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## **MEDICAID HOME CARE: PRESERVING INCOME WITH A POOLED TRUST**

Most of us hope to spend our last days at home. Certainly, we expect to remain at home for as long as possible. If we become ill or incapacitated, we may be able to remain at home with the services of an aide or home care attendant, but the cost for these services can range between \$170.00 and \$400.00 a day.

Medicaid affords home care benefits to those individuals who meet certain requirements. Among other things, an applicant must disclose income. Once an applicant is approved for Medicaid home care benefits, Medicaid will pay all or some of the home care costs. The Medicaid recipient is presented with a budget requiring that monthly income exceeding \$767.00, \$1,117.00 for husband and wife (“excess income”), must be paid to the agency providing home care services. Living on this budget in the New York metropolitan area is problematic, particularly if the Medicaid recipient owns a home or apartment.

The good news is that Medicaid allows disabled individuals to establish a Pooled Income Trust (“Trust”), managed by a nonprofit organization. This provides a mechanism for protecting the excess income. Once the Trust is established, instead of paying the excess income to the agency providing services, the Medicaid recipient may deposit it into an account set up for his or her benefit and use it to pay expenses, including rent, utilities, homeowners’ insurance, real estate and school taxes, credit card bills, food, clothing and household items. The funds cannot be used to pay income taxes or for prescription drugs, alcohol or tobacco. But the funds are also not considered available resources for Medicaid eligibility purposes. For these reasons, the ability to establish a Trust is often what enables Medicaid recipients to remain in their homes as they have the use of the excess income, monies which would otherwise be lost.

In order to establish a Trust, an application and other documents must be completed and signed. If the applicant is incapable of applying, his or her agent under a Power of Attorney may submit the application. However, the Power of Attorney must be broadly drafted so as to afford the agent the authority to establish such a Trust on behalf of the applicant. Unless the Power of Attorney is sufficiently broad, the nonprofit organizations which manage these Trusts will refuse to establish an account for the applicant and the planning may fail. Absent an appropriate Power of Attorney, a guardianship proceeding, which is both costly and time-consuming, may enable the guardian to establish this type of Trust.

We recommend that, when determining whether to apply for Medicaid home care benefits, serious consideration be given to the use of a Pooled Income Trust to protect income. If this is a strategy

that makes sense, it is important to also review the existing Power of Attorney. If you have questions concerning Medicaid home care benefits, the establishment of an account under a Pooled Income Trust, or if you wish to have a Power of Attorney reviewed or a new one created, please call our office and we will be happy to assist you.

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