 Earnings limitations for individuals receiving early Social Security retirement benefits
- § 10:7 Repeal of earnings limitations for individuals over the age of 66 for social security retirement benefits
- § 10:8 Unearned income
- § 10:9 Spouse of wage earner
- § 10:10 Parent of wage earner
- § 10:11 Divorced spouse

## TABLE OF CONTENTS

§ 10:12	Child of wage earner
§ 10:13	Disabled adult child
§ 10:14	Stepchild
§ 10:15	Grandchild
§ 10:16	Survivor's benefits/spouse of deceased wage earner
§ 10:17	Surviving divorced spouse
§ 10:18	Parent of deceased wage earner
§ 10:19	Surviving child of deceased wage earner
§ 10:20	Surviving stepchild of deceased wage earner
§ 10:21	Surviving grandchild of deceased wage earner
§ 10:22	Non-citizen eligibility
§ 10:23	Social Security Disability benefits
§ 10:24	Reduction in SSDI Benefits
§ 10:25	Disability: Definition
§ 10:26	Establishing disability
§ 10:27	Sequential evaluation of eligibility
§ 10:28	Limits based on physical exertion
§ 10:29	Limits on non-exertional activity
§ 10:30	Insured status
§ 10:31	Date last insured
§ 10:32	—Trial work period
§ 10:33	Disability based on blindness
§ 10:34	Primary insurance amount
§ 10:35	Medicare for disabled beneficiaries
§ 10:36	Five-month waiting period for benefits
§ 10:37	Compassionate Allowances
§ 10:38	Supplemental Security Income—Overview
§ 10:39	—Eligibility: Classification
§ 10:40	—Resources
§ 10:41	—Exempt resources
§ 10:42	—Income: Overview
§ 10:43	—Countable Income: non-exempt income
§ 10:44	—Application process
§ 10:45	—Pass program
§ 10:46	—Ticket to Work Program
§ 10:47	—SSI benefit levels: Monthly (in New York)
§ 10:48	—Congregate care rates
§ 10:49	—Transfers of assets
§ 10:50	—Medicaid
§ 10:51	—Discontinuance: Medicaid
§ 10:52	—Reconsideration; appeals; legal fees
§ 10:53	—Children's eligibility for SSI
§ 10:54	Direct Express—A safer way to receive Social Security and SSI payments

§ 10:55 Federal benefit payments

## **CHAPTER 11. VETERANS BENEFITS**

- § 11:1 Overview
- § 11:2 Who is a veteran?
- § 11:3 Who administers the programs?
- § 11:4 Service-connected disability compensation
- § 11:5 Secondary service connection
- § 11:6 Rating system
- § 11:7 Increased disability ratings
- § 11:8 Financial requirements for service-connected disability compensation
- § 11:9 Pharmacy benefits
- § 11:10 Veterans Health Administration Facilities
- § 11:11 Non-service connected pensions
- § 11:12 Military service requirements—Pension
- § 11:13 Asset limits
- § 11:14 Homestead
- § 11:15 Asset transfers
- § 11:16 Basic pension benefits
- § 11:17 Additional allowances to Basic Pensions
- § 11:18 Housebound allowance
- § 11:19 Aid and attendance
- § 11:20 Income disregards and deductions
- § 11:21 Assisted living facilities aid and attendance pension benefits
- § 11:22 Improved disability benefits pension rates
- § 11:23 Spousal allowances—Death benefit dependency and indemnity compensation (DIC)
- § 11:24 Death pension for veteran’s surviving spouse or unmarried child
- § 11:25 Survivor Benefits Plan for veteran’s disabled child
- § 11:26 Housebound allowance for survivors
- § 11:27 Aid and attendance for survivors
- § 11:28 Dependent child
- § 11:29 Veterans Asset Protection Trust
- § 11:30 What is the application process?
- § 11:31 Fully Developed Claims
- § 11:32 Veterans burial allowance
- § 11:33 Attorney accreditation
- § 11:34 Attorney Fees
- § 11:35 Enrollment Priority Groups
- § 11:36 Resources
- § 11:37 2026 Pension benefit figures

