

Presented:

2020 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 2020

What follows is a listing of the major changes in the 2020 edition of this paper.

TOPIC	SUMMARY OF CHANGE	PAGE
Attorney Fees	SSA is considering requiring its approval of attorney fees for draft Special Needs Trusts, even when the attorney is not representing the beneficiary in a claim before the agency.	58
Retirement Accounts	In a new policy not yet reduced to writing, HHSC exempts the assets of IRAs from counting as "resources": (1) those with RMDs and (2) those invested in annuities (including deferred annuities).	87
Adult Child Support to Special Needs Trust	The Texas Family Code has been amended to provide expressly that child support for an adult child with a disability may be paid to a Special Needs Trust in a case in which the state does not have a Title IV-D claim. However, that does not prevent such an order in a case involving support of a minor child.	58
ACA Extensions	Money Follows the Person and the extension of spousal impoverishment protections to married applicants for HCBS Waiver programs have been extended through May 31, 2020.	165 169
Child Support Paid by SNT is "Income" to Beneficiary	Payments of child support on behalf of an SNT beneficiary with a duty of support are treated as income to the SNT beneficiary, as if the beneficiary had received money then paid it as child support	60
Transfer on Death Deeds and Lady Bird Deeds	The 2019 Legislature repealed the statutory form for a Transfer on Death Deed. However, it was never mandatory. We summarize recent developments affecting the selection and uses of those deeds.	132
Texas v. United States	If the District Court again determines the entire Affordable Care Act is unconstitutional, and that is upheld by the Supreme Court, virtually every page of this paper will have to be revised. But we aren't going there just yet.	165

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