PLI’S COMPLETE LIBRARY OF TREATISE TITLES

ART LAW

BANKING & COMMERCIAL LAW
Asset-Based Lending: A Practical Guide to Secured Financing
Equipment Leasing–Leveraged Leasing
Hillman on Commercial Loan Documentation
Hillman on Documenting Secured Transactions: Effective Drafting and Litigation
Maritime Law Answer Book

BANKRUPTCY LAW
Bankruptcy Deskbook
Personal Bankruptcy Answer Book

BUSINESS, CORPORATE & SECURITIES LAW
Accountants’ Liability
Anti-Money Laundering: A Practical Guide to Law and Compliance
Antitrust Law Answer Book
Broker-Dealer Regulation
Conducting Due Diligence in a Securities Offering
Consumer Financial Services Answer Book
Corporate Compliance Answer Book
Corporate Legal Departments: Practicing Law in a Corporation
Corporate Political Activities Deskbook
Corporate Whistleblowing in the Sarbanes-Oxley/Dodd-Frank Era
Covered Bonds Handbook
Cybersecurity: A Practical Guide to the Law of Cyber Risk
Derivatives Deskbook: Close-Out Netting, Risk Mitigation, Litigation
Deskbook on Internal Investigations, Corporate Compliance, and White Collar Issues
Directors’ and Officers’ Liability: Current Law, Recent Developments, Emerging Issues
Doing Business Under the Foreign Corrupt Practices Act
EPA Compliance and Enforcement Answer Book
Exempt and Hybrid Securities Offerings
Fashion Law and Business: Brands & Retailers
Financial Institutions Answer Book: Law, Governance, Compliance
Financial Product Fundamentals: Law, Business, Compliance
Financial Services Mediation Answer Book
Financial Services Regulation Deskbook
Financially Distressed Companies Answer Book
Global Business Fraud and the Law: Preventing and Remediying Fraud and Corruption
Hedge Fund Regulation
Initial Public Offerings: A Practical Guide to Going Public
Insider Trading Law and Compliance Answer Book
Insurance and Investment Management M&A Deskbook
International Corporate Practice: A Practitioner’s Guide to Global Success
Investment Adviser Regulation: A Step-by-Step Guide to Compliance and the Law
Life at the Center: Reflections on Fifty Years of Securities Regulation
Mergers, Acquisitions and Tender Offers: Law and Strategies
Mutual Funds and Exchange Traded Funds Regulation
Outsourcing: A Practical Guide to Law and Business
Privacy Law Answer Book
Private Equity Funds: Formation and Operation
Proskauer on Privacy: A Guide to Privacy and Data Security Law in the Information Age
Public Company Deskbook: Complying with Federal Governance & Disclosure Requirements
SEC Compliance and Enforcement Answer Book
Securities Investigations: Internal, Civil and Criminal
Securities Law and Practice Deskbook
The Securities Law of Public Finance
Securities Litigation: A Practitioner's Guide
Social Media and the Law
Soderquist on Corporate Law and Practice
Sovereign Wealth Funds: A Legal, Tax and Economic Perspective
A Starter Guide to Doing Business in the United States
Technology Transactions: A Practical Guide to Drafting and Negotiating Commercial Agreements
Variable Annuities and Variable Life Insurance Regulation

COMMUNICATIONS LAW
Advertising and Commercial Speech: A First Amendment Guide
Sack on Defamation: Libel, Slander, and Related Problems
Telecommunications Law Answer Book

EMPLOYMENT LAW
Employment Law Yearbook
ERISA Benefits Litigation Answer Book
Labor Management Law Answer Book

ESTATE PLANNING AND ELDER LAW
Blattmachr on Income Taxation of Estates and Trusts
Estate Planning & Chapter 14: Understanding the Special Valuation Rules
International Tax & Estate Planning: A Practical Guide for Multinational Investors
Manning on Estate Planning
New York Elder Law
Stocker on Drawing Wills and Trusts

HEALTH LAW
FDA Deskbook: A Compliance and Enforcement Guide
Health Care Litigation and Risk Management Answer Book
Health Care Mergers and Acquisitions Answer Book
Medical Devices Law and Regulation Answer Book
Pharmaceutical Compliance and Enforcement Answer Book

IMMIGRATION LAW
Fragomen on Immigration Fundamentals: A Guide to Law and Practice

INSURANCE LAW
Business Liability Insurance Answer Book
Insurance Regulation Answer Book
Reinsurance Law

INTELLECTUAL PROPERTY LAW
Copyright Law: A Practitioner's Guide
Faber on Mechanics of Patent Claim Drafting
How to Write a Patent Application
Intellectual Property Law Answer Book
Kane on Trademark Law: A Practitioner's Guide
Likelihood of Confusion in Trademark Law
Patent Claim Construction and Markman Hearings
Patent Licensing and Selling: Strategy, Negotiation, Forms
Patent Litigation
Pharmaceutical and Biotech Patent Law
Post-Grant Proceedings Before the Patent Trial and Appeal Board
Substantial Similarity in Copyright Law
Trade Secrets: A Practitioner's Guide
LITIGATION
American Arbitration: Principles and Practice
Class Actions and Mass Torts Answer Book
Electronic Discovery Deskbook
Essential Trial Evidence: Brought to Life by Famous Trials, Films, and Fiction
Expert Witness Answer Book
Evidence in Negligence Cases
Federal Bail and Detention Handbook
How to Handle an Appeal
Medical Malpractice: Discovery and Trial
Product Liability Litigation: Current Law, Strategies and Best Practices
Sinclair on Federal Civil Practice
Trial Handbook

REAL ESTATE LAW
Commercial Ground Leases
Friedman on Contracts and Conveyances of Real Property
Friedman on Leases
Holtzschue on Real Estate Contracts and Closings: A Step-by-Step Guide to Buying and Selling Real Estate
Net Leases and Sale-Leasebacks

TAX LAW
The Circular 230 Deskbook: Related Penalties, Reportable Transactions, Working Forms
The Corporate Tax Practice Series: Strategies for Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations & Restructurings
Foreign Account Tax Compliance Act Answer Book
Internal Revenue Service Practice and Procedure Deskbook
International Tax & Estate Planning: A Practical Guide for Multinational Investors
International Tax Controversies: A Practical Guide
International Trade Law Answer Book: U.S. Customs Laws and Regulations
Langer on Practical International Tax Planning
The Partnership Tax Practice Series: Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances
Private Clients Legal & Tax Planning Answer Book
Transfer Pricing Answer Book

GENERAL PRACTICE PAPERBACKS
Anatomy of a Mediation: A Dealmaker's Distinctive Approach to Resolving Dollar Disputes and Other Commercial Conflicts
Attorney-Client Privilege Answer Book
Drafting for Corporate Finance: Concepts, Deals, and Documents
Pro Bono Service by In-House Counsel: Strategies and Perspectives
Smart Negotiating: How to Make Good Deals in the Real World
Thinking Like a Writer: A Lawyer's Guide to Effective Writing & Editing
Working with Contracts: What Law School Doesn't Teach You

Order now at www.pli.edu
Or call (800) 260-4754 Mon.–Fri., 9 a.m.–6 p.m.

Practising Law Institute
1177 Avenue of the Americas
New York, NY 10036

When ordering, please use Priority Code NWS9-X.
This work is designed to provide practical and useful information on the subject matter covered. However, it is sold with the understanding that neither the publisher nor the author is engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.
This book is dedicated to Samuel Sadin,
the founder of the Institute on Law and Rights of Older Adults;
a pioneer in elder law;
an expert in social work;
an advocate for the aged;
a mentor to all.
About the Sadin Institute on Law & Public Policy

The Sadin Institute on Law & Public Policy (formerly the Institute on Law and Rights of Older Adults) of the Brookdale Center for Healthy Aging of Hunter College/CUNY has been in operation since 1977 as a legal support system for advocates who serve the elderly. The interdisciplinary staff of the Sadin Institute conducts continuing education and in-service training programs for professionals and maintains a telephone case consultation service. It publishes seven manuals on various public entitlements: The Brookdale Senior Rights Report, a bimonthly newsletter on entitlements for professionals; the HELP for Seniors series on entitlements for senior citizens; and the Benefits Checklist for Older New Yorkers. The Sadin Institute is a not-for-profit organization funded through private foundation grants, New York State training contracts, and the Interest on Lawyer Account Fund of New York State.
# Table of Chapters

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Social Security, Old Age, Survivor &amp; Dependency Benefits</td>
<td>Barbara Samuels</td>
</tr>
<tr>
<td>2</td>
<td>Supplemental Security Income</td>
<td>Jill Ann Boskey&lt;br&gt;2014 Update by Barbara Samuels</td>
</tr>
<tr>
<td>3</td>
<td>Social Security and SSI Disability</td>
<td>Barbara Samuels</td>
</tr>
<tr>
<td>4</td>
<td>Medicare</td>
<td>Home Care Association of New York State, Inc.&lt;br&gt;2018 Update by Andrew Koski</td>
</tr>
<tr>
<td>5</td>
<td>Supplemental Medical Insurance</td>
<td>Andrew Koski</td>
</tr>
<tr>
<td>6</td>
<td>Medicaid for the Elderly, Blind, or Disabled</td>
<td>Douglas J. Chu, J.D.</td>
</tr>
<tr>
<td>7</td>
<td>Home Care</td>
<td>Ellen P. Rosenzweig</td>
</tr>
<tr>
<td>8</td>
<td>Protective Services</td>
<td>Debra Studer Sacks</td>
</tr>
<tr>
<td>9</td>
<td>Housing Law</td>
<td>Andrew Scherer&lt;br&gt;2011 Update by David Robinson</td>
</tr>
<tr>
<td>10</td>
<td>Nursing Homes</td>
<td>Margaret M. Flint</td>
</tr>
<tr>
<td>11</td>
<td>Health Care Decision Making</td>
<td>Annette Levinson Kasle&lt;br&gt;2011 Update by Raquel Malina Romanick, J.D.</td>
</tr>
<tr>
<td>12</td>
<td>Veterans’ Benefits</td>
<td>Katharine Bloeser</td>
</tr>
<tr>
<td>13</td>
<td>Retirement Plans</td>
<td>David Pratt</td>
</tr>
</tbody>
</table>
# Table of Contents

