SUFFOLK ACADEMY OF LAW
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FRAMEWORK FOR ESTATE & MEDICAID PLANNING (PART 1)

FACULTY

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Biography

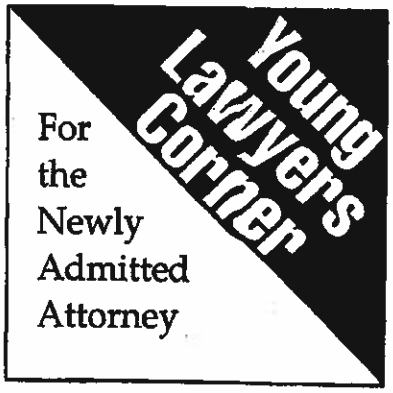
Jay P. Sheryll is the founding and managing attorney of Sheryll Law, P.C., focusing his practice on Elder Law, Estate Planning, Trusts and Estates, Medicaid Planning, Estate Tax Planning, Asset Protection, Special Needs Planning and Guardianship Practice. Jay is a graduate of Touro College, Jacob D. Fuchsberg Law Center where he was a member of the Law Review. Jay has been admitted to practice law in the States of New York and New Jersey. Jay is a trained Article 81 Guardian and frequently serves the Guardianship part as a court- appointed Guardian and Court Evaluator.

Jay is active in the local community serving as a member of the Rotary Club of Riverhead and as a Vice President of the Riverhead Chamber of Commerce. Jay also volunteers his time on the board of the Long Island Science Center, a museum dedicated to provided STEAM educational programs and content to Long Island students.

Jay is a frequent speaker, where he lectures on Elder Law, Medicaid, and Estate Planning. Jay is married to his loving wife and has two adorable children. When not in the office, Jay enjoys playing the guitar and spending time on the Peconic Bay.

Entering the Practice of Elder and Special Needs Law

By Kirsten Dunn



Elder and Special Needs Law sounds like a nice, innocuous area of law to dabble in. After all, what could be more noble or fulfilling than helping the vulnerable? Whether an attorney who recently graduated from law school, or a seasoned attorney with years of practice under your belt, Elder and Special Needs Law is full of surprises, requiring much more than a noble spirit and a willingness to help. Indeed, it requires much: great people skills; understanding of estate planning and the challenges Medicaid brings to the table; the ability to learn a new language (the acronyms in Medicaid planning are outrageous); negotiation skills—especially when dealing with a nursing home billing department or warring family members; knowledge of myriad miscellanea, from real estate transactions to types of physical lifts available for homes to tax complexities; and a sensitivity to all the parties involved, as well as a sense of humility that will admit "this crystal ball is out of order." Elder Law *does* deal with planning for the unknown, and no party to the transaction can pretend they have transcendent knowledge of the future. Thankfully, the practice of Elder and Special Needs Law is chockful of fabulous people, learning and struggling and teaching and sharing right along with the newbie. What follows is a non-exhaustive list of tips and tricks for attorneys involved in the practice of Elder and Special Needs Law.

MINGLE: Join NYSBA's Elder and Special Needs Law Section and sign up for the listservs. The listserv such as the Section "digests" are a fantastic resource for attorneys new and old, with all levels of experience advising on all types of issues. Involvement is a great way to widen horizons and learn about new strategies or techniques, or to find out that even seasoned veterans have cases with new issues arising in them. Asking questions often opens up the resource of a mentor in the practice, as many experienced attorneys are very willing to share their knowledge. For those of us who practice in a rural area, and who do not have daily or even weekly contact with other attorneys, this can be especially helpful and builds a sense of community among those in the field. Even for those involved in larger practices, many attorneys are not well versed in the newer Medicaid rules, or other areas of estate planning, which can be quite nuanced. Daily contact through the listservs keeps our minds fresh to the latest trends, latest vocabulary and latest problems. The Section offers other resources, as well, such as latest legal decision updates and articles on pertinent subjects relating to the elder law.

Join other things, too: County bar associations, women's or men's clubs, local associations, and Boards of organizations catering to elder or special needs are great places to get to know people involved in your area of planning, and also help keep the elder law practitioner abreast of current issues. Attending local fairs and public events creates an endless source of resources, whether clients or those invested in the same business. One benefit of becoming known in this way is that your personal strengths can be revealed in a natural setting, creating an easy comfort for new clients who may want to bring their elderly mother to you, or who wouldn't mind divulging their financial and personal secrets to you as their counselor. It can be a real challenge for a parent of a special needs child to locate a person they can confide in and trust with their child's future, and a simple meeting at an unplanned venue can be just what it takes for the trust to develop.

Part of being an Elder Law attorney is forming connections with other people relating to elder care of all sorts. These connections can be with the clerks of the court ("Do I file the waiver and consent *with* the petition or after it on the e-filing system?"), the clerks of the county ("Do you have a copy of the deed I filed? You placed it in the box for me? Oh, THANK YOU!"), the local Department of Social Services ("Would you hold onto that application until we meet and clear up that transaction? Thanks!"), and local law enforcement ("Is there any way to keep him off his tractor in the streets, since he is legally blind and should definitely NOT be driving, even though this is a right-to-farm community and tractors are not regulated the same way cars are, and one doesn't need a license to drive them?"). The connections can also be found at your child's school party, where you might find yourself rubbing shoulders with the local sheriff, the supreme court justice, the physician and the Liberty Community Services driver, all of whom have children in the same class and all who are potential valuable resources to the Elder Law practitioner—or the town meeting, where you meet all kinds, and they all talk a lot, with varying degrees of value to the law practice, but infinite value to the spice of life factor.

ATTEND live session CLEs offered by the Elder Law and Special Needs Section. While it seems easier to simply gain CLE credit through online courses, there is much missed when not attending CLEs live. People in this Section are NICE. Genuinely nice. For some reason, those

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who spend their time helping the elderly or those with special needs have themselves some very special qualities. Many are so friendly, so willing to help out clients and other attorneys, and are people who enjoy what they do and the people they do it for. The camaraderie in the Section is not something duplicated in other Sections, making the live CLEs, especially the longer weekend meetings, an anticipated treat. Attending live CLEs also allows for making friends with attorneys who are licensed in other states, creating a resource network around the nation. Other helpful resources are also made available during the live CLEs that are not existent during online courses: contacts with trust administration companies, pooled trust representatives, Offices for Aging representatives, and more.

KEEP an open mind. I met an attorney at a (live) CLE who wanted to transition his firm from military contracts to elder law. It is hard to imagine a more drastic change, but this man saw his source of referrals drying up (for whatever reason, the source was leaving the area), and he and his two partners were aging and wanted to transition into an area of law with which they thought they could grow and keep up. Two years later, the transition is complete, and while they are finishing off some unfinished former business they are now growing and thriving with Elder Law.

"BUILD your reputation and keep it strong. Be known as a problem solver, not a problem attorney."

Change scenes to a law school elder law course where students are taught about Medicaid redesign. Most students leave the room with a dazed look, swearing internally they will never, ever practice that area of law. It is confusing, frustrating, complicated, vast, and apparently unconquerable. But if it seems that way to students and practitioners of law, how much more so to those intimately affected by it? This is an area that needs practitioners. They are wanted, in demand, and generally well-liked. Given that the fastest-growing segment of society is now those over 65 thanks to the baby boomers growing up, this is also a growing area of need in the law. Adding Elder Law to an existing practice, or making the shift entirely to practicing only Elder Law can be a worthwhile experience.

TRUSTS: This word alone connotes a scary, nebulous netherworld of provisions that without help can be intimidating enough to keep practitioners away from the area of Elder and Special Needs Law. Intimidation can be immobilizing. Don't let intimidation prevent you from learning and filling in the gaps in your knowledge base! Ask questions: as previously stated, *most* Elder law attorneys are nice, and willing to answer your questions. When reading the listserv, it becomes obvious that we all share a lot of questions. Additional resources can be found through law schools, through the NYSBA Section leaders and the NYSBA mentorship program. CLEs on trust drafting are available. Take time to educate yourself in this area, and then dive in. During a trust-drafting CLE, an attorney shared his experience of his first trust, drafted for an older client who was needing crisis planning. Scared, he launched into the project and was almost finished when the client passed away. He hated to admit he was almost glad, because the "voices" had him worried that he just didn't know enough to practice in this area of law. But the next case came in, and he successfully created his first plan including a trust. Each new case added to his knowledge and, in turn, to his confidence. Yes, the practice of Elder and Special Needs Law does often include trust drafting. But it doesn't have to mean the death of you!

BUILD your reputation and keep it strong. Be known as a problem solver, not a problem attorney. Contrary to popular culture and media impressions, antagonistic attorneys are not helpful to anyone. As young (newer) attorneys, we may try to mask our lack of knowledge with bravado. It rarely helps solve matters, and almost always leads to a much less pleasant interaction with opposing counsel. Some of our problems are best solved through creative solutions and the attorney willing to consider these builds a reputation as a problem solver. Since the problems presented in Elder Law tend to be varied (a hairy real estate transaction involving a borderline dispute before the property can be transferred into trust, or an unscrupulous billing department at a skilled nursing facility trying to bully the client's family into paying what they don't owe), we have many opportunities to let our creative juices flow when it comes to finding solutions.

Proofreading is a huge skill to build a strong reputation. I have always been a stickler for proper English use, so maybe this is a personal problem. (What is wrong with the following: "Drive Careful!" or "Live Fearless!"? Please tell me you know!!!) Writing letters or emails or pleadings in the same manner with which you speak or text or message or snap is unprofessional. Casualness leads to misunderstandings. It shows a lack of decorum, respect and professionalism. One very obvious way to show you are skilled is through your professionalism with every communication. (And yes, the spell-check feature has created some embarrassments for me that I did not catch until too late! Should have proofread! Lesson learned.)

Lastly, your reputation as a quality person is important in the practice of Elder Law. Our clients tend to be very vulnerable and may be in a crisis situation, may be angry, or may be scared. Kindness, helpfulness, professionalism and humility go a long way in assisting these clients and building our reputations.

The need is real, and Elder and Special Needs Law attorneys can be and are great friends and assets to their clients, their firms, and their communities.

The Statutory Power of Attorney and Its Use in Medicaid Planning

By Winston Spencer Waters

Abstract

The use of the statutory "power of attorney" as a means of Medicaid and estate planning is often overlooked in practice. It is an important resource for attorneys practicing in the area of elder law. The general tendency in Medicaid planning is to at one point or another seek the appointment of a Guardian for the Person and Property of an incapacitated person, with a request for Medicaid planning to be sought in the same or separate application. However, the statutory "power of attorney" allows an effective means by which attorneys can engage in Medicaid and estate planning in the least restrictive way by circumventing judicial intervention through expensive and protracted guardianship proceedings. The current "power of attorney" in New York is designed to empower the principal to permit an agent to engage in financial and estate planning. This article seeks to review the more significant sections of agency law in New York via an effective use of a "power of attorney." This article examines: (1) durable versus non-durable powers; (2) springing powers; (3) HIPAA considerations; (4) format of the power of attorney; (5) agent's power to make gifts; and (6) standard of care. The article also reviews its enforceability by the courts as it relates to Medicaid planning.

Introduction

The relationship between an attorney-in-fact and his principal has been characterized as an agent and principal relationship, with the attorney-in-fact under a duty to act with the utmost good faith toward the principal in accordance with the principles of morality, fidelity, loyalty and fair dealing. Consistent with that duty, traditionally, an agent could not make a gift to himself or a third party of money or property that was the subject of the agency relationship. Many cases examined whether the principal authorized the agent to make gifts from assets belonging to the principal.[1] If the specific gifting language was not present within parameters of the statute the gift was disallowed by the courts.

The law was amended in 1996 to allow agents to make gifts to a class of close relatives of the principal with a cap of $10,000 (which was the limit for annual exclusions at that time). Despite there being language permitting gifting authority, questions remained about the discretionary authority of the agent in such matters. In the event such a gift was made, a presumption of impropriety was created that could only be rebutted with a clear showing that the principal intended to make the gift.[2] This was particularly applicable when a power of attorney existed between relatives.[3] The use of a statutory short form power of attorney for major gifts and significant transfers created problems for the courts to determine: (1) whether the agent had authorization to make gifts;(2) what standard guided the making of gifts, and (3) whether the agent could make gifts to himself. Gifts by an agent to himself or others carried with them a presumption of impropriety and self-dealing, a presumption that could only be overcome with the clearest showing of intent on the part of the principal to make the gift.[4]

In 2006, the New York Court of Appeals in *In re Ferrara*[5] decided this issue. In *Ferrara, infra*, the decedent executed a will explicitly stating that he was not making any provision for any family members and that his entire estate was to go to the charity. After the decedent's health began to decline, the decedent signed a durable power of attorney making his brother and his nephew his attorneys-in-fact. The principal executed the statutory short form provided in N.Y. Gen. Oblig. Law § 5-1501(1). At that time, N.Y. Gen. Oblig. Law § 5-1501(1)(M) permitted an attorney-in-fact to give gifts to family members not to exceed the aggregate of $10,000 to each person in any year. The form executed by the decedent removed the $10,000 limitation. A nephew of the decedent subsequently transferred $820,000 of the decedent's assets to himself. The court held that where the statutory short form under N.Y. Gen. Oblig. Law § 5-1503 was augmented to remove the $10,000 limitation, an attorney-in-fact had to make gifts in the principal's best interest, which was interpreted by N.Y. Gen. Oblig. Law § 5-1502M as gifts to carry out the principal's financial, estate, or tax plans. It decided that the nephew did not make gifts to himself for such purposes and that he improperly impoverished the decedent whose will contradicted any desire to give his estate to the nephew. The New York Court of Appeals held that an agent acting under color of a statutory short form power of attorney that contains additional language augmenting the gift-giving authority must make gifts pursuant to these enhanced powers in the principal's best interest.[6] The Court stated that whether the gift-giving power in a

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statutory short form power of attorney is limited to the authority spelled out in the lettered subdivision, or augmented by additional language, the best interest requirement remains. The agent was only authorized to make gifts to himself insofar as these gifts were in the decedent's best interest ... as gifts to carry out the principal's financial, estate or tax plans. Here, Dominick Ferarra clearly did not make gifts to himself for such purposes. Rather, he consistently testified that he made the self-gifts "[i]n furtherance of the [decedent's] wishes" to give him "all of his assets to do with as [Dominick] pleased." The term "best interest" does not include such unqualified generosity to the holder of a power of attorney, especially where the gift virtually impoverishes a donor whose estate plan, shown by a recent will, contradicts any desire to benefit the recipient of the gift.[7] Despite the issues resolved in *Ferrara*, problems still persisted.

