

Everyone into the pool

**Nursing homes can wait,
thanks to supplements to
federal entitlements**

By GREGORY ZELLER

Sign away your life savings. You'll be happier.

That's the gist of an increasingly popular approach to retirement financing: "Pooled trusts," giving seniors the resources to confront rising long-term care costs without disqualifying them from critical government entitlements. A 1993 federal law allows disabled people, including the elderly disabled, to deposit assets or monthly income above Medicaid limits into a group trust that covers basic necessities like rent or food, while the beneficiary still qualifies for government health care assistance.

The idea is not to supplant government entitlements, insiders note, but to supplement them – ensuring a better quality of life for beneficiaries by challenging a byzantine Medicaid system's strict limits on how much beneficiaries can possess or earn.

Pooled trusts can also help beneficiaries remain in their homes, especially seniors. "If you're trying to stay at home but need care, the Medicaid budget is completely inhumane," said Wendy Sheinberg, an elder law

attorney at Davidow Siegel & Stern in Garden City. "How could you possibly pay real estate taxes on Long Island when all you get to keep is \$760 a month?"

Mathematically, you can't. But if the money used for rent, food and clothing were no longer in your possession, and yet available for those expenses, and you thereby remained Medicaid-eligible, you'd be in pretty good shape.

"Now, each month, the trust administrator can write a check to pay for my heat," Sheinberg said. "And I can get the assistance I need for medical care and live some kind of dignified existence."

The hang-up, for some, is twofold. Pooled trusts are discretionary and expenditure authority rests with the trustee; once money is deposited, it's literally and figuratively out of the beneficiary's hands. And when the beneficiary dies or encounters some other life change – finally entering a nursing home, for instance – leftover funds remain with the trust.

Those "pooled" funds are used to strengthen the trust and support ancillary programs. Delmar-based NYSARC, formerly the New York State Association for Retarded Children, operates several pooled trusts benefitting various disabled populations, including the elderly disabled, and uses pooled resources to support its statewide Corporate Guardianship Program and vari-

ous recreation programs.

"The biggest problem for the individual is surrendering control of their funds," said NYSARC Chief Financial Officer John Sherman. "But the benefit to the individual is extraordinarily high. In our case, [the trusts] allow people to remain in their homes. They give up that money, but they stay in their community and see local physicians and still receive necessary homecare and any pharmaceuticals they require."

Sheinberg said the pool opened with the federal Omnibus Reconciliation Act of 1993, which imposed a "nonexempt transfer penalty" on trust deposits by beneficiaries of a certain age. "Once you passed age 65, you lost the ability to put money into a trust without being penalized," she said.

But the OBRA only set that restriction, she added, on individual trusts benefitting physically or developmentally disabled persons. There was nothing in the law at all, Sheinberg said, about pooled trusts, which are now catching on with cash-strapped baby boomers in search of financial answers.

NYSARC began managing individual trusts in 1972 and currently services over 5,000 beneficiaries, including numerous Long Islanders, through trusts with a combined value of roughly \$40 million. That includes \$31 million in three pooled trusts, according to Sherman, none of which caters exclusively to any one group, but each of which services seniors. "Most of our beneficiaries are elderly disabled," Sherman noted.

Mary McNamara, community resources director for AHRC Nassau County (formerly the Association for the Help of Retarded Children) and director of the Nassau Coun-

ty AHRC Foundation, agreed interest in pooled trusts is growing. The Nassau foundation manages a pooled trust of just under \$1 million that caters exclusively to the developmentally disabled, but according to McNamara, calls come constantly on behalf of seniors interested in similar services.

"Many of the calls for trust services that come to my office, fully a third of them, are for seniors," she said.

While meeting the same basic criteria – their discretionary nature, the "pooling" procedure, management by a recognized charity – each trust has its own rules. The NYSARC pools, for instance, have a \$200 enrollment fee but generally no minimum on monthly deposits, according to Sherman, while the Nassau County AHRC Foundation pool requires a \$25,000 buy-in (\$10,000 down, the balance paid over five years).

Allowable expenditures also vary, though each trust is careful about spending member's money. That AHRC Foundation pool won't pay for rent or food, according to McNamara, but does help a beneficiary who enjoys the theater see a few shows each year. NYSARC boasts a nine-member trustee board in charge of expenditures, Sherman noted, appointed by the NYSARC executive committee and currently featuring several attorneys, a social services commissioner and an expert in federal and state benefit law.

"What the fund covers depends on what's in each individual's trust and what the beneficiary has for other resources," Sherman noted. "We may pay some part of their shelter, some part of their utilities, perhaps a car service if they need it."