

Chapter 7

Legal Affairs

Overview

In our complex world, there are many situations where older New Yorkers may need legal assistance. Senior citizens experience many of the same legal problems as the rest of the population, but often have need for assistance in the following areas:

- Housing: Landlord/tenant, home ownership.
- Public Benefits: Social Security, SSI, Medicare, Medicaid.
- Consumer: Debt collections, fraud, and other scams.
- Employment: Pensions and age discrimination.
- Personal Decision-Making: Powers of attorney, health care proxies.
- Long-Term Care: Paying for nursing home care, residents' rights.
- Estate Planning: Wills, trusts, estate taxes, probate.
- Family: Divorce, grandparent visitation.

HOW DO I FIND AN ATTORNEY?

Get recommendations from friends, business associates, coworkers, professionals, or other people whose judgment you respect. Most local bar associations operate a referral service and can provide you with a list of attorneys from which to choose. Some membership organizations offer legal service plans or have fee-reduction agreements with local attorneys.

ARE THERE LEGAL PROGRAMS FOR THE ELDERLY?

There is a Legal Assistance Program for the elderly funded under Title III of the Federal Older Americans Act. These programs serve those who are in greatest economic and social need. These programs do not have specific financial eligibility limits and services cannot be conditioned on an individual's ability or willingness to pay. Nonetheless, Title III Legal Assistance Programs must be targeted to certain needy populations. These programs generally establish priority subject areas which reflect the needs of these target populations.

Civil legal services programs, funded for the most part by the Legal Services Corporation, provide legal advice and representation to indigent persons, including the elderly. These programs are required to limit their services to those who meet strict income guidelines. Legal Services Corporation programs also establish priority areas of law and refer those with other problems elsewhere.

WHAT CAN I EXPECT FROM MY ATTORNEY?

Your attorney should always treat you with courtesy and concern for your needs. You should be told what will be done, why it will be done, and how much it will cost you. You will not be guaranteed a result, but you should be informed of possible results. Your attorney should involve you in decision making and must keep you informed of the progress in your case.

You should receive an explanation of how fees are figured and how and when you are expected to pay for services. In short, your attorney should be able to talk with you so that you can be a partner in the handling of your legal matter.

HOW CAN I HELP MY ATTORNEY HELP ME?

An attorney's advice will be based upon the law as applied to the facts. If your attorney does not know as much as possible about your matter, then the advice you receive will not be as useful. Therefore, always provide as much information as possible, even if the facts make your case seem worse. If your attorney asks you for documents or other information, get them as soon as possible.

Also, make sure you understand what is happening. If you don't, ask questions. You should respect your attorney's professional opinion, but you also should be aware of your choices and feel free to voice your opinions. Remember, you should be a full partner in managing your legal affairs, and a good attorney will welcome your interest in the handling of your matter

DO I ALWAYS NEED AN ATTORNEY?

No, there are many steps you can take to resolve legal matters on your own. But be careful! You do not want the \$400 you save in attorney's fees to end up costing you \$1,500 to fix because you did it wrong when you did it yourself. Therefore, obtain as much information as you can before you attempt to handle a legal matter on your own. The more information you have, the better able you will be to decide if you need help from a professional. Also, if you decide you do need help, it will be far less expensive if you already know some of the issues involved and can help gather material and information with your attorney.

Other ways you can do it yourself involves the use of small claims court for minor disputes and the use of the Community Dispute Resolution Center Program. Your local city, town, or village court should have more information about these alternatives. They are quite often very successfully used without great expense or difficulty. Go here for more information:

<https://ww2.nycourts.gov/ip/adr/ProgramList.shtml>.

MEDICAID ELIGIBILITY & PAYING FOR NURSING HOME CARE

What is Medicaid?

The Medical Assistance Program, Medicaid, was established by Title XIX of the Social Security Act as a joint federal/state endeavor. Each state operates and partially funds its program to pay for necessary medical care for low-income persons.