Then, in 2009, the New York State legislature amended the New York General Obligations Law concerning statutory powers of attorney. The law made significant changes in the manner and procedures that must be followed in the preparation of the power of attorney document. The legislature revised the New York State General Obligations law to permit extensive estate planning to be structured through an agency relationship. A seasoned practitioner can accomplish this by the creative use of the new power of attorney document.

At the outset, it is important to note that the new power of attorney does not apply to all situations where a person seeks to appoint an agent. This new type of power of attorney does not apply to: (1) a power of attorney given primarily for a business or commercial purpose, including without limitation: (a) a power to the extent it is coupled with an interest in the subject of the power; (b) a power given to or for the benefit of a creditor in connection with a loan or other credit transaction; (c) a power given to facilitate transfer or disposition of one or more specific stocks, bonds or other assets, whether real, personal, tangible or intangible; (2) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; (3) a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose; (4) a power authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government or governmental subdivision, agency or instrumentality or other third party; (5) a power authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power; (6) a power given by an individual who is or is seeking to become a director, officer, shareholder, employee, partner, limited partner, member, unit owner or manager of a corporation, partnership, limited liability company, condominium or other legal or commercial entity in his or her capacity as such; (7) a power contained in a partnership agreement, limited liability company operating agreement, declaration of trust, declaration of condominium, condominium bylaws, condominium offering plan or other agreement or instrument governing the internal affairs of an entity authorizing a director, officer, shareholder, employee, partner, limited partner, member, unit owner, manager or other person to take lawful action relating to such entity; (8) a power given to a condominium managing agent to take action in connection with the use, management and operation of a condominium unit; (9) a power given to a licensed real estate broker to take action in connection with a listing of real property, mortgage loan, lease or management agreement; (10) a power authorizing acceptance of service of process on behalf of the principal; and (11) a power created pursuant to authorization provided by a federal or state statute, other than this title, that specifically contemplates creation of the power, including without limitation a power to make health care decisions or decisions involving the disposition of remains.[8] An attorney can use a statutory short form power of attorney or a non-statutory power of attorney in connection with any of the transactions described above.[9]

I. Durable vs. Non-Durable Power of Attorney

A principal can make an appointment of an agent while having the requisite mental capacity through a durable power of attorney and the agent can continue to act after the possible mental incapacity of the principal.[10] This approach is based on the assumption that most principals prefer that their powers of attorney remain in effect during any period of incapacity, thus avoiding the need for guardianship. The durable power has long been the preferred form for most purposes, while the nondurable form is often chosen for real property transactions.[11] At one time a specially labeled document had to be used containing a heading, "Durable Power of Attorney." Pursuant to recent amendments "a power of attorney is presumed to be durable unless the instrument expressly provides that it is terminated by the incapacity of the principal.[12] However, to convert the "power of attorney" form to a nondurable power of attorney (a power of attorney which will no longer be effective if the principal becomes incapacitated), the principal should include a statement to that effect in the section of the form labeled "modifications."[13]

II. Springing Powers

Once there is an execution of the "power of attorney" by a principal with capacity, duly acknowledged in the presence of a notary,[14] the actual effective date of the power of attorney is the date of acknowledgement of the agent's signature.[15] If there is more than one agent designated then the power of attorney becomes effective on the date the last designated agent's signature is notarized.[16]There are instances when the principal seeks to delay the effective date of the power of attorney. A

power of attorney can "spring into effect" at a later point in time.[17] To convert the form to a power of attorney effective at a future time, also called a "springing" durable power of attorney, in the section labeled "modifications," the principal should include a statement describing the contingency that will trigger the document's effectiveness, or provide the date on which the document will become effective.[18] If the power of attorney states that it takes effect upon the occurrence of a date or a contingency specified in the document, then the power of attorney takes effect only when the date or contingency identified in the document has occurred, and the signature of the agent acting on behalf of the principal has been acknowledged.[19] If the trigger is anything but a date, the principal should also specify who is to certify that the contingency has taken place.[20] If the document requires that a person or persons named or otherwise identified therein declare, in writing, that the identified contingency has occurred, such a declaration satisfies the requirement of this paragraph without regard to whether the specified contingency has occurred.[21] If a person opts to wait without having a power of attorney, an expensive guardianship proceeding may be necessary to make financial decisions if incapacity follows.[22]

III. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Practitioners should be aware that the Privacy Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[23]will be triggered if the principal wishes to create either a nondurable power or a springing power in which the contingency for effectiveness is the principal's incapacity.[24] The Privacy Rule protects individuals' medical information from disclosure to third parties without a valid HIPAA-compliant authorization.[25]

The new legislation permits an agent acting pursuant to a power of attorney to "examine, question, and pay medical bills in the event the principal intends to grant the agent power with respect to records, reports and statements, without fear that the HIPAA Privacy Rule [will] prevent the agent's access to the records."[26] However the amendment also clearly states that the agent's authority does not include the power to make medical or health care decisions for the principal.[27] This decision-making authority remains with the principal's health care proxy designated pursuant to New York Public Health Law section 2981.[28]

IV. Format of the Power of Attorney

The format of the power of attorney is controlled by statute.[29] Among other requirements, it must be printed or typed and be signed by both the principal and agent.[30] The document must be signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property[31] and it must be signed and dated by any agent acting on behalf of the principal with the signature of the agent duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property.[32] Interestingly, the power of attorney does not have to be created or executed in the State of New York to be enforceable within New York State.[33] The power of attorney executed in another state in compliance with the law of that state or the law of New York State is valid in this state, regardless of whether the principal is a domiciliary of this state.[34]

V. Agent's Power to Make Gifts

The key provision in the 2009 power of attorney is the ability to make gifts. There are two applicable statutes: N.Y. Gen. Oblig. Law § 5-1502(I)(McKinney 2018) and N.Y. Gen Oblig. Law § 5-1514 (McKinney 2018).

N.Y. Gen. Oblig. Law §5-1502(I) (McKinney 2018)

The statute authorizes an agent to make gifts that the principal customarily made to individuals and charitable organizations prior to the creation of the agency, provided that in any one calendar year all such gifts shall not exceed five hundred dollars in the aggregate.[35]

N.Y. Gen Oblig. Law § 5-1514 (McKinney 2018)

The major gifts rider section of the law reflects the evolution of the power of attorney into an instrument to accomplish complex financial and estate planning. In order to emphasize the significance of this usage, the 2009 law consolidates all of the permissible gifting and transfer powers that were scattered throughout the pre-2009 construction sections into section 5-1514. The various default self-gifting provisions that appeared in several construction sections are converted into affirmative choices. Section 5-1514 provides for an optional Major Gifts Rider to the statutory short form power of attorney by which the principal may authorize the agent to make major gifts and analogous transfers such as creating joint accounts and changing beneficiary designations. The principal must sign the Major Gifts Rider before two witnesses or acknowledge her signature before two witnesses, like the requirement for wills.[36] This execution requirement reflects the fact that by exercising the authority granted in the instrument, the agent can alter the principal's probate and non-probate assets. If the agent is granted such authority, the agent must exercise that authority in the best interest of the principal unless the principal has provided specific instructions about the exercise of the authority.[37] It is germane to note that if a principal grants gift giving authority to the agent, the specific power must be provided in the Statutory Major Gifts Rider only. It is not permissible to place such power in the the statutory short form power of attorney.

Specifically, the statute provides that the Statutory Gift Rider is a document by which the principal may supplement a statutory short form power of attorney to

authorize certain gift transactions[38] other than those permitted by subdivision fourteen of section 5-1502I.[39]

The power of attorney must meet the requirements of subdivision nine of section 5-1514 of the General Obligations Law,[40] and contain the exact wording of the form set forth in subdivision ten of section 5-1514.

A mistake in wording, such as in spelling, punctuation or formatting, or the use of bold or italic type, shall not prevent a statutory gifts rider from being deemed a statutory gifts rider, but the wording of the form set forth in subdivision ten of section 5-1514 governs.[41]

The use of the form set forth in subdivision 10 of section 5-1514 is lawful and when used, it shall be construed as a statutory gifts rider. A statutory gifts rider may contain modifications or additions as provided in section 5-1503 as such modifications or additions relate to *all* gift transactions. The statutory gifts rider must be executed in the manner provided in section 5-1514, simultaneously with the statutory short form power of attorney in which the authority (*SGR*) is initialed by the principal. A statutory gifts rider and the statutory short form power of attorney with its supplements must be read together as a single instrument.

Format

The statute authorizes the agent to make other types of gifts that were not allowed beyond those customarily made by the principal or those that exceeded the $500 threshold limit.[42] The principal must expressly grant such authority either in a statutory gifts rider[43]to a statutory short form power of attorney or in a non-statutory power of attorney executed pursuant to certain requirements.[44] To be valid, a statutory gifts rider to a statutory short form power of attorney must (a) be typed or printed using letters which are legible or of clear type no less than 12 point in size, or, if in writing, a reasonable equivalent thereof;[45] (b) be signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and witnessed by two persons who are not named in the instrument as permissible recipients of gifts, in the manner described in subparagraph two of paragraph (a) of section 3-2.1 of the Estates, Powers and Trusts law;[46] (c) be accompanied by a statutory short form power of attorney in which the authority (Statutory Gift Rider) is initialed by the principal;[47] (d) be executed simultaneously with the statutory short form power of attorney.[48]

Statutorily Permissible Gifts

The statute permits the principal to authorize the agent to make gifts to two different classes of persons.

Gifts to Family

The statute permits the principal to authorize the agent to make gifts to the principal's spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code.[49] For gifts to the principal's children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if the principal's spouse agrees to split gift treatment pursuant to the Internal Revenue Code.[50]

"The new legislation permits an agent acting pursuant to a power of attorney to examine, question, and pay medical bills in the event the principal intends to grant the agent power with respect to records, reports and statements, without fear that the HIPAA Privacy Rule [will] prevent the agent's access to the records."

General Gifts

The principal can authorize an agent to make gifts in unlimited amounts.

The principal may also authorize the agent to (a) make gifts up to a specified dollar amount, or unlimited in amount; (b) make gifts to any person or persons; (c) make gifts in any of the following ways: (1) opening, modifying or terminating a deposit account in the name of the principal and other joint tenants; (2) opening, modifying or terminating any other joint account in the name of the principal and other joint tenants; (3) opening, modifying or terminating a bank account in trust form as described in section 7-5.1 of the estates, powers and trusts law, and designate or change the beneficiary or beneficiaries of such account; (4) opening, modifying or terminating a transfer on death account as described in part four of article 13 of the Estates, Powers and Trusts Law, and designate or change the beneficiary or beneficiaries of such account; (5) changing the beneficiary or beneficiaries of any contract of insurance on the life of the principal or annuity contract for the benefit of the principal; (6) procuring new, different or additional contracts of insurance on the life of the principal or annuity contracts for the benefit of the principal and designate the benefi-

ciary or beneficiaries of any such contract; (7) designating or changing the beneficiary or beneficiaries of any type of retirement benefit or plan; (8) creating, amending, revoking or terminating an inter vivos trust; and (9) opening, modifying or terminating other property interests or rights of survivorship, and designate or change the beneficiary or beneficiaries therein.[51]

A gift to an individual authorized by this subdivision may be made outright, by exercise or release of a presently exercisable general or special power of appointment held by the principal, to a trust established or created for such individual, to a Uniform Transfers to Minors Act account for such individual (regardless of who is the custodian), or to a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code for the benefit of such individual (without regard to who is the account owner or responsible individual for such account).[52]

Gifts to the agent must be authorized in the Statutory Gifts Rider.

