Supplemental Needs Trusts – Protecting Access to Medicaid, SSI and Other Benefits

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Too Much Income or Assets for Medicaid?

- Elderly and disabled Medicaid applicants/recipients face both an **income** and an **asset** test to qualify for coverage.
- 2019 income limit = $879/month Single $1267 couple (after deduct $20, health insurance premiums, and if you or spouse works - $65 + half of monthly *earned* income).
- The amount of income over the limit is the “surplus” or “Spend-down.” Either one must pay for Medical expenses until the cost equals the “surplus” or “pay-in” the surplus to Medicaid.
- A Pooled Trust can be used to deposit:
  - Surplus income – and eliminate the “surplus”
  - Excess assets above the Medicaid limit.
What is a Supplemental Needs Trust (SNT)?

- Supplements public benefits
  - Trust agreement prohibits trustee from spending the trust property in any way that would impair beneficiary’s eligibility for public benefits
- Irrevocable
- Beneficiary is disabled
  - Same definition of “disabled” as used by the Social Security Administration for SSDI/SSI. If SSA has not yet found you “disabled,” the Medicaid agency can make this determination.
3rd Party vs. 1st Party Self-Settled SNT

Depending on whose money is used to set up the SNT, there may be a PAYBACK requirement.

1. 1st party “self-settled” trust – If you set up your own SNT with your own money, you are both the “donor” and the “beneficiary”:

   Any money left in SNT at death must be paid back to State to pay for Medicaid expenses paid during lifetime. With a pooled trust, the money stays in the trust to be used for the benefit of other people with disabilities.

2. 3rd Party Trust – if a non-legally responsible relative, friend, an Estate or other entity is the “donor” of the money and sets up an SNT, there is NO payback requirement at death. The trust may provide that principal be distributed to other beneficiaries at death.

   • Better for parent of adult disabled child to set up 3rd party trust in will or during parent’s lifetime, with no payback requirement, then to leave $$ to child in will. Child may put inherited money into a 1st party self-settled SNT, but will have a payback requirement.
How does an SNT work?

• Donor establishes SNT
  • Executes trust agreement (3rd party or 1st party self-settled)
  • For a pooled SNT, donor and beneficiary can be the same person
• Donor transfers income or assets to SNT
  • Personal injury settlement, Inheritance, Excess Savings
  • Shelter excess income for Medicaid, to eliminate the “spend-down”
• Trustee invests and maintains assets
  • Trustee must file tax returns (but not taxable income to beneficiary)
  • Trustee must provide accounting
What may SNT Trustee Pay for?

• Trustee spends money on behalf of beneficiary
• Trustee cannot give beneficiary cash!
• Trust expenditures must be primarily for the benefit of the beneficiary
  • Can’t make gifts to others
  • Can’t pay expenses for others
  • Can reimburse someone else for paying beneficiary’s expenses
• Trustee must make “third-party” payments
  • Pay rent to landlord, roommate
  • Pay bills directly to vendor (ConEdison, Time Warner, Visa, etc.)
• How expenditures affect public benefits depends on the specific program in question (SSI vs. Medicaid, etc.)
Individual SNTs and Pooled Trusts – What they Have in Common

1. BOTH may be established by the individual, their parent, grandparent, legal guardian, or by court order
   • if an agent uses a Power of Attorney signed in 2009 or later to establish a trust for an individual, in NYS the Power of Attorney must have a Statutory Gift Rider authorizing the agent to establish a supplemental needs trust.

2. BOTH allow deposit of surplus income to eliminate the Spend-down or excess assets or lump sums
   • However, if the individual is age 65+, she MAY ONLY deposit income or assets in A POOLED TRUST. She may not use an individual SNT.

3. Which expenses may be paid by trust is the same for both types of trusts, but depends on which benefits the individual receives.
## Individual vs. Pooled SNT - Differences

<table>
<thead>
<tr>
<th></th>
<th>Individual SNT (d4a)</th>
<th>Pooled SNT (d4c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who is Trustee?</td>
<td>Anyone (family, friend, lawyer, bank)(Allows more flexibility)</td>
<td>Non-profit organization (NYSARC, CDR)</td>
</tr>
<tr>
<td>Age limit?</td>
<td>Must be &lt; 65 when $ deposited</td>
<td>May be any age when deposit money (but warning re transfer penalties)</td>
</tr>
<tr>
<td>Need an attorney?</td>
<td>Yes – trust is individually drafted; trustee must do accountings, administration</td>
<td>No – use trust standard form. Trustee does all administration</td>
</tr>
<tr>
<td>Funds remaining at beneficiary’s death</td>
<td>Must be paid back to State for cost of Medicaid services provided; if any left, can pass on to remainder beneficiary</td>
<td>Must either be retained by the trustee organization, or paid back to the State (varies with trust)</td>
</tr>
</tbody>
</table>
How do Pooled Income Trusts - “PITs” – work?