The federal government shares the cost of Medicaid with the states and has set guidelines within which the states may determine eligibility criteria, benefits to be covered, benefit levels, and administrative procedures.

Medicaid and Medicare are often confused but differ significantly. Medicare is available regardless of financial need. Medicaid, on the other hand, is available only to those with limited income and resources. While Medicaid pays for a variety of services, our focus here is solely on eligibility for institutional, (i.e., nursing home) long-term care services.

I. ELIGIBILITY DETERMINATION

An applicant for Medicaid must meet three general tests and if successful, will be deemed eligible based on:

- Circumstances
- Resources
- Income

PART ONE – ELIGIBILITY BASED ON CIRCUMSTANCE

An applicant for Medicaid will meet this eligibility test if the applicant is either:

Categorically needy: An applicant is categorically needy if eligible for or receiving home relief, aid to dependent children, SSI, or other specified forms of assistance; or,

Medically needy: An applicant is medically needy if:

- 1) net available income and resources do not meet the cost of necessary medical care and services available under the Medicaid program; and,
- 2) 65 years of age or older or meets some other specified criteria.

Our focus will be on those who are medically needy and 65 years of age or older.

PART TWO - ELIGIBILITY BASED ON RESOURCES

A medically needy applicant for Medicaid will meet this eligibility test if the applicant's available resources are less than, or equal to an amount set by the NYS Department of Health (DOH). Keep in mind that even one dollar over this amount will make the applicant ineligible for Medicaid.

The resource limit will vary by the size of the applicant's household. Typically, the household size is either one or two persons when the elderly apply for assistance in paying for long-term care.

In addition, an institutionalized person is entitled to keep a small amount for personal needs.

PART THREE - ELIGIBILITY BASED ON INCOME

Again, a medically needy Medicaid applicant will meet this eligibility test if the applicant's income is less than, or equal to an amount set by DOH. Even one dollar over this amount will make the applicant ineligible for Medicaid.

As with resources, the income limit will vary by size of the applicant's household. The income limits for one and two households are different.

In addition, Medicaid applicants may keep an additional small sum of money, per month.

For up-to-date information on Medicaid in N.Y. State visit:

https://www.health.ny.gov/health_care/medicaid/#trusts

II. RESOURCES & INCOME

What is a resource?

In simplest terms, a resource is property of any kind. A resource may be "liquid" such as cash, or property that can readily be converted to cash. It may be "non-liquid," meaning that it may not be easily converted to cash. Resources include both real and personal property, and tangible as well as intangible property.

What is income?

Income means any payment from any source. It includes not only payments of money, but "payments" in goods and services. Income can be a payment made on a one-time basis or on a recurring basis. Income can be earned, such as compensation received as a result of working, such as wages, tips, bonuses, and commissions. Income can also be unearned, such as dividends, interest, and pension benefits.

ARE ALL RESOURCES AND INCOME TAKEN INTO CONSIDERATION WHEN DETERMINING MEDICAID ELIGIBILITY?

No. In determining an applicant's eligibility for Medicaid, resources and income must be both *countable* and *available*.

WHAT ARE NON-COUNTABLE RESOURCES AND INCOME?

New York uses a combination of disregards and exemptions in determining non-countable resources and income. Lists of some, but not all, non-countable resources and income are set out below.

Non-countable resources

- Life insurance policies;
- A homestead and property contiguous to it;
- Qualifying burial or funeral plans, or trusts;
- An automobile;
- Clothing and personal effects;
- Household furniture, appliances and equipment; and
- Tools and equipment necessary for the applicant's trade or business.

Non-countable income

- Federal energy assistance payments;
- Food stamp coupons;
- Retroactive benefits under the SSI program.

By definition, if a resource or type of income is not disregarded or exempt, it is countable. A complete list of non-countable (disregarded or exempt) resources and income can be found in the New York State regulations at 18 NYCRR §§ 360-4.6, 360-4.7.

WHAT ARE AVAILABLE RESOURCES AND INCOME?

