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## Protecting and Maximizing Public Benefits

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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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# 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 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 2017

What follows is a listing of the major changes in the 2017 edition of this paper.

<b>Topic</b>	<b>Summary of Change</b>	<b>Page</b>
Medicaid Applications	If a Medicaid application is delayed or contains a mistake, the Office of Eligibility Service has a dedicated a unit to help.	174
ABLE Act	Texas has not fully implemented the ABLE program but, in certain states, accounts are available for out-of-state residents.	53
21 <sup>st</sup> Century Cures Act	An individual with a disability who has the intellectual capacity to establish his or her own self-settled account similar to a Special Needs Trust can now do so, effective December 13, 2016.	34

Long-Term Care Medicaid – HCBS Programs	Updated HCBS program information	81
Long-Term Care Medicaid – HCBS Programs	HHSC has updated their policies on “Spousal Protected Resource Amounts” and the “Personal Needs Allowance” for waiver programs	86
Long-Term Care Medicaid – HCBS Programs	Introduction to special rules when both spouses apply for long-term care	89
Long-Term Care Medicaid – Money Follows the Person	The “Money Follows the Person” program has been extended through August 2017.	92
Long-Term Care Medicaid – Transfer Rules	HHSC Officials have confirmed HCBS programs do not have a start date to begin the transfer penalty period	101
Long-Term Care Medicaid – Transfer Rules	HHSC has clarified transfer penalties on transfers by a Community Spouse	108

## 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 (which includes the Food Stamp Program, Medical Assistance Programs for Families and Children, and Temporary Assistance for Needy Families (TANF)), and Disaster Assistance programs.

HHSC is also responsible for the administrative functions of the other four health and human service (HHS) agencies of Texas:

**Department of State Health Services (DSHS)** – responsible for health and mental health services (including state mental health facilities and hospitals), as well as substance abuse programs;

**Department of Aging and Disability Services (DADS)** – responsible for intellectual disability (ID) services and State Supported Living Centers (residential intellectual disability) programs, nursing homes, community care services, and aging and long-term care services for the elderly (but not responsible for determining *financial* eligibility for Medicaid, which is done by HHSC);

**Department of Assistive and Rehabilitative Services (DARS)** – responsible for rehabilitation services, disability determination services, services for the deaf, blind, and visually impaired, and early childhood intervention services; and

**Department of Family and Protective Services (DFPS)** – responsible for adult and child protective services, investigations of abuse and neglect in homes and state facilities, the licensing and regulating of child care facilities, and prevention and early intervention services for child maltreatment and juvenile delinquency.

### B. Medicaid Managed Care Covers the State

#### 1. Historical Background in Texas

With the approval of the 2011 Texas Legislature, the Texas Health & Human Services Commission applied for a new Medicaid waiver program that was approved by the federal Centers for Medicare & Medicaid Services December 12, 2011. By that approval, CMS “waived” certain requirements of federal Medicaid law, most notably the prohibition on payment of certain Medicaid funds to hospitals serving large numbers of low-income patients, when the

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