• An elderly or disabled Medicaid beneficiary makes deposits of their spend-down amount into a PIT every month

• The money deposited in a PIT is excluded from countable income in Medicaid budgeting
  • Excluding the deposit amount eliminates the person’s spend-down altogether
  • Eliminating the spend-down activates their Medicaid

• The money that is deposited in the PIT can be used to pay the person’s monthly living expenses

• Medicaid must approve trust and re-budget income on an individual basis
Medicaid doesn’t care about your living expenses – Medicaid budget without pooled trust

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Gross monthly income</td>
<td>$1,600</td>
</tr>
<tr>
<td>Health insurance premiums</td>
<td>(Medicare Part B) - 135.50 (Medigap) - 161</td>
</tr>
<tr>
<td>Unearned income disregard</td>
<td>- 20</td>
</tr>
<tr>
<td><strong>Net countable income</strong></td>
<td>$1,283.50</td>
</tr>
<tr>
<td>Income limit for single</td>
<td>- 859</td>
</tr>
<tr>
<td>Excess income (&quot;surplus&quot; or Spend-down) Must be used for medical expenses. How to pay rent of $1,000?</td>
<td>$424.50</td>
</tr>
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Medicaid budget with pooled income trust

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<tr>
<td>Excess income</td>
<td>$424.50</td>
</tr>
<tr>
<td>Contribution to Pooled Trust</td>
<td>-$424.50</td>
</tr>
<tr>
<td>Spend-down</td>
<td>$ 0</td>
</tr>
</tbody>
</table>
How can client come out ahead?

• An extra perk of the PIT is it can make you eligible for the Medicare Savings Program (MSP), in which NY State pays their Medicare Part B premium

• So, by using the PIT, you can get a $135.50/mo. raise to your Social Security, in addition to eliminating your Medicaid spend-down

• In most cases, this will more than cover the monthly fee charged by the PIT

• In example, you would INCREASE the contribution to the pooled trust from $424.50 + $135.50 = $560.

• The Medicare Part B premium would no longer be a deduction from income. See budget:
### Medicaid budget with pooled income trust + extra deposit for Medicare Savings Program

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<td>Income limit for single</td>
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<tr>
<td>Excess income</td>
<td>$560</td>
</tr>
<tr>
<td>Contribution to Pooled Trust</td>
<td>-$560</td>
</tr>
<tr>
<td>Spend-down</td>
<td>$ ZERO</td>
</tr>
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Setting up a Pooled Trust – 2 STEPS

1. **Enroll in Pooled Trust - sign “Joinder Agreement”**
   - Pay enrollment fees – vary by trust
   - If use a Power of Attorney dated 2009 or later, be sure it includes a Statutory Gift Rider authorizing establishment of an SNT
   - Each trust has requirements
   - Trust will mail back letter of approval

2. **Submit Trust to local Medicaid agency with request to re-budget**
   - Include letter of approval from Trustee and complete copy of “master trust” and joinder agreement
   - Need “Verification of Deposits” (VOD) of spend-down into trust
   - Need proof of disability. If < 65, use SSA award letter. If > 65, need DOH Forms 486 and 1151.
   - Need HIPPA releases, counties may vary on forms required.
Web resources on setting up a pooled income trust

- **How to use pooled trust to eliminate spend-down**


What expenses May be Paid for by an SNT?

Rules are different for each benefit. Must consider if practical to use an SNT. If expense payment counts as “income” an SNT may not be useful.

See summary chart,
## What may trust pay for? (basics)

<table>
<thead>
<tr>
<th></th>
<th>TA/HASA</th>
<th>SSI</th>
<th>Non-MAGI Medicaid</th>
<th>SNAP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASH:</strong></td>
<td><strong>NEVER!</strong> SNT MAY NEVER GIVE CASH to BENEFICIARY, including gift or debit cards, unless restricted.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SHELTER:</strong></td>
<td>NO – counts as income (may not supplement benefits provided for in the TA standard of need)</td>
<td>YES but will reduce SSI by lesser of $257 (1/3 FBR) or actual cost</td>
<td>YES if direct pay to landlord/supplier or credit card</td>
<td>YES but can’t deduct excess shelter/medical expenses from income if trust pays them.</td>
</tr>
<tr>
<td>Rent/mortgage/ maintenance, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal</td>
<td>YES – won’t reduce SSI.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>FOOD:</strong></td>
<td>Longer chart – see handout</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(bills, restaurant)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clothing, Cable, phone, cell phone, internet, transportation.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Non-MAGI Medicaid

Do payments from the SNT count as income?