Basically, if you can get your hands on it, a countable resource or source of income will be treated as if you've got it. Thus, when applying for Medicaid, they are treated as available to you.

III. SPOUSAL IMPOVERISHMENT

Are there any resource and income set-asides for a healthy spouse?

Until the passage of the Medicaid Catastrophic Coverage Act (MCCA) of 1988, obtaining Medicaid benefits for one spouse often meant impoverishing the community spouse as well as the institutionalized spouse. The spousal impoverishment provisions of the MCCA, as amended by the Family Support Act of 1988 allows limited income and resource protection for the community spouse. The income and resource limits are indexed for inflation, and thus are increased from year to year.

RESOURCE PROTECTION

The amount the spouse may keep may be increased to an amount determined at a fair hearing or by court order. The institutionalized spouse may transfer resources to the community spouse to raise the community spouse to the applicable minimum. Only countable resources are considered.

INCOME PROTECTION

When applying for long-term care Medicaid, be that in a nursing home or for Home and Community Based Services (HCBS) in one's home, an adult foster care home, or an assisted living residence via a Medicaid Waiver, there are income and asset limits that must be met. For married couples, with just one spouse applying for these types of benefits, there are spousal impoverishment rules in place to ensure the non-applicant spouse, often called the community spouse or well spouse, has sufficient financial means from which to live. To be very clear, spousal impoverishment rules do not apply when one spouse of a married couple is applying for a state's regular Medicaid program. For the elderly, this program is often called Aged, Blind and Disabled Medicaid.

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is one spousal impoverishment rule. It allows a married Medicaid nursing home applicant or HCBS Medicaid Waiver applicant to transfer a portion, or in some cases, all of their monthly income, to their non-applicant spouse. The MMMNA protects non-applicant spouses who have little to no monthly income from becoming impoverished so that their applicant spouse can meet Medicaid's income limit; it is the minimum amount of monthly income to which the non-applicant spouse is entitled. In order to receive this spousal income allowance, the community spouse's monthly income must fall under the amount set for their state's MMMNA. If the community spouse's monthly income is equal to or greater than the MMMNA, they will not receive any income from their applicant spouse.

Relative to spousal impoverishment provisions, an applicant spouse is often called the institutionalized spouse. This can be confusing since the applicant spouse does not have to be institutionalized (reside in a nursing home). Rather, the applicant spouse can receive long-term care services in their home or community via a HCBS Medicaid Waiver.

The Community Spouse Resource Allowance (CSRA), which is not covered in this article, is another spousal impoverishment provision. The CSRA protects a certain amount of the couple's resources for the non-applicant spouse.

ELIGIBILITY STANDARD

After making allocations for resource and income protection, the one-person income and resource standards are used to determine the institutionalized spouse's eligibility for Medicaid.

IV. TRANSFER OF RESOURCES

If I have resources and income in excess of the Medicaid eligibility limits, can I transfer them to meet those eligibility limits?

Transfers are not generally prohibited. However, a transfer of countable resources for less than fair market value will result in a period of ineligibility. A transfer for fair market value could result in exchanging one countable resource for another.

The federal and state statutes and regulations governing Medicaid spell out the types of transfers that will result in a denial of benefits. Likewise, certain transfers are specifically recognized as permissible and even desirable.

PROHIBITED TRANSFERS

The most basic example of a prohibited transfer would be one made:

- For less than fair market
- Within 36 months of institutionalization or application for Medicaid, whichever is later.

Such a transfer would be presumed to have been made to qualify for nursing home care and would result in a period of ineligibility for Medicaid. This is known as the 36-month rule.

