

# **Pickle People: Using the Pickle Amendment to Obtain Medicaid Eligibility**

13<sup>th</sup> Annual Changes and Trends Affecting  
Special Needs Trusts  
The University of Texas School of Law  
Austin, Texas  
February 9-10, 2017

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	THE LAW.....	4
	A.    Federal Statute.....	4
	B.    Program Operations Manual System (POMS).....	5
	C.    Texas Administrative Code.....	5
	D.    Texas Medicaid Eligibility Handbook.....	5
	E.    Case Law.....	5
III.	PICKLE PERSON SPECIFICS.....	6
	A.    Who is a Pickle Person?.....	6
	B.    How Do You Identify a Pickle Person.....	6
	C.    Hints to Find a Pickle Person.....	7
	D.    Concurrent SSI/SSD Eligibility.....	7
	E.    Pickle vs. Childhood Disability Benefits.....	8
IV.	CLASSIC PICKLES, SENIOR PICKLES AND WILD PICKLES.....	9
V.	CONCLUSION.....	10

## I. INTRODUCTION

Many Elder Law Attorneys have heard of a class of beneficiaries receiving government benefits called “Pickle People.” The name is found in publications addressing Supplemental Security Insurance (SSI) issues and Medicaid. However, the explanation given of a “Pickle Person” is often arcane and lacks specifics of just exactly who is a Pickle Person. This paper attempts to provide an understanding of *who* qualifies as a Pickle Person and how this status affects a person’s ability to qualify for government benefits, specifically, Medicaid. The details of this article will focus on qualifying someone as a Pickle Person in Texas, but, except for the references to Texas State Medicaid regulations, the general requirements and techniques for qualifying an individual for benefits should be the same in other states.<sup>1</sup> Texas is a 1634(a) state,<sup>2</sup> however, and the rules set forth in this paper may differ for 209(b) states<sup>3</sup> and SSI-criteria states.<sup>4</sup> In 209(b) states and SSI-criteria states, the particular state Medicaid rules must be consulted.

Generally, the Pickle Amendment continues or reinstates Medicaid for persons who were once eligible for both Social Security and SSI, and who would still have SSI “but for” Social Security cost-of living increases. This includes two main groups. First, individuals who have a large Social Security benefit and only a small SSI benefit often lose SSI if the annual cost of living increase in their Social Security benefit overruns the annual increase in SSI. The Pickle Amendment provides continuing Medicaid eligibility for these individuals. Second, this amendment covers a surprisingly large number of individuals who received SSI disability while their Social Security benefit level was being calculated, and then lost SSI when the Social Security disability turned out to be higher than the SSI income limit. At some point, often many years later, the SSI standard of need exceeds the amount of the recipient’s *first* Social Security check, the check that originally made the individual ineligible for SSI. At that point, “but for” the Social Security cost of living increase, the individual would be eligible for SSI and the Pickle Amendment will restore Medicaid eligibility.

A “Pickle Person” is a person who, although originally eligible for SSI and Medicaid benefits after April 1977, has lost that eligibility as a result of increases in countable income from cost-of-living adjustments (COLA) to that income. The COLA increase can even be to the income of someone other than the beneficiary. If a person whose income is deemed to the beneficiary receives a COLA increase, and as a result, the beneficiary would be ineligible, that beneficiary may keep eligibility as a Pickle Person. The source of the income that initially disqualifies a beneficiary is not limited to Social Security Disability income (SSDI) or a standard Social Security benefit. To be a Pickle Person, the beneficiary must meet all of the other disability and resource rules of

## Medicaid eligibility.

At first glance, it seems counter intuitive for an increase in Social Security to affect eligibility for SSI. Just like Social Security, the SSI benefit rate is indexed for inflation. So, it would appear that the two would always increase at the same rate and in the same manner so as not to negatively affect SSI eligibility. However, many people are eligible for SSI as a result of the \$20.00 disregard of countable income.<sup>5</sup> The first twenty dollars of income is excluded when determining SSI eligibility. The current Federal Benefit Rate for SSI for the year 2017 is \$735 per month. Thus, someone earning \$754.00 each month in 2017, would still be eligible for SSI because the individual's countable income would be \$734.00. The disregard is not indexed for inflation and, as a result, if the person's SSI eligibility is dependent on the \$20.00 disregard, then COLAs will eventually cause the individual's income to exceed the SSI income limit.

As a result of the Pickle Amendment, many people have their eligibility to SSI-linked Medicaid restored many years after the date they initially lost eligibility. Because of the way the eligibility calculations are made, every year that a COLA is granted to beneficiaries, a new group of beneficiaries become Pickle People.

There are various benefits that are available to persons through the Medicaid program that are not otherwise provided by other public programs such as Medicare. The majority of Pickle Persons will be eligible for Medicare, either as recipients of SSDI or because they are retirement age and have qualified for regular Social Security retirement benefits and, in turn, Medicare. The Pickle Amendment allows the dually eligible status, both Medicaid and Medicare eligibility, which can be an important benefit to these individuals and allow them to benefit from the Medicaid coverage as a stop-gap for Medicare.

## II. THE LAW

### A. The Federal Statute

The Federal law that establishes the Pickle Amendment is found at 42 U.S.C. §1396a.<sup>6</sup> The Pickle Amendment became effective July 1, 1977. The Amendment is named after U.S. Representative from Texas, James Jake Pickle. Congressman Pickle originally introduced a bill called Pickle I,<sup>7</sup> that would have indexed the \$20.00 disregard for SSI income calculations for inflation. The bill did not pass; an amendment was eventually offered by Senator Benson and it became what is known today as the Pickle Amendment. The amendment has been described in judicial opinions as "one of the longest run-on sentences to be found in the entire United States Code,"<sup>8</sup> and also that the "nearly impenetrable verbiage of the

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