

Table of Contents

VOLUME I

CHAPTER 1

OVERVIEW OF ELDER LAW PRACTICE

by Jessica A. Liebau

I. Scope of Chapter [§ 1.1]

II. Changing Demographics [§ 1.2]

- A. In General [§ 1.3]
- B. Socioeconomic Profile of Older Americans [§ 1.4]
- C. Care Needs of Older Americans [§ 1.5]
- D. Some Implications of Current Demographic Trends [§ 1.6]

III. The Nature of Elder Law Practice [§ 1.7]

- A. In General [§ 1.8]
- B. Clients [§ 1.9]
 - 1. Reasons for Consulting Elder Law Attorney [§ 1.10]
 - 2. Assessment of Capacity [§ 1.11]
 - 3. Identification of Client [§ 1.12]
 - 4. Possible Conflicts of Interest [§ 1.13]
- C. Areas of Law [§ 1.14]
- D. Extralegal Knowledge [§ 1.15]
- E. Attorney's Personality [§ 1.16]
- F. Elements of Effective Practice [§ 1.17]

IV. Building an Elder Law Practice [§ 1.18]

- A. Referral Sources [§ 1.19]
 - 1. Clients [§ 1.20]
 - 2. Lawyer Referral Services [§ 1.21]
 - 3. Other Professionals Working with Elderly Persons [§ 1.22]
- B. Public Speaking and Writing [§ 1.23]
- C. Advertising [§ 1.24]
- D. Use of the Internet [§ 1.25]
- E. Office Location and Design [§ 1.26]
- F. Resources for Staying Current [§ 1.27]
 - 1. In General [§ 1.28]
 - 2. Elder Law Sections and Professional Organizations [§ 1.29]
 - 3. Books, Newsletters, and Periodicals [§ 1.30]
 - 4. Networking [§ 1.31]

V. The Initial Client Interview [§ 1.32]

- A. In General [§ 1.33]
- B. Location [§ 1.34]
- C. Participants [§ 1.35]

- D. Reasons for the Consultation [§ 1.36]
 - 1. In General [§ 1.37]
 - 2. Precipitating Crisis [§ 1.38]
- E. Attorney’s Familiarity with Client and Family [§ 1.39]
- F. Source of Referral [§ 1.40]
- G. Fees [§ 1.41]
- H. Tips for a Successful Practice [§ 1.42]

VI. Appendices [§ 1.43]

- A. Appendix 1A: Elder Law Sections and Professional Organizations [§ 1.44]
- B. Appendix 1B: Client Interview Form (ELD-0010) [§ 1.45]
- C. Appendix 1C: Capacity Assessment (ELD-0011) [§ 1.46]

CHAPTER 2

SPECIAL ETHICAL CONSIDERATIONS

by Mark T. Johnson

I. Scope of Chapter [§ 2.1]

II. Introduction [§ 2.2]

- A. Identification of Client (ELD-0001) [§ 2.3]
- B. Limitations of Rules of Professional Conduct [§ 2.4]
- C. Awareness of Potential Bad Actors [§ 2.5]

III. Lawyer’s Duties to Client [§ 2.6]

- A. Competent Representation (ELD-0002) [§ 2.7]
 - 1. In General [§ 2.8]
 - 2. Requisite Expertise [§ 2.9]
 - 3. Standards of Practice [§ 2.10]
- B. Diligence [§ 2.11]
 - 1. In General [§ 2.12]
 - 2. Client Expectations [§ 2.13]
 - 3. Legal Issues That May Arise Due to Delay [§ 2.14]
 - a. Diminishing Capacity or Loss of Capacity [§ 2.15]
 - b. Death [§ 2.16]
- C. Confidentiality [§ 2.17]
 - 1. In General [§ 2.18]
 - 2. Difficulties in Preserving Confidentiality [§ 2.19]
 - 3. Waiver of Confidentiality [§ 2.20]
 - 4. Attorney-Client Privilege [§ 2.21]
 - 5. Confidentiality Exceptions [§ 2.22]
- D. Communication [§ 2.23]
 - 1. In General [§ 2.24]
 - 2. Informed-Consent Standard [§ 2.25]
 - 3. Keeping Client Informed [§ 2.26]
 - 4. Careful Listening [§ 2.27]
 - 5. Sufficiency of Information [§ 2.28]
 - a. In General [§ 2.29]
 - b. Clients with Diminished Mental Capacity [§ 2.30]

- 6. Potential Conflict with Duty to Preserve Confidentiality [§ 2.31]
- 7. Information About Attorney Fees [§ 2.32]
- 8. Extralegal Information [§ 2.33]
- 9. Effect of Age Gap Between Lawyer and Client [§ 2.34]
- E. Loyalty: Avoiding Conflicts of Interest [§ 2.35]
 - 1. In General [§ 2.36]
 - 2. Problem Areas [§ 2.37]
 - a. In General [§ 2.38]
 - b. Spouses [§ 2.39]
 - (1) Potential Sources of Conflict Generally (ELD-0003) [§ 2.40]
 - (2) Confidentiality [§ 2.41]
 - (3) Prenuptial and Postnuptial Agreements [§ 2.42]
 - (4) Mental Capacity [§ 2.43]
 - c. Elderly Parent and Child—Generally [§ 2.44]
 - (1) In General [§ 2.45]
 - (2) Undue Influence [§ 2.46]
 - (3) Power of Attorney [§ 2.47]
 - (4) Guardianship [§ 2.48]
 - (5) Attorney Fees [§ 2.49]
 - d. Elderly Parents and Children—Family Business [§ 2.50]
 - e. Fiduciary and Beneficiary [§ 2.51]
 - (1) In General [§ 2.52]
 - (2) Identification of Client [§ 2.53]
 - (3) Elective Rights [§ 2.54]
 - (4) Tax Issues [§ 2.55]
 - f. Lawyer and Client [§ 2.56]
 - (1) In General [§ 2.57]
 - (2) Lawyer as Fiduciary [§ 2.58]
 - (3) Decedent’s Lawyer as Counsel for Fiduciary [§ 2.59]
 - (4) Lawyer’s Current Representation of Family Member [§ 2.60]
 - (5) Lawyer’s Previous Representation of Family Member (ELD-0004) [§ 2.61]
 - g. Family Unit as Client [§ 2.62]
 - 3. Client’s Waiver of Conflict of Interest [§ 2.63]
 - a. In General [§ 2.64]
 - b. Unwaivable Conflicts (ELD-0005) [§ 2.65]
 - c. Waivable Conflicts [§ 2.66]
 - (1) Standard for Waivability of Conflict [§ 2.67]
 - (2) Standard for Valid Client Consent [§ 2.68]

IV. Lawyer’s Duties to Nonclients [§ 2.69]

V. Client’s Mental Capacity [§ 2.70]

- A. In General [§ 2.71]
- B. Capacity Required for Specific Acts [§ 2.72]
 - 1. In General [§ 2.73]
 - 2. Executing Will and Trust [§ 2.74]
 - 3. Conveying Property [§ 2.75]
 - 4. Executing Powers of Attorney or Living Will [§ 2.76]
- C. Protecting Against Challenges to Client’s Competency (ELD-0006) [§ 2.77]
- D. Lawyer’s Duty to Client with Diminished Mental Capacity [§ 2.78]

1. In General [§ 2.79]
2. When Conservatorship Is Sought [§ 2.80]
3. When Guardianship Is Sought [§ 2.81]
 - a. Representing Petitioner [§ 2.82]
 - b. Lawyer as Petitioner [§ 2.83]
 - b. Guardian ad Litem [§ 2.84]
 - c. Representing Proposed Ward [§ 2.85]
 - d. Representing Guardian: Duty to Ward [§ 2.86]

VI. Medical Assistance and Divestment Considerations [§ 2.87]

- A. Client Identification [§ 2.88]
- B. Typical Conflicts of Interest [§ 2.89]
 1. In General [§ 2.90]
 2. Spouses [§ 2.91]
 3. Divesting Individual and Children [§ 2.92]
 4. Among Children [§ 2.93]
 5. Agent Under Power of Attorney [§ 2.94]
 6. Issues Arising After a Spouse’s Death [§ 2.95]
- C. Attorney Fees [§ 2.96]

VII. Other Matters Unique to Ethics in Elder Law [§ 2.97]

VIII. Forms [§ 2.98]

- A. Appendix 2A: Agreement to Provide Legal Services (ELD-0007) [§ 2.99]
- B. Appendix 2B: Letter Explaining Right to Confidentiality (ELD-0008) [§ 2.100]
- C. Appendix 2C: Consent to Payment of Legal Fees and Costs by Third Party (ELD-0009) [§ 2.101]
- D. Appendix 2D: Suggested Office Procedures During Public Health Emergency [§ 2.102]

CHAPTER 3

WISCONSIN’S ELDER SUPPORT NETWORK

by Kate Schilling

I. Scope of Chapter [§ 3.1]

II. Overview of Aging Network [§ 3.2]

- A. National Aging Network [§ 3.3]
 1. Older Americans Act [§ 3.4]
 2. Programs Under Older Americans Act [§ 3.5]
- B. Wisconsin Aging Network [§ 3.6]
 1. In General [§ 3.7]
 2. Bureau on Aging and Disability Resources [§ 3.8]
 3. Board on Aging and Long-Term Care [§ 3.9]
 4. Area Agencies on Aging [§ 3.10]
 5. County and Tribal Aging Units and Aging and Disability Resource Centers [§ 3.11]
 6. County Human Service Agencies [§ 3.12]

III. Information and Assistance [§ 3.13]

- A. Eldercare Locator [§ 3.14]
- B. Wisconsin County and Tribal Aging Units [§ 3.15]

- C. Medigap Helpline [§ 3.16]
- D. Elderly Benefit Specialist Program [§ 3.17]
- IV. Geriatric Assessment and Comprehensive Care Management [§ 3.18]**
 - A. In General [§ 3.19]
 - B. Geriatric Assessment [§ 3.20]
 - C. Care Management [§ 3.21]
 - 1. Family Care, Family Care Partnership, PACE, and IRIS [§ 3.22]
 - 2. Family Care [§ 3.23]
 - 3. IRIS [§ 3.24]
- V. Private Sector Resources [§ 3.25]**
 - A. In General [§ 3.26]
 - B. Care Management Services [§ 3.27]
 - C. Religious and Interfaith Programs [§ 3.28]
 - D. Hospital-Affiliated Programs [§ 3.29]
 - E. Independent Living Centers [§ 3.30]
 - F. Nonprofit Services [§ 3.31]
 - G. Voluntary Organizations [§ 3.32]
 - H. Legal Resources [§ 3.33]
- VI. Congregate Services [§ 3.34]**
 - A. In General [§ 3.35]
 - B. Congregate Nutrition Program [§ 3.36]
 - C. Senior Centers [§ 3.37]
 - D. Adult Day Care [§ 3.38]
 - E. Caregiver Support Groups [§ 3.39]
- VII. Home-Based Resources [§ 3.40]**
 - A. Supportive Home Services [§ 3.41]
 - 1. Home-Delivered Meals [§ 3.42]
 - 2. Home Health Services [§ 3.43]
 - 3. Personal Care [§ 3.44]
 - 4. Respite Care for Caregivers [§ 3.45]
 - 5. Transportation [§ 3.46]
 - a. Services for Individuals Receiving Medicaid or Living in Long-Term Care Facilities [§ 3.47]
 - b. Other Transportation for Older Adults and Individuals With Disabilities [§ 3.48]
 - 6. Alzheimer’s Family and Caregiver Support Program [§ 3.49]
 - 7. National Family Caregiver Support Program [§ 3.50]
 - B. Adaptive Equipment and Home Modifications [§ 3.51]
 - 1. Personal Emergency Response Systems [§ 3.52]
 - 2. Wheelchair Ramps and Other Home Modifications [§ 3.53]
 - 3. Adaptive Aids for Vision Impairment [§ 3.54]
 - 4. Adaptive Aids for Hearing Impairment [§ 3.55]
 - 5. Durable Medical Equipment [§ 3.56]
- VIII. Long-Term Care [§ 3.57]**
 - A. Types of Facilities [§ 3.58]
 - 1. Community-Based Residential Facilities [§ 3.59]
 - 2. Adult Family Homes [§ 3.60]

- 3. Residential Care Apartment Complexes [§ 3.61]
- 4. Continuing Care Retirement Communities [§ 3.62]
 - a. In General [§ 3.63]
 - b. Permit [§ 3.64]
 - c. Continuing Care Contract [§ 3.65]
 - d. Fees and Other Entrance Requirements [§ 3.66]
 - e. Evaluation of Facility [§ 3.67]
- 5. Nursing Homes [§ 3.68]
- B. Long-Term Care Ombudsman Program [§ 3.69]

IX. Lead Elder Abuse Prevention [§ 3.70]

- A. Wisconsin Elder Abuse Reporting Law [§ 3.71]
 - 1. In General [§ 3.72]
 - a. Introduction [§ 3.73]
 - b. Where to Report [§ 3.74]
 - c. Immunity Provisions [§ 3.75]
 - d. Reportable Situations [§ 3.76]
 - 2. Investigation of Alleged Abuse [§ 3.77]
- B. Statutory Bases for Legal Intervention [§ 3.78]

X. Appendices [§ 3.79]

- A. Appendix 3A: Wisconsin Area Agencies on Aging [§ 3.80]
- B. Appendix 3B: National Elder Law Resources [§ 3.81]
- C. Appendix 3C: Alzheimer’s Disease Resources [§ 3.82]
- D. Appendix 3D: Checklist: Evaluating a Continuing Care Contract (ELD-0012) [§ 3.83]

CHAPTER 4

EMPLOYMENT

by Nicholas E. Fairweather & Colin B. Good

I. Scope of Chapter [§ 4.1]

II. Overview [§ 4.2]

- A. Protection Against Mandatory Retirement [§ 4.3]
- B. Protection Against Age Discrimination Generally [§ 4.4]
- C. Protection Against Discrimination Based on Perceived Disability [§ 4.5]

III. Constitutional Protections [§ 4.6]

IV. Age Discrimination in Employment Act [§ 4.7]

- A. Coverage [§ 4.8]
 - 1. Employees [§ 4.9]
 - 2. Employers [§ 4.10]
- B. Prohibited Practices [§ 4.11]
- C. Burden of Proof [§ 4.12]
 - 1. In General [§ 4.13]
 - 2. Disparate Treatment [§ 4.14]
 - 3. Disparate Impact [§ 4.15]
- D. Defenses [§ 4.16]
 - 1. In General [§ 4.17]

- 2. Bona Fide Occupational Qualification [§ 4.18]
 - 3. Reasonable Factors Other Than Age [§ 4.19]
 - 4. Bona Fide Seniority System [§ 4.22]
 - 5. Bona Fide Employee Benefit Plan [§ 4.21]
 - 6. Good Cause [§ 4.22]
 - E. Enforcement [§ 4.23]
 - 1. In General [§ 4.24]
 - 2. Time Limits [§ 4.25]
 - 3. Cross-Filing with ERD [§ 4.26]
 - F. Remedies [§ 4.27]
 - G. Waivers and Settlements [§ 4.28]
- V. Wisconsin Fair Employment Act [§ 4.29]**
- A. In General [§ 4.30]
 - B. Coverage [§ 4.31]
 - 1. Employees [§ 4.32]
 - 2. Employers [§ 4.33]
 - C. Prohibited Practices [§ 4.34]
 - D. Burden of Proof [§ 4.35]
 - E. Defenses [§ 4.36]
 - F. Enforcement [§ 4.37]
 - G. Remedies [§ 4.38]
 - H. Differences Between WFEA and ADEA Prohibitions of Age Discrimination [§ 4.39]
- VI. Americans with Disabilities Act [§ 4.40]**
- A. In General [§ 4.41]
 - B. Coverage; Effective Dates [§ 4.42]
 - C. Disability Defined [§ 4.43]
 - 1. In General [§ 4.44]
 - 2. Physical or Mental Impairment [§ 4.45]
 - 3. Record of Impairment [§ 4.46]
 - 4. Perception of Impairment [§ 4.47]
 - D. Qualified Individual with Disability Defined [§ 4.48]
 - E. Reasonable Accommodation; Undue Hardship [§ 4.49]
 - F. Prohibited Practices [§ 4.50]
 - G. Preemployment Medical Examinations [§ 4.51]
 - H. Enforcement [§ 4.52]
 - I. Remedies [§ 4.53]
 - J. Differences Between WFEA and ADEA Prohibitions of Disability Discrimination [§ 4.54]
- VII. Rehabilitation Act of 1973 [§ 4.55]**
- A. Coverage [§ 4.56]
 - B. Comparison to ADA [§ 4.57]
 - C. Enforcement [§ 4.58]
- VIII. Retiree Benefits Bankruptcy Protection Act of 1988 [§ 4.59]**
- A. In General [§ 4.60]
 - B. Retirees' Authorized Representative [§ 4.61]
 - C. Hearing Required Before Benefits Are Modified [§ 4.62]
 - D. Priority of Retiree Benefits in Bankruptcy [§ 4.63]

