

# LEGALEase

## Things to Consider if You Have a Serious or Chronic Illness



signed it can be used by your agent, so make sure your agent is someone you trust.

**Will** – A will is a legal document that disposes of your property, both real and personal, according to your wishes. If you do not have a will, your property will be distributed by New York State’s Laws of Intestacy. In addition to stating how you want your property to be distributed after you die, a will also allows you to state your wishes regarding a guardian for your children if anything should happen to you. The person designated in your will does not automatically have legal authority to act as a guardian for your children; that person will have to go to court for approval. While a will is not enough to put in place your future plans for your children, it is important evidence of your wishes regarding this decision.

**Permanency Planning for Children** – If you are a parent or guardian who has a serious illness, there are a number of options you have for making plans for the future care and custody of your children. If you are ill and want to make permanent plans for the future care of your children without giving up custody now, you can designate a standby guardian. A standby guardian will become the guardian of your children at such time that you become mentally or physically unable to care for your children or if you should die.

There are two ways to designate a standby guardian. If you want to make sure that the court approves your choice of guardian you can go to Family Court now to ask the court to appoint the person you have chosen. If you do not want to go to court you can also designate a standby guardian by filling out and signing a designation form. The person designated to be the guardian must go to court within 60 days after the parent dies or becomes too ill to take care of the children. The person designated must seek the court’s approval to become the guardian.

*This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the New York Legal Assistance Group.*



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### Do You Want To Continue Working?

**Reasonable Accommodation** – Both the Americans with Disabilities Act (ADA) and New York State and City laws require that employers make “reasonable accommodations” for employees with certain medical conditions who are otherwise qualified to perform the essential functions of their jobs. This includes many kinds of physical or mental conditions, including fatigue and chronic conditions that vary in severity and duration.

A reasonable accommodation is a modification or adjustment to work duties, a work schedule or the work environment that would enable the employee to perform the essential job duties without imposing an “undue hardship on the operation of the business.” For help making a reasonable accommodation request, contact your Human Resources department, union representative, Employee Assistance Program (EAP), social worker, legal assistance organization or counselor. When making a request, it is helpful if you have a doctor’s letter describing your needs.

### Do You Need To Take A Leave of Absence From Your Job?

#### Options

**Short Term Disability (STD)** – New York State requires most employers to offer a minimum level of short-term disability protection or “temporary disability insurance” for illness and off-the-job injuries. In New York, most non-governmental employers must offer STD paying 50% of your weekly income up to \$170 per week for a maximum of 26 weeks of disability every 52-week period. This applies to both full-time and part-time employees. Some employers choose to supplement state-required STD income with private STD insurance and/or salary continuation programs. Review your Employee Handbook and summary plan descriptions to see whether your employer offers an enhanced plan. If your employer does offer STD, ask for a “DB-450” claim form, which you will then need to have signed by your doctor. For more information on New York STD and other disability benefits, see [www.health.ny.gov/community/disability](http://www.health.ny.gov/community/disability) or the Workers’ Compensation Board at [www.wcb.ny.gov](http://www.wcb.ny.gov).

**Family and Medical Leave Act (FMLA)** – FMLA is a federal law that protects the job of employees who need to take time off from work to care for themselves or a sick relative. FMLA is available to employees who work for public agencies, all public and private elementary

and secondary schools, and companies with 50 or more employees within a 75-mile radius. You are eligible for leave if you have worked for your employer for at least 12 months and at least 1,250 hours over the past 12 months. If you are eligible, FMLA offers unpaid leave with job protection for 12 weeks. The three months do not need to be taken all at once. The law allows you to choose, or your employer may require, the use of accrued paid leave (such as vacation days) for some or all of the FMLA period, and your employer is obligated to continue your health insurance benefits. You must continue to pay your contribution to your health insurance while you are on FMLA leave. FMLA now also applies to military families: up to 26 weeks of unpaid “military caregiver leave” is available to an employee who needs to care for an injured family member returning from active duty; 12 weeks of unpaid “qualifying exigency leave” is available to an employee with a family member who is currently, or is about to be, deployed on active duty. Inquire with your employer whether you are eligible for FMLA.