**About the Sadin Institute on Law & Public Policy**                      ix  
**Table of Chapters**                                               xi  
**Introduction**                                          xlvii  

## Chapter 1  Social Security, Old Age, Survivor & Dependency Benefits

_by Barbara Samuels_

§ 1:1  Overview......................................................................... 1-3  
§ 1:2  Sources of Law and Authority ........................................ 1-4  
  § 1:2.1 Social Security Rulings ........................................ 1-5  
  § 1:2.2 Acquiescence Rulings........................................... 1-7  
  § 1:2.3 Program Operations Manual System (POMS)............... 1-8  
  § 1:2.4 Hearings, Appeals, Litigation, and Law Manual (HALLEX) ........................................ 1-9  
  § 1:2.5 Other Sources.................................................... 1-10  
§ 1:3  Eligibility for Old Age Benefits .................................. 1-10  
  § 1:3.1 Age Generally...................................................... 1-10  
  § 1:3.2 Insured Status....................................................... 1-11  
  § 1:3.3 Noncitizen Beneficiaries......................................... 1-12  
  § 1:3.4 Earnings Records and How Wage-Earner’s Benefits Are Calculated ........................................ 1-15  
  § 1:3.5 Issuance of Social Security Checks........................... 1-15  
  § 1:3.6 Regular Retirement............................................... 1-16  
  § 1:3.7 Early Retirement................................................... 1-16  
  § 1:3.8 Delayed Retirement............................................... 1-17  
  § 1:3.9 Medicare............................................................. 1-17  
  § 1:3.10 Earnings After Retirement ..................................... 1-18  
  § 1:3.11 Nonwage Income.................................................. 1-21  
§ 1:4  Auxiliary Benefits...................................................... 1-21  
  § 1:4.1 Spouses.................................................................... 1-22  

(N.Y. Elder Law, Rel. #41, 3/18)  xiii
New York Elder Law

[A] Spouse of a Living Wage-Earner:
Husband or Wife .................................................... 1-23

[B] Deemed Spouse .................................................. 1-24

[C] Spouse of Deceased Wage-Earner:
Widow or Widower ................................................... 1-25

[D] Divorced Spouse of Living Wage-Earner ............... 1-26

[E] Surviving Divorced Spouse ................................ 1-26

[F] Mothers and Fathers ........................................... 1-27

§ 1:4.2 Children ....................................................... 1-28

[A] Generally ......................................................... 1-28

[B] Children of Same-Sex Marriages ......................... 1-29

[C] Legitimate Children .......................................... 1-29

[D] Illegitimate Children ........................................ 1-29

[E] Adopted Children .............................................. 1-30

[F] Disabled Adult Children .................................... 1-31

[G] Grandchildren .................................................. 1-31

[H] Stepchildren .................................................... 1-32

[I] Posthumously Born Children ............................... 1-33

§ 1:4.3 Parents .......................................................... 1-33

§ 1:5 Processing a Social Security Claim ..................... 1-34

§ 1:5.1 The Process in General ................................... 1-34

§ 1:5.2 The Appeal Process ........................................ 1-35

[A] Generally .......................................................... 1-35

[B] Initial Application ............................................ 1-35

[C] Reconsideration ................................................ 1-36


[D][1] Generally ..................................................... 1-37

[D][2] Assignment of Case to an ALJ .......................... 1-38

[D][3] After Assignment of Case to an ALJ ................. 1-38

[D][4] Prehearing Conference .................................... 1-39

[D][5] Requesting On-the-Record Decisions ............... 1-39

[E] Hearing Procedure ............................................. 1-39

[F] Telephonic Hearing Testimony ............................ 1-40

[G] Posthearing Period ............................................. 1-41

[H] Hearing Decision ............................................... 1-41

§ 1:5.3 Appeals Council Review ................................. 1-42

§ 1:5.4 Good Cause for Late Filing ............................ 1-45

§ 1:5.5 Res Judicata and Collateral Estoppel ................ 1-47

§ 1:5.6 Overpayments .............................................. 1-48

§ 1:5.7 Fleeing Felons Prohibition .............................. 1-50

[A] Generally .......................................................... 1-50
Table of Contents

§ 1:6  Practical Problems ........................................................................................................... 1-52
§ 1:6.1 Misplaced Files and Documents .................................................................................... 1-53
§ 1:6.2 Delays ............................................................................................................................. 1-54
  [A] Generally ............................................................................................................................ 1-54
  [B] Administrative Advocacy .................................................................................................. 1-56
  [C] Congressional Inquiries .................................................................................................... 1-56
  [D] Judicial Intervention: Mandamus and Interim Benefits ................................................ 1-57
§ 1:6.3 Dealing with the Administrative Hierarchy ................................................................... 1-60
§ 1:7  Conclusion ......................................................................................................................... 1-61
Appendix 1A  Eligibility for Old Age Benefits .............................................................. App. 1A-1
Appendix 1B  Benefit Reduction Factors for Early Retirement .................................................. App. 1B-1
Appendix 1C  Maximum Percentage Benefit of Family Members ........................................ App. 1C-1

Chapter 2  Supplemental Security Income
by Jill Ann Boskey
2014 Update by Barbara Samuels

§ 2:1  Introduction ...................................................................................................................... 2-6
§ 2:2  Overview .......................................................................................................................... 2-8
§ 2:3  Sources of Law ................................................................................................................. 2-9
  § 2:3.1 The Statute .................................................................................................................. 2-9
  § 2:3.2 The Regulations ......................................................................................................... 2-10
  § 2:3.3 The POMS ................................................................................................................. 2-10
  § 2:3.4 HALLEX .................................................................................................................... 2-11
  § 2:3.5 SSA Rulings .............................................................................................................. 2-11
  § 2:3.6 Program Circulars, Teletypes, and Other Instructions ............................................. 2-11
  § 2:3.7 Case Law .................................................................................................................... 2-12
  § 2:3.8 Acquiescence Rulings ............................................................................................... 2-12
§ 2:4  Summary .......................................................................................................................... 2-14
§ 2:5  Categorical Eligibility ...................................................................................................... 2-14
  § 2:5.1 Blindness .................................................................................................................... 2-14
  § 2:5.2 Disability .................................................................................................................... 2-14
  § 2:5.3 Age ............................................................................................................................. 2-15
§ 2:6  Technical Eligibility ......................................................................................................... 2-17
  § 2:6.1 Residency .................................................................................................................... 2-17
  § 2:6.2 Application for Other Benefits .................................................................................... 2-19
  § 2:6.3 Permission to Contact Financial Institutions .......................................................... 2-19
  § 2:6.4 Citizenship .................................................................................................................. 2-19

(N.Y. Elder Law, Rel. #41, 3/18)  xv
§ 2:6.5 SSI Eligibility for Noncitizens

[A] Persons Exempted from the General SSI Ban

[A][1] Refugees, Asylees, and Persons with Deportation Withheld

[A][2] Legal Permanent Resident Who Can Be Credited with Forty Quarters of Work

[A][3] Veteran or Active Duty Member of the Armed Forces, and His or Her Spouse or Dependent Child

[A][4] Certain American Indians

[B] Grandfathered

[C] Aliens Legally Residing in the United States on August 22, 1996, but Not Receiving SSI on That Date


[E] Proving Legal Permanent Residence or PRUCOL Status

[E][1] Legal Permanent Residents

[E][2] PRUCOL (Permanently Residing Under Color of Law)

[F] Assisting Aliens Seeking to Obtain or Retain SSI

[G] Reporting to INS/ICE Aliens Who Are Not Legally Present in the United States

§ 2:6.6 Fleeing Felon Prohibitions

[A] Generally

§ 2:7 Financial Eligibility and Living Arrangements

§ 2:7.1 Generally

§ 2:7.2 Resources

[A] Generally

[B] Defining Resources

[C] Maximum Resource Levels

[D] Countable Resources

[E] Liquid Resources

[E][1] Cash

[E][2] Bank Accounts and Joint Bank Accounts

[E][3] Trusts

[E][4] Stocks, Bonds, Promissory Notes, Mutual Fund Shares, Pension and Retirement Funds

[F] Nonliquid Resources
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>[G]</td>
<td>Deemed Resources</td>
<td>2-39</td>
</tr>
<tr>
<td>[G][1]</td>
<td>Spouses</td>
<td>2-39</td>
</tr>
<tr>
<td>[G][2]</td>
<td>Children</td>
<td>2-41</td>
</tr>
<tr>
<td>[G][3]</td>
<td>Aliens</td>
<td>2-43</td>
</tr>
<tr>
<td>[H]</td>
<td>Excluded Resources</td>
<td>2-43</td>
</tr>
<tr>
<td>[H][1]</td>
<td>Generally</td>
<td>2-43</td>
</tr>
<tr>
<td>[H][2]</td>
<td>The Home</td>
<td>2-44</td>
</tr>
<tr>
<td>[H][3]</td>
<td>Foreclosure Guidance for SSI Property- Owning Recipients</td>
<td>2-44</td>
</tr>
<tr>
<td>[H][4]</td>
<td>Household Goods and Personal Effects</td>
<td>2-45</td>
</tr>
<tr>
<td>[H][5]</td>
<td>Automobile</td>
<td>2-46</td>
</tr>
<tr>
<td>[H][6]</td>
<td>Life Insurance Policies</td>
<td>2-46</td>
</tr>
<tr>
<td>[H][7]</td>
<td>Burial Spaces or Agreements and Burial Funds</td>
<td>2-47</td>
</tr>
<tr>
<td>[H][8]</td>
<td>Property Essential to Self-Support</td>
<td>2-48</td>
</tr>
<tr>
<td>[H][9]</td>
<td>Disaster Relief and Relocation Assistance</td>
<td>2-48</td>
</tr>
<tr>
<td>[H][10]</td>
<td>Funds Excluded Under Other Statutes</td>
<td>2-49</td>
</tr>
<tr>
<td>[H][11]</td>
<td>Personal Injury Awards for Children and Other Trusts</td>
<td>2-50</td>
</tr>
<tr>
<td>[H][12]</td>
<td>Native American Trust Funds and Per Capita Distributions</td>
<td>2-50</td>
</tr>
<tr>
<td>[H][13]</td>
<td>Other Excluded Resources</td>
<td>2-50</td>
</tr>
<tr>
<td>[I]</td>
<td>Resources Excluded for Limited Periods of Time</td>
<td>2-51</td>
</tr>
<tr>
<td>[I][1]</td>
<td>Generally</td>
<td>2-51</td>
</tr>
<tr>
<td>[I][2]</td>
<td>Retroactive Payments, or Underpayments, of SSI or Social Security Benefits</td>
<td>2-51</td>
</tr>
<tr>
<td>[I][3]</td>
<td>Receipts for Replacement of Lost, Damaged, or Stolen Excluded Resources, Including Crime Victim Compensation Payments</td>
<td>2-52</td>
</tr>
<tr>
<td>[I][4]</td>
<td>Promissory Notes or Installment Contracts</td>
<td>2-53</td>
</tr>
<tr>
<td>[I][5]</td>
<td>Earned Income Tax Credits</td>
<td>2-53</td>
</tr>
<tr>
<td>[I][6]</td>
<td>Certain Assistance for Medical Care or Social Services</td>
<td>2-53</td>
</tr>
<tr>
<td>[I][7]</td>
<td>Plan to Achieve Self-Support (PASS Plan)</td>
<td>2-53</td>
</tr>
<tr>
<td>[J]</td>
<td>Disposition of Resources: Transfer of Assets Rules</td>
<td>2-53</td>
</tr>
</tbody>
</table>

