

HOSPITAL DISCHARGE AND NURSING HOME ISSUES

by

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HOSPITAL DISCHARGE AND NURSING HOME ISSUES

I. Hospital Discharge

A. Admission:

1. No right to admission to a particular hospital but MUST be provided with care in an emergency.

- a. **Federal Law 42 U.S.C. § 1395dd (e)(2)**
Emergency Medical Treatment and Labor Act
a/k/a Anti-Dumping Act

provides that hospitals participating in the Medicare program that have emergency departments must provide treatment in order to stabilize the patient and can only transfer the patient once stable.

- b. **Public Health Law § 2805-b**

expands a patient's rights and provides that "every general hospital shall admit any person who is in need of immediate hospitalization with all convenient speed and shall not before admission question the patient or any member of his or her family concerning insurance, credit or payment of charges, provided, however, that the patient or a member of his or her family shall agree to supply such information promptly after the patient's admission."

1. According to **PHL § 3001 (1)**, "emergency medical service" means initial emergency medical assistance including, but not limited to, the treatment of trauma, burns, respiratory, circulatory and obstetrical emergencies.

2. Sources of Admission:
 - a. Through the Emergency Room, or
 - b. Directly accepted as a patient.

3. Once Admitted as a patient, certain rights commence and the rules and regulations take effect.
 - a. Patient's Bill of Rights
 1. **Public Health Law § 2803-c**
 - b. Prior to discharge, hospital patients must receive a written notice that the hospital has determined that hospital care is no longer medically necessary and a written discharge plan with the reasons for discharge. The notice must also state that the patient has a right to request a review of this determination. **Public Health Law § 2803-i.**
 - c. **NYCRR § 405.9** Outlines all of the particular rules regarding admission and discharge.
 - d. The discharge plan must meet the patient's post-hospital care needs. If a patient requires continuing health care services, such services must be secured or determined by the hospital to be reasonably available to the patient. **10 NYCRR § 405.9(f)(1)**
 - e. Hospitals must make sure that no person that is admitted for medical care be removed, transferred or discharged based upon his/her ability to pay. **10 NYCRR § 405.9(f)(7)**

B. Discharge:

1. **Medical Necessity determines Discharge.**
 - a. Medicare defines “medical necessity” as services or items reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

2. **Insurance, Medicaid, and Medicare:**
 - a. place limitations on when services are no longer covered;
 - b. determine the # of days that the patient will have coverage;
 - c. HINN letter
(Hospital Issued Notice of Non-Coverage)

3. **Financial Motivation to leave**

C. Miscellaneous:

1. **Guardianships – Hospitals Petition if:**
 - a. Incompetent/Incapacitated; or
 - b. Family member is abusing or misusing power.

2. **Elder Law attorneys need to arrange for client’s discharge into a Nursing Home (which will be discussed later), Rehabilitation Facility or to their Home. Need familiarity with:**
 - a. HIPAA Authorization

 - b. Insurance Issues - should be familiar with filing appeals and IPRO

 - c. Geriatric Care Manager to assist
 - i. PRI – Patient Review Instrument
 - a. Score determines your placement, based upon ADL's (activities of daily living)

II. Nursing Home Issues

A. Admissions Agreement

1. Parties to the Agreement:

- a. “Resident” is the individual admitted to and who resides in a nursing home and who is entitled to receive care, treatment and services. **10 NYCRR § 415.2 (m)**
- b. “Sponsor” is the agency or person or persons, other than the resident, responsible in whole or in part for the financial support of the resident, including the costs of care in the facility. **10 NYCRR § 415.2 (s)**
- c. “Designated Representative” is the individual or individuals designated in accordance with this subdivision to receive information and to assist and/or act on behalf of a particular resident to the extent permitted by State law; it being understood that a designated representative specified in subparagraph (1) (iii) of this subdivision is not a health care agent as defined in Article 29-C of the Public Health Law.
 - i. Such individual or individuals shall be designated, with such designation noted in the clinical record:
 - a. by a court of law when the designation of an individual, committee or guardian has been sought;

- b. by the resident if the resident has the capacity to make such designation; or
- c. by family members and other parties who have an interest in the well-being of the resident who, after discussion with the facility, identify the individual or individuals most personally involved in the resident's care, if the resident lacks the capacity to make such designation.

ii. The designated representative shall:

- a. Receive any written and oral information required to be provided to the resident if such resident lacks the capacity to understand or make use of such information, and also receive any information required to be provided to both the resident and the designated representative; and
- b. Participate to the extent authorized by State law in decisions and choices regarding the care, treatment and well-being of the resident if such resident lacks the capacity to make such decisions and choices. **10 NYCRR § 415.2 (f)(2)(ii)**

d. “Responsible Party” and Financial Agent defined by contract as an individual who has legal access to a resident’s income or resources available to pay for facility care, to sign a contract, without incurring financial liability, to provide the facility payment from the resident’s income or resources.

10 NYCRR § 415.3 (b)(6)

e. “Financial Agent” defined by contract – typically limited access to resources.

- (1) Trust
- (2) Power of Attorney
- (3) Joint Accounts or convenience accounts

2. Financial Disclosure:

a. Identifies the proper parties listed in previous section for purposes of the Admission Agreement.

b. Confirms sources of payment:

- i. Private pay;
- ii. Insurance or Supplemental Coverage;
- iii. Medicaid recipient:
 - a. Need to verify assets and any prior transfers to determine eligibility.
 - b. Medicaid planning: residents or potential residents shall not be required to waive their rights to Medicare or Medicaid benefits [Nursing Homes] shall not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for Medicare, or Medicaid benefits.

