



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower    The Governor Nelson A. Rockefeller Empire State Plaza    Albany, New York 12237

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*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

**INFORMATIONAL LETTER**

**TRANSMITTAL:** 05 OMM/INF-1

**TO:** Commissioners of  
Social Services

**DIVISION:** Office of Medicaid  
Management

**DATE:** April 19, 2005

**SUBJECT:** Pooled Trusts and Disability Determinations for Individuals 65  
Years of Age and Over

**SUGGESTED**

**DISTRIBUTION:** Medicaid Staff  
Fair Hearing Staff  
Staff Development Coordinators

**CONTACT PERSON:** Upstate: Local District Liaison (518) 474-8216  
NYC: (212) 417-4500

**ATTACHMENTS:** Attachment I - Transmittal Sheet - Disability Determination  
Request form (DSS-654 Rev. 1/05)

**FILING REFERENCES**

| Previous<br>ADMs/INFs | Releases<br>Cancelled | Dept. Regs | Soc. Serv.<br>Law & Other<br>Legal Ref.<br>SSL 366(2)<br>(b)(2)(iii) | Manual Ref. | Misc. Ref |
|-----------------------|-----------------------|------------|--|-------------|-----------|
| 96 ADM-8              |                       |            |  |             |           |

The purpose of this Office of Medicaid Management/Informational Letter (OMM/INF) is to inform local departments of social services (LDSS) of new procedures for determining disability for individuals age 65 and over when the disability determination is needed to determine whether to exempt an Applicant/Recipient's (A/R's) funds placed in a pooled trust.

A pooled trust is a trust which meets the criteria set forth in Section 1917(d)(4)(C) of the Social Security Act (the Act) and Section 366(2)(b)(2)(iii) of the Social Services Law. It contains the assets of a number of disabled individuals and is managed by a nonprofit organization that maintains separate accounts for each such individual. The principal and income of a pooled trust account are not counted in determining Medicaid eligibility.

The federal Medicaid statute does not require that a pooled trust be established with the funds of a disabled individual under age 65 (as is the case with the other type of exception trust exempted under the statute). Therefore, a properly constituted pooled trust must be exempted even if it is established by a disabled individual over age 65. Please note, however, that the transfer-of-assets statute only provides an exception for assets transferred to trusts for the benefit of disabled individuals under age 65. Assets transferred to a pooled trust on or after the disabled individual's 65<sup>th</sup> birthday are subject to a transfer penalty.

An increasing number of senior citizens are establishing pooled trusts. Many of these individuals are not in receipt of Social Security Disability Insurance (SSDI) benefits and, therefore, require a separate disability determination. Social Security Administration Ruling SSR 03-3p, Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older, prescribes the method used to determine disability for individuals age 65 or over.

Individuals age 65 and over may have Medicare coverage as a result of their age rather than the result of a disability determination and receipt of SSDI benefits. This means that in verifying disability, a Medicare card must not be used as proof of disability unless it is accompanied by a Social Security Administration SSDI award letter.

**Effective immediately**, disability determinations for individuals who are age 65 or over who are establishing a pooled trust, must be performed by the State Disability Review Team in Albany. The following instructions must be followed by all local districts in submitting a disability packet.

The submission process for an individual age 65 or over is much the same as submission of a disability determination packet for the Medicaid Buy-In program for Working People with Disabilities (MBI-WPD). The submission process is as follows:

- Have the applicant sign the appropriate release of medical documentation forms.
- Complete and sign the DSS-1151, "Disability Interview" form during the face-to-face interview.

- Send the appropriate release of medical evidence form and appropriate sections of the "Medical Report for Determination of Disability" (DSS-486T) form to treating sources to obtain medical evidence covering a period up to 12 months prior to the date of application. Each provider who receives any portion of the LDSS-486T must also receive pages 1 and 2, along with the specific body part section of the form. It is important to gather medical evidence that covers the timeframe for which the disability determination is being sought.
- As medical evidence is received, a disability package is created consisting of the completed LDSS-1151 "Interview form", appropriate portions of the LDSS-486T, signed by a medical doctor or a qualified psychologist (as applicable) and all requested supporting medical evidence, such as hospital records, office notes and treatment records, etc. It is important that the Medical Report forms be signed by a medical doctor, psychiatrist or qualified psychologist, as appropriate. If forms are received that are unsigned or otherwise incomplete, you must return it to the provider for completion prior to submitting it to the Disability Review Team in Albany.

**Note: An M11Q, "Medical Request for Home Care" form cannot be used as a substitute for the disability packet.**

- Complete the Transmittal Sheet, "Disability Determination Request" form (see attached LDSS-654, Revised 2/05) and place two copies on the front of the disability packet.

**Note: The revised LDSS-654 Transmittal Sheet attached to this INF must be used for any disability determination packet sent to the State Disability Review Team in Albany. The form has been revised to accommodate all of the types of cases that may be submitted for disability determination, including Medicaid Only, Temporary Assistance Only, Audit cases, MBI-WPD cases, and Individuals 65 Years of Age and Over. This means that local districts that have the State Disability Review Team perform all of their disability determinations must begin using this transmittal form for all submissions. Please replace the previous LDSS-654 with the revised form immediately and batch submissions according to case type as described on the revised form. Remember to attach two copies of the transmittal sheet to each batch of cases submitted.**

- Mail the complete disability packet to:

New York State Disability Review Team  
Division of Consumer and Local District Relations  
NYS Department of Health  
Office of Medicaid Management  
One Commerce Plaza, Room 826  
Albany, New York 12260

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The State Disability Review Team will perform the disability determination and send the completed "Disability Review Team Certificate" (LDSS-639) to the district with the submitted medical evidence package. If the individual is determined disabled, any of the disabled individual's income placed in his or her pooled trust account must be disregarded in determining the disabled individual's eligibility for Medicaid. It should be noted that this disregard does not apply under chronic care budgeting. Additionally, if a disabled individual transfers assets to a pooled trust after he/she turns age 65, that transfer of assets is subject to the appropriate period for medical coverage of nursing facility services.

An applicant seeking to have a pooled trust account exempted is, by virtue of the application, claiming a disability. As with any Medicaid eligibility determination, the local district must require proof of disability if it exists, as previously discussed in this INF, or initiate the disability determination process described above. The LDSS, in conjunction with the State Disability Review Team, has 90 days from the date of application to make the disability determination. Applicants, who establish a pooled trust for the purposes of exempting income, must have a disability determination prior to an eligibility determination.

If you have any questions about pooled trusts for individuals over 65 years of age, please contact Wendy Butz at (518) 473-0955. If you have questions regarding the submission of a packet for disability determination, please contact Peggy Williams at (518) 473-0891.

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Kathryn Kuhmerker  
Deputy Commissioner  
Office of Medicaid Management