- **Non-MAGI Medicaid** is for people age 65+ or who are disabled < age 65 and have Medicare. They have stricter rules than people who get Medicaid under the Affordable Care Act who have MAGI Medicaid.

- **Bills paid by SNT on behalf of beneficiary** are **not** countable income for Medicaid purposes, regardless of type of expense. Trust may pay rent, mortgage, maintenance, all utilities, food.

- This is because Medicaid does not count **in-kind income** at all unless from legally responsible relatives (meaning trustee or adult child can pay rent directly to landlord – this is not counted as income).
  - Spouse is a “legally responsible relative” for spouse even if separated.
  - Parent is “legally responsible relative” for a minor age child.

- Medicaid more liberal than SSI (next slide).
SSI -- What May Trust pay for?  
SSI Stricter than Medicaid

- Payments made by the trust to third parties (landlord, utility, grocery store) for **food** or **shelter** are considered **In-kind Support and Maintenance (ISM)** and will reduce SSI by the lower of (1) the actual value or (2) maximum of one-third of monthly Federal Benefit Rate (FBR) (1/3 of $771 = $257)(2019)

- Shelter includes rent, mortgage, maintenance, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal

- Reduction may be worth accepting if rent is very high, say $1,500 – it’s worth a $257 reduction in SSI check, if enough principal in SNT to subsidize the rent for the future.
Allowed trust payments without reducing SSI; also OK for non-MAGI Medicaid

- Trust **may** pay for cable, phone, cell phone, internet, travel, local transportation, entertainment, education, and clothing. An account could be set up with a car service that would bill the trust monthly.

- Pre-payment of burial expenses is OK thru a funeral agreement. (May enter into a monthly payment agreement with funeral home, which trust can pay). See [http://www.wnylic.com/health/entry/36/](http://www.wnylic.com/health/entry/36/)

- Trust **MAY NOT** pay funeral expense after beneficiary dies! So pay them before!
**“Sole Benefit Rule” – 2018 updates – for both SSI and Non-MAGI Medicaid**

- The SSA POMS manual was updated in 2018 to clarify that expenditures for which others receive a collateral benefit are OK if they primarily benefit the beneficiary.
- Trust may buy house or TV even though others live there, watch the TV. Special rules for cars.
- The trust may pay a third party for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion. May not require that aide be certified. Family may be paid.
- Travel expenses of 3rd party to visit beneficiary allowed.
- See cites in SNT Outline pp. 27-28.
ABLE Accounts
https://www.mynyable.org/home.html

• Federal law established as an alternative to SNTs.
• Must have been disabled before age 26
• May be set up by beneficiary for themselves, or by a parent or legal guardian on person’s behalf
• MAXIMUM account balance = $100,000. Maximum deposit per year is $14,000, combined from any sources – client, family, trust/estate, 3rd party
• Principal + interest exempt as resource for Temporary Assistance, SNAP, SSI, & Medicaid
• Nominal fees
ABLE Accounts – may pay “Qualified Disability Expenses”

- Education
- Health and wellness
- **Housing – Main difference with SNTs for SSI recipients**
- Transportation
- Legal fees
- Financial management
- Employment training and support
- Assistive technology
- Personal support services
- Oversight and monitoring
- Funeral/ burial expenses

*If use for non-qualified expenses – taxable and tax penalty*
# ABLE Account vs. SNT – some differences

<table>
<thead>
<tr>
<th></th>
<th><strong>SNT</strong></th>
<th><strong>ABLE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Who can use</td>
<td>Anyone with a “disability.” If age 65+ must use pooled trust.</td>
<td>Only those disabled before age 26.</td>
</tr>
<tr>
<td>What happens at death?</td>
<td>Payback to Medicaid all expenses Medicaid paid in lifetime</td>
<td>Payback to Medicaid only costs paid since the date the account was established.</td>
</tr>
<tr>
<td>May SNT pay rent, shelter?</td>
<td>SSI – if client receives SSI, trust payment of rent considered “income” – benefit reduced by one-third Federal Benefit Rate</td>
<td>SSI – ABLE account may pay rent and not affect SSI. So parent/3rd party may contribute to ABLE account which in turn pays rent. Or client may transfer $ from SNT to ABLE account with no adverse impact on SSI.</td>
</tr>
<tr>
<td>Maximum balance</td>
<td>No maximum</td>
<td>$100,000 maximum</td>
</tr>
<tr>
<td>Maximum deposit/year</td>
<td>No maximum</td>
<td>$14,000 year combined from all sources</td>
</tr>
</tbody>
</table>
Public Assistance/ HASA

Are trust expenditures income?

