



**TEXAS**  
Health and Human  
Services

## **Medicaid: The View from the HHSC**

### **14th Annual Changes and Trends Affection Special Needs Trusts**

**Kymerly Oltrogge**

**Health and Human Services Commission**

**February 15, 2018**

### **Medicaid for the Elderly and People with Disabilities Program - MEPD - Texas Health and Human Services Commission**



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The Medicaid program provides medical benefits to groups of low-income people, some of whom may have no medical insurance or inadequate medical insurance. Medicaid is a jointly funded cooperative venture between the federal and state governments to assist states in providing adequate medical care to eligible needy persons.

Although the federal government establishes general guidelines for the program, the Medicaid program requirements are established by each state. States are required to include certain types of individuals or eligibility groups under their Medicaid plans and they may include others.

HHSC is responsible for determining eligibility for the MEPD Medicaid programs for persons who are aged, blind or disabled. Medicaid matching federal funding provides for medical care and supportive services (for example, vendor drugs, nursing facility and institutional care) to persons who qualify for Medicaid under one of the MEPD programs in this chapter.

And so on



## Questions submitted to HHSC

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The following are questions submitted to HHSC for the 14<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trust Conference and answers to those questions.

Answers to questions that include scenarios are given based solely on the information provided in the questions. While the issues addressed in the questions and answers may be relevant to an eligibility determination, determinations of eligibility are made on a case by case basis and include evaluation of income, resources, disability, and other relevant information.

References to the Medicaid for the Elderly and People with Disabilities Handbook are denoted using the abbreviation MEPDH.

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## JUDICIAL REFORMATION OF TRUSTS

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Title 9 of the Texas Property Code Subtitle B. sets out the statutory provision for the creation, operation and termination of trusts in Texas.

Subchapter C, Section 112.054 was amended by Tex. S.B. 617 in the 85<sup>th</sup> Regular Session to add a provision allowing reformation of a trust to qualify a distributee of the trust for governmental benefits. The reformation must be a manner that conforms as nearly as possible to the probable intention of the settlor.

The court may order the reformation on petition by a trustee or trust beneficiary. The court may order that the reformation has retroactive effect. The provision was not changed by the recent amendment.

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## REFORMATION OF TRUSTS - CONTINUED

### Facts:

Uncle leaves assets in a testamentary trust for a disabled nephew, requiring the trust to terminate at age 35 and pay any remaining funds outright to the disabled nephew. The nephew is currently receiving Medicaid benefits through the CLASS waiver program. The Trustee of the Testamentary Trust files an action to judicially amend the trust to continue the Trust for the beneficiary's (nephew's) life instead of terminating at age 35. When the petition is filed, the nephew is 26 years old.

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## REFORMATION OF TRUSTS – CONTINUED

### **Question:**

Does the State need to be joined as a party in the Petition to Amend the Trust? Or does the agency prefer that we give notice informally by sending a copy of the petition to the Office of Chief Counsel of HHSC without naming the agency as a party?

### **Answer:**

The State is not a required party in a Petition to Amend the Trust. The attorney representing the moving party should send a copy of the Petition and related documents including a copy of the original trust for which the amendment is requested to

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"View from HHSC"