

# Suffolk County Bar Association Elder Law & Estate Planning 2026 Update

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# Medicaid Limits for a Single Person

- ***GIS 26 MA/05 dated 2/13/26***
- ***Income:***
  - \$50 a month under Institutional Medicaid
  - \$1,836 a month under Community Medicaid
    - However, more can be kept under Community Medicaid with a “Pooled Income trust”.
  - See new rule on payout status of Qualified Money, i.e. IRA
- ***Resources:***
  - \$33,038 in non-qualified assets
  - Equity in the Home must be equal to or less than \$1,130,000
  - Qualified Money, i.e. IRA etc, exempt as a resource if in payout status

# Medicaid Limits Community & Married

- ***One applying:***
  - Resources:
    - Spouse - A Home of any value
    - Applicant \$33,038 and a Spouse can have \$74,820 – \$162,660.
    - Certain Tax-Qualified-Retirement accounts in Medicaid pay status (new rule)
  - Monthly Income:
    - Applicant can have \$653 and non-applying Spouse can have \$4,066.50 for a combined total of \$5,902.50 or use of a Pooled Trust.
- ***Both applying:***
  - Resources:
    - Home subject to the equity limit of \$1,130,000 and \$44,796 in other resources and certain Tax-Qualified-Retirement accounts in Medicaid pay status (new rule).
  - Monthly Income
    - \$2,489 + Pooled Trust
- ***Spousal Refusal***

# Medicaid Limits Nursing Home Married

- ***Resources:***

- ***Applicant*** is permitted:

- Basic \$33,038
- In addition, unlimited amounts in certain Tax-Qualified-Retirement accounts in a Medicaid pay status (new rule).
- Be careful with annuities.

- The ***Community Spouse*** is permitted:

- A Home of any value
- Basic \$74,820 – \$162,660
- In addition, unlimited amounts in certain Tax-Qualified-Retirement accounts in a Medicaid pay status (new rule).
- Be careful with annuities.

- ***Monthly Income:***

- Applicant \$50.00 and spouse \$4,066.50

- ***Spousal Refusal***

# Medicaid Regional Rates

## GIS 25 MA 14 dated 12/22/25

- \$15,193 for Suffolk & Nassau County
- \$15,282 for NYC

# Updated Life Estate Table

## GIS 25 MA 09 - 8/26/25

- The purpose of this General Information System **GIS 25 MA 09**:
  - Provides LDSS with the ***updated life expectancy table*** issued by the Office of the Chief Actuary of the Social Security Administration (SSA).
  - ***Administrative Directive 06 OMM/ADM-5*** the life expectancy table issued by SSA is required to be used in evaluating whether an ***annuity purchased of an applicant/recipient on or after February 8, 2006 is actuarially sound.***
  - The table is ***also used*** in determining whether the repayment term for a ***promissory note, loan or mortgage is actuarially sound.***
- ***Effective*** with the release of ***GIS 25 MA 09 on 08/26/2025***, districts must use the revised table.

# Medicare SNF & SS Update 2026

- **Medicare:** Skilled Nursing Facility day **81-100 Copayment \$217**
- **Social Security:**
  - Increases in maximum wages subject to SS Tax increase to \$184,500.
- **Disabled SGA:**
  - Legally blind increased to \$2,830 a month and Non-blind to \$1,690
- **The earliest you can take** your benefits is age 62 with a reduced payout.
  - Born in 1960 or later reach full retirement age at 67. Benefits increase until age of 70.
- **Earning Limits:**
  - Below "full" retirement age after \$24,480 of wages, \$1 deducted from benefits per \$2 earned. Year of "full" retirement age after \$65,160, \$1 deduction from benefits per \$3 earned, and no limit for workers "full" retirement age or older for the entire year.
- **Taxation:**
  - AGI of \$25,000-\$34,000 (couples \$32,000-\$44,000) is 50% taxable, over \$34,000 (couples \$44,000) up to 85%.
- **Federal SSI Rate 2025**
  - \$994 month individual \$1,491 month couple, resource \$2000/individual & \$3,000/couple
  - (NY adds a supplement \$87 a month for individuals and \$104 a month for couples )

# Elimination of Requirement to Apply for Other Benefits as Condition of Medicaid Eligibility

GIS 25 MA/15 dated 12/23/25

- ***This GIS informs that the requirement to apply for other benefits as a condition of Medicaid eligibility is eliminated*** pursuant to CMS elimination of the requirement under 42 CFR § 435.608.
- ***Prior applicants were required, as a condition of eligibility, to take all necessary actions to obtain other benefits, including, ... annuities, pensions, retirement & disability benefits such as Veterans' compensation & pensions, SS, RR & unemployment benefits. Now 18 NYCRR § 360-2.3(c)(1) applicants are not required ... effective with release of this GIS & GIS 16 MA/12 is rescinded.***
- ***However, the requirement to apply for Medicare and other available 3<sup>rd</sup> Party Health Insurance as a condition of Medicaid eligibility has not changed and remains current policy.***

# Elimination of Requirement to Apply for Other Benefits as Condition of Medicaid Eligibility

## GIS 25 MA/15 dated 12/23/25

- Medicaid applicants/recipients maximization of the following as a condition of Medicaid eligibility may no longer be cited for denial or discontinuance of Medicaid:
  - SS Benefits; Unemployment Insurance Benefit; Veterans' Benefits.
  - ***Maximum Periodic Payments from Retirement Funds (RF),***
    - ***Applicant is no longer required to receive maximized periodic payments for calculating NAMI under post-eligibility rules & failure to receive maximized payments is not an uncompensated transfer for coverage of nursing home care. However, transfer of assets rules for annuities per 06 OMM/ADM-5 unchanged. If RF is in payout status (PS) which is when RF is paying regularly scheduled periodic payments, regardless of the periodic amount & actual frequency, then RF subject to income counting rules, & principal balance isn't a countable resource. If not in PS, balance is a countable resource, based on amount can currently withdraw, less penalty for early withdrawal, but no deduction for taxes.***

# Elimination of Requirement to Apply for Other Benefits as Condition of Medicaid Eligibility

GIS 25 MA/15 dated 12/23/25

- U.S. Savings Bond is a U.S. Treasury security that increases in value until it is cashed or reaches final maturity. When an A/R owns a U.S. Savings Bond, the bond must be evaluated to determine its availability and value based on the bond's minimum retention period. An A/R who is applying for Medicaid coverage of long-term care services is no longer required to request to have the minimum retention period waived by the U.S. Treasury. Effective with the release of this GIS, policy guidance GIS 08 MA/006, "Treatment of U.S. Savings Bonds During the Retention Period," requiring it is rescinded.
- ***Elective share interest for couples that are not subject to a transfer of assets review, the requirement for a surviving spouse, as a condition of Medicaid eligibility, to exercise their right of election against their deceased spouse's estate under Section 5-1.1-A of the New York State Estates, Powers and Trusts Law (EPTL), is eliminated effective with the release of this GIS.***

# FI Change to NY Medicaid CDPAP Program

- In the **2024 NYS budget CDPAP/CDPAS was changed requiring a transition from a local fiscal intermediary (“FI”) to a statewide FI by 4/1/2025.**
  - See, Part II of the HMH Art. VII (S.8307-C/A.8807-C) of the Governor’s budget.
- **CDPAP/CDPAS program recipients (also known as “Consumers”), instead of an agency, direct their own services (“self-directing”)** with flexibility in choosing their caregivers, which may include existing private caregiver, a friend, a neighbor and/or a family member (other than a spouse or parent of a minor child). The tradeoff is the consumer must manage the services.
- To participate in this program the consumer is **required to contract with a FI to process the payroll and monitor and insure some additional basic requirements** are met, i.e. training. Prior to these changes this was handled by certain local HC agencies. The new law eliminated the ability to use a local agency as the FI and replace it with one statewide FI. **NY selected a Georgia-based company Public Partnerships, LLC, [hereafter referred to as “PPL”].**
- **On 11/12/24 the Governor, in response to the advocacy, identified 24 (now up to 30) fiscal intermediaries to be PPL’s subcontractors.** Current facilitators can be found at <https://pplfirst.com/cdpap-facilitators/> Facilitators are community-based organizations located throughout NY who help transition to PPL

# FI Change to NY Medicaid CDPAP Program

- *1/27/25 Nassau County Judge Jerome C. Murphy issued a temporary restraining order (TRO) until it is demonstrated procedural safeguards were in place to protect the confidential, proprietary data and alleviate any concerns of violations of HIPAA" and other applicable privacy laws or regulations. The TRO was in effect only until 3/4/25 and applied only to the FIs that were parties to the lawsuit, Caring Professionals, Inc. and members of the trade organization CDPAANYs. It was expected that this could impact DOH's target April 1, 2025 transition deadline*
- *On 1/29/25 DOH directed all current FIs to provide a written notice to consumers at least 45 days before they are required to stop providing services*
- *DOH fought back claiming the TRO would make it impossible to meet the 4/1/25, deadline. Despite the Nassau County TRO, DOH succeeded in other venues and other state courts (such as Cattaraugus County) denied similar injunctions. On 3/20/25 DOH announced they were moving forward with the transition to PPL despite the ongoing litigation in Nassau County.*
- *The focus shifted a federal class-action lawsuit (Engesser et al v. McDonald) in the Eastern District of NY where Federal Judge Frederic Block issued a broader injunction effectively superseded Nassau County. This federal case resulted in a settlement so ordered 6/27/25 that extended the final registration deadlines multiple times—eventually landing on August 1, 2025, for all consumers to be fully moved to PPL.*

# FI Change to NY Medicaid CDPAP Program

- Relevant DOH Guidance:
  - ADMs:
    - 25 OHIP/ADM-01 dated 2/1/25 - Regarding the on-going transition interaction to PPL.
    - 25 OHIP/ADM-02 (PDF) 3/21/25 - Payment Policy for Late Registrants
    - 25 OHIP/ADM - 04 (PDF) 7/3/25 - Amended Preliminary Injunction
    - 25 OHIP/ADM - 05 (PDF) 8/1/25 - Evaluation of a Consumer's Continued Appropriateness for CDPAP (See more later slide)
  - GIS
    - GIS 25 MA/08 – 08/01/25 - Service Authorization Renewal Timelines
    - GIS 25 MA/07 - Aid to Continue if Request FH Timely

# CDPAP No Longer Appropriate

25 OHIP/ADM 05 date 8/1/25

- ***LDSS must determine if consumer is still appropriate for CDPAP when consumer is no longer medically eligible, consumer/designated representative (DR) refuses to cooperate in assessments, is unwilling/unable to manage their plan of care, risks their own safety and/or the safety of employees, or otherwise does not/cannot fulfill their responsibilities.***
- Consumers must be capable of self-directing or have a DR that is capable & agrees to assume the consumers' responsibilities. The FI has an obligation to report to LDSS when it has knowledge a consumer and/or their designated representative is not fulfilling their duties may include, but is not limited to:
  - Consumer is not approving timesheets by the weekly deadline
  - Consumer is not meeting the Electronic Visit Verification (EVV) compliance requirement
  - Consumer is scheduling personal assistants in a way that risks safety of consumer or personal assistant
  - Any reports of an unsafe environment
  - Additional DR duties are: ensure the consumer responsibilities are carried out without delay, be available & present for scheduled assessments/visits by independent assessor, examining medical professional, or LDSS when the member is not self-directing.

# Increased ADLs for Personal Care Services Started 9/1/2025

ADM 25 OHIP/ADM-03 dated 6/30/2025

- **Original Budget Change:**
  - *As Part of NYS Article VII 2020-2021 Budget* - Part MM - Section 2-a: Effective: To individuals who receive an initial authorization for such services **on or after October 1, 2020**. Amends §365-a subd.2 (e) by adding subparagraphs (v) and (vi). (Note Sections 2-b and 3 of the Bill apply to CDPAP).
  - **Change:** *Personal care services* other than personal emergency response services **shall be available only to individuals assessed as needing at least limited assistance with physical maneuvering with more than two activities of daily living, or for individuals with a dementia or Alzheimer's diagnosis, assessed as needing at least supervision with more than one activity of daily living**, as defined and determined by using an evidenced based validated assessment instrument by an independent assessor.
  - In 2020, Chapter 56 of the Laws of 2020 amended SSL§§ 365-a & 365-f, & PHL § 4403-f to change the assessment eligibility criteria for Medicaid individuals seeking PCS/CDPAS, and for individuals seeking enrollment into an MLTC plan. These statutes, and updates to the accompanying regulations at 18 NYCRR §§ 505.14 & 505.28, establish the Minimum Needs Requirements for those individuals being initially assessed using the Community Health Assessment (CHA).

# Increased ADLs for Personal Care Services Started 9/1/2025

ADM 25 OHIP/ADM-03 dated 6/30/2025

- This ADM notifies about changes to the eligibility criteria for adult Medicaid recipients *aged 21 and older* seeking *PCS & CDPAS*, and *those of any age in MLTC plans beginning 9/1/25*.
- It defines these new requirement as “*Minimum Needs Requirements*” ... *and states they will be applied to all initial assessments from 9/1/25 forward & subsequent reassessments*.
  - Individuals *assessed & approved* for PCS/CDPAS *prior to 9/1/25* or those *continuously enrolled in MLTC* will be granted *Legacy Status* (defined) & *exempt* from the “*Minimum Needs Requirements*” as well as those enrolled in PACE plans.

# Increased ADLs for Personal Care Services Started 9/1/2025

ADM 25 OHIP/ADM-03 dated 6/30/2025

- ***Documentation Of Alzheimer's Disease (AR) Or Dementia Disorder (DD):***
  - With a diagnosis of AR or DD must provide proof of a diagnosis during the assessment process. ***"The Alzheimer's Disease or Dementia Form (DOH-5821) "must be completed.***
  - The form can be completed ***by the licensed health care professionals*** listed on the form. ***However, the diagnosis must be made by a physician (M.D. or D.O.) & doesn't need to be NYS Medicaid Provider.***
  - ***This documentation is required at each assessment.***

# Increased ADLs for Personal Care Services Started 9/1/2025

ADM 25 OHIP/ADM-03 dated 6/30/2025

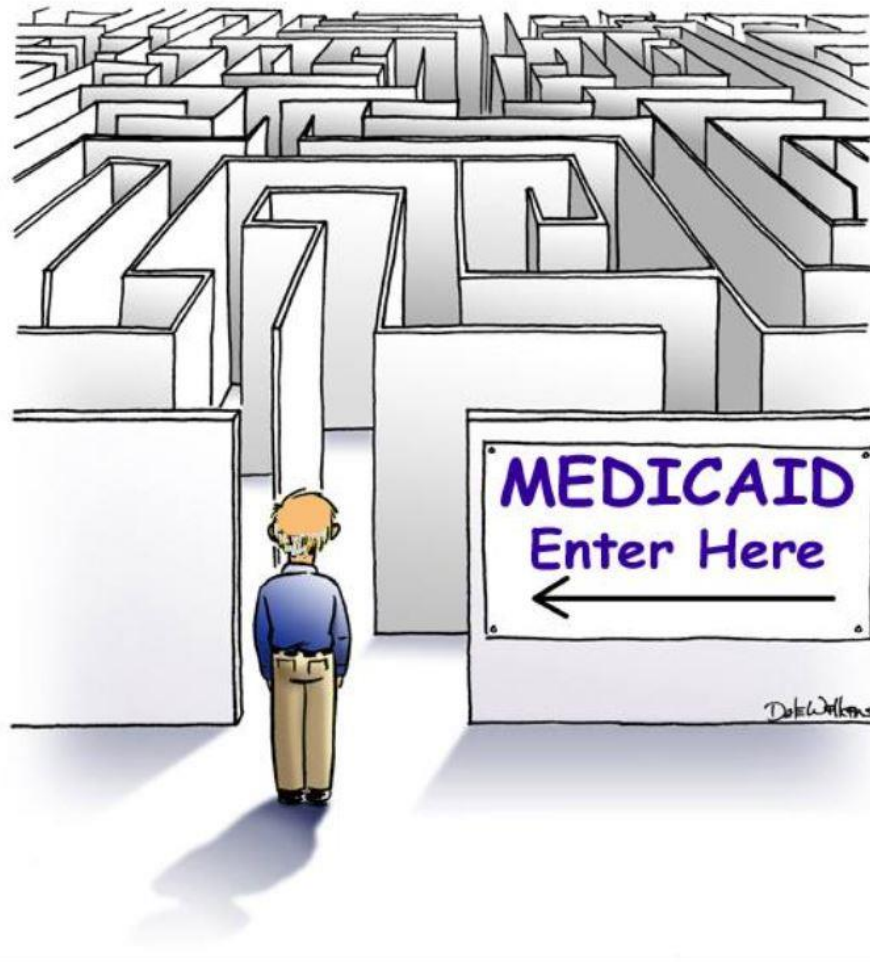
- **Legacy Status**

- *Will be tracked in the UAS-NY and LDSS will be responsible and insure assessed & reassessed under the Legacy Criteria.*
- *Determination Of Service Legacy Status will be granted as follows, if:*
  - *1. Assessed and authorized for PCS/CDPAS prior to September 1, 2025.*
  - *2. Assessed but not yet authorized for PCS/CDPAS. Need a valid assessment between 8/31/24-9/1/25, and service must be authorized w/1 year of assessment.*
  - *3. Initial Assessment scheduled but not yet authorized for PCS/CDPAS before 9/1/25 & was rescheduled through no fault of their own to a date after 9/1/25. Note: The rescheduling must occur before the date of the initial appointment.*
- *Required Actions During Assessments And Reassessments . Documentation of Legacy status will be data loaded by LDSS & UAS-NY documentation entered by LDSS.*
- *See, GIS 26 ma 22 dated 1/22/26 for discussion of children under 21 being granted Legacy Status until they reach age 21.*

# Medicaid Changes Under OBBBA

- Section 71108 *home equity* (42 U.S.C. § 396p(f) cap \$1,000,000. *Effective 1/1/28.*
- Section 71107 *eligibility re-determinations* from 12 to every 6 months for *Medicaid expansion adults* — i.e., those qualifying under the ACA. *Effective 12/31/26.*
- Section 71112(b) *reduces retroactive coverage to 1 month for individuals under 65, who are not pregnant, not entitled to Medicare Part A or B, and have income not exceeding 133% of the federal poverty line (ACA expansion adults), and to 2 months for all other applicants, including nursing home residents. Effective 12/31/2026.*
- Section 71119 “*Community Engagement/Work Requirements*“ mandated for *Medicaid members age 19–64 who are covered through the ACA Medicaid expansion or an 1115 demonstration waiver* provides they *must engage in at least 80 hours per month of employment, education, a work program, or community service. States are required to implement by 1/1/27. Exemptions for Individuals with disabilities receiving SSI or SSDI, Medicare Dual-eligibles...* primary caregivers of dependent children under .. individuals enrolled in long-term services and supports (LTSS) ...

