

HOW TO USE A POOLED INCOME TRUST TO REDUCE YOUR MEDICAID “EXCESS INCOME” OR SPEND-DOWN (AGE 65+/DISABLED) (UPDATED 5/23/23)

2023 – BIG INCREASE in Income Levels Means Less Can be Deposited in Pooled Trusts!

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WHO NEEDS A POOLED TRUST?

People age 65+, blind, or disabled can get Medicaid if they have limited assets and income under: **\$1,677 for singles** and **\$2,268 for couples** (2023).¹

Income over these levels, after deducting the cost of Medicare Part B and other health insurance premiums, is the “spend-down” or “surplus income” or “excess income.” Every month, one must first incur medical bills in an amount that equals the “spend-down” to qualify for Medicaid.² New applicants may meet their “spend-down” by using older bills incurred in earlier months.³ But current recipients must “spend down” on current medical expenses every month. A pooled trust can eliminate the need to spend-down excess income.

¹ \$20/mo. per household of gross *unearned* income for disabled, aged and blind applicants is disregarded, along with over *half* of *earned* income. Some special higher income limits and disregards may reduce the spend-down— see <http://www.wnyc.com/health/entry/222/>. For info about asset limits see <http://health.wnyc.com/health/download/2/>.

² May use current medical expenses not paid by Medicaid or Medicare, including current over-the-counter expenses that a doctor prescribes as medically necessary. See <http://wnyc.com/health/download/70/>. And https://www.health.ny.gov/health_care/medicaid/excess_income.htm.

³ New applicants for Medicaid can meet the spend-down with:

- old *unpaid* and unreimbursed medical bills they still owe and *paid* bills for medical care received within the 3 months before they applied for Medicaid and
- the amounts that EPIC or ADAP paid for their prescription costs up to three months before they applied for Medicaid, in addition to the co-payments the client paid for these programs. See links In fn. 2.

2023 Income Limit Increases Reduce Spend-down! See next page

In 2023, the Medicaid income limits increased from just 82% to 138% of the Federal Poverty Line. See figures above. Some people who had a spend-down in 2022 **will have NO spend-down in 2023!** Others will see their spend-down go down and can reduce how much they deposit into a pooled trust.

NYS is not doing a mass rebudgeting using the 2023 limits. Instead, recipients may request a “rebudget” by their local Medicaid office or wait for their annual renewal in 2023-2024 for their spend-down to be calculated under the new 2023 limits. These are the first renewals conducted since March 2020. During the Public Health Emergency, no renewals were processed, Medicaid could not be discontinued, and the spend-down amount could not be increased. The “unwinding” of the Public Health Emergency started in March 2023, and all Medicaid recipients will go through a “renewal” over the next year. See more at <http://www.wnyc.com/health/news/90/> and <http://health.wnyc.com/health/news/86/>. For how to request “rebudgeting” see <http://health.wnyc.com/health/news/90/#II.%20Timing>.

Why does Someone With Medicare need Medicaid?

1. Medicaid provides **long-term home care**, which is not paid for by Medicare, and which is very expensive when paid for out of pocket.
2. With Medicaid you automatically get **Extra Help**, the Low-Income Subsidy that reduces costs of your Medicare Part D drug plan.
3. Medicaid also subsidizes some other **Medicare costs**.
4. Starting 2023, the income limit for Medicaid is the same as for the **Qualified Medicare Beneficiary (QMB)** Medicare Savings Program. This saves a beneficiary \$164.90/mo. for the Part B premium (2023) and much more. See below.

EXAMPLE – HOW SPEND-DOWN IS CALCULATED

Sally is age 67. Her gross Social Security is \$2,978.35 per month. Her Medicare Part B premium of \$164.90 is deducted from her check, so she receives **\$2,813.45**. She also pays for an AARP Medigap Plan N policy of \$211.45/mo. Sally’s spend-down calculation is:

<u>Total Income</u>	\$2,978.35	Gross Income
- 164.90		- Medicare Part B premium (2023)
- 20.00		- Disregard for aged, disabled (standard)
<u>- 211.45</u>		- <u>AARP - Medigap premium (Plan N)</u>
	<u>- 396.35</u>	TOTAL DEDUCTIONS
	2,582.00	Countable net income
	<u>- 1,677.00</u>	- Medicaid level for ONE (2023)
	\$ 905.00	Spend-down or Excess Income - monthly

Sally’s rent is \$1900. Her utilities, phone, cable, food, transportation, clothing, household costs eat up all of her income. She can’t afford her \$905 spend-down! A pooled trust can help her in many ways described below.