10 NYCRR § 415.3

- 3. Liability for Payment to Nursing Home:
 - a. Responsible Party Liability
 - i. NY General Obligations Law
Fraudulent Conveyance
 - ii. Breach of Contract
 - b. Third-Party Guarantee Prohibited
 - i. A Nursing Home shall not require a third-party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility.
42 U.S.C. § 1396r (c)(5)(A)(ii)
 - ii. [Nursing Home] shall not charge, solicit, accept or receive, in addition to any amount otherwise required to be paid by third-party payors, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility except that arrangements for prepayment for basic services not exceeding three months shall not be precluded by this paragraph. **10 NYCRR § 415.3 (b) (2)**

- B. Bed-Hold Policy: Prior to discharge or transfer, a facility must notify a resident in writing of the facility's bed-hold policy. **42 U.S.C. § 1396r (c)(2)(D); 42 C.F.R. § 483.12(b); 10 NYCRR § 415.3(h)(4)**
 - 1. A private paying resident can hold their bed at the private-pay rate.
 - 2. Medicaid reimburses nursing home up to 15 days (can be extended to 20 days).
 - 3. DOH requires priority to former residents.
 - 4. Nursing Homes may use to dump non-paying

resident.

C. Discharge

1. Definition:

- a. Discharge is defined as movement of a resident to a bed outside of the certified facility. **42 C.F.R. § 483.12(a)(1); 10 NYCRR § 415.3 (h)**

2. Regulations regarding Discharge:

- a. Federal law and regulations provide that a Nursing Home must permit each resident to remain in the facility and must not transfer or discharge the resident unless: **42 USC 1396r(c)(2); 42 C.F.R. § 483.12(a)(2)**

- i. the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- ii. the discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- iii. the safety of the individuals in the facility is endangered;
- iv. the health of individuals in the facility would be otherwise endangered;
- v. the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or
- vi. the facility ceases to operate.

- b. According to New York Law a Nursing Home may not transfer or discharge a resident unless: **10 NYCRR 415.3 (h)(1)(i)(a)**
 - i. the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
 - ii. the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or
 - iii. the health or safety of individuals in the facility would otherwise be endangered, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to safely address the problem.

3. Notice of Discharge

- a. Federal law requires before effecting a transfer or discharge of a resident, the nursing home must notify the resident in writing of the discharge and the reasons and must record the reasons in the resident's clinical record. **42 USC 1396r(c)(2)(B)(i); 42 C.F.R. § 483.12(a)(4)**
 - i. Requirements:
 - a. If the immediate family member or the resident or legal representative are known they must also be notified.

- b. The notice of discharge must be made at least 30 days before the resident's transfer with few exceptions including when the safety of individuals in the facility is endangered. **42 USC 1396r(c)(2)(B)(ii); 42 C.F.R. § 483.12(a)(5)(i)**
 - c. The written notice of discharge must state the effective date of discharge, the reason for discharge, the location to which the resident is discharged, the right of the resident to appeal the action by a hearing; and the name, address and telephone number of the State long term care ombudsman. **42 USC 1396r(c)(2)(B)(iii); 42 C.F.R. § 431.200(c)(1) and § 483.12(a)(6)**
 - d. The notice must also cite the specific regulations that support the intended action. **42 C.F.R. § 431.210(c)**
-
- b. New York State law also requires that before effecting a transfer or discharge of a resident, the nursing home must notify the resident in writing of the discharge and the reasons and must record the reasons in the resident's clinical record. **10 NYCRR 415.3 (h)(1)(iii)(a) and (b)**

- i. Requirements:
 - a. If the immediate family member or the resident or legal representative are known they must also be notified.
 - b. The notice of discharge must be made at least 30 days before the resident's transfer with few exceptions including when the safety of individuals in the facility is endangered. **10 NYCRR 415.3(h)(1)(iv)**
 - c. The notice must include a statement that the resident has a right to appeal the action to the State Department of Health.

4. Appeal/Hearing

- a. Federal regulations require that the state agency must grant an opportunity for a hearing to any resident who requests it because he or she believes a skilled nursing facility has erroneously determined that he or she must be transferred or discharged. **42 C.F.R. §§ 431.200(c)(1), 431.220(a)(3) and 483.204**

- i. Requirements:
 - a. The agency may not limit or interfere, with appellant's right to make a request for a hearing and may assist the appellant with this request.

42 C.F.R. §§ 431.221(b) and(c)

- b. The agency must allow the appellant a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. **42 C.F.R. § 431.221(d)**
- c. The hearing must be held before the Medicaid agency; or to be held as an evidentiary hearing at the local level, with a right of appeal to a State agency hearing. The hearing system must meet the due process standards set forth in Goldberg v. Kelly, 397 U.S. 254 (1970), plus all additional standards established in the federal regulations. **42 USC 1396r(e)(3); 42 C.F.R. § 431.205**
- d. The appellant must be given the opportunity to examine the content of the appellant's case file; all documents and records to be used by the State or local agency; bring witnesses; present an argument without undue interference; and question or refute any testimony or evidence, including opportunity to confront and cross examine adverse witnesses. **42 C.F.R. § 431.242**

- e. An appellant may represent himself or use legal counsel. **42 USC 1396r(e)(3); 42 C.F.R. §§ 431.206(b)(3) and 431.242**
 - f. Additional Hearing requirements are outlined in **42 C.F.R. § 431.240**
 - g. The agency may deny or dismiss a request for a hearing only if the applicant or recipient withdraws the request for the hearing or fails to appear at a scheduled hearing without good cause. **42 C.F.R. § 431.223**
- b. New York State regulations provide that the resident of a nursing home has a right to a “pre-transfer appeal determination” under the auspices of the Department of Health. **10 NYCRR 415.3(h)(2)(i)(a)**
- i. Requirements:
 - a. NYS does not provide for hearings on appeal as required by the federal regulations.
 - b. Without requiring a hearing, the state regulations require that the department conduct a review and render a decision on appeal within 15 days of the request. **10 NYCRR 415.3(h)(2)(v)**

5. Notice of Decision in Writing
 - a. Federal regulations require that the agency must notify the applicant or recipient in writing of the decision and his right to request a state agency hearing, if the hearing was conducted by the local agency, or seek judicial review, to the extent that either is available to him. **42 C.F.R. § 431.245**

D. Nursing Homes Options to Seek Payment for Services

1. Hardship waiver
 - a. Undue hardship exists when an
 - i. Individual is deprived of medical care such that their life or health will be endangered, or an
 - ii. Individual is deprived of food, clothing, shelter or life necessities
 - b. States are required to institute a process
 - i. Notice to recipients that undue hardship exists
 - ii. Timely process for determining if waiver will be granted
 - c. Facilities may apply for waiver for Resident
 - i. Need consent of resident or designated representative
 - ii. Hardship is only for hardship to resident, not the facility

2. **Fraudulent Conveyances**

- a. In **N.Y.S.S.L. § 366** there is a presumption that transfers for less than fair consideration within the look back period, were made to qualify for Medicaid

- b. According to **D.C.L. § 273**, to establish a case of fraudulent conveyance it must be determined whether the
 - i. Conveyance was made without fair consideration
 - ii. Conveyance was made with intent to defraud creditors
 - iii. Conveyance rendered the resident insolvent.