# Medicaid at its Best!



# Medicare Changes Under OBBBA +

- **Potential Drug Price Savings:**
  - **IRA Drug Price Negotiation Program under Biden —**
    - **1st set of negotiated drug prices took effect 1/1/26 estimated to save the Medicare \$6 billion annually, and beneficiaries \$1.5 billion annually**
    - **2nd round - Medicare Part D drugs price discounts ranging from 38% to 84% of the 2024 list price, estimated savings \$12 billion annually & \$685 million for beneficiaries in 2027.**
  - **Executive Order 14289 (May 12, 2025) —directed the administration to take actions to bring American drug prices in line with those paid by comparable nations. Since 9/30/25 President Trump announced 5 deals with major pharmaceutical manufacturers to bring prices in line**
  - **"TrumpRx": Direct-to-Consumer platform drug sales portal allowing manufacturers to sell drugs directly to patients at most-favored-nation prices, by passing pharmacy benefit managers and insurer markups.**
  - **H.R. 1 broadened the orphan drug exclusion from the IRA negotiation program, excluding drugs for multiple rare diseases or conditions at a \$8.8 Billion Cost to Medicare.**
  - **Biden-Era Drug Pricing Executive Orders Rescinded (1/20/25) "Lowering Prescription Drug Costs for Americans"). Rescinded 3 proposed models to lower drug costs.**

# Other Changes Under OBBBA+

- ***Other Changes:***
  - ***Explicitly bars CMS from enforcing Nursing Home minimum staffing ratios or national mandates for nursing or aide hours per resident.***
  - ***Provider Taxes: States were able to use revenues from health care provider taxes to help finance their share of Medicaid expenditures. Sec. 71115 prohibits states that have not expanded Medicaid from imposing new or increasing existing provider taxes to finance their share of Medicaid spending & for states that have expanded Medicaid, the bill cuts existing rates by 0.5% every year starting in 2028 until it reaches 3.5% starting in 2032 but exempts Nursing homes & intermediate care facilities.***
  - ***Rural Health Transformation Program established under Sec. 71401 \$50 billion to the program for FY 2026 through FY 2030. Funding must be used to address 8 issues & strategies in rural health systems, improving access, recruiting & training clinicians, support training & technical assistance for technology. The federal government will distribute \$25 billion equally among all approved states, however this program does not offset the Medicaid cuts that rural facilities face.***



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Alzheimer's Disease Program

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## NYS Coordinating Council for Alzheimer's Disease and Other Dementia

Alzheimer's Disease and  
Related Dementias

# NYS Coordinating Council for Alzheimer's Disease and Other Dementia

- The New York State Coordinating Council for Alzheimer's Disease and Other Dementias (hereafter referred to as the “Council”) was *established by Public Health Law § 2004-a* (enacted by Chapter 58 of the Laws of 2007, Part B, § 24). The Council *was created to facilitate interagency planning and policy-making, review specific agency initiatives for their impact on services related to the care of persons with dementia and their families, and provide a continuing forum for concerns and discussions related to the formulation of a comprehensive state policy for Alzheimer's disease (AD).*
- The *Council is charged with providing periodic reports to the Governor and the Legislature.* The reports must set forth the Council’s recommendations for state policy relating to dementia and include a review of services initiated and coordinated by public and private agencies to meet the needs of persons with Alzheimer's disease and related dementias and their families, this report provides a beginning to this review.
- The *2025 Council Report is posted* to the webpage of the NYS Coordinating Council for Alzheimer’s Disease and Other Dementia under Biannual Reports & Executive Summary.
  - [https://www.health.ny.gov/diseases/conditions/dementia/coordinating\\_council/](https://www.health.ny.gov/diseases/conditions/dementia/coordinating_council/)

# NYS Coordinating Council for Alzheimer's Disease and Other Dementia

- ***The “Healthy Brain Initiative” Public Health Road Map***
  - [https://www.cdc.gov/aging-programs/php/nhbi/roadmap.html?CDC\\_AAref\\_Val=https://www.cdc.gov/aging/healthybrain/roadmap.htm](https://www.cdc.gov/aging-programs/php/nhbi/roadmap.html?CDC_AAref_Val=https://www.cdc.gov/aging/healthybrain/roadmap.htm)
  - ***This is a state and local public health partnerships*** to address dementia serving to advance cognitive health as an integral component of public health. ***It outlines how state and public health agencies and their partners that promote brain health address cognitive impairment for people living in the community, improve diagnosis and care of those with Alzheimer's disease*** and related dementia and help meet the needs of caregivers.
- ***National Plan to Address Alzheimer's Disease***
  - <http://aspe.hhs.gov/sites/default/files/documents/59cefdd628581b48b2e389891a675af0/napa-national-plan-2022-update.pdf> and
  - <https://aspe.hhs.gov/collaborations-committees-advisory-groups/napa>
  - ***The National Alzheimer's Project Act*** was ***signed into law in early 2011*** and ***requires the Secretary of Health and Human Services to create and maintain a national plan*** to address Alzheimer's disease. The ***Plan was released in May 2012, with the most recent update published in 2022.*** National Plan ***coordinates federal research on Alzheimer's.***

# NYS Coordinating Council for Alzheimer's Disease and Other Dementia

- ***GUIDE Model - Guiding an Improved Dementia Experience***

- <https://www.cms.gov/priorities/innovation/innovation-models/guide>
- ***On 7/1/24, the Guiding an Improved Dementia Experience (GUIDE) model was introduced by the CMS as an eight-year pilot program with the goal of supporting persons living with dementia and their caregivers through an interdisciplinary team. This model focuses on importance of care coordination including care management, caregiver education and support, and respite services.***
- To qualify for this model, ***potential participants must have Medicare Part A and B and a diagnosis of dementia***, Participants are ***assigned a Care Navigator*** that will assist the person living with dementia and their caregivers to access both clinical and non-clinical support.
- There are currently 390 healthcare organizations/systems enrolled in the GUIDE model nationwide with 24 located in New York State.
- The Guiding an Improved Dementia Experience (GUIDE) model delivers on the Biden Administration's Executive Order 14095 to increase access to high-quality care and supporting caregivers as well as supporting the goals of the National Plan to Address Alzheimer's Disease.

# NYS Coordinating Council for Alzheimer's Disease and Other Dementia

- ***BOLD: Building Our Largest Dementia Infrastructure for Alzheimer's Act (P.L.115-406)***
  - ***The federal government advanced support for a public health approach to the prevention, treatment, and care of Alzheimer's disease and related dementia, under legislation passed 12/31/18. This Act authorized the Centers for Disease Control and Prevention to:***
    - ***1) Establish Public Health Centers of Excellence dedicated to promote the best ways to effectively manage Alzheimer's disease and related dementia (ADRD) and support caregivers,***
    - ***2) Work with state, local, and tribal public health departments to promote brain health, strategies to reduce cognitive decline and care for individuals with Alzheimer's disease and related dementia, and***
    - ***3) Improve the analysis and timely reporting of data on ADRD, cognitive decline, caregiving and health disparities at both a state and national level. Efforts under BOLD have been directed at implementing the Healthy Brain Initiative 2023-2027 Road map.***
  - ***BOLD INITIATIVES UNDERWAY*** across the United States and in New York. ***CDC successfully funded 43 State, local and tribal health departments to implement or expand ADRD infrastructure.*** Several States and jurisdictions are at an early stage of developing an ADRD coalition and the partnerships needed to support ADRD services. ***States with more developed programs, such as New York, are expanding focus on early detection and diagnosis of ADRD and the promotion of brain health under BOLD.***

# NYS Coordinating Council for Alzheimer's Disease and Other Dementia

- ***BOLD: Building Our Largest Dementia Infrastructure for Alzheimer's Act***
  - ***NEW YORK BOLD INITIATIVES. NYSDOH Alzheimer's Disease Program (ADP) was awarded a 5-year cooperative agreement with the CDC beginning on 9/30/2023-9/29/2028. Project activities are specific to increasing awareness about brain health, risk reduction strategies, and the management of chronic disease comorbidities, as well as strengthening partnerships with primary care providers around early detection and diagnosis. In addition, this project will train primary care providers using the clinical expertise of the NYS Centers of Excellence for Alzheimer's Disease (of which SUNY at Stonybrook is one of) and New York University BOLD Public Health Center of Excellence on Early Detection of Dementia (NYU BOLD PHCOE on EDD).***
- ***Related Public Policy Initiatives: New York State Initiatives***
  - ***On 11/4/22 Governor Hochul directed coordination, planning, and policymaking with Executive Order No. 23 creating the first Master Plan for Aging in New York State (MPA), heralding a new era of support for older adults and people of all ages to succeed. The MPA is designed to ensure that older adults and individuals of all ages can live healthy, fulfilling lives while aging with dignity and independence. The DOH and SOFA are coordinating the Master Plan for Aging and is building on a longstanding foundation of existing coordinated work in New York.***

# NYS Coordinating Council for Alzheimer's Disease and Other Dementia

- ***NYSOFA***

- ***Mission is to help older NYs be as independent as possible*** for as long as possible through advocacy, development and delivery of person-centered, consumer-oriented, and cost-effective policies, programs, and services which support and empower older adults and their families, in partnership with the network of public and private organizations that serve them. These partnerships with community-based organizations and state agencies result in beneficial outcomes for older adults in New York State, including individuals living with Alzheimer's disease and related dementia and their caregivers. Programs include:
- Social Adult Day Services Programs, Caregiver Supports and Services, Tailored Caregiver Assessment and Referral Pilot Project, New York State Coalition on Caregiving and Respite Voucher Program, Lifespan Respite Project Period 2021-2026, Caregiver Wellness & Respite Center, Respite Care Provider Training, Life Course Tools for Respite, Elder Abuse Interventions and Enhanced Multi-Disciplinary Team Initiative, Elder Abuse Education and Outreach Program.

**Miscellaneous  
Enacted Legislation**

# Amendment to Regulations to Comply with 2025-2026 Budget Allowing Younger Medically Fragile to Remain in NH up to Age 36

(2025-41 N.Y. St. Reg. 104 *October 15, 2025*)

- In accordance with amendment under the Title XIX (Medicaid) State Plan for long term care services to comply with 2025-2026 enacted budget the following changes are made:
  - Long Term Care Services: Effective on or after November 1, 2025, the Department shall amend the public health law to ***allow medically fragile young adults who reside in pediatric specialized nursing facilities to remain at such facilities after reaching the age of 21 until they reach the age of 36.***

# “Medical Aid in Dying”

## Article 28-F of the Public Health Law

(Signed 2.6.26; S: A00136 and A09515)

- ***A NY resident who is a mentally capable terminally ill adult may request a prescription from a provider for a medication they can ingest to die peacefully.*** Justification for it:
  - “Faced with ***a terminal diagnosis***, when ***no curative treatment options exist***, New Yorkers deserve the full range of options for care at the end of life. The law would authorize medical aid in dying for ***terminally ill adults with less than six months to live*** who have been ***determined by two doctors & a mental health professional to be mentally capable to make an informed decision and request the medication.***
  - Medical aid in dying allows a mentally capable, terminally ill adult to ***request a prescription*** from their healthcare provider for a medication that they can choose to ingest to die peacefully. The multi-step request process, ***strict eligibility criteria, and other safeguards embedded*** in this legislation ensure that patients pursuing the option, healthcare providers who deliver care pursuant to the law, and those who refrain from participating in medical aid in dying are all protected.
  - Authorizing the ***full range of end-of-life options, including medical aid in dying, allows people to engage in open conversations*** with their healthcare providers, their loved ones and their faith leaders about the end of life experience they want.”
- ***Actions under this law & hospice are not an either/or proposition.***
- This act shall take effect [immediately ] on the ***one hundred eightieth day after it shall have become a law.***

# “Medical Aid in Dying”

## Article 28-F of the Public Health Law

(Signed 2.6.26; S: A00136 and A09515)

- *Specifically, a patient who is suffering from a terminal illness may now request a medication which patient may self-administer to end their life, upon an understanding & acknowledgment of certain facts, which request is made voluntarily, without coercion, after being fully informed of their medical diagnosis & prognosis, risks & probable result & that the patient may choose not to obtain the medication or may decide not to self-administer it; and the alternatives, thereby making an Informed Decision.*
- *Process: Upon a patient’s request .... the attending physician shall examine the patient in person ... relevant medical records, ... (the attending may waive in-person and conduct ... via telehealth if ... in-person visit would result in extraordinary hardship).... and **make a determination the patient has a terminal illness, decision-making capacity, is making an informed decision, & the request is voluntary by the patient without coercion. Also Dr. must inform patient of requirement for confirmation by a consulting physician & a mental health professional (defined by statute), provide information & counseling (or arrange for another Dr.) to ensure an informed decision is being made, discussing medical diagnosis & prognosis, potential risks, probable result, that patient may choose not to take it; alternatives to this, importance of having another person present, that only patient can administer, not taking in a public place and informing the family.***

# “Medical Aid in Dying”

## Article 28-F of the Public Health Law

(Signed 2.6.26; S: A00136 and A09515)

### • ***Additional Protections:***

- *A prescription for medication shall not be filled until 5 days after it had been written, unless Patient's attending confirm individual may within reasonable medical judgment die before that.*
- *protection for patient's privacy and records,*
- *death certificates provide the reason for death as the **underlying illness** and not the act of self-administered medication,*
- *that a patient **not be considered a person who is suicidal for any purpose**, and the action shall not be construed for any purpose to constitute suicide...mercy killing, or homicide under the law, including as an accomplice or accessory or otherwise,*
- *that **no provision in a contract, will or other** agreement, whether written or oral, **to the extent the provision would affect whether a person may make or rescind a request** for medication or take any other action under the article, **shall be valid,***
- ***no obligation owing under any contract will be conditioned upon or affected by the making or rescinding of a request by a person for medication** or taking any other action under the article,*
- *that a **person and his or her beneficiaries shall not be denied benefits under a life insurance policy** for actions taken in accordance with the article, and the sale, procurement or issuance of a life or health insurance or annuity policy or the rate charged for the policy shall not be conditioned upon or affected by the patient making or rescinding a request for the medication.*

# “Medical Aid in Dying”

## Article 28-F of the Public Health Law

(Signed 2.6.26; S: A00136 and A09515)

- ***Additional Protections (con’t):***
  - ***protects professionals by restricting insurers issuing malpractice insurance from adjusting rates conditioned on if insured does or does not participate under this article.***
  - ***Requests must be made by the individual and not be made by any other individual, including the individual’s health care agent, other agent or surrogate.***
  - ***A physician, nurse, pharmacist, other health care provider or other person shall not be under any duty, by law or contract, to participate and shall not be subject to civil, administrative, or criminal liability or penalty or professional disciplinary action for taking reasonable good faith action or refusing to act under this article.***
  - ***A private health care facility may not prohibit the prescribing, dispensing, ordering or self-administering of medication under this article while the patient is being treated in the health care facility: unless contrary to a formally adopted policy of the health care facility based on sincerely held religious beliefs or moral convictions central and the facility informed the patient of such policy prior to admission or as soon as reasonably possible., and shall assist the patient to be transferred promptly to another health care facility that will provide it.***
  - ***An insurer or 3<sup>rd</sup> party health care payer shall not provide any information to a patient about the availability of medication under this article absent a request by the patient or by such patient's attending physician upon the request of such patient.***

# Medical Evaluation 30 Days Prior to Admission to Assisted Living Paulin A02027; Rivera S03361

*(Signed 10.16.25 chap. 444)*

- Section 1. Subdivision 2 of section 461-1 of the social services law is amended by adding a new paragraph (e) to read as follows:
- (e) Medical evaluations. ***Medical evaluations used to determine that the assisted living program can support*** the physical, supervisory and psycho-social needs of a resident ***must be conducted within thirty days prior to the date of admission*** and signed by either a physician, physician assistant or nurse practitioner.
- § 2. This act shall take effect immediately.

# NY Department of Taxation & Finance

## Digital Signatures

Magnarelli A09431;Liu S08829

*(2/13/26 Signed)*

- ***Directs the commissioner of taxation and finance to develop procedures for the use or acceptance of signatures in digital or other electronic form on any declaration, statement, or other document*** utilized by the department and authorizes the use of an electronic signature by a person granted a power of attorney by a taxpayer with respect to documents submitted to the New York state department of taxation and finance.