TABLE OF CONTENTS

**CHAPTER 12. MEDICARE**

§ 12:1	Overview
§ 12:2	Funding Medicare
§ 12:3	Medicare Part A—Overview
§ 12:4	—Coverage for people who have paid into the social security or railroad retirement system
§ 12:5	—Coverage for disabled persons under the age of 65
§ 12:6	—Coverage for people under 65 with end stage renal (kidney) disease or ALS (“Lou Gehrig’s Disease”)
§ 12:7	—Enrollment for covered individuals receiving Social Security or Railroad Retirement Benefits
§ 12:8	—Enrollment for covered individuals not eligible for Social Security or Railroad Retirement Benefits
§ 12:9	—Enrollment for fully covered individuals who continue to work past age 65
§ 12:10	—Enrollment for uncovered individuals: Voluntary purchasers
§ 12:11	—Enrollment periods for disabled persons under the age of 65, and for those with end stage renal disease
§ 12:12	—Coverage
§ 12:13	—In-patient hospital care; items which are not covered
§ 12:14	—Medical necessity
§ 12:15	—Prospective payment system; DRGs
§ 12:16	—“Outlier” days
§ 12:17	—Outpatient prospective payment system
§ 12:18	—Payment system; Medicare administrative contractor (MAC)
§ 12:19	—In-patient hospital care
§ 12:20	—Skilled nursing facility care—Overview
§ 12:21	—Skilled nursing facility care—Services
§ 12:22	—Custodial care; personal care services
§ 12:23	—Skilled care
§ 12:24	— —Daily basis
§ 12:25	—Coverage limitation for skilled nursing facility care
§ 12:26	—Pre-requisites to skilled nursing facility coverage
§ 12:27	—Home health care services: Overview
§ 12:28	—Where home health care services can be provided
§ 12:29	—Included home health care services
§ 12:30	—Excluded home health care services
§ 12:31	—Part-time or intermittent services
§ 12:32	—Coinsurance: deductibles
§ 12:33	—Benefit periods

NY ELDER LAW AND SPECIAL NEEDS PRACTICE

- § 12:34 —Lifetime reserve days
- § 12:35 —Spell of illness—Benefit period
- § 12:36 — —In-patient psychiatric care
- § 12:37 Hospice care—Overview
- § 12:38 —Conditions for coverage
- § 12:39 —Covered services
- § 12:40 —Coverage periods
- § 12:41 —Coinsurance: deductibles
- § 12:42 Medicare Part A: redeterminations, reconsiderations, hearings, and appeals—Overview
- § 12:43 —Quality improvement organization (QIO)
- § 12:44 —Medicare administrative contractors (MACs)
- § 12:45 —Hearings before an administrative law judge—  
Overview
- § 12:46 — —Attorney’s fees
- § 12:47 — —Preparing for hearing
- § 12:48 — — —Physician contact
- § 12:49 — — —Reviewing government record
- § 12:50 — —Hearing: The Parties
- § 12:51 — —Hearing: Procedure
- § 12:52 —Medicare Appeals Council
- § 12:53 —District court; judicial review
- § 12:54 Medicare Part B—Overview
- § 12:55 —Enrollment for covered persons
- § 12:56 —Enrollment for voluntary purchasers
- § 12:57 —Premium payments
- § 12:58 —Deductibles and co-insurance
- § 12:59 —Exceptions to co-insurance
- § 12:60 —Covered providers and services
- § 12:61 Medicare Part D—Prescription drug coverage—Overview
- § 12:62 —Prescription drug coverage—Plans
- § 12:63 —Low income subsidy
- § 12:64 —Participants under 100%, 135%, and 150% of the federal poverty level for income
- § 12:65 —Resource levels
- § 12:66 —Co-payments—Below 135% of the FPL
- § 12:67 —Participants not eligible for subsidy
- § 12:68 —Managed Care; HMOs
- § 12:69 —Calculating out-of-pocket expenses
- § 12:70 —Excluded drug coverage
- § 12:71 —Enrollment
- § 12:72 —Veterans programs
- § 12:73 —EPIC Prescription Drug Plan
- § 12:74 Medicare—Covered providers: limitations

## TABLE OF CONTENTS

§ 12:75	—Uncovered services
§ 12:76	—Conditional payments
§ 12:77	—Claims and payments
§ 12:78	—Participating providers
§ 12:79	—Non-participating providers
§ 12:80	— —Limiting charge
§ 12:81	—Physician payment reform; relative value units
§ 12:82	Medicare Part B—Redeterminations, reconsiderations, hearings and appeals
§ 12:83	Medicare Part C—Overview
§ 12:84	—Coordinated Care Plans
§ 12:85	—Provider Sponsored Organizations
§ 12:86	—Religious Fraternal Benefit Societies
§ 12:87	—Medical Savings Account Plans (MSAs)
§ 12:88	—Medicare Advantage; Private-Fee-For-Service Plan
§ 12:89	Medigap Insurance
§ 12:90	—Open enrollment for purchasing Medigap Insurance
§ 12:91	Managed Care; HMOs—Overview
§ 12:92	—Advantages
§ 12:93	—Disadvantages
§ 12:94	—Risk HMOs vs. Cost Basis HMOs
§ 12:95	—Review and appeal
§ 12:96	—External review of adverse decisions by HMOs and health insurers
§ 12:97	—Suing an HMO
§ 12:98	Chart of the Ten Standard Medicare Supplemental Plans
§ 12:99	Form: Request for Administrative Law Judge (ALJ) Hearing or Review of Dismissal (OMHA-100)
§ 12:100	Form: Request for Hearing by Administrative Law Judge (HA-501-U5)
§ 12:101	Form: Appointment of Representative (CMS-1696)
§ 12:102	Chart of Medicare Parts A and B Appeals: Home Health Care