3. **Responsible Parties:**

- a. Spouse if patient/resident does not have sufficient means
- b. Designated Representative who signed the Admissions Agreement or Power of Attorney but only to the extent he/she has access to the patient/resident's funds

Table of Authorities

- Federal Law 42 U.S.C. § 1395dd(e)(2)
- Public Health law § 2805-b
- Public Health law § 3001
- Public Health Law § 2803-c
- Public Health Law § 2803-i
- 10 NYCRR § 405.9(f)(1)
- 10 NYCRR § 405.9 (f)(7)
- 10 NYCRR § 415.2 – Definitions
- 10 NYCRR § 415.3 – Resident’s Rights
- 42 U.S.C. §1396r (c)(5)(A)(ii)
- 42 U.S.C. § 1396r (c)(2)(D)
- 42 C.F.R. § 483.12(b)
- 42 C.F.R. § 483.12(a)(4)
- 42 C.F.R. § 483.12(a)(6)
- 42 C.F.R. § 431.200(c)(1)
- 42 C.F.R. § 431.210(c)
- 42 C.F.R. § 431.220(a)(3)
- 42 C.F.R. § 483.204
- 42 C.F.R. § 431.221(b)(c)(d)
- 42 U.S.C. § 1396r(e)(3)
- 42 C.F.R. § 431.205
- 42 C.F.R. § 431.242
- 42 C.F.R. § 431.206(b)(3)
- 42 C.F.R. § 431.240
- 42 C.F.R. § 431.223
- 42 C.F.R. § 431.245

NURSING HOME ADMISSIONS AGREEMENTS

- ◉ Parties to the Agreement
 - Resident (10 NYCRR § 415.2)
 - Individual admitted.
 - Sponsor (10 NYCRR § 415.2)
 - Agency or person responsible for financial support of the resident.
 - Designated Representative (10 NYCRR § 415.2)
 - Individual(s) designated to receive information and to assist and/or act on behalf of resident.
 - Responsible Party (10 NYCRR § 415.3(b)(6))
 - Individual who has legal access to a resident's income or resources to provide payment to the facility.
 - Financial Agent
 - Defined by contract.

NURSING HOME ADMISSIONS AGREEMENTS

- ◉ Financial Disclosure
 - Identifies Proper Parties
 - Confirms Source of Payment
 - ❖ Private-Pay
 - ❖ Insurance or Supplemental Coverage
 - ❖ Medicaid Recipient



NURSING HOME ADMISSIONS AGREEMENT



- Liability for payment to Nursing Home
 - Residents are liable for care received.
 - A resident with full mental capacity who signs an Admission Agreement that includes a promise on the part of the resident to pay privately for his/her care, or to apply for government benefits is liable for care received.

LIABILITY FOR PAYMENT TO NURSING HOME

- Liability of Resident's Spouse
 - Doctrine of Necessaries
 - There is a reciprocal duty upon each spouse to furnish the other with reasonable necessities, including medical care.
 - ❖ *Med. Bus. Assoc., Inc. v. Steiner, 183 A.D.2d 86, 87 (N.Y.S.2d 1992)*
 - The spouse who received the necessary goods or services should be primarily liable for payment.
 - A creditor seeking to recover a debt against the non-resident spouse must demonstrate that:
 - ❖ The non-resident spouse has the ability to pay for the debt; and
 - ❖ That an attempt was made to secure payment from the debtor spouse first.
 - N.Y. Gen. Oblig. Law § 3-305
 - A contract made by a married woman does not bind her husband or his property.

LIABILITY FOR PAYMENT TO NURSING HOME

- Liability of Resident's Spouse
 - The Family Court Act Section 412
 - A married person is chargeable with the support of his or her spouse and, if possessed of sufficient means or able to earn such means, *may be required* to pay for the support in a fair and reasonable sum, as the Court may determine, having due regard to the circumstances of the respective parties.
 - However, Section 422 of the Family Court Act states that the parties who have standing to assert this claim are not third parties such as creditors.
 - Family Court has exclusive jurisdiction over spousal claims that arise from Section 412.

LIABILITY FOR PAYMENT TO NURSING HOME

- Third party liability for nursing home bills
 - Federal Nursing Home Reform Act
 - A nursing home is prohibited from requiring a third party to guarantee payment to the facility as a condition of admission of another party.
 - Any child who signs a guarantee can later disavow.
 - Sometimes nursing homes will "require" a child to guarantee payment for the cost of a parent's care in the nursing home.
 - Third parties can have access to resident's funds through:
 - Power of Attorney
 - Joint Bank Account
 - Appointment as Guardian

LIABILITY FOR PAYMENT TO NURSING HOME

- ◉ However, a child can be held responsible for renegeing on a written promise to a nursing home to apply the *parent's own assets* towards the cost of the parent's nursing home.
 - *Troy Nursing & Rehabilitation Ctr., LLC v. Naylor* (2012 NY Slip Op. 03243, App. Div. 3rd Dept., April 26, 2012)
 - Daughter signed an agreement wherein she promised, as agent under her father's power of attorney, to use her father's assets to pay for her father's care in the facility.
 - Daughter renegeed and the nursing home filed suit against her.
- ◉ The court distinguished between a child's guarantee to use her *own assets* to pay for care and a promise to use the *resident's own assets* to pay for care.

LIABILITY FOR PAYMENT TO NURSING HOME

- ◉ Other important case law:
 - *Prospect Park Nursing Home v. Goutier, 12 Misc.3d 1192*
 - Power of Attorney who signed an admission agreement can be held liable to a nursing home for breach of contract if he failed to turn over funds actually received by him that he has the legal authority to use (i.e. under the power of attorney)
 - If Power of Attorney does not have access to sufficient funds belonging to the resident to cover the resident's nursing home bill, the Power of Attorney who signed the admission agreement could not be held liable to the facility.
 - However, it is not enough to have legal access to funds, there must also be income or resources available to pay for the care.
 - *Amsterdam Nursing Home v. Lang, 16 Misc.3d 1138*
 - Proof of access to the resident's funds is a pre-requisite to finding the signer of an admission agreement liable for the resident's nursing home bill.

