

And How Are the Children? Planning for Children with Special Needs Trusts

“Medicaid For Kids”

Written by:
Patricia Flora Sitchler, CELA*

&

Kathy Lynch
Legal Assistant to Patricia F. Sitchler
and Retired, Texas Department of Human Services

Edited & Updated by:

Christina Leshner, B.S.W, J.D.
Law Office of Christina Leshner, PC
5615 Kirby Drive, Suite 412
Houston, Texas 77005

University of Texas CLE

*Certified as an Elder Law Attorney by the National
Elder Law Foundation as recognized by the Texas
Board of Legal Specialization

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Introduction: And How Are The Children?

Among the most accomplished and fabled tribes of Africa, no tribe was considered to have warriors more fearsome or more intelligent than the mighty Masai. It is perhaps surprising then to learn the traditional greeting that passed between Masai warriors.

‘Kasserian ingera,’ one would always say to another. It means, ‘and how are the children?’

It is still the traditional greeting among the Masai, acknowledging the high value that the Masai always place on their children's well-being. Even warriors with no children of their own would always give the traditional answer, ‘All the children are well.’ Meaning, of course, that peace and safety prevail, that the priorities of protecting the young, the powerless are in place, that Masai society has not forgotten its reason for being, its proper functions and responsibilities. ‘All the children are well’ means that life is good. It means that the daily struggles of existence, even among poor people, do not preclude proper caring for its young.

I wonder how it might affect our consciousness of our own children’s welfare if in our culture we took to greeting each other with this same daily question: ‘And how are the children?’ I wonder if we heard that question and passed it along to each other a dozen times a day, if it would begin to make a difference in the reality of how children are thought of or cared for in this country? I wonder if every adult among us, parent and non-parent alike, felt an equal weight for the daily care and protection of all the children in our town, in our state, in our country..... I wonder if we could truly say without any hesitation, ‘the children are well, yes, all the children are well.’

What would it be like.....if the [Governor] began every press conference, every public appearance, by answering the question, ... ‘And how are the children, Governor? Are they all well?’ Wouldn't it be interesting to hear [his] answers?

**Excerpt from a speech by the Rev. Dr. Patrick T. O'Neill, First Parish Universalist Church in Framingham, MA*

The United States Census Bureau estimates that, of the 4.9 million school-aged children in Texas, 5.5%, over 269,000, had a disability in 2010.¹ In 2012, it was estimated that 8% of Texas’s 2.3 million children under the age of five had some form of developmental delay and “[a]n estimated 9-13% of Texas children have some type of disability, with the highest growth rates in mental, behavioral, and emotional conditions.”²

¹ UNITED STATES CENSUS BUREAU, SCHOOL-AGED CHILDREN WITH DISABILITIES IN U.S. METROPOLITAN STATISTICAL AREAS: 2010 4 (2011), <https://www2.census.gov/library/publications/2011/acs/acsbr10-12.pdf> .

² TEXAS CHILDREN’S POLICY COUNCIL, RECOMMENDATIONS FOR IMPROVING THE SERVICES FOR CHILDREN WITH DISABILITIES (Sept. 2012). This document is no longer available online. For a more recent report, see TEXAS CHILDREN’S POLICY COUNCIL, RECOMMENDATIONS FOR IMPROVING THE SERVICES FOR CHILDREN WITH DISABILITIES (Dec. 2018), <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports->

Access to Medicaid programs that pay for health care, caretakers, or housing costs, in some instances, could mean the difference between life and death for some of these children with disabilities. Medicaid is a federally and state funded program that provides a variety of services and benefits. While each state's program must follow federal guidelines, each state is given discretion to establish the benefit structure, eligibility, service delivery, and payment rates within those guidelines. Each state has great latitude on how to provide access to these services.

There are two types of Medicaid benefits available to Texas children. One type requires a child to be disabled and in financial need.³ The other type is provided to a financially needy child, as determined under the Texas Works Program, regardless of disability and is administered by the Texas Health and Human Services Commission.⁴ Certain Medicaid programs have long waiting lists, making needed care not immediately available to children and families.

Because eligibility for Medicaid programs is based on financial need, receipt of outside assets, property, or resources could cause a child to lose benefits. A child or the child's family may receive funds as a result of a personal injury award, inheritance, or gift.⁵ Directing the child's funds to a Supplemental Needs Trust (SNT) can protect benefits for a child who meets the disability criteria outlined by the Social Security Administration.⁶ A Trust may also be used to protect Medicaid eligibility for financially needy children who are receiving benefits under the Texas Works Program, provided that the Trust used complies the prescribed guidelines.⁷

Part I of this paper will describe how the State of Texas uses the Children's Policy Council's recommendations to implement and administer policies for long-term services and support, health services, and mental health services for children with disabilities.

Part II of the paper will set out the major Medicaid benefit programs available to these children.

Part III will highlight a means of accessing certain Medicaid programs that have long waiting lists or, as the Medicaid agency refers to them, "interest" lists.

Finally, Part IV of the paper will set out suggestions for creating Special Needs Trust to protect benefits when a child receives funds from any source.

[presentations/2019/tx-children-policy-council-recs-impr-svcs-dec-2018.pdf](https://www.txchildrenspolicycouncil.org/presentations/2019/tx-children-policy-council-recs-impr-svcs-dec-2018.pdf).

³ Generally, these include Medicaid waiver programs, under Title XIX of the Social Security Act, and Medicaid, associated with Supplemental Security Income eligibility.

⁴ TEX. HEALTH AND HUMAN SERVICES, TEXAS WORKS HANDBOOK §A-800 (2019), <https://hhs.texas.gov/laws-regulations/handbooks/twh/texas-works-handbook> [hereinafter TEXAS WORKS HANDBOOK].

⁵ A gift generally arises when a child is the beneficiary of a custodial account under the Texas Uniform Transfers to Minors Act enacted under Texas Property Code Ch. 141.

⁶ See 42 U.S.C. §1382c(a)(3)(A) (the Social Security Administration's definition of "disabled").

⁷ TEXAS WORKS HANDBOOK at §A-1237.

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