- **Trust may not supplement benefits provided for in the standard of need** – rent, utilities, travel, food, clothing, phone, recreation and entertainment – all count as income

- **Income earmarked for a specific purpose that do NOT supplements benefits provided for in the TA standard of need.** OTDA 01-INF-08 are **NOT COUNTED AS INCOME**:
  - education or medical expenses (private health insurance premium, medical expenses not covered by Medicaid or health insurance), child care costs,
  - expenses of disabled beneficiary such as housekeeping, aides, social workers, therapists, and vocational rehabilitation aides, and legal expenses.

- **TIP:** Draft SNT to ensure that expenditures by the SNT are **earmarked for allowed purposes** listed above, so would not count as income.

- 2001 OTDA 01-INF-08; 18 N.Y.C.R.R. § 352.16(a).
SNAP/ Food Stamps – Expenditures by Trust

• Vendor in-kind payments by SNT don’t count as income. But if SNT paying rent or other expense that would otherwise be deductible from income, can’t use that income deduction. OTDA 01-INF-8.

• Direct payments to household (as opposed to vendor payments) do count as income if reimbursing for normal living expenses (food, shelter, clothing). Id.

• Direct payments to household OK if reimbursing for past or future actual expenses and are not a gain or benefit to the household
Section 8 – What can Trust pay for?  Is it Countable as Income?

- No specific mention in regs what trust may or may not pay for, but regs say what is not income, e.g. “temporary, non-recurring or sporadic income” (including gifts) – so trust should pay non-recurring expenses, not regular recurring expenses.

- Withdrawal of the principal, not earnings, of family assets is not “income.” 24 C.F.R. § 5.609(b). *DeCambre* 1st Circuit 2016 decision (not binding in 2nd Circuit)(held withdrawal of trust assets from personal injury settlement not income, since settlement wasn’t countable as income in 1st place)
USING TRUSTS FOR A LUMP SUM

1. Impact on Medicaid – 2 types of Medicaid
2. Impact on SSI
3. Impact on other benefits
MEDICAID & LUMP SUMS

Focus on People with Medicaid Only, Not SSI

1. MAGI vs. Non-MAGI Medicaid
2. Institutional Medicaid
Could Client be MAGI? With better rules?

Before you assume that the strict Medicaid limits on INCOME and ASSETS apply to you, ask if you may qualify for MAGI Medicaid under the Affordable Care Act.

WHO CAN BE MAGI:

• < 65 and not on Medicare, including those on SSD in 24-month waiting period for Medicare
• Any age and have Medicare, if they are caretaker relatives for a minor child or other relative (< 18 or < 19 if in school full time)
Medicaid Eligibility Categories

**MAGI**
- All Children and Adults under age 65 -- if not on Medicare -- including early retirees before age 65

**Choice of MAGI or Non-MAGI**
- Certified Disabled, under 65 and not yet on Medicare, including children
  - E.g., On SSI but then receive a lump sum / PI settlement. If forego SSI can keep $$ and get MAGI Medicaid until age 65 or get Medicare
  - Age 65+ or on Medicare and a “parent/caretaker relative” of a child, grandchild or other relative under 18 or 19 if full-time student.

**Non-MAGI**
- Aged 65+ and not a parent/caretaker relative.
- On Medicare and not a parent/caretaker relative
- Receive SSI (lower asset limits $2000/$3000)
“MAGI” Medicaid – Favorable Rules

1. MAGI Medicaid has **NO ASSET LIMIT**. A lump sum received in the past and saved does not impact current eligibility.

2. MAGI uses federal income tax rules for Adjusted Gross Income, but slightly Modified. These **don’t count as income**: 
   - Gift or inheritance
   - Personal injury settlement – whether lump sum or structured settlement
   - Veteran’s benefits
   - Workers Comp – both monthly benefit and lump sum
MAGI Medicaid – 12 month continuous eligibility

• 12-months continuous eligibility from the time MAGI Medicaid is authorized (or renewed). A lump sum or other increased income received during those 12 months **will not affect eligibility**.

• At the next renewal, eligibility will be based on the then current income. The lump sum will, by then, be a resource, and resources don’t count for eligibility.

