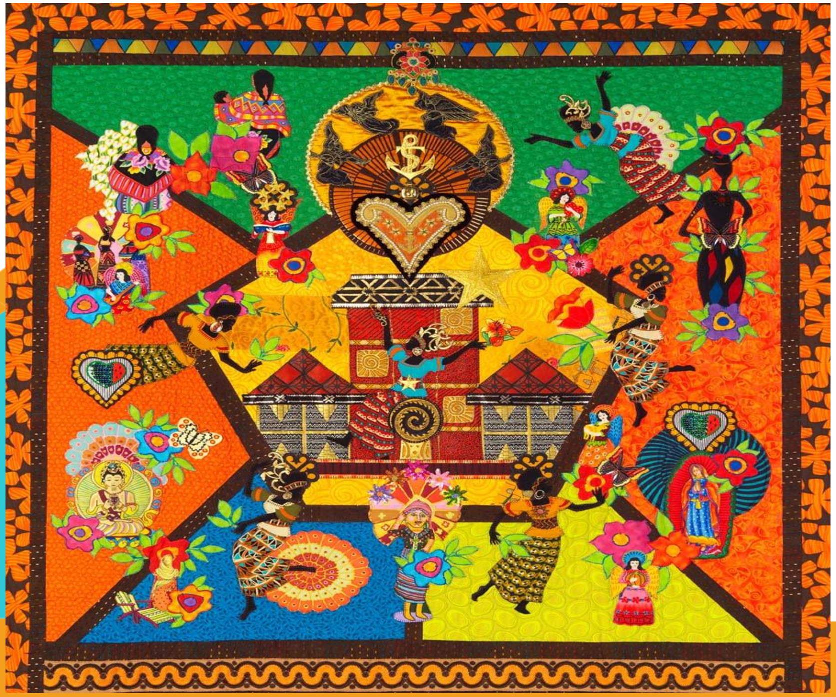
NY Alliance Housing Navigator Training

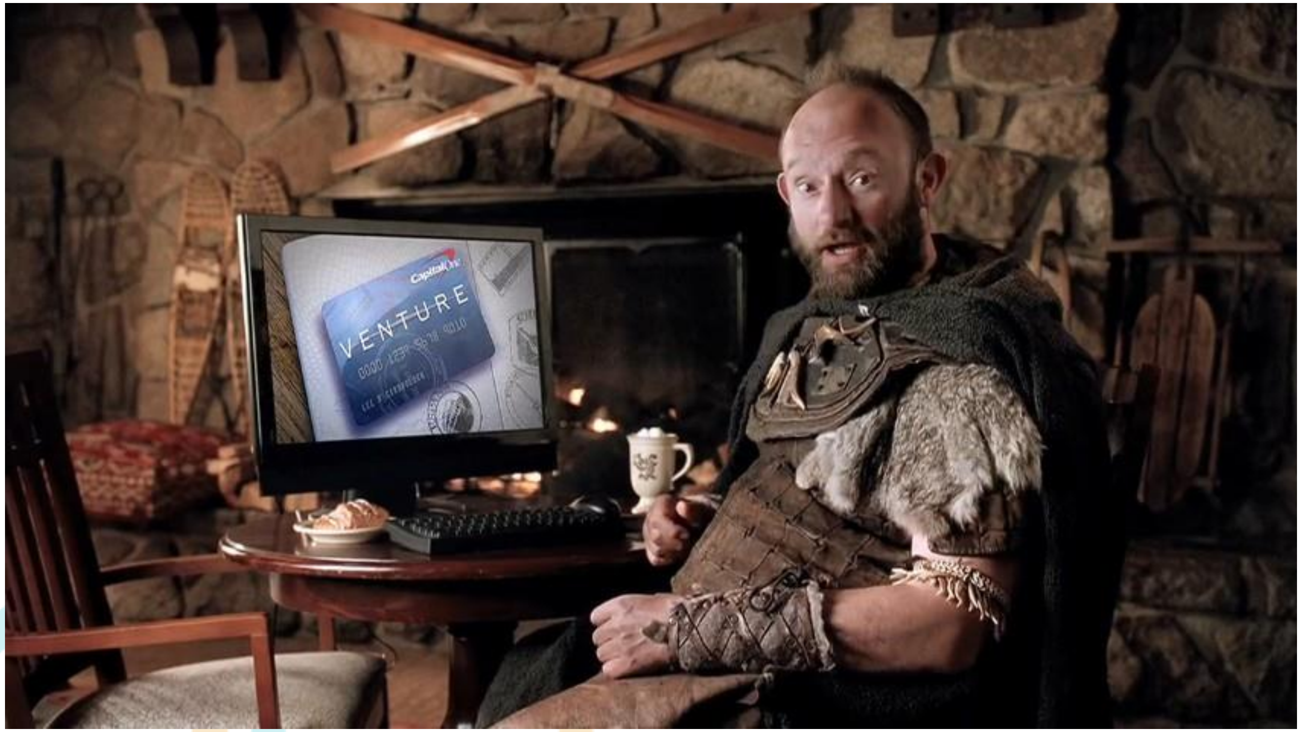
Housing Navigation

Protecting Savings. Special needs, or Supplemental Needs Trusts

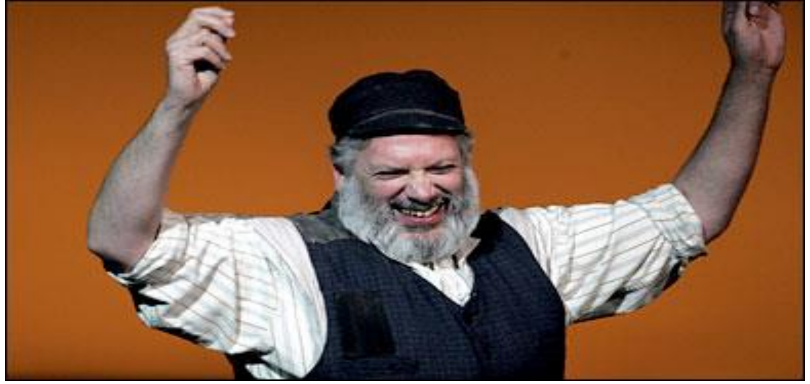


NEW YORK
ALLIANCE FOR INCLUSION & INNOVATION

What's in Yewer wallet?

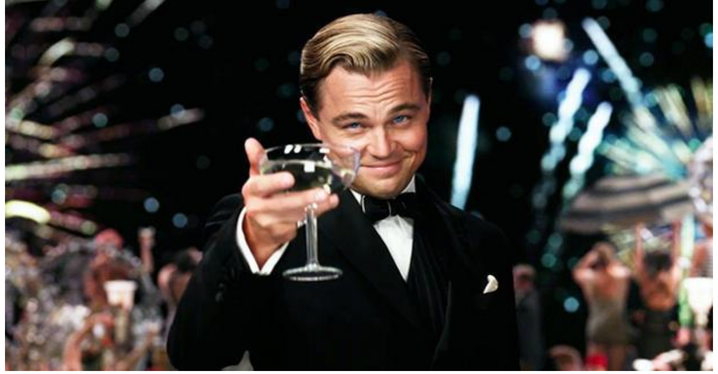


Open Architecture



- NY State- 25% below $25k, 25% above $100k
- SSI is for Food and Shelter
- Families can help
- Segregated settings exclude family resources
- Open Architecture allows a mix of private and public funding for the benefit of all.

Trusts



- **Trusts are assets unless they are**
  - Under section 1917 (d) (4) (A) of the Social Security Act. "Special Needs trusts"
  - Section 1917 (d) (4) "Pooled Trusts"
- **Special Needs Trusts, or Supplemental Needs trusts (SNTs) hold the assets of a person intended to be used only for "Supplemental Needs", anything other than Food or Shelter**
- **A trustees First Duty is to act as a responsible fiduciary, soooo…**

First Person trust

- "Self Settled" or "First Person"
- If "Self Settled" the beneficiary uses their own resources. There is NO Medicaid transfer of asset penalty
- Only for someone under the age of 65
- Must have a trustee
- Medicaid must have rights to any remainder of the trust

Remember CDB!

2024 Spend-down threshold $1,732, up from $934 in 2022

- **In the Matter of Mary O., Fair Hearing Decision No. 3945750N (February 25, 2004)**
- **Community Medicaid (Non-MAGI)***
- **When a person with a disability places their excess or surplus monthly income (also called a spend-down) into an SNT, the local Medicaid program must adjust the person's Medicaid budget to eliminate their spend-down for Community Medicaid. This has been true in NY State since February 25, 2004, when the State Department of Health issued a fair hearing decision allowing use of the NYSARC trust to eliminate the spend-down of income.**