IX. Age Discrimination Act of 1975 [§ 4.64]

- A. In General [§ 4.65]
- B. Coverage [§ 4.66]
- C. Defenses [§ 4.67]
- D. Enforcement [§ 4.68]
- E. Remedies [§ 4.69]

X. Older Americans Act [§ 4.70]

- A. In General [§ 4.71]
- B. Assistance for Legal Representation [§ 4.72]

CHAPTER 5

HOUSING

by April A. Hartman, Angel R. Kwaterski & Brittany D. Schoenick

I. Scope of Chapter [§ 5.1]

II. Federally Subsidized Low-Income Housing [§ 5.2]

- A. In General [§ 5.3]
- B. Low-Income Public Housing [§ 5.4]
 - 1. In General [§ 5.5]
 - 2. Applications and Waiting Lists [§ 5.6]
 - 3. Eligibility [§ 5.7]
 - a. In General [§ 5.8]
 - b. Annual Income [§ 5.9]
 - (1) In General [§ 5.10]
 - (2) Assets [§ 5.11]
 - (3) Exclusions [§ 5.12]
 - 4. Local Preferences [§ 5.13]
 - 5. Designation of Housing as Exclusively for Elderly or Disabled [§ 5.14]
 - 6. PHA Tenant-Selection Criteria [§ 5.15]
 - a. In General [§ 5.16]
 - b. Substance Abuse or Criminal Activity [§ 5.17]
 - 7. Denial of Application for Admission to Housing [§ 5.18]
 - a. In General [§ 5.19]
 - b. Notice [§ 5.20]
 - c. Appeal Rights [§ 5.21]
 - 8. Rents [§ 5.22]
 - 9. Special Rules Relating to Household Pets [§ 5.23]
 - 10. Rental Assistance Demonstration Conversions [§ 5.24]
- C. Other Subsidized Housing Programs [§ 5.25]
 - 1. Section 8 Programs [§ 5.26]
 - a. In General [§ 5.27]
 - b. Section 8 Vouchers [§ 5.28]
 - (1) In General [§ 5.29]
 - (2) Eligibility [§ 5.30]
 - (3) Denial of Admission or Termination of Assistance [§ 5.31]
 - (4) Lease Terms and Duration [§ 5.32]
 - (5) Rents [§ 5.33]

- c. Section 8 Projects [§ 5.34]
 - (1) In General [§ 5.35]
 - (2) Moderate Rehabilitation Program [§ 5.36]
 - (3) Other Section 8 Project-Based Programs [§ 5.37]
 - 2. Federal Housing Administration Projects [§ 5.38]
 - a. In General [§ 5.39]
 - b. Application [§ 5.40]
 - c. Financial Eligibility [§ 5.41]
 - d. Other Tenant-Selection Criteria [§ 5.42]
 - e. Rejection of Application [§ 5.43]
 - f. Rents [§ 5.44]
 - g. Termination of Tenancy and Eviction [§ 5.45]
 - 3. Section 202 Projects [§ 5.46]
 - a. In General [§ 5.47]
 - b. Financial Eligibility [§ 5.48]
 - c. Other Eligibility Criteria [§ 5.49]
 - d. Rents [§ 5.50]
 - 4. Low-Income Tax Credit Program [§ 5.51]
 - 5. Rural Housing Service Programs [§ 5.52]
 - a. In General [§ 5.53]
 - b. Eligibility [§ 5.54]
 - c. Selection Criteria [§ 5.55]
 - d. Rejection of Application [§ 5.56]
 - e. Rents [§ 5.57]
 - f. Termination of Tenancy and Eviction [§ 5.58]
 - g. Grievances [§ 5.59]
 - 6. HOME Program [§ 5.60]
- D. Termination of Tenancy and Eviction [§ 5.61]
 - 1. In General [§ 5.62]
 - 2. Good Cause [§ 5.63]
 - a. In General [§ 5.64]
 - b. Violations Constituting Good Cause [§ 5.65]
 - 3. Termination Notice and Procedure [§ 5.66]
 - a. In General [§ 5.67]
 - b. Public Housing [§ 5.68]
 - c. Other Housing Programs [§ 5.69]

- III. Wisconsin Property Tax Deferral Loan Program [§ 5.70]**
- A. In General [§ 5.71]
- B. Eligibility [§ 5.72]
- C. Conditions and Repayment [§ 5.73]
- IV. Wisconsin Homestead Tax Credit Program [§ 5.74]**
- A. In General [§ 5.75]
- B. Calculation of Credit [§ 5.76]
- C. Application for Credit [§ 5.77]
- V. Other Federal and Wisconsin Housing Assistance Programs [§ 5.78]**
- A. Section 502 Loans for Rural Low-Income Persons [§ 5.79]
 - 1. Program Description [§ 5.80]

- 2. Eligibility and Limitations [§ 5.81]
 - B. Section 504 Loans for Rehabilitation and Repair [§ 5.82]
 - 1. Program Description [§ 5.83]
 - 2. Eligibility and Limitations [§ 5.84]
 - 3. Conditions and Repayment [§ 5.85]
 - 4. Application [§ 5.86]
 - C. WHEDA Home Improvement Loans [§ 5.87]
 - 1. Program Description [§ 5.88]
 - 2. Eligibility and Limitations [§ 5.89]
 - 3. Conditions and Repayment [§ 5.90]
 - 4. Application [§ 5.91]
 - D. Low-Income Energy Assistance [§ 5.92]
 - 1. Program Description [§ 5.93]
 - 2. Eligibility and Limitations [§ 5.94]
 - 3. Application [§ 5.95]
 - E. Weatherization Program [§ 5.96]
 - 1. Program Description [§ 5.97]
 - 2. Eligibility and Limitations [§ 5.98]
 - 3. Application [§ 5.99]
- VI. Protections Against Housing Discrimination [§ 5.100]**
- A. In General [§ 5.101]
 - B. Fair Housing Laws [§ 5.102]
 - 1. Protected Classes [§ 5.103]
 - 2. Prohibited Practices [§ 5.104]
 - 3. Reasonable Accommodation for Persons with Disabilities [§ 5.105]
 - a. In General [§ 5.106]
 - b. Service Animals on Emotional Support Animal [§ 5.107]
 - c. New Construction [§ 5.108]
 - C. Enforcement [§ 5.109]
 - 1. Federal and State Enforcement Agencies [§ 5.110]
 - 2. Fair Housing Councils [§ 5.111]
 - 3. Administrative Complaint Procedure [§ 5.112]
 - 4. Private Rights in Action [§ 5.113]
- VII. Appendix [§ 5.114]**
- A. Appendix 5A: Fair Housing Enforcement Agencies [§ 5.115]

CHAPTER 6

GRANDPARENTS' RIGHTS

by Theresa L. Roetter

- I. Introduction; Scope of Chapter [§ 6.1]**
- II. Legal Custody [§ 6.2]**
 - A. In General [§ 6.3]
 - B. Legal Standard; Burden of Proof [§ 6.4]
 - 1. In General [§ 6.5]
 - 2. Parental Preference [§ 6.6]

- 3. Legal Standard for Transfer of Custody [§ 6.7]
 - a. Parental Unfitness or Inability to Care for Child [§ 6.8]
 - b. Other Compelling Circumstances [§ 6.9]
- C. Procedure [§ 6.10]
 - 1. When Court May Determine Custody [§ 6.11]
 - 2. Jurisdiction [§ 6.12]
 - 3. Summons and Petition [§ 6.13]
 - 4. Notice [§ 6.14]
 - 5. Motion to Intervene [§ 6.15]
 - 6. Appointment of Guardian ad Litem [§ 6.16]
 - 7. Mediation [§ 6.17]
 - 8. Use of Psychological Evidence [§ 6.18]
 - 9. CHIPS Finding [§ 6.19]
 - 10. Liability for Costs and Attorney Fees [§ 6.20]
 - 11. Stipulations [§ 6.21]
- D. Custody Award to Grandparent [§ 6.22]
 - 1. In General [§ 6.23]
 - 2. Right to Receive Child Support [§ 6.24]
 - 3. Right to Receive Public Assistance [§ 6.25]
 - 4. Modification of Custody Award [§ 6.26]

III. Visitation [§ 6.27]

- A. In General [§ 6.28]
- B. Visitation Under Family Code [§ 6.29]
 - 1. In General [§ 6.30]
 - 2. Legal Standard for Awarding Visitation Under the Family Code [§ 6.31]
 - 3. Procedure [§ 6.32]
- C. Visitation Under the Guardianship and Conservatorship Chapter [§ 6.33]
 - 1. In General [§ 6.34]
 - 2. Standing to Petition [§ 6.35]
 - 3. Legal Standard for Awarding Visitation Under the Guardianship and Conservatorship Chapter [§ 6.36]
 - 4. Procedure [§ 6.37]
 - a. In General [§ 6.38]
 - b. Petition and Summons [§ 6.39]
 - c. Notice [§ 6.40]
- D. Equitable Visitation [§ 6.41]
 - 1. In General [§ 6.42]
 - 2. Procedure [§ 6.43]

IV. Guardianship [§ 6.44]

- A. In General [§ 6.45]
- B. Types of Guardianship [§ 6.46]
 - 1. Guardian of Minor’s Person [§ 6.47]
 - 2. Guardian of Minor’s Estate [§ 6.48]
- C. Legal Standard for Appointment [§ 6.49]
- D. Procedure [§ 6.50]
 - 1. Jurisdiction [§ 6.51]
 - 2. Venue [§ 6.52]
 - 3. Persons Subject to Guardianship [§ 6.53]

- 4. Persons Who May Serve as Guardian [§ 6.54]
- 5. Petition for Appointment of Guardian [§ 6.55]
- 6. Notice of Hearing [§ 6.56]
- 7. Role of Guardian ad Litem [§ 6.57]
- 8. Bond [§ 6.58]
- 9. Costs and Attorney Fees [§ 6.59]
- E. Duration of Guardianship [§ 6.60]
- F. Right to Receive Child Support [§ 6.61]

V. Juvenile Court Proceedings [§ 6.62]

- A. In General [§ 6.63]
- B. CHIPS Proceedings [§ 6.64]
- C. Juvenile Court Dispositions [§ 6.65]

VI. Termination of Parental Rights and Adoption [§ 6.66]

- A. In General [§ 6.67]
- B. Grandparents' Right to Adopt Grandchildren [§ 6.68]
 - 1. In General [§ 6.69]
 - 2. Adoption with Parental Consent [§ 6.70]
 - 3. Adoption Without Parental Consent [§ 6.71]
 - 4. Investigation and Hearing [§ 6.72]
 - 5. Subsidized Adoptions [§ 6.73]
- C. Grandparents' Rights When Grandchildren Adopted by Others [§ 6.74]
 - 1. In General [§ 6.75]
 - 2. Right to Notice of TPR Proceedings [§ 6.76]
 - 3. Rights After Adoption [§ 6.77]
 - a. Adoption by Stepparent or Relative [§ 6.78]
 - b. Adoption Other Than by Stepparent or Relative [§ 6.79]

CHAPTER 7

PRIVATE RETIREMENT FINANCING

by Greg W. Renz

I. Scope of Chapter [§ 7.1]

II. Qualified Retirement Plans [§ 7.2]

- A. In General [§ 7.3]
- B. Types of Qualified Plans [§ 7.4]
 - 1. In General [§ 7.5]
 - 2. Defined Benefit Plans [§ 7.6]
 - 3. Defined Contribution Plans [§ 7.7]
 - a. In General [§ 7.8]
 - b. Profit Sharing [§ 7.9]
 - c. Stock Bonus [§ 7.10]
 - d. Money Purchase [§ 7.11]
 - e. 401(k) [§ 7.12]
 - f. ESOP [§ 7.13]

- 4. Hybrid Plans [§ 7.14]
 - a. Target Benefit [§ 7.15]
 - b. Cash Balance [§ 7.16]
- C. Tax Treatment [§ 7.17]
 - 1. In General [§ 7.18]
 - 2. Timing of Income Recognition by Employee [§ 7.19]
 - 3. Special Employee Income Tax Options [§ 7.20]
 - a. In General [§ 7.21]
 - b. After-Tax Contributions to Plan [§ 7.22]
 - c. Rollovers [§ 7.23]
 - d. 10-Year Averaging [§ 7.24]
 - e. Net Unrealized Appreciation [§ 7.25]
 - 4. Income Tax Withholding [§ 7.26]
 - a. In General [§ 7.27]
 - b. Eligible Rollover Distributions [§ 7.28]
 - (1) In General [§ 7.29]
 - (2) Direct Rollovers [§ 7.30]
 - (3) 20% Automatic Withholding [§ 7.31]
 - c. Other Distributions [§ 7.32]
 - 5. Wisconsin Income Tax [§ 7.33]
- D. Distribution of Benefits [§ 7.34]
 - 1. Forms of Distribution [§ 7.35]
 - a. In General [§ 7.36]
 - b. Qualified Joint and Survivor Annuity [§ 7.37]
 - c. Other Annuities [§ 7.38]
 - d. Lump Sum [§ 7.39]
 - e. Installments [§ 7.40]
 - f. Employer Securities [§ 7.41]
 - 2. Timing and Amount of Distributions [§ 7.42]
 - a. In General [§ 7.43]
 - b. Distributions Before Normal Retirement Age [§ 7.44]
 - c. Distributions After Normal Retirement Age [§ 7.45]
 - 3. Preretirement Death Benefits [§ 7.46]
- E. Assignment and Alienation of Benefits [§ 7.47]
 - 1. In General [§ 7.48]
 - 2. Qualified Domestic Relations Orders [§ 7.49]
- F. Participants' Disclosure Rights [§ 7.50]
 - 1. In General [§ 7.51]
 - 2. Annual Report [§ 7.52]
 - 3. Summary Plan Description [§ 7.53]
 - 4. Benefit Statements [§ 7.54]
- G. Disputes [§ 7.55]
 - 1. ERISA Claims Procedure [§ 7.56]
 - 2. Litigation [§ 7.57]
- H. Bankruptcy Issues [§ 7.58]
- I. Marital Property Issues [§ 7.59]

III. Nonqualified Retirement Plans [§ 7.60]

- A. Types of Plans [§ 7.61]

- B. Impact of I.R.C. § 409A [§ 7.62]
- C. Timing of Income Recognition by Employee [§ 7.63]

IV. Individual Retirement Accounts [§ 7.64]

- A. In General [§ 7.65]
- B. Traditional IRA [§ 7.66]
- C. Roth IRA [§ 7.67]
- D. Simplified Employee Pensions [§ 7.68]
- E. SIMPLE Plans [§ 7.69]

V. Other Retirement Financing Options [§ 7.70]

- A. In General [§ 7.71]
- B. Life Insurance [§ 7.72]
- C. Annuities [§ 7.73]
- D. Other Investments [§ 7.74]
- E. Home Equity [§ 7.75]
 - 1. In General [§ 7.76]
 - 2. Tax Treatment of Sale of Principal Residence [§ 7.77]
 - 3. Lease or Sale of Portion of Principal Residence [§ 7.78]
 - 4. Sale and Lease-Back of Principal Residence [§ 7.79]
 - 5. Reverse Mortgage [§ 7.80]

VI. Appendices [§ 7.81]

- A. Appendix 7A: Sources of the Law [§ 7.82]
- B. Appendix 7B: Private Retirement Financing Checklist (ELD-0013) [§ 7.83]
- C. Appendix 7C: Sources of Retirement Plan Information [§ 7.84]
- D. Appendix 7D: Glossary of Retirement Plan Terms [§ 7.85]
- E. Appendix 7E: Selected Bibliography [§ 7.86]