## **CHAPTER 13. MEDICAID—OVERVIEW**

§ 13:1	Medicaid—Overview
§ 13:2	Medical services offered
§ 13:3	—Freedom of choice of medical providers: Managed care programs
§ 13:4	—Managed long term care programs
§ 13:5	—Social Security waivers
§ 13:6	Medicaid buy in program
§ 13:7	Structure

NY ELDER LAW AND SPECIAL NEEDS PRACTICE

- § 13:8 —Fiscal responsibility of counties
- § 13:9 —Payment structure
- § 13:10 Residency—Overview
- § 13:11 —Medicaid between counties in New York State
- § 13:12 —Disputes between counties
- § 13:13 —Medicaid between states
- § 13:14 —New York/Florida connection
- § 13:15 Citizenship
- § 13:16 Age and related eligibility requirements
- § 13:17 —Disability
- § 13:18 —Blindness
- § 13:19 —Eligible for public assistance
- § 13:20 —Recipient of Supplemental Security Income
- § 13:21 Financial eligibility requirements
- § 13:22 —Assignments to Medicaid
- § 13:23 Legally responsible relatives
- § 13:24 —Same sex marriages
- § 13:25 —Exceptions to legal responsibility
- § 13:26 —Spousal or parental refusal
- § 13:27 —Continuing liability following spousal or parental refusal
- § 13:28 —Post Medicaid eligibility planning following a spousal refusal
- § 13:29 —Pursuing resources in family court support actions
- § 13:30 —Actions pursuing excess income
- § 13:31 —Pursuing a judgment against excess resources in a family court support action
- § 13:32 —Actions to pursue excess resources
- § 13:33 —Actions to recover excess resources pursuant to the debtor creditor law
- § 13:34 —Living apart
- § 13:35 Home Care
- § 13:36 —Consumer Directed Home Care Program
- § 13:37 —Supplementation of home care
- § 13:38 —Shared aides
- § 13:39 —Personal emergency response services
- § 13:40 —Limitations on home care authorizations
- § 13:41 —Financial “look back” for Community Medicaid
- § 13:42 Medicaid Waiver Programs
- § 13:43 Long Term Home Health Care Program
- § 13:44 Nursing home care
- § 13:45 Medicaid application
- § 13:46 —Application form
- § 13:47 —Required documentation
- § 13:48 —Collateral investigation

TABLE OF CONTENTS

§ 13:49 —1099 reports

§ 13:50 —Personal Care Aides

§ 13:51 —Immediate need of Personal Care Aides

§ 13:52 Immediate need for person care services or CDPAP and its current status

§ 13:53 Medicaid application—Time limitations

§ 13:54 —Medicaid acceptance

§ 13:55 —Retroactivity of Medicaid application

§ 13:56 —DRA transfers

§ 13:57 —Denial notice

§ 13:58 —Reconsideration

§ 13:59 Reduction or discontinuance of benefits

§ 13:60 Recertification

§ 13:61 Medicaid application—Conversion

§ 13:62 —Expedited home care applications

§ 13:63 Form: Access NY Health Care Application (DOH-4220)—Medicaid

§ 13:64 Form: Supplement A (Supplement to Access NY Health Care Application (DOH-4220))(DOH-5178A)

§ 13:65 Form: List of Documents Required for Medicaid Application

§ 13:66 Form: New York State Medical Report for Determination of Disability Form (DOH-5143)

§ 13:67 Form: Medical Request for Home Care (M-11q)

§ 13:68 Form: DOH-5139 Disability Questionnaire

§ 13:69 Form: Renewal for Medicaid (Chronic Care) (DOH-5798 (12/23))

§ 13:70 Form: Submission of Request From Residential Health Care Facilities (RHCF) (MAP-648p)

§ 13:71 Form: Authorization to Apply for Medicaid on my Behalf (MAP-3043 (E))

§ 13:72 Form: Submission of Application on Behalf of Applicant (DOH-5147)

§ 13:73 Form: Authorization for Verification of Resources (Applicant) (DOH)-5148

§ 13:74 Form: Authorization for Verification of Resources (Legal Spouse) (DOH-5149)

§ 13:75 Form: Medicaid Authorized Representative Designation/Change Request (DOH-5247)

§ 13:76 Form: Disability Determination Request (NYC) (MAP-3177) (E)

§ 13:77 Form: Applicant/Recipient Declaration Concerning the Legally Responsible Relative's Income/Resources (NYC) (MAP-2161(E))

§ 13:78 Form: Consent to Release (NYC) (MAP-751P)

