

Starting Soon...

# ***Medicaid Planning for Individuals With a Disability***

August 14, 2023

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# Welcome

- ▶ Your Lines Are Muted
- ▶ Type Questions in the Q&A Section at the Bottom of Your Screen
- ▶ Presentation is Posted:  
[Pierrolaw.com/Resources](https://Pierrolaw.com/Resources) Under Medicaid Planning
- ▶ Fill Out Our Survey with Feedback





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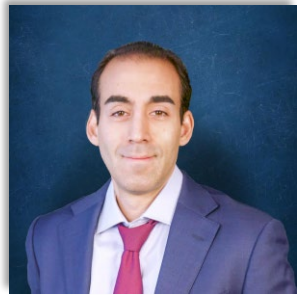
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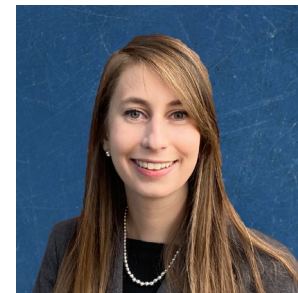
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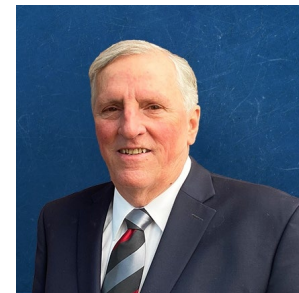
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# WATCH ALL MEDICAID MONDAY VIDEOS:

January	2023 Update and the Surprising New Numbers
February	Qualifying and Why It's Become Harder
March	Medicaid Asset Protection Trusts
April	Using a Pooled Trust to Qualify for Medicaid Home Care
May	Nursing Home Medicaid
June	What Happens If You're Denied?
July	Recertification and Post-COVID Protocols

**<https://www.pierrolaw.com/medicaid-planning-videos/>**

# Agenda

- New York State Medicaid Income and Resource Allowances
- Fundamentals of Planning for individuals with disabilities
- Rule changes ahead
- Types of Special Needs Trusts
- Pooled Trusts
- ABLE Accounts



# INCOME LEVELS ROSE IN 2023

Landmark Medicaid Increases Passed in NYS Budget:  
Same income limit will be used for younger people under  
Affordable Care Act and for Age 65+, blind & disabled

YEAR	INCOME / MTH		ASSET LIMIT	
	SINGLES	COUPLES	SINGLES	COUPLES
2023	\$1,677 + \$20	\$2,268 + \$20	\$30,182	\$40,821
<b>Difference over 2022</b>	<b>+\$743</b>	<b>+\$901</b>	<b>+\$13,382</b>	<b>+\$16,221</b>

Institutionalized Individual Income Allowance remains the same: \$50

# Fundamentals of Special Needs Planning

- **Techniques are permitted** by federal and state law to maximize available resources
- **Government benefits are available** to all families regardless of their means in certain circumstances
- Family's personal resources serve as a **secondary source of support**
- Federal and NY State law requires support and services by persons with disabilities in the community rather than in facilities
  - Olmstead vs. L.C., 527 U.S. 581 (1999)
  - Matter of Shah, 95 N.Y. 2d 148 (2000)



# Federal Benefits Not Based on Financial Need

- SSDI (Social Security Disability Insurance)
  - For adults with work history
  - Benefits based on parents' work history
- Medicare (Disability + 2 years)
- Disabled Adult Child or "DAC" benefits
- Other benefits
  - e.g. special education, housing, real estate tax abatement





# Federal Benefits: Need-Based

- Supplemental Security Income (SSI)

- Provides monthly income to the aged (over 65), blind or persons with disabilities, and who have limited income and financial resources

Income \$914/month

Resources \$2,000

- Medicaid

- Joint federal and state program that helps with medical costs for some people with low incomes and limited resources
- Income \$1,677 + \$20 /month (New York)
- Resources \$30,182 individual + certain exempt assets