CHAPTER 8

SOCIAL SECURITY

by Paul M. Schmidt

I. Scope of Chapter [§ 8.1]

II. Introduction [§ 8.2]

- A. Sources of Law and Policy [§ 8.3]
 - 1. Statutes and Regulations [§ 8.4]
 - 2. Policy Guides [§ 8.5]
 - a. Rulings [§ 8.6]
 - b. Program Operations Manual System [§ 8.7]
 - c. Social Security Handbook [§ 8.8]
 - d. Other Policy Guides [§ 8.9]
 - 3. Other Reference Sources [§ 8.10]
- B. Social Security Administration [§ 8.11]
 - 1. District Offices [§ 8.12]
 - 2. Office of Hearings and Appeals [§ 8.13]
 - 3. Appeals Council [§ 8.14]
 - 4. SSA Toll-Free Telephone Service [§ 8.15]

III. Eligibility for Social Security Retirement Benefits [§ 8.16]

- A. In General [§ 8.17]
- B. Covered Employment [§ 8.18]
- C. Insured Status [§ 8.19]
 - 1. In General [§ 8.20]
 - 2. Fully Insured Status [§ 8.21]
 - 3. Currently Insured Status [§ 8.22]
- D. Calculation of Quarters of Coverage [§ 8.23]
- E. Earnings Record [§ 8.24]
 - 1. Request for Record [§ 8.25]
 - 2. Request for Correction of Errors [§ 8.26]
 - a. Time Limit for Filing [§ 8.27]
 - b. Request Within Time Limit [§ 8.28]
 - c. Request After Expiration of Time Limit [§ 8.29]
- F. Self-Employment [§ 8.30]
- G. Retirement Age [§ 8.31]

IV. Derivative Claims of Family Members [§ 8.32]

- A. In General [§ 8.33]
- B. Spouse's Benefits [§ 8.34]
 - 1. Eligibility Requirements [§ 8.35]
 - 2. Benefit Amount [§ 8.36]
 - 3. Termination of Benefits [§ 8.37]
- C. Divorced Spouse's Benefits [§ 8.38]
- D. Child's Benefits [§ 8.39]
 - 1. Eligibility Requirements [§ 8.40]
 - 2. Definition of Child of Insured Person [§ 8.41]
 - a. In General [§ 8.42]
 - b. "Natural" Child [§ 8.43]
 - c. Adopted Child [§ 8.44]
 - d. Stepchild [§ 8.45]
 - e. Grandchild or Stepgrandchild [§ 8.46]
 - 3. Dependency Requirements [§ 8.47]
 - 4. When Benefits Begin and End [§ 8.48]
 - a. In General [§ 8.49]
 - b. Child Is 18 and Full-Time Student [§ 8.50]
 - c. Child Is 18 and Disabled [§ 8.51]
 - 5. Benefit Amount [§ 8.52]
 - 6. Reentitlement to Benefits [§ 8.53]
- E. Survivor's Benefits [§ 8.54]
 - 1. In General [§ 8.55]
 - 2. Widow's or Widower's Benefits [§ 8.56]
 - a. Eligibility Requirements [§ 8.57]
 - b. Benefit Amount [§ 8.58]
 - c. Termination of Benefits [§ 8.59]
 - (1) In General [§ 8.60]
 - (2) Benefits Based on Disability [§ 8.61]
 - 3. Divorced Spouse's Benefits [§ 8.62]
 - 4. Mother's and Father's Benefits [§ 8.63]
 - a. Eligibility Requirements [§ 8.64]

- b. When Benefits Begin and End [§ 8.65]
 - c. Benefit Amount [§ 8.66]
 - d. Divorced Spouse’s Benefits [§ 8.67]
- 5. Parent’s Benefits [§ 8.68]
 - a. Eligibility Requirements [§ 8.69]
 - b. Parent’s Relationship to Insured Person [§ 8.70]
 - c. Proof of Support [§ 8.71]
 - d. When Benefits Begin and End [§ 8.72]
 - e. Benefit Amount [§ 8.73]
- 6. Child’s Benefits [§ 8.74]
- 7. Lump-Sum Death Benefits [§ 8.75]

V. Computation of Benefits [§ 8.76]

- A. Primary Insurance Amount [§ 8.77]
 - 1. In General [§ 8.78]
 - 2. Methods of Computing [§ 8.79]
 - a. Average-Indexed-Monthly-Earnings Method [§ 8.80]
 - b. Average-Monthly-Wage Method [§ 8.81]
 - c. “Special Methods” [§ 8.82]
- B. Early or Delayed Retirement [§ 8.83]
 - 1. Early Retirement Reductions [§ 8.84]
 - 2. Delayed Retirement Credits [§ 8.85]
- C. Family Maximum [§ 8.86]
 - 1. In General [§ 8.87]
 - 2. Formula for Computing [§ 8.88]
 - 3. Entitlement on More Than One Record [§ 8.89]
 - 4. Reduction When Family Maximum Exceeded [§ 8.90]
- D. Entitlement to Multiple Benefits [§ 8.91]
- E. Deductions for Excess Earnings [§ 8.92]
 - 1. In General [§ 8.93]
 - 2. Definition of Earnings [§ 8.94]
 - 3. Computation of Deduction [§ 8.95]
 - 4. Grace Year [§ 8.96]
 - 5. Reporting Requirements [§ 8.97]
 - a. In General [§ 8.98]
 - b. Failure to Report Earnings [§ 8.99]
 - (1) Penalty [§ 8.100]
 - (2) Circumstances Constituting Good Cause [§ 8.101]
 - 6. Suspension of Benefits [§ 8.102]

VI. Application for Social Security Retirement Benefits [§ 8.103]

- A. In General [§ 8.104]
- B. Who May Sign Application [§ 8.105]
- C. Timing Considerations [§ 8.106]
 - 1. Application Filed Before First Month of Entitlement [§ 8.107]
 - 2. Application Filed After First Month of Entitlement [§ 8.108]
 - 3. Deemed Filing Date Based on Misinformation [§ 8.109]
- D. Presumption Regarding Spouse’s Benefits [§ 8.110]
- E. Withdrawal of Application [§ 8.111]
- F. Evidence to Support Claim for Benefits [§ 8.112]

VII. Social Security Disability Benefits [§ 8.113]

- A. Introduction [§ 8.114]
 - 1. Social Security Disability Distinguished from SSI [§ 8.115]
 - 2. Sources of Law and Policy [§ 8.116]
 - 3. Definitions [§ 8.117]
 - a. Disability [§ 8.118]
 - b. Period of Disability [§ 8.119]
- B. Eligibility Requirements [§ 8.120]
 - 1. In General [§ 8.121]
 - 2. Disability Insured Status [§ 8.122]
 - 3. Disability Determinations [§ 8.123]
- C. Evaluation of Disability [§ 8.124]
 - 1. In General [§ 8.125]
 - 2. Substantial Gainful Activity [§ 8.126]
 - 3. Severe Impairment [§ 8.127]
 - 4. Listing of Impairments [§ 8.128]
 - 5. Residual Functional Capacity to Perform Past Relevant Work [§ 8.129]
 - 6. Residual Functional Capacity to Perform Any Other Work [§ 8.130]
 - a. In General [§ 8.131]
 - b. Grid Categories [§ 8.132]
 - (1) Age [§ 8.133]
 - (2) Work Experience [§ 8.134]
 - (3) Education [§ 8.135]
 - (4) Capacity for Physical Exertion [§ 8.136]
 - c. Grid Determinations [§ 8.137]
 - d. Special Considerations for Older Workers [§ 8.138]
 - (1) Recognized Exceptions to “Other Work” Requirement [§ 8.139]
 - (2) Transferability of Skills [§ 8.140]
 - 7. Special Areas of Proof [§ 8.141]
 - a. Pain [§ 8.142]
 - b. Mental Impairments [§ 8.143]
 - c. Drug Addiction and Alcoholism [§ 8.144]
 - 8. Continuing Disability Reviews [§ 8.145]
 - 9. Widows, Widowers, and Surviving Divorced Spouses [§ 8.146]

VIII. Overpayments and Underpayments [§ 8.147]

- A. In General [§ 8.148]
- B. Waivers of Adjustment or Recovery [§ 8.149]
 - 1. In General [§ 8.150]
 - 2. Grounds [§ 8.151]
 - a. Recipient Is Without Fault [§ 8.152]
 - (1) In General [§ 8.153]
 - (2) Deduction Overpayments [§ 8.154]
 - (3) Entitlement Overpayments [§ 8.155]
 - b. Recovery Would Defeat Purpose of Title II [§ 8.156]
 - c. Recovery Would Be Against Equity and Good Conscience [§ 8.157]
- C. Compromises of Claims [§ 8.158]
- D. Challenge to Overpayment Claims [§ 8.159]

IX. Taxation of Benefits [§ 8.160]

X. Administrative and Judicial Review [§ 8.161]

- A. Overview [§ 8.162]
- B. Initial Determination [§ 8.163]
 - 1. In General [§ 8.164]
 - 2. Administrative Actions That Are Initial Determinations [§ 8.165]
 - 3. Administrative Actions That Are Not Initial Determinations [§ 8.166]
 - 4. Notice [§ 8.167]
- C. Reconsideration [§ 8.168]
 - 1. In General [§ 8.169]
 - 2. Time for Request; Good Cause for Extension [§ 8.170]
 - 3. Procedure [§ 8.171]
- D. Hearing Before ALJ [§ 8.172]
 - 1. Request for Hearing [§ 8.173]
 - 2. Notice [§ 8.174]
 - 3. Objections [§ 8.175]
 - a. To Time and Place of Hearing [§ 8.176]
 - b. To Issues [§ 8.177]
 - c. To Appointed ALJ [§ 8.178]
 - 4. Prehearing Case Review [§ 8.179]
 - 5. Dismissal of Request for Hearing [§ 8.180]
 - 6. Decision on Record Without Hearing [§ 8.181]
 - a. In General [§ 8.182]
 - b. Remand to SSA [§ 8.183]
 - c. Disability Cases [§ 8.184]
 - 7. Prehearing and Posthearing Conferences [§ 8.185]
 - 8. Consolidated Hearing [§ 8.186]
 - 9. Hearing Procedure [§ 8.187]
 - a. In General [§ 8.188]
 - b. Issues Before ALJ [§ 8.189]
 - c. Subpoenas [§ 8.190]
 - d. Presentation of Evidence [§ 8.191]
 - e. Issue Preclusion [§ 8.192]
 - 10. ALJ's Decision [§ 8.193]
 - a. In General [§ 8.194]
 - b. Effect of Decision [§ 8.195]
- E. Appeals Council Review [§ 8.196]
 - 1. Request for Review [§ 8.197]
 - 2. Review on Council's Own Initiative [§ 8.198]
 - 3. Cases Accepted for Review [§ 8.199]
 - 4. Dismissal of Request for Review [§ 8.200]
 - 5. Notice of Review [§ 8.201]
 - 6. Review Procedures [§ 8.202]
 - a. Evidence [§ 8.203]
 - b. Briefs and Oral Argument [§ 8.204]
 - 7. Remand by Appeals Council to ALJ [§ 8.205]
 - a. When Council May Remand Case [§ 8.206]
 - b. Action on ALJ's Recommended Decision [§ 8.207]

- 8. Appeals Council Decision [§ 8.208]
- 9. Remand by Federal Court to Appeals Council [§ 8.209]
- F. Judicial Review [§ 8.210]
 - 1. In General [§ 8.211]
 - 2. Expedited Appeals [§ 8.212]
 - a. In General [§ 8.213]
 - b. Time for Filing Request [§ 8.214]
 - c. Agreement [§ 8.215]
- G. Reopening and Revising Determinations and Decisions [§ 8.216]
 - 1. In General [§ 8.217]
 - 2. Conditions for Reopening [§ 8.218]
 - 3. Notice of Revision [§ 8.219]
 - 4. Effect of Revised Determination or Decision [§ 8.220]
 - 5. Request for Hearing or Further Review [§ 8.221]

XI. Attorney Fees [§ 8.222]

- A. In General [§ 8.223]
- B. Fee Awards Under Social Security Act [§ 8.224]
 - 1. Administrative Proceedings [§ 8.225]
 - 2. Judicial Proceedings [§ 8.226]
 - 3. SSI Cases [§ 8.227]
 - 4. Fee Approval [§ 8.228]
 - a. Request for Approval [§ 8.229]
 - b. Decision [§ 8.230]
 - (1) Administrative Proceedings [§ 8.231]
 - (2) Judicial Proceedings [§ 8.232]
 - 5. Review of Fee Determinations [§ 8.233]
- C. Fee Awards Under Equal Access to Justice Act [§ 8.234]
 - 1. In General [§ 8.235]
 - 2. Definitions [§ 8.236]
 - a. Adversary Adjudication [§ 8.237]
 - b. Prevailing Party [§ 8.238]
 - c. Substantial Justification [§ 8.239]
 - d. Final Disposition or Judgment [§ 8.240]
 - 3. Restrictions [§ 8.241]
 - a. Duplicate Fees [§ 8.242]
 - b. Fee Amount [§ 8.243]
 - 4. Fee Application [§ 8.244]
 - a. Content [§ 8.245]
 - b. Time for Filing [§ 8.246]
 - c. Decision [§ 8.247]
 - 5. Fee Awards on Remand [§ 8.248]
 - 6. Review of Fee Determinations [§ 8.249]

XII. Appendices [§ 8.250]

- A. Appendix 8A: Glossary of Social Security Terms [§ 8.251]
- B. Appendix 8B: Documentation Required to Establish Eligibility for Social Security Benefits [§ 8.252]
- C. Appendix 8C: Social Security Offices in Wisconsin [§ 8.253]
- D. Appendix 8D: Cost-of-Living Adjustments: 2018 [§ 8.254]

CHAPTER 9

SSI AND OTHER GOVERNMENTAL INCOME SECURITY PROGRAMS

by Paul M. Schmidt

I. Scope of Chapter [§ 9.1]

II. Supplemental Security Income [§ 9.2]

- A. Overview [§ 9.3]
- B. Sources of the Law [§ 9.4]
 - 1. Statutes [§ 9.5]
 - 2. Regulations [§ 9.6]
 - 3. Agency Policies [§ 9.7]
 - a. Program Operations Manual System [§ 9.8]
 - b. Social Security Rulings [§ 9.9]
- C. Nonfinancial Eligibility Requirements [§ 9.10]
 - 1. Age, Blindness, or Disability [§ 9.11]
 - a. Age [§ 9.12]
 - b. Blindness [§ 9.13]
 - c. Disability [§ 9.14]
 - 2. Coordination with Other Benefits [§ 9.15]
 - 3. Marital Status [§ 9.16]
 - 4. Citizenship and Residency [§ 9.17]
 - a. Citizen or Qualified Alien [§ 9.18]
 - b. Residency [§ 9.19]
 - 5. Residency in Public Institution [§ 9.20]
 - a. In General [§ 9.21]
 - b. Exceptions [§ 9.22]
 - 6. Warrants and Parole or Probation Violations [§ 9.23]
 - 7. Dependent's Benefits [§ 9.24]
- D. Financial Eligibility Requirements [§ 9.25]
 - 1. In General [§ 9.26]
 - 2. Resources [§ 9.27]
 - a. In General [§ 9.28]
 - b. Resource Limits [§ 9.29]
 - c. Excludable Resources [§ 9.30]
 - (1) Home [§ 9.31]
 - (2) Automobile [§ 9.32]
 - (3) Household Goods and Personal Effects [§ 9.33]
 - (4) Life Insurance Policies [§ 9.34]
 - (5) Burial Spaces and Burial Funds [§ 9.35]
 - (6) Property Essential for Self-Support [§ 9.36]
 - (7) Resources Necessary for Approved PASS Plan [§ 9.37]
 - (8) Retroactive Payments [§ 9.38]
 - (9) Cash or In-Kind Replacement of Excluded Resources [§ 9.39]
 - (10) State or Local Relocation Assistance Payments [§ 9.40]
 - (11) Other Exclusions [§ 9.41]
 - (12) Trusts [§ 9.42]
 - d. Deeming of Resources [§ 9.43]
 - e. Disposal of Excess Nonliquid Resources [§ 9.44]
 - f. Divestment of Resources [§ 9.45]