§ 2:7.3 Income

[A] Generally

[B] Defining Income

[B][1] Generally

[B][2] Income Versus Resources

[B][3] Kinds of Income
Table of Contents

[D][17] Income Tax Refunds Other Than Earned
Income Tax Credits .................................................. 2-79
[D][18] Hostile Fire Pay ................................................. 2-79
[D][19] Up to $60 of Infrequent Unearned Income ....... 2-79
Regularly Attending School ................................ 2-79
[D][21] Up to $30 of Infrequent or Irregular
Earned Income Per Quarter ................................ 2-79
[D][22] Earned Income of a Disabled Claimant Used
to Meet Impairment-Related
Work Expenses [IRWEs] .......................................... 2-80
[D][23] Earned Income of a Blind Claimant Used to
Meet Work-Related Expenses .................................. 2-80
[D][24] $65 Per Month of Earned Income .................... 2-81
[D][26] Earned or Unearned Income Used to
Fulfill an Approved Plan for
Self-Support [PASS Plan] ....................................... 2-81
[D][27] $20 Per Month General Income Exclusion ....... 2-81
[D][28] Value of Transportation Ticket ....................... 2-82
[D][29] Dependent’s Portion of VA Benefits ............... 2-82
[D][30] Native American Trust Fund Payments ............. 2-82
[D][31] Gifts to Terminally Ill Children ....................... 2-82
[D][32] Reparation Payments to Victims of
Nazi Persecution ..................................................... 2-83
[D][33] Interest on Dedicated Savings Accounts ............ 2-83
[D][34] Interest Earned on Burial Account ................... 2-83
§ 2:7.4 Eligibility for and Payment of Benefits:
Retrospective Monthly Accounting .......................... 2-83
§ 2:7.5 Living Arrangements and Payment Rates .......... 2-85
[A] Generally .......................................................... 2-85
[B] Federal Living Arrangements .............................. 2-86
[C] New York State Living Arrangements ................ 2-86
[C][1] Generally .......................................................... 2-86
[C][2] Living Arrangements That Cause Total or
Partial Ineligibility for SSI Benefits ....................... 2-88
[C][3] Calculating Benefit Rates: Review and
Summary .............................................................. 2-88
§ 2:8 Practice Tips for Maximizing Benefits ............... 2-89
§ 2:9 Other Factors Causing Ineligibility for Benefits ...... 2-91
§ 2:9.1 Failure to Apply for Other Benefits .................. 2-91
§ 2:9.2 Failure to Accept Vocational Rehabilitation ...... 2-92
New York Elder Law

§ 2:9.3 Ineligibility Based on Certain Crimes .................... 2-92
§ 2:9.4 Failure to Comply with a Request for Information or Whereabouts Unknown .................. 2-94
§ 2:10 The Application and Appeal Process ......................... 2-94
§ 2:10.1 Generally .......................................................... 2-94
§ 2:10.2 Filing an Application ............................................ 2-95
§ 2:10.3 The Administrative Appeals Process ....................... 2-96
   [A] Generally .......................................................... 2-96
   [B] Reconsideration .................................................. 2-97
   [C] Administrative Law Judge Hearings and Appeals Council Review ................................ 2-97
§ 2:10.4 Federal Court Review ......................................... 2-98
§ 2:11 Payment of Benefits .............................................. 2-98
§ 2:11.1 Generally .......................................................... 2-98
§ 2:11.2 Representative Payees ......................................... 2-98
§ 2:11.3 Presumptive Disability Payments .......................... 2-99
§ 2:11.4 Emergency Advance Payments ............................. 2-99
§ 2:12 Redeterminations, Overpayments, and Underpayments ................................................. 2-99
§ 2:12.1 Generally .......................................................... 2-99
§ 2:12.2 Redeterminations ................................................. 2-100
§ 2:12.3 Underpayments ................................................... 2-101
   [A] Generally .......................................................... 2-101
   [B] Interim Assistance ............................................... 2-101
   [C] Other Underpayments ......................................... 2-102
§ 2:12.4 Overpayments .................................................... 2-102
   [A] Generally .......................................................... 2-102
   [B] Notice of an Overpayment ................................... 2-102
   [C] Recovery of Overpayments .................................. 2-103
   [D] Reconsideration of Overpayment .......................... 2-105
   [E] Waiver of Overpayment ....................................... 2-106
   [E][1] Generally .......................................................... 2-106
   [E][2] Without Fault ................................................... 2-107
   [E][3] Defeat the Purpose ............................................ 2-107
   [E][4] Against Equity and Good Conscience ................... 2-108
   [E][5] Impede Administration ...................................... 2-108
   [F] Appeals of Overpayment/Ineligibility Determinations ................................................. 2-108
§ 2:13 Conclusion .......................................................... 2-109
Appendix 2A New York State SSI Payment Rates for Individuals and Couples in Various Living Arrangements for 1986–2016 .......... App. 2A-1

xx
Table of Contents

Appendix 2B  New York Monthly Deeming Break-Even Points Effective 01/01/2015 ........................ App. 2B-1
Appendix 2C  SSI and SSP Benefit Levels Chart Effective January 1, 2016................................. App. 2C-1

Chapter 3 Social Security and SSI Disability

by Barbara Samuels

§ 3:1  Overview ........................................................................ 3-4
§ 3:2  Impact of Welfare Reform Legislation on Social Security and SSI Disability ............................ 3-5
  § 3:2.1  Substance Abusers ................................................. 3-6
  § 3:2.2  SSI Eligibility for Noncitizens .............................. 3-8
  § 3:2.3  Disabled SSI Children ............................................ 3-9
  § 3:3.1  Compassionate Allowance .................................. 3-11
§ 3:4  How Is Disability Determined? .................................... 3-12
  § 3:4.1  The Sequential Evaluation ..................................... 3-12
    [A]  Generally .................................................................... 3-12
    [B]  Step 1: What Is Substantial Gainful Activity [SGA]? ........................................ 3-14
    [C]  Step 2: What Is a “Severe” Impairment? ................ 3-16
    [D]  Step 3: What Is a Listing and How Does One Meet or Equal It? .................. 3-17
      [E][1]  Generally .......................................................... 3-21
      [E][2]  How PRW Is to Be Evaluated ................................ 3-22
      [E][3]  Step 4 Consideration of Employer Accommodations ........................................ 3-23
      [E][5]  Evaluating the Ability to Perform Past Relevant Work [PRW] on the Basis of Residual Functional Capacity ...................................................... 3-26
      [E][6]  By-Passing Step 4 in Absence of Complete Work History ................................ 3-27
    [F]  Step 5: Elements Which Must Be Considered in Determining Whether an Individual Can Perform Other Work in the National Economy ..................................... 3-27
      [F][1]  Generally .......................................................... 3-27
      [F][2]  Age ..................................................................... 3-28
New York Elder Law

[F][2][a] Generally ............................................................ 3-28
[F][2][b] Aged Aliens (SSI only) .................................. 3-29
[F][3] Education ............................................................... 3-31
[F][4] Skills ...................................................................... 3-32
[F][5] Transferability of Skills ......................................... 3-33
[F][6] Levels of Physical Exertion .................................... 3-34
[F][6][a] Generally ............................................................ 3-34
[F][6][b] Exertional Activity ............................................. 3-36
[F][7] Nonexertional Activity ......................................... 3-36
[F][8] Evaluating Disability Under Step 5:
The Medical-Vocational Regulations of
Appendix 2 .................................................................... 3-39
[F][8][a] Generally ............................................................ 3-39
[F][8][b] Avoiding Application of
the Medical-Vocational Guidelines .................... 3-41

§ 3:4.2 Other Considerations ............................................ 3-42
[A] Failure to Follow Prescribed Treatment ............... 3-42
[B] Remediability of an Impairment ......................... 3-43
[C] Pain and Other Subjective Symptoms .................. 3-45
[D] Onset and Duration of Disability ......................... 3-48
[E] Date Last Insured (Title II Only) ......................... 3-51
[F] Burden of Proof ......................................................... 3-54

§ 3:5 Other Disability Categories .................................... 3-54
§ 3:5.1 Widow’s and Widower’s Benefits (Title II Only) ... 3-54
§ 3:5.2 Adult Child’s Disability Benefits (Title II Only) ... 3-55
§ 3:5.3 Children’s Disability Benefits (SSI Only)......... 3-55

§ 3:6 Blindness .................................................................. 3-58

§ 3:7 Proving Disability .................................................... 3-61
§ 3:7.1 Generally ............................................................. 3-61
§ 3:7.2 Sources of Medical Evidence .......................... 3-61
[A] Generally ................................................................. 3-61
[B] Objective Versus Subjective Evidence ................. 3-63
[C] Treating, Consulting, and Nonexamining
Doctors’ Statements ...................................................... 3-64
[D] The Treating Physician Rule in New York State.... 3-67