• Exception – When turn 65, cuts off 12-month eligibility, cannot keep MAGI Medicaid. Must transfer to non-MAGI Medicaid. **GIS 15 MA/022 - Continuous Coverage for MAGI Individuals**

• Exception - LOTTERY – now pro-rated over a number of months up to 10 years, depending on amount received – so could bar eligibility for subsequent years. See NHELP guide (cites in SNT outline n 35).

NY Soc. Serv. L. § 366 (c)(4)(c); NYS DOH 2013 ADM-03.
MAGI Medicaid and Lump Sums

* These ARE COUNTED as income –
  * Housing Buyout probably taxable as ordinary income or capital gain (this is not tax advice!) so would count as MAGI income -- see https://www.brickunderground.com/blog/2014/10/buyout_tax_ask_an_expert
  * Lottery – 2018 changes (bad) – see Outline – lottery winnings > $80,000 are pro-rated and deemed to be income in 2 or more months – as many as 10 years if high award.. So would disqualify recipient from MAGI Medicaid.
  * Some lawsuit awards can be taxable – lost wages, contract, discrimination/employment, business, punitive damages.
  * Interest and dividends on savings
  
  But even if they are income, most of the above are income only in the month received. So when the client renews the following year, it would no longer be “income” and not affect Medicaid eligibility.
MAGI Medicaid – Lump Sum Strategy

• Is client close to turning 65 or to obtaining Medicare?
  o **If close to 65,** this affects planning as even though lump sum won’t terminate MAGI Medicaid, she needs to do asset planning for when transferred to Non-MAGI Medicaid at age 65.
  o **If <65 and receives SSD, and close to receiving Medicare** (after 24 months), 12-month continuous coverage still applies. But at end of 12 months, will transition to non-MAGI Medicaid so must do asset planning ➔ SNT!!!

• If not close to 65 or getting Medicare, can keep lump sum and won’t affect eligibility.
“NON-MAGI” MEDICAID & LUMP SUMS

• **WHO** – Disabled or Blind with Medicare OR Aged 65+ & do not live with/take care of a child/other relative < 18/ < 19 in school

• A lawsuit settlement or other lump sum is *income* in the month received. If still in one’s possession in the next month, will count as a *resource* against resource limits.

• What to do with a lump sum depends on:
  1. **AGE** – whether < 65 or age 65+
  2. **DISABILITY** – if under 65, is person disabled? Receive Medicare?
  3. Whether may need **Institutional Medicaid** in next 5 years
  4. **Caretaker relative?** Even if 65+ or has Medicare, may be “MAGI” – no asset limits, different rules
What to do with Lump sum – Community non-MAGI Medicaid

1. **Transfer of the lump sum has NO TRANSFER PENALTY for community Medicaid.** Includes MLTC, Assisted Living Program, all home care, waivers. However, if enter a nursing home in next 5 years, a non-exempt transfer will be penalized (Medicaid wouldn’t pay for nursing home care for 1 month for every $12,139 transferred in 5 years before admitted to NH.
   - Need proof $ transferred. Otherwise they see a withdrawal from your account and think it’s under your mattress.
   - If client may need NH in next 5 years -- avoid transfers that cause a penalty – such as:
     - If under 65 and disabled – **transfer to own SNT** - has no transfer penalty – individual or pooled.
     - Transfer to spouse who can do spousal refusal; transfer to disabled child

2. **Save** – up to resource limit ($15,450 single, $22,800 couple)

3. **Spend the rest** down – see next slide
NON-MAGI MEDICAID

Spending Down Lump Sum

• Must spend on one’s own expenses, not as a gift for someone else. Since this is not an uncompensated transfer, would not trigger a transfer penalty if enter a nursing home in the next 5 years:

1. Pre-pay for funeral agreement for self and certain family members, buy burial space(s). See fact sheet at http://www.wnylc.com/health/entry/36/
2. Pay down mortgage
3. Pay back BONA FIDE loans, credit card debt.
4. Home improvement, buy stuff, computer, TV, travel.
5. Pre-pay rent, utility bills (even a year’s rent!)

• Keep receipts! Will need if enter nursing home in next 5 years, may need now to show $ isn’t under mattress!
What to do with lump sum -- con’d.

4. If age 65+ - Transfer into a pooled SNT will have no transfer penalty for community Medicaid, but:
   • If needs Nursing Home care in next 5 years, transfer will trigger a penalty. Not advisable if risky.
   • MAY transfer to an SNT for someone ELSE who is < 65 and disabled – need not be one’s own child!