- 3. Income [§ 9.46]
 - a. In General [§ 9.47]
 - b. What Is Not Income [§ 9.48]
 - c. Deeming of Income [§ 9.49]
 - d. Types of Income [§ 9.50]
 - (1) Earned Income [§ 9.51]
 - (2) Unearned Income [§ 9.52]
 - (3) In-Kind Support and Maintenance [§ 9.53]
- E. Application Process [§ 9.54]
 - 1. In General [§ 9.55]
 - 2. Date of Filing [§ 9.56]
- F. Benefits [§ 9.57]
 - 1. Computation of Benefits [§ 9.58]
 - a. In General [§ 9.59]
 - b. Retrospective Monthly Accounting System [§ 9.60]
 - c. Exceptions [§ 9.61]
 - 2. Payment of Benefits [§ 9.62]
 - a. Federal Benefit Rate [§ 9.63]
 - b. State Supplement [§ 9.64]
 - c. SSI—Exceptional Expense [§ 9.65]
 - d. Emergency Advance Payments [§ 9.66]
 - e. Presumptive Payments [§ 9.67]
 - f. Interim Assistance [§ 9.68]
 - 3. Overpayments and Underpayments [§ 9.69]
- G. Administrative and Judicial Review [§ 9.70]

III. Supplemental Nutrition Assistance Program [§ 9.71]

IV. General Relief [§ 9.72]

INDEX TO VOLUMES I AND II

VOLUME II

CHAPTER 10

MEDICARE

by Avery J. Mayne

I. Scope of Chapter [§ 10.1]

II. Introduction [§ 10.2]

- A. Sources of Law and Policy [§ 10.3]
- B. Administration [§ 10.4]
 - 1. Centers for Medicare and Medicaid Services [§ 10.5]
 - 2. Social Security Administration [§ 10.6]
 - 3. Fiscal Intermediaries and Carriers [§ 10.7]
 - 4. Quality Improvement Organizations [§ 10.8]

- a. In General [§ 10.9]
 - b. Wisconsin BFCC-QIO and QIN-QIO [§ 10.10]
 - 5. Utilization Review Committees [§ 10.11]
- C. Program Financing [§ 10.12]
 - 1. Funding Sources [§ 10.13]
 - 2. Beneficiary Cost Sharing [§ 10.14]
 - a. In General [§ 10.15]
 - b. Medigap Insurance [§ 10.16]
 - c. Medicaid Programs: QMB and SLMB [§ 10.17]
- D. Medicare Advantage [§ 10.18]

III. Part A Eligibility and Enrollment [§ 10.19]

- A. Eligibility [§ 10.20]
 - 1. In General [§ 10.21]
 - 2. Persons 65 and Over [§ 10.22]
 - 3. Persons with Disabilities [§ 10.23]
 - 4. Kidney Patients [§ 10.24]
 - 5. Federal Employees [§ 10.25]
 - 6. Voluntary Purchasers [§ 10.26]
- B. Enrollment [§ 10.27]
 - 1. Automatic Enrollment [§ 10.28]
 - 2. Enrollment by Application [§ 10.29]

IV. Part B Eligibility and Enrollment [§ 10.30]

- A. Eligibility [§ 10.31]
- B. Enrollment [§ 10.32]
 - 1. In General [§ 10.33]
 - 2. Employees Covered Under Group Health Plan [§ 10.34]
 - 3. Enrollment Periods [§ 10.35]
 - 4. Late Enrollment Penalty [§ 10.36]
- C. Coverage Periods [§ 10.37]
- D. Premium Payments [§ 10.38]

V. Part A Benefits [§ 10.39]

- A. Introduction [§ 10.40]
 - 1. Overview of Part A Benefits [§ 10.41]
 - 2. Benefit Period Defined [§ 10.42]
 - 3. Deductibles and Coinsurance [§ 10.43]
 - a. Inpatient Deductible and Coinsurance [§ 10.44]
 - b. Blood Deductible [§ 10.45]
 - c. Skilled Nursing Facility Coinsurance [§ 10.46]
 - d. Home Health Coinsurance for Durable Medical Equipment [§ 10.47]
 - e. Hospice Coinsurance [§ 10.48]
- B. Inpatient Hospital Care [§ 10.49]
 - 1. What Medicare Covers [§ 10.50]
 - a. Number of Days [§ 10.51]
 - b. Services and Supplies [§ 10.52]
 - c. Emergency Services in Nonparticipating Hospitals [§ 10.53]
 - d. SNF Care (Swing Beds) [§ 10.54]

- 2. Coverage Limitations [§ 10.55]
 - a. In General [§ 10.56]
 - b. Inpatient Psychiatric Care [§ 10.57]
- 3. Condition of Coverage: Medical Necessity [§ 10.58]
- C. Skilled Nursing Facility Care [§ 10.59]
 - 1. In General [§ 10.60]
 - 2. What Medicare Covers [§ 10.61]
 - a. Number of Days [§ 10.62]
 - b. Services and Supplies [§ 10.63]
 - 3. Coverage Limitations [§ 10.64]
 - 4. Conditions of Coverage [§ 10.65]
 - a. In General (ELD-0014) [§ 10.66]
 - b. Skilled Care Requirement [§ 10.67]
 - (1) In General [§ 10.68]
 - (2) Checklist (ELD-0015) [§ 10.69]
 - c. Daily Basis Requirement [§ 10.70]
 - d. Practical-Matter Test [§ 10.71]
- D. Home Health Care [§ 10.72]
 - 1. In General [§ 10.73]
 - 2. What Medicare Covers [§ 10.74]
 - a. Number of Visits [§ 10.75]
 - b. Services and Supplies [§ 10.76]
 - c. Chronic Care [§ 10.77]
 - 3. Coverage Limitations [§ 10.78]
 - 4. Conditions of Coverage [§ 10.79]
 - a. In General [§ 10.80]
 - b. Skilled Care Requirement [§ 10.81]
 - c. Part-Time or Intermittent Services Requirement [§ 10.82]
 - d. Confined-to-Home Requirement [§ 10.83]
- E. Hospice Care [§ 10.84]
 - 1. In General [§ 10.85]
 - 2. What Medicare Covers [§ 10.86]
 - a. Election Periods [§ 10.87]
 - b. Services and Supplies [§ 10.88]
 - 3. Coverage Limitations [§ 10.89]
 - a. In General [§ 10.90]
 - b. Cap Amount [§ 10.91]
 - 4. Conditions of Coverage [§ 10.92]

VI. Part B Benefits [§ 10.93]

- A. In General [§ 10.94]
- B. Premiums, Deductibles, and Coinsurance [§ 10.95]
 - 1. In General [§ 10.96]
 - 2. Blood Deductible [§ 10.97]
- C. What Medicare Covers [§ 10.98]
 - 1. Checklist (ELD-0016) [§ 10.99]
 - 2. Physician Services [§ 10.100]
 - a. In General [§ 10.101]
 - b. Dentists [§ 10.102]
 - c. Podiatrists [§ 10.103]

- d. Optometrists [§ 10.104]
- e. Chiropractors [§ 10.105]
- 3. Outpatient Mental Health Treatment [§ 10.106]
- 4. Ambulance Services [§ 10.107]
 - a. In General [§ 10.108]
 - b. Coverage Limitations [§ 10.109]
 - c. Air Ambulance Services [§ 10.110]
 - d. Problem Areas [§ 10.111]
- 5. Durable Medical Equipment [§ 10.112]
 - a. In General [§ 10.113]
 - b. Reimbursement Methodology [§ 10.114]
 - c. Special Regional Carriers [§ 10.115]
 - (1) In General [§ 10.116]
 - (2) Wisconsin [§ 10.117]
- 6. Ambulatory Surgical Center Services [§ 10.118]

VII. Coverage Exclusions: Parts A and B [§ 10.119]

- A. In General [§ 10.120]
 - 1. Reasonable and Necessary Standard [§ 10.121]
 - 2. National Coverage Decisions [§ 10.122]
- B. General Exclusions [§ 10.123]
- C. Specific Excluded Services [§ 10.124]
- D. Services for Which Medicare Is Secondary Payer [§ 10.125]

VIII. Claims [§ 10.126]

- A. Part A [§ 10.127]
 - 1. Wisconsin Fiscal Intermediary [§ 10.128]
 - 2. Prospective Payment System [§ 10.129]
 - 3. Diagnosis-Related Groups [§ 10.130]
 - a. In General [§ 10.131]
 - b. Outliers [§ 10.132]
 - c. Beneficiary Cost Sharing [§ 10.133]
 - d. SNFs [§ 10.134]
 - 4. Role of QIOs [§ 10.135]
- B. Part B [§ 10.136]
 - 1. Wisconsin Carrier [§ 10.137]
 - 2. Physician Fee Schedule [§ 10.138]
 - 3. Reasonable Charge Formula [§ 10.139]
 - 4. Assignment [§ 10.140]
 - a. In General [§ 10.141]
 - b. Dual Medicare and Medicaid Eligibility [§ 10.142]
 - 5. Limiting Charge [§ 10.143]
 - 6. Private Contracting [§ 10.144]
- C. Medicare Summary Notice [§ 10.145]
- D. Time Limits [§ 10.146]
 - 1. Submission of Claims [§ 10.147]
 - 2. Payment of Claims [§ 10.148]

IX. Coverage Denials: Waiver of Liability [§ 10.149]

- A. In General [§ 10.150]
- B. Waiver of Liability for Part A and Assigned Part B Claims [§ 10.151]
 - 1. In General [§ 10.152]
 - 2. Notice of Noncoverage [§ 10.153]
 - 3. Special Considerations in Part A Cases [§ 10.154]
 - a. Demand Billing [§ 10.155]
 - b. Waiver in Inpatient Hospital Cases [§ 10.156]
 - c. Waiver in SNF Cases [§ 10.157]
 - (1) No Notice of Noncoverage [§ 10.158]
 - (2) Placement in Noncertified Bed [§ 10.159]
 - d. Waiver in Home Health-Care Cases [§ 10.160]
- C. Waiver of Liability for Unassigned Part B Claims [§ 10.161]
 - 1. Physician Services [§ 10.162]
 - a. In General [§ 10.163]
 - b. Notice of Noncoverage [§ 10.164]
 - 2. Elective Surgery [§ 10.165]
- D. Limitations of Waiver Protection [§ 10.166]

X. Medicare Advantage Eligibility and Enrollment [§ 10.167]

- A. In General [§ 10.168]
- B. Eligibility [§ 10.169]
- C. Enrollment Periods [§ 10.170]
 - 1. In General [§ 10.171]
 - 2. IEP [§ 10.172]
 - 3. AEP [§ 10.173]
 - 4. SEP [§ 10.174]
 - 5. Medicare Advantage Open Enrollment Period [§ 10.175]
- D. Effective Dates [§ 10.176]

XI. Medicare Part D [§ 10.177]

- A. In General [§ 10.178]
- B. Prescription Drug Plans (PDPs) [§ 10.179]
 - 1. Eligibility [§ 10.180]
 - 2. Enrollment Periods [§ 10.181]
 - a. In General [§ 10.182]
 - b. Initial Enrollment Period [§ 10.183]
 - c. Annual Enrollment Period [§ 10.184]
 - d. Special Enrollment Period [§ 10.185]
 - (1) In General [§ 10.186]
 - (2) Enrollment in both Medicare and Medicaid [§ 10.187]
 - (3) Move [§ 10.188]
 - (4) Involuntary Loss of Creditable Prescription Drug Coverage [§ 10.189]
 - (5) Institutionalized Individuals Moving Into or Out of an Institution [§ 10.190]
 - (6) Low-Income Subsidy (LIS) Individuals [§ 10.191]
 - (7) Enrollment or Disenrollment Because of an Error by a Federal Employee [§ 10.192]
 - (8) Contract Nonrenewals [§ 10.193]
 - (9) PDP Sponsor Termination of Contract and Terminations or Contract Modifications by Mutual Consent [§ 10.194]

- (10) CMS Termination of PDP Sponsor Contract [§ 10.195]
 - (11) Violation of Contract by PDP Sponsor [§ 10.196]
 - (12) Other Exceptional Circumstances [§ 10.197]
 - 3. Late-Enrollment Penalty [§ 10.198]
 - 4. Effective Dates [§ 10.199]
 - 5. Cost to Beneficiary [§ 10.200]
 - 6. Low-Income Subsidy [§ 10.201]
 - 7. Benefit [§ 10.202]
- C. Medicare Advantage Prescription Drug Plans [§ 10.203]
 - 1. In General [§ 10.204]
 - 2. Enrollment Periods [§ 10.205]
 - a. In General [§ 10.206]
 - b. SEP [§ 10.207]
 - c. Late-Enrollment Penalty [§ 10.208]
 - d. Effective Dates [§ 10.209]
 - e. Cost and Benefit to Beneficiary [§ 10.210]
- D. Part D Exceptions [§ 10.211]
 - 1. In General [§ 10.212]
 - 2. Types of Exceptions [§ 10.213]
 - a. Nonformulary Drug [§ 10.214]
 - b. Step Therapy [§ 10.215]
 - c. Quantity Limit [§ 10.216]
 - d. Cost Sharing [§ 10.217]
 - e. Prior Authorization [§ 10.218]
 - 3. Procedure for Requesting Exception [§ 10.219]

XII. Administrative and Judicial Review [§ 10.220]

- A. In General [§ 10.221]
- B. Eligibility Cases [§ 10.222]
- C. Part A and B Coverage Cases [§ 10.223]
 - 1. In General [§ 10.224]
 - 2. Redetermination [§ 10.225]
 - 3. Reconsideration [§ 10.226]
 - 4. ALJ Hearing [§ 10.227]
 - 5. Administrative and Judicial Review [§ 10.228]
 - a. Medicare Appeals Council Review [§ 10.229]
 - b. Judicial Review [§ 10.230]
 - c. Reopenings of Initial Determinations, Redeterminations, Reconsiderations, Hearings, and Reviews [§ 10.231]
 - d. Expedited Determinations and Reconsiderations of Provider Service Terminations and of Procedures for Inpatient Hospital and SNF Discharges [§ 10.232]
- D. Medicare Advantage Coverage Cases [§ 10.233]
 - 1. In General [§ 10.234]
 - 2. Organization Determination [§ 10.235]
 - 3. Reconsideration [§ 10.236]
 - 4. Reconsideration by an Independent Entity [§ 10.237]
 - 5. ALJ Hearing, MAC Review and Judicial Hearing [§ 10.238]
 - 6. Reopening and Revising Determinations and Decisions [§ 10.239]

- E. Part D Appeals [§ 10.240]
 - 1. In General [§ 10.241]
 - 2. Redetermination [§ 10.242]
 - 3. Reconsideration [§ 10.243]
 - 4. ALJ Hearing [§ 10.244]
 - 5. Medicare Appeals Council [§ 10.245]
 - 6. U.S. District Court [§ 10.246]
- F. Part D Grievances [§ 10.247]

XIII. Overpayment of Benefits [§ 10.248]

XIV. Attorney Fees [§ 10.249]

XV. Appendices [§ 10.250]

- A. Appendix 10A: Glossary of Medicare Terms [§ 10.251]
- B. Appendix 10B: Part A Benefits [§ 10.252]
- C. Appendix 10C: Part B Benefits [§ 10.253]
- D. Appendix 10D: Part A & B Appeals [§ 10.254]
- E. Appendix 10E: Medicare Advantage Appeals [§ 10.255]
- F. Appendix 10F: Part D Appeals [§ 10.256]

CHAPTER 11

MEDICAID

by Dayna J. Lefebvre & Carol J. Wessels

I. Scope of Chapter [§ 11.1]

II. What Is Medicaid? [§ 11.2]

III. Sources of Law and Policy [§ 11.3]

- A. In General [§ 11.4]
- B. Federal Authority [§ 11.5]
 - 1. Statutes [§ 11.6]
 - 2. Regulations [§ 11.7]
- C. State Authority [§ 11.8]
 - 1. State Plan [§ 11.9]
 - 2. Statutes [§ 11.10]
 - 3. Regulations [§ 11.11]
- D. Program Manuals [§ 11.12]
 - 1. Federal [§ 11.13]
 - 2. State [§ 11.14]

IV. Administrative Structure [§ 11.15]

- A. Federal [§ 11.16]
- B. State [§ 11.17]
- C. County or Tribe [§ 11.18]

V. Overview of Eligibility Requirements [§ 11.19]

- A. In General [§ 11.20]
- B. Categorical Requirements [§ 11.21]