I. Standard of Care

In *Morrow v. Phelps*,[53] Johnnie Mae Phelps (hereinafter referred to as "the decedent") was a member of the Teacher Retirement System in New York City prior to her death, and owned a pension annuity valued at $46,434.48. Additionally, US Life Insurance insured the decedent for $100,000. The decedent died on January 15, 2012. In March, 2001, the decedent designated Tanya Phelps ("Phelps") and Dorothy Gordon ("Gordon") as her beneficiaries of the US Life Insurance policy and in June 2001, designated Gordon as the primary beneficiary on her pension account with TRS. In November, 2011, decedent had her Last Will and Testament prepared where she appointed Nancy P. Barbie as her Executrix and Gordon as alternate Executrix ("November Will").

On December 30, 2011, decedent hired her husband, T.J. Morrow, to draw a power of attorney ("Power of Attorney") and on January 9, 2012, T.J. Morrow drew decedent's Last Will and Testament ("January Will"). The January Will contained Riders, including plaintiff's power to select beneficiaries for decedent's life insurance and pension accounts, for which plaintiff's daughter was named as primary beneficiary. Further, the December Will included a No Contest Clause.

Gordon and Phelps contested the second will and plaintiff (Jacqueline Morrow) brought suit based on the "no contest" clause to recover 100 percent of the proceeds from the US Life Insurance policy and the TRS account. In support of her motion, plaintiff argued she had general authority to act as an alter ego of the principal (decedent) based on the Power of Attorney drawn by decedent. Further, decedent granted non-statutory powers to plaintiff through the January Will and the attached riders to change the beneficiary forms, where the January Will states, "My attorney in fact shall arrange my beneficiary documents accordingly. Rider B: Asset 1."

Allegedly decedent asked plaintiff to change her beneficiaries on January 11, 2012. Plaintiff argued she had the authority to do so and changed the beneficiaries on the US Life Insurance and TRS accounts on January 13, 2012, which plaintiff's attorney mailed on January 16, 2012. The change in beneficiaries was made in accordance with decedents intent (as defined in the Rider to the January Will). Plaintiff argued that even though the changes in beneficiary forms were not mailed until after decedent passed away, plaintiff did all that was humanly possible to adhere to decedent's wishes to change her beneficiaries and mailed them as soon as possible. As such, after defendants contested the will, plaintiff argued that she was entitled to 100 percent of the proceeds of the Life Insurance policy and the TRS pension, where defendants violated decedent's No Contest Clause.

In March, 2013, the court in denying the motion for summary judgment, held that *there were further issues of fact regarding whether plaintiff had a valid power of attorney to designate a change in beneficiaries, where the section on gift giving authority is blank and not signed/initialed by decedent* (emphasis supplied). The court also held that [t]he Designation of Beneficiary Form stated on Page 3, Instruction #5, "TRS must have your completed 'Designation of TDA Beneficiary Form' on file before your death." Decedent passed away on January 15, 2012 and plaintiff conceded the form was not mailed until January 16, 2012, one day after decedent's death. According to General Obligations Law 5-1514, "if the principal intends to authorize the agent to make gifts other than gifts authorized by subdivision fourteen of section 5-1502 of this title, the principal must expressly grant such authority either in a statutory gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney" (N.Y. Gen. Oblig. Law § 5-1514 (McKinney). *An agent may not: (a) exercise any authority described in subdivision two or three of this section unless such authority is expressly granted in a statutory gifts rider to a statutory short form power of attorney or in a non-statutory power of attorney executed pursuant to the requirements of paragraph (b) of subdivision nine of this section."*

As such, there are issues of fact as to whether plaintiff had the authority to change beneficiaries and if she did, whether the change of beneficiaries was properly filed with TRS. Further, there are issues of fact regarding the proper beneficiaries of the US Life Insurance account as well for the same above-stated reasons[54] (emphasis supplied).

In addition, defendants Phelps and Gordon made a motion to disqualify T.J. Morrow, on the basis that he was a necessary and material witness regarding significant issues of fact and would likely be called at trial to testify to those issues. The court mentioned that the action involved plaintiff and plaintiff's counsel, and issues

concerning their involvement in having the decedent draw up a new Power of Attorney and Last Will and Testament just before decedent's death naming plaintiff and plaintiff's daughter as beneficiaries. Many of Gordon's and Phelp's counterclaims asserted claims against both plaintiff and plaintiff's attorney. They were in a dire financial situation, having problems with their mortgage until they eventually defaulted in 2008, upon which a foreclosure action is pending. Defendants argued these financial strains have created a fraudulent-looking cloud on their alleged relations with the decedent. Further, the genuineness of the documents, all of which were prepared by plaintiff's attorney, were at issue in the case. According to the court, the documents at issue included: the retainer agreement; the "new" power of attorney executed on December 30, 2011; the change of beneficiary forms for US Life Insurance and TRS, both allegedly executed on January 13, 2012; and the "new" will with riders allegedly executed on January 9, 2012. Each document requires testimony of plaintiff's attorney and after proper depositions and discovery. Based on such factual issues, the court denied the motion.

In *In re Conklin*,[55] on August 30, 2010 Julius Gargani died testate. He was survived by two children, Norman Gargani and Regina Demitrack. The decedent's Last Will and Testament dated December 9, 2003 was admitted to probate on February 10, 2011 and letters testamentary issued to Joan Conklin. Ms. Conklin was a cousin and "significant other" of the decedent. This case involved an accounting proceeding of the executor, Joan Conklin, who was also an attorney in fact. Her daughter, Lori Conklin, was co-agent under one power of attorney and a successor agent for the decedent under a second power of attorney. The decedent's will provided, in pertinent part, for all of his personal savings accounts, including his checking account as well as his personal belongings, to go to Joan Conklin. Article Fourth provided for the bequest of "all of the sales proceeds from the sale of my ownership interest in the cooperative apartment ... which is to be sold by the Executrix of my estate as soon as practicable upon my demise, and to be divided equally ... amongst my son, Norman Gargani, my daughter, Regina Demitrack and my ex-spouse Regina Gargani." The residue of the estate was bequeathed to Joan Conklin.

The first witness to testify was the attorney who drafted the power of attorney. The attorney testified that he was contacted by Lori Conklin, who said she needed a power of attorney for the decedent as well as Medicaid planning. The attorney scheduled a meeting with Lori Conklin and her mother, Joan Conklin. Lori Conklin subsequently testified that at almost every meeting with the attorney, present were her mother, her brother and her brother's wife. *The decedent was not present at any of these meetings* (emphasis supplied). The purpose of the meeting, according to the attorney, was to arrange for the drafting and execution of a new power of attorney and to provide Medicaid planning. The attorney testified that he sent a letter to Lori Conklin in which he outlined his plan for Mr. Gargani. The lawyer recommended that the decedent's cooperative apartment be sold and the net proceeds deposited into an account in the name of Julius Gargani. The lawyer advised Ms. Conklin in the letter that the account could be a joint account with Joan Conklin or Lori Conklin. With regard to the decedent's bank accounts, the attorney advised that the various accounts be consolidated and that "for the time being, when the new account is opened the designated beneficiary, 'in trust for person,' can remain the same." Further discussions regarding transfers for future Medicaid planning, according to the attorney, would be addressed at a later date. The attorney further testified that he reviewed an existing power of attorney and recommended that the decedent execute a new power of attorney as the other power of attorney did not contain a major gifts rider. The attorney testified that subsequent to the meeting, he believed that he had a telephone call with the decedent wherein they discussed the drafting of the power of attorney.

The attorney testified that he met the decedent for the first time on March 24, 2010 at a nursing home or a rehabilitation facility in which the decedent was residing. Also present at the meeting were the attorney's father, Lori Conklin, Joan Conklin and Ann Marie Conklin. The purpose of the meeting was to execute the second power of attorney. The attorney testified that he had a discussion with the decedent about liquidating the cooperative apartment and consolidating the accounts. The attorney thought that the entire meeting took approximately 30 minutes.

After the execution of the second power of attorney, the attorney testified that he had one additional conversation with the decedent on the date of the closing of the cooperative apartment, when the decedent was contacted to ensure that he was alive. The net proceeds from the sale of the cooperative apartment in the approximate amount of $125,500 were deposited into an account in the decedent's name. With regard to Medicaid planning, the attorney testified that he had further discussions with Joan Conklin and Lori Conklin regarding Medicaid planning. When asked whether the attorney advised the decedent about the proceeds from the sale of the cooperative apartment going to Joan Conklin, the attorney replied that he and the decedent talked about Medicaid planning, not about his testamentary plan. He stated that his firm was not retained to do estate planning and as such he never discussed with the decedent where his money should go. The attorney repeatedly stated that he was the attorney for the decedent despite the fact that his initial contact was with Lori Conklin, his subsequent meetings were with various members of the Conklin family and his only contact with the decedent was a 30-minute meeting and two phone calls.

The attorney testified that he told both Joan Conklin and Lori Conklin that they could charge a fee for acting as agents for the administration of Mr. Gargani's financial affairs. He did not recall if he told them what the amount of the fee should be. Lori Conklin testified that the decedent was her mother's cousin and her mother's "significant other" and that they had lived together for approximately 13 years. Ms. Conklin testified that she strongly disliked the decedent and resented the way he treated her mother. Ms. Conklin testified that at some point in January, 2010, the decedent was hospitalized. In February of 2010, a power of attorney was executed and according to Ms. Conklin, she and her mother were appointed agents by the decedent. Each was given the authority to act separately. Ms. Conklin testified that she arranged for the meetings with the attorney and that the decedent never discussed finances with her. With regard to the decedent's bank accounts, she testified that she found the bank books in the decedent's apartment, took possession of the bank books, closed some of the accounts and deposited the proceeds into an account in the decedent's name.

The issues at the hearing were whether the agent[s] appointed by the decedent in these powers of attorney acted appropriately when they closed out multiple Totten trust accounts; sold the decedent's specifically bequeathed cooperative apartment; paid $20,000 allegedly for the renovation of one of the agent's bathrooms; and paid themselves compensation as agents. As a result of the actions of the agents, the decedent's entire estate went to the accounting party, Joan Conklin, who was also an agent under both powers of attorney. Joan Conklin was not available to testify at the hearing as she is a resident of a nursing home.

The evidence and testimony adduced at the trial showed the following: on March 15, 2010, acting under the first power of attorney, Lori Conklin closed an account held in the decedent's name in trust for the decedent's daughter, Regina Demitrack, in the total amount of $10,001.04. On March 26, March 27, and April 23, 2010, acting under the second power of attorney, Lori Conklin closed bank accounts in the decedent's name in trust for Regina Gargani, Norman Gargani, Regina Demitrack and Joan Stucko. The combined total of the Totten trust accounts that were closed was $165,302.76.[56] The funds were deposited into an account in the decedent's name. With regard to the decedent's accounts that were in trust for her mother, Ms. Conklin testified that she left those alone. She also testified that she did not close some small Totten trust accounts for the Gargani family that amounted to approximately $40,000. Her mother's Totten trust accounts amounted to approximately $60,000. Ms. Conklin testified, incredibly, that the reason she did not liquidate the accounts in trust for her mother was because she wanted to start with the larger accounts and save the "little ones" for later.

With regard to the decedent's cooperative apartment, the apartment was sold on August 12, 2010. Ms. Conklin testified that the net proceeds in the approximate amount of $125,000 were deposited into an account in the decedent's name. Mr. Gargani died on August 30, 2010. Ms. Conklin testified that on September 8, 2010, nine days after the decedent died, she used the power of attorney to close out the decedent's account; she then used "90,000 to 99,000" to pay off her mother's home equity loan and the remaining $100,000 was "disbursed for Medicaid planning." The account statements offered into evidence at the hearing show that $100,000 was deposited into an account with Lori Conklin and Joan Conklin. She testified that she had never "read" the decedent's will, but that she had "heard" about it, which is why she knew that all the decedent's money could go to her mother. Lori Conklin further testified that her mother's home was transferred to her brother and her mother's other assets were transferred for Medicaid planning. She claimed, incredibly, to have no knowledge about where the $100,000 in the joint account she held with her mother (funded by the decedent's assets) had gone.

The court held with regard to the appointment of Lori Conklin as an agent for the decedent, the instrument failed on its face. As set forth in the General Obligations Law § 5–1501B, to be valid, a statutory short form power of attorney must be signed and dated by any agent with the signature of the agent duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property (General Obligations Law § 5–1501B [1][c]). The power of attorney in question has Lori Conklin's name handwritten into the document next to her mother's name. Joan Conklin's signature is properly acknowledged but the document is silent with regard to Lori Conklin. As such, the power of attorney was not valid with regard to her and she had no authority to close the account. Further, even if the power of attorney had been properly executed and acknowledged, as set forth more fully below, the power of attorney did not have the appropriate language to allow her to close the Totten trust account[57](emphasis supplied).