# Uniform Special Deposits Act

## Hunter A5345; Krueger S04323

(Signed 12/5/25)

- ***This legislation creates a new legal framework for "special deposits"—bank accounts designed for specific commercial or legal purposes, such as escrow funds, security deposits, or corporate payroll.***
- ***Key Features of the Bill:***
- ***It is optional and can be used instead of attorney escrow or IOLA accounts.***
- ***Affects:***
- ***1. Enhanced "Bankruptcy Remoteness" - Under the Uniform Special Deposits Act, funds are legally "bankruptcy remote" because the money is not considered the property of the depositor.***
- ***2. Protection from Creditor Claims. This law protects the funds from creditors until the bank is actually obligated to pay the beneficiary.***
- ***3. Bank has limited liability & no fiduciary duty. The Act explicitly states that a bank does not have a fiduciary duty to any person regarding a special deposit and limits the bank's liability to proximate damages.***

# Uniform Special Deposits Act

## Hyndman A5345; KruegerS04323

(Signed 12/5/25)

- The *"who" & "how" funds are released* are dictated by a private account agreement rather than a third-party escrow agent's subjective discretion.
- *Legislation states it shifts the mechanism to "contract-and-record" model:*
  - 1. *The Trigger: A "Payment Contingency."* The funds are released upon the occurrence of contingency specified in the written agreement.
  - 2. *The Bank's Role: Verification, Not Fiduciary.* A traditional escrow agent has a fiduciary duty to act in the parties' best interests the bank has no fiduciary duty *The bank is obligated to pay the beneficiary as soon as it obtains knowledge that the payment contingency has occurred, unless agreement says otherwise.*

# Commissions Of Trustees Of Charitable Trusts

## Hoylman-Sigal S08373; Walsh A8300

*(Signed by Governor)*

- Amends the SCPA, in relation to the computation and allocation of the commissions of trustees of charitable trusts; and to repeal certain provisions of such law relating thereto
- This bill was introduced at the request of the Unified Court System, on the recommendation of the Chief Administrative Judge's Surrogate's Court Advisory Committee. ***This bill brings the commissions received by a charitable trustee more in line with the commissions received by a trustee of a non-charitable trust.***

# Service of Process in Surrogates Court Within NY – Now By Mail

Sepulveda S08175; Dais A08408 substituted by  
Senate Bill

*(Effective November 21, 2025)*

- Primary focus is to ***permit service of process by mail to within*** or without the State in Surrogates Court proceedings.

# Electronic Wills in New York

- **S07416:**
  - Lavine A07856 & Hoylman-Sigal S07416 (**Signed 12/12/25** – Assembly Bill Replaced by Senate Bill)
  - Enacts provisions for the **execution of electronic wills** including attestation, revocation and filing.
- **Amendment S08887**
  - Lavine A09497; S08887 (**Signed 2-13-26**)
  - An act to **amend** the estates, powers and trusts law, **in relation to electronic wills**; to amend the judiciary law, in relation to rules relating to electronic wills; and to amend a chapter of the laws of 2025 amending the estates, powers and trusts law and the state technology law relating to electronic wills, as proposed in legislative bills numbers S. 7416-A and A. 7856-A, in relation to the effectiveness thereof
  - Enacts provisions for the execution of electronic wills including attestation, revocation, filing and storage; requires the **chief administrator of the courts to adopt** rules necessary and appropriate for electronic wills.
- **See Robert Harper, Esq materials.**

# Advertisements Must Disclose Use Of Synthetic Performer

Gianaris S08420;A08887

*(Signed chap.617)*

- *Requires advertisements to disclose the use of a synthetic performer; imposes a \$1,000 civil penalty for a first violation and a \$5,000 penalty for any subsequent violation.*

# **Miscellaneous Pending Legislation**

# Patients Over Paperwork Act of 2025, 119 H.R. 6148

*(Introduced in the house 11/19/25)*

- A bill to amend Public Law 119-21 to repeal certain changes to eligibility redeterminations under the Medicaid program.
- ***This bill would repeal Section 71107 of OBBA which requires eligibility re-determinations changed from 12 to every 6 months for Medicaid expansion adults — i.e., those qualifying under the ACA. Effective 12/31/26.***

# Educating NH Residents on Use of an Attorney for Medicaid Applications

## Bronson A.B. 3350

*(Committee on Health 1/27/2025)*

- Relates to educating nursing home residents about the role of legal counsel in applying for Medicaid benefits; ***requires operators of residential health care facilities to display and provide residents with a notice upon admission regarding such resident's right to hire an attorney to assist with a Medicaid application.***

# Eliminate Cap on NYS Medicaid Spending

## Simon A2170

*(referred to health)*

- The purpose of this Bill is to *eliminate NYS spending Cap* .
- *In 2011 state budget imposed a percentage cap on Medicaid spending growth*, called for by the Governor as proposed by the Governor's Medicaid Redesign Team. That *cap is calculated annually based on the overall health care inflation rate for the past decade. Whenever Medicaid spending is expected to breach the cap, the 2011 law gives the Health Commissioner and Director of the Budget unilateral powers to impose cuts in covered benefits, eligibility, or payments to providers* (hospitals, doctors and other health care professionals, community health centers, home care agencies, drug treatment programs, etc.).

# Requires Medicare & Medicaid Managed Care Cover Out-Of-Network Providers with Long Term Relationships

## Chandler-Waterman A07239; Comrie S02449

*(A:1/7/26 referred to health; S:1/7/26 referred to health)*

- Requires Medicare and Medicaid managed care providers to ***provide coverage for certain out-of-network health care when the patient has a long term relationship with a medical professional*** who is not a recurring provider under the managed care provider's network.

# Quality Incentive for Medicaid Managed Care Paulin A02044; Salazar S06266

*(A:2/4/26 reported referred to ways and means; S:1/7/26 referred to health)*

- ***This bill requires Commissioner of Health to establish a quality incentive program for Medicaid Managed Care plans & consult with representatives of managed care providers & other relevant stakeholders in establishing criteria for the distribution of funds under the MMC quality incentive program.***

# Supplemental Quality Improvement Payments for MLTC Plans

## Clear S07518

*(S:1/7/26 referred to health)*

- *Provides for supplemental quality improvement payments for managed long term care plans that meet certain criteria.*
- To reward managed long-term care plans that have above average quality and high-risk scores.
- The bill amends Public Health Law section 4403-f to add a new subdivision which establishes supplemental quality improvement payments for ***MLTC plans who have received a four of five-star rating on the latest DOH quality rating guide and have a relative risk score of 1.1 or higher.*** The payments are capped at \$30 million or one percent of total capitation whichever is less. Payments will be made based on allocated share with higher quality getting a higher amount.

# Repeal of Look Back For Medicaid Homecare

## Paulin A.B. 1907; Skoufis S04786

*(A:1/7/26 referred to health; S:1/7/26 referred to health)*

- AN ACT to amend the social services law, in relation to *eliminating a "look-back period" for home care* for non-institutionalized Medicaid applicants; and repealing certain provisions of such law relating thereto.

# Work Requirement For Able Medicaid Recipients

## O'Mara S.B. 1499

*(Introduced)*

- Directs the commissioner of the department of health to ***apply for a waiver to implement a work requirement for able-bodied adult*** recipients of Medicaid.

# Homecare Providers to Receive Adequate Reimbursement

Paulin A01112; Rivera S03599

*(A: 1/7/26referred to health) ; S:1/7/26referred to health)*

- Requires the Commissioner of Health to establish regional minimum hourly base reimbursement rates for home care aides.
- The need for a reliable and predictable mechanism to ***ensure that home care providers receive adequate reimbursement from managed care organizations*** for the purpose of paying their employees.
- Currently, there is no common understanding on what constitutes an adequate rate to cover a worker's wages and benefits. This legislation would require DOH to set a minimum hourly base reimbursement rate, the elements that are articulated by statute and determined by DOH. This will help establish an objective standard against which to measure negotiated rates. By articulating the elements of the rate that must be accounted for by the department, this legislation would drive the rate to a formula and bring clarity and predictability to the current process. It would set objective expectations for providers, plans and the State regulators.

# The "Fair Pay For Home Care Act" in NY

## Clearance S08955; Paulin A01991

*(S:1/21/26 referred to health; A:1/7/26 referred to health)*

- Enacts the ***"fair pay for home care act"*** relating to ***minimum wages applicable to home care aides; provides for a minimum wage of 150%*** of the applicable statewide or regional minimum wage.

# Home Care Bill of Rights to Eliminate Certain Discriminations

Rosenthal A09264; Cleare S8668

*(A: 1/7/26 referred to health S: 1/7/26 referred to health )*

- ***Establishes a home care services bill of rights for patients of home care services agencies and certified home health agencies; requires training for staff and contractors of such agencies to eliminate certain discriminations; makes related provisions so that a patient who receives home care services is not subject to discrimination on the basis of sexual orientation, gender identity, gender expression, and/or hiv status...***

# NY's Own Combat Veterans Healthcare Choice Program Act

## Manktelow A04765; Ashby S03326

*(A: 1/7/27 referred to veterans' affairs; S: 1/7/26 referred to referred to veterans, homeland security and military affairs)*

- *Establishes the "New York's Own Combat Veterans Healthcare Choice Program Act" to establish tax free savings accounts to pay the healthcare costs of combat veterans on active duty during Operation Enduring Freedom or Operation Iraqi Freedom, until covered by the federal government; directs the division of military and naval affairs to establish a registry of Afghanistan and Iraq veterans..*

# Remove the new PC ADL Requirements Rivera S358/A1198

*(1/7/26 referred to health )*

- ***Governor Cuomo's Article VII Bill*** – changed the law to require individuals who receive an initial authorization for *services on or after 10/1/2020 be required to be assessed as needing:*
  - *at least limited assistance with physical maneuvering with more than 2 ADL, or*
  - *for individuals with a dementia or Alzheimer's diagnosis, assessed as needing at least supervision with more than 1 ADL, as defined & determined by using an evidenced based validated assessment instrument by an independent assessor.*
- Two federal laws delayed the implementation:
  - FFCRA prevents new restrictions on eligibility until April 2023 or later &
  - The ARP contains a “Maintenance of Effort” until March 31, 2025.
- ***Senator Rivera seeks to amend Social Services Law § 365-a and § 365-f to eliminate the requirement that applicants for Medicaid services in the home have to be assessed as needing at least limited assistance with physical maneuvering with activities of daily living.***

# Repeal MLTC

## Paulin A02018A Rivera S02332A

*(A&S:1/12/26 amend and recommit to health )*

- ***The purpose of this bill*** is to ***eliminate*** the current partially capitated ***Medicaid Long Term Care program*** and ***replace*** it with ***long term care services delivered*** through a ***fee-for-service model while preserving fully capitated*** models.
- ***NY transitioned home care from a traditional fee-for-service*** model to a Medicaid managed care program or ***MLTC Plans in 2011, under Governor Cuomo***. The original ***intent*** was that MLTC plans would ***develop into fully capitated plans*** over time. This ***has not happened, instead*** the majority of the services arranged are ***solely home care***. Because of this "care coordination" is limited, and the plan ***administrative costs and profit are a drain on the Medicaid*** system.
- In the past 3.75 years, ***NY has allocated \$5.9 billion to 24 managed care plans*** managing home care in administrative costs and profit. ***In 2021 alone***, the latest full year of data available, ***MLTC plans posted \$722 million in profits***, twice the national average.
- To address this, the "Home Care Savings & Reinvestment Act" would repeal the partially capitated MLTC program and instead provide appropriate long-term care benefits under a fee for-service model or through a fully capitated model where appropriate.

# Transparency in Medicaid Managed Care

## SlaterA09312

*(1/7/26referred to health)*

- ***Ensures Medicaid spending results in real access to medical care by increasing transparency in Medicaid Managed Care*** adequacy reviews & safeguarding continuity of care in light of recent provider network withdrawals.
- It is therefore the intent of this act to ensure New Yorkers have timely access to care and that Medicaid funding is used effectively to provide enrollees with access to care, regardless of where they are located in the state.

# CDPAP: Allow Legally Responsible Person to Be Personal Assistant

Eichenstein A00393; Rajkumar A03503;  
Dinowitz A01408 (Similar)

*(A: 1/7/26 referred to health)*

- A00393: Allows a person ***legally responsible*** for an eligible individual's care and support, an eligible individual's spouse or designated representative ***to be a personal assistant*** in a consumer directed personal assistance program.
- A03503: Permits an eligible individual's ***parent***, adult child or in-law relative to be a personal assistant under the consumer directed personal assistance program.
- A01408: Expands which individuals qualify to be an individual's personal assistant for the purposes of consumer directed personal assistance programs to include an ***eligible individual's attorney-in-fact, health care proxy, or legal guardian***.

# Allow Parent to Act as Aide in Complex Case

## Steck (MS) A00464

*(referred to health)*

- Authorizes New York State to *allow family members of medically fragile children* to be *trained and paid to provide care* as a complex care assistant.
- Requires the state Medicaid director to *establish a program for specific individuals to become complex care assistants and provide private duty nursing services* to certain Medicaid enrollees under increased reimbursement rates.

# NY LTC Trust Act

**Mayer A.B. 1499; S.B. 1179**

*(Assembly and Senate Referred to Health 1/7/26)*

- ***This intends to establish the NY Long Term Care Trust Program to provide long-term care benefits for eligible residents.***
- ***NY residents who have paid a required payroll tax withholdings & are in need of assistance with at least 3 ADL, as determined by DOH, will be eligible for the program benefit with lifetime benefit of 365 days at \$200.00 per day (as adjusted).***
- ***To be exempt and not have to pay the payroll tax individual must own long-term care insurance before January 1st of the year this law becomes effective.***
- ***Payroll tax to be determined by Commissioner.***

# Investment in Primary Care

## Paulin A01915; Rivera S01634

*(1/7/26 A:referred to insurance, S:referred to health)*

- ***The purpose of this bill is to enhance the role of primary care in New York's current healthcare*** delivery to improve the general health of residents and avoid more costly-health interventions down the road.

- ***Section 1*** would amend Insurance Law requiring plans & payors to annually report to the Department of Financial Services (DFS) the % of the plan or payor's overall annual healthcare spending on primary care. Also ***beginning on 4/1/26 each plan or payor that reports less than 12.5% of total expenditures, in the previous year, on primary care services would have to provide the Superintendent of DFS a plan to increase its spending on primary care by 1% of its total overall spending.***
- ***Section 2*** of the bill would amend the Social Services Law to ***require Medicaid managed care plans and fee-for services payors to annually report to the percentage of the plan or payer's overall annual healthcare spending that constituted primary care spending to DOH.*** Also beginning on 4/1/26 each plan or payer that ***reports less than 12.5% of total expenditures in the previous year on primary care services they will have to provide the DOH a plan to increase its spending*** on primary care by 1% of its total overall spending.

# Automatic Recertification For Medicaid Rivera S01617; Paulin A02459

*(A:1/7/26 referred to ways and means; S:1/7/26 referred to health)*

- Currently, Medicaid recipients complete a mail renewal form, attesting to their income, once a year in order to continue to receive health care coverage. This is true even if the recipient is on a fixed income. ***The recertification process is so prone to errors that it frequently results in a discontinuance of eligibility.*** The recipient may not receive the discontinuance notice on time or at all or may not be able to request a fair hearing within 10 days, which automatically triggers disenrollment. In 2011, the ***Medicaid program recognized the problems and initiated a demonstration program to automate renewals for Aged, Blind, and Disabled Medicaid recipients with fixed incomes. This bill extends the benefits of that demonstration to the rest of the program.***

# Health Home Program For Individuals With Physical Disability Rivera S.B. 1918

*(1/4/26 Reported & Committed to Finance)*

- The Health Home program has oriented towards populations with complex medical needs and mental health, substance use, or intellectual/developmental disabilities that necessitate personalized care management. In 2019, DOH established a specialized health home for adults with physical disabilities, operated by the Independence Care System, in recognition of this underserved population that needed support that is struggling under current framework.
- ***This amendment to the Health Home law would provide specific legislative authority for a program for adults with physical disabilities within the Health Home framework*** that has distinct eligibility criteria; a model of care focused on maintaining members' health, maximizing their function with wheeled mobility, and supporting independent living; performance measures that focus on reducing the most common risk factors for poor health and hospitalizations; and payment to support the resources needed to successfully operate this specialized program.

# Pre-admission Disclosure of Hospital Protocols to Refuse to Health Care Proxy Rosenthal A00121; Cleare S06686

*(1/7/26 A: referred to health)*

- ***This bill amends the pre-admission disclosure protocols of hospitals relating to the refusal to follow directives specified in health care proxies.***
- Public Health Law Section 2984 requires that ***health care providers must honor advance directives except where the agent's health care decision is contrary to a formally adopted policy of the provider that is expressly based on religious beliefs or sincerely held moral convictions central to the facility's operating principles*** and the hospital would be permitted by law to refuse to honor the decision if made by the principal.
- ***Notice of such policy must now be given either to the patient or the health care agent prior to or upon admission***, if reasonably possible. It is not sufficient to give notice of the policy upon admission or after admission, which the policy allows. Once the patient is in the institution, it is cumbersome to alter care plans, and it creates a burden on the patient and family members to transfer the patient to another facility.

# NY Health Savings Accounts

**Jensen A09384**

*(A; 1/7/26 referred to health)*

- *Authorizes the establishment of New York health care savings accounts to allow residents of the state to save money for the payment of qualified health care related expenses; relates to the use, maintenance, and tax liability of such accounts.*

# Compensation for Court Evaluators

## Persaud S08086; Eachus A09380

*(S: referred to mental health A; referred to judiciary)*

- ***Relates to compensation of individuals appointed by the court as court evaluators in guardianship matters.***
- The court may award a reasonable compensation to a court evaluator, including the mental hygiene legal service, payable by any or all of the petitioner, the person alleged to be incapacitated or the estate of the allegedly incapacitated person.