1. In General [§ 11.22]
2. Elderly, Blind, or Disabled [§ 11.23]
3. Categorically Needy [§ 11.24]
 - a. In General [§ 11.25]
 - b. SSI Recipients [§ 11.26]
 - c. Recipients of Optional SSI State Supplement Only [§ 11.27]
 - d. Persons Eligible for but Not Receiving SSI [§ 11.28]
 - e. Persons SSI-Ineligible Because of Social Security COLAs [§ 11.29]
 - f. Widows and Widowers with Disabilities [§ 11.30]
 - g. Institutionalized Persons [§ 11.31]
 - h. Recipients of Home and Community-Based Waiver Services [§ 11.32]
 - i. Persons with Tuberculosis [§ 11.33]
4. Medically Needy [§ 11.34]
 - a. In General [§ 11.35]
 - b. Noninstitutionalized Persons [§ 11.36]
 - c. Institutionalized Persons [§ 11.37]
5. Medicare Cost-Sharing Program Beneficiaries [§ 11.38]
 - a. QMBs [§ 11.39]
 - b. SLMBs [§ 11.40]
 - c. SLMB+s [§ 11.41]
6. Disease Aid Programs [§ 11.42]
- C. Nonfinancial Requirements [§ 11.43]
 1. In General [§ 11.44]
 2. United States Citizenship or Residency [§ 11.45]
 3. Proof of Citizenship and Identity [§ 11.46]
 4. Required Documentation [§ 11.47]
 5. Failure to Provide Documentation [§ 11.48]
 6. Wisconsin Residency [§ 11.49]
 - a. In General [§ 11.50]
 - b. Noninstitutionalized Persons [§ 11.51]
 - c. Institutionalized Persons [§ 11.52]
 7. Persons Who Are Elderly, Blind, or Disabled [§ 11.53]
 8. Application for Other Benefits [§ 11.54]
- D. Financial Requirements [§ 11.55]
 1. General Principles of Financial Eligibility [§ 11.56]
 2. Deeming [§ 11.57]

VI. Financial Eligibility for Noninstitutionalized Persons [§ 11.58]

- A. In General [§ 11.59]
- B. Resource Determinations [§ 11.60]
 1. In General [§ 11.61]
 2. Definitions [§ 11.62]
 3. Availability of Resources [§ 11.63]
 4. Exempt Resources [§ 11.64]
 - a. In General [§ 11.65]
 - b. Home Property [§ 11.66]
 - c. Household Goods and Personal Effects [§ 11.67]
 - d. Motor Vehicles [§ 11.68]
 - e. Life Insurance [§ 11.69]
 - f. Long-Term Care Insurance Policy [§ 11.70]

- g. Burial Arrangements [§ 11.71]
 - (1) Burial Spaces [§ 11.72]
 - (2) Irrevocable Burial Trusts [§ 11.73]
 - (3) Burial Funds [§ 11.74]
 - (4) Life-Insurance-Funded Burial Arrangements [§ 11.75]
 - (5) Limits on Exempt Burial Arrangements [§ 11.76]
- h. Property Essential to Self-Support [§ 11.77]
- i. Funds to Replace Lost, Damaged, or Stolen Excluded Resources [§ 11.78]
- j. Nonhome Real Property [§ 11.79]
- 5. Rules for Treatment of Specific Resources [§ 11.80]
 - a. Joint Accounts [§ 11.81]
 - b. Other Types of Jointly Held Property [§ 11.82]
 - c. Land Contracts [§ 11.83]
 - d. Life Estates [§ 11.84]
 - e. Loans [§ 11.85]
 - f. Lump Sum Payments [§ 11.86]
- C. Income Determinations [§ 11.87]
 - 1. In General [§ 11.88]
 - 2. What Is Considered Income? [§ 11.89]
 - 3. Categorically Needy [§ 11.90]
 - a. In General [§ 11.91]
 - b. SSI Eligibility [§ 11.92]
 - c. Non-SSI-Based Categorically Needy Medicaid Eligibility [§ 11.93]
 - 4. Medically Needy (Medicaid Deductible) [§ 11.94]
 - a. In General [§ 11.95]
 - b. Deductible Period [§ 11.96]
 - c. Prepaying the Deductible [§ 11.97]
 - d. Examples [§ 11.98]
 - 5. Medicaid Purchase Plan (MAPP) [§ 11.99]
 - a. In General [§ 11.100]
 - b. General Eligibility [§ 11.101]
 - c. Financial Eligibility [§ 11.102]
 - (1) Resources [§ 11.103]
 - (2) Income [§ 11.104]
 - (3) Employment Requirement [§ 11.105]
 - (4) Premiums [§ 11.106]

VII. Financial Eligibility for Institutionalized Persons [§ 11.107]

- A. In General [§ 11.108]
- B. *Institutionalized Person* Defined [§ 11.109]
- C. Distinguishing Income from Resources [§ 11.110]
- D. Resource Determinations [§ 11.111]
 - 1. In General [§ 11.112]
 - 2. Availability of Resources [§ 11.113]
 - 3. Resource Limit for Individuals [§ 11.114]
 - 4. Resource Limit for Married Persons: Spousal Impoverishment Provisions [§ 11.115]
 - a. In General [§ 11.116]
 - b. Definitions [§ 11.117]
 - c. Determining the Resource Limit [§ 11.118]
 - d. Increasing the CSAS [§ 11.119]

- 5. Exempt Resources [§ 11.120]
 - a. In General [§ 11.121]
 - b. Home Property [§ 11.122]
 - c. Household Goods and Personal Effects [§ 11.123]
 - d. Motor Vehicles [§ 11.124]
 - e. Life Insurance [§ 11.125]
 - f. Burial Arrangements [§ 11.126]
 - g. Property Essential to Self-Support [§ 11.127]
 - h. Funds to Replace Lost, Damaged, or Stolen Exclude Resources [§ 11.128]
 - i. Nonhome Real Property [§ 11.129]
- E. Income Determinations [§ 11.130]
 - 1. In General [§ 11.131]
 - 2. *Income* Defined [§ 11.132]
 - 3. Disregarded Income [§ 11.133]
 - 4. Payments That Are Resources, Not Income [§ 11.134]
 - 5. Persons in Medical Institutions [§ 11.135]
 - a. Categorically Needy Versus Medically Needy [§ 11.136]
 - b. Deductions from Income to Determine Nursing Home Liability Amount: Individuals [§ 11.137]
 - c. Spousal Impoverishment Provisions [§ 11.138]
 - (1) Income Allocation for Community Spouse [§ 11.139]
 - (2) Income Allocation for Dependent Family Members [§ 11.140]
 - 6. Persons Participating in Home or Community-Based Waiver Long-Term Care Programs [§ 11.141]
 - a. Categorically Needy Versus Medically Needy [§ 11.142]
 - b. Income Eligibility and Cost Share for Group B [§ 11.143]
 - c. Income Eligibility and Cost Share for Group B Plus [§ 11.144]
- F. Post-Eligibility Issues for Married Couples [§ 11.145]
 - 1. Increase in Community Spouse’s Assets After MA Eligibility [§ 11.146]
 - 2. Annual Review [§ 11.147]

VIII. Divestment [§ 11.148]

- A. In General [§ 11.149]
- B. Criminal Penalties [§ 11.150]
- C. Divestment—Basic Rules [§ 11.151]
 - 1. Look-Back (and Look-Forward) Period [§ 11.152]
 - 2. People Who Are Prohibited from Divesting [§ 11.153]
 - 3. Definition of “Assets” for Divestment Purposes [§ 11.154]
 - 4. Penalty Period [§ 11.155]
 - 5. Allocation of Penalty Period Between Institutionalized Spouses [§ 11.156]
 - 6. Relationship Between Penalty Period and Look-Back Period [§ 11.157]
 - 7. Divestments After Establishment of Medicaid Eligibility [§ 11.158]
 - 8. Actions That May Be Divestments [§ 11.159]
- D. Particular Transfers or Transactions [§ 11.160]
 - 1. Annuities [§ 11.161]
 - 2. Promissory Notes [§ 11.162]
 - 3. Payments to Relatives for Services or Care [§ 11.163]
 - 4. Common Ownership [§ 11.164]
 - a. In General [§ 11.165]
 - b. Joint Bank Accounts [§ 11.166]

- c. Other Jointly Owned Assets [§ 11.167]
 - d. Reducing Control over Assets [§ 11.168]
 - e. Life Estates [§ 11.169]
- E. Exceptions: Transfers That Do Not Cause Medicaid Ineligibility [§ 11.170]
 - 1. In General [§ 11.171]
 - 2. Transfers Between Spouses [§ 11.172]
 - 3. Transfers to or for a Disabled Child [§ 11.173]
 - 4. Transfers to Disabled Person Under Age 65 [§ 11.174]
 - 5. Transfers of the Home [§ 11.175]
 - 6. Other Exceptions [§ 11.176]

IX. Trusts [§ 11.177]

- A. Medicaid Trusts [§ 11.178]
- B. Requirements [§ 11.179]
 - 1. Established by the Individual [§ 11.180]
 - 2. Assets of the Individual [§ 11.181]
- C. The Medicaid Trust Rules’ Broad Applicability [§ 11.182]
- D. Effect of Trusts on Medicaid Eligibility [§ 11.183]
 - 1. In General [§ 11.184]
 - 2. Revocable Trusts [§ 11.185]
 - 3. Irrevocable Trusts [§ 11.186]
- E. Trusts Excepted from Rules [§ 11.187]
 - 1. Testamentary Trusts [§ 11.188]
 - 2. Supplemental (Special) Needs Trusts [§ 11.189]
 - 3. *Miller* Trusts [§ 11.190]
 - 4. Pooled Trusts [§ 11.191]
 - 5. Trusts Established by a Third Party [§ 11.192]

X. Planning for Medicaid Eligibility [§ 11.193]

- A. In General [§ 11.194]
- B. Long-Term Planning (5+ Years) [§ 11.195]
- C. Medium-Term Planning [§ 11.196]
- D. Short-Term Planning (Less Than One Year) [§ 11.197]
- E. Post-Eligibility Planning [§ 11.198]
- F. Particular Planning Strategies: What to Do with the “Extra Money” [§ 11.199]
 - 1. In General [§ 11.200]
 - 2. Paying for Care [§ 11.201]
 - 3. Buying Exempt Resources [§ 11.202]
 - 4. Prepaying Funeral Costs [§ 11.203]
 - 5. Investing in Home Property [§ 11.204]
 - 6. Making Use of Unavailable Resources [§ 11.205]
 - 7. Converting Resources into Income [§ 11.206]
 - 8. Paying Relatives for Services and Care [§ 11.207]
 - 9. Increasing the Community Spouse Resource Allocation or Income Allocation [§ 11.208]
 - a. In General [§ 11.209]
 - b. Increase in Value of Spousal Resources on Date of Institutionalization [§ 11.210]
 - 10. Transferring Exempt Resources [§ 11.211]
 - 11. Making Transfers That Are Specifically Allowed [§ 11.212]
 - 12. Divesting [§ 11.213]
- G. Special Needs of Couples in Other Than First Marriages [§ 11.214]

- H. Divorce or Legal Separation [§ 11.215]
- I. Tax Considerations [§ 11.216]
 - 1. In General [§ 11.217]
 - 2. Gift and Estate Taxes [§ 11.218]
 - 3. Capital Gains Taxes [§ 11.219]
 - 4. Income Taxes [§ 11.220]

XI. Application for Medicaid [§ 11.221]

XII. Benefits [§ 11.222]

- A. In General [§ 11.223]
 - 1. Extent of Benefits [§ 11.224]
 - 2. Duration and Retroactivity [§ 11.225]
 - 3. Access to Services; Certified Providers [§ 11.226]
 - 4. Covered Services [§ 11.227]
 - 5. Prior Authorization [§ 11.228]
- B. Skilled Nursing Facilities and Intermediate Care Facilities [§ 11.229]
 - 1. In General [§ 11.230]
 - 2. Participation Requirements [§ 11.231]
 - 3. Level of Care Determinations [§ 11.232]
- C. Home Health and Personal Care Services [§ 11.233]
- D. Home and Community-Based Waiver Services [§ 11.234]
- E. Out-of-State Services [§ 11.235]
 - 1. Border-Status Providers [§ 11.236]
 - 2. Other Services [§ 11.237]
- F. Burial Expenses [§ 11.238]

XIII. Reimbursement [§ 11.239]

- A. In General [§ 11.240]
- B. Dual Entitlees: Medicare-Eligible Persons [§ 11.241]
- C. Third-Party Liability [§ 11.242]
 - 1. In General [§ 11.243]
 - 2. Private Health Insurance [§ 11.244]
 - 3. Group Health Plans, Fee-for-Service Plans, Medigap Policies, and HMOs [§ 11.245]

XIV. Post-Eligibility Issues [§ 11.246]

- A. Guardianship and Medicaid [§ 11.247]
- B. Financial Responsibility of Spouses and Other Relatives [§ 11.248]
- C. Recovery of Recipient Payments [§ 11.249]
 - 1. In General [§ 11.250]
 - 2. Incorrectly Paid Benefits [§ 11.251]
 - 3. Correctly Paid Benefits [§ 11.252]
- D. Recipient Billing Protections [§ 11.253]
 - 1. In General [§ 11.254]
 - 2. Prior Authorization Cases [§ 11.255]
 - 3. Noncovered Services [§ 11.256]
 - 4. Recipient Refunds [§ 11.257]
- E. Reporting Obligation [§ 11.258]

XV. Liens and Estate Recovery [§ 11.259]

- A. In General [§ 11.260]
- B. Liens: Nursing Home Medicaid Benefits [§ 11.261]
 - 1. Imposition [§ 11.262]
 - 2. Enforcement [§ 11.263]
 - 3. Release of Liens [§ 11.264]
- C. Estate Recovery: Nursing Home and Community-Based Medicaid Benefits [§ 11.265]
 - 1. In General [§ 11.266]
 - 2. Applicable Estates [§ 11.267]
 - 3. Notice to DHS [§ 11.268]
 - 4. Limits on Claims [§ 11.269]
 - 5. Undue Hardship Waiver [§ 11.270]
 - a. In General [§ 11.271]
 - b. Persons Eligible to Apply [§ 11.272]
 - c. Criteria for Establishing Eligibility [§ 11.273]
 - (1) Welfare Recipients [§ 11.274]
 - (2) Real Property Subject to Recovery Part of an Ongoing Business [§ 11.275]
 - d. Notice of Availability of Waiver [§ 11.276]
 - e. Procedure [§ 11.277]
 - (1) Application and Review [§ 11.278]
 - (2) Appeal Process [§ 11.279]
 - 6. Follow-around Liens [§ 11.280]
 - 7. Installment Payments [§ 11.281]

XVI. Appeals and Hearings [§ 11.282]

- A. In General [§ 11.283]
- B. Notice Rights [§ 11.284]
- C. Hearing Rights [§ 11.285]
- D. Continuation of Benefits Pending Hearing [§ 11.286]
- E. Request for Hearing [§ 11.287]
- F. Hearing Procedure [§ 11.288]
 - 1. In General [§ 11.289]
 - 2. Specific Types of Hearings [§ 11.290]
 - a. Spousal Impoverishment Cases [§ 11.291]
 - (1) Increasing the CSAS [§ 11.292]
 - (2) Increasing the MMMNA [§ 11.293]
 - b. Prior Authorization Denials [§ 11.294]
 - c. Disability Cases [§ 11.295]
 - d. Proposed Imposition of Lien [§ 11.296]
 - e. Overpayments [§ 11.297]
- G. Hearing Decision [§ 11.298]
- H. Request for Rehearing [§ 11.299]
- I. Judicial Review in Circuit Court [§ 11.300]
 - 1. In General [§ 11.301]
 - 2. Procedure [§ 11.302]
 - 3. Scope of Review [§ 11.303]
 - 4. Remedies [§ 11.304]

XVII. Attorney Fees Under Wisconsin Equal Access to Justice Act [§ 11.305]

- A. In General [§ 11.306]
- B. Parties [§ 11.307]
- C. Prevailing Party [§ 11.308]
- D. Substantial Justification [§ 11.309]
- E. Obtaining Fees at Fair Hearing Level [§ 11.310]
- F. Obtaining Fees upon Circuit Court Review [§ 11.311]
 - 1. How to Raise the Issue [§ 11.312]
 - a. In General [§ 11.313]
 - b. Review of ALJ Decision on Attorney Fees [§ 11.314]
 - c. Fees When Underlying Issue Is Subject of Court Review [§ 11.315]
 - d. Fees When Relief Granted Is a Remand [§ 11.316]
 - 2. Forms Required [§ 11.317]
- G. Amount of Fees [§ 11.318]