In 2007, Helen Van Alst (hereinafter "decedent") opened an individual account and an individual retirement account (hereinafter IRA) at defendant Morgan Stanley Smith Barney, LLC (hereinafter MSSB). Decedent named no joint owners of the individual account and named her estate as the sole beneficiary of the IRA. Defendant Stephen J. Mazzei Jr. was later assigned as the financial advisor for these accounts. In January 2011, plaintiff (Jacobs), who was decedent's longtime friend and neighbor, took decedent—then 88 years old and suffering from lung cancer—to the hospital. Five days later, while still hospitalized, decedent executed a durable power of attorney—prepared by an attorney—that designated plaintiff as decedent's agent. Decedent initialed line (P) in the section headed "Grant of Authority," thus authorizing plaintiff to exercise all of the powers enumerated in that section, but neither initialed the section authorizing

plaintiff to make gifts pursuant to a statutory gifts rider, nor executed such a document (*see* General Obligations Law § 5–1513 [1] [Power of Attorney New York Statutory Short Form(f)(2); (h)]).[58]

Shortly thereafter, plaintiff presented the power of attorney to defendants and asked to be added to decedent's individual account as a joint owner and to be listed as the sole beneficiary of the IRA. Based upon decedent's failure to initial the statutory gifts rider section of the power of attorney, defendants declined to make the requested changes, and Mazzei allegedly advised plaintiff that personal confirmation from decedent was required.[59] Plaintiff later presented defendants with handwritten notes, allegedly signed by decedent, asking to have plaintiff added to the individual account as a joint owner. However, no changes were made, and decedent passed away several days later. The notes did not mention the IRA.[60]

Plaintiff commenced an action alleging negligence and breach of contract arising out of defendants' failure to make the requested account changes. Defendants answered, asserting lack of standing and other affirmative defenses. Morgan Stanley brought a counterclaim against plaintiff, as well as a third-party complaint for interpleader against, among others, decedent's sister. Shortly thereafter, defendants moved for summary judgment dismissing the complaint. Plaintiff opposed the motion and cross-moved for denial or a continuance on the ground that further discovery was required. Supreme Court granted defendants' motion, denied plaintiff's cross motion and dismissed the complaint. Plaintiff appealed. The Appellate Division held that defendants did not owe a duty to plaintiff to make the requested changes in decedent's accounts.

The supreme court held that whether a defendant owes a duty of care to a plaintiff is a threshold inquiry in a negligence action, as there can be no liability in the absence of such a duty (*see Lauer v. City of New York*, 95 N.Y.2d 95, 100, 711 N.Y.S.2d 112, 733 N.E.2d 184 [2000]; *Baker v. Buckpitt*, 99 A.D.3d 1097, 1098, 952 N.Y.S.2d 666 [2012]). The Appellate Division agreed with the supreme court that defendants did not owe a duty to plaintiff to make the requested changes in decedent's accounts stating: A principal who wishes to authorize an agent to make gifts other than those authorized by General Obligations Law § 5–1502I(14), including gifts by the agent to himself or herself, "must expressly grant such authority ... in a statutory gifts rider." (General Obligations Law § 5– 1514 [1]; *see* General Obligations Law § 5–1501B [2][a]; *In re Curtis*, 83 A.D.3d 1182, 1183, 923 N.Y.S.2d 734 [2011]; *see also Marszal v. Anderson*, 9 A.D.3d 711, 712–713, 780 N.Y.S.2d 432 [2004]).[61] Further, in the absence of a statutory gift rider, an agent may not "add, delete or otherwise change the designation of beneficiaries in effect for any ... retirement benefit or plan" (General Obligations Law § 5–1502L [2]).[62] It is undisputed that decedent did not execute a statutory gifts rider or initial the pertinent section of the power of attorney.[63] Thus, plaintiff was without authority to make the requested changes in decedent's accounts (*see* General Obligations Law § 5– 1514[4][b]; *see also In re Marriott*, 86 A.D.3d 943, 945, 927 N.Y.S.2d 269 [2011], *lv. denied*, 17 N.Y.3d 717, 2011 WL 5829297 [2011]) and, as the power of attorney was not executed in accordance with the statutes applicable to plaintiff's requests, defendants owed her no duty to honor it (*see* General Obligations Law §5–1504[1]).[64]

Finally, plaintiff contended that she was acting as a liaison between defendants and decedent, rather than pursuant to the power of attorney. In this respect, she asserted that decedent's handwritten notes and the forms that decedent allegedly signed to add plaintiff as joint owner of the individual account and beneficiary of the IRA created issues of fact as to whether decedent intended to make the contested changes in her account, and whether defendants breached a duty to act according to her intent.[65] However, the court held that even assuming that plaintiff could act for decedent independently of the power of attorney in this fashion, any resulting duty of defendants would necessarily be owed to decedent, not to plaintiff. Moreover, plaintiff's authority to raise any related legal claims on decedent's behalf under the power of attorney terminated when decedent passed away (*see* General Obligations Law § 5–1502H [1]; 1511[1][a]), and in the absence of such authority, she lacks standing to raise decedent's legal rights (*see Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 772–773, 570 N.Y.S.2d 778, 573 N.E.2d 1034 [1991]). Thus, "plaintiff has wholly failed to demonstrate that defendant[s] breached any legally cognizable duty owed to her," and her negligence claims were properly dismissed (*Poole v. Susquehanna Motel Corp.*, 280 A.D.2d 764, 765, 720 N.Y.S.2d 592 [2001]).

These are just some examples of how the courts in New York are refusing to give credence to power of attorney if it was not executed in strict accordance with the statutory guidelines. It appears that the courts are taking special interest to determine whether or not the parties have strictly complied with the statutory guidelines on the statutory gifts rider.

Summary

This article is a clear demonstration of the use of the statutory power of attorney if drafted and executed properly. This article further demonstrates the benefits it has in both financial and Medicaid planning. Finally, the cases reviewed show the strict scrutiny New York courts are applying in enforcement proceedings.

Endnotes

1. *In re DeBelardino*, 352 N.Y.S.2d 858 (Surrogate Court, Monroe County 1974) (The decedent appointed the administrator as her attorney in fact. The administrator borrowed from a bank and the decedent signed as guarantor of the loans and pledged certain of her securities as collateral. The administrator also made a gift of more than half of decedent's estate to himself by executing a deed of gift. Seven days later, the decedent died intestate. Subsequently, a trial was held regarding the validity of the gift. The administrator defaulted in the payment of the loans and the bank executed against the securities. The court held that the gift was invalid and that the securities, which were the subject of the gift, were assets of the estate); *In re Colbert*, 101 N.Y.S.2d 666 (Surrogate Court, Westchester County 1950)(The court concluded money withdrawn from the decedent's bank satisfying the daughter and her husband's mortgages was an absolute gift, and the premature reimbursement of money to that daughter did not result in any damage to the estate. The court held funds transferred from the bank account by the daughter in Massachusetts who had a power of attorney into an account in her name only was not a valid inter vivos gift. The court found that under the power of attorney the daughter was permitted to withdraw such sums the decedent required, that the sums withdrawn were in excess of the decedent's needs, and that the transmittal of some of the funds occurred after the decedent's death, which was an unequivocal revocation of the daughter's agency); *In re Robertson*, 191 Misc. 956, 81 N.Y.S.2d 286 (Surrogate Court, Richmond County 1948) (The will of the decedent set up two trusts, one for her son, and one for her daughter, the executrix, with the provision that in the event of the death of either child without issue then the income of the trust fund of the deceased child was to be paid to the surviving child with remainder to the issue of the surviving child. It appeared from the petition that the son had three children while the executrix had none. The executrix failed to include in her account any of the stocks of the decedent, claiming that they were not assets of the estate. She relied on a power of attorney executed by the decedent and a transfer of stock or bill of sale to herself and her brother. The court held that the power of attorney did not give the executrix the right to make a gift of the stocks).
2. *Mantella v. Mantella*, 268 A.D.2d 852, 701 N.Y.S.2d 715 (3d Dep't 2000).
3. *Id.*
4. *Leonard Nursing Home, Inc. v. Kay*, 2003 WL 1571579, (Supreme Court. Saratoga County 2003).
5. *Ferrara v. Ferrara*, 7 N.Y 3d 244 (2006).
6. *Ferrara v. Ferrara*, 7 N.Y.3d 244, 247 (2006).
7. *Id.* at 7 N.Y.3d 254.
8. N.Y. Gen. Oblig. Law § 5-1501C (McKinney 2018).
9. *Id.*
10. N.Y. Gen. Oblig. Law § 5-1501A (McKinney 2018). The power of attorney is not affected by incapacity

    1. A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal.

    2. The subsequent incapacity of a principal shall not revoke or terminate the authority of an agent who acts under a durable power of attorney. All acts done during any period of the principal's incapacity by an agent pursuant to a durable power of attorney shall have the same effect and inure to the benefit of and bind a principal and his or her distributees, devisees, legatees and personal representatives as if such principal had capacity. If a guardian is thereafter appointed for such principal, such agent, during the continuance of the appointment, shall account to the guardian rather than to such principal.
11. See Rose Mary Bailly and Barbara S. Hancock, commentary to N.Y. Gen. Oblig. Law § 5-1501A (McKinney 2018) at 2.
12. N.Y. Gen. Oblig. Law § 5-1501A (McKinney 2018).
13. *Id.*
14. N.Y. Gen. Oblig. Law § 5-1501B(1)(b) (McKinney 2018).
15. N.Y. Gen. Oblig. Law § 5-1501B(3)(a) (McKinney 2018).
16. *Id.*
17. N.Y. Gen. Oblig. Law § 5-1501B(3)(b) (McKinney 2018).
18. *Id.*
19. *Id.*
20. *See* Rose Mary Bailly and Barbara S. Hancock, commentary to N.Y. Gen. Oblig. Law § 5-1501A (McKinney 2018) at 2.
21. N.Y. Gen. Oblig. Law § 5-1501B(3)(b)(McKinney 2018).
22. *See* New York Mental Hygiene Law Article 81.
23. The Health Insurance Portability and Accountability Act of 1996 makes it easier for people to protect the confidentiality and security of their health care information.
24. *See* Bailly and Hancock, *supra* note 20, at 2.
25. *See* 45 C.F.R. § 164.508(a)(1); Bailly and Hancock, *supra* note 20, at 2.
26. *See* N.Y. State Law Revision Comm'n, Memorandum in Support 1 (2007), available at www.lawrevision.state.ny.us/reports/07-memo-in-support.pdf; *see also* Rose Mary Bailly & Barbara S. Hancock, *Changes for Powers of Attorney in New York*, NYSBA Trusts and Estates Law Section Newsletter, Spring 2009, at 8.
27. Bailly and Hancock, *supra* note 20, at 8. *See also* N.Y. Gen. Oblig. Law § 5-1502K.
28. N.Y. Pub. Health Law § 2981 (McKinney 2018).
29. N.Y. Gen. Oblig. Law § 5-1501B (McKinney 2018).
30. N.Y. Gen. Oblig. Law § 5-1501B(1)(a) (McKinney 2018).
31. N.Y. Gen. Oblig. Law § 5-1501B(1)(b) (McKinney 2018).
32. N.Y. Gen. Oblig. Law § 5-1501B(1)(c) (McKinney 2018).
33. N.Y. Gen. Oblig. Law § 5-1512 (McKinney 2018).
34. *Id.*
35. N.Y. Gen. Oblig. Law § 5-1502(I)(14) (McKinney 2018).
36. *See* Estates, Powers and Trusts Law § 3-2.1.
37. *See In re Ferrara*, 7 N.Y.3d 244 (2006). *See also* Bailly and Hancock, *supra* note 20, at 15.
38. N.Y. Gen. Oblig. Law § 5-1501(2)(n) (McKinney 2018).
39. § 5-1502I. Construction—personal and *family maintenance*
    In a statutory short form power of attorney, the language conferring general authority with respect to "personal *and family maintenance*" must be construed to mean that the principal authorizes the agent:

    1. To do all acts necessary for maintaining the customary standard of living of the spouse and children, and other dependents of the principal, including by way of illustration and not by way of restriction, power to provide living quarters by purchase, lease or by other contract, or by payment of the operating costs, including interest, amortization payments, repairs and taxes, of premises owned by the principal and occupied by his family or dependents, to provide normal domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide usual educational facilities, and to provide funds for all the current living costs of such spouse, children and other dependents, including, among other things, shelter, clothing, food and incidentals;

    2. To provide, whenever necessary, medical, dental and surgical care, hospitalization and custodial care for the spouse, children and other dependents of the principal;

3. To continue whatever provision has been made by the principal, prior to the creation of the agency or thereafter, for his spouse, children and other dependents, with respect to automobiles, or other means of transportation, including by way of illustration but not by way of restriction, power to license, to insure and to replace any automobiles owned by the principal and customarily used by the spouse, children or other dependents of the principal;

4. To continue whatever charge accounts have been operated by the principal prior to the creation of the agency or thereafter, for the convenience of his spouse, children or other dependents, to open such new accounts as the agent shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal to make such charges prior to the creation of the agency;

5. To continue the discharge of any services or duties assumed by the principal, prior to the creation of the agency or thereafter, to any parent, relative or friend of the principal;

6. To supervise and to enforce, to defend or to settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal, or under such circumstances that the loss resulting therefrom will, or may fall on the principal;

7. To continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization or to continue contributions thereto;

8. To demand, to receive, to obtain by action, proceeding or otherwise any money or other thing of value to which the principal is or may become or may claim to be entitled as salary, wages, commission or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and to endorse, collect or otherwise realize upon any instrument for the payment so received;

9. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which the principal is or may be liable;

10. To utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from any bank deposit of the principal, to sell any land, chattel, bond, share, commodity interest, chose in action or other asset of the principal, to borrow money and to pledge as security for such loan, any asset, including insurance, which belongs to the principal;

11. To execute, to acknowledge, to verify, to seal, to file and to deliver any application, consent, petition, notice, release, waiver, agreement or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

12. To prosecute, to defend, to submit to *alternative dispute resolution*, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any transaction enumerated in this section or to intervene in any action or proceeding relating thereto;

13. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof;

14. To continue gifts that the principal customarily made to individuals and charitable organizations prior to the creation of the agency, provided that in any one calendar year *all such gifts shall not* exceed five hundred dollars *in the aggregate*; and

15. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, for the welfare of the spouse, children or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, All powers described in this section 5-1502I of the general obligations law shall be exercisable equally whether the acts required for their execution shall relate to real or personal property owned by the principal at the giving of the power of attorney or thereafter acquired and whether such acts shall be performable in the state of New York or elsewhere.