- § 13:79 Form: Declaration of the Legally Responsible Relative (NYC) (MAP-2161a (E))
- § 13:80 Chart: Medicaid 2026 Update

## **CHAPTER 14. MEDICAID INCOME, RESOURCES, TRANSFERS AND SPOUSAL IMPOVERISHMENT**

- § 14:1 Deficit Reduction Act of 2005
- § 14:2 Medicaid income standards
- § 14:3 —Spend-downs/overages
- § 14:4 Income overages; in-patient hospital bills
- § 14:5 Medicaid income standards—Income: defined
- § 14:6 —Earned income
- § 14:7 —Unearned income
- § 14:8 —Health insurance premiums
- § 14:9 —Income expenses
- § 14:10 —Exempt income
- § 14:11 —Income availability
- § 14:12 —Deeming
- § 14:13 Medicaid resource standards
- § 14:14 —Countable resources
- § 14:15 —Retirement Accounts
- § 14:16 —Exempt resources
- § 14:17 —Burial allowance
- § 14:18 —Burial space and trust
- § 14:19 —Personal property
- § 14:20 —Homestead
- § 14:21 —Impact of permanent absent status
- § 14:22 —Other exempt resources
- § 14:23 —Time limited exempt resources
- § 14:24 —Excess resources
- § 14:25 Annuities
- § 14:26 Transfer of assets
- § 14:27 Transfer of assets—Look-back period for nursing home care
- § 14:28 Transfer of assets—Look-back period for home care
- § 14:29 Medicaid transfer start date for nursing home care
- § 14:30 Medicaid transfer start date for home care
- § 14:31 Medicaid planning options
- § 14:32 Transfer of assets—Other Medicaid transfer rules under current law
- § 14:33 —Unsuccessful attempts to criminalize Medicaid planning
- § 14:34 —Multiple transfers

## TABLE OF CONTENTS

- § 14:35 —Life estates
- § 14:36 —Exempt transfers
- § 14:37 —Transfers to or solely for the benefit of spouse or disabled child
- § 14:38 —Exclusively for purposes other than to qualify for Medicaid
- § 14:39 —Undue hardship
- § 14:40 Spousal impoverishment
- § 14:41 —Community spouse income allowance
- § 14:42 —Community spouse resource allowance
- § 14:43 —Enhanced community spouse allowances
- § 14:44 —Long Term Home Health Care Program; Nursing Home Without Walls; The *Lombardi* Program
- § 14:45 Department of Health and Human Services Health Care Financing Administration State Medicaid Manual Transmittal No. 64-Excerpt of Life Estate and Remainder Interest Table
- § 14:46 Regional Nursing Home Transfer Rates (County Listing by Region)
- § 14:47 Department of Health and Human Services Health Care Financing Administration State Medicaid Manual Transmittal No. 64-Excerpt of Life Expectancy Tables for Males and Females

## CHAPTER 15. MEDICAID TRANSFERS

- § 15:1 Overview
- § 15:2 Decision to make outright gifts
- § 15:3 Transfers—Overview
- § 15:4 —Transfer of bank accounts and stocks
- § 15:5 —Transfer of retirement accounts
- § 15:6 —Transfer of life insurance
- § 15:7 —Transfer of real property
- § 15:8 Medicaid planning—Titling of assets
- § 15:9 Annuities—Transfer Penalty Rules
- § 15:10 Transfer of assets—Life estates
- § 15:11 —Exempt transfers
- § 15:12 —Transfers to or solely for the benefit of spouse or disabled child
- § 15:13 —Transfers by spouse
- § 15:14 —Transfers by community spouse
- § 15:15 —Overcoming presumption of transfers to qualify for Medicaid
- § 15:16 Medicaid planning—Documenting the gift
- § 15:17 —Outright gifts to a spouse
- § 15:18 —Transfer of assets

- § 15:19 Transfer of assets; Partial Gift / Promissory Note
- § 15:20 Medicaid planning—Return of gifted property:  
midcourse adjustments
- § 15:21 —Availability of assets for partial payback
- § 15:22 —Availability of transferred assets for individual’s  
care
- § 15:23 —Knowing the donee of an outright gift
- § 15:24 —Problems due to lack of availability
- § 15:25 —Special arrangements
- § 15:26 —Incomplete gifts
- § 15:27 Tax consequences of outright gifts
- § 15:28 Multiple transfers/gifts
- § 15:29 Ethical dilemma for the elder law attorney
- § 15:30 Form: Sample Language of Limited Testamentary  
Power of Appointment
- § 15:31 Form: memorandum regarding transfer of residence  
with a retained life estate or to a trust
- § 15:32 Form: Completed Nominee and Trust Agreement
- § 15:33 Form: Completed Family Agreement
- § 15:34 DRA compliant promissory note

