

MEDICAID ALERT

June 25, 2018

Deferring Medicaid Eligibility Determinations
Due to Powers of Attorney Lacking Specific Authority to
Create Trusts

This Alert is to inform Providers, Client Representatives, Community Based Organizations and all organizations assisting clients with their Medicaid applications that the Medical Assistance Program (MAP) and the Home Care Services Program (HCSP) are updating the manner in which trust submissions are being handled. Both programs will now defer Medicaid applications that include a trust signed by an agent pursuant to a Power of Attorney that does not have the authority to create and fund trusts. This will afford applicants an opportunity to submit a newly executed Power of Attorney.

On July 26, 2017, a MARC Alert was issued outlining the requirements for a valid Power of Attorney used to establish a trust. Specifically, a Power of Attorney executed in New York State after September 1, 2009 must comply with the detailed requirements of Title 15 of the New York General Obligations Law (“GOL”) to be valid, particularly GOL §§ 5-1501B and 5-1514.

If this agency’s Office of Legal Affairs determines a Power of Attorney invalid for the purpose of creating and funding a trust, MAP or HCSP will send a deferral to the client for a newly executed valid Power of Attorney.

Note: It is insufficient to amend an already executed Power of Attorney that does not authorize the creation and funding of a trust. If the trust is otherwise valid, pooled trusts deposits made without the legal authority to enter into the trust may be deemed unavailable to the individual once a new Power of Attorney with the authority to create and fund trusts pursuant to Title 15 of the GOL is submitted and approved by the Office of Legal Affairs. All other Pooled Trust requirements remain as they are now.