XVIII. Appendices [§ 11.319]

- A. Appendix 11A: Glossary of Medicaid Terms [§ 11.320]
- B. Appendix 11B: Statement of Citizenship and Identity, Form F-10161 [§ 11.321]

CHAPTER 12

VETERANS' BENEFITS

by Shana Dunn, Travis James West, Andrew J. Adams & Jonathan C. Heiden

I. Scope of Chapter [§ 12.1]

II. Sources of Law [§ 12.2]

III. General Eligibility Requirements [§ 12.3]

- A. In General [§ 12.4]
- B. Active Military Service [§ 12.5]
 - 1. In General [§ 12.6]
 - 2. Minimum Active Duty [§ 12.7]
- C. Qualifying Discharge [§ 12.8]
- D. Service-Connected and Non-Service-Connected Disability [§ 12.9]
- E. Documentation [§ 12.10]

IV. Health-Care Benefits [§ 12.11]

- A. In General [§ 12.12]
- B. Patient Enrollment System [§ 12.13]
 - 1. Enrollment Requirement [§ 12.14]
 - 2. Priorities for Benefits [§ 12.15]
- C. Hospital Care [§ 12.16]
 - 1. Eligibility [§ 12.17]
 - a. In General [§ 12.18]
 - b. Mandatory Care [§ 12.19]
 - (1) In General [§ 12.20]
 - (2) Income Assessment [§ 12.21]
 - c. Discretionary Care [§ 12.22]
 - (1) In General [§ 12.23]
 - (2) Copayments [§ 12.24]

- d. Veterans Community Care [§ 12.25]
 - 2. Application [§ 12.26]
 - a. In General [§ 12.27]
 - b. Veterans Community Care [§ 12.28]
- D. Nursing Home Care [§ 12.29]
 - 1. In General [§ 12.30]
 - 2. Eligibility [§ 12.31]
 - a. In General [§ 12.32]
 - b. Copayments [§ 12.33]
 - 3. Private Nursing Homes [§ 12.34]
 - a. In General [§ 12.35]
 - b. Direct Admission [§ 12.36]
 - c. Transfer [§ 12.37]
 - 4. Application [§ 12.38]
- E. Domiciliary Care [§ 12.39]
 - 1. In General [§ 12.40]
 - 2. Eligibility [§ 12.41]
 - 3. Application [§ 12.42]
- F. Outpatient Care [§ 12.43]
 - 1. Eligibility [§ 12.44]
 - a. In General [§ 12.45]
 - b. Veterans Community Care [§ 12.46]
 - 2. Application [§ 12.47]
- G. Miscellaneous Health-Care Benefits [§ 12.48]
 - 1. In General [§ 12.49]
 - 2. Dental Care [§ 12.50]
 - 3. Medications [§ 12.51]
 - a. Eligibility [§ 12.52]
 - b. Copayments [§ 12.53]
 - c. Prescriptions by Mail [§ 12.54]
 - d. Refill Procedures [§ 12.55]
 - 4. Prosthetics [§ 12.56]
 - 5. Visual Impairment Services [§ 12.57]
 - 6. Sensori-neural Aids [§ 12.58]
 - 7. Hearing Impairment Services [§ 12.59]
 - 8. Provision of Service Dogs for Other Veterans [§ 12.60]
 - 9. Substance Abuse Treatment [§ 12.61]
 - 10. Readjustment Counseling [§ 12.62]
 - a. In General [§ 12.63]
 - b. Eligibility [§ 12.64]
 - 11. Health Registry Programs [§ 12.65]
 - 12. Beneficiary Travel Reimbursement [§ 12.66]
 - 13. Home Health Services [§ 12.67]
 - 14. Reimbursement for Unauthorized Medical Services [§ 12.68]
 - 15. Other Services [§ 12.69]
- H. Medical Care Benefits for Specific Groups [§ 12.70]
 - 1. Merchant Seamen [§ 12.71]
 - 2. Allied Veterans [§ 12.72]
 - 3. Dependents and Survivors (CHAMPVA) [§ 12.73]
 - 4. Homeless Veterans [§ 12.74]

V. General Monetary Benefits [§ 12.75]

- A. Service-Connected Disability Compensation [§ 12.76]
 - 1. Eligibility [§ 12.77]
 - a. In General [§ 12.78]
 - b. Elements of Service Connection [§ 12.79]
 - c. Legal Presumptions [§ 12.80]
 - d. Aggravated Disability [§ 12.81]
 - e. Secondary Service Connection [§ 12.82]
 - f. Certain Conditions for Which Service Connection Cannot Be Established [§ 12.83]
 - g. Financial Considerations [§ 12.84]
 - 2. Types of Benefits [§ 12.85]
 - a. Basic Monthly Payment [§ 12.86]
 - b. Special Monetary Awards [§ 12.87]
 - 3. Application [§ 12.88]
 - a. In General [§ 12.89]
 - b. Time and Method for Filing Claim [§ 12.90]
 - c. Supporting Evidence [§ 12.91]
 - (1) In General [§ 12.92]
 - (2) Medical Records [§ 12.93]
 - (3) Witness Testimony [§ 12.94]
 - (4) Rating Examination [§ 12.95]
- B. Non-Service-Connected Disability Pensions [§ 12.96]
 - 1. In General [§ 12.97]
 - 2. Types of Pensions [§ 12.98]
 - 3. Eligibility [§ 12.99]
 - a. In General [§ 12.100]
 - b. Service During Period of War [§ 12.101]
 - c. 90 Days of Active Duty [§ 12.102]
 - d. Disability [§ 12.103]
 - 4. Income and Asset Limitations [§ 12.104]
 - a. In General [§ 12.105]
 - b. Annual Adjustments [§ 12.105]
 - 5. Application [§ 12.106]

VI. Burial Benefits [§ 12.108]

- A. Funeral and Burial Expenses [§ 12.109]
 - 1. Eligibility [§ 12.110]
 - 2. Types of Benefits [§ 12.111]
 - a. Burial Allowance [§ 12.112]
 - b. Plot or Interment Allowance [§ 12.113]
 - c. Transportation [§ 12.114]
 - 3. Deductions for Payments from Non-VA Sources [§ 12.115]
 - 4. Application [§ 12.116]
- B. Headstones and Markers [§ 12.117]
- C. Burial in National Cemeteries [§ 12.118]
 - 1. Eligibility [§ 12.119]
 - 2. Application [§ 12.120]
 - 3. Arlington National Cemetery [§ 12.121]
- D. Presidential Memorial Certificates [§ 12.122]

- E. Burial Flags [§ 12.123]
- F. Military Funeral Honors [§ 12.124]

VII. Initial Determinations and Appeals [§ 12.125]

- A. In General [§ 12.126]
- B. Process for Appeals [§ 12.127]
 - 1. In General [§ 12.128]
 - 2. Legacy Appeals [§ 12.129]
 - 3. Modernized Appeals [§ 12.130]
- C. Appeal of Board of Veterans Appeals Decisions to Court of Appeals for Veterans Claims and Beyond [§ 12.131]
- D. Appeal to Court of Appeals for Federal Circuit and Supreme Court [§ 12.132]

VIII. Attorney Fees [§ 12.133]

- A. In General [§ 12.134]
- B. Limitations on Fees [§ 12.135]

CHAPTER 13

OTHER HEALTH-CARE FINANCING OPTIONS

by Mark T. Johnson

I. Scope of Chapter [§ 13.1]

II. Introduction [§ 13.2]

- A. Medicare and Other Health-Care Financing Options [§ 13.3]
- B. Sources of Law and Policy [§ 13.4]
- C. Federal and State Regulatory Agencies [§ 13.5]

III. Employer-Sponsored Plans [§ 13.6]

- A. In General [§ 13.7]
- B. ERISA Preemption [§ 13.8]
- C. Employee Coverage [§ 13.9]
 - 1. In General [§ 13.10]
 - 2. Medicare as Secondary Payer [§ 13.11]
- D. Retirement: Continuation and Conversion Rights [§ 13.12]
 - 1. In General [§ 13.13]
 - 2. Federal COBRA Rights [§ 13.14]
 - 3. State Rights [§ 13.15]
- E. Renewability [§ 13.16]
- F. Adequacy of Coverage [§ 13.17]
- G. Managed-Care Restrictions [§ 13.18]
 - 1. In General [§ 13.19]
 - 2. Provider Choice [§ 13.20]
 - 3. Geographic Restrictions [§ 13.21]
 - 4. Prior Authorization [§ 13.22]

IV. Other Group Plans and Individual Plans under the Affordable Care Act [§ 13.23]

V. Medigap Policies [§ 13.24]

- A. In General [§ 13.25]
- B. Coordination with Other Governmental Health-Care Programs [§ 13.26]
 - 1. Medicaid [§ 13.27]
 - 2. Qualified Medicare Beneficiary Program [§ 13.28]
 - 3. Specified Low-Income Medicare Beneficiary Program [§ 13.29]
- C. Basic Medicare Supplemental Policies [§ 13.30]
 - 1. In General [§ 13.31]
 - 2. Mandated Coverage and Optional Riders [§ 13.32]
 - 3. Eligibility [§ 13.33]
 - a. In General [§ 13.34]
 - b. Enrollment During Open Enrollment Period [§ 13.35]
 - c. Enrollment at Other Times [§ 13.36]
 - 4. Premiums [§ 13.37]
 - 5. Policy Provisions [§ 13.38]
 - a. In General [§ 13.39]
 - b. Waiting Periods for Preexisting Conditions [§ 13.40]
 - c. Renewability [§ 13.41]
 - d. Premium Refunds [§ 13.42]
 - e. Claim Denial Appeal Procedure [§ 13.43]
 - 6. Claims Handling [§ 13.44]
- D. Medicare Select Policies [§ 13.45]
 - 1. In General [§ 13.46]
 - 2. Basic Coverage and Optional Rider [§ 13.47]
 - 3. Eligibility [§ 13.48]
 - 4. Premiums [§ 13.49]
 - 5. Policy Provisions [§ 13.50]
 - a. In General [§ 13.51]
 - b. Renewability [§ 13.52]
 - c. Waiting Period [§ 13.53]
 - d. Complaint Procedures [§ 13.54]
 - e. Restrictions on Provider Choice [§ 13.55]
 - f. Restrictions on Residency Outside Plan Service Area [§ 13.56]
 - 6. Claims Handling [§ 13.57]

VI. Long-Term Care Insurance [§ 13.58]

- A. In General [§ 13.59]
- B. Eligibility [§ 13.60]
 - 1. Medical Underwriting [§ 13.61]
 - 2. Age [§ 13.62]
- C. Decision to Purchase [§ 13.63]
 - 1. Income and Asset Assessment [§ 13.64]
 - 2. Age [§ 13.65]
- D. Policy Provisions [§ 13.66]
 - 1. In General [§ 13.67]
 - 2. Waiting Periods for Preexisting Conditions [§ 13.68]
 - 3. Renewability [§ 13.69]
 - 4. Elimination Period [§ 13.70]
 - 5. Daily Benefits [§ 13.71]
 - 6. Benefit Maximums [§ 13.72]

- 7. Unintentional Lapse [§ 13.73]
- 8. Nonforfeiture Option [§ 13.74]
- 9. Inflation Protection [§ 13.75]
- 10. Waiver of Premium [§ 13.76]
- E. Coordination with Other Governmental Programs [§ 13.77]
- F. All-Inclusive Care for the Elderly [§ 13.78]
- G. Long-Term Care Partnership Program [§ 13.79]

VII. Other Types of Individual Insurance [§ 13.80]

- A. Hospital Confinement Indemnity Insurance [§ 13.81]
- B. Specified Disease Insurance [§ 13.82]
- C. Limited Service Insurance [§ 13.83]
 - 1. Dental, Vision, and Hearing Aid Services [§ 13.84]
 - 2. Discount Plans [§ 13.85]

VIII. Appendices [§ 13.86]

- A. Appendix 13A: Glossary of Medigap Terms [§ 13.87]
- B. Appendix 13B: Wisconsin Medicare Supplemental Policies: Part A Benefits [§ 13.88]
- C. Appendix 13C: Wisconsin Medicare Supplemental Policies: Part B Benefits [§ 13.89]

CHAPTER 14

SELECTED ESTATE PLANNING ISSUES FOR OLDER CLIENTS

by Margaret Wrenn Hickey & Sara B. Andrew

I. Scope of Chapter [§ 14.1]

II. Initial Considerations [§ 14.2]

- A. Client's Objectives (ELD-0018) [§ 14.3]
- B. Legal Competency [§ 14.4]
 - 1. Capacity Required for Estate Planning [§ 14.5]
 - 2. Client of Questionable Competency [§ 14.6]
 - a. Situations That May Lead to Challenge (ELD-0019) [§ 14.7]
 - b. Preventive Measures (ELD-0020) [§ 14.8]
 - 3. Client Lacking Competency [§ 14.9]
 - 4. Client Under Guardianship [§ 14.10]
- C. Typical Client Profiles [§ 14.11]
 - 1. Introduction [§ 14.12]
 - 2. Estate Less Than Individual Applicable Exclusion Amount (ELD-0021) [§ 14.13]
 - 3. Joint Estate Less Than Combined Applicable Exclusion Amount [§ 14.14]
 - 4. Estate Exceeding Applicable Exclusion Amount [§ 14.15]

III. Durable Powers of Attorney [§ 14.16]

- A. Introduction [§ 14.17]
 - 1. Statutory Authority [§ 14.18]
 - 2. Definition; Required Wording [§ 14.19]
 - 3. Distinction from Traditional POA [§ 14.20]
 - 4. Usefulness in Estate Planning [§ 14.21]
 - 5. Who May Execute and How [§ 14.22]
 - 6. Statutory Form, Form Document, or Custom-Made Document [§ 14.23]
 - 7. Springing Versus Immediate Power [§ 14.24]

- B. Selection of Agent [§ 14.25]
- C. Agent’s Fiduciary Duties [§ 14.26]
 - 1. Common-Law Duties [§ 14.27]
 - 2. Duties Imposed by POA [§ 14.28]
- D. Powers [§ 14.29]
 - 1. In General [§ 14.30]
 - 2. Checklist (ELD-0022) [§ 14.31]
 - 3. Powers That Cannot Be Delegated [§ 14.32]
 - a. To Make Personal Choices [§ 14.33]
 - b. To Exercise Discretionary Powers [§ 14.34]
 - 4. Powers to Delegate with Care [§ 14.35]
 - a. To Make Health-Care Decisions [§ 14.36]
 - b. To Make Gifts [§ 14.37]
 - c. To Manage and Control Marital Property [§ 14.38]
 - d. To Change Existing Estate Plan [§ 14.39]
- E. Revocation [§ 14.40]
- F. Third Parties [§ 14.41]
 - 1. In General [§ 14.42]
 - 2. Sample Letter to Third Party (ELD-0023) [§ 14.43]
- G. Other Considerations [§ 14.44]
 - 1. Interplay with Guardianship and Trust [§ 14.45]
 - 2. Potential Family Conflict [§ 14.46]
 - 3. Agent’s Signature [§ 14.47]
 - 4. Ethical Considerations [§ 14.48]

IV. Revocable Trusts [§ 14.49]

- A. Introduction [§ 14.50]
 - 1. Definition [§ 14.51]
 - 2. Funded and Unfunded Revocable Trusts [§ 14.52]
 - 3. Usefulness in Estate Planning [§ 14.53]
 - 4. Interplay with Durable POA [§ 14.54]
 - 5. Marital Property Considerations [§ 14.55]
 - 6. Medicaid Considerations [§ 14.56]
- B. Characteristics of Revocable Trust Estate Plan (ELD-0024) [§ 14.57]
- C. Some Advantages for Older Clients [§ 14.58]
 - 1. Investment and Record-Keeping Assistance [§ 14.59]
 - 2. Property Management upon Incapacity [§ 14.60]
 - 3. Few Tax Effects [§ 14.61]
 - a. Income Tax; Grantor Trust Rules [§ 14.62]
 - b. Estate Tax [§ 14.63]
 - c. Gift Tax [§ 14.64]
 - d. Homestead Tax Credit [§ 14.65]
 - 4. Adjustment in Income Tax Basis at Death [§ 14.66]
 - 5. Probate Avoidance [§ 14.67]
- D. Selection of Trustee [§ 14.68]
 - 1. In General [§ 14.69]
 - 2. Beneficially Interested Trustee [§ 14.70]
- E. Trustee Powers [§ 14.71]
- F. Settlor’s Power to Revoke or Amend [§ 14.72]
- G. Disposition of Assets During Settlor’s Lifetime [§ 14.73]