§ 3:7.3 Other Evidentiary Considerations .................... 3-69
[A] Incomplete or Inaccurate Earnings Record
(Title II Only) ............................................................ 3-69
[B] Formal Education Greater Than
Claimant’s Actual Attainment .................................. 3-70
[C] Overstatement of Claimant’s Skills ..................... 3-71
[D] Other Evidence (Marriage, Divorce, Death, Age).... 3-72

xxii
Table of Contents

§ 3:8 Insured Status (Title II Only) ........................................ 3-72
§ 3:8.1 Disability Insurance Coverage ................................ 3-72
[A] Generally ............................................................... 3-72
[B] Quarters of Coverage, in General ......................... 3-73
[C] Insured Status for Disability Coverage ................... 3-73
[D] How to Find a “Date Last Insured” ....................... 3-75
[E] Younger Workers and Date Last Insured ............. 3-77
§ 3:8.2 What Can Be Found in an Earnings Record [ER] ..... 3-78
[A] General Information .............................................. 3-78
[B] Deciphering Abbreviations .................................... 3-79
§ 3:8.3 Concepts Related to Disability Entitlement ........... 3-81
[A] Period of Disability ............................................... 3-81
[B] Disability Freeze .................................................. 3-81
[C] Primary Insurance Amount [PIA] ......................... 3-82
§ 3:9 Representative Payees ............................................ 3-82
§ 3:10 Administrative Appeal Process .......................... 3-83
§ 3:10.1 The Appeal Process in General ....................... 3-83
§ 3:10.2 Appeal Process As Applied to Disability Evaluations 3-84
[A] Initial Disability Application ............................... 3-84
[B] Administrative Law Judge Hearings ..................... 3-85
[B][1] Generally ......................................................... 3-85
[B][2] ALJ In-Person and Video Teleconferenced Hearings 3-86
[B][3] Expert Testimony via Telephone ....................... 3-87
[B][4] Medical Experts ................................................... 3-88
[B][5] Vocational Experts .............................................. 3-89
[B][6] Closing Argument ............................................... 3-93
[B][7] After the ALJ Hearing ................................... 3-93
[B][8] ALJ Decisions .................................................... 3-93
[C] Appeals Council Review ....................................... 3-94
[D] Judicial Review ..................................................... 3-96
§ 3:11 Postentitlement Disability Issues Including Termination of Disability 3-96
§ 3:11.1 Generally ......................................................... 3-96
§ 3:11.2 Work Attempts .................................................. 3-96
§ 3:11.3 Work Incentives ............................................... 3-98
§ 3:11.4 Reentitlement Period (Title II Only) ............... 3-100
§ 3:11.5 Termination Proceedings (CDRs) ..................... 3-101
§ 3:11.6 CDR Sequential Evaluation ............................. 3-103
§ 3:11.7 Overpayments ................................................... 3-107

(N.Y. Elder Law, Rel. #41, 3/18) xxiii
§ 3:12 Practical Problems ................................................................. 3-109
§ 3:12.1 Generally ........................................................................ 3-109
§ 3:12.2 Undeveloped Claims Files ........................................ 3-109
§ 3:12.3 Incorrect Factual Information ........................................ 3-110
§ 3:12.4 Onset Date ...................................................................... 3-110

Appendix 3A Residual Functional Capacity: Maximum
Sustained Work Capability Limited to
Sedentary Work As a Result of Severe
Medically Determinable Impairment(s) ...... App. 3A-1

Appendix 3B Residual Functional Capacity: Maximum
Sustained Work Capability Limited to
Light Work As a Result of Severe Medically
Determinable Impairment(s) ................. App. 3B-1

Appendix 3C Residual Functional Capacity: Maximum
Sustained Work Capability Limited to
Medium Work As a Result of Severe
Medically Determinable Impairment(s) ..... App. 3C-1

Chapter 4 Medicare
by Home Care Association of New York State, Inc.
2018 Update by Andrew Koski

§ 4:1 History and Overview ......................................................... 4-6
§ 4:2 Program Administration and Sources of Law .................. 4-8
§ 4:3 Eligibility and Enrollment .................................................. 4-10
§ 4:3.1 Eligibility ......................................................................... 4-10
§ 4:3.2 Application ...................................................................... 4-11
§ 4:3.3 Enrollment ...................................................................... 4-11
[A] Initial Enrollment Period .................................................. 4-11
[B] General Enrollment Period .............................................. 4-12
[C] Working Elderly and the Special Enrollment
   Period .............................................................................. 4-13
[D] Failure to Enroll .............................................................. 4-14
[E] Appeals ............................................................................. 4-15
§ 4:4 Medicare Appeals Process ................................................. 4-15
§ 4:4.1 Redeterminations ............................................................ 4-16
§ 4:4.2 Reconsideration ............................................................. 4-16
§ 4:4.3 Administrative Hearings ................................................. 4-17
§ 4:4.4 Summary of Part A Appeals Process .............................. 4-17
§ 4:4.5 Summary of Part B Appeals Process .............................. 4-19
§ 4:5 Part A: Hospital Services .................................................... 4-20

xxiv
## Table of Contents

<table>
<thead>
<tr>
<th>§ 4:5.1</th>
<th>Coverage and Qualifying Criteria</th>
<th>4-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>[A]</td>
<td>Benefit Periods</td>
<td>4-20</td>
</tr>
<tr>
<td>[B]</td>
<td>Covered Benefits</td>
<td>4-21</td>
</tr>
<tr>
<td>[C]</td>
<td>Standard for Coverage</td>
<td>4-22</td>
</tr>
<tr>
<td>§ 4:5.2</td>
<td>Rehabilitation Hospitals</td>
<td>4-22</td>
</tr>
<tr>
<td>§ 4:5.3</td>
<td>Reimbursement Structure and Coverage Issues</td>
<td>4-23</td>
</tr>
<tr>
<td>[A]</td>
<td>Admission Denials</td>
<td>4-24</td>
</tr>
<tr>
<td>[B]</td>
<td>Premature Discharges</td>
<td>4-25</td>
</tr>
<tr>
<td>[C]</td>
<td>Observation Status</td>
<td>4-25</td>
</tr>
<tr>
<td>§ 4:5.4</td>
<td>Beneficiary’s Right to Discharge Planning</td>
<td>4-26</td>
</tr>
<tr>
<td>§ 4:5.5</td>
<td>Coverage Denials and Appeals</td>
<td>4-27</td>
</tr>
</tbody>
</table>

**Chart 4-1** Medicare Hospital Coverage Determination and Appeals Process | 4-28

| § 4:5.6 | Which Medicare Denials for Inpatient Hospital Care Should Be Appealed: A Quick Screen to Aid in Identifying Coverable Cases | 4-29 |
| [A] | Additional Advocacy Tips | 4-29 |

| § 4:5.7 | Which Medicare Denials for Inpatient Hospital Rehabilitation Should Be Appealed: A Quick Screen to Aid in Identifying Coverable Cases | 4-30 |
| [A] | Additional Advocacy Tips | 4-30 |

| § 4:6 | Part A: Skilled Nursing Facility Coverage | 4-31 |
| § 4:6.1 | Coverage and Qualifying Criteria | 4-31 |
| [A] | Benefit Periods | 4-31 |
| [B] | Beneficiary Copayment Obligation | 4-32 |
| [C] | Covered Services | 4-33 |
| § 4:6.2 | Reimbursement Structure and Coverage Issues | 4-33 |
| [A] | Provider Decisions | 4-34 |
| [B][1] | Initial Admissions | 4-35 |
| [B][2] | Approved Admissions | 4-36 |
| [B][3] | Redeterminations | 4-36 |
| § 4:6.3 | Terminations | 4-37 |
| § 4:6.4 | Appeals Overview | 4-38 |

**Chart 4-2** Medicare Skilled Nursing Facility Claims Submission and Appeals Process | 4-39

| § 4:6.5 | Which Medicare Denials for Skilled Nursing Facility Care Should Be Appealed: A Quick Screen to Aid in Identifying Coverable Cases | 4-40 |
| [A] | Other Important Points | 4-40 |

| § 4:7 | Home Health Coverage | 4-41 |
| § 4:7.1 | Coverage and Qualifying Criteria | 4-42 |
New York Elder Law

[A] Homebound Rule.................................................... 4-43
[B] Skilled Nursing Care on an Intermittent Basis ..... 4-45
[C] Skilled Therapy Services......................................... 4-48
[D] Part-Time or Intermittent Services ......................... 4-49
[E] Chronic, Stable, and Maintenance-Level Patients............................................. 4-50

§ 4:7.2 Claims Submission and Reimbursement Structure................................................................. 4-52
§ 4:7.3 Notice Requirements.............................................. 4-52
[A] ABN at Initiation.................................................... 4-53
[B] ABN for Reductions................................................ 4-53
[C] ABN for Terminations ............................................ 4-53
[D] Other Insurance...................................................... 4-54
[E] Completion of ABN................................................ 4-54
[F] Exceptions............................................................... 4-55
[G] HHCCN ........................................................................ 4-55
§ 4:7.4 Terminations .......................................................... 4-57
§ 4:7.5 Appeals Overview ................................................... 4-58
Chart 4-3 Medicare Home Health Claims Submission and Appeals Process .............................................. 4-59
§ 4:7.6 Which Medical Denials for Home Health Services Should Be Appealed: A Quick Screen to Aid in Identifying Coverable Cases ............................................. 4-60
[A] Additional Advocacy Tips ....................................... 4-60

§ 4:8 Part A: Hospice Coverage .............................................. 4-61
§ 4:8.1 Coverage and Qualifying Criteria................................. 4-61
§ 4:8.2 Deductibles and Coinsurance for Nonhospice Care ................................................................. 4-63
§ 4:8.3 Election of the Hospice Benefit ................................ 4-64
[A] Who May Make an Election for Hospice Care ...... 4-64
[B] How the Election Is Made and How It Is Revoked ................................................................. 4-64
[C] Changing the Hospice That Is Providing Care ....... 4-65
§ 4:8.4 The Appeals Process............................................... 4-66
§ 4:8.5 Which Medicare Denials for Hospice Care Should Be Appealed: A Quick Screen to Aid in Identifying Coverable Cases ............................................. 4-66
[A] Additional Advocacy Tips ....................................... 4-66

§ 4:9 Part B............................................................................. 4-67
§ 4:9.1 Covered Services..................................................... 4-67
§ 4:9.2 Approved Charges and Balance Billing.................. 4-70
§ 4:9.3 Advance Beneficiary Notice .................................... 4-72
Table of Contents

