



The Role of Pooled Trusts in the Managed Care Landscape

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2

Medicaid Excess Income Program

With most public benefits, if your income is over the limit, it's game over.



But not with Medicaid.

The Excess Income Program means that you can still get Medicaid, but you must contribute towards the cost of your care in the amount that your income is over the limit.



3

How does spend-down work?

The Medicaid spend-down (aka “surplus”) works differently depending upon the applicant’s situation:

- Non-home care cases
 - Like a monthly deductible
 - Must submit incurred medical bills to DSS each month to get Medicaid card activated for remainder of month
 - For coverage of inpatient hospital care, must meet 6x regular spend-down
- Home care cases
 - Like a monthly premium charged by the MLTC plan



4

Spend-down and MLTC

- Amount of individual’s spend-down is withheld from monthly premium paid by Medicaid to MLTC plan
- MLTC plan then bills individual for the spend-down
- Failure to pay spend-down eats into MLTC plan’s revenue
- MLTC plans are legally permitted to involuntarily disenroll member for nonpayment!



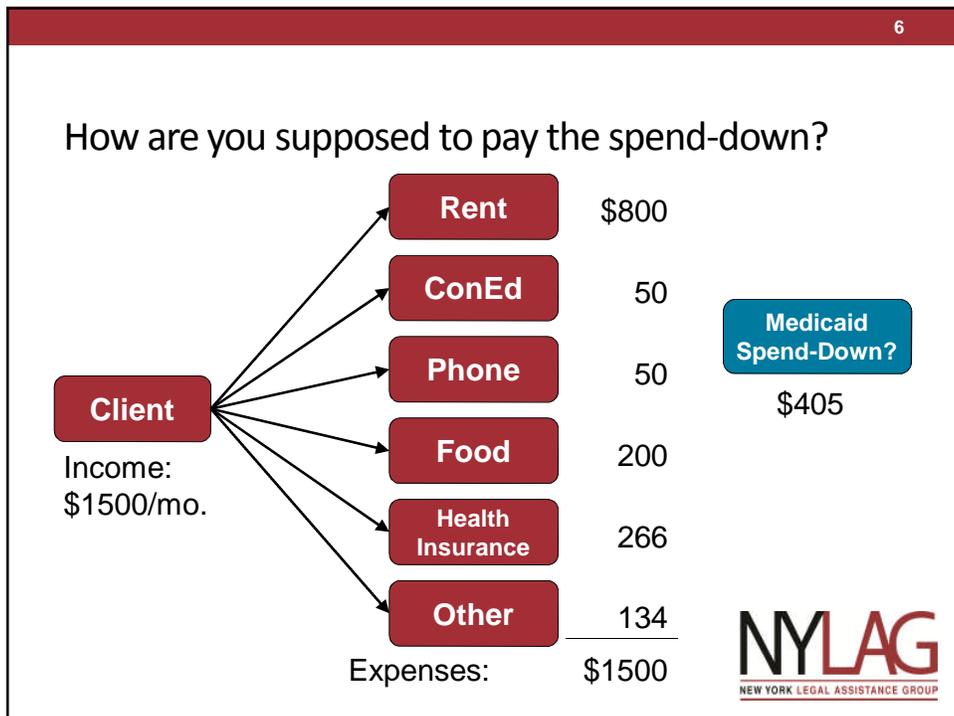
N.Y. Dep’t of Health, MANAGED LONG TERM CARE PARTIAL CAPITATION CONTRACT, Art. V(D)(5)(b) at p.20 [p.27 of PDF file] (April 26, 2013), at http://is.gd/NY_MLTC_contract.



5

Medicaid doesn't care about your living expenses

Gross monthly income	\$1,500
Health insurance premiums	(Medicare Part B) - 105 (Medigap) - 161
Unearned income disregard	- 20
Net countable income	\$1,214
Income limit for single	- 809
Excess income	\$405



WHAT CAN YOU DO ABOUT EXCESS INCOME?