LIABILITY FOR PAYMENT TO NURSING HOME

- ◎ Hillside Manor Rehab. & Extended Care Center LLC v. Barnes (Queens)
 - Mother added daughter's name to bank account prior to admission to nursing home.
 - Mother then became resident of the nursing home before passing away.
 - Following her passing, the nursing home sent bills to daughter for unpaid NAMI. When bills remained unpaid, the nursing home sued the daughter to recover \$6,830.40 alleging that she had access to the mother's funds which should have been paid to the nursing home.
 - Daughter used the funds to pay household bills to maintain her mother's home.
 - Daughter never signed a contract with the nursing home to pay bill from the mother's funds.
 - Court found that there was no evidence of an agreement requiring the daughter to pay the nursing home from the joint account or from any of the mother's assets or resources.
 - Even if such an agreement existed, there could be no personal financial liability to defendant because Federal and State regulations prohibit nursing homes from requiring a third party guarantee as a condition to admission.

LIABILITY FOR PAYMENT TO NURSING HOME

- ◎ Third Party Liability Conclusions:
 - ◎ An admission agreement can only require the signer to use his/her access to *the resident's funds*
 - ◎ *Can also have a clause requiring assistance with* documentation to the resident's Medicaid application
 - ◎ If the signer does not have access to *the resident's funds*, that individual may not have liability to the facility under a breach of contract cause of action.

**HOW TO ADVISE
FAMILY MEMBERS**

(1) SPEND DOWN

- a) Community Medicaid
- b) Chronic Care Medicaid

COMMUNITY MEDICAID SPEND-DOWN

- Allowed income level for a single individual is \$825.00 + \$20 disregard
- Allowed income level for a couple is \$1,209.00 + \$20 disregard
- A married person may choose either Spousal Impoverishment Budgeting or regular Community Budgeting, which allows for a pooled trust, whichever is more advantageous.

COMMUNITY SPEND-DOWN

a) Pooled Trust

b) Pay Towards Care

POOLED TRUST - HOW IT WORKS

- a) After calculating Gross Income less any Deductions, your spend-down may be sent to a Pooled Trust.
- b) Pooled Trust can pay any non-medical bills in applicant's name, i.e. utilities, real estate taxes, and rent. Trust may also pay medical bills not covered by Medicare, private insurance, or Medicaid.
- c) Each month, the applicant's Spend-Down is sent to the Pooled Trust along with current bills up to your Spend-Down amount (less any monthly fees for the Trust). The Trust pays these bills directly.
*THE TRUST MAY NOT PAY THE APPLICANT DIRECTLY.

OPTIONS OF POOLED TRUSTS

- a) NYSARC, Inc. Trust Services
- b) Life's WORC Trusts
- c) LIFE, Inc. Pooled Trust
- d) The Theresa Foundation Pooled Trust of New York
- e) Many more...(See attached list in materials)

POOLED TRUSTS (FACTORS THAT VARY)

- **Administration Fee** – some have higher “start up” fees than others. Must use a sliding scale based upon the Spend-Down for their monthly fee.)
- **What is allowed** – i.e. can bills be in spouse’s name? Will they pay private aides?
- **Consistency with bill-paying** – some have a 3 day turnaround, some have 2 weeks.
- You need to determine what is best for your client. Each situation may vary.

PAY TOWARDS CARE

- Applicant or their spouse’s medical bills.
- Medical bills of their children, whether they live with you or not.
- Any medical bills not covered by Medicare, private insurance or Medicaid.

CHRONIC CARE SPEND-DOWN

- Home improvements, a vehicle upgrade or a pre-paid funeral.
- Computer, Television or custom chair or medical equipment
- Hiring of professionals – Attorneys or geriatric care managers

(2) NET AVAILABLE MONTHLY INCOME (“NAMI”)

- Chronic Care Medicaid adds up all of your GROSS non-exempt income (i.e. Social Security, pension, monthly IRA, monthly dividends, etc.)
 - Subtracts medical premiums and personal needs allowance
- Long term nursing home residents are allowed to keep \$50/month of their income a/k/a personal needs allowance

**COMMUNITY MEDICAID
SPOUSE INCOME**

Community Spouse

The Community Spouse is permitted a Minimum Monthly Maintenance Needs Allowance (“MMNA”) and as such may be allowed to keep some of their institutionalized spouse’s income.

The Community Spouse Income Allowance (“CSIA”) for 2016 is \$2,980.50 per month. If the Community Spouse’s income is less than the CSIA, the Community Spouse will be allowed to keep the amount of their institutionalized spouse’s income that will bring him/her up to that level

**COMMUNITY MEDICAID
ENHANCED INCOME**

Enhanced Community Spouse Income Allowance:
18 NYCRR Section 360-4.10(b) (6) provides that if it is established that the Community Spouse needs income above the level established by Medicaid “...based upon exceptional circumstances which result in significant financial distress...the department must substitute an amount adequate to provide additional necessary income from the income otherwise available to the institutionalized spouse.”

HOW TO ACHIEVE ENHANCED INCOME

- Often will require a Fair Hearing to establish.
- Attorneys may go to Family Court as it was easier to obtain a higher level of support; however this is not often the practice since the Administrative Law Judges at the Fair Hearings now use the same standard.

(3) PROPER USE OF FUNDS

- Resources in excess of the Medicaid resource level will affect Medicaid eligibility unless the resources are exempt.
- Exempt Resources are those that the Medicaid agency does not take into account when determining eligibility.

EXEMPT RESOURCES – BURIAL ALLOWANCE

- A Medicaid applicant can have a combination of a cash burial allowance and life insurance that has a face value of less than \$1,500.
- Burial space items such as a grave, headstone, engraving, casket, grave opening and perpetual care are also Exempt Resources.
- Medicaid applicants may also pre-pay funeral and burial expenses with an Irrevocable Medicaid Pre-Needs Trust.