## **CHAPTER 16. MEDICAID FAIR HEARINGS**

- § 16:1 Overview
- § 16:2 Right to a fair hearing
- § 16:3 Notice requirements
- § 16:4 —Adequate notice
- § 16:5 —Contents of notice
- § 16:6 —Notice of acceptance
- § 16:7 —Timely notice
- § 16:8 —Exceptions to timely notice
- § 16:9 Agency conference
- § 16:10 Reconsideration
- § 16:11 Requesting a fair hearing
- § 16:12 —Time to request a fair hearing
- § 16:13 —Withdrawing a request
- § 16:14 —Abandonment of a request
- § 16:15 Aid continuing
- § 16:16 —Exceptions
- § 16:17 Right to Return Home and Receive Care in the  
Community
- § 16:18 Notice of fair hearing
- § 16:19 Scheduling a fair hearing
- § 16:20 —Priority in obtaining a fair hearing and decision
- § 16:21 —Adjourning a fair hearing
- § 16:22 Where the fair hearing is held

## TABLE OF CONTENTS

- § 16:23 Burden of proof
- § 16:24 Evidence
- § 16:25 Who may be present at a fair hearing
- § 16:26 —Media presence at a fair hearing
- § 16:27 Consolidated fair hearings
- § 16:28 Responsibilities of the local Medicaid Agency at a fair hearing
- § 16:29 Hearing Officer
- § 16:30 —Removal of a hearing officer
- § 16:31 Hearing record
- § 16:32 Decision
- § 16:33 —Decisions without a hearing
- § 16:34 —Corrected decisions and reopened hearings
- § 16:35 Fair hearings: precedents; Administrative Stare Decisis
- § 16:36 Judicial review of a fair hearing decision
- § 16:37 Fair hearing request form—Fax or mail
- § 16:38 —Online
- § 16:39 Request to adjourn/reopen a fair hearing—Fax or mail
- § 16:40 Request to adjourn a fair hearing—Online
- § 16:41 Authorization to Represent form

## **CHAPTER 17. MEDICAID RECOVERIES, LIENS AND ASSIGNMENTS**

- § 17:1 Overview of recoveries
- § 17:2 Recovery of Medicaid improperly paid
- § 17:3 Recovery of Medicaid properly paid: estate claims
- § 17:4 —Age of 55 and older limitation
- § 17:5 — —10-year limitation
- § 17:6 —Surviving spouse limitation
- § 17:7 Right of election against the estate of a community or non-applying spouse
- § 17:8 Definition of estate
- § 17:9 Expanded Medicaid estate recovery- Not enacted
- § 17:10 Medicaid: a preferred creditor
- § 17:11 Time limit for filing a creditor's claim
- § 17:12 Seven month time factor for creditors
- § 17:13 Undue hardship
- § 17:14 Negotiating Medicaid recovery liens
- § 17:15 Liens against realty when owner is institutionalized
- § 17:16 Accident liens
- § 17:17 —Priority of accident liens
- § 17:18 —Waivers and reductions of accident liens

- § 17:19 —Accident lien against the recovery of a person  
under the age of 21
- § 17:20 —Attorneys’ fees for collecting Medicaid liens
- § 17:21 Assignments
- § 17:22 Recoveries from community spouses

## **CHAPTER 18. LONG TERM CARE INSURANCE**

- § 18:1 Long Term Care Insurance—Overview
- § 18:2 Long term care insurance—New York State minimum  
standards
- § 18:3 Long term care services; definitions
- § 18:4 Home care
- § 18:5 Insurability
- § 18:6 Coverage provisions
- § 18:7 —Prior hospitalization
- § 18:8 —Levels of care
- § 18:9 —Age requirements
- § 18:10 —Benefits; dollar limits
- § 18:11 —Inflation protection
- § 18:12 —Elimination period
- § 18:13 —Benefit term
- § 18:14 —Pre-existing conditions
- § 18:15 —Exclusions
- § 18:16 —Renewability: level premiums
- § 18:17 —Waiver of premium
- § 18:18 —Nonforfeiture benefit
- § 18:19 —Death benefits
- § 18:20 —Free look period
- § 18:21 Coverage provisions; third party notification
- § 18:22 Cost of long term care insurance
- § 18:23 Affordability of long term care insurance
- § 18:24 Long term care insurance and Medicaid planning
- § 18:25 New York State Partnership for Long Term Care—  
Overview
- § 18:26 —Minimum standards
- § 18:27 —Duration
- § 18:28 —Benefit levels
- § 18:29 —Elimination periods
- § 18:30 —Covered services
- § 18:31 —Additional benefits
- § 18:32 —Medicaid requirements and benefits
- § 18:33 —Policy Premiums
- § 18:34 —Medicaid Considerations