8

Your options

Start from the top of the list and rule out each option before proceeding to the next. These options are mutually exclusive.

1. Nursing Home Transition Shelter Allowance
2. Spousal Impoverishment Budgeting
3. Negotiate the spend-down with the plan
4. Pay the full spend-down to the MLTC plan
5. Enroll in a pooled income trust
6. Pay-In Program



1) Nursing Home Transition Shelter Allowance

Medicaid will subtract a regionally-standardized shelter cost deduction from income where:

- The individual has been in a nursing home for at least 30 days (not counting the day of discharge);
- Medicaid must have made a payment for the nursing home stay;
- Not receiving spousal impoverishment budgeting; and
- Eligible for and enrolled in an MLTC plan upon discharge.

N.Y. Dep't of Health, ADMINISTRATIVE DIRECTIVE: SPECIAL INCOME STANDARD FOR HOUSING EXPENSES FOR INDIVIDUALS DISCHARGED FROM A NURSING FACILITY WHO ENROLL INTO THE MANAGED LONG TERM CARE (MLTC) PROGRAM, 12 OHIP/ADM-5 at 2-4 (October 1, 2012).



2013 Special Income Standards for Housing Expenses

Region	Counties	Deduction
Central	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$368
Long Island	Nassau, Suffolk	\$1,045
NYC	Bronx, Kings, Manhattan, Queens, Richmond	\$1,003
Northeastern	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$408
North Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$805
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$380
Western	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$338

N.Y. Dep't of Health, GENERAL INFORMATION SYSTEM MESSAGE: 2013 SPECIAL INCOME STANDARDS FOR HOUSING EXPENSES, GIS 13 MA/04 (February 20, 2013).

11

Example budget with NH transition shelter allowance

Gross monthly income		\$1,500
Health insurance premiums	(Medicare Part B)	- 105
	(Medigap)	- 161
Unearned income disregard		- 20
Shelter deduction (NYC)		- 1,003
Net countable income		\$211
Income limit for single		- 809
Excess income		\$0

12

2) Spousal Impoverishment Budgeting

- Spousal impoverishment budgeting, previously only for nursing home and waiver programs, is now available to married couples where one spouse is in MLTC.
- If applicant has a **community spouse**, he/she may shelter up to \$2,931/mo. of joint income (and up to \$74,820 of assets).
- It works almost the same as for nursing home, but with some minor variations.

N.Y. Dep't of Health, GENERAL INFORMATION SYSTEM MESSAGE: SPOUSAL IMPOVERISHMENT AND TRANSFER OF ASSETS RULES FOR CERTAIN INDIVIDUALS ENROLLED IN MANAGED LONG TERM CARE, GIS 13 MA/018 (September 24, 2013).



13

Example budget with spousal impoverishment

Gross monthly income		\$1,500
Personal Needs Allowance		- 383
Community Spouse Monthly Income Allowance (CSMIA)	MMMNA (\$2,931) - Otherwise Available Income of spouse (\$1,500) =	- 1,431
Health insurance premiums	(Medicare Part B)	- 105
	(Medigap)	- 161
Excess income		\$0

N.Y. Dep't of Health, Medicaid Update Vol. 30, No. 3 at 5-9 (March 2014); N.Y. Dep't of Health, GENERAL INFORMATION SYSTEM MESSAGE: SPOUSAL IMPOVERISHMENT BUDGETING WITH POST-ELIGIBILITY RULES FOR INDIVIDUALS PARTICIPATING IN A HOME AND COMMUNITY-BASED WAIVER PROGRAM, GIS 12 MA/013 (April 16, 2012); N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 278-282 (June 2010).