Authorizing Medicaid Coverage for those  
Attending Out of State College  
Rosenthal A.B. 3139

*(Introduced)*

- *This bill ensures that disabled New York State residents who receive Medicaid can continue to receive such benefits while at out-of-state colleges and universities.*

# Establishes Protections For Eligible Adults From Financial Exploitation

## Clear S06379; Seawright A07019

*(S;referred to consumer protection 1/7/26; A: referred to banks 1/7/26)*

- ***Establishes protections for adults 60 years of age or older who because of mental or physical impairments, are unable to manage their own resources or protect themselves from financial exploitation*** without assistance from others.

# Preventing Financial Exploitation of Older & Vulnerable Adults Borrello S.B. 1293

*(referred to consumer protection 1/7/26)*

- *Allows for investment advisers and firms to disclose potential financial exploitation of elderly and vulnerable adults to the commissioner of the department of financial services and to halt disbursements from an account if an adviser or firm believes that financial exploitation is occurring.*

# Requires Restriction on Letters for Cause of Action Arising due to Death Sepulveda S08295 *(1/7/26 - referred to judiciary)*

- ***Requires all letters granted to personal representatives contain restrictions on compromising any cause of action arising from the death of the decedent.***

# Phases In Tax Cuts To NY Personal Income Tax Over 10

## Rhoads S09110

*(2/3/26 - referred to referred to budget and revenue)*

- Phases in tax cuts to the personal income tax over a period of ten years; repeals certain provisions relating to tax benefit recapture.
- Section 1 lowers rates and phases in an exemption of \$100,000 over a ten year period for *married taxpayers filing jointly*.
- Section 2 lowers rates and phases in an exemption of \$75,000 over a ten year period for *taxpayers filing as a head of household*.
- Section 3 lowers rates and phases in an exemption of \$50,000 over a ten year period for *single taxpayers*.

# Eliminate Property Taxes for Those Over 60 years of Age

## Oberacker S.B. 1155

*S;1/7/26 referred to local government)*

- Establishes a real property tax exemption for persons sixty years of age or over with an annual household income not exceeding \$100,000; directs the state to reimburse municipalities for lost revenues.

# Driverless Automobiles Permitted

## Cunningham A04901; Cooney S00344

*(A: 1/7/26 referred to transportation S:1/7/26 referred to transportation)*

- Provides that ***a person may operate a fully autonomous vehicle on the public roads of this state without a human driver*** provided that the automated driving system is engaged and the vehicle meets certain conditions; defines terms; requires insurance and that such vehicle is registered as a fully autonomous vehicle; makes related provisions..

# Controller to Audit DOH in Meeting Requirements of Monitor MMCO Steck A08781

*(A: 1/7/26 referred to governmental operations)*

- Directs the *state comptroller to conduct an audit of the department of health and other agencies to ensure that the agency meets its responsibilities to review and assess Medicaid Managed Care Organizations for compliance* with federal and state requirements to maintain adequate health care providers within network, and to meet mental health and substance use disorder parity requirements.

# Independent Quality Monitors for RHCFS With Deficiencies

## Cunningham A04901; May S9087

*(A: 1/7/26 referred to transportation S:1/7/26 referred to transportation)*

- *To strengthen and clarify the Department of Health's authority to require independent quality monitors in residential health care facilities with serious and recurring deficiencies, and to ensure that monitoring leads to sustained improvements in resident care, staffing, and safety.*
- *Provides for requirements under written corrective plans for residential health care facilities; requires such facilities to make payments to the department for independent quality monitors; provides for minimum staffing and monitoring frequency for such facilities; makes related provisions.*
- This bill amends section 2803-w of the public health law governing the use of independent quality monitors in residential health care facilities. It clarifies when monitoring may be required and establishes clear expectations for what monitoring must include once imposed.

# Confirmation Adoption for Assisted Reproduction-2 or more Named Parents

## Gonzalez-Rojas A04880; Hoylman-Sigal S04555

*(A: 1/7/26 referred to judiciary S:2/6/25 referred to children & families)*

- ***Establishes confirmatory adoptions providing for the adoption of children born as a result of assisted reproduction; allows for more than two persons to be named parents*** of a child; establishes presumed parentage and provides for the challenge and adjudication thereof; repeals certain provisions of the domestic relations law and the family court act relating thereto.

# Increases the Medicaid Savings Exemption

## Kim A1043; Cleare S03554

*(A: 1/7/26 referred to health; S: 1/7/26 referred to health)*

- To amend the SSL to increase savings exemption for eligibility for Medicaid.

- Section 1. Subparagraph 4 of paragraph (a) of subdivision 2 of §366 of the social services law, as amended by §3 of part AAA of chapter 56 of the laws of 2022, is amended to increase savings **from 150%** of the income amount permitted under subparagraph (7) of this paragraph, ... **to \$300,000.00; and**
- Subparagraph (5) of paragraph (c) of subdivision (1) of §366 of the SSL, as amended by chapter 583 of the laws of 2023, also amended as to a disabled individual at **least 16, but under the 65, who: would be eligible for SSI but for earnings in excess** of the allowable limit and net available income not in excess of 250% of the applicable federal income official poverty line...;has household resources, as defined in paragraph (e) of subdivision (2) of §366(c) of this title, other than retirement accounts, increased **from ...150% of the income** amount permitted under subparagraph (7) of paragraph (a) of subdivision (2) of this section, for a 1 or 2 household **to.. \$300,000.00...**

# NYC The "Fair Share Act"

Liu S08577; Forrest & Burdick A08953

*(Introduced)*

- Enacts the "fair share act"; authorizes cities imposing city personal income taxes to adopt and amend local laws imposing ***an additional tax of 2% on the annual city taxable income of city residents, estates and trusts reporting any return in excess of \$1,000,000.***

# Enacting COVID -19 the Justice for Nursing Home Victims Act Kim A00896

*(1/7/26 S; A: referred to judiciary)*

- Relates to enacting the Justice for Nursing Home Victims act; creates a nursing home resident COVID-19 ***compensation program to provide full compensation to any nursing home resident or their statutory beneficiary when COVID-19 caused or contributed to such resident's death***; provides the responsibilities of a nursing home during a pandemic; provides for the repeal of such provisions upon the expiration thereof.

# Requires Medical Facility Obtain Express Prior Written Consent Before Filming &/or Broadcasting Images of Patient's Medical Treatment.

**Krueger S00555; Braunstein A06954**

*(S1/29/26 - advanced to third reading; A:1/7/26 - referred to health)*

- Relates to requiring a medical facility or related service to obtain express prior written consent before filming and/or broadcasting of visual images of a patient's medical treatment..

# Senior's Credit for Property Taxes

## Ashby S05375; Walsh A00452

*(1/7/26 – S: referred to budget and revenue; A: referred to ways and means)*

- Establishes the retire strong ***tax credit for certain individuals age 65 or older***; authorizes a tax credit amounting to half the qualifying real property taxes paid by such individual for the taxable year, ***up to \$6,500***.

# Extends Confidentiality Privileges To Certain Communications To Or From A Licensed Mental Health Counselor

**Bronson A03906 Brouk S01725**

*(1/7/26 A: referred to judiciary)*

- The purpose of the legislation is to include licensed mental health
- counselors among the professions for which confidential communication is
- provided. It extends confidentiality privileges to certain communications to or from a licensed mental health counselor in the course of such licensed mental health counselor's professional employment, and to certain employees of such licensed mental health counselor; provides exceptions thereto.

# A Bill To Repeal New York State's Estate Tax Walsh (MS)A00498; Tedisco S01135

*(A: Ways and Means Committee S:referred to Budget and Revenue)*

- New York's estate tax penalizes family owned and closely-held businesses throughout the state which has caused a state wide exodus of many of our brightest business minds and the capital they possess to other states within the country. This is the very capital necessary to create new technologies, new businesses, and new jobs.
- In 2004 the National Bureau of Economic Research revealed that a 1 percent differential in estate tax rates was associated with a 4 percent reduction in the number of residents in a given state. Eliminating the estate tax will encourage residents to remain in New York and continue living and doing business herein the Empire State.

# A Bill to Increase NY Estate, Gift Tax & Create Inheritance Tax

## Solages AO2049; Brisport S00914

*(S: 1/7/26 to budget & revenue committee A: to ways and means committee)*

- To amend the tax law to reform the estate tax rates and brackets, ***introducing a gift tax and a tax on gifts and inheritance.***
- This bill ***lowers the estate tax threshold***, with progressive marginal tax rates applying to estates worth more than ***\$750,000***, ***imposes a gift tax***, modeled on the federal gift tax, on individuals who give gifts in excess of the lifetime exemption limit, which is equal to the zero-rate bracket for the estate tax (\$ 750,000). Lifetime gifts are treated as part of the estate when estate tax liability is determined, as in the federal estate tax. ***The gift tax imposed on giftors, however, would not include, in taxable gifts, any gifts that are subject to tax on the giftee, as discussed next.***
- The bill ***also treats inheritances & gifts as income to the recipient.*** Inheritance income would be taxed under the rates specified ***with a credit available for estate tax paid on the same*** amount of property. The inheritance tax would be imposed on inheritances of more than ***\$250,000 and receipt of gifts more than \$ 50,000 in a year***

# Extending Effectiveness of Estate Tax Treatment of Dispositions To Surviving Spouses Who Are Not United States Citizens To 7/1/28 Cooney S08317

*(Senate Referred To Rules; To Assembly Ways and Means Committee)*

- Extends the effectiveness of the estate tax treatment of dispositions to surviving spouses who are not United States citizens to July 1, 2028.
- The purpose of this bill is to extend Chapter 538 of the laws of 2013 which will expire if not acted on. Under the federal estate tax, an estate is not entitled to marital deduction for a non-U.S. citizen surviving spouse unless a bequest passes to a qualified domestic trust. To create a qualified domestic trust in absence of federal estate return for New York estate tax purpose is time consuming and tremendous burden. ***The bill will ensure that filing of a qualified domestic trust is unnecessary when a federal estate tax does not require filing of such trust.***

# NY Imposition of Additional Tax on Long Term Capital Gain

Kim (MS) A.B. 676; Rivera S.B. 1439

*(A: 1/7/26 referred to ways and means S:1/0/26 referred to budget and revenue)*

- The purpose of this legislation is to ***amend the New York tax law to introduce an additional tax on investment income (capital gains)***, for the purposes of ***correcting the unfair federal tax benefit for income earned from investing rather than working.***
- For instance, the highest federal income tax rate on ordinary income is 37%, while the highest federal income tax rate on long-term capital gains is 23.8%. ***A New York taxpayer in this bracket would pay a 13.2% additional tax on his or her long-term capital gains***, so that the combined rate of federal, state, and local tax does not differ between ordinary income and long-term capital gains. The additional tax also applies to dividends, and any other kinds of income taxed at long-term capital gain rates.

# Billionaire Mark-To-Market Tax Act

## Ramos S0165 Kelles A03632

*(1/7/26 – S; referred to budget and revenue; A: - referred to ways and means)*

- ***Establishes a billionaire mark-to -market tax taxing residents with one billion dollars or more in net assets.***
- Today, people pay taxes on stocks and other assets only when they sell them. They do not pay annual taxes on the increased value of these assets and often never sell them and pass them on to their spouses at death on a stepped up basis. Moreover, ***the Mark-to-Market Tax would tax the increase in value of billionaires assets at the same rate as other income 10.9%.***
- ***While New York State's constitution does not permit an "ad valorem tax on intangible property," a Mark-to-market tax is not an ad valorem.tax. An ad valorem tax would tax a billionaire who started and ended 2021 with 1 billion dollars in wealth, a mark-to-market tax would treat the \$ 1 billion gain like income.***

# Credit Shelter Trust Formula Construed to Include Both Federal and NY Estate Tax

## Dinowitz A.B. 1387

*(To Assembly Judiciary Committee)*

- Amends the EPTL, in relation to *providing a presumption that credit shelter bequests be construed to set aside the maximum amount that may be shielded from both federal and state estate taxes.*
- Would *require a proceeding to override* the presumption.

# Patient Privacy Protection Act; Prohibits Ex-parte Interviews Health Care Provider

Dinowitz A01215

*(1/7/26 A: referred to judiciary)*

- Enacts the "patient privacy protection act"; ***prohibits ex-parte interviews of other party's treating physicians or health care providers in personal injury, medical, dental, or podiatric malpractice, or wrongful death actions.***

# Rename New York Courts

## Skoufis NY S06049;Lavine A08437

*(NY: referred to judiciary A1/30/26;S2/3/26)*

- ***Renames the Courts as follows:***

- Supreme Court the Superior Court
- The Court of Appeals the Supreme Court.

# Joint Accounts

## A08549

*(A: 2/25/26 referred to codes)*

- Enacts provisions for the establishment and administration of joint accounts and non-survivorship accounts; provides for account agreements, payments during lifetime, and liability; provides for notice, competing claims, and court orders; defines terms; makes related provisions.
- Also *clarifies presumptions as to joint v non-joint spousal and non-spousal accounts and convenience accounts and documentation for same.*

# Child Care Savings Account Solages A06176; S05866

*(A; 1/7/27 referred to ways & means; S: 1/7/26 referred to investigations & government operations)*

- Establishes authority for *early childcare savings accounts to provide tax benefits for savings for qualified childcare services*; provides for the functions and powers of the comptroller; provides for the program requirements and limitations.

# A NY Prepay Tuition Plan Gounardes S02495

*(S;1/7/26 referred to higher education )*

- ***Establishes the New York state pre-paid tuition plan*** by which a person may contribute to an account for the pre-payment of college tuition, tax free..

# Autism Spectrum Noted on Driver's License Sayegh A2672; Comrie S08014

*(A; 1/7/26 referred to transportation; S:1/7/26 referred to transportation)*

- ***Introduced in 2023 NY A.B. 213***
  - AN ACT to amend the vehicle and traffic law, in relation to ***including if a person has autism spectrum disorder on his or her driver's license.***

# Notification of Trustees & Beneficiaries when POA Signed

## CarrollA08430; Skoufis S04549

*(Both A&S: 1/7/26 referred to judiciary)*

- § 5-1515. Duty to notify other trustees and beneficiaries.
  1. when a ***principal, who is a trustee*** of a trust, ***signs a power of attorney*** which ***allows the agent to affect such trust*** and the ***agent is not a co-trustee*** of such trust, the ***principal shall make a good faith effort to identify and notify in writing all other co-trustees*** of the signing of a power of attorney and identify the person assigned as the principal's agent.
  2. when a ***principal, who is a beneficiary*** of a trust, ***signs a power of attorney*** and the ***agent is not a co-beneficiary*** of such trust, the ***principal shall notify in writing*** all other ***co-beneficiaries*** of the signing of a power of attorney and identify the person assigned as the principal's agent. If the principal cannot identify or contact a co-beneficiary after good faith efforts were made, the principal must attest to the efforts made to identify and/or contact co-beneficiaries.

# TOD Farm Implements

## Skoufis S03277; Woerner A09232

*(1/7/26 S:referred to agriculture A: referred to governmental operations)*

- Establishes a process for designating transfer-on-death beneficiaries for farming implements involving filing a document with the commissioner of agriculture and markets..

# Disqualification of Surviving Spouse if Marriage Annulled/Voided After Death

Braunstein A07069; Hoylman-Sigal S04999

*(A&S: 1/7/26 referred to judiciary)*

- Provides:
- (2) A final decree or judgment of annulment or declaring the nullity of a void marriage or dissolving such marriage, recognized as valid under the law of this state, is issued before or after the deceased spouse died. For the purposes of this section, ***in the event any such decree or judgment is issued after the deceased spouse died, the marriage shall be deemed a nullity immediately prior to the death*** of such spouse.

# Increase the Value Motor Vehicle Exempt from a Will or Intestate Distribution. Holyman-Sigal S08367; Carroll A08306

*(Referred To Rules)*

- Section 1. *Subparagraph 5 of paragraph (a) of section 5-3.1 of the estates, powers and trusts law*, as amended by chapter 437 of the laws of 2010, is *amended to read to increase exemption for one motor vehicle not* exceeding in value [twenty-five] *FIFTY thousand dollars. ....*

# Relates To Establishing New Fee Rates For Large Estates

## Sepúlveda S05278; Carroll A08306

*(Partisan Bill delivered To Assembly S:reported &committed to finance)*

- AN ACT to amend the surrogate's court procedure act, in relation to establishing new fee rates for large estates:

| Value of Estate or Subject Matter            | Fee Rate         |
|--|------------------|
| • Less than \$10,000 .....                   | 45.00            |
| • 10,000 but under 20,000 .....              | 75.00            |
| • 20,000 but under 50,000 .....              | 215.00           |
| • 50,000 but under 100,000 .....             | 280.00           |
| • 100,000 but under 250,000 .....            | 420.00           |
| • 250,000 but under 500,000 .....            | 625.00           |
| • 500,000 [and over] BUT UNDER 750,000 ..... | 1,250.00         |
| • <b>750,000 BUT UNDER 1,000,000 .....</b>   | <b>1,875.00</b>  |
| • <b>1,000,000 BUT UNDER 2,000,000 .....</b> | <b>2,500.00</b>  |
| • <b>2,000,000 BUT UNDER 3,000,000 .....</b> | <b>5,000.00</b>  |
| • <b>3,000,000 BUT UNDER 5,000,000.....</b>  | <b>7,500.00</b>  |
| • <b>5,000,000 AND OVER .....</b>            | <b>10,000.00</b> |

# Permits Courts To Award Punitive Damages Against An Estate For Sexual Abuse

Myrie S08624: Jackson A10046

*(Introduced S12/19/25; A1/30/26)*

- An act to amend the civil practice law and rules, in relation to *permitting courts to award punitive damages against an estate for sexual abuse.*
- This bill seeks to codify the principle that *victims of abuse should not be robbed of vindication by the death of their abuser, nor should an estate escape liability where that very estate may have helped facilitate abusive conduct.*

# Permits a CFO of a County/Public Administrator, When Controlling Disposition of Remains to Select Cremation.

## Paulin A07894

*(NY: S 2/11/26 NY Rivera S07457 replaced with Assembly Bill; A; Engrossed and returned to Assembly 1/27/26)*

- ***Permits a chief fiscal officer of a county or a public administrator***, when having the right to control the disposition of the ***remains of a decedent*** and acting reasonably and in good faith, to, without civil liability, ***select cremation*** or natural organic reduction as the method of disposition for such decedent ***where the financial resources of such decedent are limited*** and such disposition is selected with the reasonable belief that the method is consistent with the religious practices of the decedent.