§ 4:9.4  Ambulance Services ................................................ 4-73
   [A] Coverage Rules ..................................................... 4-73
   [B] Nonemergency Services .......................................... 4-74
   [C] Physician Certification Rules ................................. 4-74
   [D] Levels of Service .................................................. 4-75
   [E] Destination Requirements ...................................... 4-76
   [F] Fee Schedule and Mandatory Assignment ................... 4-76
§ 4:9.5  Part B: Appeals .................................................. 4-77
§ 4:10   Medicare and Medicaid .......................................... 4-77
§ 4:11   Medicare As Secondary Payer ................................ 4-78
   § 4:11.1  When Medicare Is a Secondary Payer ................. 4-78
      [A] Automobile and Liability Insurance ....................... 4-79
      [B] Employer Group Health Plan: End-Stage
          Renal Disease .................................................... 4-79
      [C] Employer Group Health Plan: Older
          Employees and Spouses .......................................... 4-80
      [D] Employer Group Health Plan: Disabled
          Individuals and Family Members ............................ 4-80
      [E] Administration of Medicare As a Secondary
          Payer Issue .......................................................... 4-80
   § 4:11.2  Filing Secondary Payer Claims ......................... 4-81
§ 4:12   Private Contracts ................................................ 4-82
   § 4:12.1  Private Contract Requirements ......................... 4-83
   § 4:12.2  Private Contract Affidavit ................................ 4-84
   § 4:12.3  Private Contract Not Required .......................... 4-85
   § 4:12.4  Appeals for Private Contracts ......................... 4-86
§ 4:13   Medicare Managed Care .......................................... 4-86
   § 4:13.1  Medicare Advantage Plan Options ...................... 4-86
      [A] Benefits .......................................................... 4-87
      [B] Continuation Area ............................................... 4-87
   § 4:13.2  Medicare Advantage Plans ................................. 4-87
      [A] Health Maintenance Organizations ......................... 4-87
      [B] Provider Sponsored Organizations ......................... 4-88
      [C] Preferred Provider Organizations ........................ 4-89
      [D] Private Fee-for-Service Plans .............................. 4-89
      [E] Religious Fraternal Benefit Society Plans ............ 4-91
      [F] Point of Service Options ..................................... 4-91
      [G] Education Campaign ............................................. 4-91
   § 4:13.3  Election Periods .............................................. 4-92
      [A] Initial Coverage Election Periods ......................... 4-92
      [B] Annual Election Periods .................................... 4-92
      [C] Medicare Advantage Disenrollment Period ............. 4-93
New York Elder Law

[D] Special Election Periods for Persons Age Sixty-Five ................................................................ 4-93
[E] Special Election Periods ................................................. 4-93
§ 4:13.4 Disenrollment by the Medicare Advantage
Plan ...................................................................................... 4-94
§ 4:13.5 Disclosure Requirements ........................................ 4-95
§ 4:13.6 Access to Services .................................................. 4-96
[A] Emergency and Urgent Care Services ..................... 4-96
[B] Urgently Needed Services ....................................... 4-97
[C] Post-Stabilization Care ........................................... 4-97
[D] Gag Orders .......................................................... 4-98
§ 4:13.7 Termination of Medicare Advantage Coverage ...... 4-98
§ 4:13.8 Appeals ................................................................. 4-99
[A] Organization Determinations ................................. 4-99
§ 4:13.9 Non-Expedited Organization Determinations ...... 4-100
[A] Requests for Services............................................. 4-100
[B] Requests for Payment ........................................... 4-101
[C] Written Notification by Practitioners.................... 4-101
§ 4:13.10 Expedited Organization Determinations .............. 4-101
[A] Written Notification ............................................. 4-102
§ 4:13.11 Non-Expedited Reconsiderations ..................... 4-102
[A] Requests for Services............................................. 4-102
[B] Requests for Payment ........................................... 4-103
§ 4:13.12 Expedited Reconsiderations .............................. 4-104
§ 4:13.13 Further Appeal Rights ....................................... 4-105
§ 4:13.14 Appeals of Hospital Coverage ......................... 4-106
§ 4:13.15 Grijalva Court Case ........................................ 4-106
[A] Advance Notice of Service Terminations .............. 4-107
[B] Fast-Track Appeal ............................................... 4-107
[C] Reconsideration .................................................... 4-108
§ 4:13.16 Grievances ............................................................ 4-109
§ 4:14 Medicare Prescription Drug, Improvement and
Modernization Act of 2003 ......................................... 4-110
§ 4:14.1 Background ........................................................ 4-110
§ 4:14.2 Eligibility .............................................................. 4-110
§ 4:14.3 Enrollment and Disenrollment Periods .......... 4-110
§ 4:14.4 Penalty for Late Enrollment ......................... 4-111
§ 4:14.5 Structure of Medicare Part D Drug Benefit ...... 4-111
§ 4:14.6 Formularies ....................................................... 4-112
§ 4:14.7 Excluded Drugs ..................................................... 4-112
§ 4:14.8 Low-Income Subsidy Assistance ..................... 4-113
Table of Contents

§ 4:14.9 EPIC ................................................................. 4-114
§ 4:14.10 Appeals ......................................................... 4-115
  [A] Coverage Determinations ............................... 4-115
  [B] Redetermination ............................................. 4-115
  [C] Reconsideration ............................................. 4-116
  [D] Further Appeals ............................................. 4-116
§ 4:15 Advocacy Issues .............................................. 4-116
Appendix 4A Medicare Beneficiary Costs ................. App. 4A-1
Appendix 4B Medicare Preventive Services ................. App. 4B-1
Appendix 4C Enrollment and Disenrollment Periods for Medicare Advantage Plans .............. App. 4C-1
Appendix 4D Medicare Advantage Plan Appeals ........ App. 4D-1
Appendix 4E Medicare Drug Benefit ......................... App. 4E-1
Appendix 4F Medicare Drug Benefit for Dual Eligible and Other Low-Income Beneficiaries .......... App. 4F-1

Chapter 5 Supplemental Medical Insurance
by Andrew Koski

§ 5:1 Introduction ....................................................... 5-3
§ 5:2 Medicare Supplement Insurance ........................ 5-3
  § 5:2.1 Gaps in Part A [Hospital] Coverage .................. 5-4
  § 5:2.2 Gaps in Part B [Outpatient and Physician]
    Coverage ............................................................ 5-5
  § 5:2.3 Standardization of Medigap Policies ............... 5-5
    [A] Limit on Number of Kinds of Policies Sold .......... 5-6
    [B] Protection Against Sale of Duplicate Coverage ...... 5-7
    [C] Medigap Coverage for Medicaid Recipients ......... 5-7
    [D] Open Enrollment ........................................... 5-8
    [E] Community Rating ........................................ 5-8
    [F] Uniformity .................................................. 5-8
    [G] Preexisting Conditions .................................. 5-8
    [H] Medicaid Coverage ..................................... 5-9
    [I] Renewability .............................................. 5-9
    [J] Minimum Loss Ratio ..................................... 5-10
  § 5:2.4 Available Medigap Plans .............................. 5-10
    [A] Core Plan [A] ............................................. 5-10
    [B] Plans B Through G ...................................... 5-10
    [C] Plans K and L .......................................... 5-11
    [D] Plans M and N ........................................... 5-11
    [E] Medigap Changes ....................................... 5-11

(N.Y. Elder Law, Rel. #41, 3/18)  xxix
## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 5:4.3</td>
<td>Issues to Examine in Selecting Public-Private Partnership Coverage</td>
<td>5-26</td>
</tr>
<tr>
<td>§ 5:5</td>
<td>Favorable Tax Treatment for Long-Term Care Insurance</td>
<td>5-28</td>
</tr>
<tr>
<td>§ 5:5.1</td>
<td>Federal Legislation</td>
<td>5-28</td>
</tr>
<tr>
<td>§ 5:5.2</td>
<td>Benefit Payments Not Counted As Income</td>
<td>5-28</td>
</tr>
<tr>
<td>[A]</td>
<td>Employer Contributions</td>
<td>5-29</td>
</tr>
<tr>
<td>§ 5:5.3</td>
<td>Allowable Deductions</td>
<td>5-30</td>
</tr>
<tr>
<td>[A]</td>
<td>Unreimbursed Expenses</td>
<td>5-30</td>
</tr>
<tr>
<td>[B]</td>
<td>Premiums</td>
<td>5-30</td>
</tr>
<tr>
<td>§ 5:5.4</td>
<td>Effective Dates</td>
<td>5-30</td>
</tr>
<tr>
<td>§ 5:5.5</td>
<td>New York State Tax Credit</td>
<td>5-31</td>
</tr>
</tbody>
</table>

Appendix 5A Deduction for Premiums for Long-Term Care Insurance, 2018 Tax Year...........App. 5A-1
Appendix 5B Medicare Coverage 2018........................................App. 5B-1
Appendix 5C Medicare Supplement Insurance Benefit Plans A–J Prior to June 1, 2010......App. 5C-1
Appendix 5D Medicare Supplement Insurance Benefit Plans K and L.....................App. 5D-1
Appendix 5E Medicare Supplement Insurance Plans As of June 1, 2010....................App. 5E-1
Appendix 5F Checklist for Purchasing Medicare Supplement Health Insurance..............App. 5F-1
Appendix 5G New York State Partnership for Long-Term Care Policies (2018).............App. 5G-1
Appendix 5H Checklist for Purchasing Long-Term Care Insurance Policies..................App. 5H-1

## Chapter 6 Medicaid for the Elderly, Blind, or Disabled

by Douglas J. Chu, J.D.