## TABLE OF CONTENTS

- § 18:35 Federal Law regarding Partnership long term care insurance policies
- § 18:36 Life insurance with a long term care rider
- § 18:37 Federal Income tax deductibility
- § 18:38 New York State Income Tax Credit
- § 18:39 Selecting a long term care policy
- § 18:40 NYS Long Term Care Insurance Education and Outreach and NY Connects
- § 18:41 Consumer tips
- § 18:42 National scope of long term care insurance

## **CHAPTER 19. NURSING HOMES AND ALTERNATIVES**

- § 19:1 Overview
- § 19:2 Regulation of nursing homes
- § 19:3 Levels of nursing home care
- § 19:4 Admission to a nursing home
- § 19:5 —Patient Review Instrument (“PRI”)
- § 19:6 —Entering a nursing home from the hospital
- § 19:7 —Entering a nursing home from the community
- § 19:8 Financing nursing home care—Overview
- § 19:9 —Security deposits
- § 19:10 —Private payment guarantees
- § 19:11 —Third party liability for nursing home bills
- § 19:12 —Notice that care is not covered by Medicare
- § 19:13 Selecting a physician in a nursing home
- § 19:14 Prescription drugs
- § 19:15 Private duty nurses, nurse aides, companions
- § 19:16 Semi-private and private rooms
- § 19:17 Medicaid—Personal incidental allowance account
- § 19:18 —“Out of New York State” nursing home care
- § 19:19 Transfers and discharges
- § 19:20 Bed holds
- § 19:21 Restraints
- § 19:22 Residents’ rights
- § 19:23 Long Term Care Ombudsman Program
- § 19:24 Residents’ Council
- § 19:25 Abuse of residents
- § 19:26 —Recoveries for negligence or abuse by the nursing home
- § 19:27 Resident’s perspective
- § 19:28 Nursing Home Residents’ Bill of Rights
- § 19:29 Alternative housing options to nursing homes—Overview

- § 19:30 Alternative housing options—Assisted living facilities
- § 19:31 —Adult homes
- § 19:32 —Continuing care retirement communities
- § 19:33 DRA changes related to CCRCs
- § 19:34 Mandatory managed long term care
- § 19:35 Nursing home agreements
- § 19:36 Nursing home agreements-Venue selection clauses
- § 19:37 Nursing home agreements-Arbitration clauses
- § 19:38 Listing of Continuing Care Retirement Communities  
in New York State
- § 19:39 Form: Notice Skilled Nursing Facility Patients  
Should Receive Pursuant to *Sarrassat v. Sullivan*

## CHAPTER 20. TAXES

- § 20:1 Overview
- § 20:2 2011–2021 Federal Gift and Estate Tax Laws
- § 20:3 Overview—Primary goals of the senior client
- § 20:4 —Planning techniques to minimize or eliminate  
estate taxes
- § 20:5 —Inter-relationship of tax and Medicaid planning
- § 20:6 —Estate tax planning tools and resources
- § 20:7 Income taxation considerations—Overview (Federal)
- § 20:8 —Tax return requirements
- § 20:9 —Medical expense deductions
- § 20:10 —Credit for the elderly and disabled
- § 20:11 —Dependent credit and exemption
- § 20:12 —Taxation of benefits from retirement plans
- § 20:13 —Taxation of accident and health plan benefits
- § 20:14 —Step up in basis
- § 20:15 —Sale of residence
- § 20:16 —Taxation of long term care benefits
- § 20:17 —Capital gains and net investment tax
- § 20:18 Unified gift and estate tax system
- § 20:19 —Unified tax rate
- § 20:20 —Unified credit against federal gift and estate tax
- § 20:21 —New York unified gift and estate tax system
- § 20:22 Gift tax considerations—Overview (Federal)
- § 20:23 —Use of the gift tax exclusion
- § 20:24 —Gift tax deductions and credits
- § 20:25 —Spousal gifts
- § 20:26 —Tax return filing requirements
- § 20:27 —Interrelationship with income and estate taxation
- § 20:28 —New York State gift taxation (Repealed)
- § 20:29 Estate Tax Considerations—Overview (Federal)