# Should Kids Help Preplan Your Funeral?



CS627093

“No wonder these grave plots  
the kids got us were so cheap.  
They’re timeshares!”

# Proof of Lost or Destroyed Trusts

## Levine A03381;S07498

*(Senate Referred to Judiciary 4/21/25)*



# Proof of Lost or Destroyed Trusts

## Levine A03381;S07498

*(Senate Referred to Judiciary 4/21/25)*

- Provides statutory provisions for proving and establishing lost or destroyed lifetime trusts.
- There are currently no statutory provisions for proving and establishing lost or destroyed lifetime trusts under the SCPA. ***New York law contains provisions for proving and probating lost or destroyed wills and testamentary trusts established thereunder (see SCPA § 1407), however, there are no parallel provisions for proving and establishing lost or destroyed lifetime trusts.*** The need for a clear mechanism to establish a lost lifetime trust has become increasingly important with the use of lifetime trusts as will substitutes becoming more prevalent.

# Prevent Convicted Elder Abuse From Inheriting From Victim

**Bronson A03328; Brouk S01015**

*(1/7/26 referred to judiciary)*

***Prohibits an individual convicted of a crime involving elder abuse from inheriting from the elder's estate as a distributee.***

# Prohibits Distributive Share To Sex Offender

## Barclay A00048

*(1/7/26 - referred to judiciary)*

- *To prevent a person from inheriting certain property if he or she has ever been convicted of a sex offense where the victim was the decedent.*
- The estates, powers and trusts law is amended to add a new section 4-1.7.
  - (a): Prevents a sex offender from inheriting from the victim/decedent of their sex offense.
  - (b): Disqualifies a sex offender, who might be entitled to Inherit from the victim/decedent of their sex offense, as if the sex offender had predeceased the victim.

# Who Can Be A Voluntary Administrator

## Sepulveda S05285; SteckA06280

*(S: Engrossed referred to judiciary 2/11/26 ; A:1/7/26 referred to judiciary)*

- Relates to persons who may become a voluntary administrator; includes fiduciaries of a deceased distributee, or a competent adult who is not a distributee upon the filed consent of all competent distributees as persons who can become a voluntary administrator prior to the chief fiscal officer of the county becoming such.

# Allows Family of Deceased to Enter Apartment for 60 Days

Rosenthal A01413

*(referred to housing)*

- § 232-d. Sixty day period to access deceased tenant's rented property. A landlord shall ***allow for access to a deceased tenant's rented property by the tenant's family or friends for sixty days following the death*** of the tenant. The estate of the tenant shall be liable for rent due for the sixty day period, unless an agreement either express or implied is made providing otherwise.

**New York  
Cases of Interest**

# Surrogate Court finds Valid Marriage Even Though No Marriage License

- *In Re Farraj, 900 N.Y.S.2d 340 (2nd Dept, 2010)*
- The couple participated in a *religious ceremony in NJ. Following the ceremony, the parties immediately resided in New York & held themselves out to be a married. 4 years later, the decedent died intestate and letters of administration were issued to his son from a previous marriage. Wife filed a petition to compel an accounting. Son filed to dismiss on the grounds she lacked standing as the marriage between the parties was void, since they had failed to obtain a marriage license prior to their religious ceremony in NJ rendering a "purported marriage absolutely void." N.J. Stat. Ann 37:1-10. Surrogates Court denied the appellant's motion, finding that a valid marriage existed despite their failure to obtain a marriage license. The appellant subsequently appealed and the 2nd Dept. affirmed finding NY had the most "significant relationship" to the marriage and so NY law applied to determine the validity of the marriage.. NY is the home state of the children & parties while married. NY recognizes a religious ceremony as a valid marriage even when the parties "do not obtain a marriage license". NY Dom. Rel. Law 25. The fact that the parties failed to obtain a marriage license does not void the marriage between the parties.*

# 17-A Guardian Allowed to Make Charitable Gift

- *In re I.G., 2025 NYLJ LEXIS 3583; 2025 LX 552100*
- *The Ward* at the age of 4 months, received a vaccine developed severe epilepsy. Letters of guardianship of the person & property were issued to her parents and Ward was awarded a settlement from the Vaccine Act. 2 annuities were purchased on her behalf, initially received \$13,000 in monthly and out-of-pocket expenses of \$4,000. *She now receives \$31,000.00 per month and monthly expenses of \$17,850.00. She has amassed an estate of approximately \$8,000,000.00.*
- *Petitioners wish to withdraw \$100,000.00 from the guardianship estate to make a charitable donation to her/heir church. Their attorney and accountant advised them to incorporate charitable giving to offset the estate's realized gains. The ward attends the church regularly and she enjoys being part of the church community. They state that the donation would be restricted for uses that would honor the ward and would be consistent with the church's mission. In particular, they propose to fund repairs to an elevator, the front steps, and entry areas, all to increase safety and accessibility. They also propose to direct that the remainder of the funds be used for acts of charity, emergency medical funds, and to support the youth ministry.*

# 17-A Guardian Allowed to Make Charitable Gift

- ***In re I.G., 2025 NYLJ LEXIS 3583; 2025 LX 552100***
  - Court stated unlike Article 81 of the MHL, in which the relief granted is closely tailored 17-A. is an entirely plenary guardianship where the plain language of 17-A does not grant a court authority/discretion to limit/tailor scope of guardianship to the individual's specific areas of need. ***But, the Court of Appeals has long recognized the inherent discretion that the SCPA implicitly vests Surrogate's Court for matters within its jurisdiction. As a court of limited jurisdiction, may exercise only the powers conferred upon it by statute & those powers incidental, inherent or necessary to do justice & that treating silence in a statute as a limit on the Surrogate's broad discretionary authority would vitiate the third statutory directive. Surrogates have found that 17-A guardians have the inherent power to give gifts of ward's funds in circumstances and have the power to engage in tax saving transactions.***
  - ***In determining to allow a 17-A guardian to make a gift, courts have relied on the doctrine of substitute judgment holding that in 17-A guardianship "the court must employ an objective standard & inquire as to what a reasonable & prudent person would do in the circumstances" . Generally, a gift from the estate of the ward will be authorized if the court determines: (1) the ward does not require the funds for maintenance and support; and (2) the ward would be likely to make such a gift if she were capable of doing so.***

# Request to Terminate Irrevocable Trust 7-1.19 As Uneconomical, Denied

- *In re Est. of Termination of the Ira Yohalem Irrevocable Trust, 2024 NYLJ LEXIS 2076*
  - *An uncontested proceeding, a co-trustee of an Insurance Trust sought to terminate the Trust as uneconomical pursuant to EPTL 7-1.19 and distribute a portion of the principal to 1 of 2 presumptive remainder beneficiaries, balance to income beneficiary, & dispense with appointment of a guardian ad litem for unborn issue by means of virtual representation pursuant to SCPA 315. The settlor of the Trust is deceased survived by wife, the other co-trustee, 2 adult children, & 2 grandchildren, 1 is a minor. Trust value \$930,000.*
  - *On settlor's death, Trust allocates a portion to a marital trust & rest to residuary trust. The terms are the same: Settlor's wife receives net income in installments for life, she has a 5&5 power & trustee must pay wife principal as they deem necessary for her HEMS. Upon wife's death, remaining balance is paid outright, equally, to settlor's 2 children, per stirpes.*
  - *Virtual representation pursuant to SCPA 315 applied where there is 1) similarity of economic interest between the representor and representee, 2) no conflict of interest, and 3) adequacy of representation. Settlor was survived by a son, with no children and a daughter with two children. The Court found grandchildren and unborn genuinely represented.*

# Request to Terminate Irrevocable Trust 7-1.19 As Uneconomical, Denied

- *In re Est. of Termination of the Ira Yohalem Irrevocable Trust, 2024 NYLJ LEXIS 2076*
  - *Termination* of a trust on the *grounds of economic unfeasibility under EPTL 7-1.19(a)(2) if found that 1) continuation of the trust is economically impracticable, 2) the express terms of the trust do not prohibit* its early termination, *3) early termination would not defeat the specified purpose* of the trust, & *4) such termination serves the best interests of beneficiaries.*
  - Court stated continued administration of a trust is *economically impracticable when its annual administration expenses approach or exceed the trust's annual income or if trust funds are insufficient* to generate meaningful income to income beneficiary. *Petitioner failed to show* continued expense of administering would be uneconomical & funds, *valued at \$930,000, are not minimal. Court also found* early termination was not expressly prohibited by the Trust, it appeared *termination would contravene the Trust's specified purpose of providing for wife for her lifetime.* Courts have found ... a trust's language limits a *trustee's power to invade principal for a lifetime income beneficiary to a "support and comfort standard,"* as opposed to ...unlimited discretion ... *demonstrates the settlor's concern to [keep funds} available for such beneficiary.* See, Dauman, 2006 NY Slip Op 51162[U], \*3.)

# POA Privilege and Decedent

- *Matter of Echtenkamp, 2026 NY Slip Op 50031(U) (Sur. Ct.)*
- In the last few years of her life, *decedent's son, Jonathan, lived with her and helped care for her. On 11/23/2021 decedent executed a POA designating Jonathan as agent. Her Will, dated 2/10/2006, left her estate in = shares to her 3 children, and her son Martin as executor, & Jonathan successor executor. Her daughter Debra petitioned to become administrator CTA of this estate. Martin filed a renunciation to serve as fiduciary & Jonathan opposed. On 12/20/24, Jonathan filed a petition to settle his accounting as decedent's agent. Debra filed objection.*
- In 4/2025, *Debra sought order directing Jonathan to produce all documents he had identified on a privilege log but declined to produce. Court ordered all documents be provided for Court's in camera review . . . The documents at issue are electronic communications between Jonathan, his former attorney in this accounting proceeding & attorney who was decedent's attorney & prepared 2021 Power of Attorney and worked with Jonathan while decedent was alive as decedent's agent.*
- *CPLR 3101 establishes 3 categories of protected materials ...: privileged matter absolutely immune from discovery; attorney's work product, absolutely immune; & trial preparation materials, subject to disclosure on showing of substantial need & undue hardship .*

# POA Privilege and Decedent

- *Matter of Echtenkamp, 2026 NY Slip Op 50031(U) (Sur. Ct.)*
- *"The attorney-client privilege shields from disclosure any confidential communications between an attorney and his or her client made for the purpose of obtaining or facilitating legal advice in the course of a professional relationship. The oldest among the common-law evidentiary privileges... 'fosters the open dialogue between lawyer and client that is deemed essential to effective representation'". The proponent of the privilege has burden of demonstrating communication was a confidential communication predominantly of a legal character between attorney & client for the purpose of rendition of legal advice or services in course of professional relationship & privilege not waived.*
- *Generally, communications between a client & counsel in known presence of a 3<sup>rd</sup> party are not privileged Exceptions exist . . . for communications to counsel through a hired interpreter, or one serving as agent of the attorney or client to facilitate communication. Statements made to said agents retain their privileged character where presence of third parties is deemed necessary to enable attorney-client communication, and the client has a reasonable expectation of confidentiality. E.g., presence of witnesses to execution of Power of Attorney doesn't waive the privilege because presence is necessary & client has reasonable expectation the confidential nature of communication with attorney.*

# POA Privilege and Decedent

- *Matter of Echtenkamp, 2026 NY Slip Op 50031(U) (Sur. Ct.)*
  - *Attorney work product* is generally limited to materials prepared by attorney, while acting as attorney, & *contain his or her legal analysis, conclusions, theory, or strategy*. Includes things naturally considered part, like *interviews, statements, memoranda correspondence, briefs, mental impressions, personal beliefs*.
  - *Debra argues (1) attorney Pohlman not part of legal team & privilege was waived for those communications, (2) Jonathan was not attorney Pohlman's client* as to preparation & execution of Power of Attorney & privilege cannot attach, & *(3) privilege was waived by Jonathan's presence*.
  - *Pohlman, was decedent's attorney & was acting on decedent's behalf through her agent, Jonathan*. as such, those communications on matters relating to the POA and HCP, and actions taken or to be taken under them, *are confidential*.
  - Debra argues, in the alternative, that Jonathan's alleged *self-dealing is a conflict of interest* that requires disclosure of those documents. *The Court found no merit to this argument. Finding the documents protected.*

# POA Privilege and Decedent

- *Matter of Echtenkamp, 2026 NY Slip Op 50031(U) (Sur. Ct.)*
  - Here, certain of the *documents created by Pohlman after decedent's death were sent to Jonathan & Jonathan's attorney at the time, Keith Rosso, Esq., who was representing Jonathan on claims brought against him by Debra* for actions he took as decedent's agent (as reflect in his POA accounting). *These represent a recitation by Pohlman, then-attorney for decedent and Jonathan, about actions taken during counsel's representation of both to the POA and HCP, as well as of related matters pertaining to decedent. These documents were sent to Jonathan's attorney in the POA accounting proceeding and relate to Debra's claims of Jonathan's allegedly improper actions. As such, these 2 documents represent prior counsel explaining to "current" counsel why actions were taken & occurred as they did so that "current" counsel could properly defend Jonathan.* In this posture, both documents constitute attorney work product which is exempt from disclosure. *Here, the successive representation of Jonathan by two attorneys — Pohlman first, then Rosso — on the same underlying legal matter(s) provides a "common legal interest" in which the communications at issue here are privileged and are not disclosable.*

# Termination of 17A Guardian

- *In re Maria M., 2026 NYLJ LEXIS 59; 2026 LX 17482*
  - *Petitioner*, represented by a court appointed attorney, was *previously determined* to be an *individual with an intellectual disability pursuant to SCPA 1750-b* by decree dated June 30, 2010 and letters of guardianship of the person were issued to Maria M.'s parents. Subsequently, *her parents were appointed co-guardians of the property for purpose of pursuing a lawsuit against the school district in connection with a sexual assault on petitioner*. Petitioner now seeks to terminate her guardianship on the grounds that the guardianship is not necessary and is not in her best interest. *Petitioner alleges that since the decree for guardianship of the person was entered more than fifteen years ago, she has matured, become more independent and continued to have the support of her parents when needed. In recognition of these facts, the co-guardians have consented* to the termination of the guardianship. A hearing was held pursuant to SCPA 1754 and 1759.
  - *At the hearing*, the court heard testimony from Maria M. and her mother. *Petitioner testified that she lives independently from the co-guardians with her two-year old son and her boyfriend (her son's father) of 6 years. She also testified that she manages all aspects of the household, including cooking, cleaning and grocery shopping. In fact, she gets her two-year old son ready for school every morning. Petitioner further testified about her ability to manage her and her son's medical care.*

# Termination of 17A Guardian

- *In re Maria M., 2026 NYLJ LEXIS 59; 2026 LX 17482*
- With respect to *finances*, *petitioner testified that she is in charge of her own finances*, and that she pays her bills from the income she earns working part-time at an outreach. Lastly, *when asked about what her plan was in regards to the money in the guardianship account, she testified that she would save half for her son's future and the remainder would be used to pay necessary expenses, and to pay off credit card debts*. The court also heard testimony from the co-guardian, that the circumstances which originally led to the guardianship have changed. *The Guardian explained that she and her husband had initially petitioned for guardianship some fifteen years ago at the advice of petitioner's then psychologist after the sexual assault incident. During their testimony, she acknowledged that petitioner is more than capable. The guardian ad litem recommended that the guardianship be terminated* did not believe the continuation was in Maria M.'s best interests.

# Google Access: Voluntary Administrator

- *In re Est. of Estes, 2026 NYLJ LEXIS 65; 2026 LX 25633*
- *The court granted, in this turnover petition of Lisa Skeen, as Voluntary Administrator of the estate of Charles Estes, an order directing Google to assist in the recovery of decedent's personal digital data as described.*
- *Court found decedent was account holder of a Google account associated with his email address and as Voluntary Administrator, Petitioner has right to obtain the content of decedent's electronic communications to the extent allowed by Article 13-A of EPTL & the Stored Communications Act (as part of the Electronic Communications Privacy Act, 18 USC 2701 et seq.).*
- *Petitioner requested order directing Google to produce decedent's photos, videos, documents, and emails stored in decedent's Google account. The Court directed Google to provide: a catalogue of electronic communications sent or received (EPTL 13-A-1[d]; 13-A-3.2); a list of contacts stored (Matter of Serrano, 56 Misc 3d 497 [Sur Ct, NY County 2017]; EPTL 13-A-1[d]); decedent's calendar (Matter of Serrano, 56 Misc 3d 497); a list of file names stored (EPTL 13-A-3.2); & access to additional digital assets, other than the content of electronic communications, including but not limited to photographs and music. Court found disclosure of these "non-content" digital assets under these circumstances authorized under EPTL 13-A-3.2 & doesn't violate the Electronic Communications Privacy Act. The request by Petitioner for the content of email communications was without prejudice, and Petitioner may apply for further disclosure upon a showing such disclosure is reasonably necessary for the administration of estate (EPTL 13-A-3.1[e][3][D]; Matter of Serrano, 56 Misc 3d 497 [Sur Ct, NY County 2017]).*

# Court Uses Assets of an Irrevocable Trust in Determining Equitable Distribution

- ***CC.S. v. R.H., 2025 N.Y. Slip Op. 51426(U) (Sept. 8, 2025) –***
  - *Case of first impression in NY law. Assets in marital & GST irrevocable trusts created by Husband treated as marital property divorce, primarily because of Husband's control of trust assets & their use trust funds to sustain lifestyle (even though neither were beneficiaries of the trusts). Trust assets were not awarded to either spouse, but court determined Wife was entitled to an amount equal to one-half of the marital property including the trust; she received all the non-trust assets & Husband ordered to pay Wife a sum over ten years.*
  - Husband was Grantor, had exclusive power to remove & replace Trustees at any time for any reason. Also retained right to substitute assets, issued promissory notes in exchange for transfers. They paid income taxes generated by the trust. Reducing marital assets & increasing trust. Husband forgave portions of note at times during marriage, he also formed GRATs transferring marital assets to Trusts & created LLCs, retaining right to remove Managing Director, in his sole discretion. Wife didn't receive salary as Managing Director and he had her appoint him as LLC Advisor so he could trade. Wife wasn't consulted/involved in creation of LLCs, didn't know duties, wasn't advised to seek counsel as to estate planning. They had unfettered use of assets in Trusts, they lived in & used property rent-free, without a lease or written agreement, until he finally wrote one with a 50% discount in rent. His attorney testified he did not follow his advice with respect to rent.