The Solution: People of any age who are disabled – including 65+ -- may enroll in a pooled “Supplemental Needs Trust” sponsored by a non-profit organization. There are many pooled trusts in New York State. This fact sheet uses one trust—operated by the Center for Disability Rights (CDR)—as an example.⁴ Pooled Trusts are open to any person who is “disabled” as defined by the Social Security law. When you join the Trust, you agree to deposit with the Trust each month the amount of your “spend-down.” Once the Trust documents are signed, and the local Medicaid program approves the Trust, Medicaid will change the budget so that the client has NO SPEND-DOWN. The Trust pays certain bills, such as rent, mortgage, electric, etc. from the money the client sends in each month. This is explained more below.

STEPS FOR ENROLLING IN A POOLED TRUST

There are five steps to enrolling into a pooled trust, each of which is explained below with forms available here: <http://www.wnyc.com/health/entry/44/>. The steps are:

1. Enroll in the Pooled Supplemental Needs Trust (SNT)
2. Decide How Much to Deposit into the Trust
3. Submit Trust Documents and Request for Disability Determination to HRA/ local DSS– with the Medicaid application if not already on Medicaid
4. Upon request, Submit Disability Documents to State Disability Review Unit
5. Follow-Up and Ensure Medicaid Budgeting Is Done Correctly

✓ **STEP 1 – Choose and enroll in the Pooled Supplemental Needs Trust**

The first step is to **choose and enroll in the pooled SNT**. Most pooled SNTs have a list of documents on their website, including FAQs and Procedures which you should read before enrolling. Look at their fees as well, which vary. There are [many Pooled SNTs in New York](#) - see <http://www.wnyc.com/health/entry/4/>.

Using the Center for Disability Rights (CDR) trust as an example, here is what you need to send CDR to enroll. All forms can be downloaded – see link in CDR entry on the list of trusts found at <http://www.wnyc.com/health/entry/4/>. All trusts have different enrollment fees and forms.

- Beneficiary Profile & Joinder Agreement - Fill out and sign – CDR and most trusts require the agreement by notarized. A legal guardian or person with Power of Attorney (POA) may sign the form if the POA authorizes it. This form may ask you how much you plan to deposit into the trust every month. For that – see **STEP 2** below.
- Disbursement/Withdrawal Form - For every expense that you want the trust to pay, you need to submit one of these forms and attach proof that the amount is due (e.g. a copy

⁴ Unofficial list of pooled trusts in New York at <http://wnyc.com/health/entry/4/>.

of your lease, monthly utility bill, credit card statement). See more about what expenses trusts will pay in Q&A page 11-12.

- **ACH Request Form** - If you want CDR to make automatic withdrawals from your bank account each month in the amount of your monthly SNT contribution, you can specify the day of the month that the withdrawal is made.
- **FEE** - Enrollment funds (check or money order) - Payable to CDR (minimum initial deposit is \$240 but see below for advice about how much to send for your full monthly contribution). Every trust has different fees. For example, see the NYSARC Community Trust II Fee Schedule - https://www.nysarctrustservices.org//download_file/6/144/ and NYSARC online fee calculator at <https://www.nysarctrustservices.org/nysarc-trusts/pooled-trusts/community-trust-ii/>. See other trusts at <http://www.wnylc.com/health/entry/4/>.
- Most trust organizations will take about 2 weeks to process your application and send you an Acceptance Letter. Keep that handy because you will need it in **Step Three**.

✓ **STEP 2 - Decide How Much to Deposit into the Trust**

Here are some tips for deciding how much to put into the trust each month.

The Bare Minimum – Actual Spend-down amount. At a minimum, deposit your actual spend-down. For example, if Sally (example on page 2 above) deposits \$905 each month into the Trust, once Medicaid approves it, she will have NO spend-down. With this option, CDR keeps \$20 as a monthly fee, and \$885 is available to pay her bills.

Strategy Tip #1: Enough to pay full rent: It may make sense to put enough in the Trust each month for the Trust to pay rent. If Sally puts her exact spend-down of \$905 into the Trust, after the \$20 monthly fee, the Trust can only pay \$885 of her \$1500 rent. She would pay the balance separately to the landlord. Alternately, she can deposit \$1920 in the trust, which would include the \$20 fee and the \$1900 rent. Some trusts, such as NYSARC, have a fee scale with higher fees for higher monthly deposits. The convenience of having the trust pay the whole rent may be worth making a larger monthly deposit.