EXEMPT RESOURCES – PERSONAL PROPERTY

- Individual belongings like clothing, jewelry and home items like furniture, paintings, silverware and china are exempt.
- However, in cases of extremely valuable collectibles, Medicaid may attempt to exclude such property from home property that is considered exempt.

EXEMPT RESOURCES – HOMESTEAD

- The primary residence occupied by an applicant or his/her spouse or minor issue is exempt, up to the value of \$828,000 as of 2016.
- The homestead can be a 1,2, or 3 family home, a condominium, a cooperative or a mobile home and may also produce income.
- However, if the homestead produces income, that income is NOT exempt.

EXEMPT RESOURCES – OTHER

- Other Exempt Resources are:
 - One automobile
 - Nazi Persecution Accounts
 - German and Austrian reparations
 - Relocation restitution to Japanese Americans



THE END



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[WNYLC Online Resources / Home / Medicaid / Supplemental Needs Trusts / List of Pooled SNTs in New York State](#)

List of Pooled SNTs in New York State

This is an unofficial list of non-profit organizations in New York State that offer pooled Supplemental Needs Trusts (or similar services) to people with disabilities. We do not claim that this is an exhaustive list; there may be other pooled trusts in the state of which we are unaware. In addition, the specifics about each trust may not be up to date, so the best source of information is to contact the trust organization directly. Please let us know if you find any corrections.

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Posted: 01 Aug, 2008
 by David Silva (New York Legal Assistance Group)
 Updated: 31 Aug, 2016
 by Valerie Bogart (New York Legal Assistance Group)

Name and Contact Info	Comments	Accepts monthly income to eliminate Medicaid spend-down
Adults and Children with Learning & Developmental Disabilities, Inc. (ACLD) 607 South Oyster Bay Road Bethpage, NY 11714 http://www.acld.org/ Colleen Crispino 516-822-0028 x 138 crispinac@acld.org	Trust A - third-party trust Trust B - self-settled trust	No
AHRC NYC Foundation 83 Maiden Lane New York, NY 10038 (212) 780-2690 info@ahrcnycfoundation.org http://www.ahrcnycfoundation.org/	Community Trust I for Persons with Disabilities <ul style="list-style-type: none"> • Third-party trust • Minimum contribution: \$10,000 • Annual fee of <1% Community Trust II <ul style="list-style-type: none"> • Self-settled trust • Minimum contribution: \$10,000 • Annual fee of <2% 	No
Camphill Resident's Trust 317 Church Street Phoenixville, PA 19460 (610) 291-5079 info@camphilltrust.com http://www.camphilltrust.com/	The minimum for starting a CRT account is \$ 15,000. However, an initial deposit of as little as \$ 3,000 may open an account with the remainder of the \$ 15,000 to be deposited within two years. Additional contributions, in amounts of \$ 100 or more, can be made at any time to an established CRT account.	No
Catholic Family Center 30 N. Clinton Avenue Rochester, NY 14604 (585) 232-1840 x4003 / x4022 http://www.cfcrochester.org/	<ul style="list-style-type: none"> • Formerly Family Service of Rochester • They do not operate a pooled trust, but will serve as trustee for individual SNTs • This might be a good option for individuals under 65 who want to establish an individual SNT, but where the trust corpus is too small to afford a for-profit institutional trustee • They can serve as trustee for lump sums, but also for monthly excess income • The trust agreement must specify that CFC receives the statutory trustee fee • CFC must be contacted by the attorney during drafting of trust • Beneficiaries must have a case manager or other go-between 	Yes
Center for Disability Rights, Inc. 497 State Street Rochester, NY 14608 CDR Pooled Trust Info & Forms Amanda Flannery or	<ul style="list-style-type: none"> • Self-settled trust • No minimum balance • \$240 start-up cost (includes \$200 enrollment fee plus \$20 monthly fee and \$20 minimum deposit) • \$20 monthly fee (covers up to 4 disbursements per month; \$10 fee for each additional disbursement) • \$50 annual accounting fee 	Yes

<p>Mirta Arroyo marrroyo@cdnys.org Ph: (585) 546-7510 Fax: (585) 546-7567 / (585) 546-7560</p>		
<p>Community Living Corporation (CLC) 600 Bedford Road Mt. Kisco, NY 10549 (914) 241 2076 clcfoundation@optonline.net http://www.clcpooledtrust.org</p>	<p>Pooled Trust 1 Pooled Trust 1 is a third-party SNT, established with funds provided by a family member or friend.</p> <ul style="list-style-type: none"> • Minimum Deposit: \$10,000 • One-time enrollment fee \$200 • \$1,000 annual fee for accounts under \$25,000 • For accounts over \$25,000, annual fee of not less than \$1,000 to be negotiated with trustee <p>Pooled Trust 2 Pooled Trust 2 is a self-settled SNT, established with funds provided by the beneficiary.</p> <ul style="list-style-type: none"> • Minimum Deposit: \$5,000 • One-time enrollment fee \$250 • \$1,000 annual fee for accounts under \$50,000 • For accounts over \$50,000, additional annual fee of 1% of balance in excess of \$50,000 	<p>Yes</p>
<p>Disabled and Alone / Life Services for the Handicapped, Inc. 61 Broadway, Suite 510 New York, NY 10006 Ph: (212) 532-6740 / (800) 995-0066 Fax: (212) 532-3588 http://www.disabledandalone.org/</p>	<ul style="list-style-type: none"> • Third-party trust • Minimum deposit: \$100,000 	<p>No</p>
<p>Future Care Community Pooled Trust (A partnership of Al Sigi Community of Agencies, Lifespan and the Arc of Monroe) 1000 Elmwood Avenue Rochester, NY 14620 T: 585-402-7840 Ext 2 http://www.futurecareplanning.org/</p>	<p><u>Must Reside in Monroe County or surrounding counties to be able to join this trust:</u></p> <p>1st Party Lump Sum Pooled Trust</p> <ul style="list-style-type: none"> • \$200 enrollment fee • \$3000 minimum opening deposit (\$2000 if on SSI) • 1.235% annually for investment services • 0.75% annually for administrative fee • \$50 annual audit fee • \$30.00 per month additional fee if trust is used for monthly disbursements <p>1st Party Spend Down Pooled Trust</p> <ul style="list-style-type: none"> • \$200 enrollment fee • \$100 Minimum balance • \$30 per month Includes 4 disbursements (\$5 per additional disbursement) • \$50 annual audit fee <p>3rd Party Pooled Trust</p> <ul style="list-style-type: none"> • \$5000 minimum opening deposit • Please call for fees 	<p>Yes (1st Party Spend Down Pooled Trust)</p>
<p>KTS Pooled Trust 3011 Avenue K Brooklyn, NY 11210 Phone: (718) 475-5000 FAX: (718) 475-5010 Email: info@ktstrust.org http://ktstrust.org/</p>	<ul style="list-style-type: none"> • \$250 enrollment fee • Monthly fee of 10% of required monthly deposit (minimum \$30, maximum \$200) • Annual renewal fee of \$100 • Monthly contributions can be made by ACH direct debit from bank account • No minimum balance • No minimum funding 	<p>Yes</p>
<p>LCG Community Trust LCG Community Services, Inc. 14 Mount Hope Place Bronx, NY 10453-6102 (718) 466-2200 info@lcgcs.org http://www.lcgcs.org/</p>	<p>Community Trust I – Self-Directed Asset Trust</p> <ul style="list-style-type: none"> • \$25,000 minimum contribution within 12 years of enrollment • Enrollment fee of 1% of initial deposit (minimum \$250) • Monthly administrative fee of 2% of funds on deposit (minimum \$42) • Monthly brokerage fee of 0.042% • Annual renewal fee of \$100 • Annual audit and tax return fee of \$100 • Can designate remainder beneficiaries to receive no more than 50% of corpus remaining on disabled beneficiary's death <p>Community Trust II – Third Party Asset Trust</p> <ul style="list-style-type: none"> • \$25,000 minimum contribution within 12 years of enrollment • \$250 enrollment fee 	<p>Yes (Community Trust II and III)</p>