NOT ALL TRANSFERS MADE WITHIN 36 MONTHS OF INSTITUTIONALIZATION ARE PROHIBITED

There is no penalty for transferring:

- Non-countable resources, such as an automobile.
- A home if it is transferred to:
 - 1) A spouse; or,
 - 2) A child who is certified blind, certified permanently and totally disabled, or under the age of 21; or,
 - 3) A sibling with an equity interest in the applicant's home, and who has resided there for one year prior to the applicant's institutionalization; or,
 - 4) A son or daughter who resided in the applicant's home for two years prior to institutionalization, and who provided care that allowed the applicant to remain at home.
- Countable resources between spouses or to another for the sole benefit of the community spouse.
- Countable resources to an applicant's blind or disabled child.
- Countable resources to the community spouse for support as ordered by a court.
- Countable resources with the intention of the resources subsequently being sold for fair market value; or,
- Exclusively for a reason other than to qualify for Medicaid.

PENALTY PERIODS

A period of ineligibility will be imposed if a prohibited transfer is made. The period of ineligibility is equal to:

- 1) The uncompensated value of the transferred resources, divided by;
- 2) The average cost of care to a private patient for skilled nursing facility services in the applicable region. **REMEMBER:** A prohibited transfer is one for less than fair market value. Therefore, the uncompensated value equals the fair market value of the resource minus the compensation received, if any.

NEW YORK'S HEALTH CARE PROXY LAW

Theresa Marie Schindler was born on December 3, 1963, and lived with or near her parents in Pennsylvania until she married Michael Schiavo on November 10, 1984. Michael and Theresa moved to Florida in 1986. They were happily married, and both were employed. They had no children. On February 25, 1990, their lives changed. Theresa, age 27, suffered a cardiac arrest as a result of a potassium imbalance. Michael called 911 and Theresa was rushed to the hospital. She never regained consciousness.

From May 1998 until April 2005, Theresa Schiavo was the subject of numerous legal and political battles. Although the Florida courts had ruled there was clear and convincing evidence to support the removal of life supports, attempts were made by the Florida legislature and the U.S. Congress to maintain Ms. Schiavo's existence.

Theresa Schiavo had not appointed a health care agent. It would be mere speculation to say that if she had, everything would have been different. However, many of these battles took place because of the uncertainty over who had the authority to make health care decisions. Certainly, the appointment of a health care agent would have provided a more certain decision-making mechanism and clarified just who had the authority to make decisions on her behalf.

New York's Health Care Proxy Law was enacted on July 1, 1990 and signed into law July 22, 1990. The law became effective on January 18, 1991.

The Health Care Proxy Law grants competent adults the right to appoint someone they trust to make decisions about medical treatment on their behalf when they are no longer able to make such decisions for themselves. The person appointed to make health care decisions is known as a health care agent.

The mechanism for appointing a health care agent is intended to be as straightforward and as simple as possible. The legal requirements are minimal. An attorney is not needed.

Nonetheless, appointing a health care agent will significantly change the way in which health care decisions will be made on behalf of an adult who loses decision-making capacity. To appreciate just how significant a change it is, a brief review of the pre-existing law is in order.

The Right to Refuse Medical Treatment:

Standards for Decision-Making on Behalf of Those Who Have Lost Capacity

A. DECISION-MAKING STANDARDS UNDER NEW YORK CASE LAW

The New York Court of Appeals, in 1981, decided companion cases raising the issues of:

1. the right of New Yorkers to refuse life sustaining treatment, and
2. the standard that must be met before life-sustaining treatment may be withdrawn or withheld.

In the absence of a legally appointed health care agent, the decisions in these cases still govern how health care decisions will be made on behalf of an adult who has lost the capacity to make those decisions.

In *Matter of Eichner v. Dillon* and *Matter of Storar*, the Court of Appeals ruled that the right of competent adults to refuse medical treatment, including life sustaining treatment, is protected under both the Due Process Clause of the State Constitution and the common law right of informed consent. Such treatment may be withheld, however, only if there is clear and convincing evidence of the patient's wishes.

The State of Missouri also required clear and convincing evidence before allowing life-sustaining medical treatment to be withdrawn or withheld from an incompetent adult patient. The clear and convincing evidence standard was challenged when the family of Nancy Cruzan asked the U.S. Supreme Court to decide whether there is a right under the federal constitution to refuse medical treatment.