TABLE OF CONTENTS

§ 20:30 —Gross estate  
§ 20:31 —Deductions from gross estate  
§ 20:32 —Credits against the estate tax  
§ 20:33 —Federal estate tax computation  
§ 20:34 —Federal estate tax liability  
§ 20:35 —Paying the federal tax  
§ 20:36 —Federal tax return filing requirements  
§ 20:37 —New York State estate taxation  
§ 20:38 Planning for the residence—Overview  
§ 20:39 —Outright transfers  
§ 20:40 —Transfer to a Medicaid Asset Protection Trust  
§ 20:41 —Comparison of residential transfers  
§ 20:42 Use of Revocable Living Trusts—Overview  
§ 20:43 —Income taxation  
§ 20:44 —Gift taxation  
§ 20:45 —Estate taxation  
§ 20:46 —Joint Revocable Living Trust  
§ 20:47 —Convertible Trusts  
§ 20:48 Irrevocable Living Trusts—Overview  
§ 20:49 —Income taxation  
§ 20:50 Grantor trusts—Income taxation  
§ 20:51 Irrevocable Living Trusts—Gift taxation—Funding of  
the Trust  
§ 20:52 — —Distributions from the Trust  
§ 20:53 —Estate taxation  
§ 20:54 Medicaid Asset Protection Trust  
§ 20:55 Use of Special Needs Trusts under OBRA 1993—  
Overview  
§ 20:56 —Income taxation  
§ 20:57 —Gift taxation  
§ 20:58 —Estate taxation  
§ 20:59 Third-Party Trusts  
§ 20:60 Use of Bypass/Marital Trusts  
§ 20:61 —Bypass Trusts: Overview  
§ 20:62 —Marital Trusts: Overview  
§ 20:63 —Will versus Living Trust format  
§ 20:64 —Trusts set up by a well spouse for a dying spouse  
§ 20:65 Planning for the senior with a taxable estate  
§ 20:66 Planning for the wealthy senior—Use of Grantor  
Retained Trusts  
§ 20:67 —Irrevocable Life Insurance Trusts  
§ 20:68 —Generation skipping  
§ 20:69 Form: Completed Sample of A/B Trusts Worksheet  
§ 20:70 Form: GRAT Worksheet  
§ 20:71 Form: QPRT Worksheet

- § 20:72 Form: Form Letter to Senior Regarding Explanation of Credit Shelter and Irrevocable Life Insurance Trust Planning
- § 20:73 Form: Suggested Language to Senior Regarding Irrevocable Life Insurance Trusts
- § 20:74 Form: Suggested Language to Senior Regarding Grantor Retained Annuity Trust (GRAT)
- § 20:75 Form: Suggested Language to Senior Regarding Qualified Personal Residence Trust (QPRT)
- § 20:76 Schedule—Federal Estate Tax Schedule
- § 20:77 —Federal and NYS Exclusion Amounts
- § 20:78 —Credit for State Death Taxes until 2004
- § 20:79 IRA Required Minimum Distribution Table

## **CHAPTER 21. LIVING TRUSTS**

- § 21:1 Overview
- § 21:2 Trusts in the context of Medicaid—Overview
- § 21:3 —Medicaid Qualifying Trusts
- § 21:4 —Trigger Trusts
- § 21:5 Medicaid: OBRA 1993
- § 21:6 Medicaid: Look-back and penalty periods for trusts
- § 21:7 Irrevocable Trusts—Overview
- § 21:8 Medicaid: Medicaid Asset Protection Trusts
- § 21:9 Irrevocable Trusts—Medicaid planning
- § 21:10 —Revocation
- § 21:11 Medicaid Asset Protection Trust—Planning overview
- § 21:12 Medicaid Asset Protection Trust Funded with a Residence
- § 21:13 Medicaid GRAT
- § 21:14 Medicaid: OBRA 1993 Exempt Trusts
- § 21:15 —Special Needs Trusts—Overview
- § 21:16 —Special Needs Trust—Administration
- § 21:17 — —Funding and Medicaid Liens
- § 21:18 —Qualified Income Trusts
- § 21:19 —Pooled Trusts
- § 21:20 —Pooled Income Trusts
- § 21:21 —Sole Benefit Trusts
- § 21:22 Third Party Supplemental Needs Trust
- § 21:23 Revocable Trusts
- § 21:24 —Medicaid
- § 21:25 —Tax consequences
- § 21:26 Revocable Living Trusts—Wills
- § 21:27 Irrevocable Trusts—Overview
- § 21:28 Estate tax planning
- § 21:29 —Use of Bypass and Marital Trusts

## TABLE OF CONTENTS

- § 21:30 —Grantor Retained Trusts
- § 21:31 —Irrevocable Life Insurance Trust
- § 21:32 Pet Trusts
- § 21:33 Form: Medicaid Asset Protection Trust—Individual Trust
- § 21:34 —Joint Trust
- § 21:35 Form: Special Needs Trust
- § 21:36 Form: Variation of Special Needs Trust
- § 21:37 Form: Third Party Supplemental Needs Trust
- § 21:38 Form: Revocable Trust
- § 21:39 Form: Sole Benefit Trust