	<ul style="list-style-type: none"> • Monthly administrative fee of 2% of funds on deposit (minimum \$42) • Monthly brokerage fee of 0.042% • Annual renewal fee of \$100 • Annual audit and tax return fee of \$100 • Can designate remainder beneficiaries to receive no more than 50% of corpus remaining on disabled beneficiary's death <p>Community Trust III – Medicaid Spend-Down Trust</p> <ul style="list-style-type: none"> • Minimum monthly deposit: \$500 • \$250 enrollment fee • Monthly administrative fee of 8.5% of required monthly deposit (minimum \$42.50) • Annual renewal fee of \$100 • Annual audit and tax return fee of \$100 • All funds remaining in the trust at beneficiary's death are retained by trustee organization 	
<p>Life's WORC Trusts 1501 Franklin Avenue PO Box 8165 Garden City, NY 11530 516-741-9000 ext. 225 516-348-7878 Fax: (516) 302-1802 Email: trustservices@lifesworc.org http://www.lifesworctrust.org/</p>	<p>Self-Settled Trust (Community Trust 1)</p> <ul style="list-style-type: none"> • Self-settled trust • Minimum deposit: \$500 • One-time enrollment fee of \$250 • Annual fees: <ul style="list-style-type: none"> • Up to \$20,000 - 5% of Account Balance; • \$20,000 to \$50,000 - \$1000; • \$50,000 and above - additional 1% of balance over \$50,000 <p>Third-Party Pooled Trust (Community Trust 2)</p> <ul style="list-style-type: none"> • Third-party trust • Minimum deposit: \$10,000 • One-time enrollment fee of \$250 • Annual fees: <ul style="list-style-type: none"> • Up to \$20,000 - 5% of Account Balance; • \$20,000 to \$50,000 - \$1000; • \$50,000 and above - additional 1% of balance over \$50,000 <p>Surplus Income Pooled Trust (Community Trust 3)</p> <ul style="list-style-type: none"> • Excess Income Trust • Minimum deposit: \$300 • One-time enrollment fee of \$250 • Double the monthly deposit is required before expenses can be paid, with one month remaining available for bill pay • Monthly administrative fees are based on monthly deposit amounts: <ul style="list-style-type: none"> • Deposits up to \$500 - \$50 fee; • \$501 to \$3000 - 10% of the monthly deposit; • \$3001 to \$4000 - \$300 fee; • \$4001 and above please contact Life's WORC Pooled Trusts 	<p>YES (Community Trust 3 only)</p>
<p>LIFE, Inc. Pooled Trust (Labor & Industry For Education, Inc.) 112 Spruce St Cedarhurst, NY 11516 Telephone: (516) 374-4564 ext. 3 www.lifetrusts.org</p>	<p>LIFE offers:</p> <p>(i) a self-settled (i.e. established by the beneficiary) monthly spend-down trust</p> <p>(ii) a self-settled asset trust and</p> <p>(iii) third-party asset trusts</p> <ul style="list-style-type: none"> • \$300 one time sign-up fee • \$200 annual fee from the second year on • Monthly fee depends on amount of the spend-down (set fee, not percentage) • No minimum deposit • Automated Monthly bill pay. • Trust established in 2 business days guaranteed • Process of bill requests in 3 business days guaranteed (no more late bills) • Dedicated trust counselor assigned to each trust client • <u>Fillable Joinder Agreement</u> 	<p>Yes (Trust I)</p>
<p>NYSARC, Inc. Trust Services 393 Delaware Avenue Delmar, NY 12054 Telephone: (518) 439-8323 Toll Free: (800) 735-8924 Facsimile: (518) 439-2670 E-mail: trustdept@nysarc.org http://nysarc.trustservices.org</p>	<p>Community Trust I</p> <ul style="list-style-type: none"> • Self-settled trust • \$200 one-time enrollment fee - non-refundable • Minimum deposit: \$300 • \$25 annual fee charged every July for accounting • \$1/month Allocation Fee • Co-trustee fee of 0.75% annually charged at monthly rate of .0625% based upon balance at end of preceding month 	<p>Yes (Community Trust II)</p>

