Senator Krueger's Virtual Older Adult Resource Fair Session 3

Rebecca Wallach, Esq., Unit Director
Nic Shugar, Law Graduate
Erin Shahinfar, Esq., Staff Attorney

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ABOUT NYLAG

New York Legal Assistance Group (NYLAG) uses the power of the law to help New Yorkers experiencing poverty or in crisis combat economic, racial, and social injustice. We address emerging and urgent needs with comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. We aim to disrupt systemic racism by serving clients, whose legal and financial crises are often rooted in racial inequality.

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EVELYN FRANK LEGAL RESOURCES PROGRAM (EFLRP)

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About the Evelyn Frank Legal Resources Program

Focuses on fighting for older adults and people with disabilities, ensuring that they have access to affordable health care and home care services to age safely in their home and communities.

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EFLRP Services (continued)

- **Counseling and Navigation:**
  - Eligibility and coverage options for Medicare, Medicaid, Medicare Savings Program, Medicaid home care.
  - Navigating enrollment in Medicaid home care through Managed Long Term Care plans.

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EFLRP Services cont.

- **Representation in fair hearings and external appeals:**
  - Represent clients against Human Resources Administration (HRA) for denials, reductions, or discontinuances of Medicaid or the Medicare Savings Program.
  - Represent clients in plan appeals, fair hearings, and external appeals against Medicaid managed care plans following denials or reductions of needed medical services (e.g., home care, durable medical equipment, etc.).

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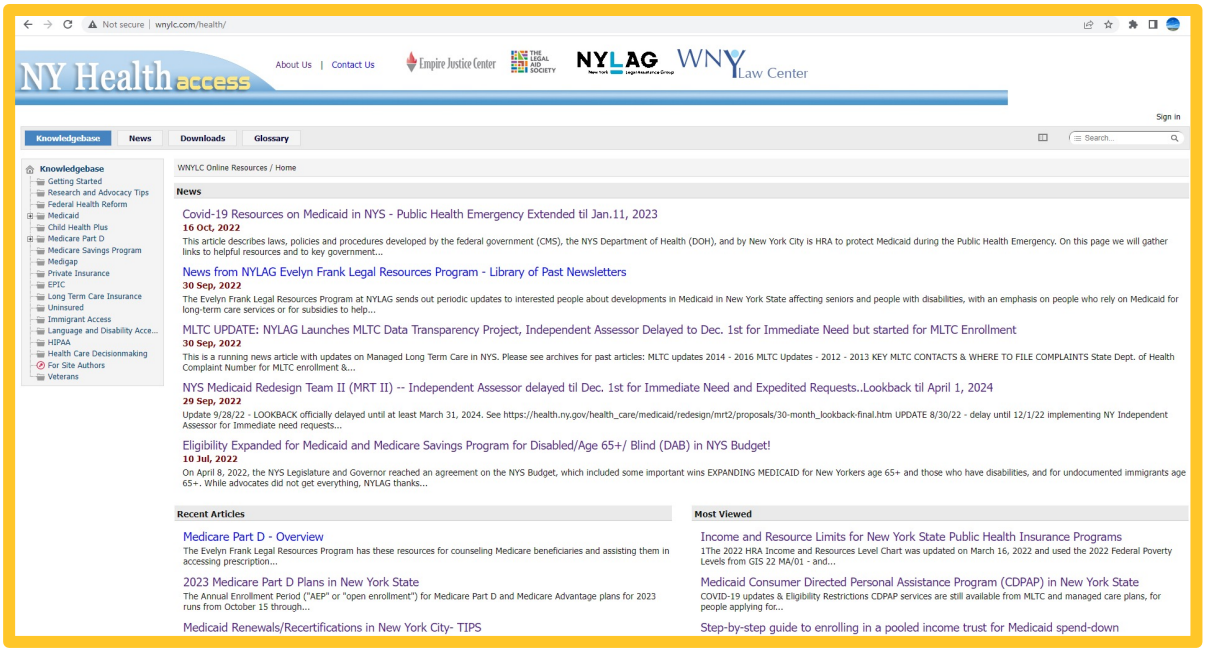
EFLRP Services (continued)

- Educating the public through the website www.nyhealthaccess.org or http://health.wnylc.com/health/



- Policy Updates
- Consumer Materials
- Expansive resources on coverage criteria and eligibility

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EFLRP Intake Contact

- Intake telephone hotline open on Mondays from 10am – 2 pm at **212-613-7310**.
- Intake email eflrp@nylag.org. Open Mondays through Fridays.

Keep in touch!