5. Other exempt transfers –
   • to spouse, who can do “spousal refusal” or, if client using MLTC, spouse (if not on Medicaid) can keep up to $74,820 with Spousal Impoverishment protections
   • To child who is certified blind or disabled
   • For purposes other than qualifying for Medicaid
Timing strategy – COMMUNITY MEDICAID

- Act fast. Goal is to preserve future eligibility and limit liability for past ineligibility. Here’s scenario:

  - **January** - Bob receives payout $. Not eligible for Medicaid because it creates excess income. Ideally, he takes action to bring his resources down to the Medicaid limit (Spend, save, and/or transfer) by:

  - **February 1st.** If his resources are under limit by 1st minute of Feb. 1st (midnight of 1/31), he is eligible for Medicaid in February and it cannot be discontinued. DSS unlikely to sue for cost of Medicaid for being ineligible for just one month – January.

  - **March 1st** – If it takes another month to bring resources down, still limiting potential liability to 2 months. DSS still unlikely to sue for costs of Medicaid for just 2 months – Jan. and Feb.
More on strategy – Community Medicaid

- **Not All or Nothing** - can put some of the lump sum into an SNT but transfer or spend the rest. Don’t want to put more in SNT than expect to spend during lifetime – balance stays in trust after death or repays Medicaid.

- **EX.** Bob receives $50,000 in January. He is 62 and receives SSD (not SSI). He only has $3000 in savings. By Feb. 28th he:
  - $12,000 – used to bring savings up to the $15,450 asset limit.
  - It’s OK if his monthly SSD brings his balance above that each month, as long as at the end of the month it’s below the limit.
  - $10,000 - pre-pay funeral for himself and his daughter.
  - $6,000 – he spends on travel and stuff for his home, computer.
  - $22,000 – he puts into an SNT.
  - BUT IF he was 65+ he might pre-pay rent, utilities – would not be a transfer, while putting into a pooled trust would be a transfer if he needed Nursing Home care in next 5 years.

See funeral agreement info at http://www.wnylc.com/health/entry/36/
Duty to Report

- Medicaid, SSI and most other benefits impose a duty to report receipt of a lump sum to the agency.
- WHEN: SSI changes must be reported by the 10th of the month FOLLOWING the month of the receipt of the income or other change.
- Medicaid uses the same rule for DAB.
- If his assets are brought down to the limit before the 1st day of March, and he reports in March, Medicaid cannot be discontinued. Medicaid can only refer case to its Lien & Recovery unit for possible suit to repay cost of care in months he had excess income or assets. May threaten but can’t enforce without lawsuit (no administrative “overpayments.” Not likely to sue for short periods.

20 CFR 416.701-416.714, POMS SI 02301.005
Lump Sums and Nursing Home Medicaid

• If in a nursing home, or in community and placement in a NH is probable in next 5 years

• Transfers of Assets trigger transfer penalty
  – Exception – No penalty for transfer into SNT while under age 65 if disabled
  – If age 65 or over at time of the transfer, then Transfer Penalty. Caution for people on COMMUNITY Medicaid at time of transfer. While there is no penalty for COMMUNITY Medicaid, if they enter a nursing home within 5 years of the transfer into the trust, there is a transfer penalty.
  – Consider other exempt transfers (Eg to spouse or disabled child, or SNT for disabled person under age 65) or spending down money, or gift & promissory note.
Medicare Savings Programs (MSP)

- Pays Medicare Part B premium ($135.50/mo 2019) and for lowest income people (QMB) also pays Medicare coinsurance and deductibles.
- Automatically gives Extra Help for Part D.
- NO ASSET LIMIT!
- A lump sum counts as income in month received, but so what.. If saved – no asset limit
- TIP: Does client really need Medicaid? If they need home care, they probably still need Medicaid. But if they don’t, MSP may be enough plus they can buy a Medigap policy with the new savings.
- See [http://www.wnylc.com/health/3/](http://www.wnylc.com/health/3/)
Supplemental Security Income (SSI)

Strategies for Lump Sums & SNTs
Lump Sums and SSI

- **Transfer penalty** – Unlike Community Non-MAGI Medicaid, transfers of assets that are not “exempt” trigger a harsh transfer penalty, which can cause suspension of SSI for up to 36 months.