<p>Mailing address NYSARC Inc. Trust Services POB 1531 Latham, NY 12110 (for Fed Ex & UPS use Delmar address above)</p>	<ul style="list-style-type: none"> Plus, the greater of: <ul style="list-style-type: none"> 0.9% annual rate, charged monthly at .075% of average monthly assets OR Flat fee of \$10/mo. Intended for lump-sums, not monthly spend-down Remainder at beneficiary's death is retained by trustee <p>Community Trust II</p> <ul style="list-style-type: none"> Self-settled trust \$200 one-time enrollment fee - non-refundable DOUBLE the monthly spend-down, of which one month is available to pay expenses. The 2nd month must be on deposit like a security deposit \$50 annual fee charged every July for accounting \$1/month Allocation Fee Pro rata share of annual audit, tax preparation costs for Trust Co-trustee fee of 0.75% annually charged at monthly rate of .0625% based upon balance at end of preceding month Plus, the greater of: <ul style="list-style-type: none"> 0.9% annual rate, charged monthly at .075% of average monthly assets OR Flat fee ranging from \$30-\$240 depending upon amount of monthly contribution (for contributions over \$4,000, contact NYSARC to determine fee)(Fee schedule posted online) <p>Community Trust III</p> <ul style="list-style-type: none"> Self-settled trust No enrollment fee Minimum deposit: \$250,000 Intended for lump-sums, not monthly spend-down Monthly fee of 0.06% or 0.075% depending upon balance, plus trustee bank fee not to exceed 0.0625% (0.75% annually) Remainder at beneficiary's death is subject to Medicaid recovery, but any amount remaining after that goes 25% to NYSARC and 75% to designated beneficiaries <p>NYSARC Chart Comparing 3 Pooled Community Trusts</p> <p>Links to Documents for all 3 Pooled Community Trusts</p>	
<p>SCS Pooled Trust 1404 Coney Island Avenue Brooklyn, NY 11230 Telephone: 718-971-2509 Fax: 844-623-0481 www.info@seniorcommservice.org www.seniorcommservice.org</p>	<ul style="list-style-type: none"> \$250 Enrollment Fee Monthly administrative fee of 10% of monthly required deposit (Min. \$25/Max. \$200) Unlimited disbursements No Minimum balance requirement No Minimum funding requirement \$100 Renewal Fee Monthly deposits can be made by ACH Direct Debit 	<p>Yes</p>
<p>The Rose and Maurice Halpern Lifetime Care Foundation at OHEL 156 Beach 9th Street Far Rockaway, NY 11691 718 686 3170 http://www.ohelfamily.org/?q=lifetime_care/pooled-trusts lctrusts@ohelfamily.org</p>	<p>The Lifetime Care Foundation Community Pooled Trust I</p> <ul style="list-style-type: none"> Third-party trust A portion of the funds can be invested An initial deposit minimum of \$20,000 must be received in order for a client's funds to be invested. The first \$10,000 is kept in a liquid account, and the next \$10,000 is invested. At a point when the liquid \$10,000 reaches a balance of \$0, money will be divested from the investment account to the liquid account in increments of \$10,000 <p>The Lifetime Care Foundation Community Pooled Trust II</p> <ul style="list-style-type: none"> Self-settled trust For those clients wishing to deposit liquid assets into a trust in order to preserve government entitlements, while having a portion of this money invested An initial deposit minimum of \$20,000 must be received in order for a client's funds to be invested. The first \$10,000 is kept in a liquid account, and the next \$10,000 is invested. At a point when the liquid \$10,000 reaches a balance of \$0, money will be divested from the investment account to the liquid account in increments of \$10,000 <p>The Lifetime Care Foundation Community Pooled Trust III</p> <ul style="list-style-type: none"> Self-settled trust 	<p>Yes</p>

	<ul style="list-style-type: none"> • Can enable disabled individuals and seniors to use their excess income to pay for their own supplemental needs, such as rent, utilities, and medical services not covered by Medicaid and/or other entitlements programs <p>Fees</p> <ul style="list-style-type: none"> • \$900 annual fee (first year's fee due at Initiation) • \$10 fee per check for any payments in excess of three per month • For Trusts I & II only: <ul style="list-style-type: none"> • Investment fees of approximately .75% from Bernstein Global Wealth Management • 1% investment fund management fee (if placed in investment account) • Annual investment fees: <ul style="list-style-type: none"> ▪ 1.5% for \$25,000-\$250,000 ▪ 1% for the next \$250,000-1 Million ▪ 0.5% for additional amounts over 1 Million 	
<p>The Theresa Foundation Pooled Trust of New York 250 Lido Boulevard Lido Beach, NY 11561 (516) 432-0449 http://www.theresafoundation.org</p> <p>Administered by The Center for Special Needs Trust Administration, Inc. 4912 Creekside Drive Clearwater, FL 33760 (877) 766-5331 http://www.centerswab.com http://centerswab.com/SNT/types_pooled_state.html</p>	<p>The Theresa Pooled Trust</p> <ul style="list-style-type: none"> • Self-settled trust • Annual fee of 2% of trust assets • One-time administrative fee of \$2,500 • Designed for sheltering lump-sums <p>The Theresa Pooled Income Trust</p> <ul style="list-style-type: none"> • Self-settled trust • One-time opening fee of \$175 • Monthly service fee of \$25 - \$200, depending upon amount of monthly contribution • Monthly maintenance fee of 0.875% of account balance • Designed for sheltering excess income <p>The Theresa Foundation Community Trust</p> <ul style="list-style-type: none"> • Third-party trust 	<p>Yes</p>
<p>UJA-Federation Community Trust Program Department of Planned Giving and Endowments 130 E. 59th street New York, NY 10022 http://www.ujafedny.org/</p> <p>Stacy Ferber (212) 836-1150 ferbers@ujafedny.org</p> <p>Case management agency for trust beneficiaries: F•E•G•S - UJA-Federation Community Trust for Individuals with Disabilities 315 Hudson Street, 6th Floor New York, NY 10013 http://www.fegs.org Ph (212) 366-8030 Fax (212) 366-8015</p>	<p>Community Trust for Disabled Adults</p> <ul style="list-style-type: none"> • Third-party trust • Minimum deposit: \$100,000, with at least \$20,000 invested initially with remainder to be deposited within 4 years • Beneficiary is assigned an advocate from a UJA agency • Annual fees: UJA-Federation administrative \$1,500/yr. and advocacy \$5,000/first yr. then \$3,000/yr. • Upon the death of the beneficiary, 100% of the remainder is designated as per the Sponsor <p>Community Trust II</p> <ul style="list-style-type: none"> • Self-settled trust • Minimum deposit: \$50,000, payable over 5 years if necessary • Beneficiary is assigned an advocate from a UJA agency if full advocacy services are selected • Annual fees: UJA-Federation administrative \$1,500/yr. and financial only advocacy \$2,000/yr. or full advocacy \$5,000/first yr. then \$3,000/yr. • Upon the death of the beneficiary, 50% shall be maintained in the Trust and the other 50% is first subject to a Medicaid right of recovery. If Medicaid has no claim these funds can be designated by the Sponsor. 	<p>No</p>
<p>UCS Disability Pooled Trust 1575 50th Street 3rd Fl Brooklyn, NY 11219 Ph: (718) 854-9300 Fax: (718) 506-9314 trustdept@ucsbp.org http://www.ucstrustservices.org/index.html</p>	<p>Trust A</p> <ul style="list-style-type: none"> • Self-settled trust • Enrollment fee: \$250 • Minimum deposit: \$1,000 • Annual fee of 2.5% of principal for deposits of \$1,000 - \$30,000; no additional fee for amounts in excess of \$30,000 • Annual renewal fee: \$200 <p>Trust B</p> <ul style="list-style-type: none"> • Self-settled trust • Enrollment fee: \$250 • Minimum deposit: \$100 • Monthly fee of 10% of required monthly deposit (minimum \$30/mo., maximum of \$200/mo.) • Annual renewal fee: \$100 • Monthly contributions can be made by ACH direct debit from bank account 	<p>Yes</p>

