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Understanding Public Benefits Affecting the Elderly

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This outline presents the law as of this writing, with the warning that many public benefits in Texas are presently in a state of change. Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication is intended for educational and informational purposes only.

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Contents

I. SUPPLEMENTAL SECURITY INCOME (SSI).....1
A. Eligibility 2
1. "Categorical" Requirements: Disability, Age 65 or over, *or* Blindness.....2
a) Disability.....2
b) Age.....3
c) Blindness.....3
2. Citizenship/Immigration/Residency Status.....3
a) Residency.....3
b) Citizen or Entitled Alien.....3
3. Income 5
a) General Rule.....5
b) Rules applying to earned income 5
c) Rules applying to unearned income 6
d) "In-kind support and maintenance".....6
e) Deeming of Income.....9
4. Resources.....9
a) General rule.....9
b) Definition of resources.....9
c) Deeming of resources.....10
B. Benefits 11
1. Cash Benefits 11
2. Medicaid Eligibility 11
C. Transfer Rules.....11
D. Application.....13
E. SSI Sources of Law.....13

II. MEDICARE 14
A. Eligibility 14
1. Eligibility at Age 65.....14
2. Eligibility in Connection With Social Security and Railroad Retirement Disability Benefits.....14
3. Medicare Premiums 15
B. Benefits 15
1. Hospital Services 15
2. Nursing Facility Services.....16
3. Home Health Services.....16
4. Hospice Services.....17
5. Medicare Improvement Standard Abrogated 17
6. Physician Services and Other "Part B" Benefits.....18
7. Prescription Drugs 19
8. Medicare Preventive Care Benefits.....20
C. Application.....21

III. "LONG TERM CARE" MEDICAID 21
A. Eligibility 21
1. Income 21
a) Income limitation for an unmarried person. 21
b) Income limitation for a married person with an ineligible spouse.....21
c) Income limitation for a married couple, both of whom apply for 22
Medicaid. 22
d) Reduction of countable income.....22

2. Resources (Countable Assets) 22
a) Resources for an unmarried applicant. 22
b) Resources for a married couple, with an ineligible spouse not living in a medical institution. 23
c) Resources for a married couple, both in a nursing home and applying for Medicaid. 23
d) Resources for a married couple, both in nursing home, only one applying for Medicaid 23
e) Limit of $552,000 equity in residence 23
f) Limit on Purchasing Life Estate in a Residence 24
g) Exclusion of Unmarketable Assets 24
h) Deferred Annuities in IRA's are Exempt 25
3. Medical Need Requirements 26
a) Nursing Home and HCBS Waiver Programs 26
b) Home care 27
4. Citizenship/Immigration/Residence Status 27
5. Age, Blindness or Disability 27
B. Benefits 27
1. Nursing Home Medicaid 27
2. Home Care Under the "Community Care" Programs 28
3. Home and Community Based Services under the Medicaid "Waiver" Programs 28
C. Trust Rules 30
1. Third-Party-Settled Trusts 30
2. Self-Settled Trusts 30
a) Benefits of a Testamentary Trust for a Spouse 30
b) Rules applying to revocable trusts established by the client 30
c) Rules applying to irrevocable trusts established by the client 31
3. Exceptions to General Rules Governing Trusts "Established By" The Client 32
a) Under-65 Supplemental Needs Trusts 32
b) Miller Trusts (Qualified Income Trusts). 32
D. Transfer ("Gifting") Rules 33
1. Nature and Purpose 33
2. Rules for Calculating the Penalty Period 34
3. Treatment of multiple transfers 35
4. How to Determine the "Start Date" of the Penalty Period 36
5. Medicaid Programs Subject to the Transfer Penalty 37
6. Disclaimers as Transfers 38
7. The Post-DRA Rules Pertaining to Annuities 38
8. The Pre-DRA Texas Rules Pertaining to Annuities 42
9. The "Return of Transferred Asset" Rule 43
10. What is "Compensation" Reducing a Transfer Penalty 46
11. Certain Transfers Excepted From Penalty 47
12. Exception: Transfers Solely for Non-Medicaid Purpose 49
13. Exception: Transfer Penalty Would Result in "Undue Hardship" 50
14. Gifting by Guardians 51
15. Fees of Guardians Deductible From Copayment 52
E. Application 52
F. Agreements of Exclusivity Between Attorneys and Skilled Nursing Facilities 52
G. Medicaid Estate Recovery Program 53
H. Lady Bird Deed 53
I. Transfer on Death Deed: The New Lady Bird Deed? 55
1. Transfer on Death Deed Overview 55
2. Comparison of TODD and LBD 57
3. Effect on Medicaid Eligibility 57
4. Will a TODD Preserve Title Insurance Protection? 58
5. Which Type Deed to Use? 58

IV. QMB AND OTHER MEDICARE SAVINGS PROGRAMS 61
A. Eligibility and Benefits 61
1. Qualified Medicare Beneficiaries (QMB) 61

2. Specified Low-Income Medicare Beneficiaries (SLMB)....62
3. Qualifying Individuals....62
4. Qualified Disabled and Working Individuals (QDWI)....62
B. Trust and Transfer Rules....63
C. Application....63

V. TIPS FOR NEW ELDER LAW PRACTITIONERS....63
A. Contact Information for Texas Health and Human Services Commission....63
B. Tips for a Successful Medicaid Application....64
1. Frequently Asked Questions....64
C. Tips for Qualified Income Trusts (Miller Trusts)....65
1. Qualified Income Trust (QIT) Checklist....65