### Do You Need To Go Out On Long Term Disability?

#### Options

**Long Term Disability (LTD)** – If you cannot go back to work after your STD benefits end, and if your employer offers group long-term disability (LTD) insurance, you should apply for benefits under that policy. You do not have to wait until your STD ends to apply for LTD. Group LTD policies typically pay between 50% and 70% of your salary less any Social Security Disability (SSD) payments that might be received (see section on SSD). Group LTD policies have an elimination period, during which time you must be disabled but will not be eligible for LTD benefits. LTD elimination periods typically last for six months, though they can be any length of time an LTD carrier chooses. If your employer offers LTD insurance, you must review your summary plan description for details about how your particular group plan works.

**Social Security Disability Insurance (SSD)** – The Social Security Disability program is a federal program that provides benefits for persons with disabilities. SSD benefits are available to individuals who have an adequate work history and become disabled. You must meet the Social Security Administration’s requirements to be found disabled. Monthly benefits are paid to those who are predicted to be unable to work for more than a year



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because of a disability, and the amount of SSD received depends on the person's work history. Regardless of how much resources and income you have, you can receive SSD, benefits if Social Security finds you to be disabled and you have a sufficient work history.

**Supplemental Security Income (SSI)** – SSI benefits are available for low-income individuals who do not have a considerable work history and become disabled. Similar to SSD, the Social Security Administration must find you disabled. However, SSI benefits are based on need. If you have too much income and/or resources you may not be eligible for SSI, even if you are disabled. For more information on SSI and SSD, you can visit the Social Security Administration at [www.ssa.gov](http://www.ssa.gov).

### What About Health Insurance?

#### Options

**COBRA** – Under a federal law called COBRA, employers are required to offer employees who are leaving a job for any reason (other than those fired for gross misconduct) the option of continuing as part of the group health insurance plan for up to 18 months. (If you are leaving your job to go out on a long-term disability leave, or become disabled within 60 days after leaving your job, you can request an 11-month extension of your COBRA continuation by providing a copy of your Social Security Disability award letter, within 60 days of your receipt of it, to the plan administrator.) If you work in the state of New York, New York Insurance Law extends COBRA protections to those who work for employers with at least two employees and provides COBRA continuation coverage for up to 36 months, with some exceptions. COBRA continuation coverage is at your expense, and the cost is often considerable. You might also consider applying for health insurance in the New York Insurance Exchange (see the section below on the Exchange for more information).

#### Medicaid Options:

**Medicaid** – Medicaid is a government health insurance program to assist people with low income. Eligibility is based on income and assets in the month you apply. If you are receiving SSI, you are automatically eligible to receive Medicaid without completing a separate

Medicaid application. People may apply to the New York State Medicaid program directly at <https://nystateofhealth.ny.gov> or with a Health Insurance Navigator by contacting (855) 355-5777. Medicaid applications can be submitted at any time of year, as the enrollment period for Medicaid is always open.

**Medicaid Excess Income/Spend-Down Category** – People with income above the Medicaid limits, but who have high medical bills, can often still qualify for Medicaid under a special “excess-income” or “spend-down” category. A Medicaid application under this category is not done through the Health Insurance website, but is done manually through the Medicaid office in each county, or through local hospitals, nursing homes, private lawyers, and nonprofit legal assistance and similar organizations. The rules can be complex, but generally speaking, if you have income above the Medicaid limits and an illness that is generating a lot of medical bills, and you are over 65 years old, under 21 years old, a parent living with a child under 21, pregnant, blind, or disabled, then the spend-down category could apply to you. In conjunction with a spend-down, a “pooled trust” can also be put in place to legally shelter excess income and make a person eligible for Medicaid coverage.