Strategy Tip #2: Extra benefit of the Trust - Medicare Savings Program (MSP) – The pooled trust deposit not only reduces one’s “countable” income for Medicaid, but also for the qualified Medicare Beneficiary (QMB) MSP. The MSP program pays the Medicare Part B premium— \$164.90 in 2023—a savings that more than offsets the monthly Trust fee. For more info see <https://tinyurl.com/NY-MSP-MRC> and <http://wnylc.com/health/entry/99>. Once enrolled in an MSP, Medicaid pays her Part B premium, and her Social Security check will increase by \$164.90. As a result, her spend-down will also increase by \$164.90. If Sally wants to be in QMB, and also have no spend-down, she should increase her monthly trust deposit by \$164.90 to \$1069.90. If she is depositing extra anyway so that the trust can pay her rent, this will qualify as the additional deposit needed for QMB.

WHICH MSP? In 2023 there are now two MSP programs. **QMB** (Qualified Medicare Beneficiary) is the sole MSP for people who also want Medicaid. **QI-1** is the MSP for people

who do not want Medicaid – they only want their Part B premium paid. A third program – SLIMB was eliminated in 2023. Both MSP’s have the extra benefit of qualifying the consumer for the Extra Help subsidy for Medicare Part D. So even if you don’t want Medicaid, it may be worth enrolling in a PIT to enroll in QI-1. Since Sally wants Medicaid, she would enroll in QMB.

**** MSP TIP:** If you deposit the extra \$164.90 to the SNT when you submit the trust and rebudget request or application to Medicaid, you will be retroactively enrolled in MSP once the trust is approved. You will be reimbursed for the Part B premiums you paid while contributing to the SNT. You must continue making your deposit in the SNT every month while the trust is awaiting approval at the Medicaid office.

**** APPLICATION TIP WITH MSP:** On the Medicaid application, write across the top of the first page that the client is applying for both Medicaid AND QMB. The Medicaid office is required to screen the client for QMB anyway, but it helps to remind them. See GIS 05/MA-033, at <http://tinyurl.com/L7AUSK>. If trust is being submitted in **NYC** for someone who already has Medicaid, include Form MAP-751-W. See fn 8 in **Step 3.C.** on p. 10.

For help determining how much to contribute each month to eliminate your spend-down, obtain the Medicare Savings Program, and ensure that all SNT fees and your bills are paid, use this 2023 worksheet for Medicaid budgets <http://health.wnylc.com/health/download/829/>.

Strategy Tip #3: WARNING - Deposit only what you can routinely spend every month - Do not let the trust deposit accumulate! If you do not spend the money deposited each month into the Trust, and it accumulates, then you may be denied Medicaid to pay for nursing home care if you need it in the next five years. This is because income deposited into the trust but not spent by the time one enters a nursing home is considered a “transfer of assets.” Transfers of assets made by someone age 65 or over can cause a delay (transfer penalty) in qualifying for Medicaid to pay for nursing home care. Fortunately, under New York State policy, placing income into a pooled Trust will not result in a transfer penalty for Medicaid coverage of nursing home care as long as the balance of the pooled Trust account does not accumulate.⁵

Coming May 2024 - Warning – Stay tuned— the “lookback” and transfer penalty may be expanded beyond nursing home care, to delay eligibility for new Medicaid applicants seeking Managed Long-Term Care, other home care, or the Assisted Living Program. It is not yet clear whether deposits into a pooled trust will trigger a “transfer penalty” to delay home care when this change begins. See info at <http://health.wnylc.com/health/news/85/#lookback>

Strategy Tip #4: Carefully read the trust’s rules to make sure they will pay the bills you want them to pay. Generally, a lease or utility bill must be in your name for the trust to pay it. Trusts will pay a credit card in your name, but may ask you to verify that each item on the bill

⁵ NYS Dept. of Health GIS 08 MA/020, *Transfers to Pooled Trusts by Disabled Individuals Age 65 and Over* at https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/08ma020.pdf. (7/24/08). For more information on these rules, see <http://wnylc.com/health/entry/38/>.

was purchased *for you*. Trusts are not permitted to pay arrears on a credit card bill or pay for an expense or gift for anyone else. Also, the SNT will never pay you – the Medicaid recipient -- directly. See more about what expenses a trust may pay in the Q&A on page 12.

Strategy Tip #5: Married couples - If both spouses need Medicaid, it may be possible for only one to establish a Trust account, depending on each of their respective incomes. This can spare the couple administrative fees and administrative hassle. Their combined income remaining after taking all deductions, and after the deposit into the Trust, must still be under the Medicaid couple income limit (\$2,268/mo. in 2023). See the example below and on the next page.