14

3) Negotiate the spend-down with the plan

- If an individual is not able to use the shelter allowance or spousal impoverishment budget, he/she may be able to bargain with the MLTC plan to pay a smaller amount.
- However, the full spend-down is still a legal debt, and Medicaid does not haggle (i.e., no point requesting Fair Hearing over unaffordable spend-down)
- MLTC plan may factor in living expenses

15

4) Pay the full spend-down to the MLTC plan

- For some individuals, it may be possible to pay the spend-down
 - Very low living expenses relative to income
 - Sources of exempt income
 - Spousal refusal



16

5) Enroll in a pooled income trust

- If the individual does not qualify for the preceding options, then he/she may be appropriate for a pooled income trust.
- A pooled income trust is a special type of Supplemental Needs Trust available to people with disabilities, which allows them to shelter monthly income from consideration by Community Medicaid.
- Must be established by a non-profit organization which pools the deposits of multiple beneficiaries.
- Trustee is the remainderman.

42 U.S.C. § 1396p(d)(4)(c); N.Y. Estates, Powers and Trusts Law § 7-1.12.



17

Medicaid budget with pooled trust

Gross monthly income		\$1,500
Health insurance premiums (<i>note: no Part B</i>)	(Medigap)	- 161
Unearned income disregard		- 20
Contribution to pooled trust	Trust withholds \$20 for fee, then sends \$800 to landlord for rent	- 820
Net countable income		\$499
Income limit for single		- 809
Excess income		\$0

18

How can client come out ahead?

- An extra perk of the pooled trust is it can make you eligible for **Medicare Savings Program (MSP)**, which pays the Medicare Part B premium
- Thus, by using the pooled trust, you can get a \$105/mo. raise to your Social Security, in addition to eliminating your spend-down
- In most cases, this will cover the monthly cost of the trust, which is the fee charged by the pooled trust organization
 - In our example, the fee was \$20/mo. (client contributed \$820 so trust could pay \$800 rent after deduction of fee)
 - Medicare premium is \$104.90/mo. in 2014

6) Pay-In Program

- Pay-In Program is a service of DSS that allows individuals with spend-down to pay it directly to the DSS, either monthly or 6 months at a time
- This option *never* makes sense for someone seeking MLTC!
- Pay-In is only appropriate for people without homecare with a relatively small spend-down
 - E.g., someone using Medicaid to supplement Medicare with a \$20 spend-down could send DSS a check for \$120 to activate Medicaid for 6 months
 - Better than faxing bills every month

N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 303-304 (January 2012).



WHO IS APPROPRIATE FOR A POOLED TRUST?



21

What's the big deal?

Let's just get everyone on a pooled trust!



- Don't put the cart before the horse!
- The pooled trust is NOT for everyone
- There are some downsides:
 - Start-up costs
 - Ongoing fees
 - Logistical hurdles
 - Future recerts

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22

Why Medicaid?

- **Uninsured**
 - For clients who are totally uninsured, and would only be eligible for Medicaid with a spend-down they cannot meet, SNT is perfect
 - But disabled individuals <65 can get Medicaid without a spend-down, if they are doing any amount of work, through MBI-WPD
 - Income limit: \$2,394/mo.
 - Resource limit: \$20,000

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Why Medicaid?

- **Under-insured**

- Clients with Medicare who have extremely high Part D drug costs, but whose income is over the limit for MSP / Extra Help; can use SNT to qualify for MSP
- Client with Medicare who cannot afford Medigap and wants to use Medicaid to wrap around Medicare
 - CAVEAT: Medicaid only covers services from Medicaid providers
 - Medicare covers most of the cost of most services; it may be cheaper to pay 20% coinsurance than establish SNT
 - Explore Medicare Advantage or cheap Medigap



Why Medicaid?