§ 6:1 Introduction .............................................................................. 6-7
§ 6:2 Background and Description of the Medicaid Program ....................... 6-7
  § 6:2.1 Internet Resources ........................................................... 6-11
§ 6:3 Eligibility Categories .................................................................. 6-12
  § 6:3.1 Supplemental Security Income (SSI) Recipients .... 6-12
  § 6:3.2 Disability Claimants ......................................................... 6-12
  § 6:3.3 Medically Needy Claimants ................................................ 6-13
  § 6:3.4 Medicaid Buy-In Program for the Working Disabled......................... 6-13

(N.Y. Elder Law, Rel. #41, 3/18) xxxi
§ 6:4 Elderly, Blind, or Disabled ............................................. 6-14
§ 6:4.1 Elderly ..................................................................... 6-15
§ 6:4.2 Blind ....................................................................... 6-15
§ 6:4.3 Disabled.................................................................. 6-15
§ 6:5 What Medicaid Covers .................................................. 6-15
§ 6:5.1 Provider Services ..................................................... 6-15
§ 6:5.2 Medical Assistance Utilization Threshold
Program [MUTS]............................................................. 6-17
[A] Annual Limits ............................................................. 6-17
[B] Programs and Services Exempt from MUTS ............. 6-18
[C] Need for Emergency Services ..................................... 6-18
[D] Requesting Additional Service Units or
Exemption ..................................................................... 6-19
[E] Override Application Process and Due Process ......... 6-21
§ 6:5.3 Copayment System..................................................... 6-22
[A] Inability to Pay Copayment ............................................ 6-22
[B] Copayment Annual Cap.............................................. 6-23
[C] Copayment Exemptions ............................................. 6-23
[D] Grievance Procedures............................................... 6-23
§ 6:5.4 Health Insurance Premiums................................... 6-23
[A] Employee Health Insurance........................................... 6-24
[B] Coverage for Medicare Premiums, Copayments, and
Deductibles................................................................. 6-24
[B][1] Qualified Medicare Beneficiary [QMB]
Program..................................................................... 6-25
[B][2] Specified Low Income Medicare Beneficiary
(SLIMBs) Program ...................................................... 6-25
[B][3] Qualified Individuals 1 (QI-1’s).......................... 6-25
§ 6:6 Medicaid Application .................................................... 6-26
§ 6:6.1 Completing and Submitting an Application........... 6-26
§ 6:6.2 Presumptive Eligibility............................................. 6-27
§ 6:6.3 Face-to-Face Interview Eliminated......................... 6-29
§ 6:6.4 Required Documentation ....................................... 6-29
[A] Missing Documentation............................................. 6-29
[B] Resource Attestation [Verification of Countable
Resources]................................................................. 6-30
§ 6:6.5 Time for Determining Eligibility ............................ 6-32
§ 6:6.6 Date of Coverage and Retroactive
Reimbursement .......................................................... 6-32
[A] Medicaid Reimbursement............................................ 6-32
[A][1] Three-Month Retroactive Coverage ....................... 6-33
[A][2] Pending Application Approval................................. 6-33
Table of Contents

[A][3] Pending Activation ............................................. 6-34
[A][4] Agency Error or Delay ........................................ 6-34
[B] Applying for Reimbursement .................................. 6-34
[C] Vendor’s Request for Medicaid Payment ................ 6-35
§ 6:6.7 Annual Renewal ..................................................... 6-35
§ 6:6.8 Assignment of Third-Party Recovery ...................... 6-35
§ 6:6.9 U.S. Citizenship Requirements .............................. 6-36
[B] Qualified Aliens ...................................................... 6-38
[C] Non-Eligible Aliens in Nursing Facilities ............... 6-38
§ 6:6.10 New York State Residency Requirements ............... 6-38
[A] Lack of Mental Capacity ......................................... 6-39
[B] Temporary Visits to or Absences from New York ... 6-39
[C] Moving from One Medicaid District to Another .... 6-40
§ 6:7 Financial Requirements ................................................. 6-41
§ 6:7.1 Rules Regarding Income ......................................... 6-41
[A] Definition of Income .............................................. 6-41
[B] Countable Income .................................................. 6-42
[B][1] Previously Exempt Income That Is Now Counted .......... 6-42
[B][2] Employment Income and Income-Producing Property .......... 6-42
[B][3] Duty to Apply for Available Funds and Income ............ 6-43
[B][4] Personal Injury Recoveries .................................. 6-43
[C] Non-Countable Income [Exemptions] ......................... 6-44
[C][1] Health Insurance Premiums [Including Medicare Part B] ... 6-44
[C][2] Interest on a Separate Exempt Burial Account .......... 6-44
[C][3] German Restitution Payments ................................ 6-44
[C][4] $20 Household Income Disregarded ......................... 6-45
[C][5] “In-Kind” Income or Support .................................. 6-45
[C][6] Other Restitution Payments .................................. 6-46
[C][7] Agent Orange Payments ....................................... 6-46
[C][8] Reverse Mortgage Income ..................................... 6-46
[C][9] Income to Supplemental Needs Trust [SNT] ............ 6-46
[C][10] Pooled Trusts for Income ..................................... 6-47

(N.Y. Elder Law, Rel. #41, 3/18) xxxiii
New York Elder Law

§ 6:7.2 Surplus Income Program (Spenddown) .................. 6-49
[A] Surplus Income for Community Care
   (Non-Home Care Services) .................................. 6-50
[B] "Pay-In" Program ........................................... 6-51
[C] Requirement to Pay Surplus Income for
   Home Care Services ........................................ 6-52
[D] Surplus Income and Hospital Services ................. 6-52
[E] Surplus Income and Nursing Homes .................... 6-52

§ 6:7.3 Rules Regarding Resources ............................... 6-53
[A] Definition of Resources ................................... 6-53
[A][1] Date to Evaluate Resources ............................ 6-53
[B] Jointly Owned Bank Accounts and
   Real Estate .................................................. 6-54
[C] Spousal Resources .......................................... 6-55
[D] Non-Liquid Resources ...................................... 6-56
[E] Resource Exemptions ..................................... 6-56
   [E][1] Homestead .............................................. 6-56
   [E][1][a] Vacant Homesteads .................................. 6-57
   [E][1][b] Vacant Non-Liquid Homesteads .................... 6-58
   [E][1][c] Subjective Intent to Return Home .............. 6-58
   [E][1][d] Homesteads Subject to a Life Estate Deed .... 6-59
   [E][1][e] Non-Liquid Resource Due to Legal
            Impediment ........................................... 6-59
   [E][2] Personal Property .................................... 6-60
   [E][3] Life Insurance ......................................... 6-60
   [E][5] Resources and Incurred Medical Bills .............. 6-61
   [E][6] Life Insurance and Burial Expenses ............... 6-61
   [E][7] Irrevocable Burial Trusts ............................ 6-62
   [E][8] German and Austrian Reparation Savings
          Accounts .................................................. 6-63
   [E][10] Non-Applicant Spouse Retirement Accounts .... 6-63
   [E][11] Supplemental Needs Trusts for the Disabled .... 6-64
   [E][12] Availability of Resources (Windfalls and
          Inheritance) ............................................. 6-65
   [E][13] Retirement Funds ..................................... 6-65
   [E][14] Annuity Reporting and Beneficiary
          Requirement ............................................. 6-66
[F] Disposing of Excess Resources ............................ 6-66
§ 6:8 Medicaid Transfer Rules and Penalties After the Deficit Reduction Act of 2005....................... 6-67

§ 6:8.1 Transfer Penalties Only for Nursing Home Services, No Penalty for Home Care........... 6-68

§ 6:8.2 Transfer Rule (Stage 1)—Look-Back Period of Five Years........................................... 6-69

[A] Five-Year Look-Back for Existing Trusts .......... 6-69
[B] Shorter Look-Back for Home Care Applications.... 6-70

§ 6:8.3 Transfer Rule (Stage 2)—Calculating the Penalty Period............................................. 6-70

[A] The Formula..................................................... 6-71

§ 6:8.4 Transfer Rule (Stage 3)—Penalty Period Begin Date .................................................. 6-71

[A] Transfers on or After February 8, 2006........... 6-72

§ 6:8.5 Transfers Exempt from Penalty.................. 6-72

[A] Transfers for Fair Market Value .................... 6-72
[B] Transfers for Purpose Other Than Qualifying for Medicaid.............................................. 6-73
[C] Transfers to a Blind or Disabled Child .......... 6-73
[D] Transfers Between Spouses............................... 6-73
[E] Undue Hardship................................................ 6-74
[F] Returning Transferred Assets......................... 6-74
[G] Transfers into a Supplemental Needs Trust [SNT] .......................................................... 6-75

§ 6:8.6 Transfers of Homesteads on or After October 1, 1989............................................. 6-75

§ 6:8.7 Transfers Made by the Non-Applicant Spouse .... 6-76

[A] Transfers by Healthy (Non-Applicant) Spouse .... 6-76

[A][1] Spousal Transfer Example ................................ 6-77

§ 6:8.8 Multiple Consecutive Transfers.................. 6-78

§ 6:8.9 Life Estates and Transfer Rules.................. 6-78

§ 6:8.10 Documentation of Transfers...................... 6-79

§ 6:8.11 Spouse’s Right of Election....................... 6-80

§ 6:8.12 Transfer Rule Definitions......................... 6-80

[A] Assets.................................................................. 6-80
[B] Long-Term Care or Nursing Home Services........ 6-80

§ 6:9 Spousal Budgeting Rules............................... 6-81

§ 6:9.1 Budgeting for When Both Spouses Require the Same Services.................................... 6-81

§ 6:9.2 Budgeting When Both Spouses Require Different Services............................................. 6-82