Married couples where **only one spouse needs Medicaid** should also consider two types of special budgets that might reduce or eliminate the spenddown, and obviate the need for a pooled trust – see <http://www.wnyc.com/health/entry/222/#1%20married> -

- **Spousal Impoverishment** – May use only if one spouse is in an MLTC plan, receives Immediate Need home care, or is in the Nursing Home Transition or TBI Waiver, OR
- **Spousal Refusal** -the non-Medicaid spouse’s income and/or assets are not counted and the applicant is considered “single.” WARNING – the county may sue the “refusing” spouse for support. Consult an experienced attorney.

MARRIED COUPLE EXAMPLE – Both are 65+ or Disabled & Need Medicaid

Sally has the same income and insurance as in the example above, but is married to John whose gross income is \$900.35. John and Sally also have the same AARP Medigap Plan N policy.

	\$2978.35	Gross Income - Sally
	<u>900.35</u>	<u>Gross Income - John</u>
	3878.70	TOTAL GROSS INCOME
- 329.80		Medicare Part B premium (\$164.90 x 2)
- 20.00		Disregard for aged, disabled (\$20/ 1 or 2)
<u>- 422.90</u>		<u>AARP Medigap premium (Plan N) (211.45 x 2)</u>
	<u>- 772.70</u>	TOTAL DEDUCTIONS
	3106.00	Countable net income
	<u>-2268.00</u>	Medicaid level for TWO (2023)
	838.00	Spend-down as a couple
	<u>+ 329.80</u>	<u>Extra for Medicare Savings Prog. (Part B x 2)</u>
	\$ 1067.80	Total to deposit if both want MSP

If they are applying as a couple, assuming they are both either disabled or 65+, it makes more sense for Sally to establish a trust, since John’s income isn’t high enough to deposit \$1067.80, which is the full spend-down if they both want to enroll in an MSP and also have a \$0 spend-down. Since John only has \$900.35 in income, he may keep his entire income, and have Sally enroll and deposit \$1067.80 into the Trust, which eliminates the spend-down for both of them. **Warning:** if Sally is not “disabled,” regardless of her age, only John may enroll in the Trust. Both spouses may need to enroll for their combined deposits to meet their couple’s spend-down.

WHAT IF -- one spouse is under age 65 and not disabled? See next page

WHAT IF -- one spouse is under 65 and not disabled?

If John was age 62 and not disabled, but has the same income as above, while Sally is age 65+ --

- Sally's eligibility & spend-down would be based on a household size of TWO, counting John's income, but without deducting a Medicare & Medigap premium for him since he's not on Medicare. Her spend-down is **\$1379.25** if she wants to enroll in QMB. See budget below

MARRIED COUPLE EXAMPLE – One is 65+ or Disabled & Other is Not

	\$2978.35	Gross Income – Sally – AGE 67
	<u>900.35</u>	<u>Gross Income – John – under 65 not disabled</u>
	3878.70	TOTAL GROSS INCOME
- 164.90		Medicare Part B premium (\$164.90)
- 20.00		Disregard for aged, disabled (\$20/ 1 or 2)
<u>- 211.45</u>		<u>AARP Medigap premium (Plan N)</u>
	<u>- 396.35</u>	TOTAL DEDUCTIONS
	3482.35	Countable net income
	<u>-2268.00</u>	Medicaid level for TWO (2023)
	1214.35	Spend-down for Sally alone
	<u>+ 164.90</u>	<u>Extra for Medicare Savings Prog. (Part B)</u>
	\$1379.25	Total to deposit if Sally wants QMB

- John would be in the **MAGI Medicaid** category, which also requires counting both spouses' income. Their combined income of \$3878.70 is over the MAGI couple limit of \$2,268 (2023), so he is not eligible for Medicaid. But he can qualify for the Essential Plan, which is similar to Medicaid.⁶ He must apply for that separately on <https://nystateofhealth.ny.gov/>. He can get help applying – TEL (888) 614-5400 Or email: cha@cssny.org (Community Health Advocates)

✓ **STEP 3 - Submit Trust Documents and Proof of Disability to Local Medicaid Office – with Medicaid Application if you don't yet have Medicaid.**

Next, submit the trust documents to the local Medicaid office. If you do not yet have Medicaid with a spend-down, then submit the trust with a Medicaid application. New applicants must make a timing decision, discussed in **3.A**. If you already receive Medicaid, skip to **STEP 3.B**.