- **Home Care**

- Clients can use home care to meet their spend-down
- Good solution for those clients now required to enroll in MLTC, where failure to pay spend-down can lead to loss of home care services



Readiness Checklist

- Otherwise Medicaid eligible
 - Only problem is income; shouldn't use pooled trust to solve a resource problem for over-65 because of transfer penalty
- Client cannot afford to pay the spend-down
 - Some clients have low living expenses relative to income
- Client cannot be using spousal impoverishment budgeting
 - However, it appears you could use both the shelter allowance and a pooled trust



Readiness Checklist

- Client has capacity, or has someone else with valid POA
 - Make sure POA includes power to establish and fund SNT
- Client has someone who can help with paperwork
 - Even if client can handle it now, what about 10 years from now?
 - Write monthly checks, send monthly disbursement requests, manage account



Readiness Checklist

- What expenses will be paid out of SNT?
 - Rent / maintenance / mortgage is best
 - Must be third-party vendor payments; not cash reimbursement
 - Can usually pay credit card bill down (for approved expenses)
 - Each trust has its own rules
 - Must make sure that you do not accumulate a large balance in trust account; this could cause a transfer penalty for nursing home care



How much to contribute?

- Exact amount of spend-down?
 - This doesn't make sense, because you'll lose out on MSP
- More than spend-down
 - Best option: spend-down + \$105 for Part B to get MSP
 - Also, might be more convenient to pay largest bill (e.g., rent) with one check from trust rather than two checks
 - Spend-down will still be zero
- Less than spend-down
 - Appropriate where expenses are relatively low and there is danger of accumulating a balance
- Use our worksheet to make it easy!
 - <http://wnylc.com/health/download/316/>



29

	A	B	C	D
1	Instructions	Fill in only the cells shaded blue.		
2		Note: This worksheet is intended as a guide only. The assumptions contained herein are applicable ONLY to the Medicaid and MSP programs in New York State, and only for beneficiaries of pooled Supplemental Needs Trusts in New York State. This is not intended as legal advice, and no attorney-client relationship is created by reliance on this resource.		
3	Step One	Calculate Gross Monthly Income		
4		Type of Income	Comments	Monthly Amount
5		Unearned Income		
6		Social Security (Retirement, Survivors, Disability)	Use gross amount, before deduction of any health insurance premiums	
7		Pension	Use gross amount, before deduction of any health insurance premiums	
8		Retirement Account Distributions (IRA, 401k, Keogh)	You must take periodic payments from your retirement account for the principal to be exempt for Medicaid purposes. These periodic payments may be annual or quarterly, in which case you must convert them to monthly amounts for this worksheet.	
9		Worker's Compensation		
10		Alimony		
11		Contributions from family/friends	In-kind contributions do not count, only cash, checks, or wire transfers	
12		Other unearned income	See http://wnylc.com/health/download/1/ for treatment of other types of income	
13		Other unearned income	See http://wnylc.com/health/download/1/ for treatment of other types of income	
14		Subtotal - Unearned Income		\$0.00
15		Earned Income		
16		Monthly wages and/or salary	Use gross amount, before deduction of payroll taxes, premiums, etc.	
17		Monthly gross self-employment income		
18		Monthly business deductions (if self-employed)		
19		Impairment-Related Work Expenses (IRWEs)		
20		Subtotal - Countable Earned Income	Less than half of earnings are counted; this formula determines the countable portion.	\$0.00
21				