# Court Uses Assets of an Irrevocable Trust in Determining Equitable Distribution

- Husband admitted that he alone decided who to appoint & remove, which assets went into the Trusts, & that he alone set the below-market rents. Trustee, was Husband's close personal friend who did not testify. Husband did not adequately explain why he did not seek court approval for his post-commencement conduct of removing Wife from the LLCs, evicting her from the Trust homes, paying distributions, and decanting the Trusts into new Trusts under Delaware law. He alone signed trust documents on behalf of the younger daughters without notice to, or the consent of, Wife.
- The court's stated cases with equitable distribution of irrevocable trust assets are few and stated it will not divide irrevocable trusts set up during marriage & funded with marital assets, provided the trust is created as a legitimate vehicle for gifting marital property to a third party and the parties are not trustees and have relinquished control over the trust assets. The court will exercise its discretion to consider the value of, and possibly even distribution, where marital assets are held in trusts, under certain circumstances. Like where the trust is a "sham" intending to defraud the other spouse or smuggle assets out of the marital estate.

# Court Uses Assets of an Irrevocable Trust in Determining Equitable Distribution

- The court went on to say even where the trust is irrevocable and there is no proof of economic fault, the court may consider the value of the marital assets placed in such trust in formulating a distributive award, although it cannot direct distribution of those assets. Similarly, the placement of a marital home in a QPRT does not necessarily remove the residence from its inclusion in a distributive award.
- ***The Court stated it cannot dissolve the trusts, and even if it could, dissolution would have catastrophic impact on the tax plan, loss of creditor protection, etc. Therefore, it is interested in retaining and maintaining the trusts but including the value of their assets in the marital estate.*** Court Awarded to Wife of all of the non-trust assets & a distributive payment in the sum of \$35,776,187, takes into consideration that the majority of the assets are illiquid, as they are held in the Trusts and cannot be distributed In order to make the \$35,776,187 distributive payment (which will be made over time), if needed, Husband can borrow against trust assets to provide funds for himself under his expanded powers over the Property Trust. He can pay back any loan from income he earns as Investment Advisor and partner in ETC.

# Court Uses Assets of an Irrevocable Trust in Determining Equitable Distribution

CS657285



"APPARENTLY THEY MADE AN EXCEPTION IN HIS CASE, AND HE TOOK IT ALL WITH HIM."

# Appeal from IRS Denial of Zero Out GRATs

- ***Elcan v. Commissioner, Tax Court Docket No. 3405-25 (Petition filed 3/14/25 - case pending).***
  - The ***Grantor created GRATs and subsequently exercised substitution powers various times*** to obtain cash from the GRATs and at other times to re-acquire general partnership interests and S corporation stock that had been contributed to the GRATs. ***Notes from the granter received by the GRATs in the substitution transactions were subsequently distributed to the granter to satisfy required annuity payments.*** The IRS issued deficiency notices to each spouse for \$306,929,994 gift tax and \$61,385,999 penalties, for total deficiencies of over \$736 million. ***The notices of deficiency stated that the initial gifts to the GRATs were taxable gifts in their entirety because the grantor's retained annuity interests were not qualified interests under §2702. Alternatively, if the retained interests are determined to be qualified interests, the transfers of the grantor's notes to the GRATs in substitution transactions in which the granter re-acquired partnership interests and stock that had been contributed to the GRATs were taxable gifts. 20% accuracy-related penalties*** were assessed under §6662 because the ***underpayment was due to negligence or disregard*** of the rules and regulations. The IRS's Answer was filed July 9, 2025; it gives no further insight as to the rationale for the gift conclusions in the deficiency notices. *Elcan v. Commissioner, Tax Court Docket No. 3405-25 (Petition filed March 14, 2025).*
  - ***This case is pending***


# Estate Planning Thoughts:

- “A wealthy man dies & leaves \$10 million dollars, 1/5 to his wife, 1/5 to his son, 1/5 to his butler, and the rest to charity. What does each get?”
- “A lawyer!”
- Some more humor...



# www.Fincen.gov

The screenshot shows the homepage of the U.S. Financial Crimes Enforcement Network (FinCEN). At the top, there is a dark blue navigation bar with the text "FINANCIAL CRIMES" on the left and "ENFORCEMENT NETWORK" on the right, separated by the FinCEN seal. Below this is a secondary navigation bar with links for HOME, ABOUT, RESOURCES, NEWSROOM, CAREERS, ADVISORIES, and GLOSSARY, along with a search bar. A green banner highlights three main topics: "FBAR Due Date", "AML Act of 2020 Information", and "FinCEN Combats Ransomware". The main content area features a large "Beneficial Ownership Information" section with a globe icon and a brief description of the BOI reporting requirements. Below this are four circular icons representing different services: Beneficial Ownership Information, Money Services Businesses Information, E-Filing, and SAR Statistics. The bottom section contains six more icons representing various resources: Financial Institutions, Need Assistance, International, Statutes & Regulations, Value of FinCEN Data, and Law Enforcement. The footer includes the FinCEN seal and links for Home, About, Contract Opportunities, Resources, Careers, Get News Updates, Contact, Newsroom, and Languages.

**FINANCIAL CRIMES**  **ENFORCEMENT NETWORK**

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**FBAR Due Date** **AML Act of 2020 Information** **FinCEN Combats Ransomware**

## Beneficial Ownership Information


U.S. Beneficial Ownership Information Registry Now Accepting Reports  
January 01, 2024  
*Existing Companies Have One Year to File; New Companies Must File Within 90 Days of Creation or Registration*

WASHINGTON — Today, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) began accepting beneficial ownership information reports. The bipartisan Corporate Transparency Act, enacted in 2021 to curb illicit finance, requires many companies doing business in the United States to report information about the individuals who ultimately own or control them.


FinCEN Issues Analysis of Identity-Related Suspicious Activity  
January 09, 2024

FinCEN Issues Final Rule Regarding Access to Beneficial Ownership Information  
December 21, 2023

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Learn About Reporting Requirements

 **Money Services Businesses Information**  
MSB Registrant Search and MSB Registration

 **E-Filing**  
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**Residential Real Estate Rule**  
**March 1, 2026**



Financial Crimes Enforcement Network

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**RESIDENTIAL REAL ESTATE**

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## Residential Real Estate Rule



**UPDATE [Starting March 1, 2026]:**

The Residential Real Estate Rule requires certain professionals involved in real estate closings and settlements to submit reports to FinCEN regarding certain non-financed transfers of residential real estate to legal entities or trusts.

The Department of the Treasury has long recognized that the illicit use of residential real estate threatens U.S. economic and national security and can disadvantage those that seek to compete fairly in the U.S. real estate market. This reporting requirement is designed to increase transparency in the U.S. residential real estate sector and to combat and deter money laundering.



**UPDATE: FinCEN Announces Postponement of Residential Real Estate Reporting Until March 1, 2026**



Anti-Money Laundering Regulations for Residential Real Estate Transfers rule (Residential Real Estate Rule), available at [www.fincen.gov/rre](http://www.fincen.gov/rre), for further details.

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### WHAT is it?

---

Beginning March 1, 2026, certain changes of ownership in residential real estate must be reported by certain real estate professionals to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). This requirement only applies if **ALL** of the following conditions are met:

- ✓ the property is [residential real estate](#);
- ✓ the property is [transferred without financing](#) from a bank or similar financial institution, such as an all-cash purchase or a gift;
- ✓ the property is transferred to a qualifying [legal entity](#) or [trust](#), such as an LLC;
- ✓ the transfer is not covered by an [exception](#).

The reporting requirement does **not** apply to certain common situations. For example, there is **no reporting requirement** when the homebuyer is an individual or when the transfer is financed (such as with a mortgage). Additionally, FinCEN has [excepted](#) many types of transfers, such as those resulting from death, divorce, or bankruptcy.

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### What is residential real property?

A property meets the definition of **residential real property** if it is located in the United States *and* the property is:

- Real property containing a structure designed principally for occupancy by one to four families;
- Land on which the transferee intends to build a structure designed principally for occupancy by one to four families;
- A unit designed principally for occupancy by one to four families within a structure on land; or
- Shares in a cooperative housing corporation.

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### **E.2. What is a transfer of residential real property?**

A reportable transfer of residential real property is a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property.

A transfer of residential real property is any sale, gift, or other transfer of an ownership interest in residential real property or a cooperative housing corporation evidenced by a deed or other documentation of transfer. If a legal entity or trust is named as a transferee in a deed of transfer of real property, the transfer may be a reportable transfer of residential real property.

[Updated February 13, 2026]

# FinCEN Residential Real Rule



## Quick Reference Guide

### Residential Real Estate Reporting



#### What is a non-financed transfer?

A **non-financed transfer** of residential real property is a transfer that does not involve an extension of credit to all transferees (the entity or entities buying or receiving the property) that is both:

- Secured by the transferred property; and
- Extended by a financial institution subject to anti-money laundering (AML) program requirements and Suspicious Activity Report (SAR) obligations.

Transfers that are financed by a lender without an obligation to maintain an AML program and a requirement to file SARs are treated under the rule as non-financed transfers that must be reported if other criteria making a transfer reportable are met.

# FinCEN Residential Real Rule



## Quick Reference Guide

### Residential Real Estate Reporting



#### What is a transferee entity and a transferee trust?

A **transferee entity** is defined as any person other than a transferee trust or an individual. For example, a transferee entity may be a corporation, partnership, estate, association, or limited liability company.

Statutory trusts, which are trusts created or authorized under the Uniform Statutory Trust Entity Act or as enacted by a state, are also considered transferee entities, rather than transferee trusts, for the purposes of this reporting requirement. There are 16 kinds of entities that are exempt from the definition of a transferee entity.

A **transferee trust** is any legal arrangement created when a grantor or settlor places assets under the control of a trustee for the benefit of one or more beneficiaries or for a specified purpose, whether formed under the United States or a foreign jurisdiction. A transferee trust also includes legal arrangements that are similar to such legal arrangements in either structure or function. However, certain types of trusts are exempted from the definition of a transferee trust.

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



- **Which types of transfers do not meet criteria for a reportable transfer?**
  - A transfer does not need to be reported if it meets any of the following criteria.
  - It is a transfer that is a grant, transfer, or revocation of an easement.
  - It results from the death of an individual, whether pursuant to the terms of a will, the terms of a trust, the operation of law, or by contractual provision.
  - It is incidental to divorce or dissolution of a marriage or civil union.
  - It is made to a bankruptcy estate.
  - It is supervised by a court in the United States.
  - It is for no consideration made by an individual, either alone or with their spouse, to a trust of which that individual, that individual's spouse, or both, are the settlors or grantors.
  - It is made to a qualified intermediary for the purposes of a like-kind exchange (see Section 1031 of the Internal Revenue Code).

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### **I.1. Who is required to file Real Estate Reports?**

The requirement to file a Real Estate Report rests with the reporting person, one of a limited number of persons who play specified roles in the reportable transfer. Only one person in a given transaction is deemed to be the reporting person, and that person is required to file a report.

The reporting person can be identified in one of two ways:

1. By way of the reporting cascade described in the Residential Real Estate Rule (see Question I.2), or
2. By way of a written designation agreement between the persons described in the cascading reporting order (see Question I.8).

# FinCEN Residential Real Rule



## Quick Reference Guide

## Residential Real Estate Reporting



The reporting cascade is as follows:

1. The person listed as the closing or settlement agent on the closing or settlement statement;
2. If no person described above is involved, the person that prepares the closing or settlement statement for the transfer;
3. If no person described above is involved, the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property;
4. If no person described above is involved, the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company;
5. If no person described above is involved, the person that disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer;
6. If no person described above is involved, the person that provides an evaluation of the status of the title;  
or
7. If no person described above is involved, the person that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property, including, with respect to shares in a cooperative housing corporation, the person who prepares the stock certificate.

If none of the above functions are performed for a given reportable transfer of residential real property, then a report is not required to be filed.

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### **H.4. What type of information is reported via a Real Estate Report?**

On the Real Estate Report, the reporting person must submit information necessary to identify:

- The reporting person
- The residential real property being transferred;
- The transferee entity or transferee trust;
- The beneficial owners of the transferee entity or transferee trust;
- Certain individuals representing the transferee entity or transferee trust in the transfer;
- If the transferee is a transferee trust, any trustee that is an entity; and
- The transferor.

The reporting person must also report the total consideration paid for the property, along with certain information about any payments made by the transferee entity or transferee trust.

[Updated February 13, 2026]

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### Filing Deadline

A Real Estate Report must be filed by the later date of:

- The last day of the month following the month that closing occurred; or
- 30 calendar days after the date of closing.

### Have questions?

- Visit [fincen.gov/rre](https://www.fincen.gov/rre).
- Subscribe to FinCEN Updates for key announcements
- Contact us at [fincen.gov/contact](https://www.fincen.gov/contact).

# FinCEN Residential Real Rule



## Quick Reference Guide Residential Real Estate Reporting



### **L.1. What penalties may a reporting person face for violating Residential Real Estate Rule requirements?**

Negligent violations of the rule could result in a civil penalty of, as of 2025, not more than \$1,430 for each violation, and an additional civil money penalty of up to \$111,308 for a pattern of negligent activity. Willful violations could result in a civil penalty of not more than the greater of the amount involved in the transaction (not to exceed \$286,184) or \$71,545. This civil penalty structure generally applies to any willful violation of a Bank Secrecy Act requirement. For more information on civil penalties, see 31 U.S.C. 5321 and 31 CFR 1010.821.

Criminal penalties for willful violations of the rule could result in a term of imprisonment of not more than five years or a criminal fine of not more than \$250,000, or both. For more information on criminal penalties, see 31 U.S.C. 5322.

**Beneficial ownership information reporting  
requirements**

**Corporate Transparency Act 31 U.S.C. 5336**

**Regulations 31 C.F.R. 1010.380**

# Corporate Transparency Act & Beneficial Ownership Reporting Requirement *Generally*

- In 2021, Congress passed the *Corporate Transparency Act (CTA)* on a bipartisan basis. This law *creates a new beneficial ownership information (“BOI”) reporting requirement* as part of the U.S. government’s efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.
- *Financial Crimes and Enforcement Network (FinCEN)* will permit *Federal, State, local, and Tribal officials*, as well as certain foreign officials *who submit a request* through a U.S. Federal government agency, *to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will have access* to beneficial ownership information *in certain circumstances, with the consent of the reporting company.* Those *financial institution’s regulators will also have access* to beneficial ownership information when they supervise the financial institutions.
- *The Law:*
  - **The Statute 31 U.S.C. 5336**
  - **Regulations 31 C.F.R. 1010.380**

# Corporate Transparency Act & Beneficial Ownership Reporting Requirement

## *Who needs to report..*

- FinCEN launched the BOI E-Filing website for reporting beneficial ownership information (<https://boiefiling.fincen.gov>) on January 1, 2024 and updated who is required to report **March 26, 2025** as follows:
- Consistent with the U.S. Department of the Treasury’s March 2, 2025 announcement, the Financial Crimes Enforcement Network (FinCEN) is issuing an interim final rule ***that removes the requirement for U.S. companies and U.S. persons to report*** beneficial ownership information (BOI) to FinCEN under the Corporate Transparency Act.
- In that interim final rule, ***FinCEN revises the definition of “reporting company”*** in its implementing regulations to mean ***only those entities that are formed under the law of a foreign country and that have registered to do business in any U.S.*** State or Tribal jurisdiction by the filing of a document with a secretary of state or similar office (formerly known as “foreign reporting companies”). FinCEN also exempts entities previously known as “domestic reporting companies” from BOI reporting requirements.
- ***For now.....***

# NY LLC Transparency Act (“NYLTA”): S.995B/A.3484 Amended by A.8544 / S.8059

*(December 22, 2023, amended March 1, 2024)*

- Requires certain “LLCs” *formed or authorized to do business in New York (each, a “NY Reporting Company”)* to file a separate BOI report with the New York State Department of State (“NY DOS”) *starting Jan. 1, 2026.* It closely follows the federal statute with important differences.
- *NY must now follow the interim rule issued by FinCEN on 3/26/25 revising definition of a reporting company to only those entities formed under the laws of a foreign country must report.*

# CTA & Real Estate - Generally

THE COMPANY, THE REAL ESTATE, THE STOCK PORTFOLIO... SON, ONE DAY IT WILL ALL BE YOURS. AND THIS CARD OF THE GRUNZEN LAW FIRM, SPECIALIZED ON DEFENDING WHITE-COLLAR CRIMINALS.