B. THE CRUZAN DECISION

Nancy Cruzan was 25 years old in 1987 when an automobile accident left her in a coma in what is known as a persistent vegetative state. She was not expected to regain consciousness. She could have lived for 30 or more years on artificial nutrition and hydration, i.e., feeding tubes.

Nancy Cruzan's parents sought to have her feeding tubes removed, claiming statements made by their daughter were evidence that she would not want to continue existence by such means. The Missouri Supreme Court, in *Cruzan v. Director, Missouri Department of Health*, found the statements made by Nancy Cruzan to be too offhand to constitute clear and convincing evidence of her wishes with respect to artificial nutrition and hydration.

On appeal, the U.S. Supreme Court ruled that competent adults do have a constitutionally protected liberty interest in refusing life-sustaining treatment, including artificial nutrition and hydration. At the same time, however, the Court specifically affirmed each state's authority to adopt reasonable standards for allowing health care decisions to be made on behalf of others. The clear and convincing evidence standard was found to be a reasonable one.

The Supreme Court's decision left the door open for Nancy's parents to present new evidence that would meet the clear and convincing evidence standard. On the basis of this new evidence, the Missouri Courts allowed the removal of life supports.

The one exception concerns decisions about artificial nutrition and hydration. The principal's wishes regarding the use of feeding tubes must be reasonably known to the agent. If the principal's wishes regarding artificial nutrition and hydration are not reasonably known and cannot be reasonably ascertained, the agent lacks authority to make decisions regarding these measures.

C. DECISION-MAKING STANDARD FOR THE HEALTH CARE AGENT

As already noted, the health care proxy law grants competent adults the right to appoint a health care agent to make decisions about medical treatment on their behalf when they are no longer able to make such decisions for themselves. Clear and convincing evidence of the principal's wishes, the standard required by New York case law, is not required for decisions made by a health care agent acting pursuant to the health care proxy law. The law expressly allows a health care agent to make decisions based on reasonable knowledge of the principal's wishes.

The reasonable knowledge standard allows consideration of the principal's religious and moral beliefs. If those wishes are not reasonably known or cannot be ascertained with reasonable diligence, the agent must decide based on a judgment about the principal's best interests.

D. DECISIONS ABOUT ARTIFICIAL NUTRITION AND HYDRATION

A health care agent may make decisions about artificial nutrition and hydration only if the principal's wishes are reasonably known to the agent. If the principal's wishes regarding artificial nutrition and hydration are not reasonably known and cannot be reasonably ascertained, the agent lacks authority to make decisions regarding these measures. Any doubt concerning a health care agent's reasonable knowledge of the principal's wishes regarding artificial nutrition and hydration can be eliminated if the principal states those wishes on the health care proxy itself. Space is expressly provided for this purpose on the proxy form developed by the Department of Health.

OBLIGATIONS OF HEALTH CARE PROVIDERS UNDER THE HEALTH CARE PROXY LAW

A. THE INDIVIDUAL HEALTH CARE PROVIDER

Health care providers have the same obligation to respond to the agent's decision as they would to decisions made by the patient, if competent. An individual who is a health care provider may refuse to honor an agent's decision only if:

- 1) the individual provider would not honor that same decision if made by the patient, and,
- 2) the decision is contrary to the individual provider's religious or sincerely held moral beliefs. The individual provider must promptly inform both the health care agent and the hospital of his or her refusal to honor the agent's decision.

In such event, responsibility for the patient must be transferred to another individual health care provider.

B. HEALTH CARE FACILITIES

A hospital, residential health care facility, or mental hygiene facility may refuse to honor the decision of a health care agent if:

- 1) the health care facility would not honor the same decision if made by the patient; and
- 2) the decision is contrary to a formally adopted policy that is expressly based on religious beliefs and sincerely held moral convictions central to the facility's operating principles; and
- 3) the facility has informed the patient or the agent of such policy prior to or upon admission, if reasonably possible; and
- 4) the facility would be permitted by law to refuse to honor the decision if made by the principal.