STEP 3.A. TIMING - Decide whether to submit Trust documents with the Medicaid application or later, after the Medicaid application is filed.

⁶ See <http://www.wnyc.com/health/entry/15/>; <http://www.wnyc.com/health/entry/195/> & <https://info.nystateofhealth.ny.gov/essentialplan>.

Even though most Medicaid applications should be decided within 45 days, an application submitted with a pooled trust may take 90 days because approval requires a determination of disability.⁷ Since these applications often take longer than 90 days, some advocates prefer to wait and submit the trust *after* the Medicaid application has been approved, in hopes that the application will be approved within 45 days. See fn 7. Even though there would be a spend-down when Medicaid is initially approved without the trust, at least the Medicaid approval could get services started.

TIMING STRATEGY TIP – Ask for Medicaid to be Approved with a Spend-down While Trust is Being Approved: Even if you submit the trust with your application, you can request HRA or your local Medicaid agency to first approve Medicaid with a spend-down, in order to get home care started, and to approve the pooled trust and re-budget the case later within 90 days. When you are approved for Medicaid with a spend-down, your Managed Long-Term Care (MLTC) plan or other home care agency will bill you for your spend-down, which you are expected to pay to the plan or agency every month. You will probably be unable to do this because you are sending the money to the pooled trust. Explain to the plan or agency that your spend-down will eventually be retroactively reduced to ZERO when the Trust is approved. The agency will then be able to back-bill Medicaid for the spend-down amount. Some plans will ask for proof that you have submitted your trust to Medicaid for approval.

If you file the application with the pooled trust and other documents, and the application is not approved within 90 days, you can request a Fair Hearing to contest the delay, which *might* speed up the decision.

Applicants who want to enroll in MLTC must make this clear with the application, to make sure the proper codes are entered by the Medicaid office.

- ✓ **Step 3.B. Documents to submit to HRA/ local Medicaid office to get Pooled Trust approved (NOTE CHANGE JUNE 2022):**
 1. **Form MAP-751W Consumer/Provider Request to Change Information on File (3/25/21) as a cover sheet.**⁸ This form is only required if consumer already has Medicaid and is now submitting the trust. This form is not required if you are submitting the trust along with the Medicaid application. Complete the top and CHECK the box on page 2 for *Medicare*

⁷ The time limits are in federal regulations. See <http://www.wnylc.com/health/entry/175/>. (People under age 65 who are disabled usually receive Social Security Disability (SSD) benefits so do not need a determination of disability by Medicaid to get a pooled trust approved. Proof of receipt of SSD until age 65 may also mean that no disability determination is needed for a pooled trust.

⁸ Download MAP-751w at <https://www1.nyc.gov/site/hra/help/health-assistance.page> or as a fillable form at <http://www.wnylc.com/health/download/770/>.

Savings Program evaluation and the box on page 3 for *Pooled Trust* and check “Budgeting for New Trust Submission.”

2. **Trust Documents:**
 - a. **Master Trust Agreement**- Download on the trust’s website
 - b. **Beneficiary Profile Sheet and Joinder Agreement**, signed by both you and the trustee (CDR, for example) - The version sent to you with your Acceptance Letter will have the trustee’s signature
 - c. **Acceptance Letter from Trust**
 - d. **Verification of Deposits** – This is proof that you started making monthly deposits. Many trusts have an online portal to download these verifications, or you can call the SNT to ask for a statement.
3. **NEW - Request for Disability Determination** - Starting June 2022, HRA only requires the DISABILITY DETERMINATION REQUEST (MAP-3177) instead of all the disability forms (now submitted in Step 4 below). Download MAP-3177 in several languages at <https://www1.nyc.gov/site/hra/help/health-assistance.page> (scroll down to *Disability Determination Requests*.) HRA will forward this to the **State Disability Review Unit (SDRU)**. You will submit the rest of the disability forms directly to the SDRU when they request them. See NEW STEP 4 below. This change was announced in HRA Medicaid Alert dated June 30, 2022, posted at <http://www.wnyc.com/health/download/816/>.
4. **NY State HIPPA Release –OCA Official Form 960** - download at http://www.nycourts.gov/forms/Hipaa_fillable.pdf) **Fill in Box 8** and the **last line in Box 9.b.** with the name of your social worker, family member or attorney to authorize HRA or local Medicaid agency to talk with them about your case. Be sure to **INITIAL** the first blank in **9.b.** This form authorizes HRA to release info to you on status of rebudgeting.
5. **Cover letter** requesting HRA/DSS to approve the pooled trust, refer the disability determination to SDRU, and budget your Medicaid case with no spend-down. If you also submitted a Medicaid application with the trust, ask for approval of Medicaid too. See [sample cover letter](http://www.wnyc.com/health/download/64) (<http://www.wnyc.com/health/download/64>) which you should customize. In your letter, also ask to be enrolled in the Medicare Savings Program (MSP) to have your Medicare Part B premium paid by Medicaid. See STEP 2 – **Strategy Tip 2** on pp. 4-5 above. Explain that even though your spend-down increases when you join an MSP, you will still have a ZERO spend-down because you have been contributing the amount of the Part B premium to the SNT. Also see <http://www.wnyc.com/health/entry/99/>.