(N.Y. Elder Law, Rel. #41, 3/18) XXXV
§ 6:9.3  Budgeting When One Spouse Needs Non-Institutional Services
[Home Care/Community Services] ................................. 6-82
[A]  Spousal Refusal ....................................................... 6-82
[B]  Marriage Equality Act—Same Sex Marriage .......... 6-84
§ 6:9.4  Budgeting When One Spouse Is Residing in a Nursing Home .......................... 6-84
[A]  Snapshot of the Budget ........................................... 6-86
§ 6:9.5  Budgeting When One Spouse Is Receiving MLTC Home Care Services  ................... 6-86
§ 6:9.6  Spousal Income Budgeting Rules ............................ 6-87
[A]  Income Allowance When a Spouse Is Residing in a Nursing Home ......................... 6-87
[B]  Spousal Impoverishment Income Allowance for the Non-Applying Spouse ................. 6-88
[B][1]  Community Spouse Excess Income
        (Twenty-Five Percent Rule) ...................................... 6-89
[C]  Family Allowance .................................................. 6-89
§ 6:9.7  Spousal Resource Budgeting Rules ......................... 6-90
[A]  Resource Limit of Institutionalized Spouse ........... 6-90
[B]  Spousal Impoverishment Resource Allowance ...... 6-90
[C]  Separating Spousal Resources [Ninety-Day Rule] ... 6-91
[D]  Exceeding the Community Spouse Resource Allowance ........................................ 6-92
[D][1]  Exceptions to the Maximum Allowance ............... 6-92
[E]  Disclosure of Financial Information ...................... 6-93
§ 6:10  Liens and Rights of Recovery .................................. 6-94
§ 6:10.1  Imposition of a Lien ........................................... 6-94
§ 6:10.2  Liens on the Homestead ...................................... 6-94
§ 6:10.3  Recovery Against Personal Injury Award ............ 6-95
§ 6:10.4  Estate Recovery Rules ........................................ 6-95
[A]  Recovery Against Estate of Medicaid Beneficiary ... 6-95
[B]  Recovery Against Estate of Surviving Spouse ........ 6-96
[C]  N.Y. Partnership Long-Term Care Policy ............... 6-96
[D]  Statute of Limitation .............................................. 6-97
§ 6:10.5  Debtor and Creditor Law ..................................... 6-97
§ 6:11  Appeals .............................................................. 6-97
§ 6:11.1  Due Process Rights ............................................. 6-98
[A]  Right to Written Notice .......................................... 6-98
[B]  Right to “Aid Continuing” ..................................... 6-98
[C]  Right of Access to Files ........................................ 6-98
[D]  Right to Representation ......................................... 6-98

xxxvi
### Table of Contents

[E] Rights Related to Fair Hearing ........................................... 6-99
[F] Right to Impartial Judgment ............................................ 6-99
[G] Right to Written Decision .............................................. 6-99
[H] Disclosure Rules Under HIPAA ...................................... 6-99
§ 6:11.2 Time Factors ............................................................ 6-100
§ 6:11.3 Fair Hearing Procedures .......................................... 6-100
§ 6:11.4 Conference Meeting ................................................. 6-101
§ 6:11.5 Judicial Review .......................................................... 6-101
Appendix 6A Medicaid Income and Resource Levels
for the Medically Needy .................................................. App. 6A-1
Appendix 6B Medicaid Copayments and Exempt
Services .................................................................................. App. 6B-1
Appendix 6C Medicaid Copayment Exemptions .......... App. 6C-1
Appendix 6D Request for Documentation of
Citizenship/Alien Status .................................................. App. 6D-1
Appendix 6E Alien Status Desk Guide Notice of
Eligibility for Coverage for the Treatment
of an Emergency Medical Condition .......... App. 6E-1
Medicaid Eligibility for Immigrants
After Aliessa ................................................................. App. 6E-5
Appendix 6F Regional Rates for Nursing Homes .......... App. 6F-1
Appendix 6H Community Spouse's Income
Allowance .................................................................................. App. 6H-1
Appendix 6I Community Spouse Resource
Allowance ............................................................................... App. 6I-1
Appendix 6J Guide to Documentation for the
Medicaid Application .............................................................. App. 6J-1
Appendix 6K Not-for-Profit Organizations That Have
Pooled Trusts in New York State ............................. App. 6K-1
Appendix 6L Medical Request for Home Care
[Form M-11q] ................................................................. App. 6L-1

### Chapter 7  Home Care

by Ellen P. Rosenzweig

§ 7:1 Introduction .................................................................. 7-3
§ 7:2 Authorities .................................................................. 7-8
§ 7:3 Kinds of Home Care Services ..................................... 7-8
§ 7:3.1 Medical Home Health Services ............................. 7-8
§ 7:3.2 Personal Care Services ............................................ 7-9
§ 7:3.3 Nonmedical Services at Home ................................. 7-11

(N.Y. Elder Law, Rel. #41, 3/18) .xxxvii
§ 7:4 Funding Sources ........................................................................ 7-12
§ 7:5 Providers of Home Care Services ........................................ 7-14
 § 7:5.1 Certified Home Health Agencies (CHHAs) ........... 7-15
 § 7:5.2 Long-Term Home Health Care Providers
          (LTHHCPs) .................................................................... 7-15
 § 7:5.3 AIDS Home Care Programs (AHCPs) ................... 7-17
 § 7:5.4 Private Duty Nurses ..................................................... 7-17
 § 7:5.5 Licensed Home Care Services Agencies
          (LHCSAs) .................................................................. 7-17
 § 7:5.6 Assisted Living Programs (ALPs) ......................... 7-18
 § 7:5.7 Limited Licensed Home Care Services
          Agencies (LLHCSAs) ............................................ 7-18
 § 7:5.8 Personal Care Providers .............................................. 7-18
 § 7:5.9 Consumer Directed Personal Assistance
          Programs (CDPAPs) ................................................ 7-19
 § 7:5.10 Hospice Programs .................................................... 7-20
 § 7:5.11 Managed Long-Term Care Demonstration
          Projects ...................................................................... 7-21
          [A] Social Health Maintenance Organizations
              (SHMOs) ................................................................ 7-21
          [B] Programs for All-Inclusive Care for the Elderly
              (PACE) .................................................................. 7-21
          [C] Continuing Care Networks (CCNs) .................. 7-22
          [D] Evaluated Medicaid Long-Term Care
              Capitation Program (Commonwealth Projects)...... 7-23
          [E] Independence Care Systems (ICS) ...................... 7-23
          [F] Long-Term Care Finance Act of 1997 (LTCFA)
              Legislatively Designated Sites ............................. 7-24
          [G] Additional LTCFA Plans ..................................... 7-24
 § 7:5.12 Expanded In-Home Services for the Elderly
          Program ..................................................................... 7-25

§ 7:6 Health and Safety Issues ...................................................... 7-26
§ 7:7 Expanded In-Home Services for the Elderly
          Program ...................................................................... 7-27
 § 7:7.1 Services ........................................................................ 7-28
 § 7:7.2 Medical Eligibility ....................................................... 7-28
 § 7:7.3 Financial Eligibility ...................................................... 7-29
 § 7:7.4 Cost Share Calculation ................................................ 7-30
 § 7:7.5 EISEP Appeals ............................................................ 7-31

Appendix 7A Reference Guide to Home Care
          Services ...................................................................... App. 7A-1
Chapter 8  Protective Services

by Debra Studer Sacks

§ 8:1  Introduction ............................................................... 8-2
§ 8:2  Voluntary and Involuntary Services ................................ 8-5
  § 8:2.1 Power of Attorney .................................................. 8-5
    [A] Creating a Power of Attorney .................................. 8-7
    [B] The Agent ................................................................ 8-9
    [C] Acceptance of the Statutory Short Form Power
       of Attorney by Third Parties ........................................ 8-10
    [D] Appointment of a Monitor ....................................... 8-11
    [E] Special Proceeding .................................................. 8-11
    [F] Termination and Revocation of the
       Power of Attorney ................................................... 8-13
  § 8:2.2 Representative Payee ............................................. 8-14
  § 8:2.3 Civil Commitment ................................................ 8-19
  § 8:2.4 Orders of Protection ............................................. 8-26

§ 8:3 Protective Services for Persons with Intellectual or
   Developmental Disabilities .............................................. 8-29
  § 8:3.1 Admission to State-Approved Schools ..................... 8-30
  § 8:3.2 Guardianship ....................................................... 8-31

§ 8:4 Article 81 Guardianship ........................................... 8-36

§ 8:5 Protective Services for Adults Program ........................... 8-48
  § 8:5.1 Three Eligibility Criteria ....................................... 8-48
  § 8:5.2 Adult Abuse .......................................................... 8-50
    [A] Definitions of Abuse .............................................. 8-50
    [B] Mandatory Reporting ............................................ 8-50
    [C] Confidentiality ..................................................... 8-50
  § 8:5.3 Plan of Care ........................................................... 8-53
    [A] Family and Friends ................................................ 8-54
    [B] Hospitals ............................................................. 8-54
New York Elder Law

Appendix 8A Request to Be Selected As Payee (Form SSA-11-BK) .................................. App. 8A-1
Appendix 8B “Power of Attorney”—New York Statutory Short Form ................................. App. 8B-1
Appendix 8C “Power of Attorney”—New York Statutory Gifts Rider Authorization.................. App. 8C-1

Chapter 9 Housing Law by Andrew Scherer
2011 Update by David Robinson

§ 9:1 Introduction ........................................................................ 9-3
§ 9:2 Overview and Sources of Housing Law in New York .... 9-4
  § 9:2.1 Landlord-Tenant Law ................................................. 9-5
    [A] Article 7 of the New York State Real Property Law .... 9-5
    [B] Rent Laws ............................................................... 9-6
  § 9:2.2 Housing Programs ...................................................... 9-8
  § 9:2.3 Eviction Procedures .................................................. 9-9
  § 9:2.4 Requirement of Notice ........................................... 9-10
  § 9:2.5 Eviction Proceedings ............................................... 9-10
  § 9:2.6 Warrant of Eviction ................................................ 9-12
  § 9:2.7 Harassment ......................................................... 9-12
  § 9:3 Housing Discrimination and Tenant Screening ....... 9-13
    § 9:3.1 Protections Based on Age .................................... 9-14
    § 9:3.2 Protections Based on Disability ....................... 9-16
    § 9:3.3 Protections Based on Source of Income ........... 9-17
    § 9:3.4 Construction Standards .................................. 9-18
    § 9:3.5 Reasonable Accommodation ........................... 9-19
    § 9:3.6 Exemptions for Housing for Elderly .......... 9-21
    § 9:3.7 Remedies for Discriminatory Housing Practices .... 9-22
    § 9:3.8 Tenant-Screening Reports ............................. 9-23
  § 9:4 Rights of Elderly Tenants ......................................... 9-24
    § 9:4.1 SCRIE: Senior Citizen Rent Increase Exemption ........................................ 9-24
    § 9:4.2 DRIE: Disability Rent Increase Exemption Program ........................................ 9-29
      [A] Income Limit ................................................ 9-29
      [B] Criteria ....................................................... 9-30
§ 9:4.3 Eviction Protections................................. 9-30
[A] Cooperative and Condominium Conversions 9-30
[B] Personal Use Evictions .............................. 9-32
[C] Succession Rights ...................................... 9-34
[D] Right to Share Apartment with Roommates 9-39
[E] Right to Terminate Leases .......................... 9-41
[F] Guardian Ad Litem in a Summary Proceeding 9-42
[G] Preexisting Tenancy in a Foreclosed Property 9-45
§ 9:5 Section 202 Housing Program.................. 9-47
§ 9:5.1 Protections from Termination in a Section 202 Tenancy 9-47
§ 9:5.2 80/20 Rental Housing Tax-Exempt Finance Program 9-48
§ 9:6 Elderly Homeowners .............................. 9-50
§ 9:7 Elderly Homeowners .............................. 9-51
§ 9:7.1 Real Property Tax Exemption .................. 9-51
§ 9:7.2 Real Property Tax Credit Program ............ 9-54
§ 9:7.3 Reverse Mortgages .............................. 9-55
§ 9:7.4 Fraudulent Mortgage Practices ............... 9-58
§ 9:7.5 Home Repair Assistance ...................... 9-61
[A] RESTORE (Residential Emergency Services to Offer Repairs to the Elderly) 9-62
§ 9:7.6 Utility Assistance ................................ 9-63
[A] Home Energy Assistance Program ............... 9-63
Appendix 9A Annual Income Levels for Real Property Tax Exemption Effective As of July 1, 2009 App. 9A-1
Appendix 9B Telephone Numbers for Information on Applying for HEAP Benefits in New York State App. 9B-1