40. N.Y. Gen. Oblig. Law §5-1514(9)(McKinney 2018) provides:

> To be valid, a statutory gifts rider to a statutory short form power of attorney must:
>
> (a) Be typed or printed using letters which are legible or of clear type no less than twelve point in size, or, if in writing, a reasonable equivalent thereof.
>
> (b) Be signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property, and witnessed by two persons who are not named in the instrument as permissible recipients of gifts, in the manner described *in subparagraph* two of *paragraph* (a) of section 3-2.1 of the estates, powers and trusts law. *The person who takes the acknowledgment, under this paragraph, may also serve as one of the witnesses.*
>
> (c) Be accompanied by a statutory short form power of attorney in which the authority *(SGR)* is initialed by the principal.
>
> (d) Be executed simultaneously with the statutory short form power of attorney and in the manner provided in this section.

41. N.Y. Gen. Oblig. Law § 5-1514(9)(McKinney 2018) provides:

> The use of the following shall be construed as the "Statutory Gifts Rider" for a statutory short form power of attorney: GIFTS RIDER FOR CERTAIN GIFT TRANSACTIONS "POWER OF ATTORNEY NEW YORK STATUTORY AUTHORIZATION
>
> CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize your agent to make gifts *in excess of an annual total of $500 for all gifts*

described in (I) of the Grant of Authority section of the statutory short form Power of Attorney (under personal and family maintenance), or certain other gift transactions during your lifetime. *You do not have to execute this rider if you only want your agent to make gifts described in (I) of the Grant of Authority section of the statutory short form Power of Attorney and you initialed "(I)" on that section of that form.* Granting any of the following authority to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death. *"Certain gift transactions"* are described in section 5-1514 of the General Obligations Law. This Gifts Rider does not require your agent to exercise granted authority, but when he or she exercises this authority, he or she must act according to any instructions you provide, or otherwise in your best interest.

This Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument.

Before signing this document authorizing your agent to make gifts, you should seek legal advice to ensure that your intentions are clearly and properly expressed.

(a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS
Granting gifting authority to your agent gives your agent the authority to take actions which could significantly reduce your property.
If you wish to allow your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.
To grant your agent the gifting authority provided below, initial the bracket to the left of the authority.
( ) I grant authority to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code.
This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(b) MODIFICATIONS:
Use this section if you wish to authorize gifts in *amounts smaller than the gift tax exclusion amount, in amounts in* excess of the *gift tax exclusion amount*, gifts to other beneficiaries, or other *gift transactions*. Granting such authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. If you wish to authorize your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.
( ) I grant the following authority to my agent to make gifts pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest:

(c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE GIFTS TO HIMSELF OR HERSELF: (OPTIONAL)

(d) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this *Statutory* Gifts Rider.

(e) SIGNATURE OF PRINCIPAL AND ACKNOWLEDGMENT:
In Witness Whereof I have hereunto signed my name on, 20.
PRINCIPAL signs here:
(acknowledgment)

(f) SIGNATURES OF WITNESSES:
By signing as a witness, I acknowledge that the principal signed the *Statutory* Gifts Rider in my presence and the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this *Statutory* Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily.
I am not named herein as a permissible recipient of gifts.

(g) This document prepared by:

42. N.Y. Gen. Oblig. Law § 5-1514(1) (McKinney 2018) [permits gifts other than gifts authorized by subdivision fourteen of section 51502(I)].
43. Effective September 12, 2010, the term "statutory gifts rider" is substituted for "statutory major gifts rider." *See* Practice Commentary to section 5-1501.
44. N.Y. Gen. Oblig. Law § 5-1514(1) (McKinney 2018).
45. N.Y. Gen. Oblig. Law § 5-1514(9) (a)(McKinney 2018).
46. N.Y. Gen. Oblig. Law § 5-1514(9) (b)(McKinney 2018).
47. N.Y. Gen. Oblig. Law § 5-1514(9) (c)(McKinney 2018).
48. N.Y. Gen. Oblig. Law § 5-1514(9) (d)(McKinney 2018).
49. N.Y. Gen. Oblig. Law § 5-1514 (2) (McKinney 2018).
50. *Id.*
51. N.Y. Gen. Oblig. Law § 5-1514 (3) (McKinney 2018).
52. *Id.*
53. 2013 WL 6857172 (New York Co., Supreme Court 2013).
54. *Morrow v. Phelps*, 2013 WL 6857172 (New York Co., Supreme Court 2013).
55. 2015 WL 1472826 (Surrogate's Court, Nassau Co. 2015).
56. TD Bank Acct. in trust for Regina Demitrack, balance of $10,001.04 closed 3/15/10; Ridgewood Savings Acct. in trust for Regina Gargani, balance of $4,009.34, closed 3/26/10; Ridgewood Savings Acct. in trust for Regina Gargani, balance of $35,178.70, closed 3/26/10; Ridgewood Savings Acct. in trust for Regina Gargani, balance of $11,025.70, closed 3/26/10; Ponce DeLeon Acct. in trust for Norman Gargani, balance of $50,043.81, closed 3/27/10; Ponce DeLeon Acct. in trust for Regina Demitrack, balance of $50,043.65; and Capital One Acct. in trust for Joan Stucko, balance of $5,000.52, closed April 23, 2010.

    The bank account at TD Bank in trust for Regina Demitrack was closed by Lori Conklin, who used a power of attorney dated February 13, 2010.
57. *In re Conklin*, 2015 WL 1472826 (Surrogate's Court, Nassau Co. 2015).
58. *Jacobs v. Mazzei*, 112 A.D.3d 1115, 977 N.Y.S.2d 123 (3d Dep't 2013).
59. *Id.*
60. *Id.*
61. *Jacobs v. Mazzei*, 112 A.D.3d 1115, 1117, 977 N.Y.S.2d 123 (3d Dep't 2013).
62. *Id.*
63. *Id.*
64. *Id.*, 112 A.D.3d at 1117.
65. *Id.*

2019 NYS INCOME AND RESOURCE STANDARDS AND FEDERAL POVERTY LEVELS (FPL)

Reference Documents: GIS 19 MA/01, GIS 19 MA/06, GIS 18 MA/15, MBL Transmittal 19-1, 18-3, 18-2 WLM 2019-00065, WLM 2017-00059-03, and WLM 2018-00381-01.

NYC Department of Social Services
Human Resources Administration
Department of Homeless Services

Medical Insurance and Community Services Administration

MAPDR-01 04/04/2019
(Obsoletes MAPDR-71)

Financial Levels for Medicaid and Related Program Eligibility

1. Non-MAGI Medicaid Levels (SSI and SSI-Related Consumers With or Without A Surplus)

Family Size	1	2	3	4	5	6	7	8	9	10	Each Additional Person
Monthly Income	$859	$1,267	$1,457	$1,647	$1,837	$2,027	$2,217	$2,407	$2,597	$2,787	$190

2. Non-MAGI Resource Levels

Family Size	1	2	3	4	5	6	7	8	9	10	Each Additional Person
Resource Level	$15,450	$22,800	$25,013	$28,275	$31,539	$34,800	$38,064	$41,325	$44,588	$47,850	$3,263

3. Spousal Support and Resource Levels

Income (MMMNA) - $3,160.50 (Inst Spouse) - **$50**	**Resources** – (Minimum) - $74,820 (Maximum) - $126,420 (Inst Spouse) - $15,450	**Family Member Allowance Formula:** Use - $2,114 **$705** is the maximum monthly family member allowance

4. MBI-WPD (Persons 16-64)

Family Size	1	2
Monthly Income 250% FPL	$2,603	$3,523
Resources	$20,000	$30,000

5. Family Planning Benefit Program Income Levels (No Resource Test)

Family Size	1	2	3	4	5	6	Each Additional Person
FPBP 223% FPL (Child Bearing Age)	$2,322	$3,143	$3,964	$4,786	$5,607	$6,428	$822

Note: FPBP eligibility is to be determined using only the applicant's income. The applicant's income is then compared to 223% of the federal poverty level for the appropriate family size. Family size continues to be determined using legal responsibility.

6. Medicare Savings Program (Buy-In)

	Income		
	Family of 1		Family of 2
QMB 100% FPL	Annual	$12,490	$16,910
	Monthly	$1,041	$1,410
SLIMB 120% FPL	Annual	$14,988	$20,292
	Monthly	$1,249	$1,691
QI-1 135% FPL	Annual	$16,862	$22,829
	Monthly	$1,406	$1,903

NO RESOURCE TEST FOR ANY MSP PROGRAM

7. Other Important Figures

Medicare Part A Premium: $240.00 (30-39 Quarters)

$437.00 (Less than 30 Quarters)

Medicare Part B Premium: (Rates based upon 2016 income tax filings)

- The Cost of Living adjustment (COLA) for Social Security will be 2.8% percent for 2019.
- Part B Medicare Premium is **$135.50** for **most** Medicare Part B recipients in receipt of benefits. The standard Medicare Part B **$135.50** monthly premium is for beneficiaries with income **less than** or **equal to $85,000**. Due to the **SSA 2.8% COLA**, some beneficiaries who were held harmless against Part B premium increases in 2018 will pay the full monthly premium of **$135.50** in 2019. This is because the increase in their Social Security benefits will be greater than or equal to the increase in their Part B premium.

Under federal law commonly known as the "hold harmless" provision, Medicare Part B premiums cannot raise more than the COLA in any year for most consumers. However, this provision does not apply to the consumers listed below. Their Part B premium increased is currently **$135.50**.

- Individuals whose income is **above** $85,000 or a married individual when the couple's combined income is **over** $170,000 will pay the higher premium.
- New Medicare Part B beneficiaries will pay the higher premium. Since they did not pay the premium the previous year.
- Individuals who do not have the Part B premium deducted from their Social Security benefit. This includes individuals who are in the Medicare Buy-In program. These individuals will not to be directly affected, as the increase premium will be paid by the State.

Standard Allocation: From non-SSI-related parent to non-SSI- related child $384

PASS-THROUGH FACTORS: .970 and .152

Note: Budgets with a "From" date of January 1, 2019, or later, that utilize a Federal Poverty Level (FPL) must be calculated with the 2018 Social Security benefit amount and Medicare Part B premium amount until the 2019 FPLs are available on MBL.

Family Size	1	2
COBRA (100% FPL)	$1,041	$1,410
AIDS Health Ins. Program (AHIP) (185% FPL)	$1,926	$2,607
QWDI (200% FPL)	$2,082	$2,819
COBRA, QWDI (Resource Level)	$4,000	$6,000
Pickle/DAC/SSI (Resource Level)	$2,000	$3,000

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8. Monthly Regional Nursing Home Rates (Use the rate for the region in which the facility is located)	
NEW YORK CITY (All boroughs) - $12, 419	**LONG ISLAND - $13,407 Nassau, Suffolk**
NORTHEASTERN - $11,280 Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	**NORTHERN METROPOLITAN - $12,636 Duchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester**
WESTERN - $10,556 Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	**ROCHESTER - $12,342 Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates**
CENTRAL - $10,068 Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	

9. Fair Market Regional Rates (Averages) / Special Standards for Housing Expenses	
NEW YORK CITY (All boroughs) (Shelter = 59) - $1300	**LONG ISLAND** (Shelter = 60) - **$1269**
NORTHEASTERN (Shelter = 54) - **$462**	**NORTHERN METROPOLITAN** (Shelter = 58) - **$930**
WESTERN (Shelter = 57) - **$360**	**ROCHESTER** (Shelter = 56) - **$419**
CENTRAL (Shelter = 55) - **$412**	
CONGREGATE CARE LEVEL III - (42+ Regional Rate for County- Shelter = 63) - **$1,825 - $2,765**	

In determining the community resource allowance on and after January 1, 2016, the community spouse is permitted to retain resources in an amount equal to the greater of the following: $74,820 or the amount of the spousal share up to $126,420. The spousal share is the amount equal to one-half of the total value of the countable resources of the couple as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse. The look-back period is anchored in the month the A/R is both institutionalized and applying for MA.

