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Protecting and Maximizing Public Benefits

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PROTECTING AND MAXIMIZING PUBLIC BENEFITS

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PROTECTING AND MAXIMIZING PUBLIC BENEFITS

INTRODUCTION

This is an overview of the most significant public benefits for persons with disabilities in Texas. It is intended to assist attorneys and other benefits counselors to identify the major benefits to which such clients may be entitled.

Its focus is primarily on the "means-tested" benefits, which are available only to persons with assets and income below certain limits. Therefore, particular attention is paid to rules relating to trusts and transfers of assets to assist attorneys and other professionals with estate planning for family members and with planning for dispositions of personal injury awards, inheritances and other assets of persons with disabilities.

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. The topic Long Term Care Medicaid, which is discussed only partially here, is covered more completely in another publication by the author titled *Financing Long Term Care in Texas*.

The authors gratefully acknowledge the contribution of Chris DeWitt, an attorney with much experience in the fields of Medicaid and disability, who updated the whole publication and expanded the discussion of state programs and laws in 2009.

I. CHANGES AND TRENDS FOR 2016

What follows is a listing of the major changes in the 2016 edition of this paper.

Topic	Summary of Change	Page
Overview-Managed Care	Texas Medicaid Managed Care expands to cover the entire state and is extended for the first time to nursing home services	3
Overview-Marriage	Partners in same-sex marriages are entitled to the same treatment as those in opposite-sex marriages.	12

Self-Settled (d4A) Trusts	A nominal contribution may be essential to effectiveness of a d4A trust.	27
Self-Settled (d4A) Trusts	Some insight into the thinking of the Regional Trust Reviewer Team may be drawn from a list of POMS sections they have cited.	44
Self-Settled (d4A) Trusts	SSA reverses policy of disapproving all court-created trusts	45
SSI Policy	Under the new ABLE Act as recently construed by the Social Security Administration, many SSI beneficiaries will no longer be forced to choose between getting help with food and shelter, and having their SSI benefit reduced by one-third	46
Long-Term Care Medicaid	Deferred annuities in IRA's are exempt under Texas long-term care Medicaid policy	69
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Long-Term Care Medicaid	1915(c) is now HCBS	109
Long-Term Care Medicaid	Income Tax Withholding No Longer Deductible from Copayment	109
Affordable Care Act	Acquiring and proving enough income to reach the poverty level under the MAGI rules, so as to qualify for Affordable Care Act health insurance, can be a life-or-death effort in Texas.	128

II. OVERVIEW OF TEXAS HEALTH AND HUMAN SERVICE AGENCIES

A. Texas Agencies

The Texas Health and Human Services Commission (HHSC) administers the Texas Medicaid program, the Children's Health Insurance Program (CHIP), Family and Community Services (e.g., Family Violence Program, Refugee Affairs Program, and education and outreach relating to social services), Special Nutrition Programs, Lone Star Business Programs, Texas Works