# Federal Trade Commission – Issues Non-Compete Clause Rule

*(Rule Issued 4/23/24 Cort Struck Down 8/20/24 now on Appeal)*

- *On April 23, 2024 the Federal Trade Commission (the “FTC”) issued a final rule making most covenants not to compete between employers and their workers illegal and void. The Rule was to have gone into effect on September 4, 2024. However, on Tuesday, August 20, 2024, in an Opinion and Order, a Texas Federal District Court for the Northern District of Texas, set aside the Federal Trade Commission's (FTC) Non-Compete Rule, as promulgated in 16 C.F.R. § 910.1-6 (Rule) mandating that the Rule not be enforced or otherwise take effect nationwide. Ryan LLC v FTC, 2024 US Dist LEXIS 148488 [ND Tex Aug. 20, 2024, Civil Action No. 3:24-CV-00986-E. In setting aside the Rule, the Court found that the FTC exceeded its rulemaking authority in issuing the Rule and that the Rule was unlawful, arbitrary and capricious.*

- *The FTC has appealed that decision, filed (Oct. 24, 2024) (No.24-10951) and has stated the decision doesn't prevent FTC from addressing non-competes on case-by-case enforcement.*

- The FTC April 23,2024 rule:

- [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ftc.gov/system/files/ftc\\_gov/pdf/noncompete-rule.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete-rule.pdf)

# Federal Trade Commission – Issues Non-Compete Clause Rule

*(Rule Revoked FTC will look review on individual basis)*

- **Case-by-Case Enforcement:** Although the blanket ban is dead, the FTC retains authority under Section 5 of the FTC Act to challenge specific non-compete agreements it deems unfair on a case-by-case basis, particularly those involving lower-level employees or agreements that appear exceptionally broad. For example, in late 2025, the FTC finalized a consent order against a large pet cremation company, forcing them to release 1,800 employees from noncompete agreements because the terms were deemed anti-competitive.
- **Alternative Protections:** Firms are encouraged to ensure their nondisclosure and non-solicitation agreements are narrowly tailored to protect legitimate business interests, as these remain the primary legal defense tools to guard against unfair competition in the absence of a federal ban. Employers should focus their compliance efforts on the evolving — and often stricter — patchwork of state-specific employment laws.
- **Employers can continue to use non-competes in most states but must ensure they are reasonable in scope and duration.** Remember, broad non-competes are still being targeted by the FTC on a case-by-case basis.

# **Federal & New York Tax Update**

# One Big Beautiful Bill Act (OBBBA)

- ***OBBBA, (P.L. 119-21 signed into law on 7/4/25).***
- ***Individual Income Tax Provisions***
  - TCJA-era rules permanent.
    - Permanent Tax Brackets: The 7 tax rates (10%, 12%, 22%, 24%, 32%, 35%, & 37%). In 2026, the 10% and 12% brackets receive inflation adjustments.
    - Standard Deduction: Permanently increased and indexed for inflation. For 2026, it is set at \$16,100 for single filers and \$32,200 for joint filers.
    - Personal Exemptions: Permanently eliminated.
    - Child Tax Credit (CTC): Permanently increased to \$2,200 per child & indexed for inflation starting in 2026.
    - Alternative Minimum Tax (AMT): Higher TCJA exemption amounts are made permanent. However, beginning in 2026, phaseout thresholds revert to lower levels (\$500k single / \$1M joint), and the phaseout rate increases to 50%.
    - ABLE– contribution limit for employed lesser of federal poverty Limit for 1 v. comp year.
  - 529 expanded to include post 2ndary credentialing expenses & k-12 expenses, (tutoring & educational therapies) & incr. withdrawal for elementary & 2ndary-\$10,000 to \$20,000. Proper distributions non-taxable.

# One Big Beautiful Bill Act (OBBBA)

- ***New and Temporary Deductions (2025–2028)***
- ***Several new deductions which are set to expire after 2028.***
  - "No Tax on Tips": Those in eligible industries can deduct up to \$25,000 in qualified tips, phases out \$100 for @ \$1000 > \$150,000. Still subject to FICA (SS & Medicare). Lawyers, doctors, accountants, & consultants cannot take deduction.
  - "No Tax on Overtime": Deducts the "premium" portion (the ½ in "time-&a-1/2"), capped at \$12,500 single(\$25,000 joint), phases out at MAGI >\$150,000 single (\$300,000 joint) by \$100 for @ \$1,000 above threshold. Still subject to FICA (SS and Medicare).
  - Senior Deduction: Additional \$6,000 deduction for TP 65+ on top of the standard deduction.
  - Auto Loan Interest: Up to \$10,000 in interest on loans for new, U.S.-assembled autos is deductible.
- ***Itemized and Specialized Deductions***
  - SALT Deduction: The cap is temporarily raised to \$40,000 (2025–2029) for those with MAGI < \$500,000 before reverting to \$10,000 in 2030.
  - Charitable Giving:
    - Non-itemizers can claim an above-the-line deduction of up to \$1,000 (\$2,000 joint) starting in 2026.
    - Itemizers deductions are limited to amounts exceeding 0.5% of AGI starting in 2026.
  - Mortgage Interest: The \$750,000 limit is permanent. Beginning in 2026, mortgage insurance premiums (PMI) are again deductible.
  - The "2/37 Rule" TP in 37% bracket have the tax benefit of ID capped at 35% by reducing allowable ID by 2/37 (roughly 5.4%) of the lesser of total deductions or income above the 37%.

# One Big Beautiful Bill Act (OBBBA)

- ***Estate and Business Provisions***

- BEA - Estate Tax Exemption: Permanently increased to \$15 million in 2026, indexed for inflation.
- Qualified Business Income (QBI) Deduction (199A): 20% pass-through deduction permanent.
- Bonus Depreciation: Section 168(k) qualified property restored to 100% including tangible personal property with a recovery period of 20 years or less, (IRC 168).
- R&E Expenses: Full immediate expensing of domestic R&E costs is restored permanently.
- Opportunity Zones: Investment in economically distressed census tracts allows TP to: (1) defer CG on reinvested gains, (2) partial basis step-up on the deferred gain, & (3) permanently exclude appreciation on the QOF investment if held for 10 years+.
- Special Depreciation Allowance for Qualified Production Property; used Mfg, etc. of a product resulting in substantial transformation 100% deduction of adjusted basis year placed in service.
- Qualified Small Business Stock (QSBS) IRC §1202 - Changed: holding period with tiered 3,4,5 year periods, gain-exclusion caps increased to \$15,000,000 or 10xs basis, and issuer-eligibility goes to \$75,000,000 in assets plus inflation.

- ***New Savings and Excise Taxes***

- Trump Accounts: IRA for minor w/ss#, annual contribution limit \$5,000 until 18. Born 12/31/24-1/1/29 may get \$1,000 from government. 18 is traditional IRA, used for education, home, entrepreneurial ½ for 18-25 education, all at 30. Distributions special taxed v gifts.
- Endowment Tax: Increases the excise tax on large college endowments (per-student assets >\$750k) from 1.4% up to 8%.
- Remittance Tax: A new 1% excise tax on certain electronic fund transfers to foreign countries.

# Federal 2026 Estate, Generation Skipping & Gift Tax Exemptions and Exclusions (BEA)

- **BEA - Exemption 2026** is **\$15,000,000** per person.
  - OBBBA fixes at \$15,000,000 in 2026 plus inflation.
  - The Basic exclusion amount (BEA), commonly referred to as the exemption amount is the same for Estate, Generation Skipping and Gift Tax.
  - **Don't forget about the Federal DSUE/ Portability** Election and Allocation of the GST exemption.
- **Annual Exclusion for 2026** is **\$19,000**.
  - **\$190,000 to a spouse who is not a citizen** of the United States in **2025** (**\$194,000 in 2026**).
  - **Recipients of gifts from certain foreign persons** are required to report gifts under §6039F if aggregate value of gifts received in a taxable year exceeds **\$19,570** (expected to be approximately **\$20,573 in 2026**).

# NY Estate and Gift Tax

- For 2026 the NY Basic Exclusion Amount (NYBEA) is ***\$7,350,000, Top Rate 16%***.
- There is ***No NYS Gift Tax, but estate include gifts made in prior 3 Years.***
  - 3 Year Gift Inclusion. NY CLS Tax §954(a)(3).
  - Governor's 25-26 Budget included provision to make this lookback permanent.
- ***No portability in NYS***, so still need credit shelter style planning.
- ***“Cliff”***: Lose NYBEA exemption if estate >105% exemption (***>\$7,717,500 in 2026***).

- Cliff Planning by use of a “Santa Clause:”

|   |                       |                              |
|---|-----------------------|------------------------------|
| • Net Estate  | \$7,450,000           | \$ 7,450,000                 |
| • Amount to charity   | <u>          -0-</u>  | <u>  (\$100,000)</u>         |
| • Net   | \$ 7,450,000          | \$7,350,000                  |
| • Tax   | <u>  \$ 265,592</u>   | <u>                  -0-</u> |
| • Net to Family   | <u>  \$ 7,184,408</u> | <u>  \$7,350,000</u>         |
| • <b><i><u>Savings \$ 165,592 in tax &amp; increase to family</u></i></b> |                       |                              |

# Disregarded SMLLC with N.Y. Real Property is Included in N.Y. Taxable Estate

- ***TSB-A-15(1)M Estate Tax May 29, 2015***
  - [Is]...a membership interest in a single-member LLC (SMLLC), that is disregarded for income tax, is also disregarded for New York State estate tax purposes.
  - Pursuant to 26 CFR §§ 301.7701-2, ...“A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.” 26 C.F.R. § 301.7701-2(a). Then, per 26 C.F.R. § 301.7701-3(a) ***an entity with a single owner is disregarded as an entity separate from its owner unless it elects to be classified as an association..***26 C.F.R. § 301.7701-3(c)(1)(i).
  - Based on the above analysis, where a SMLLC is disregarded for Federal income tax, it is treated as owned by the individual owner and the activities of the SMLLC are treated as activities of the owner. Therefore, ... an interest in the SMLLC ... would not be treated for NY estate tax purposes as an intangible asset, ***instead, condominium held by SMLLC would be treated as real property held by the decedent for New York State estate tax purposes.***

# Federal Income Tax

- **Trusts and Estates** brackets are compressed and *reach 37% at \$16,250 where individuals reach it at \$640,601.*
  - **Grantor Trust Rules** (See Rev. Rul. 85-131985-1 C.B. 184) treat grantor as the owner of the trust for income tax purposes, and therefore taxed on individuals return and rates, etc. Instructions to 1041 give reporting options, and how to use Grantor's Tax Identification Number for the trust.
- **Capital gains.**
  - The **15% rate**: above \$98,901 for married joint and **\$49,451 for individuals and \$3,300 for trusts and estates.**
  - The **20% rate**: Above \$613,700 for married joint and **\$545,500 for individuals and \$15,900 for trust and estates.**
- **Alternative minimum tax (AMT)** for individuals, exemption is \$140,200 for married joint, \$90,100 for individuals, \$31,400 for trusts/estates. The exemption is reduced by \$0.50 per \$1 once Amt exceeds \$500,000 for individuals and \$1,000,000 for married joint. The AMT rate of 26% applies to first \$244,500 and 28% above that. For corporations it has been repealed. ***Faster phase out under OBBBA so more people subject to it.***

# Federal Income Tax

## Tax brackets, tax rates change and Alternative Minimum Tax.

| <b>Tax Rate</b> | <b>For Single Filers</b> | <b>For Married Individuals Filing Joint Returns</b> | <b>For Heads of Households</b> |
|-----------------|--------------------------|---|--------------------------------|
| 10%             | \$0 to \$12,400          | \$0 to \$24,800                                     | \$0 to \$17,700                |
| 12%             | \$12,401 to \$50,400     | \$24,801 to \$100,800                               | \$17,701 to \$67,450           |
| 22%             | \$50,401 to \$105,700    | \$100,801 to \$211,400                              | \$67,451 to \$105,700          |
| 24%             | \$105,701 to \$201,775   | \$211,401 to \$403,550                              | \$105,701 to \$201,775         |
| 32%             | \$201,776 to \$256,225   | \$403,551 to \$512,450                              | \$201,776 to \$256,200         |
| 35%             | \$256,226 to \$640,600   | \$512,451 to \$768,700                              | \$256,201 to \$640,600         |
| 37%             | \$640,601 or more        | \$768,701 or more                                   | \$640,601 or more              |

# Federal Income Tax

- **Itemized deductions eliminated, limited or modified (continued)**
  - **Medical expenses threshold for 2026 is 7.5% of AGI.**
    - Home Care
    - Assisted Living – (part of cost - consult with Assisted Living Facility)
    - Long Term Care Insurance – Qualified Plan
      - New York permits a credit for 20% of premium paid for qualifying long term care insurance, with a maximum of \$1,500.00 and AGI is below \$250,000
    - Federal Deduction:

| <u>Attained age before end of Year</u> | <u>Maximum deduction for year</u> |
|--|-----------------------------------|
| 40 or less                             | \$500                             |
| More than 40 but not more than 50      | \$930                             |
| More than 50 but not more than 60      | \$1,860                           |
| More than 60 but not more than 70      | \$6,200                           |
| More than 70                           | \$6,020                           |

# Estate Tax Planning Considerations 2026

- ***Tax planning considerations for estates approaching/ in excess of Federal and/or New York BEA.***
  - ***Outright Gifts***
    - Use *Annual Exclusion*
    - Good for *estate freeze*
    - *Lose step up* in basis
    - Watch out for *NY 3year look back & loss of step up for assets pulled back— maybe a 3year GRAT?*
  - ***Spousal Lifetime Access Trust (SLAT).***
    - One spouse makes a gift to a trust for benefit of the other & maybe descendants.
    - ***Be sensitive to matrimonial law issues.***
    - Make sure the *transfer is made entirely from one spouse's property for the other spouse* and avoid *reciprocal trusts*.
    - The *beneficiary-spouse or someone else* can be granted a “*power of appointment*” *exercisable at spouse's death* to *appoint the assets to a trust for donor-spouse* (this may raise a potential "implied agreement" argument under §§2036 & 2038 if the donor's creditors can reach trust under "relation back" doctrine.)
    - ***May*** be useful for *Asset Protection*.

# Estate Tax Planning Considerations 2026

- ***Split Gifts.*** One spouse makes a gift and the other joins in by a “split gift” election which treats the gift as having been made equally by both spouses.
  - ***Make sure both spouse has exclusion available.***
  - This ***does not work if one spouse will be the beneficiary*** of a trust to which the gift is made, ***i.e. a SLAT,***. A spouse cannot split gifts to a trust they are beneficiary of.
  - ***Reallocate assets among spouses*** so that each spouse can take advantage of the exclusion amount.
    - ***However, watch our for Smaldino v. Commissioner issue where the court treated a gift by a spouse to the other followed by gifts to a trust for descendants the next day as indirect gift from the initial transferor spouse, triggering the “step transaction and indirect gift doctrine.”***
- ***Note: IRS updated Form 709 for the reporting of split gifts 2024 and after. Now spouse splitting gifts with donor must file a Notice of Consent & attach to donor’s 709 instead of signing 709.*** The Notice of Consent must be signed & dated by the consenting spouse & state they are electing to treat all gifts to 3rd parties as made one-half by each spouse.

# Estate Tax Planning Considerations 2026

- ***Use Business entities to transfer*** certain assets.
  - ***Gift Non-voting stock and keep voting stock.***
- ***For Hard to Value Assets use “Defined Value Clauses”***
- ***GST Planning.***
  - Donors of large gifts may also consider increase in BEA
- ***Use increase in BEA every year.***
- ***Review Formula Bequests*** to confirm they still achieve the intended result.
- ***Insure Adequate Disclosure Reporting on Gift Tax Returns*** to start the statute of limitations period for the IRS to contest reporting.
- ***Consider Ensuring Your Estate Has Sufficient Liquidity***
  - If you have substantial illiquid assets (such as an interest in a closely held business or real estate) consider use of installment payment under 6166 election and impact of gifts on same and/or Life Insurance in an Trust (“ILIT”) to provide liquidity & keep proceeds outside of your estate for tax.