- H. Disposition of Assets upon Settlor’s Death [§ 14.74]
 - 1. In General [§ 14.75]
 - 2. Use of Pour-Over Will [§ 14.76]

- V. **Wills [§ 14.77]**
 - A. Nature of Testamentary Transfers [§ 14.78]
 - B. Advantages of Probate Estate [§ 14.79]

- VI. **Nonprobate Transfers [§ 14.80]**
 - A. In General [§ 14.81]
 - B. Assets Controlled by Beneficiary Designation [§ 14.82]
 - 1. In General [§ 14.83]
 - 2. Life Insurance [§ 14.84]
 - a. In General [§ 14.85]
 - b. Irrevocable Life Insurance Trusts [§ 14.86]
 - 3. Individual Retirement Accounts [§ 14.87]
 - 4. Annuities [§ 14.88]
 - a. In General [§ 14.89]
 - b. Medicaid Considerations [§ 14.90]
 - 5. Retirement Plans [§ 14.91]
 - C. Payable-on-Death Accounts [§ 14.92]
 - D. Joint Accounts; Joint Ownership [§ 14.93]
 - 1. In General [§ 14.94]
 - 2. Creditors of Joint Tenant [§ 14.95]
 - E. Life Estate in Real Estate [§ 14.96]
 - 1. In General [§ 14.97]
 - 2. Medicaid Considerations [§ 14.98]
 - F. TOD Deed [§ 14.99]
 - G. Transfer of Farming Implements [§ 14.100]

- VII. **Trusts and Medicaid Eligibility [§ 14.101]**
 - A. General Rules [§ 14.102]
 - B. Exceptions [§ 14.103]
 - 1. Generally [§ 14.104]
 - 2. Exceptions for Certain Types of Trusts [§ 14.105]
 - 3. Hardship Exceptions [§ 14.106]
 - C. Income-Only Irrevocable Trusts [§ 14.107]
 - D. Supplemental Needs Trusts [§ 14.108]

- VIII. **Selected Issues Under Wisconsin’s Marital Property Law [§ 14.109]**
 - A. In General [§ 14.110]
 - B. Adjustment in Income Tax Basis at Death [§ 14.111]
 - C. Forms of Holding Property: Legal Implications [§ 14.112]
 - D. Medicaid Considerations [§ 14.113]
 - E. Marital Property Agreements [§ 14.114]
 - 1. Use to Avoid Probate: Will Substitute Agreements [§ 14.115]
 - a. In General [§ 14.116]
 - b. Medicaid Considerations [§ 14.117]

2. Use in First Marriages [§ 14.118]
 - a. In General [§ 14.119]
 - b. Sample Letter to Clients Regarding Dual Representation (ELD-0025) [§ 14.120]
3. Use in Second and Subsequent Marriages [§ 14.121]

IX. Federal Estate and Gift Tax Issues [§ 14.122]

- A. In General [§ 14.123]
- B. Federal Estate Tax [§ 14.124]
 1. Applicable Exclusion Amount [§ 14.125]
 - a. In General [§ 14.126]
 - b. Application Against Both Estate and Gift Tax [§ 14.127]
 2. Marital Deduction [§ 14.128]
 3. Charitable Deduction [§ 14.129]
 4. Disclaimer [§ 14.130]
 - a. In General [§ 14.131]
 - b. Medicaid Considerations [§ 14.132]
- C. Federal Gift Tax [§ 14.133]
 1. In General [§ 14.134]
 2. Annual Exclusion [§ 14.135]
 3. Carryover Basis [§ 14.136]
 4. Valuation Issues [§ 14.137]
 5. Marital Deduction Gifts [§ 14.138]
 6. Developing a Gift-Giving Program (ELD-0026) [§ 14.139]

X. ABLE Accounts [§ 14.140]

XI. Appendix [§ 14.141]

- A. Appendix 14A: Designation of TOD Beneficiary [§ 14.142]

CHAPTER 15

PLANNING FOR HEALTH-CARE DECISION-MAKING

by Maren Beermann

I. Scope of Chapter [§ 15.1]

II. Introduction [§ 15.2]

- A. Common-Law Requirement of Consent [§ 15.3]
- B. Consent Dilemma: Incapacity [§ 15.4]
 1. In General [§ 15.5]
 2. Early Solutions [§ 15.6]
 - a. Substituted Consent [§ 15.7]
 - b. Implied Consent [§ 15.8]
- C. *In re Quinlan*; Genesis of Living Will [§ 15.9]
- D. Issues Under Federal Constitution: *Cruzan* [§ 15.10]
 1. In General [§ 15.11]
 2. The Facts [§ 15.12]
 3. The Decision [§ 15.13]
- E. Federal Legislation; Patient Self-Determination Act [§ 15.14]
- F. Wisconsin Law [§ 15.15]
 1. Living Will and POAHC Legislation [§ 15.16]

- 2. *L.W.* [§ 15.17]
 - a. In General [§ 15.18]
 - b. The Facts [§ 15.19]
 - c. The Decision [§ 15.20]
- F. *Spahn v. Eisenberg (In re Guardianship & Protective Placement of Edna M.F.)* [§ 15.21]
 - 1. In General [§ 15.22]
 - 2. The Facts [§ 15.23]
 - 3. The Decision [§ 15.24]
- G. Summary of Why Planning Is Needed [§ 15.25]
 - 1. In General [§ 15.26]
 - 2. Benefits [§ 15.27]
 - 3. Limitations [§ 15.28]

III. A Partial Answer: The Living Will [§ 15.29]

- A. In General [§ 15.30]
- B. Statutory and Nonstatutory Form Living Wills [§ 15.31]
 - 1. In General [§ 15.32]
 - 2. Living Wills Outside Scope of Wis. Stat. Ch. 154 [§ 15.33]
- C. Substantive Aspects of Living Wills Under Wis. Stat. Ch. 154 [§ 15.34]
 - 1. Definition [§ 15.35]
 - 2. Substantive Scope [§ 15.36]
 - a. In General [§ 15.37]
 - b. General Restrictions [§ 15.38]
 - (1) In General [§ 15.39]
 - (2) Qualified Patient [§ 15.40]
 - (3) Terminal Condition and Persistent Vegetative State [§ 15.41]
 - (4) Life-Sustaining Procedure and Feeding Tube [§ 15.42]
 - (5) Assisted Suicide; Active Euthanasia [§ 15.43]
 - c. Specific Restrictions [§ 15.44]
 - d. Scope of Statutory Form Living Will [§ 15.45]
 - e. Scope of Nonstatutory Form Living Will [§ 15.46]
 - 3. Express Effects [§ 15.47]
 - a. Suicide [§ 15.48]
 - b. Competency [§ 15.49]
 - c. Pregnancy [§ 15.50]
 - d. Health-Care Providers [§ 15.51]
 - e. Witnesses [§ 15.52]
 - f. Life and Health Insurance [§ 15.53]
 - g. Penalties [§ 15.54]
- D. Procedural Aspects of Living Wills Under Wis. Stat. Ch. 154 [§ 15.55]
 - 1. Basic Requirements [§ 15.56]
 - 2. Witnesses [§ 15.57]
 - 3. Notification [§ 15.58]
 - 4. Revocation [§ 15.59]
- E. Cautionary Matters [§ 15.60]
 - 1. Living Wills Executed Under Prior Statute [§ 15.61]
 - 2. Living Will Superseded If in Conflict with POAHC [§ 15.62]

IV. A More Complete Answer: The Power of Attorney for Health Care [§ 15.63]

- A. In General [§ 15.64]
- B. Statutory and Nonstatutory Form POAHCs [§ 15.65]
 - 1. In General [§ 15.66]
 - 2. POAHCs Outside Scope of Wis. Stat. Ch. 155 [§ 15.67]
- C. Substantive Aspects of POAHCs Under Wis. Stat. Ch. 155 [§ 15.68]
 - 1. Definition [§ 15.69]
 - 2. Substantive Scope [§ 15.70]
 - a. In General [§ 15.71]
 - b. General Restrictions [§ 15.72]
 - (1) In General [§ 15.73]
 - (2) Health Care Only? [§ 15.74]
 - (3) Health-Care Decisions [§ 15.75]
 - (4) Incapacity [§ 15.76]
 - (5) Standards Governing Agent’s Conduct [§ 15.77]
 - (6) Suicide; Active Euthanasia [§ 15.78]
 - c. Specific Restrictions [§ 15.79]
 - (1) Feeding Tubes and Orally Ingested Nutrition and Hydration [§ 15.80]
 - (2) Admission to Mental-Health and Other Treatment Facilities [§ 15.81]
 - (3) Admission to Residential Facilities, Nursing Homes, and Hospice [§ 15.82]
 - (4) Protective Services and Certain Mental Health Research and Procedures [§ 15.83]
 - d. Scope of Statutory Form POAHC [§ 15.84]
 - e. Scope of Nonstatutory Form POAHC [§ 15.85]
 - 3. Express Effects [§ 15.86]
 - a. Suicide [§ 15.87]
 - b. Competency [§ 15.88]
 - c. Pregnancy [§ 15.89]
 - d. Health-Care Providers [§ 15.90]
 - e. Witnesses [§ 15.91]
 - f. Agents [§ 15.92]
 - g. Life, Health, and Disability Insurance [§ 15.93]
 - h. Penalties [§ 15.94]
- D. Procedural Aspects of POAHCs Under Wis. Stat. Ch. 155 [§ 15.95]
 - 1. Basic Requirements [§ 15.96]
 - 2. Certification of Incapacity [§ 15.97]
 - 3. Health-Care Agents [§ 15.98]
 - 4. Witnesses [§ 15.99]
 - 5. Notification [§ 15.100]
 - 6. Revocation [§ 15.101]
- E. Cautionary Matters [§ 15.102]
 - 1. POAHCs Executed Under Prior Statutes [§ 15.103]
 - 2. Interplay of POAHC with Guardianship [§ 15.104]

V. Supported Decision-Making [§ 15.105]

VI. Statutory Do-Not-Resuscitate Orders [§ 15.106]

- A. In General [§ 15.107]
- B. Basic Requirements [§ 15.108]

VII. Planning for Anatomical Gifts [§ 15.109]

- A. In General [§ 15.110]
- B. After Death [§ 15.111]
- C. Donation During Life [§ 15.112]

VII. Final Considerations [§ 15.113]

- A. Use of POAHC, Living Will, or Both? [§ 15.114]
- B. Toward a More Comprehensive Solution [§ 15.115]

VIII. Appendices [§ 15.116]

- A. Appendix 15A: 25 Topics for Client Discussion with POAHC Agent [§ 15.117]

CHAPTER 16

GUARDIANSHIP AND PROTECTIVE PLACEMENT

by Maren Beermann

I. Overview [§ 16.1]

- A. Scope of Chapter [§ 16.2]
- B. Overview of Guardianship [§ 16.3]
 - 1. Statutory Authority [§ 16.4]
 - 2. Purpose [§ 16.5]
 - 3. Incompetency Standard [§ 16.6]
 - 4. Types of Guardianships [§ 16.7]
- C. Overview of Protective Service System [§ 16.8]
 - 1. Statutory Authority [§ 16.9]
 - 2. Purpose [§ 16.10]
 - 3. Qualification for Protective Services or Placement [§ 16.11]

II. Choosing the Proper Procedure [§ 16.12]

- A. Types of Guardianships [§ 16.13]
 - 1. In General [§ 16.14]
 - 2. Guardianship of the Estate [§ 16.15]
 - 3. Guardianship of the Person [§ 16.16]
- B. Types of Protective Services and Placement [§ 16.17]
 - 1. In General [§ 16.18]
 - 2. Protective Services [§ 16.19]
 - a. Voluntary Services [§ 16.20]
 - b. Involuntary Services [§ 16.21]
 - 3. Involuntary Protective Placement [§ 16.22]
 - a. In General [§ 16.23]
 - b. Legal Requirements [§ 16.24]
 - c. Placement Decision [§ 16.25]
 - d. Mental Health Treatment [§ 16.26]
 - e. Placement Considerations and Least Restrictive Setting [§ 16.27]
- C. Choice of Procedure [§ 16.28]
 - 1. Guardianship [§ 16.29]
 - 2. Protective Services or Placement [§ 16.30]
 - 3. Concurrent Guardianship and Protective Services or Placement [§ 16.31]

III. Choosing a Guardian [§ 16.32]

- A. In General [§ 16.33]
- B. Selecting the Guardian [§ 16.34]
 - 1. Anticipatory Nomination [§ 16.35]
 - 2. Court Selection [§ 16.36]
- C. Potential for Abuse [§ 16.37]
 - 1. In General [§ 16.38]
 - 2. Wisconsin's Reporting System [§ 16.39]
 - 3. Indicators of Abuse (ELD-0067) [§ 16.40]
- D. Individual Versus Corporate Guardian [§ 16.41]
 - 1. In General [§ 16.42]
 - 2. Individual Guardian [§ 16.43]
 - 3. Corporate Guardian [§ 16.44]
 - a. Bank [§ 16.45]
 - b. Other Entities [§ 16.46]

IV. Role of the Petitioner's Attorney [§ 16.47]

- A. In General [§ 16.48]
- B. Ethical Issues in Representing the Petitioner [§ 16.49]
- C. Initial Documents [§ 16.50]
 - 1. In General [§ 16.51]
 - 2. Petition [§ 16.52]
 - a. Who May File [§ 16.53]
 - b. Contents (ELD-0068) [§ 16.54]
 - c. Where Filed [§ 16.55]
 - d. Foreign Guardianship Matters [§ 16.56]
 - 3. Order Appointing Guardian ad Litem [§ 16.57]
 - 4. Order and Notice for Hearing [§ 16.58]
 - 5. Order for Comprehensive Evaluation [§ 16.59]
 - 6. Order Appointing Physician or Psychologist [§ 16.60]
 - 7. Certificate of Service [§ 16.61]
- D. Case Preparation [§ 16.62]
 - 1. Execution of Documents [§ 16.63]
 - 2. Filing the Action [§ 16.64]
 - 3. Service [§ 16.65]
 - a. On the Proposed Ward [§ 16.66]
 - b. On Interested Persons [§ 16.67]
 - 4. Report of Physician or Psychologist [§ 16.68]
 - 5. Comprehensive Evaluation [§ 16.69]
 - 6. Report of Guardian ad Litem [§ 16.70]
- E. Hearing [§ 16.71]
 - 1. In General [§ 16.72]
 - 2. Uncontested Hearing [§ 16.73]
 - a. Proposed Ward's Attendance [§ 16.74]
 - b. Bond [§ 16.75]
 - c. Witnesses [§ 16.76]
 - d. Determination and Order [§ 16.77]
 - e. Letters of Guardianship [§ 16.78]
 - f. Statement of Acts, Required Training, and Consent to Serve [§ 16.79]
 - g. Hearing Procedure [§ 16.80]

- 3. Contested Hearing [§ 16.81]
 - a. General Procedures [§ 16.82]
 - b. Objections from Interested Persons [§ 16.83]
 - c. Preparation for Hearing [§ 16.84]
- F. Checklist (ELD-0064) [§ 16.85]