# Changes to Community Medicaid Rules

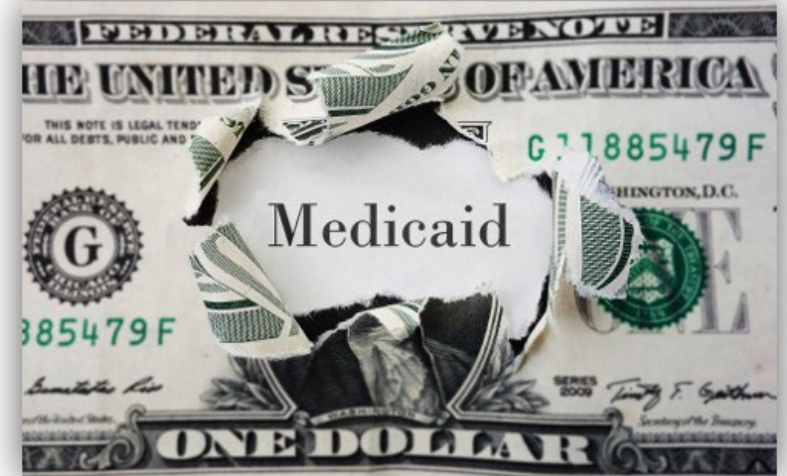
As of May 16, 2022,

- Independent Assessment by NYIA (community health assessment)
- Independent Physician Assessment by NYIA
- Independent Review Panel if > 12 hours of care needed
- MLTC determination of need for hours

**RESULT:** Delays in processing, disappointing results,  
ie: lack of sufficient hours to provide appropriate level of care.

# Changes Ahead

30-month lookback for asset transfers for Home Care to be phased in starting April 2024\*



\*Guidance still needed from the NYS Department of Health

\*Refer to the Medicaid Monday webinar on MAPT and Qualifying for Home Care:  
[pierrolaw.com/videos](http://pierrolaw.com/videos)

# Gifts Assets Directly to Person with a Disability – Disaster

What if you.... Gift or Bequeath

Assets to another family member (usually a sibling) to hold for the benefit of the individual with a disability?

**DON'T DO IT!**

Instead...

Provide the benefit via a Supplemental Needs Trust



# Supplemental Needs Trusts

- Purpose: to support and enhance the quality of life of the person with the disability by providing a supplemental source of funds.
- Because of certain legal benefits of these trusts, persons in need can remain eligible for government benefits that have income and resource tests, such as SSI and Medicaid





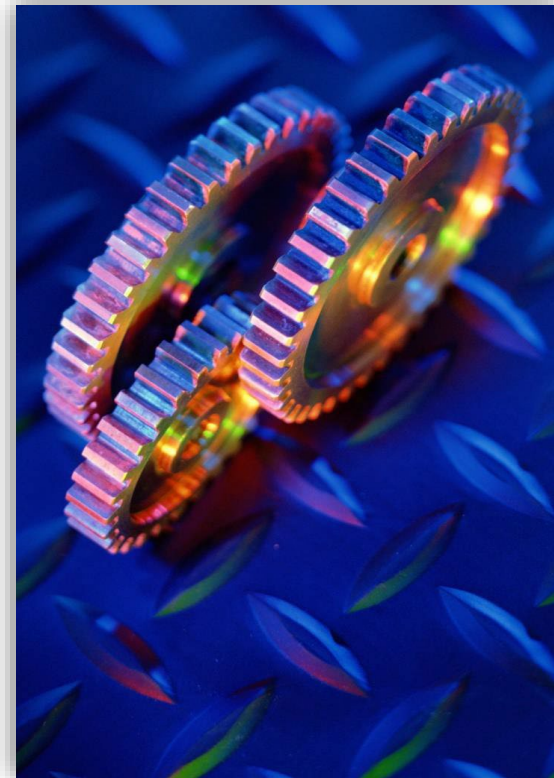
# Designing the Trust



- The beneficiary's physical and cognitive abilities are key
- They are not "disabled persons." They are "persons with a disability."
- Allow for the participation of the person with the disability to the maximum extent possible

# Types of Special Needs Trusts

- Self-settled or "First-Party" SNT
- Third-party SNT – The Best!!
- Pooled SNT



# SNTs, SSI and Medicaid

- Trust distributions are made at the sole discretion of the trustee
- Distributions must be made directly to providers of goods and services to the beneficiary
- Any money paid directly to the beneficiary will be counted for purposes of eligibility for SSI and will be considered by Medicaid in determining the recipient's required contribution to his or her case.
- The Trust must be purely discretionary, not a support trust.