- Sign up to receive our newsletters - https://go.nylag.org/Subscribe-to-EFLRP

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ABOUT FCAP

The Family Caregiver Abuse Prevention Initiative is a multi-agency project that provides social and legal support to older adults and their caregivers to help stem abuse, neglect, and exploitation.

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Understanding Elder Abuse

- Definitions:
  - "the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm." –*Older Americans Act*
  - "Elder abuse is any intentional or negligent act by a caregiver or a trusted person that causes or creates a serious risk of harm to an older adult." – *National Center on Elder Abuse*

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Understanding Elder Abuse

- Prevalence: 1 in 10 older adults will experience abuse in their lifetimes
- Types: include physical abuse, sexual abuse, psychological abuse, neglect, and financial exploitation. Financial exploitation is by far the most common.
- Perpetrator: in 60% of cases, the abuser is a family member. Two thirds of nursing home staff reported committing some form of abuse.
- Risk Factors: social isolation and mental impairment (such as dementia). Elder abuse impacts older adults of all races, backgrounds and socio-economic levels

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Understanding Elder Abuse

- Red Flags:
  - Changes in routine or behavior
  - Confusion about finances and unpaid bills
  - Unexplained physical injuries
  - Increased social or physical isolation
  - Older adult appears fearful of caregiver
  - Weight loss, unusually unkempt, or quiet
  - Caregiver appears rough, rude, or negligent

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FCAP Legal Services

- **Preventative Services:**
  - Healthcare Proxies & Powers of Attorney: to ensure medical and financial decisions are made by trusted people
  - Wills & Trusts: to protect assets
  - Guardianship advocacy (no representation): to promote continued autonomy

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FCAP Legal Services

- **Preventative Services**
  - Medicaid & Medicare
  - Managed Long-Term Care
    - Homecare for support

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FCAP Legal Services

- **Protective Services**
  - Family Court Orders of Protection: to protect older adults from abusive family members and close caregivers

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FCAP Legal Services

- **Other Services**
  - Consumer Rights and Fraud
  - Limited Housing-Related Advocacy
  - Nursing Home Advocacy

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FCAP Contact

- For help with elder abuse and caregiver support, please call NYLAG's main intake line:

212-613-5000

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ABOUT THE ADVANCE PLANNING PRACTICE

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About NYLAG's Advance Planning Practice

- Life Planning
  - Wills, Powers of Attorney, Health Care Proxies, Living Wills
- Guardianship
  - Representation on Article 17A guardianship
  - Advice and Counsel on Article 81 guardianship
- Estates
  - Advice and limited representation on non-contested estates
- Elder Abuse Prevention

<u>Income / Asset Limits for Advance Planning Practice:</u>

Income: 250% of the Federal Poverty Level or $37,650 annual income for a household of 1 and $51,100 for a household of 2

Asset: $40,000 for a household of 1, $60,000 for a household of 2. Excludes primary residence and retirement accounts.

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Advance Planning Practice Contact

- For help with life planning, guardianship, and non-contested estates please contact:

  lifeplanning@nylag.org or 212-613-6514

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What is Estate Probate / Administration?

- Probate and administration are the processes of managing a deceased person's assets in their name only, paying their debts, and distributing the remainder to the heirs at law or the beneficiaries in their Will
- **Probate** → Process of proving Will is valid and empowering Executor named in Will
- **Administration** → Process of appointing Administrator to handle Estate

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What is a Will?

- A Last Will and Testament is a legal document that states how a person's property should be distributed after their death.
- Why make a Will?
  - Decide who gets your belongings and in what shares
  - Make contingency plans
  - Decide who is in charge of your estate
  - Hold property for minors or people with disabilities
  - Avoid tangled title or "heirs property," which increases the risk of home loss for older adults and especially BIPOC property owners

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What happens if you don't make a Will?

If a person dies without a Will, their estate will be distributed pursuant to the Laws of Intestacy in New York State (EPTL § 4-1.1):

- **Spouse and no children →** all to spouse
- **Spouse and Children →** $50,000 plus one half of the balance of the Decedent's net estate to the spouse. Children share remaining half
- **Children and no spouse →** estate divided equally among children
- **One or both parents and no spouse or children →** all to parents
- **Siblings and no spouse, children or parents →** estate is divided among siblings and their descendants
- **One or more grandparents or issue of grandparents and no spouse, children, parents, or siblings →** 1/2 to paternal grandparents or if both are deceased to their children (first cousins). 1/2 to maternal side in same manner. If no one surviving on one side, the whole estate goes to the other side.

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Who can be Administrator?