- **Exceptions** – no transfer penalty if:
  1. Transfer into one’s own SNT (pooled or individual) *if under age 65 + disabled.*
    - **WARNING!** Transfers into a pooled trust if *age 65+* has harsh transfer penalty. Explained on next slide.
  2. Transfer into SNT for another Disabled Individual < 65 or
  3. Transfer to one’s Disabled Child of any age (not necessarily in an SNT)
SSI transfer penalty & strategies

- Penalty period is from **1 to 36 months** depending on amount of uncompensated transfer. POMS SI 01150.110, .111
- Divide amount transferred by SSI benefit rate applicable to individual. Includes state supplement.
- **$8,580 transferred** -- divide by $858 (2019 SSI rate for individual living alone) = 10 months penalty – disqualified from SSI.
- Maximum penalty 36 months for transfer of **$30,888** (2019).
- Strategy if age 65+ or if < 65 and want to transfer or use $ and not use SNT: If lump sum is significantly over $30,888, may be worth accepting penalty and living on the lump sum during the 3 years. Then reapply, show where $ went.
SSI: Strategy for Age 65+ and Lump Sum

**Example:** Sally is age 66, has SSI. PI award = $100,000.

- Transfers $50,000 into pooled SNT.
- Spend down $50,000 over the next 3 years. Her SSI is cut off and she loses $30,888 income she would have received. But her net benefit was $70,000.
- She buys Medigap policy and applies for Medicare Savings Program – gives up Medicaid.
- Can apply for Medicaid once assets < $15,450
- At end of 3 years, reapply for SSI – document deposit into SNT and how balance spent. Transfer penalty expired. Has SNT to use to supplement SSI.

- What if she can’t give Medicaid up for 3 years?
SSI Strategy – keeping Medicaid

- Though cut off SSI for assets > $2000, or because transferred assets, can keep Community Medicaid if assets < $15,450, even if transferred excess assets. The *Stenson* process* provides notices and seamless recertification for Medicaid-only wo/ SSI.

- She puts $60,000 into pooled trust, keeps $15,450, spending the rest (about $25,000) immediately on:
  - $10,000 on home improvement, furniture, travel, computer for herself
  - $12,000 on funeral agreements for self, siblings, kids
  - $ 3,000 – pre-pay rent, utilities

- When her SSI is cut off, she can keep Medicaid thru *Stenson* – showing her resources are now under $15,450.

- No transfer penalty for community Medicaid. **CAUTION:** Nursing Home transfer penalty if enter NH in 5 years.

*Stenson* cites and info at http://www.wnylec.com/health/entry/85/
Veteran’s pension

NEW asset limits and transfer penalties

2018
Veteran’s Pension – NEW 2018!

• This benefit was always for low INCOME, but now has ASSET test too.

• INCOME limits – eff. Dec. 1, 2018 --
  o Single $13,535 per year ($1,127/mo.)
  o One Dependent $17,724 per year ($1,477/mo)
  o Higher if need Aid & Attendance
  o Can supplement SSI

• Asset limit eff 12/1/18 - $127,061 (same as max CSRA for spousal impoverishment rules)
  • *Sum* of claimant’s + spouse’s assets + annual income
Veteran’s pension – Asset Exclusions

• EXCLUDE:

1. Primary residence (with up to 2 acres land; excess land counts toward asset limit)
   • Home exempt even if living in nursing home or other care facility, or with a family member for care
   • Mortgage can’t be deducted from other assets

2. Car, appliances, personal effects consistent with “reasonable way of life.”
Veteran’s benefits – Excess assets

1. If assets exceed the limits, may spend down assets for fair market value, but not transfer. Eligible on date bring under asset limit. Otherwise must reapply.

2. If assets exceed limits, benefits discontinued effective last day of same calendar year, unless spend it down in same calendar year.
Veteran’s pension – Transfers of assets

• Transfers of assets EXCEEDING resource limit on and after October 18, 2018 subject to transfer penalty – maximum length 5 years

• Divide excess assets transferred by $2,230 = No. months penalty

• Lookback is 36 months preceding filing original pension claim or a new pension claim after a period of non-entitlement.
VA pension –

Exceptions to Transfer Penalty

- Only TWO exceptions –
  1. Transfer result of fraud or unfair business practice related to marketing or sale of annuity or financial products in order to get VA pension
  2. Veteran or spouse transfers money to trust for a child incapable of self-support – NO exception for transfer to own SNT!!

- Return of assets will reduce penalty, like Medicaid.
SNAP/ FOOD STAMPS
Food Stamps ("SNAP")

• **Is a lump sum income?** State Food Stamp Source Book* at p. 276 expressly **exempts** "NON-RECURRING LUMP SUM PAYMENTS." This includes but is not limited to the following:
  
  a. Income tax refunds, rebates or credits,
  
  b. Retroactive lump sum Social Security, SSI, TA, Railroad Retirement benefits, or other payments, or
  
  c. Retroactive lump-sum insurance settlements.

• While FSSB doesn’t specify other lump sum sources – lottery wins, lawsuit settlements, inheritance, the “including but not limited to” language should prevail.