Chapter 10 Nursing Homes
by Margaret M. Flint
§ 10:1 Introduction ........................................ 10-2
§ 10:2 Sources of Law ................................... 10-4
§ 10:3 Access to Nursing Homes ...................... 10-6
§ 10:4 Residents' Rights ............................... 10-9

(N.Y. Elder Law, Rel. #41, 3/18) xli
Chapter 11  Health Care Decision Making

by Annette Levinson Kasle

2011 Update by Raquel Malina Romanick, J.D.

§ 11:1  Introduction ................................................................. 11-2
§ 11:2  Right to Refuse Treatment............................................. 11-4
§ 11:3  Patient Autonomy and Self-Determination ..................... 11-5
§ 11:4  Patient Self Determination Act ................................. 11-6
§ 11:5  Health Care Agents and Proxies................................. 11-7
  § 11:5.1  Confidentiality........................................................ 11-9
  § 11:5.2  Notification to the Principal................................ 11-9
  § 11:5.3  Standard for Decision Making by the Agent .............. 11-9
  § 11:5.4  Creation and Revocation of the Health Care Proxy .... 11-10
§ 11:6  Living Wills ................................................................. 11-12
§ 11:7  Orders Not to Resuscitate .......................................... 11-13
  § 11:7.1  Consenting to a DNR Order ................................... 11-14
  § 11:7.2  Nonhospital DNR Orders...................................... 11-14
  § 11:7.3  Role of the Physician ........................................... 11-15
  § 11:7.4  Portability of DNR Orders................................... 11-16
§ 11:8  Family Health Care Decision Making Act .................... 11-17
  § 11:8.1  How a Surrogate Is Selected .................................. 11-17
  § 11:8.2  Determining Incapacity ....................................... 11-18
  § 11:8.3  Rights of a Surrogate .......................................... 11-18
  § 11:8.4  Decision Making for Incapacitated Patients Without a Surrogate ........................................... 11-19
  § 11:8.5  Dispute Mediation Protocols ................................ 11-20
§ 11:9  Medical Orders for Life Sustaining Treatment ............ 11-21
  § 11:9.1  MOLST Forms and DNR Orders .......................... 11-22
  § 11:9.2  Incapacitated Patients ...................................... 11-22
§ 11:10  End of Life Counseling Bill .................................... 11-22
Appendix 11A  New York State Health Care Proxy ............ App. 11A-1
Appendix 11B  New York State Living Will ....................... App. 11B-1
Chapter 12 Veterans’ Benefits

by Katharine Bloeser

§ 12:1 Introduction .................................................................. 12-2
§ 12:2 Sources of Law............................................................... 12-3
§ 12:3 Health Care .................................................................. 12-4
  § 12:3.1 Eligibility for Health Care ...................................... 12-5
    [A] Character of Discharge ........................................... 12-5
    [B] Minimum Service Requirements ............................ 12-7
    [C] Priority Groups ..................................................... 12-8
    [D] Subgroups ............................................................ 12-10
§ 12:3.2 Community Living Center Nursing/Home Care ... 12-10
§ 12:3.3 Long Term and Extended Care ............................. 12-12
  [A] Adult Day Health Care......................................... 12-13
  [B] Purchased Skilled Home Care.............................. 12-13
  [C] Homemaker/Home Health Aide........................... 12-14
  [D] Home-Based Primary Care ................................... 12-14
  [E] Respite Care......................................................... 12-14
  [F] Hospice and Palliative Care.................................. 12-15
  [G] Medical Foster Homes ............................................ 12-15
§ 12:3.4 Dental Care .......................................................... 12-16
§ 12:3.5 Transportation ...................................................... 12-16
§ 12:3.6 Prescriptions ......................................................... 12-17
§ 12:3.7 Medical Care for Dependents and Survivors ...... 12-18
§ 12:3.8 Appealing Decisions Regarding Medical Care ...... 12-18
§ 12:4 Compensation and Pension......................................... 12-19
  § 12:4.1 Service-Connected Disability or Compensation ... 12-19
    [A] Conditions Incurred During or Exacerbated by
        Military Service ................................................... 12-20
    [B] Presumptive Conditions ....................................... 12-21
§ 12:4.2 Rating of a Service-Connected Disability .......... 12-25
§ 12:4.3 Aid and Attendance or Special Monthly
        Compensation ......................................................... 12-26
§ 12:4.4 Adapted Housing Grants........................................ 12-27
§ 12:4.5 Veterans Pension ................................................. 12-28
  [A] Improved Pension .................................................. 12-29
  [B] Section 306 or Protected Pension .......................... 12-30

(N.Y. Elder Law, Rel. #41, 3/18)
§ 12:4.6 Benefits for Survivors and Dependents................. 12-31
   [A] Dependency and Indemnity Compensation ...... 12-31
   [B] Survivor’s Pension.................................. 12-31
§ 12:4.7 Appealing Decisions Regarding Compensation and Pension ............................................. 12-32
§ 12:5 Burial Benefits ............................................................. 12-33
Appendix 12A Eligibility Priority Groups .................. App. 12A-1
Appendix 12B Some Veterans Service Organizations in New York State.......................... App. 12B-1
Appendix 12C Service-Connected Disability Compensation Rates, 2017 .................. App. 12C-1
Appendix 12D Maximum Annual Pension Rate (MAPR) Yearly Income Allowance........ App. 12D-1
Appendix 12E Section 306 Disability Pension Yearly Income Allowance.................. App. 12E-1
Appendix 12F Dependency and Indemnity Compensation Rate Amount......................... App. 12F-1
Appendix 12G Maximum Annual Pension Rate (MAPR) Yearly Income Allowance for Survivor’s Pension........................ App. 12G-1
Appendix 12H VA Burial Allowances......................... App. 12H-1

Chapter 13 Retirement Plans
   by David Pratt
§ 13:1 Introduction .............................................................. 13-3
§ 13:2 Legal Background ..................................................... 13-4
   § 13:2.1 In General .................................................. 13-4
   § 13:2.2 ERISA Exemptions .................................. 13-6
   § 13:2.3 ERISA and Other Laws .............................. 13-7
   § 13:2.4 Classifying the Plan ....................................... 13-8
   § 13:2.5 Multiemployer Plans .................................. 13-9
   § 13:2.6 Agencies with Pension Jurisdiction .............. 13-10
§ 13:3 Tax Qualified Retirement Plans ......................... 13-12
   § 13:3.1 Introduction ............................................ 13-12
   § 13:3.2 What Is a Qualified Plan? .......................... 13-13
      [B] Defined Benefit Plans .............................. 13-14
      [C] Hybrid Plans ........................................ 13-15
      [C][1] Cash Balance Plan ............................... 13-16
      [C][2] Pension Equity Plan ......................... 13-16
Introduction

by Angela Ghesquiere, Ph.D., M.S.W.

Angela Ghesquiere is the Program Manager of the Sadin Institute for Law and Public Policy at the Brookdale Center for Healthy Aging, Hunter College, City University of New York. She is a social work researcher focusing on services research with older adults. She graduated from Smith College with a B.A., from Washington University in St. Louis with an M.S.W., and from the Columbia University School of Social Work with a Ph.D.

Advocates for older adults are being challenged on all fronts. We must anticipate the needs of our vulnerable clients even as access to health care and other services seems to be more and more elusive. With advances in medical care, people are living longer than ever before. Baby Boomers are entering the ranks of the aging, often with fewer benefits, pensions, and other assets than recent generations, and with increasing health care costs. Social Security income is often not sufficient for retirees to live on, leaving those who were not able to save significant assets living at poverty levels. For those who were lucky enough to acquire modest assets through home equity or retirement accounts, there are perils such as frauds and scams, predatory lending, and a volatile housing market.

In 1977, as the field of elder law began to emerge, the Sadin Institute on Law and Public Policy was created to help lawyers and other advocates serve their older clients. Housed at the Brookdale Center for Healthy Aging of Hunter College, Sadin provides leadership in policy and training on legal issues that affect older adults. The Sadin Institute has a unique voice among elder law advocacy organizations. We recognized early on that complex elder law cases require the efforts of a team of dedicated professionals including lawyers, social workers, and advocates from social services organizations.

We created this handbook as a comprehensive guide to New York programs and services. Effective advocacy for older adults is increasingly a multidisciplinary effort. These complex cases often require the
collaboration of social workers, lawyers, and health care providers. Because our audience includes all of these disciplines, we have tried to present the information in a user-friendly format that will provide guidance and clarity without jargon or unnecessary “legalese.” We do provide case law and legal citations throughout, and this book can and should be used as a practice guide.

We want to thank the extraordinary authors of this book. They are skilled practitioners who manage to convey an impressive grasp of the subject matter using case law, actual case examples, and their collective years of experience. Covering topics as diverse as Medicaid, housing, and health care decision making, they have each made a valuable contribution to the field of elder law.

This book is published in loose-leaf format. It will be supplemented at least annually to keep readers informed of the changes in entitlement programs that can be anticipated with each state and federal legislative session. We would like to thank Carol Benedicto and the other members of PLI’s publication department for their support and assistance in producing this volume.