If these conditions are met, the patient must be transferred promptly to another, reasonably accessible hospital, residential health care facility, or mental hygiene facility that will honor the agent's decision. If such transfer is not affected, the hospital, residential health care facility, or mental hygiene facility must seek judicial relief or honor the agent's decision.

C. FILLING OUT THE FORM

The Department of Health's health care proxy form contains simple to follow instructions on how to fill it out, along with answers to several common questions about the law. Again, use of this form is not mandatory.

D. QUESTIONS AND ANSWERS

The health care proxy form and instructions, along with these Questions & Answers, addresses many questions that have been raised concerning health care proxies.

Q. Do I need a lawyer to fill out a health care proxy form?

A. No. The health care proxy law has very minimal legal requirements. The form designed by the Department of Health asks for all the required information and provides space for optional information as well. Use of this form is not mandatory.

Q. What are the legal requirements for designating a health care agent?

A. The health care proxy form must:

- Identify the principal (person making the appointment).
- Identify the person being appointed as health care agent.
- State that the principal intends the agent to have authority to make health care decisions on the principal's behalf; and,
- Be signed and dated by the principal in the presence of two adult witnesses who also must sign the proxy.
- Another person may sign on behalf of the principal if the principal is unable to do so, provided the signing is at the principal's direction, in the principal's presence, and in the presence of two adult witnesses.

Q. What optional information can I provide?

A. You can direct your health care agent to make health care decisions in accordance with specific instructions that you state on the form. You may provide that your agent's authority expires upon a specified date or upon the occurrence of a certain condition. If no such date or condition is specified, the agent's authority remains in effect until revoked.

Also, unless your agent knows your wishes concerning the use of feeding tubes, your agent will not be allowed to make decisions about the use of feeding tubes.

Q. If I want to provide instruction concerning the use of feeding tubes, how should I state my wishes?

A. State your wishes as clearly and as simply as possible. The Department of Health has provided some sample language you could use for stating specific instructions about a variety of treatments that you may or may not desire. However, use of this language is not mandatory.

- Q.** Is a health care agent limited to authorizing the termination of life sustaining medical treatment?
- A.** No. A health care agent can make decisions to continue such treatment. Therefore, the health care proxy law is just as valuable for those who want treatment continued as for those who want to refuse it.
- Q.** Are there any limits on the types of medical treatment for which my health care agent can make decisions?
- A.** A health care agent is subject to the express limitations placed in the health care proxy by the principal. Also, if the principal's wishes regarding the use of feeding tubes is not reasonably known, the agent may not make decisions regarding these measures. Otherwise, a health care agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
- Q.** Can I give instructions for organ donation as part of my health care proxy?
- A.** A health care proxy may include the principal's wishes or instructions regarding organ and tissue donation. Failure to state wishes or instructions shall not be construed to imply a wish not to donate.
- Q.** Is a health care proxy form the same as a living will?
- A.** No. Generally speaking, a living will is a document in which an individual gives directions about health care to be followed in the event the individual has a terminal illness and is unable to provide further instructions.
- The health care proxy law establishes a decision-making process. It does not require individuals to make a written statement regarding decisions about specific health care treatment in advance. The agent can make those decisions when the time comes.
- Q.** Should I discuss the appointment of an agent with anyone before I fill out the form?
- A.** Appointing a health care agent is an important decision. You should discuss it with your family, close friends, your doctor, and certainly with the person you are appointing.
- Q.** Does the health care proxy form have to be notarized?
- A.** No, it does not. However, it must be signed in the presence of two witnesses.
- Q.** Can I appoint more than one person to act as agent?
- A.** You can name a substitute or fill-in agent to act if the person you appoint as your principal health care agent is unable or unwilling to act. However, you cannot have two health care agents acting on your behalf at the same time.
- Q.** What should I do with the health care proxy form after it is filled out?
- A.** Copies of the form should be given to your health care agent, substitute agent, if any, and your doctor. Give a copy to hospital officials at the time of admission, if possible. Carry a copy with

you. Put a copy away for safe-keeping. You may want to give a copy to family and close friends as well. These people should be notified of any subsequent changes in your wishes regarding medical treatment. Remember to notify them also if you decide to revoke a health care proxy.