<http://wnylc.com/health/download/316/>



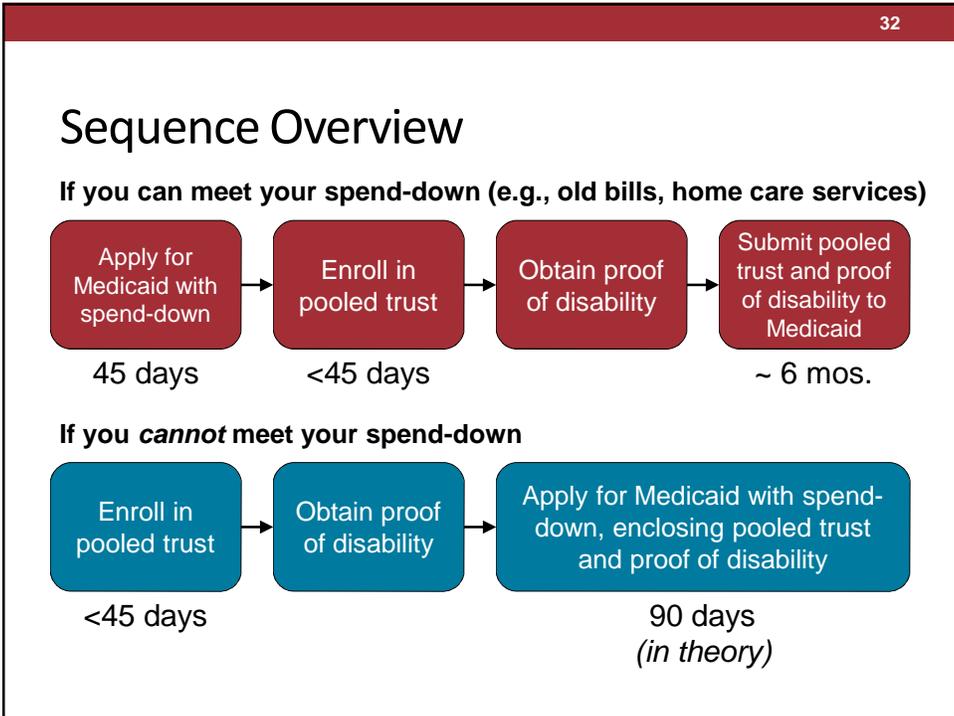
30

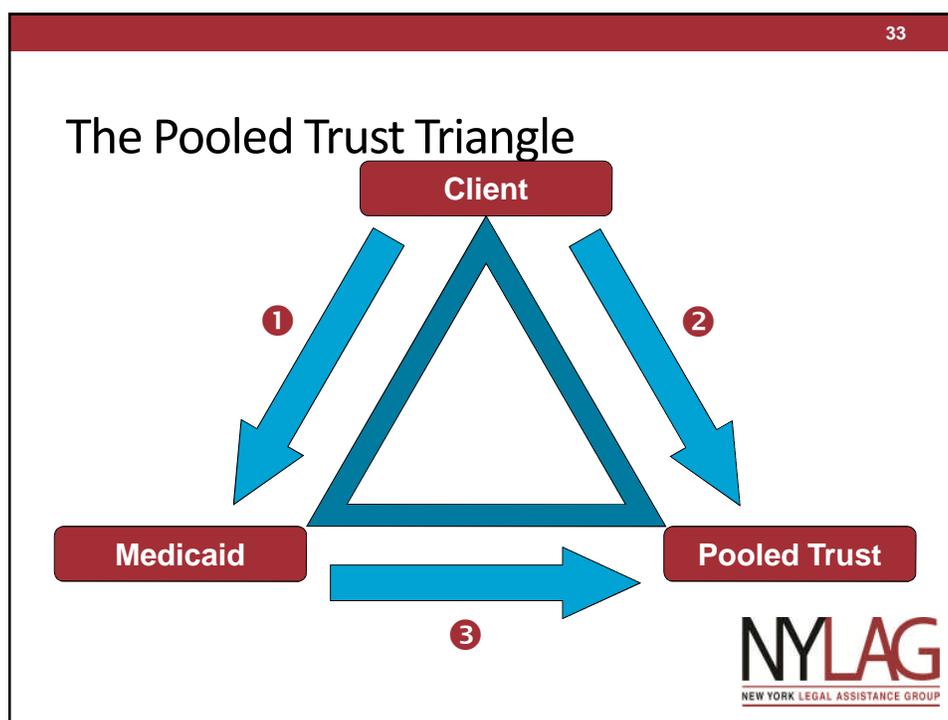
Which pooled trust?