## **CHAPTER 22. WILLS, WAIVERS, AND RENUNCIATIONS**

- § 22:1 Wills—Overview
- § 22:2 Gathering the information
- § 22:3 Client objectives
- § 22:4 Will preparation for married couples
- § 22:5 —Estates in excess of \$15,000,000 and \$30,000,000 in 2026
- § 22:6 —Estates in excess of \$15,000,000
- § 22:7 Special needs provisions—Overview
- § 22:8 —Health care
- § 22:9 — —Special needs not related to health
- § 22:10 Spendthrift provision
- § 22:11 Disinheritance of a relative other than a spouse
- § 22:12 No contest clauses
- § 22:13 Common disaster provisions
- § 22:14 Payment of estate taxes
- § 22:15 Powers and duties of executors and trustees: Prudent Investor Act
- § 22:16 Selecting an executor and/or trustee
- § 22:17 —Selecting an attorney as executor and/or trustee
- § 22:18 Attorney/beneficiary: ethical issues
- § 22:19 Method of contingent distributions—Overview
- § 22:20 Method of unequal distributions to a class of beneficiaries
- § 22:21 Method of contingent distributions—Overview—Per stirpes
- § 22:22 — —Per capita
- § 22:23 — —By representation
- § 22:24 Affidavit of subscribing witnesses
- § 22:25 Elective share
- § 22:26 Waiver of elective share

NY ELDER LAW AND SPECIAL NEEDS PRACTICE

- § 22:27 Renunciations
- § 22:28 —Requirements of a renunciation
- § 22:29 Pour Over Will
- § 22:30 Remote notarizations and witnessing from March 20, 2020 to June 24, 2021
- § 22:31 Form: Sample Language of Testamentary QTIP Trust for a Spouse
- § 22:32 Form: Sample Language of Testamentary QTIP Trust for a Spouse with Supplemental Needs Restrictions as to Principal
- § 22:33 Form: Sample Will Containing a Supplemental Needs Trust for the Surviving Spouse
- § 22:34 Form: Sample Memorandum Summarizing the Sample Will Containing a Supplemental Needs Trust for the Surviving Spouse
- § 22:35 Form: Sample Language for Supplemental Needs as Part of a Will Containing a Unified Credit Shelter Trust and a QTIP Trust if a Beneficiary Resides in a Nursing Facility
- § 22:36 Form: Sample Language for Beneficiaries with Severe and Chronic or Persistent Disability—EPTL § 7-1.12
- § 22:37 Form: Sample Language of a Spendthrift Provision
- § 22:38 Form: Sample Language of a No Contest Clause
- § 22:39 Form: Sample Language of a Disinheritance Provision
- § 22:40 Form: Example of a Common Disaster Provision
- § 22:41 Form: Example of Estate Tax Apportionment Clause—Taxes Paid from Residuary Estate
- § 22:42 Form: Example of a Broad Discretionary Power Clause
- § 22:43 Form: When set forth in a writing executed prior to or concurrently with a will under S.C.P.A. § 2307-a(3)(a)
- § 22:44 Form: When set forth in a writing executed subsequently to the will under S.C.P.A. § 2307-a(3)(b)
- § 22:45 Form: Sample Inheritance Memorandum
- § 22:46 Form: Affidavit of Subscribing Witnesses Pursuant to S.C.P.A. § 1406 Made At Request of Testator/rix
- § 22:47 Form: Elective Share Calculation Worksheet.
- § 22:48 Form: Renunciation of Interest and Affidavit by Renouncing Party in Estate Pursuant to EPTL § 2-1.11
- § 22:49 Form: Sample Provision of Trust Distributions in Stages
- § 22:50 Form: Sample Provision of Trust Distributions in a Lump Sum

## TABLE OF CONTENTS

- § 22:51 Form: Pour Over Will
- § 22:52 Form: Sample of Will Drafting Checklist

## **CHAPTER 23. CASE STUDIES**

- § 23:1 Overview
- § 23:2 Planning for the single individual
- § 23:3 —Variation: in good health
- § 23:4 —Variation: requires home care
- § 23:5 —Variation: requires nursing home care
- § 23:6 Planning for a husband and/or wife
- § 23:7 Planning for the healthy married couple
- § 23:8 —Variation: estate of \$3,500,000
- § 23:9 —Variation: adult child with special needs
- § 23:10 Planning for an ill spouse requiring home care
- § 23:11 —Variation: ill spouse requires home care and possibly nursing home care
- § 23:12 —Husband needs home care, wife in community (in good health)
- § 23:13 Planning for an Ill Spouse Requiring Nursing Home Care
- § 23:14 Planning for an ill spouse requiring nursing home care—Variation: estate of \$2,000,000
- § 23:15 Planning for an Ill Spouse Requiring Nursing Home Care—Husband Needs Nursing Home Care, Wife in Community (In Good Health)
- § 23:16 Planning for an ill spouse requiring nursing home care—Variation: ill spouse requires nursing home care/caregiver child
- § 23:17 —Variation: residence co-occupied with a sibling
- § 23:18 —Second stage planning for community spouse
- § 23:19 Planning for the married couple when both spouses require care
- § 23:20 Planning for ill married couple—Variation: both require nursing home care
- § 23:21 Planning for the healthy married couple—Variation: minor child with special needs
- § 23:22 Planning for the adult client with disabilities

### **Table of Laws and Rules**

### **Table of Cases**

### **Index**