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10. MAGI Levels for Medicaid and Related Program Eligibility											
Family Size	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**Each Add'l Person**
Pregnant Women and Infants Under Age 1 (223% FPL)	$2,322	$3,143	$3,964	$4,786	$5,607	$6,428	$7,250	$8,071	$8,893	$9,714	$822
Infants Under Age 1 223% FPL	$2,322	$3,143	$3,964	$4,786	$5,607	$6,428	$7,250	$8,071	$8,893	$9,714	$822
Children Age 1-5 154% FPL	$1,603	$2,171	$2,738	$3,305	$3,872	$4,440	$5,007	$5,574	$6,141	$6,708	$568
Children Age 6 -19 110% FPL	$1,145	$1,551	$1,956	$2,361	$2,766	$3,171	$3,576	$3,982	$4,387	$4,792	$406
Children Age 6-19 (Expanded - 154% FPL)	$1,603	$2,171	$2,738	$3,305	$3,872	$4,440	$5,007	$5,574	$6,141	$6,708	$568
Parents and Caretaker Relatives 138% FPL	$1,437	$1,945	$2,453	$2,962	$3,470	$3,978	$4,487	$4,995	$5,503	$6,012	$509
19 and 20 Year Olds Living with Parents 138% FPL	$1,437	$1,945	$2,453	$2,962	$3,470	$3,978	$4,487	$4,995	$5,503	$6,012	$509
19 and 20 Year Olds Living with Parents (Expanded - 155% FPL)	$1,614	$2,185	$2,756	$3,327	$3,897	$4,468	$5,039	$5,610	$6,181	$6,752	$571
S/CCs and 19 and 20 Year Olds Living Alone (100% FPL)	$1,041	$1,410	$1,778	$2,146	$2,515	$2,883	$3,251	$3,620	$3,988	$4,356	$369
S/CCs and 19 and 20 Year Olds Living Alone (Expanded 138% FPL)	$1,437	$1,945	$2,453	$2,962	$3,470	$3,978	$4,487	$4,995	$5,503	$6,012	$509

11. Children's Medicaid Income Eligibility Levels									
Family Size	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**Each Additional Person**
Children Under 1 year; Pregnant Women*	$2,322	$3,143	$3,964	$4,786	$5,607	$6,428	$7,250	$8,071	$822
Children 1-18 Years	$1,603	$2,171	$2,738	$3,305	$3,872	$4,440	$5,007	$5,574	$568
Note: *Pregnant women household size calculation includes all expected children.									

12. Child Health Plus Premium Levels – Monthly Income by Family Size (Children Under 19 Not Medicaid Eligible)							
Premium Categories	**1**	**2**	**3**	**4**	**5**	**6**	**Each Add'l Person**
Free Insurance **(under 222% FPL)**	$1,665	$2,254	$2,843	$3,433	$4,022	$4,611	$589
$9 per child per month (Max. $27 per family) **(222% - 249% FPL)**	$2,311	$3,129	$3,947	$4,764	$5,582	$6,400	$818
$15 per child per month (Max $45/family) **(250% - 299% FPL)**	$2,603	$3,523	$4,444	$5,365	$6,286	$7,207	$921
$30 per child per month (Max. $90 per family) **(300% - 349% FPL)**	$3,123	$4,228	$5,333	$6,438	$7,543	$8,648	$1,105
$45 per child per month (Max. $135 per family) **(350% - 399% FPL)**	$3,643	$4,933	$6,222	$7,511	$8,800	$10,089	$1,290
$60 per child per month (Max. $180 per family) **(400% FPL)**	$4,164	$5,637	$7,110	$8,584	$10,057	$11,530	$1,474
Full Premium per child/month if **over 400%** FPL (Premium amount varies from plan to plan)	Over $4,165	Over $5,638	Over $7,111	Over $8,585	Over $10,058	Over $11,531	Over 1,445
Note: *Pregnant women count as two.							

13. Disabled Adult Children (DAC) Levels		
Living Arrangements	**Shelter Types**	**Amount**
1	15	$1,037.48
1	28	$999.48
1	16	$1,206.00
1	29	$1,176.00
1	42	$1,465.00
1 or 5	Other than: 15, 16, 28, 29 or 42	$858.00
2	15	$2,074.96
2	28	$1,998.96
2	16	$2,412.00
2	29	$2,352.00
2	42	$2,930.00
2 or 6	Other than: 15, 16, 28, 29 or 42	$1,261.00
3	All	$999.48
4	All	$1,037.48

14. Congregate Care Level I, II and III Levels		
Shelter Codes	**PNA**	**Shelter Amount**
15 - (NYC, Nassau, Suffolk, Westchester, Rockland Counties) Level I	$148.00	$889.48
16 - (NYC, Nassau, Suffolk, Westchester, Rockland Counties) Level II	$171.00	$1,035.00
28 - (Rest of State) Level I	$148.00	$851.48
29 - (Rest of State) Level II	$171.00	$1005.00
42 - (NYC, Nassau, Suffolk, Westchester, Rockland Counties) Level III	$204.00	$1,261.00
42 - (Rest of State) Level III	$204.00	$1,261.00

15.	SSI Levels			
SSI Consumer	**Amount**			
Allocation Amount (The difference between the regular Medicaid levels for a household of two [$1,209.00] and a household of one [$825.00])	$408.00			
Personal Needs Allowance (Certain waiver participants subject to spousal impoverishment budgeting)	$408.00			
Maximum Social Security Benefit at Full Retirement Age	$2,861			
State Supplement	Individual	$87.00	Couple	$104.00
Federal Benefit Rate	Individual	$771.00	Couple	$1,157.00
SSI Resource Levels	Individual	$2,000.00	Couple	$3,000.00
Family Care Level (LA 3 & 4)	NYC and Nassau, Suffolk, Westchester and Rockland	1037.48	Upstate	999.48
SSI Related Student Earned Income Disregard	Monthly	$1,870.00	Annual Max.	$7,550.00

16.	Substantial Gainful Activity (SGA) Levels	
Category	**Amount**	**Payment Occurrence**
Non-Blind	$1,220.00	Monthly
Blind	$2,040.00	Monthly
Month Trial Work Period	$880.00	Monthly

17.	Home Equity Maximum
Medicaid Coverage Limit (RVI 1 and 2 cases)	$878,000

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

Fast-Track Medicaid Applications

If you have an "IMMEDIATE NEED" for Personal Care or Consumer-Directed Personal Assistance Services – NYC

If you apply for Medicaid in order to enroll in a Managed Long Term Care (MLTC) plan, it can take 3 – 4 months or more before you are actually enrolled in a plan and start receiving home care. The Medicaid application takes about 6 weeks to process, then it takes 2 weeks to schedule a "Conflict Free" assessment by New York Medicaid Choice, then another 2-3 weeks while you ask MLTC plans to schedule a nursing assessment, so that you can select a plan and enroll. The plan must submit the signed enrollment form by the 19th of the month for enrollment to start the 1st of the next month. If you miss that deadline, enrollment is delayed another month.

If you have an IMMEDIATE NEED for Medicaid home care, you can apply at your local Medicaid program and **get Medicaid approved and home care started in 2-3 weeks.** If you don't have Medicaid, you can apply for Medicaid AND home care at the same time. If you already have Medicaid, you just ask for "immediate need" home care.

You can apply whether you are home, in a hospital, or nursing home.

In New York City, submit the following documents in person, by mail or fax to:

HRA--HCSP Central Medicaid Unit FAX - 1-917-639-0665
785 Atlantic Avenue, 7th Floor
Brooklyn, NY 11238

1. **HRA HCSP Transmittal Form HCSP -3052**[1] – Cover form in NYC
2. **Medicaid application** with all required documents. This must include "Supplement A" (DOH-4495A in NYC) (alternate languages and formats of forms posted at this link). See more about Medicaid eligibility here.
    1. If you already have Medicaid, submit the approval notice and CIN number.
    2. If an application was submitted and is pending, submit a copy of it along with all documentation, and proof of when and where it was filed.
3. **Physician's order/ Form M11q in NYC** - Must be current, meaning that your doctor saw you and signed the form less than 30 days before you submit it. See tips at **Q-Tips**. Doctor may attach extra comments describing your needs.
4. **Attestation of Immediate Need (OHIP 0103) --** Consumer must sign this form to attest to immediate need. Form is attached. You have an immediate need even if your family has been providing some assistance, if that assistance is not enough or cannot continue. Explain the particular facts in a COVER LETTER.

| 7 HANOVER SQ, 7TH FL NEW YORK NY 10004-2754 |
| FAX: (212) 967 0725 | WWW.NYLAG.ORG |
EFLRP INTAKE TEL: (212) 613 7310 or EFLRP@NYLAG.ORG

5. Married applicants whose spouse does not need or receive Medicaid can request **spousal impoverishment budgeting,** which allows the couple to keep about $3400 in combined income and $90,000 in combined assets. You may not need to use "Spousal Refusal" or a Pooled Income Trust with this budgeting. Use the DOH **"Request for Assessment" form** to request spousal budgeting (page 9 of this link)

6. **HIPAA release** - OCA Form No. 960 - Authorization for Release of Health Information Pursuant to HIPAA

7. **If you are requesting Consumer Directed assistance,** include a completed application for CDPAP https://www1.nyc.gov/assets/hra/downloads/pdf/services/micsa/m_13d.pdf

8. **If you will need a pooled trust,** submitting it now will slow down the application. If you do submit it (with all of the documents listed in http://www.wnylc.com/health/entry/44/) then in cover letter request that you be initially budgeted with a spend-down, until the trust is approved.

9. **Cover letter** that explains:
    - why you have an "immediate need" for services,
    - gives contact info for a family member or friend to arrange home visits for assessment and explains who will be "directing" care if the applicant has dementia,
    - requests "spousal impoverishment" budgeting if helpful for married applicant
    - if you are requesting CDPAP, explain your plan for arranging care
    - if you are submitting a pooled trust, request that you be initially budgeted with a spend-down, until the trust is approved.

What Happens After I Submit the Application Package?

In the next **12 days,** the Medicaid office should process your Medicaid application, send a nurse to your home to assess your need for home care, and authorize you for personal care or CDPAP services provided by an agency that contracts with NYC. They may ask you to provide some additional documents.

After the home care services are provided for 120 days, you will receive a notice from New York Medicaid Choice, a state contractor that serves as the enrollment broker for all managed care programs. The notice will explain that you need to select and enroll in an Managed Long Term Care (MLTC) plan within 60 days If you do not select one, you will be auto-assigned to one.

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[1] **Links to all forms and links in this fact sheet can be found here -**
http://www.wnylc.com/health/entry/203/
See also DOH website https://www.health.ny.gov/health_care/medicaid/#need

Attestation of Immediate Need
for
Personal Care Services/Consumer Directed Personal Assistance Services

I, _____ attest that I am in need of immediate Personal Care Services
(Name)
or Consumer Directed Personal Assistance Services.

I also attest that:

- no voluntary informal caregivers are available, able and willing to provide or continue to provide needed assistance to me;
- no home care services agency is providing needed assistance to me;
- adaptive or specialized equipment or supplies including but not limited to bedside commodes, urinals, walkers or wheelchairs, are not in use to meet, or cannot meet, my need for assistance; and
- third party insurance or Medicare benefits are not available to pay for needed assistance.

I certify that the information on this form is correct and complete to the best of my knowledge.

X _____ _____
SIGNATURE OF APPLICANT/ REPRESENTATIVE **DATE SIGNED**

Individuals Receiving Long Term Care Services in a Nursing Home or Hospital Setting

If you are receiving long term care services in a nursing home or a hospital setting and intend to return home, you may have your eligibility for Personal Care Services or Consumer Directed Personal Assistance Services processed more quickly. Follow the directions on the previous page and fill in the information requested below.

I am in a nursing home or a hospital setting and have a date set to return home on _____.
DATE

Contact me or my legal representative by calling_____.

IMMEDIATE NEED FOR PERSONAL CARE SERVICES/CONSUMER DIRECTED PERSONAL ASSISTANCE SERVICES: INFORMATIONAL NOTICE AND ATTESTATION FORM

If you think you have an immediate need for Personal Care Services (PCS) or Consumer Directed Personal Assistance Services (CDPAS), such as housekeeping, meal preparation, bathing, or toileting, your eligibility for these services may be processed more quickly if you meet the following conditions:

- You have no informal caregivers available, able and willing to provide or continue to provide care;
- You are not receiving needed help from a home care services agency;
- You have no adaptive or specialized equipment or supplies in use to meet your needs; and
- You have no third party insurance or Medicare benefits available to pay for needed help.

If you don't already have Medicaid coverage, and you meet the above conditions, you may ask to have your Medicaid application processed more quickly by sending in: a completed Access NY Health Insurance Application (DOH-4220); the Access NY Supplement A (DOH-4495A or DOH-5178A), if needed; a physician's order for services; and a signed *"Attestation of Immediate Need."

If you already have Medicaid coverage that does not include coverage for community-based long term care services, you must send in a completed Access NY Supplement A (DOH-4495A or DOH-5178A), a physician's order for services and a signed *"Attestation of Immediate Need."

If you already have Medicaid coverage that includes coverage for community-based long term care services, you must send in a physician's order for services and a signed *"Attestation of Immediate Need."

If you don't already have Medicaid coverage or you have Medicaid coverage that does not include coverage for community-based long term care services: All of the required forms (see the appropriate list, above) must be sent in to your local social services office or, if you live in NYC, to the Human Resources Administration (HRA). As soon as possible after receiving all of these forms, the social services office/HRA will then check to make sure that you have sent in all the information necessary to determine your Medicaid eligibility. If more information is needed, they must send you a letter, by no later than four days after receiving these required forms, to request the missing information. This letter will tell you what documents or information you need to send in and the date by which you must send it. By no later than 7 days after the social service office/HRA receives the necessary information, they must let you know if you are eligible for Medicaid. By no later than 12 days after receiving all the necessary information, the social services office/HRA will also determine whether you could get PCS or CDPAS if you are found eligible for Medicaid. You cannot get this home care from Medicaid unless you are found eligible for Medicaid. If you are found eligible for Medicaid and PCS or CDPAS, the social services office/HRA will let you know and you will get the home care as quickly as possible.