<p>Westchester ARC Foundation 121 Westmoreland Avenue White Plains, NY 10606 http://www.westchesterarc.org/ Anne Sweazey (914) 428-8330, ext. 3336 asweazey@westchesterarc.org</p>	<p>Community Trust I - third-party trust Community Trust II - self-settled trust</p>	<p>No</p>
<p>Western New York Coalition Pooled Trusts Go to www.wnypooledtrust.org for downloads, and more information Contact: Rachel Schepart (716) 853-3087 ext. 227 Trustees: People Inc. & Legal Services for the Elderly, Disabled or Disadvantaged of WNY, Key Bank (fiscal trustee) Only available to Erie, Niagara, Cattaraugus, Chautauqua and Allegany Counties</p>	<p>WNY Coalition Pooled Medicaid Payback Trust (Trust #1)</p> <ul style="list-style-type: none"> • Self-settled trust • Accepts income deposits • No minimum deposit • Initiation fee: \$100 • Monthly fee sliding scale based on amount deposited <p>WNY Coalition Over 65 Pooled Trust (Trust #2)</p> <ul style="list-style-type: none"> • Self-settled trust • Accepts income deposits • Only for individuals aged 65 or older • No minimum deposit • Initiation fee: \$100 • Monthly fee sliding scale based on amount deposited <p>WNY Coalition Under 65 Pooled Trust (Trust #1) and Over 65 Pooled Trust (Trust #2)</p> <ul style="list-style-type: none"> • Self-settled trust • Accepts lump sums without a minimum deposit • Initiation fee: 10% of Deposit not to exceed \$1,000 • Annual commission: <ul style="list-style-type: none"> ◦ \$10.50 per thousand on the first \$400,000 ◦ \$ 4.50 per thousand on the next \$600,000 ◦ \$ 3.50 on the balance in the pooled trust ◦ Plus additional annual commission by bank trustee • Semi-annual accounting fee: \$6 • Termination fee: 1% of all amounts paid out <p>WNY Coalition Friends and Family Trust</p> <ul style="list-style-type: none"> • Third-party trust • Only 25% of balance remainder at the death of the beneficiary is retained by trustees. Remaining 75% can be directed to others. • Initiation fee: 10% of Deposit not to exceed \$1,000 • Annual commission: <ul style="list-style-type: none"> ◦ \$10.50 per thousand on the first \$400,000 ◦ \$ 4.50 per thousand on the next \$600,000 ◦ \$ 3.50 on the balance in the pooled trust ◦ Plus additional annual commission by bank trustee • Semi-annual accounting fee: \$6 • Termination fee: 1% of all amounts paid out 	<p>Yes - but only for Erie, Niagara, Cattaraugus, Chautauqua and Allegany Counties Fee Schedule Income Only</p>
<p>YAI / National Institute for People with Disabilities 460 West 34th Street New York, NY 10001-2382 http://www.yai.org/ (212) 563-7474</p>	<ul style="list-style-type: none"> • Serves DD/MR/MI/ Phys Disabled, TBI. • Minimum deposit \$25,000 with some flexibility. 	<p>No</p>

This article was authored by the Evelyn Frank Legal Resources Program of New York Legal Assistance Group.



Attached files

- [SNT Outline 2016.3-14-2016 FINAL.pdf](#) (993 kb)
- [SNTShort 2014 \(Sept. 2014\).pdf](#) (748 kb)
- [2016-6-7 Pooled Trust Unit Liaison and Contact Information.pdf](#) (131 kb)
- [Pooled Income Trust Contribution Worksheet.xls](#) (42 kb)
- [Cover Letter to Medicaid with SNT.docx](#) (53 kb)
- [Pooled Trust Readiness Checklist.pdf](#) (158 kb)

Also read

- [Overview - Supplemental Needs Trusts](#)
- [Step-by-step guide to enrolling in a pooled income trust for Medicaid spend-down](#)
- [Legal Authorities Relating to Supplemental Needs Trusts](#)

- [\[3\] Medicaid Disability Determinations - NYS Forms & Procedures \(with updated forms July 2012\)](#)
- [\[3\] Spousal Impoverishment Protections for Married Couples where One Spouse Is in a Managed Long Term Care Plan - Pooled Trusts Allowed as an Option](#)

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[Next](#)

[Advocate's Outline on Supplemental Needs Trusts](#)

[How to use a pooled SNT to eliminate the Medicaid spend-down.](#)

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