**Medicaid Buy-In for Working People with Disabilities (MBI-WPD)** – If you are working, even part-time, but cannot afford to buy health insurance on your own, you still may qualify for Medicaid. New York's MBI-WPD program is designed to allow people with long-lasting or serious medical conditions to continue working without fear of losing their Medicaid health insurance because they make too much money. As a resident of New York, you may qualify for this program if you: are 16 to 65 years old; have a medical condition that has lasted or is expected to last for 12 months; are working (either part-time or full-time), including self-employed; earn income up to \$61,740 a year; and have assets below \$20,000 (excluding 401K and IRA). Medicaid MBI-WPD may be activated simultaneously with Medicare or private health insurance to cover copays and other services not covered by the non-Medicaid insurance. If you think you qualify, apply directly at your county's Medicaid office. Ask for the “MBI-WPD” program, Medicaid coverage for Working People with Disabilities.

**Dual Coverage** – Medicaid insurance is often available as secondary coverage, even when you already have private health insurance or Medicare. New York State Medicaid pays for many services that private insurance or Medicare do not. Therefore, it is nearly always to your advantage to apply for Medicaid, even if you already have other insurance. If you are a person with low income and qualify for Medicaid, you may keep the insurance you have, while benefitting from the additional coverage that New York State Medicaid provides.

**Medicare** – Medicare is a federal health insurance program for individuals over 65 and individuals under 65 who are disabled and have been receiving Social Security Disability Insurance (SSD) for over two years. There are different parts to Medicare to help cover specific services: Part A (hospital insurance), Part B (medical insurance), Part C (Medicare-approved private health insurance, or “Medicare Advantage Plus”), and Part D (prescription drug coverage). For more information on Medicare, you can call the Medicare Helpline at 1-800-MEDICARE or visit [www.medicare.gov](http://www.medicare.gov).

**New York Health Insurance Exchange (Affordable Care Act or “Obamacare”)** – The New York Health Insurance Exchange offers many low- and no-cost options for private health insurance. Depending on income, you may qualify for subsidies or tax credits to assist with paying for insurance. There are fixed enrollment periods each year, though people losing their group health insurance from their employment are entitled to enroll at any time online at <https://nystateofhealth.ny.gov>. Anyone contemplating buying insurance through the exchange should pay close attention to copayments and annual deductibles. New York now also offers health insurance under the “Essential Plan” which offers the same benefits at a lower premium for those who do not qualify for Medicaid. Enrollment is open all year and premiums do not exceed \$20 monthly. Visit <https://nystateofhealth.ny.gov> or call (855) 355-5777.

#### Do You Want to do Advance Planning?

##### Options

**Health Care Proxy** – The New York Health Care Proxy Law allows you to appoint someone you trust — for

example, a family member or close friend — to make health care decisions for you if you lose the ability to make decisions yourself. Hospitals, doctors, and other health care providers must follow your agent's decisions as if they were your own. You may allow your agent to make all health care decisions or only certain ones, including decisions about end of life care. The Health Care Proxy form can also be used to document your wishes or instructions with regard to organ and/or tissue donation. In instances where a patient has not signed a health care proxy, New York's Family Health Care Decisions Act of 2010 establishes the authority of a patient's family member or close friend to serve as a “surrogate” and make health care decisions. While the decision-making capabilities of a surrogate are similar to those of an agent, a surrogate may only make decisions if the patient is in a hospital, nursing home or hospice care.

**Living Will** – A living will is a statement of one's wishes with respect to one or a number of potential medical care decisions. It is used when you can no longer make decisions on the medical care you wish to receive. It only holds for the medical situations it addresses. Although New York does not have a specific law regarding living wills, they are recognized by case law. A living will should not be used as a substitute for a health care proxy, which is the preferred method for expressing your medical wishes in New York State. If you do not have anyone to appoint as a health care agent, then you should complete a living will. A living will can also provide guidance for your agent or family.

**Power of Attorney** – A power of attorney is an important document that gives the person you designate, your agent, broad powers to handle your property during your lifetime, which may include powers to mortgage, sell, or otherwise dispose of any real or personal property as well as handle your banking and other important financial matters. Depending upon your decision, these powers could continue to exist even after you become disabled or incompetent. This type of power of attorney is called a “durable” power of attorney. A power of attorney does not authorize your agent to make medical decisions for you. Those decisions have to be made by your health care agent designated in a health care proxy. Once a power of attorney is