If you already have Medicaid coverage that includes coverage for community-based long term care services: The physician's order and the signed Attestation of Immediate Need must be sent to your local social services office or HRA. By no later than 12 days after receiving these required forms, the social services office/HRA will determine whether you can get PCS or CDPAS. If you are found eligible for PCS or CDPAS, the social services official/HRA will let you know and you will get the home care as quickly as possible.

The necessary forms may be obtained from your local department of social services or are available to be printed from the Department of Health's website at: http://www.health.ny.gov/health_care/medicaid/#apply

*Found on the back side of this page.

IMMEDIATE NEED TRANSMITTAL TO THE HOME CARE SERVICES PROGRAM

NYC Human Resources Administration Department of Social Services

HCSP-3052 (E) 09/19/2016

DATE: _____ CONSUMER'S NAME: _____ LAST 4 DIGITS OF CONSUMER'S SSN: _____

From
NAME OF SUBMITTING ORGANIZATION
STREET ADDRESS
CITY, STATE, ZIP CODE

To:
HOME CARE SERVICES PROGRAM – IMMEDIATE NEEDS
785 ATLANTIC AVENUE, 7th Floor
BROOKLYN, NY 11238

I am submitting this application package on behalf of the above named consumer for processing as an "Immediate Need" for home care services. S/he wishes to be enrolled in the following program (check one):

☐ Personal Care (PCS) ☐ Consumer Directed Personal Assistance (CDPAS)

I understand that the documentation listed in the table(s) below is **required** for this request to be processed. All are attached and appear to be fully completed.

For all Immediate Need Requests

OHIP-0103, **Attestation of Immediate Need**	HCSP M-11q, **Medical Request for Home Care**	OCA-960, **Authorization for Release of Health Information Pursuant to HIPAA**

Also required, in addition to the three items listed above, **if** the consumer already has Medicaid coverage, but it does not include long term care coverage

DOH-4495A, **Access NY Supplement A**	All necessary proofs that apply to this supplemental form **only**, as detailed in the DOH-4220 "**Documents Needed When You Apply For Public Health Insurance**" section

Also, required in addition to everything listed in both tables above, **if** the consumer does not already have Medicaid coverage at all

DOH-4220, **Access NY Insurance Application**	All necessary proofs as detailed in the DOH-4220 "**Documents Needed When You Apply For Public Health Insurance**" section

Though not required, I understand that submission of a cover letter that includes an explanation of the immediate need, the status of consumer's current whereabouts, a listing of submitted documents, the type of service requested (PCS or CDPAS), is strongly recommended.

☐ I have attached a cover letter ☐ I have not submitted a cover letter

Print Name:	Sign Name:	Telephone Number:

APPLICANT/RECIPIENT DECLARATION CONCERNING THE LEGALLY RESPONSIBLE RELATIVE'S INCOME/RESOURCES

NYC Human Resources Administration Department of Social Services

MAP-2161 (E) 05/11/2018

DATE: _____

_____ CASE NAME: _____

_____ CASE NUMBER: _____

_____

If you have any questions, call HRA Helpline at 888-692-6116

Dear _____

This form is to be completed by the applicant or recipient who is living with a Legally Responsible Relative (LRR) who has refused to make income and/or resources available for the cost of necessary medical care and services. Legally Responsible Relatives are: spouses (e.g. husband for wife, wife for husband) and parents for children under 21.

The Legally Responsible Relative is not absolved from providing financial resources for the care of his or her spouse or child. The Department of Social Services expects the legally responsible relative to cooperate with the process of substantiating the income and resources of the responsible relative in order to determine the amounts the Legally Responsible Relative will be required to pay. **Legally Responsible Relatives may be taken to court for failure to support their spouses or minor children.** Failure to provide requested financial information may also result in the legally responsible relative being taken to court.

Complete the table below, including your signature and the date, and return this entire form in the enclosed envelope within 10 days

I (Print name) _____ _____ declare that my
(First) (Last)

☐ Spouse ☐ Parent ☐ Other, specify: _____
has refused to make his/her income and/or resources available for the cost of necessary medical care and services. I have read the above and understand that the process of financial review and collection of my Medicaid debt from my legally responsible relative begins when I sign this form.

Name of Legally Responsible Relative: _____ _____
(First) (Last)

Social Security Number of Legally Responsible Relative: _____

In consideration of the determination of my eligibility for Medical Assistance, I hereby assign, to the Commissioner of the New York City Human Resources Administration (Department of Social Services), my right of support from the legally responsible relative named above.

Name of Legally Responsible Relative's Health Care Plan (if applicable)

Type of Health Care Coverage (i.e. Long-Term Care): _____

Policy Number (if applicable): _____

Contact Number: ( ) _____
(Area Code)

Signature of Applicant/ Recipient: _____ Date: _____

Worker's Name	Title	Section

Supervisor's Name (Print)	Supervisor's Name (Sign)

Do you have a medical or mental health condition or disability? Does this condition make it hard for you to understand this notice or to do what this notice is asking? Does this condition make it hard for you to get other services at HRA? **We can help you.** Call us at 212-331-4640. You can also ask for help when you visit an HRA office. You have a right to ask for this kind of help under the law.

DECLARATION OF THE LEGALLY RESPONSIBLE RELATIVE

NYC Human Resources Administration Department of Social Services

MAP-2161a (E) 05/11/2018

_____

_____

_____

DATE: _____

CASE NAME: _____

CASE NUMBER: _____

HRA HelpLine: 888-692-6116

Dear _____:

An application/recertification for Medicaid has been submitted by or on behalf of the person named above. You have been identified as the Legally Responsible Relative (LRR).

If found eligible, Medicaid will cover that part of the consumer's care for which s/he is unable to pay because of the refusal of the Legally Responsible Relative to make available income and/or resources for the cost of necessary medical care and services.

Legally Responsible Relatives are: a husband for his wife, a wife for her husband, and parents for children under 21.

IMPORTANT NOTICE: Legally Responsible Relatives may be taken to court for failure to support their spouses or minor children.

Complete the table below, including your signature and the date, and return this entire form in the enclosed envelope within 10 days.

Name: _____ _____
(First) (Last)

Relationship to the Medicaid Applicant/Recipient (check box): ☐ Spouse ☐ Parent ☐ Other: _____
(specify)

Social Security Number: _____

Name of your Health Insurance Plan (if applicable):

_____

Type of Health Insurance Coverage (i.e. Long-Term Care): _____

Policy Number (if applicable): _____

Contact Number: (_____) _____
Area Code

I declare that I refuse to make my income and/or resources available for the cost of necessary medical care and services for the Medicaid applicant/recipient listed above.

Signature of the Legally Responsible Relative: _____ Date: _____

If you have any questions, contact:

SUPERVISOR	SECTION	TELEPHONE NUMBER

Do you have a medical or mental health condition or disability? Does this condition make it hard for you to understand this notice or to do what this notice is asking? Does this condition make it hard for you to get other services at HRA? **We can help you.** Call us at 212-331-4640. You can also ask for help when you visit an HRA office. You have a right to ask for this kind of help under the law.

Checklist for an Elder-Friendly Law Office

The American Bar Association Commission on Law and Aging

David Godfrey, Adrienne Lyon Buenavista, and Danielle Valdenaire

Summer 2012

The ABA also invites the collaboration of interested state groups, such as bar committees, to develop state-specific versions of this *Checklist*. Contact the ABA Commission on Law and Aging at aging@americanbar.org.

Checklist for an Elder-Friendly Law Office

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Summer 2012

Checklist for an Elder-Friendly Law Office

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An elder-friendly office is one that provides spatial and social accommodations for disabilities prevalent among older persons such as hearing loss, visual impairment, and mobility limitations. In order to better provide legal services to an older population, your office floor plan, lighting, furniture, and staff procedures need to be designed so elders with disabilities can easily navigate your office. By complying with the American with Disabilities Act (ADA) Accessibility Guidelines and making other practical design decisions, you can improve your older client's experience in your office.

ADA Accessibility Guidelines (ADAAG)

The ADA Accessibility Guidelines contain technical and design standards for facilities. The guidelines include dimensions and installation details of accessible elements such as parking spaces, accessible routes, ramps, stairs, elevators, doors, entrances, drinking fountains, bathrooms, signs, and fixed seats and tables.

Virtually all offices, retail and service establishments open to the public—including law offices—are expected to comply with ADA requirements (See 42 U.S.C. § 12181(7)(F)). However, this does not mean that each organization must fulfill all ADA Accessibility Guidelines because the ADA distinguishes between "barrier removal" in existing facilities and "new construction and alteration" of facilities.

Existing facilities must remove structural barriers and make the space ADA compliant where "readily achievable" (i.e., easily accomplishable without much difficulty or expense). Examples of barrier removal measures include installing ramps, widening doorways, installing grab bars in toilet stalls, and rearranging furniture. Necessary barrier removals are determined on a case-by-case basis in light of an organization's resources—generally, its size and budget. When barrier removal is not possible, the facility must provide alternative measures to make services accessible. For instance, law offices might consider providing home visits or relocating activities to accessible locations.

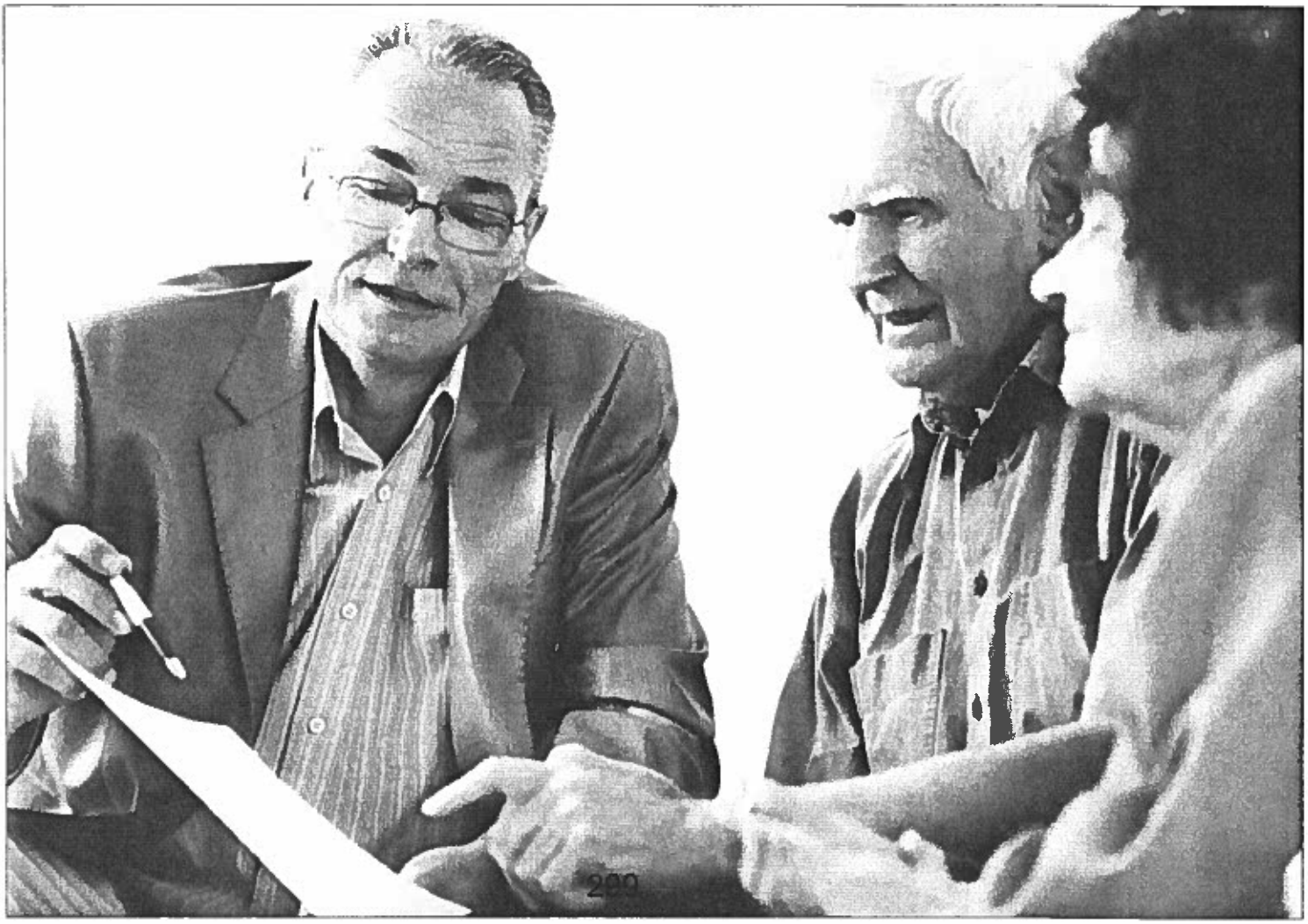
When constructing a new building or altering an existing building, all spaces are required to be in accordance with the ADA Accessibility Guidelines unless providing access would be impracticable or infeasible. However, these limitations will only apply in rare circumstances where terrain makes fully accessibility unusually difficult. Thus, law offices in new or modified facilities typically must comply with ADA Accessibility Guidelines.