VI. APPENDICES....66
Appendix 1: Benefit Eligibility Numbers....66
Appendix 2: How to Calculate "Pro Rata Share"....68
Appendix 3: Sample Instructions for Trust Distributions....69
Appendix 4: Limits on Eligibility of Aliens for Public Benefits in Texas....71
Appendix 5: Sources of Free and Reduced Price Prescription Medications....73
Appendix 6: Selected Bibliography....74
Appendix 7: Transfer on Death Deed....77
Appendix 8: Enhanced Life Estate Deed (Lady Bird Deed)....80
Appendix 9: Medicaid for the Elderly and People with Disabilities (MEPD) Managers and Supervisors....83
Appendix 10: Health and Human Services Commission Organizational Chart....90

Understanding Public Benefits Affecting the Elderly

INTRODUCTION

This is an overview of the most significant public benefits for persons age 65 and over in Texas. It is intended to assist attorneys and other benefits counselors to answer clients' questions about such benefits and to identify benefits clients may need but do not know about.

The benefits fall into two major categories:

- **Social insurance benefits** (financed by taxes paid by beneficiaries, available regardless of wealth or income): Social Security Retirement and Medicare

- **Means-tested benefits** (available only to those with assets and income below certain levels): Supplemental Security Income, Medicaid, Medicare Savings Programs (QMB, SLMB, Part D Extra Help)

This paper does not cover benefits available primarily to individuals under age 65—for example, Social Security Disability Insurance, under-65 Special Needs Trusts, Medicaid for children and pregnant women, and intellectual disability benefits. Those programs are covered in a longer paper by the authors.[1]

Although Social Security Retirement is a public benefit affecting the elderly, there is very little demand for attorney services with regard to that benefit. Therefore, it is not covered in this paper. There are very good summaries available, such as Joseph F. Stenken, *Social Security & Medicare Facts* and the Social Security website at www.ssa.gov .

Although much of the law discussed is federal law, many rules are state-specific. Accordingly, with regard to cases governed by the law of jurisdictions other than Texas, it must be used, if at all, with great caution.

This outline is intended as a "bridge" to help the practitioner better understand and use the voluminous statutes, rules and agency operating instructions applying to each program. Therefore, although it seeks to cover the most important rules, it cannot include every benefit, exclusion, exemption, etc. contained in the numerous sources of law, which are cited for further reference. We also cite (and list in the Resources appendix) some books, papers and websites we have found helpful.

I. SUPPLEMENTAL SECURITY INCOME (SSI)

[1] Farrell and Lesher, *Protecting Public Benefits,* University of Texas School of Law conference Changes and Trends Affecting Special Needs Trusts (February 4-5, 2016).

It is relatively rare to find a senior who is eligible for SSI, because most have Social Security or other income exceeding its income maximum ($753 per month for an unmarried person, $1,100 per month for a married couple in 2016). However, it occasionally happens, and SSI can be especially valuable because in addition to a cash income, it carries with it eligibility for full Medicaid and food stamps (SNAP benefits). Moreover, the SSI "methodology" for identifying and valuing countable assets and income is used in other programs more frequently encountered in Elder Law practice—most notably, the Medicare Savings programs (QMB, SLMB, QI-1) and Medicare Part D Extra Help (very cheap prescriptions) discussed below. Therefore, this section on SSI can be used as a reference for determining whether a Medicare beneficiary has low enough assets and income to qualify for programs that eliminate or greatly reduce the premiums, copayments and deductibles associated with Medicare. And in those rare cases in which a client over age 65 does not have Medicare, the Medicaid associated with SSI can be critical.

Supplemental Security Income (SSI) is often confused with Social Security Disability Insurance (abbreviated SSDI or SSD) and other Social Security benefits for retirees, dependents and survivors, because some of those programs also have disability criteria and because SSI is also administered by the Social Security Administration (SSA). Even the telephone operators at SSA occasionally use the terms interchangeably and incorrectly. It is, therefore, imperative to distinguish which program applies to the circumstances of a given individual. A simple way to remember the most important difference is: SSI is a needs-based program (hence the name: *supplemental … income*); and SSDI is the program that most workers "buy" into to insure themselves in the event of a disability that renders them unable to work (hence the name: Social Security *Disability Insurance*). A person becomes eligible for SSDI upon the completion of a certain work history and a qualifying determination of disability, irrespective of financial need. In many instances, a person who has a disability and the requisite work history, but a small SSDI benefit, may be eligible for both SSI and SSDI, which would also entitle the individual in question to both Medicaid and Medicare respectively.

Another important distinction between SSI and the other Social Security benefits is that the latter are paid for through the Social Security taxes paid for by workers; whereas SSI is not paid for by Social Security taxes but rather from the general funds of the United States Treasury.[2]

A. Eligibility[3]

1. "Categorical" Requirements: Disability, Age 65 or over, *or* Blindness

a) Disability

We'll skip over the disability requirement, because it does not apply to individuals age 65 or over. They need to meet only the asset and income requirements. Therefore, when you encounter a person who has reached age 65 and has very low income (discussed below), consider whether

[2] *See* Social Security Handbook, http://www.ssa.gov/OP_Home/handbook/handbook.21/handbook-2105.html (last visited Dec. 20, 2015).

[3] *See* Social Security, http://www.socialsecurity.gov/ssi/text-eligibility-ussi.htm (last visited Dec. 20, 2015).

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