✓ **3.C. Where to Submit Trust Documents and Medicaid applications –**

Each county has a Medicaid office in their Dept. of Social Services that accepts Medicaid applications and pooled trusts.

In **New York City**, since the COVID public health emergency started, it is best to **FAX** all Medicaid applications and pooled trusts. If you receive or are applying to receive home care, MLTC, or the Assisted Living Program, write this on the top so your application and/or trust is routed to the Home Care Services Program.

- E-fax the Medicaid application with the pooled trust to **917-639-0732**.
- If you have an “Immediate Need” for home care and are applying for Medicaid with a pooled trust, additional forms are required. See fact sheet here <http://www.wnyc.com/health/download/637/>. E-fax the complete package to **917-639-0665**.
- **If you already have Medicaid** and are faxing just the pooled trust documents listed in 3.B. above, fax them to **917-639-0645**. Include form **MAP-751W**. See Step 3.B. above and n. 8.
- The document package described above may also be accepted **in person or by mail** to: HRA HCSP Central Medicaid Unit, 785 Atlantic Avenue, 7th Floor, Brooklyn, NY 11238. Certified mail is recommended if using mail.

✓ **STEP 4 – Submit Disability Documents to the State Disability Review Unit (SDRU) When Requested. New June 2022**

Before June 2022, you submitted these documents to NYC HRA in STEP 3 along with the pooled trust. HRA then transmitted them to the SDRU. Now, HRA will only transmit the new DISABILITY DETERMINATION REQUEST (MAP-3177) to the SDRU.⁹ Start gathering and completing the following forms to submit when requested by the SDRU.¹⁰

1. **If you were approved for either SSDI or SSI benefits on the basis of a disability**, then just send a copy of your SSA Award Letter or SSA Disability Determination, or if you no longer have that award letter, request a benefit verification letter from the SSA - <https://www.ssa.gov/myaccount/proof-of-benefits.html>. Submit this proof of past SSD or SSI even if you turned age 65 and now receive Social Security based on age. Otherwise, you need to send the documents below for Medicaid to make a [disability determination](http://www.wnyc.com/health/entry/134/) (<http://www.wnyc.com/health/entry/134/>)
2. **Medical Report for Determination of Disability –NEW FORM DOH-5143 replaces 486T form.**¹¹ This form must be filled out by your primary care doctor or specialist. **NOTE:** Though no longer used, the old 486T form had numerous attachments that elicited information about different body systems, such as a musculoskeletal or cardiac impairments. You might ask the physician to complete the applicable attachment, though no longer required, or use it as a guide to show the applicant satisfies criteria for "meeting the listings" to be found disabled.¹²

⁹ This change was announced in HRA Medicaid Alert dated June 30, 2022, posted at <http://www.wnyc.com/health/download/816/>

¹⁰ All of these forms can be downloaded at <http://www.wnyc.com/health/entry/134/> and at https://www.health.ny.gov/health_care/medicaid/reference/mdm/adult.htm

¹¹ See Dec. 2021 HRA Medicaid Alert - <http://www.wnyc.com/health/download/799/>

¹² Step Three in the [sequential evaluation](http://www.wnyc.com/health/entry/134/) at <http://www.wnyc.com/health/entry/134/>. Click here for the [old 486T](http://www.wnyc.com/health/download/60/). <http://www.wnyc.com/health/download/60/>.