- Q.** How long will the authority of my health care agent last?
- A.** You may provide that the health care proxy expires upon a specified date or upon the occurrence of a certain condition. The health care agent's authority would also terminate on that date or upon the occurrence of that condition. Otherwise, the agent's authority remains until the health care proxy is revoked.
- Q.** How do I revoke a health care proxy?
- A.** A health care proxy can be revoked by:
- Notifying the agent or a health care provider, orally or in writing, or by some other act evidencing an intent to revoke the proxy; or,
 - Executing a subsequent health care proxy; or,
 - Where the health care agent is the principal's spouse, upon divorce or legal separation from the spouse.
- Q.** If I executed a health care proxy prior to the January 18, 1991, effective date of the health care proxy law, will it be effective?
- A.** A health care proxy executed prior to January 18, 1991, became effective on January 18, 1991.

If you have questions not discussed here, you may contact the following agencies for further information:

NYS Office for the Aging
2 Empire State Plaza
Albany, NY 12223-1251
1-844-NYSOFA1 or
1-844-697-6321
<https://aging.ny.gov/>

NYS Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237
www.health.ny.gov

**NYS Task Force on Life
and the Law**
90 Church Street, 4th Floor
New York, NY 10007
(212) 417-5444
[https://www.health.ny.gov/
regulations/task_force/](https://www.health.ny.gov/regulations/task_force/)

WORD ABOUT LIVING WILLS

A living will is another type of advance directive that is used for health care decision making when a patient loses decision making capacity. Instead of appointing an individual to make decisions on the patient's behalf, a living will contains the patient's written instructions regarding health care.

Unlike most other states, New York does not have a living will statute. Thus, there is no standard form for a living will and no legislation directing its enforcement. The New York Court of Appeals, however, has indicated that a living will may be used to establish clear and convincing evidence of a patient's wishes regarding health care.

Also, Department of Health regulations require medical facilities to assess advance directives other than a health care proxy and allow, but not require, such facilities to seek a court determination that any individual advance directive has been expressed in a clear and convincing manner.

ESTATE PLANNING-DO I NEED A WILL?

Yes. If not, New York State has prepared one for you—but it might not say what you want. You should see a lawyer to talk about the terms of your estate plan. There are choices to be made, and a lawyer can help make sure that you consider as many of them as possible. Even though you might not have to do any estate tax planning (because of recent helpful changes in the estate tax rates) there are still important things to be decided—such as your choice of guardians for any minor children, the executor of your will, and special provisions for ill or disabled beneficiaries.

The cost of a will is determined by how complicated it is. Drawn properly and reviewed periodically to keep it up to date, a will can save loved ones a great deal of time, trouble, and money.

LEGAL PREPARATION FOR AGING OR INFIRMITY

Also, you might have to look to others for help in the management of your legal affairs, if you are infirm or aged. A lawyer can talk with you about joint checking or savings accounts, powers of attorney, or appointment of a conservator. Each of these actions involves certain practical risks and problems which must be fully considered with the help of your lawyer.

RETIREMENT CHECKLIST

Legal Affairs

As you approach retirement it is useful to determine what you know, what you've done, and what you still need to find out or do.