If a person dies without a Will, SCPA § 1001(3-9) lists who has priority to be appointed as administrator of your estate:

1. **Surviving spouse**
2. **The children**
3. **The grandchildren**
4. **Either parent**
5. **Brothers or sisters**
6. **Any other persons who are distributees and qualify. Preference given to person with the largest share in the estate.**

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Assets that pass by operation of law

There are certain kinds of property that do not usually go through probate or administration. This is called non-probate property. Below are common examples of probate and non-probate property:

Probate	Non-Probate
• Cash • Tangible personal property (furniture, clothing, jewelry, books, etc.) • Bank accounts, securities, real property held solely in the name of the decedent	• Life insurance (with a designated beneficiary) • Pension / retirement plans (with a designated beneficiary) • Payable on Death / Transfer on Death / Totten Trust bank accounts • Joint accounts • Property held jointly with right of survivorship • TODD deeds • Trusts

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Small Estates - 1310 Affidavits

- Allows certain relatives and creditors to collect a decedent's assets without filing in Surrogate's Court.
- Requires an affidavit (sworn statement), death certificate, and may require heirship affidavit.
- Cannot be used if an Administrator or Executor has been appointed.
- Must be signed in front of notary public.
- Third parties are not required to accept the affidavit.
- If Administrator or Executor is later appointed and requests the money back, recipient must give it to them.
- https://www.nycprobate.com/ny-scpa-1310-small-estate-affidavit.htm

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Small Estates – Voluntary Administration (Less than $50k)

- Same court process whether there is a Will or not.
- Expedited process for dealing with the estate of decedent.
- If decedent owned real property in their name only then can't use voluntary administration process.
- Total value of decedent's property passing by probate is less than $50k.
- Voluntary administrator is executor named in Will (if there is one) or person who would be administrator subject to SCPA § 1001(3-9).
- Court will issue certificates so that voluntary administrator can collect decedent's property.
- DIY Form filler available on NY Courts website: https://www.nycourts.gov/courthelp/DIY/smallEstate.shtml
- Voluntary administrator must open an estate bank account and property of the decedent will go there. Estate debts are then paid in an order set out by statute.
- 7 months after voluntary administrator appointed, administrator will pay debts and distribute remaining funds as set out in the Will or to the decedent's heirs.

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Probate and Administration

- Total value of decedent's property passing by probate is more than $50k or decedent owned real property.
- Obtain and complete the appropriate Probate or Administration petition from the Surrogate's Court. These are accessible online.
- Give notice to next of kin or get waivers from them.
- Court will issue letters to the Executor or Administrator
- Executor / Administrator will need to obtain an EIN tax number and open an estate bank account. Existing accounts and funds from any property that is sold should go into this account.
- 7 months after Executor / Administrator is appointed, Executor / Administrator will need to pay debts.
- After debts, Executor / Administrator will distribute remaining funds as set out in the Will or to the decedent's heirs.
- At final distribution, Executor / Administrator will need to account to the beneficiaries.

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Common client questions

1. Does making a Will avoid probate?	No. In order to have legal effect a Will must go through the probate process in Surrogate's Court. A will does not avoid probate.
2. Can a Will control property in another state or country?	If property is in another U.S. state, a copy of the NY will must be probated in the other state where the property is located. A US will does not control property in another country. Clients should consult with a lawyer in the country where the property is located.
3. Can someone outside of NY be an executor?	Yes, a US citizen residing anywhere can be executor of a NY Will. Non-citizen must be resident of NY. Generally, courts will not appoint non-citizen, non-NY domiciliary unless there is NY resident co-executor

Common client questions

4. What are the responsibilities of an executor?	**Executor must probate the Will, pay costs of administration, give notice to required parties, gather property of the decedent, pay debts, and then carry out instructions in the Will.**
5. Do I need to make a Will if I have a POA?	**These documents do different things. POA is valid only during lifetime. Will has power only after death. POA empowers agent to carry out instructions of principal or, if principal can't make decisions, agent can do so in best interest of principal. Will gives instructions that Executor must follow. POA can impact gifting set out in a Will.**

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Common client questions

6. Can I disinherit my children in a Will? Can I disinherit my spouse?	Yes, you can disinherit your children. You can disinherit your spouse under only very limited circumstances. There are laws that protect disinherited spouses and allow them to elect against a Will.
7. I already have a Will, but I want to make some changes. Can I just cross stuff out?	No. Extraneous marks won't be given legal effect by Surrogate's Court. You can create a codicil to an existing Will but signing requirements are same as executing a whole new Will.

THANK YOU

More information at nylag.org

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