- a. **12 months of Medical Records** – ask your doctor who signed the 486T form to provide 12 months of records from their office. See HRA Medicaid Alert (Jan. 2013) <http://www.wnylc.com/health/download/402/>. If you can, also submit records from any hospitalizations or nursing home stays in the past 12 month. You want to ensure that Medicaid has a full picture of your medical and psychological conditions for the disability determination.
3. **DOH-5139 - Disability Questionnaire NEW 8/2021 - replaces the DSS-1151 form.** (<https://www.health.ny.gov/forms/doh-5139.pdf>) See [HRA Alert 8/12/2021](#), download at <http://www.wnylc.com/health/download/783/>. This form can be filled out by you, a social worker or family member.
4. **New HIPPA form for Pooled Trusts – New August 2021 – DOH-5173.**¹³ Complete, sign and submit **one copy for EACH health care provider** listed on the Disability Questionnaire, filling in the name of the provider on **Line 7** and **9.b.** plus one signed and dated with the Provider information left blank. **INITIAL** the first blank in **9.b.** Form MAP-571e no longer required.
5. **Cover Letter** – explain to the SDRU why the documents show the individual meets the standards for disability. Use the [NYS Medicaid Disability Manual](#) as a guide for how to explain why you should be found “disabled” based on your specific disability(ies), using the "sequential evaluation process" for determining disability, the Listing of Impairments, and other guidelines explained in the Manual (http://www.health.ny.gov/health_care/medicaid/reference/mdm/).

✓ **STEP 5 - Follow-Up and Ensure Medicaid Budgeting Is Done Correctly**

The last step on this journey is to make sure that the Medicaid case is re-budgeted properly. Once you have submitted the SNT and disability documentation to your DSS, after the SDRU finds the individual disabled, the DSS/HRA then should send a written notice stating that your Medicaid case has been re-budgeted with no spend-down (and telling you that you are enrolled in MSP if you applied for it). *See note in STEP 3.A above about the 90-day limit if you submitted the SNT along with your Medicaid application.*

- Make sure that the **effective date** of this notice is correct - it should be the month that you first began making a contribution of your full spend down amount (+ \$164.90 if you wanted QMB) to the trust.

If it is not correct, you must **request a Fair Hearing** to appeal the notice for the date to be corrected ([click here to request a hearing - http://otda.ny.gov/hearings/](http://otda.ny.gov/hearings/)).

- If an application with Pooled Trust not approved in 90 days, you may request a Fair hearing, which might move it along.

¹³ Download at <https://www.health.ny.gov/forms/doh-5173.pdf> (4/2016). See August 2021 HRA Medicaid Alert, available at <http://www.wnylc.com/health/download/783/>.

- **FREQUENTLY ASKED QUESTIONS**

Q: If my Social Security increases every year, will this increase my spend-down? Should I increase my trust deposits?

A: If income increases, the client must increase the amount placed into the trust each month. Also, some pooled trusts require a sort of “security deposit” – the equivalent of one month’s spend-down to be on deposit at all times. If Social Security or other income goes up, the client may have to increase this deposit as well.

Q: What bills may the Trust pay?

A: *WARNING: These rules are for people using a pooled trust solely for Medicaid only, not people who have SSI. If you have SSI and want to use a trust for a lawsuit settlement or other lump sum, the rules are different and more restrictive.*

The Trust may pay the client’s rent, mortgage, maintenance, utility bills, and/or credit card bills, as long as it makes the payments directly to the landlord, utility, or other third party. Such in-kind payments are not considered “income” for Medicaid purposes.¹⁴ *The Trust may never give the client money directly*—not even to reimburse the client!

Rent or mortgage payments are the ideal expense for the trust to pay, since these expenses are consistent and most trusts will set up an automatic monthly payment. Some trusts will not put the client on automatic payment of rent or mortgage until the client has been enrolled and paid in the client’s spend-down for 3 months. So, during the first 3 months, the client must make individual disbursement requests for the client’s rent or mortgage. After that, ask for automatic payment.

Trusts vary on whether utility and other bills must be sent each month to the trust for payment, or whether bills on a budget plan with fixed monthly payments (“level billing”) may be automatically paid by the trust, like rent.

Though the trust may pay bills only for the benefit of the Trust beneficiary (the client), and NOT for the client’s family members or friends, payments that incidentally benefit a third party may be permissible, such as rent where the client’s spouse benefits from the payment. The client needs the trust’s permission to pay expenses that benefit a third party, such as paying the expenses for a travel companion of the beneficiary, or travel expenses for a close family member to visit the beneficiary.

Some trusts permit reimbursement to a family member or other individual who paid for a client's expense, such as paying rent or buying clothing, if receipts are submitted. However, they must contact the trust to get approval BEFORE making the expenditure to assure reimbursement. The client herself can never be reimbursed.