V. Role of the Guardian ad Litem and Advocacy Counsel [§ 16.86]

- A. In General [§ 16.87]
- B. Role of Guardian ad Litem [§ 16.88]
 - 1. In General [§ 16.89]
 - 2. Initial Considerations [§ 16.90]
 - 3. Interviewing Proposed Ward and Current, Proposed, and Potential Guardians [§ 16.91]
 - a. Proposed Ward [§ 16.92]
 - b. Proposed Guardian [§ 16.93]
 - c. Current Guardian [§ 16.94]
 - 4. Assessing Powers of Attorney and Agents [§ 16.95]
 - 5. Reviewing Records [§ 16.96]
 - 6. Making Requests to Court [§ 16.97]
 - a. Independent Medical or Psychological Evaluation [§ 16.98]
 - b. Appointment of Advocacy Counsel [§ 16.99]
 - 7. Anticipating Transportation and Attendance Issues [§ 16.100]
 - 8. Considering the Type and Extent of Guardianship [§ 16.101]
 - a. Type of Guardianship [§ 16.102]
 - b. Need for Guardianship and Protective Placement [§ 16.103]
 - 9. Report to Court [§ 16.104]
 - 10. Representing Proposed Ward at Hearing [§ 16.105]
 - a. In General [§ 16.106]
 - b. Uncontested Hearing [§ 16.107]
 - (1) Preparation [§ 16.108]
 - (2) Participation in Hearing [§ 16.109]
 - c. Contested Hearing [§ 16.110]
 - (1) Preparation [§ 16.111]
 - (2) Participation [§ 16.112]
 - 11. Checklist (ELD-0065) [§ 16.113]
- C. Role of Advocacy Counsel [§ 16.114]
- D. Appeals [§ 16.115]

VI. Role of the Guardian [§ 16.116]

- A. In General [§ 16.117]
- B. Guardian of the Person [§ 16.118]
 - 1. Statutory Authority [§ 16.119]
 - 2. Duties and Powers [§ 16.120]
 - a. In General [§ 16.121]
 - b. Consent to Medical Treatment [§ 16.122]
 - 3. Other Responsibilities [§ 16.123]
 - a. Secure Care and Services [§ 16.124]
 - b. Act in Good Faith [§ 16.125]
 - c. Submit Annual Report [§ 16.126]

- C. Guardian of the Estate [§ 16.127]
 - 1. Statutory Authority [§ 16.128]
 - 2. Duties and Powers [§ 16.129]
 - a. In General [§ 16.130]
 - b. Estate of Married Ward [§ 16.131]
 - 3. Other Responsibilities [§ 16.132]

VII. Safeguards Under the Protective Service System [§ 16.133]

- A. In General [§ 16.134]
- B. Restrictions on Transfer of Protective Placement [§ 16.135]
 - 1. In General [§ 16.136]
 - 2. Transfer to a Different Placement [§ 16.137]
 - 3. Modification of Protective Placement [§ 16.138]
 - 4. Transfer to Psychiatric Facility [§ 16.139]
- C. Annual Review of Protective Placement [§ 16.140]
 - 1. In General [§ 16.141]
 - 2. Agency Review [§ 16.142]
 - 3. Court Review [§ 16.143]
 - a. In General [§ 16.144]
 - b. Guardian ad Litem’s Initial Duties (ELD-0066) [§ 16.145]
 - c. Guardian ad Litem’s Report to Court [§ 16.146]
 - d. Hearing [§ 16.147]

VIII. Termination or Modification of a Guardianship or Protective Placement [§ 16.148]

- A. In General [§ 16.149]
- B. Termination of Guardianship or Protective Placement [§ 16.150]
 - 1. Guardianship [§ 16.151]
 - 2. Protective Placement [§ 16.152]
- C. Modification of Guardianship or Protective Placement [§ 16.153]
 - 1. Change of Venue [§ 16.154]
 - 2. Change of Guardian [§ 16.155]

IX. Emergency Procedures [§ 16.156]

- A. In General [§ 16.157]
- B. Temporary Guardianship [§ 16.158]
 - 1. In General [§ 16.159]
 - 2. Procedure [§ 16.160]
 - a. Initial Documents [§ 16.161]
 - b. Service [§ 16.162]
 - c. Guardian ad Litem Appointment and Responsibilities [§ 16.163]
 - d. Hearing [§ 16.164]
 - 3. Limitations [§ 16.165]
 - a. In General [§ 16.166]
 - b. Nursing Home Placement [§ 16.167]
 - c. Duration [§ 16.168]
- C. Emergency and Temporary Protective Placement or Emergency Protective Services [§ 16.169]
 - 1. Emergency Protective Services [§ 16.170]
 - 2. Respite Placement [§ 16.171]
 - 3. Emergency Placement Following Hospitalization [§ 16.172]

- 4. Emergency and Temporary Protective Placement [§ 16.173]
 - a. In General [§ 16.174]
 - b. Procedure [§ 16.175]
 - c. Limitations [§ 16.176]
- D. Temporary Protective Placement Under Wis. Stat. § 51.67 [§ 16.177]
 - 1. In General [§ 16.178]
 - 2. Procedure [§ 16.179]

X. Appendices [§ 16.180]

- A. Appendix 16A: Additional Resources [§ 16.181]
- B. Appendix 16B: Forms [§ 16.182]

CHAPTER 17

COMMUNITY-BASED LONG-TERM CARE PROGRAMS

by Melanie L. Cairns

I. Scope of Chapter [§ 17.1]

II. Overview [§ 17.2]

- A. In General [§ 17.3]
- B. Financial Aspects of Programs [§ 17.4]
 - 1. Participant Cost Sharing [§ 17.5]
 - 2. Estate Recovery [§ 17.6]
 - 3. Financial Requirements [§ 17.7]
- C. Program Functional Requirements [§ 17.8]
 - 1. In General [§ 17.9]
 - 2. Target Group Automation [§ 17.10]
 - 3. Adaptive Equipment [§ 17.11]
- D. Restrictions on Eligibility [§ 17.12]
 - 1. Home and Community-Based Settings [§ 17.13]
 - 2. Care Plan [§ 17.14]

III. Family Care, PACE, and Family Care Partnership [§ 17.15]

- A. In General [§ 17.16]
- B. Family Care [§ 17.17]
 - 1. In General [§ 17.18]
 - 2. Aging and Disability Resource Centers [§ 17.19]
 - 3. Managed Care Organizations [§ 17.20]
 - 4. Family Care Benefit [§ 17.21]
 - a. Eligibility (Wis. Stat. § 46.286) [§ 17.22]
 - b. Functional Eligibility [§ 17.23]
 - c. Financial Eligibility [§ 17.24]
- C. PACE and Family Care Partnership [§ 17.25]
 - 1. In General [§ 17.26]
 - 2. Program of All-Inclusive Care for the Elderly [§ 17.27]
 - 3. Family Care Partnership [§ 17.28]

IV. Wisconsin’s Self-Directed Support Waiver: IRIS (Include, Respect, I Self-Direct) [§ 17.29]

V. Independent Advocacy Agencies [§ 17.30]

CHAPTER 18
LONG-TERM CARE FACILITIES: REGULATION
by Robert J. Lightfoot

- I. Scope of Chapter [§ 18.1]**
- II. Overview of Regulatory Framework [§ 18.2]**
 - A. Sources of Law [§ 18.3]
 - B. Regulation [§ 18.4]
 - 1. Nursing Homes, CBRFs, and RCACs, and Adult Family Homes [§ 18.5]
 - a. Licensure [§ 18.6]
 - b. Medicaid [§ 18.7]
 - c. Medicare [§ 18.8]
 - d. Board on Aging and Long-Term Care [§ 18.9]
 - e. Trade Associations and Advocacy Groups [§ 18.10]
 - 2. Continuing-Care Facilities [§ 18.11]
- III. Nursing Homes [§ 18.12]**
 - A. Licensure, Certification, and Other Regulatory Requirements [§ 18.13]
 - 1. Sources of Law [§ 18.14]
 - 2. Licensure [§ 18.15]
 - 3. Certification (ELD-0027) [§ 18.16]
 - 4. Survey Process [§ 18.17]
 - 5. Governmental Enforcement of Licensure and Certification Standards [§ 18.18]
 - a. In General [§ 18.19]
 - b. State Enforcement Provisions [§ 18.20]
 - c. Federal Enforcement Provisions [§ 18.21]
 - 6. Resource Allocation Program [§ 18.22]
 - B. Admission [§ 18.23]
 - 1. Sources of Law [§ 18.24]
 - 2. Selecting a Nursing Home [§ 18.25]
 - 3. Competence and Consent [§ 18.26]
 - 4. Discrimination Against Residents Because of Payment Source [§ 18.27]
 - 5. Admission Agreements [§ 18.28]
 - a. Requirement of Written Acknowledgment [§ 18.29]
 - b. Required Disclosures (ELD-0028) [§ 18.30]
 - c. Prohibited Provisions (ELD-0029) [§ 18.31]
 - C. Residents' Rights [§ 18.32]
 - 1. Sources of Law [§ 18.33]
 - 2. Specific Rights [§ 18.34]
 - a. Communications [§ 18.35]
 - b. Grievances [§ 18.36]
 - c. Finances [§ 18.37]
 - d. Admission Information [§ 18.38]
 - e. Treatment [§ 18.39]
 - f. Privacy [§ 18.40]
 - g. Work [§ 18.41]
 - h. Outside Activities [§ 18.42]
 - i. Personal Possessions [§ 18.43]
 - j. Transfer or Discharge [§ 18.44]

- k. Abuse and Restraints [§ 18.45]
- l. Care [§ 18.46]
- m. Choice of Provider [§ 18.47]
- n. Care Planning [§ 18.48]
- o. Religious Activity [§ 18.49]
- p. Nondiscriminatory Treatment [§ 18.50]
- q. Right to Apply for and Receive Medicare and Medicaid Benefits [§ 18.51]
- r. Rights of Incompetent Residents [§ 18.52]
- s. Notification [§ 18.53]
- D. Transfer and Discharge [§ 18.54]
 - 1. In General (ELD-0030) [§ 18.55]
 - 2. Sources of Law [§ 18.56]
 - 3. Acceptable Reasons for Transfer and Discharge [§ 18.57]
 - 4. Notice [§ 18.58]
 - a. Timing [§ 18.59]
 - b. Contents [§ 18.60]
 - 5. Planning Conference [§ 18.61]
 - 6. Records [§ 18.62]
 - 7. Appeals of Transfers and Discharges [§ 18.63]
 - 8. Bedhold Provisions [§ 18.64]

IV. Home and Community-Based Services [§ 18.65]

V. Community-Based Residential Facilities [§ 18.66]

- A. Sources of Law [§ 18.67]
- B. Licensure [§ 18.68]
- C. Admission [§ 18.69]
 - 1. In General [§ 18.70]
 - 2. Admission Procedures [§ 18.71]
 - 3. Admission Agreements (ELD-0031) [§ 18.72]
- D. Resident Discharge or Transfer [§ 18.73]
 - 1. Initiated by Resident [§ 18.74]
 - 2. Initiated by CBRF [§ 18.75]
 - a. General [§ 18.76]
 - b. Resident’s Belongings After Discharge [§ 18.77]
 - c. Disbursement of Funds [§ 18.78]
 - d. Information Provided at the Time of Transfer or Discharge [§ 18.79]
- E. Resident Funds [§ 18.80]
- F. Terminally Ill Residents [§ 18.81]
- G. Resident Records (ELD-0032) [§ 18.82]
- H. Notice of Change Affecting Resident [§ 18.83]
 - 1. Change in Resident’s Status [§ 18.84]
 - 2. Death of Resident [§ 18.85]
 - 3. Incidents and Accidents [§ 18.86]
- I. Service Requirements [§ 18.87]
 - 1. Individualized Service Plan [§ 18.88]
 - 2. Program Services (ELD-0033) [§ 18.89]
 - 3. Food Services [§ 18.90]
- J. Residents’ Rights (ELD-0034) [§ 18.91]

VI. Residential Care Apartment Complexes [§ 18.92]

- A. In General [§ 18.93]
- B. Sources of Law [§ 18.94]
- C. Registration and Certification [§ 18.95]
- D. Requirements for Operation [§ 18.96]
 - 1. In General [§ 18.97]
 - 2. Building Requirements [§ 18.98]
 - 3. Comprehensive Assessment [§ 18.99]
 - 4. Service Agreement [§ 18.100]
 - 5. Fee Schedule [§ 18.101]
 - 6. Risk Agreement [§ 18.102]
 - 7. Services [§ 18.103]
- E. Conversion of Nursing Homes and CBRFs [§ 18.104]
- F. Residents' Rights (ELD-0035) [§ 18.105]

VII. Continuing Care Facilities [§ 18.106]

- A. Sources of Law [§ 18.107]
- B. Definitions [§ 18.108]
- C. Duties of Continuing Care Providers (ELD-0036) [§ 18.109]
- D. Requirements for Continuing Care Contracts (ELD-0037) [§ 18.110]

VIII. Adult Family Homes [§ 18.111]

- A. Sources of Law [§ 18.112]
- B. Licensure [§ 18.113]
- C. Regulation of Adult Family Homes [§ 18.114]
- D. Admission [§ 18.115]
 - 1. Preadmission [§ 18.116]
 - 2. Admission (ELD-0069) [§ 18.117]
- E. Termination of Placement [§ 18.118]
- F. Other [§ 18.119]
 - 1. Resident Records (ELD-0070) [§ 18.120]
 - 2. Changes to be Reported to Licensing Agency [§ 18.121]
 - 3. Resident Care and Services (ELD-0071) [§ 18.122]
 - 4. Prescription Medications [§ 18.123]
 - 5. Nutrition [§ 18.124]
 - 6. Resident Rights (ELD-0072) [§ 18.125]
 - 7. Resolution of Grievances [§ 18.126]

CHAPTER 19

OVERVIEW OF NEGLIGENCE CLAIMS FOR OLDER CLIENTS

by Ann S. Jacobs & Amy M. Risseuw

I. Scope of Chapter [§ 19.1]

II. Initial Considerations and Concerns [§ 19.2]

- A. Identifying the Plaintiff [§ 19.3]
 - 1. In General [§ 19.4]
 - 2. In Cases Involving a Living Injured Older Adult [§ 19.5]
 - 3. In Cases Involving a Deceased Older Adult [§ 19.6]

- B. Recognizing Potential Pitfalls in Representing the Older Client [§ 19.7]
 - 1. Confidentiality [§ 19.8]
 - 2. Conflict of Interest [§ 19.9]

III. Damages and Causation [§ 19.10]6

- A. In General [§ 19.11]
- B. Causation [§ 19.12]
- C. Special Damages [§ 19.13]
 - 1. Past Medical Expenses [§ 19.14]
 - a. In General [§ 19.15]
 - b. Reasonableness of Past Medical Expenses [§ 19.16]
 - c. Causation and Necessity of Past Medical Expenses [§ 19.17]
 - d. Subrogation [§ 19.18]
 - 2. Future Medical Expenses [§ 19.19]
 - 3. Past Loss of Earning Capacity [§ 19.20]
 - 4. Future Loss of Earning Capacity [§ 19.21]
- D. General Damages [§ 19.22]
 - 1. Past Pain, Suffering, and Disability [§ 19.23]
 - a. Parameters [§ 19.24]
 - 2. Future Pain, Suffering, and Disability [§ 19.25]
 - a. Finite Period of Time [§ 19.26]
 - b. Fear of Future Surgery [§ 19.27]

IV. Common Negligence Claims and Issues for Elderly Plaintiffs [§ 19.28]

- A. In General [§ 19.29]
- B. Types of Claims [§ 19.30]
 - 1. Premises-Liability claims [§ 19.31]
 - 2. Motor Vehicle Accidents [§ 19.32]
 - 3. Long-Term Care Negligence Claims [§ 19.33]
 - a. In General [§ 19.34]
 - b. Common Causes of Action [§ 19.35]
 - c. Type of Facility Involved [§ 19.36]
 - d. Establishing Negligence and Identifying Confounding Factors [§ 19.37]
 - 4. Medical Malpractice Claims [§ 19.38]
 - a. In General [§ 19.39]
 - b. Bringing the Claim [§ 19.40]
 - c. Is the Case Actually a Malpractice Claim? [§ 19.41]
 - d. Proving the Claim [§ 19.42]
 - e. The Value of the Claim [§ 19.43]
 - 5. Claims of Financial Abuse [§ 19.44]
 - a. In General [§ 19.45]
 - b. Action for Accounting: Holding the Power of Attorney for Finances Accountable [§ 19.46]
 - c. Conversion [§ 19.47]
 - d. Breach of Fiduciary Duty [§ 19.48]
 - e. Fraud, Misrepresentation, or Undue Influence [§ 19.49]
 - f. Unjust Enrichment and Constructive Trusts [§ 19.50]
 - g. With Respect to Real Property—Declaration of Interest, Quiet Title, Partition [§ 19.51]

INDEX TO VOLUMES I AND II

ELDER LAW RESOURCES ON THE INTERNET