Food Stamps – Resource limit

• If household has someone age 60+ or disabled:
  ➢ NO RESOURCE LIMIT as long as gross monthly income < 200% of Federal Poverty Line (2019 $2,082/mo. single, $2,820/mo. couple)

• If > age 60 and income > 200% FPL –
  • RESOURCE LIMIT is $3,250.

• If < age 60 & no member is disabled –
  • RESOURCE LIMIT IS $2,000.

• IF resource limit applies – SNT should be exempt.

• 7 C.F.R. § 273.8(e)(8)(i) - (iv); OTDA Food Stamp Source Book at pp. 363 - 364; http://otda.ny.gov/policy/directives/2001/INF/01_INF-08.pdf at 5.
Food Stamps – Transfer Penalty

• **If no resource limit applies** because age 60+ or disabled and income < 200% FPL, there should be no transfer penalty for transferring a resource – whether into an SNT or otherwise.

• **If resource limit DOES apply**, there is a penalty for “knowing“ transfer 3 months before application or after approval. Up to 1 year disqualification, depending on amount transferred. $5000 in resources above resource limit = 1 year penalty. $250 above limit = 1 month penalty, etc.

• **TIP**: Lookback is only 3 months before application. If transfer assets wait > 3 months to apply for FS.
Housing subsidies

1. SCRIE/DRIE RENT EXEMPTION
2. Section 8, Public Housing
SCRIE/DRIE Rent Increase Exemption

• Freezes rent if age 62+ or disabled and income < $50,000
• NYC pays rent increases thru property tax abatement to landlord.

• **Not counted as income** --
  • Personal injury damages award, HEAP, income tax refunds (in FAQ online)

• **Counted as income** –
  • Other lawsuit settlements, lottery wins, capital gains from sale of stock, trust income

• **No asset limit**, no lookback or transfer penalty if lump sum is in to an SNT.
• **Is SNT’s payment of expenses income?** State reg is silent. May be exempt as “gifts” – above? Not clear.
SCRIE/DRIE relief for lump sum income

- Application and renewal based on income in **prior year**. Renewals done every 2 years - must report prior year income, including any lump sum received the preceding year.
- SCRIE/DRIE can be terminated the year after receipt of the lump sum, if it brings income > $50,000, or because rent is < one-third of the household income.
- May reapply the next year. If then eligible, **tax abatement amount will revert to the old level**, as if the rent exemption had not expired. SCRIE/DRIE is essentially suspended for 1 year – in which the tenant must pay the full rent. Reinstated if reapplies the next year.

RPTL § 467-b(2)(3).
Section 8 and Public Housing - General

- Both Section 8 and Public Housing provide a rent subsidy
- Generally rent is set at 30% of family’s net countable income.
- Calculation of rent is a complicated formula, taking into account medical expenses, age, disability, etc.
- ASSETS – there is no asset limit, but if assets exceed a threshold (Now $5000, will increase to $100,000), interest on the excess amount will be imputed as income.
Section 8 – Income  

24 CFR 5.609(c)  

• “Lump sum additions to family assets” don’t count as income -- so no penalty for keeping or transferring:  
  • inheritances,  
  • temporary, nonrecurring or sporadic income (including gifts) (NYCHA defines as including one-time lottery win, retro unemployment/TA check)  
  • Insurance payments (health and accident, workers comp)  
  • reimbursement for medical expenses,  
  • retro SSD/SSI (but if saved counts as asset),  
  • settlement for personal or property losses, tax refunds, capital gains
Section 8, Public Housing – Eligibility

- NO ASSET TEST! But - For assets in excess of $5,000 income is imputed and counted in rent calculation.

- Count larger of:
  1. actual income generated by the asset or
  2. “imputed” income at annual rate of .06%.

- If income generated gets high enough, rental subsidy is reduced to zero.

- TRUST assets exempt if not in control of tenant. Trust income not counted. 24 C.F.R. § 5.603(b)(2).

Section 8 – Asset Limit & Transfer Penalty

- No current asset limit but 2016 HOTMA law sets $100,000 limit, but no regulations yet so not in effect (will exempt irrevocable trusts, IRAs, etc.)

- Though no current asset limit:
  1. If assets > $5000, count greater of actual interest or imputed income @ .06% of excess amount
  2. If transfer assets > $5,000 = Transfer Penalty:
     For 2 years after transfer, actual income or .06% asset (imputed income) is imputed to increase rent. Includes transfers to an SNT, but not transfer of exempt income

See outline - Housing Opportunity Through Modernization Act
THE END