¹⁴ 18 NYCRR § 360-4.3(e)

Some trusts will pay credit card bills, provided that the bill is in the client's name, and that there are no past due charges being carried forward. The actual monthly bill must be submitted for the Trust to verify that no cash withdrawals were made. The Trust has the right to inquire whether the expenses were for the benefit of the beneficiary and not for anyone else.

Trusts may not pay for gifts or charitable donations.

Funds in a trust may pay for a pre-paid funeral agreement for the client while the client is alive. Client may enter an installment plan for a funeral agreement with a funeral home and submit monthly installment bills to the trust to pay. NO POOLED TRUST may pay for funeral expenses after the client dies. This is a federal policy.

Q: How does the client/beneficiary leave the Trust? There are a few ways:

A: i. The client leaves the Trust when she dies. Money left in the Trust when the client dies stays in the Trust for the benefit of other disabled persons. It may NOT be inherited by the client's family or heirs. Also, after the client's death, the Trust is very limited in what expenses it may pay. The Trust may NOT pay funeral costs after the client's death. The Trust may NOT pay debts owed to third parties, such as paying off a mortgage, credit card debts, etc. The Trust also may NOT pay taxes due upon death, nor fees for administration of the estate. Some Trusts MAY pay current expenses due at the time of death, such as the rent and current bills.

ii. The client is permanently admitted to a nursing home. The type of Medicaid budget used for permanent nursing home care, called *chronic care budgeting*, does not allow the client to deposit income into a Trust to eliminate the spend-down (called a "NAMI" for Net Adjusted Monthly Income" in a nursing home). However, if the nursing home stay is short-term, the client can request that the nursing home submit a form to HRA/Medicaid certifying that she is expected to return home and request "*non-chronic*" or "*community budgeting*." With that budgeting, continuing deposits into the pooled trust should be allowed. See more info and forms at <http://www.wnyc.com/health/entry/117/>. Once the nursing home stay is considered permanent, the client stops making further trust deposits. The client may still submit expense requests to the trust to use up any remaining funds, and then close the account.

iii. The client may stop making any further monthly deposits, spend down the balance in the account and close the trust account any time. **2023 tip – If the client no longer has a spend-down under the increased 2023 income limits, she can close her trust.** See page 2 above. If the income is close to the 2023 income limits, consider keeping the trust open in case you have a spend-down again in 2024, and just deposit the minimum amount needed to cover the monthly fee. Every trust charges a minimum fee until the account funds are spent down and the account is closed. This will avoid setting up a pooled trust again.

The trust must be notified in writing if you want to close the Trust, in order to free up the remaining one month security deposit, if any.

Troubleshooting – Try your local Medicaid office to address delays or errors

CAUTION: As stated in STEP 5 above, you must request a fair hearing within 60 days after the date of the notice to correct any error on the spend-down, effective date, etc. Don't let the time limit run out while you are trying to informally advocate.

NYC HRA contacts

- **HOME CARE CASES** – send secure e-mail to hcspinquiries@hra.nyc.gov
- **NON-HOME CARE CASES** –
 - Email undercareproviderrelations@hra.nyc.gov or call
Phone (929) 221-0868/69 Fax (718) 636-7847
 - Eligibility Information Services- Phone (929) 221-0865/66/67/68

ONLINE LINKS - Visit NY Health Access at <http://nyhealthaccess.org>

General info on supplemental needs trusts <http://wnylc.com/health/14/>

Training outline (updated Jan 2022) explaining Supplemental Needs Trusts (both individual and pooled). The Appendix explains how SNTs affect eligibility for many different public benefits. <http://www.wnyc.com/health/download/9/>

Forms & Procedures for Determining Disability <http://www.wnyc.com/health/entry/134/>

Contact List of Pooled Trusts in NYS - <http://www.wnyc.com/health/entry/4/> -

Federal, state, and NYC authorities on pooled trusts <http://www.wnyc.com/health/entry/128/>

2019 Webinars on SNTs when receiving a lump sum <http://www.wnyc.com/health/news/84/>

Check for updates of this FACT SHEET at

<http://www.wnyc.com/health/download/4/> and
<http://www.wnyc.com/health/entry/44/>

New York Legal Assistance Group (NYLAG), Evelyn Frank Legal Resources Program

For intake please call or email: 212-613-7310 or eflrp@nylag.org

Mon 10 AM – 2 PM

FOR HELP – Contact a [private elder attorney](http://www.naela.org) (www.naela.org) or geriatric care manager (<https://www.aginglifecare.org/>) to help with this process. Some [free legal services](#) (<http://www.lawhelpny.org/>) may be available to help also.