

Presented:

2019 CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS
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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

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 2019

What follows is a listing of the major changes in the 2019 edition of this paper.

Note: The pdf version of this paper contains updates to the income eligibility numbers effective March 1, 2019 that are not included in the printed version distributed at the conference on February 7, 2019: Children's Medicaid, Pregnant Women's Medicaid and Children's Health Insurance Program. The pdf version also includes corrected resource limits for the QMB, SLMB, QI-1, all shown as \$7,730 unmarried and \$11,600 couple in MEPS and Texas Works Bulletin (February 1, 2019), effective March 1, 2019.

TOPIC	SUMMARY OF CHANGE	PAGE
Retirement Accounts	We expect a major announcement soon (perhaps at this conference) that HHSC exempts the assets of IRAs and other retirement accounts from counting as "resources." However, that policy has not yet been reduced to writing, so we do not discuss it in this paper.	

TOPIC	SUMMARY OF CHANGE	PAGE
Self-Settled SNTs	SSA announced in 2018 a major revision of its policies on permissible ways of drafting, establishing and managing self-settled SNTs	38
Disabled Adult Child Medicaid	HHSC has addressed the problem of loss of Medicaid benefits when SSI is lost due to the Childhood Disability Benefit, with "Gap Medicaid."	60
Long-Term Care Insurance and Medicaid	Medicaid policy now requires that all long-term care insurance benefits should be paid directly from the insurance company to the nursing home.	77
Transfers	A transfer from one spouse to the other never results in a transfer penalty	112
Transfers	Current transfer penalty policy creates uncertainty regarding a simple "transfer and return" strategy. Therefore, that strategy should be avoided, in favor of using an algorithm to determine the optimal amount to transfer and paying the rest to the facility, buying an annuity or returning it to the transferor after start of the transfer penalty period.	110
Transfers	Start date of the transfer penalty period for HCBS Waiver programs is now same as for nursing home Medicaid: the date when the applicant meets all the requirements for initial eligibility, but for the transfer penalty	105
Transfers/MERP	The new "Beneficiary Designation of a Motor Vehicle" (form VTR-121) allows a vehicle to pass free of Medicaid estate recovery <i>and</i> does not create a transfer penalty	117
Terminating Self-Settled Trusts	It is no longer necessary to obtain Medicaid claims from all three possible Texas payers (TMHP, HHSC, MCOs). Now you can get them all from TMHP.	200
Income	The authors propose an interpretation of HHSC's policies pertaining to treatment of alimony and community	128

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