- **The decision relies on an old amended directive of the State Department of Health – a letter dated September 23, 1997 that amends directive 96-ADM-8, titled "OBRA '93 Provisions on Transfers and Trusts." The 1997 letter states: "While most exception trusts are created using the individual's resources, some may be created using the individual's income, either solely or in conjunction with resources. Income diverted directly to a trust or income received by an individual and then placed into a trust is not counted as income to the individual for Medicaid eligibility purposes."**

*Modified Adjusted Gross Income

Third Party Trust

- A Third Party provides the funding in the trust
- May not be used to meet basic needs, i.e. food and shelter
- No impact on benefits
- Available to any age
- Must have a trustee
- Disbursements only to a vendor, not to the beneficiary

Trustee Duties

- Can be a person, a financial institution or a bank. They should know the purpose of the trust and the needs of the beneficiary
- Should know issues re I/DD and Medicaid and SSA
- Disbursements must be made in accordance with the trust rules or the trust may fail and become a countable resource
- Trustee must comply with state trust law and reporting requirements.

SNTs

- Establishing a trust can be costly
- Consider whether it will reach six figures
- Beware of amateur advice!

Miller Trusts

- **Miller Trusts, Qualified Income Trusts. Income over Medicaid limit is put in a trust**
- **Not in NY, <u>BUT</u> Pooled SNTs run by NFPs are.**
- **State is the beneficiary of the Trust**
- **https://www.medicaidplanningassistance.org/miller-trusts/**

Pooled Trusts

- Managed by nonprofits
- Individual funds are co-mingled
- Separate “accounts”
- Must be under 65
- If over 65 at risk for a transfer penalty
- Enforcement unclear

Pooled trusts

- Can only disburse to vendors of -
- Supplemental services
- After participant's death Medicaid will be reimbursed and remainder stays in the trust
- NFP May retain funds
- Pooled trust fees are not always transparent

James Traylor