# Estate Tax Planning Considerations 2026

- **Use Trusts** - Trusts are often used for large gifts, with good reason, as they provide many protections.
  - **“Intentionally Defective Grantor Trust” and income tax burn.**
    - **“Grantor” is owner for income tax but not estate or gift, required to pay tax on trust’s income, transferring that amount free of estate or gift tax.**
      - **Careful:**
        - **Rev. Rul. 2004-64: if a clause in a trust or state law requires this to be reimbursed trust is includible in estate §2036(a)(1), discretionary power (NY Law) by itself is not a problem unless exercised.**
        - **Rev Rul 2023-2 no “step up” in basis .**
      - **The grantor also can sell assets to the trust in return for a low-interest promissory note, there’s no income tax since grantor is treated as sale to self and benefit if trust income & appreciation exceeds note the interest rate. Consider “GST Exempt Dynasty Trust.”**
    - **Use of “Beneficiary Owned Trust”**
    - **Use of non-grantor trust – income tax charitable giving maybe be better.**

# Estate Tax Planning Considerations 2026

- ***Consider the Step Up/Down in Basis When Planning.***
  - ***“Upstream Planning”***
    - ***if family member has unused exemption transfer assets to them or grant GPOA. Donor cannot get back for 1 year - maybe trust for donor.***
    - ***Existing Trust, if trust provides, grant a GPOA or a formula GPOA to a beneficiary, see PLR 202206008; or trigger “Delaware Tax Traps”.***
- ***Consider Liquidating IRA’s during life & pay the tax to reduce estate.***
  - ***Note, IRD (IRAs, etc.) is subject to estate tax without reduction for inside income tax. IRC 691(c)-beneficiary reporting income gets deduction for estate tax paid attributable, but “estate tax” is only Federal (IRC 2001/2101, not state.***
- ***Particular to NY estate in excess of BEA***
  - ***Consider buying out of state real property to reduce & avoiding 3 year LB***
  - ***Santa Clause***
  - ***NY only QTIP election - TSB-M-10(1)M Estate Tax 3/16/2010 allows a NY QTIP where no Federal 706 required; but if Federal 706 required QTIP both.***
- ***Consider a 15 month Marital Trust v. Disclaimer.***

# Revenue Ruling 2023-2: No Step up in Basis for Assets in a “Intentionally Defective Grantor Trust”

- This *Revenue Ruling* states that there is *no basis adjustment under section 1014 since it generally does not apply to the assets* of an irrevocable grantor trust *not included* in the *deceased grantor’s gross estate for Federal estate tax* purposes.
- *Section 1014(a) provides generally that the basis of property in the hands of a person acquiring the property from or passed from a decedent .... is adjusted to the fair market value at the date of death.* Section 1014(b) describes 7 categories of assets.
- *Some planners maintain assets in a “Defective Grantor Trust“ should receive a basis adjustment at grantor's death since until that time the assets were deemed owned by the grantor for income tax purposes* (see Rev. Rul. 85-13, 1985-1 C.B. 184), and *after grantor's death* they are "*acquired from a decedent*" by someone else.
- *Question, does the ruling only to sales to Grantor Trust(s)?* Since the *ruling said it addresses an asset transferred to the trust in a transaction that was "a completed gift for gift tax purposes"* .

# Belmont Investments, LLC. v. Comm- Challenge to Revenue Ruling 2023-2 Seeking Step up in Basis for Assets in a “Intentionally Defective Grantor Trust”

- In this case *spouses created joint grantor trust* with community property & divided the trust into separate trusts representing the contributions of each grantor at the first spouse’s death. *Belmont Investments, LLC. v. Commissioner, Tax Court Docket No. 14039-25 (Petition filed October 3, 2025).*
- Since each trust was a *grantor trust under §675, each deemed owners for federal income tax purposes. Upon their deaths* they each *no longer held the power to reacquire trust corpus by substitution*, and thus, *each* trust was *no longer a grantor* trust with respect to the portion of the trust property contributed by each of them. *Petitioner claims that, upon their deaths, one-half of the assets held by each grantor trust was deemed transferred* to a non-grantor trust for federal tax purposes. Petitioner’s position is that this deemed transfer *satisfies the requirements of §§ 743(b) and 1014*, entitling the partnership to a basis adjustment at death. (“Step-up”).
- *This case is pending.*

# Elect Portability

- ***Rev. Proc. 2022-32, 2022-30 I.R.B. 101 - 5 year rule***
  - ***The IRS has extended from 2 years to 5 years*** the length of time after a predeceased spouse's death that an extension of time ***to elect portability can be made without a letter ruling***. The rules related to requesting the extension are the same under the 5 year rule as they were under the 2 year rule.
- ***Miscellaneous Notes on Portability***
  - A ***Nonresident Surviving Spouse Not A Citizen*** of the U.S, may ***not*** take into account the DSUE amount of a deceased spouse, ***except*** to the extent allowed by ***treaty***.
  - ***Last Deceased Spouse Limitation***
    - ***The last deceased spouse is the most recently deceased person*** who was married to the surviving spouse at the time of their death. This is ***determined as of the day a taxable gift is made, or*** in the case of a ***transfer at death***, date of the ***surviving spouse's death***.
    - ***Remarriage does not affect, or prevent, the surviving spouse from applying the DSUE*** amount to taxable transfers. When a taxable gift is made, the DSUE amount received from the last deceased spouse is applied before the surviving spouse's basic exclusion amount.
    - A ***DSUE*** amount ***of a predeceased spouse may not be applied after the death of a subsequent spouse***.

# Qualified Charitable Distribution (“QCD”) IRC 408(d)(8) & Secure 2.0

- *Allows taxpayers age 70½ and older to transfer up to \$108,000 annually from their IRA directly to a qualified charity without having to recognize the income. For those 73 and older the distribution also counts towards this years RMD.*
- The SECURE Act did not change this.
- *Not permitted to transfer to donor-advised funds, supporting organizations or private foundations.*
- Under the SECURE Act, QCDs need to be reduced by any post-age 70 ½ IRA contributions.
- *Section 307, One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation.* Section 307 expands the IRA charitable distribution provision to allow for *a one-time, \$50,000* distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts,.

# Donating Crypto Of \$5,000 Or More Requires Qualified Appraisal

- Unlike publicly traded securities, a *donation of crypto currency that exceeds \$5,000 will require a qualified appraisal*. Wait, aren't crypto currencies actively traded, with the ups and downs of their prices making headlines? The answer is that neither the IRS nor the SEC has taken any official position to treat cryptocurrencies as securities. In fact, the *IRS has designated cryptocurrency as property and not currency*.
  - A “qualified appraisal” must meet IRS requirements, who is an appraiser who has met education & experience requirements and are usually licensed/certified in state where property is located.
  - Appraisal must be no more than 60 days prior to the donation & no later than due date of tax return including extensions. The appraisal is reported on Form 8283 & appraiser must.
  - It can be challenging to find a crypto appraiser, investors may turn to their financial institutions, advisor, charities or donor advised funds and planned giving resources as a resource.
- *Confirmed in Ruling of 1<sup>st</sup> impression by IRS Office of Chief Counsel*
  - *Internal Revenue Service Memorandum Number: 202302012 Release Date: 1/13/2023* – Failure to obtain a qualified appraisal will result in a denial of a Charitable Deduction

## §2036 & Gifting of Non-Voting Stock

- ***Stay in control and give away non-voting stock.***
- ***Ltr Rul 9004009, October 26, 1989, states in order for section 2036(b) of the Code to apply to a transfer, the transferor must retain voting rights directly or indirectly over the actual shares of stock transferred. If, however, the shares are nonvoting shares, retention of the voting rights over the shares not transferred will not taint the transferred shares.*** Accordingly, section 2036(b) did not apply where stock was same in all rights other than voting and Donor retained voting. See also Prop Treas Reg § 20.2036-2(a).
- ***S Corporations may have differences in voting rights.*** See, IRC 1361(c)(4).
- ***However, for noncorporate entities, cases have suggested the ability to control distributions or dissolution may trigger estate inclusion.*** For clients who want to keep as much control as possible, the planner may want to start with the client having control of investment & distribution decisions for entities but eventually give up control over these decisions (hopefully more than three years before death).

# IRS Issues Long-Awaited Proposed Regulations on Donor Advised Funds

*(Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966 [88 Fed. Reg. 77922 (11/14/23)])*

- ***Donor Advised Funds (DAFs) have existed since 1930s with no tax rules until the Pension Protection Act of 2006 (PPA), creating restrictive & complex excise tax regime to guard against abuses adding excise taxes for transaction with, and benefits received by, donors, donor-advisors & certain distributions.***
  - ***§4958 - 25% excise tax*** on excess benefit transactions, including ***compensation payments to donor or advisor*** of donor.
  - ***§4966 - 20% excise tax*** on each ***"taxable distribution"*** from a DAF, and
  - ***§4967-125% excise tax*** on transactions providing more than incidental benefit to the donor or family.
- ***Proposed reg***
  - ***Do not address incidental benefit issues under §4967.***
  - ***Interpret the definition of DAF & advisory privileges under §4966 broadly.*** Charities establishing separate funds need to exercise caution when permitting advisory privileges to avoid inadvertent creation of a DAF, particularly if DAF classification would prevent it from being used for its purpose.
- ***IRS proposed that compensation from DAF to advisor who advises the donor regarding DAF & also investment advice to donor personally would be an "excess benefit" subject to 25% excise tax per §4958 unless advisor provides advice to the supporting organization of DAF as a whole.*** This provision has been widely criticized.

# Can DAF Terminate Donor's Advisory Privileges

*Status: Pending; Complaint filed January 2026*

- ***Peterson v. Christian Community Foundation, Inc. (d/b/a WaterStone), No. 1:26-cv-00179 (D. Colo. filed /15/26) Colorado U.S. District. Do advisory privileges carry legal content, & can a sponsor suspend/disregard those privileges at will & does good faith, etc. weigh in.*** This case alleges improper termination of a advisory privileges in a DAF, which while nonbinding, may be legally enforceable and a sponsoring organization must respect & administer in good faith, ***DAF agreements & acknowledgments must recite sponsoring organization has “exclusive legal control” over assets*** for tax purposes but sponsors nearly usually honor donor wishes.

- ***A. Statutory Structure of DAFs and Advisory Privileges:*** DAFs are charitable tax exempt vehicles administered by “sponsoring organization.” Donor establishes by contributing to the sponsor, gets a charitable deduction & may recommend distributions to charities. Tax rules: DAF must be owned & controlled by sponsoring organization; charitable deduction is conditioned on donor's relinquishing of dominion & control of assets & acknowledging sponsor's “exclusive legal control” and discretion to approve/deny grant recommendations (donor has no legally enforceable right to compel grants, investments). Sponsor may restrict, suspend, or terminate advisory privileges. Legislative history speaks to enforceable rights with respect to assets

# Can DAF Terminate Donor's Advisory Privileges

*Status: Pending; Complaint filed January 2026*

Technical Explanation to IRC §4966(d)(2)(A) discusses agreements with sponsoring organization & donor that provide enforceable legal rights as to contributed assets go beyond mere “advisory privileges” and disqualifies the fund as a DAF. See, Technical Explanation of H.R. 4, the “Pension Protection Act of 2006” (Joint Comm. on Tax’n, Aug. 3, 2006). Mere, advisory privileges as to grants are not enforceable property rights in assets, even if a legal interest for contract, standing, or injunctive relief.

- B. Prior Litigation Involving DAF Advisory Privileges. This case differs from other cases. In *Fairbairn v. Fidelity Charitable* (N.D. Cal. 2021), the claim was diminution of sale proceeds or charitable value, *Pinkert v. Schwab Charitable* (9th Cir. 2022) was excessive fees, imprudent investment, & mismanagement diminishing value, and *Styles v. Friends of Fiji* (Nev. 2019) sponsor ignored recommendations & requested return assets.
- *This case is pending.*

# E-filing-Federal Gift Tax Returns FYE 2024

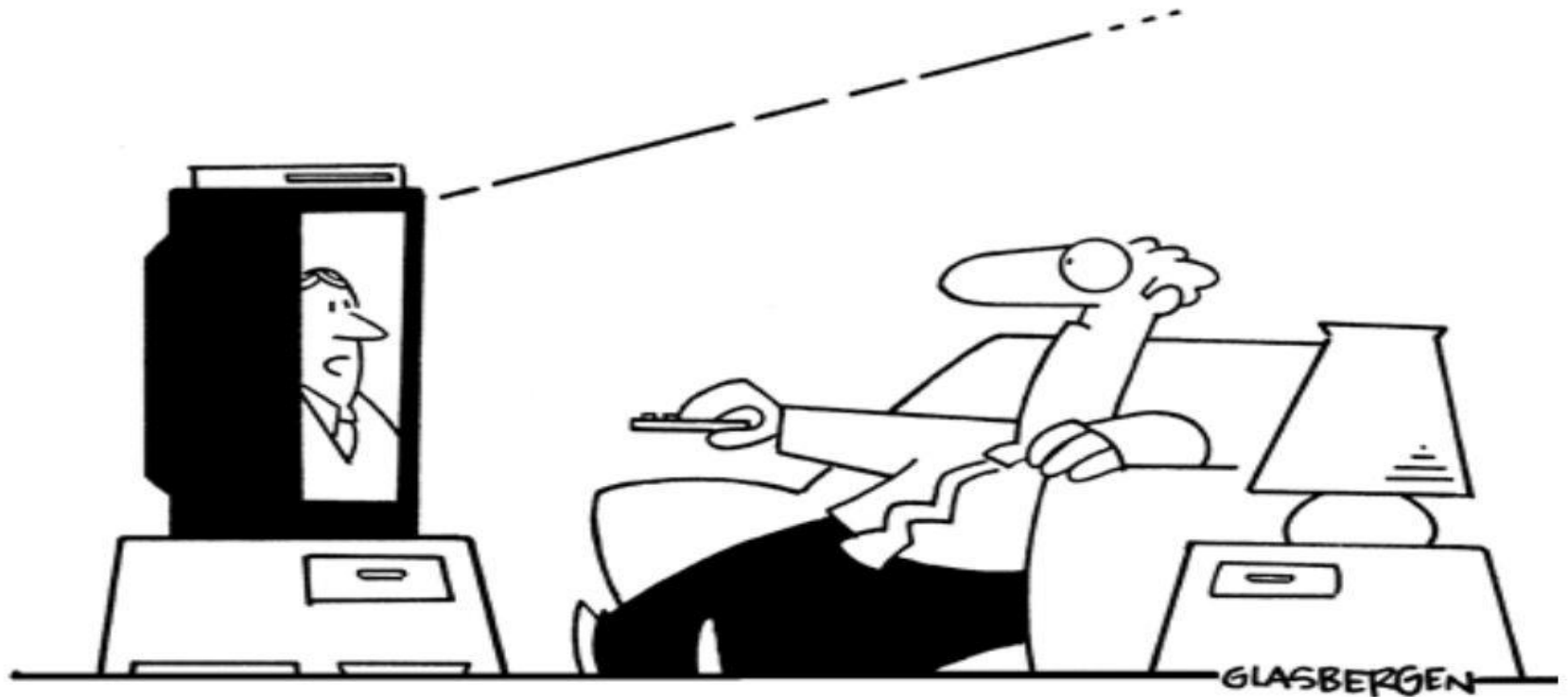
- Modernized e-File (MeF) for gift taxes now offers a secure and accurate way to file Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return and Form 709-NA, United States Gift (and Generation-Skipping Transfer) Tax Return of Nonresident Not a Citizen of the United States
- Modernized e-File (MeF) for Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return and Form 709-NA, United States Gift (and Generation-Skipping Transfer) Tax Return of Nonresident Not a Citizen of the United States and Instructions for Form 709-NA, is now part of IRS e-file. New Modernized e-File (MeF) schema and business rules for Form 709 and Form 709-NA are now available for tax year 2024/processing year 2025. Additional information is available on the Modernized e-File (MeF) for gift taxes page.
- <https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax>

# Avery v. Commissioner: Tenth Circuit Affirms Attorney Can't Deduct Race Car Expenses

*(December 9, 2024)*

- *Avery v Commissioner, 2024 U.S. App. LEXIS 31155 [10th Cir Dec. 9, 2024, No. 23-9004]*
- The Tenth Circuit, in an unpublished opinion, affirmed a Tax Court decision that held that an *attorney could not claim deductions for his car racing activity as ordinary and necessary business expenses of his law practice* because they were not related to his work as an attorney, finding no error by the Tax Court.

# A The New Method of Taxation ....



**“Today we are introducing a new simplified tax code:  
Send us all of your money and we’ll send back  
whatever we don’t use.”**

# A & A Veteran's Benefit

- 2026 A&A Pension can provide up to **\$2,424** per month to a veteran, **\$1,558** per month to a surviving spouse, or **\$2,874** per month to a couple (if both are veterans **\$3,845**).
- Any War-Time Veteran with **90** days of active duty.
- To qualify medically, Veteran or Surviving Spouse requires assistance of another person to help with activities of daily living
- Deductible Medical Expenses include:
  - Payments for meals, lodging, health care, custodial care and other services provided by a facility (assisted living, independent living, etc.) are deductible medical expenses as long as the Veteran:
  - Resides in a facility that is staffed 24 hours/day
  - Needs assistance with 2 Activities of Daily Living (ADLs)
  - An in-home attendant with health care or custodial care.

# A & A Veteran's Benefit

- **Net Worth:**
  - Asset limit: **\$163,699 in year 2026**
  - Net worth includes monthly income multiplied by 12 and added to total.
  - Certain medical expenses can be deducted from income (see below).
- **Look-Back and Penalty Periods for transfers after October 18, 2018:**
  - **36 Month** look-back period.
  - Applicant **can return** assets and un-do a penalty period (in whole or in part) within 60 days of a penalty period decision.
  - Penalty period cannot **exceed 5 years**.
  - Transfers to a **trust for a disabled** child will not be penalized.
- **Real Property**
  - Primary residence is excluded from net worth
  - Acreage limit: Primary residence plus 2 acres is excluded. Additional acreage will be counted toward net worth unless it is unmarketable.
  - Proceeds from the sale of real property, after benefit entitlement, are not counted as long used to purchase another property in the same year.

# Famous Quotes:

***Jeremy Bentham*** “The power of the lawyer is in the uncertainty of the law”

***Millicent Fenwick*** “It has been said one man’s loophole is another man’s livelihood”

***Pablo Picasso*** “Only put off until tomorrow what you are willing to die having left undone.”

***Winston Churchill*** “Let our advance worrying become advance thinking and planning.”

***Ronald Reagan*** “The taxpayer: that’s someone who works for the federal government but doesn’t have to take a civil service examination.”

***Albert Einstein*** “The hardest thing in the world to understand is the income tax.”

***F.J. Raymond*** "Next to being shot at and missed, nothing is quite as satisfying as an income tax refund."

***Morgan Stanley advertisement*** “You must pay taxes. But there’s no law that says you gotta leave a tip.”

***Will Rogers*** “The difference between death and taxes is death doesn’t get worse every time Congress meets.”

*Thank you!*

*I hope my presentation &  
materials provide a helpful  
roadmap.*

*Feel free to reach out with any  
comments or questions.*

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