- There are about 20 different pooled trusts in New York state
- Each have different rules, minimum contribution limits, fees, etc.
- Most pooled trusts are designed for sheltering excess resources for people with disabilities under age 65
- Make sure to find one that will allow monthly contributions of income rather than a lump sum of assets
- See unofficial list at <http://wnylc.com/health/entry/4/>



STEP-BY-STEP PROCESS



34

1) Apply for Medicaid with Spend-Down

- Although counterintuitive, this is the fastest option for most applicants
 - Shorter turnaround time on Medicaid application without pooled trust and disability documents enclosed
 - Can use old bills or prospective home care (e.g., MLTC) to meet spend-down after approval
- Normal Medicaid application
 - Pretend there is no pooled trust (because there isn't, yet)
 - Once approved, can enroll in MLTC plan (don't let plans tell you they can't enroll people with spend-down!)

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2) Enroll in pooled trust

- The procedure and timeline for enrolling in a pooled trust varies from trust to trust
- This can be done in parallel with Medicaid application
- For most pooled trusts, you will need the following:
 - Joinder Agreement, filled out and signed before a notary public
 - Guaranteed funds (cashier's check, certified check, or money order) payable to pooled trust for the initial deposit
 - Might also need Social Security Award Letter



Note on timing

- The ultimate goal is to have Medicaid rebudgeted with a zero spend-down retroactive to the earliest date possible.
- That date should be the earliest date where all of the following conditions have been met:
 - Resource eligible for Medicaid
 - Began contributing at least spend-down amount to pooled trust each month
 - On or after onset of disability (i.e., proof of disability)
- So, the earlier you set up the pooled trust, the better, and
- The earlier you get the proof of disability from the doctor(s), the better



3) Notify Medicaid about the pooled trust

- Within 45 days, the client should receive an approval both of Medicaid with spend-down, and of enrollment in their pooled trust of choice
- Now, to complete the triangle, you must notify Medicaid about the change in the client's situation – i.e., his/her enrollment in the pooled trust
- This is the most difficult and critical stage of the process, because any errors can cause Medicaid to deny or mishandle the rebudgeting



3) Notify Medicaid about the pooled trust

- You must submit the following items to Medicaid:
 - Cover Letter
 - See cover letter template at: <http://wnylc.com/health/download/64/>
 - Proof of SNT
 - Master Trust Agreement
 - Joinder Agreement, signed by both beneficiary and the trustee
 - Verification of Deposits made to SNT
 - SNT Acceptance Letter
 - (cont'd on next page)



3) Notify Medicaid about the pooled trust

- Proof of Disability
 - If client was ever approved for SSDI or SSI on basis of disability, then you only need to submit award letter and none of the following forms
 - DSS-486T - Medical Report for Determination of Disability
 - Medical records for all doctors back 12 mos. or to desired onset date
 - DSS-1151 - Disability Questionnaire
 - MAP-751D - Medicaid HIPAA Release (for you as rep)
 - OCA Official Form 960 - NY State HIPAA (for doctor) x 3

N.Y. Dep't of Health, GENERAL INFORMATION SYSTEM MESSAGE: MEDICAL EVIDENCE GATHERING FOR DISABILITY DETERMINATIONS – ADULT CASES, GIS 12 MA/027 (October 12, 2012); NYC Human Resources Administration, MEDICAID ALERT: MEDICAL EVIDENCE GATHERING FOR ADULT DISABILITY DETERMINATIONS (January 24, 2013) at <http://wnylc.com/health/download/402/>.



Am I done yet?

- Follow-up with client
 - Make sure client continues making proper monthly contributions to trust, and that they are successfully obtaining disbursements towards living expenses
- Follow-up with Medicaid
 - It can take many months to process
- Look out for notices
 - Final outcome is notices setting spend-down to zero and approving enrollment in QMB (the Medicare Savings Program)
 - Check effective dates: if they are not as early as you wanted, request fair hearing



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<http://nyhealthaccess.org>



Thank You!