About this Checklist

The following checklist will assist you in making your work space accessible for older persons. Although this list identifies key ADA provisions, it is not exhaustive. The checklist also includes "good practices" to

make a law office elder-friendly; these suggestions are not mandated by law, but would make your office more accessible to older clients. This checklist is organized around three key topics: External Access to Your Office, Internal Accessibility of Your Office, and Comfort and Communication in Your Office.

For more information on accessible design guidelines, visit the U.S. Department of Justice 2010 ADA Standards website at ***http://www.ada.gov/2010ADAstandards_index.htm.***



External Access to Your Office

Office Location

In order for older clients to utilize your legal services, they need to be able to access your office.

ADA Accessibility Guidelines

1. Generally, you should have one accessible parking space per twenty-five (25) total parking spaces provided (See ADAAG 208.2).

2. A parking space (for a car) should have a minimum width of ninety-six (96) inches and an adjacent accessible aisle with a minimum width of sixty (60) inches (See ADAAG 502).

3. Design sidewalks to avoid steep slopes, steps and irregular surfaces (See ADAAG 403 and 405 for specific dimension and slope requirements for sidewalks and ramps).

4. There should be at least one accessible route from accessible parking, accessible loading zones, public sidewalks, and on-site public transportation stops (See ADAAG 206.2.1).

Good Practices

1. Locate your office near older consumers so they only have a short distance to travel to your office. Look for office facilities near retirement communities, senior centers, libraries, shopping centers, or places of worship.

2. Situate your office nearby a public train or bus stops. If there are no stations or stops near your office, consider providing shuttle service to your office from a major bus or train stop.

3. Avoid locating your office near high-traffic areas, as traffic congestion can be stressful and dangerous for older clients.

4. Have accessible parking spaces as well as a drop-off area in front of your office.

5. Construct wide parking lot entrances to make it easier to enter and exit. If possible, locate your office so parking can be both entered and exited using right hand turns.

Office Visibility

It may be difficult for an older client to locate your office's address and entrance, especially when he or she visits you for the first time.

Good Practices

1. Be sure your office has clear, easily visible signage. Signs should clearly state the name of your organization and the street address. The sign should be written in large letters so it can be seen from all approaches.

2. On you web page and in hard copy, provide clear directions, maps, public transportation information and anything else that can guide your client to your office.

Internal Accessibility of Your Office

When entering a building, a client has to navigate the interior space by moving through hallways, doors, elevators, and stairs. When designing your office interior, it is critical to consider how older clients will circulate through the office spaces.

Doors

ADA Accessibility Guidelines

1. Interior doors should not require an opening force of more than five pounds. (See ADAAG 404).

2. In order to give a disabled client time to move through a door, all exterior and interior doors should not close too quickly. If your door has a closer, the door should take at least 5 seconds to close (See ADAAG 404).

3. Doors should be wide enough to permit wheel chairs to navigate easily. The ADA Accessibility Guidelines require a door to be at least 32" wide, but generally 36" is ideal for wheelchair access (See ADAAG 404).

4. For specific ADA dimension and clearance requirements, see ADAAG 404.2.4.1 through 404.2.4.6.

Good Practices

1. To avoid injuries, all doors need to be easy to open. On exterior doors, you should install automatic openers.

2. On interior doors, you should use levered door handles or simple push/pull devices instead of knobs so clients will not have to struggle to open a door.

Elevators

Although elevators make circulating in your office easier for clients with mobility problems, elevators can be challenge for older clients with visual impairments.

ADA Accessibility Guidelines

1. Elevators are not required in facilities with fewer than three stories or facilities with fewer than 3,000 square feet per floor, unless the building is a shopping center, health care provider's office, or public transportation station (See ADAAG 206.2.3). However, it is still best practice to include an elevator in multi-story law offices.

2. For specific dimension requirements for elevator cars, see ADA Accessibility Guidelines figure 407.5.1.

Good Practices

1. Elevator buttons should be legible (written in large, tactile text and braille), large, well-lit, and in a color that contrasts with the elevator walls.

2. Make sure the light in the elevator is bright enough.

Comfort & Communication in Your Office

Office elements that impact your client's comfort and communication include: seating and table type, restroom design, heating and air conditioning, lighting, and acoustics.

Seating

Good Practices

1. You should avoid sofas and other plush seats as your client will have a harder time getting up without assistance. Instead, you should install chairs with firm arms (e.g. wood) and supportive seats.

2. Chairs with a shallow seat (17" to 24" depth) are easiest for older persons to get in and out of.

3. Four legged chairs with a sturdy frame and stable base are preferable. Be careful of chairs on wheels—they can roll out from under clients as they are getting in and out of them. (Hint: rolling a wheeled chair up against a wall can make it easier to get in and out of.)

Furnishings

ADA Accessibility Guidelines

1. Use tables high enough so that clients don't have to bend far to reach objects. Tables and counters should be 26" to 30" high (See ADAAG 902).

Good Practices

1. You should use tables, cabinets, and any other furniture with rounded corners to prevent injures if your client bumps into an object.

2. Do not over-decorate a room with knickknacks, baskets, or other items that can cause falls.

3. Do not use complex decorative patterns that can generate visual or spatial confusion. It is best practice to use solid colors for walls, floors, and ceilings.

Heating and Air

Good Practices

1. If you can choose or change the level of a room's temperature, always ask your client if he or she is too cold or too hot.

2. If you can't control the temperature of your office, you can offer your client a fleece blanket if he or she is cold and open a window or turn on a fan if he or she is hot.

3. You should situate your client's chair so the air is not blowing directly on it.

Lighting

To make lighting more effective in your office, keep in mind that many clients will have decreased visual acuity, increased sensitivity to glare, reduced contrast sensitivity, and diminished color perception.

Good Practices

1. To reduce glare in a room, use light, non-glossy colors for the walls, floor and ceiling.

2. Avoid glare-causing objects inside your office such as reflective furniture or tables made out of glass, mirror or chrome. The reflections can exacerbate visual problems and spatial confusion.

3. You should also avoid positioning clients in any location that has them looking at a window because this creates back lighting and glare.

4. Avoid conventional incandescent lamps. High-quality fluorescent lamps work best with older clients. (For further details about lamps, read this report published by the Lighting Research Center: http://www.lrc.rpi.edu/programs/lighthealth/aarp/pdf/aarpbook1.pdf).

Acoustics

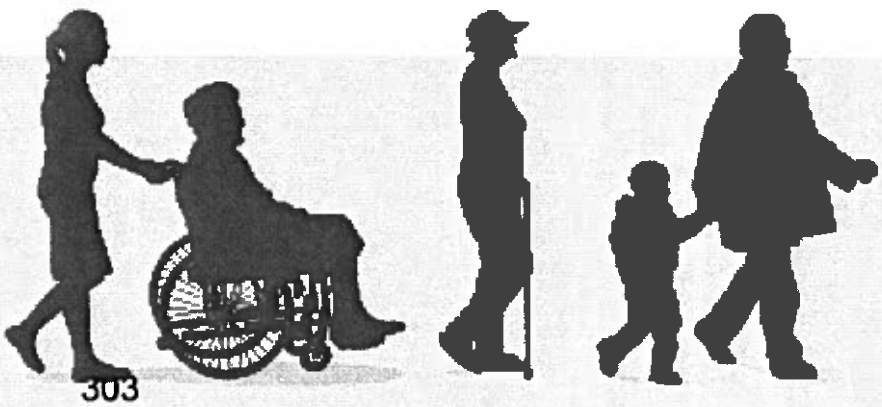
Background noise can be a serious barrier to good communication with a client who has even a low level of hearing impairment. A quiet meeting space and good acoustics are important.

Good Practices

1. Meeting rooms or offices should be should be adequately sound insulated or in a quiet part of your office complex. Additionally, for offices in more urban locations, window sound proofing will help keep out exterior noise.

2. Even if you find background music relaxing, turn it off when meeting with your client.

3. Air conditioning, fans, and heating systems can be noisy. Minimize the noise and, if necessary, turn the system down or off. If possible, install a quieter mechanical system.



Comfort & Communication in Your Office

Restrooms

Restrooms can be dangerous for persons with mobility limitations if they are not adapted for people with disabilities.

ADA Accessibility Guidelines

1. Restrooms should be large enough that a client with a wheel chair or walker could easily move through the space. Refer to figure 604.8.1.1 (wheelchair accessible compartments) in the ADA Accessibility Guidelines for specific dimension requirements.

2. Every public and common use bathroom should be accessible. Only one stall must be accessible, unless there are six or more stalls, in which case two stalls must be accessible (one wheelchair, one ambulatory) (ADAAG 213.3.1).

3. Grab bars are required on the back and side of a wheelchair accessible stall and on both sides of an ambulatory accessible stall (See ADAAG 604).

4. For particular fixture and dimension requirements, refer to figures 604.2 (toilet location) and 604.3.1 (toilet clearance) in the ADA Accessibility Guidelines.

Auxiliary Assistance

Law offices are only required to provide auxiliary aids such as interpreters, devices for deaf persons, readers, brailled materials, and large print materials when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.

Good Practices

1. Try to obtain access to a Telecommunications Device for the Deaf (TDD) for the office.

2. Written documents should be available in large print (14 print or larger).

3. Sign language interpreters or similar services can be provided for if requested by clients who are hearing impaired.

4. If walking distances are significant, you should consider providing a wheelchair at the entrance.

Office Congeniality

Good Practices

1. Always make water accessible in the waiting room and in meeting rooms. The availability of other drinks is a plus (e.g., coffee, tea, fruit juices, and sodas) as long as you provide a wide range of choices, so clients with allergies or medical restrictions will have options.

2. Pictures of your family or pets and memorabilia of your personal interests can help clients connect with you, encouraging conversation by putting them at ease.

Personal Note:

While working on this checklist, my mother began using a walker and I realized how the smallest obstacle limited her ability to move about. When researching accessible design standards, it struck me that because of these standards my mother can participate in every day life with a greater degree of comfort and safety. Little differences such as grab bars in restrooms or curb cuts on a sidewalk can make a great difference in the life of an older adult.

-David Godfrey

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About the Commission on Law and Aging...

The mission of the ABA Commission on Law and Aging is to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders.

It carries out this mission through research, policy development, technical assistance, advocacy, education, and training.

The Commission consists of legal professional staff and a 15-member interdisciplinary body of experts in aging and law, including lawyers, judges, health and social services professionals, academics, and advocates.

The Commission examines a wide range of law-related issues, including:

- Legal Services to Older Persons
- Health and Long-Term Care
- Housing Needs
- Professional Ethical Issues
- Social Security, Medicare, Medicaid, and other Public Benefits Programs
- Planning for Incapacity
- Guardianship
- Elder Abuse
- Pain Management and End-of-Life Care
- Dispute Resolution
- Court-Related Needs of Older Persons and Persons with Disabilities

For more information visit http://www.americanbar.org/aging

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- Guardianship
- Elder Abuse
- Pain Management and End-of-Life Care
- Dispute Resolution
- Court-Related Needs of Older Persons and Persons with Disabilities

For more information visit http://www.abanet.org/aging

HELPFUL LINKS

1. The Medicaid Reference Guide
   - https://www.health.ny.gov/health_care/medicaid/reference/mrg/

2. NYS Department of Health GIS and ADMs
   - https://www.health.ny.gov/health_care/medicaid/publications/

3. Fair Hearing Decisions
   - https://otda.ny.gov/hearings/search/

4. The State Medicaid Manual
   - https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html

5. NY Health Access
   - http://www.wnylc.com/health/entry/87/

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BIOGRAPHY

Jay P. Sheryll is the founding and managing attorney of Sheryll Law, P.C., focusing his practice on Elder Law, Estate Planning, Trusts and Estates, Medicaid Planning, Estate Tax Planning, Asset Protection, Special Needs Planning and Guardianship Practice. Jay is a graduate of Touro College, Jacob D. Fuchsberg Law Center where he was a member of the Law Review. Jay has been admitted to practice law in the States of New York and New Jersey. Jay is a trained Article 81 Guardian and frequently serves the Guardianship part as a court-appointed Guardian and Court Evaluator.

Jay is active in the local community serving as a member of the Rotary Club of Riverhead and as a Vice President of the Riverhead Chamber of Commerce. Jay also volunteers his time on the board of the Long Island Science Center, a museum dedicated to provided STEAM educational programs and content to Long Island students.

Jay is a frequent speaker, where he lectures on Elder Law, Medicaid, and Estate Planning. Jay is married to his loving wife and has two adorable children. When not in the office, Jay enjoys playing the guitar and spending time on the Peconic Bay.

PROFESSIONAL ORGANIZATIONS

- Rotary Club of Riverhead, Incoming Director
- Riverhead Chamber of Commerce, 2nd Vice President
- Long Island Science Center, Director
- Suffolk County Bar Association, Surrogate's Court & Elder Law and Estate Planning Committees
- New York State Bar Association, Trust & Estates Law Section & Elder Law and Special Needs Section
- American Bar Association, Member
- National Academy of Elder Law Attorneys, Member