# Parties to the SNT



- Settlor/Grantor - creates the Trust
- Beneficiary - receives the benefit of the Trust
- Trustee - Controls the Trust
  - Trustee is a Fiduciary responsible for financial decisions and the type and amount of distributions
- Possible additional parties
  - Advocate or Care Manager
  - Trust Protector

# Self-Settled or “First-Party” SNT

- Created for sole benefit of individual with a disability under age 65 **with his or her own funds**
- Must be Irrevocable
- May be created by the individual with a disability or by a parent, grandparent, guardian, or by a court
- The individual who is disabled can fund the trust and only that individual's assets go into this trust
- Typically set up when an individual receives a lump sum, including an inheritance or the proceeds from a lawsuit or settlement



# Self-Settled or “First-Party” SNT

- Assets in trust are not counted as resources for eligibility purposes
- Upon death, any money or assets remaining in the trust must be used to **reimburse the government** for Medicaid benefits paid during his/her lifetime
- Most states require notice to local Medicaid offices when the SNT is created or funded and when the beneficiary dies
- Some types of distributions have been limited by recent changes in rules that have been liberalized by modification of federal P.O.M.S.

# Third-Party SNT

- Created by a third-party (not the individual with the disability) and funded with that person's money
  - Typically a parent, grandparent, sibling or child of individual with a disability
- Beneficiary does not need to be under age 65
- Trust assets may be used as the Trust directs at the discretion of the Trustee – flexible, easy to administer
- Should also be a discretionary trust, not a support trust



# Selecting a Trustee

**Judgement, Experience, Relationship with Beneficiary and Integrity are key.**

1. Family Member
2. Third Party
  - Financial Advisor
  - Attorney
  - Advocate
  - Other Trusted Individual
3. Corporate / Professional Trustee
  - Long-term need for trustee based on individual's life expectancy

# Pooled Trusts

- Statutory trust established by and managed by a nonprofit organization
- Can be created by the individual with disability for himself/herself
- Can be used by an individual to deposit excess income or “spend- down” amount when receiving Medicaid benefits OR
- Can be used to create eligibility for benefits (like Medicaid and SSI) if the individual has excess assets



# Pooled Trusts for Income

- Monthly income above \$1,697 is deposited into pooled trust account
- Can be used for expenses of the beneficiary at the discretion of the pooled trust Trustee.
  - Examples
    - Rent
    - Utilities
    - Taxes
    - Additional home care hours
    - Any expenses which benefits the
- For in depth review of these concepts – see April's Medicaid Monday!



# Pooled Trusts for Assets

- Typically funded with excess assets to create eligibility for governmental benefits
- Excess funds could be the result of:
  - An inheritance
  - Settlement proceeds (lump sum or structured payments)
  - Retroactive benefit payments
  - Child support or alimony payments
- Benefits of an asset pooled trust
  - Managed by a professional trustee
    - Someone who knows the rules of Medicaid and/or SSI
  - Can be set up for a beneficiary over the age of 65

# ABLE Accounts

- Achieve a Better Life Experience (ABLE) Act (2014)
  - Federal act authorized 529A accounts for individuals with disabilities to cover disability related expenses
- ABLE plans do not replace traditional trust planning, but provide a useful supplement to prudent planning



# ABLE Accounts-Rules

- For individuals who had a disability before age 26
- Earnings in the account are not taxed
- May receive up to annual gift tax exclusion (\$17,000) per beneficiary for their care
- First \$100,000 is excluded for SSI eligibility purposes
- In New York ABLE Account is exempt for Medicaid purposes regardless of value
- Can now roll over 529 Plan assets into ABLE Plan accounts, subject to annual contribution limit
- Disadvantage- has payback provision for Medicaid (not the case with custodian accounts)

# **NEXT MEDICAID MONDAY**

12-12:30pm, September 11, 2023

Medicaid Planning for  
Immediate Needs

**REGISTER:**

<https://www.pierrolaw.com/events/>  
**(518)459-2100**

**PRESENTED BY**



**Louis Pierro  
Frank Hemming III**



**Thank You!**  
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or clients:**

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