

Pooled Income Trusts and Medicaid Home Care

Disabled persons of any age receiving community Medicaid services — including home care, adult-day care and prescription drugs — are now able to use virtually all of their income to pay for their living expenses by participating in a pooled-income trust. It is no longer necessary for consumers to contribute their "excess" income to the Medicaid system as a "spend-down." The pooled trust is proving to be a popular planning tool for persons in need of long-term health-care services for whom the excess-income option did not work because it would not allow them sufficient money to live in the community and qualify for Medicaid. The program works as follows:

- Suppose Mr. Smith has a monthly income of \$1,712 in Social Security and pension income and is utilizing Medicaid home care and adult day-care services. Under present (2007) Medicaid guidelines he is only allowed to keep \$720 of that income.
- Currently his monthly surplus is \$1,000 ($\$1,720 - \$720 = \$1,000$). He is sending a check each month for that amount to the appropriate health-care provider as a contribution toward the cost of his care.
- After Mr. Smith joins the pooled-income trust his \$1,000 check will be sent to the trust office. He will keep \$720 as he does now. Mr. Smith's expenses for rent, food, utilities, clothing, etc. will be paid by the trust according to instructions from Mr. Smith or his representative. Mr. Smith's Medicaid services will not be affected.

The pooled-income trust contains the assets of a number of disabled individuals and is managed by a non-profit organization that maintains separate accounts for each individual. It is effectively a supplemental-needs trust that receives the beneficiary's monthly income and redistributes it on his behalf as directed by the beneficiary or his representative.

Generally, consumers of any age (including those age 65 or older) who wish to establish pooled-trust accounts are required to have a disability evaluation as part of the eligibility determination process unless they have already been determined disabled by the Social Security Administration. Consumers under age 65 who have received either a Social Security disability finding or a Group 1 Disability Approval from Medicaid are also not required to have another disability review but must provide documentation of disability findings.

For those whose disability has not yet been established, Medicaid will make the determination on the basis of completed and signed forms LDSS-1151, DSS-486T and MAP-252F.

In order for a person to participate in the trust, a joinder agreement between the beneficiary and the trust must be completed. The agreement must be signed by the disabled individual (who must have capacity), or by a parent, grandparent, guardian or a person acting under a durable power-of-attorney (with specific authority for joining a pooled trust), or the agreement must be approved by the court. To initiate the process of conserving his "excess" income the individual beneficiary should deposit into his separate trust account the equivalent of two months' excess income (one

month as a deposit and the other as working capital).

While there are no restrictions attached to the establishment or addition of funds to an already-established pooled trust by an individual under age 65, there are restrictions on the transfer of funds into a pooled trust by an individual age 65 or older. **If a disabled individual either first establishes or adds funds to an already existing pooled trust after he turns 65 that transfer of assets is subject to the appropriate penalty period for Medicaid coverage of nursing facility services.** Please see the article on *Medicaid Update - The Good News*.

All pooled-income trust cases must be reviewed by government attorneys before a final determination of eligibility is made. Before proceeding with the pooled-income trust, individuals and their families are strongly encouraged to consult with an attorney who has knowledge of and experience in planning for long-term-care needs.

An important question: Generally, there is no penalty period for income paid into the pooled-income trust before February 8, 2006. However, under new Medicaid law, there is a question about the status of the money paid into the trust on or after that date. Will Medicaid subject that income to a transfer-of-assets penalty period when the individual applies for Medicaid nursing-home coverage? The law appears to provide that to the extent the income is actually paid out by the trust for the benefit of the individual, the individual will be considered to have received fair-market value for the funds placed in the trust and no penalty will apply. *Note:* In anticipation of nursing-home placement, it is then well-advised to keep records of bills paid by the pooled-income trust on behalf of the Medicaid recipient.

**PETROFF & BELLIN, Attorneys at Law, 60 East 42 St., Suite 1056,
New York, NY 10165 Tel: (212) 962-2400; Fax: (212) 571-0284**