Read each of the questions below and circle your answer, "YES" or "NO." Next, for each "NO" answer you gave, write down a few words in the space next to it that will help you find the answers. You may want to use the same space to record other personal questions about this topic.

| | | |
|---|------------|-----------|
| 1. Do I understand estate exemptions and marital deductions as they apply to my estate? | YES | NO |
|---|------------|-----------|

| | | |
|---------------------------|------------|-----------|
| 2. Is my will up-to-date? | YES | NO |
|---------------------------|------------|-----------|

| | | |
|--|------------|-----------|
| 3. Do I understand the impact of joint ownership on my will? | YES | NO |
|--|------------|-----------|

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|-------------------------------------|------------|-----------|
| 4. Am I satisfied with my attorney? | YES | NO |
|-------------------------------------|------------|-----------|

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|--|------------|-----------|
| 5. Do others know where to find all my important papers? | YES | NO |
|--|------------|-----------|

| | | |
|---|------------|-----------|
| 6. Am I familiar with my tax status after retirement? | YES | NO |
|---|------------|-----------|

RESOURCES

Legal Affairs

Consider the following initial resources to get a sound, professional evaluation of your legal needs:

Union Legal Plan - contact your union representative or union headquarters directly to get an overview of the benefit package afforded to you as a State employee and union member.

New York State Bar Association (NYSBA) - is a volunteer organization of attorneys that offers a wide range of free services. Along with a series of publications which address specific legal issues, the Bar Association can also offer an unbiased legal referral service. The NYSBA is represented on a county-by-county level across New York State and can be found listed in the phone book or:

New York State Bar Association 1 Elk Street
Albany, New York 12207 518-463-3200
www.nysba.org

Know Your Rights Pamphlets Series:

- Buying and Selling Real Estate
- Rights of Residential Owners and Tenants
- If You Have an Auto Accident
- Divorce & Separation in New York State
- Your Rights as a Crime Victim
- Your Rights if Arrested Elder Law Section Pamphlets:
 - 17 Benefits for Older New Yorkers 2016
 - Why Your Medicaid Application Should be Entrusted to an Elder Law Attorney
 - Why You Need a Will
 - Living Wills and Health Care Proxies
 - Long Term Care Insurance

Local Legal Mediation Panels - can be located through local district attorney's office or the NYS Attorney General's Office, and offers an alternative to costlier legal fees, and court appearances in matters such as neighborhood disputes and consumer complaints.

American Association of Retired People (AARP) - has a diversified list of publications and services available to its members.

1 888-687-2277

www.aarp.org

American Council on Aging has up to date information on Medicaid

<https://www.medicaidplanningassistance.org/nursing-home-costs/#>

NEW YORK STATE AGENCIES:

NYS Office for the Aging
2 Empire State Plaza
Albany, NY 12223-1251
<https://aging.ny.gov/>

County Offices for the Aging may provide free legal consultations directly or provide referrals to other local sources of legal advice. Chapter 1 of this Guide has a county-by-county listing of area Agencies on Aging. A toll-free Senior Citizen's Help Line is also available by calling: 1-800-342-9871.

NYS Office of the Attorney General
The Capitol
Albany, NY 12224-0341
General Help Line: 800-771-7755 Healthcare Hotline: 800-428-9071
Medicaid Fraud Unit: 212-417-5397
<https://ag.ny.gov>

NYS Division of Human Rights Headquarters:

One Fordham Plaza 4th Floor
Bronx, NY 10458
718-741-8400

Upstate Office:
Agency Building 1
Empire State Plaza
Albany, NY 12220
518-474-2705
1-888-392-3644
<https://dhr.ny.gov/>

NYS Department of Financial Services Consumer
Hotline 1-800-342-3736
www.dfs.ny.gov

Department of State Division of Consumer Protection

Corning Tower
5 Empire State Plaza, Suite 2101
Albany, NY 12223-1556
518-474-8583
1-800-697-1220
<http://www.dos.ny.gov/consumerprotection/>

Office of Victim Services
Albany Office:
AE Smith Building
80 S. Swan Street, 2nd Fl.
Albany, NY 12210
518-457-8727

Brooklyn Office:
55 Hanson Place 10th Fl. Brooklyn, NY 11217
718-923-4325
Victims Services Hotline: 1-800-247-8035
www.ovs.ny.gov

Older Americans Act

<https://acl.gov/about-acl/authorizing-statutes/older-americans-act>

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