



PROTECTING & MAXIMIZING PUBLIC BENEFITS

UNIVERSITY OF TEXAS SCHOOL OF LAW
2020 CHANGES AND TRENDS AFFECTING SPECIAL
NEEDS TRUSTS
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2020 PUBLIC BENEFITS UPDATE

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SSA MAY REQUIRE APPROVAL OF SNT ATTORNEY FEES

- SSA published then withdrew an ambiguous POMS section arguably requiring SSA approval of fees of an attorney drafting an SNT, even if there is no Appointment of Representative.
- President of NAELA “remains concerned” that may be SSA policy.
- Next presentation at 3:15 pm: Constance R. Somers and Stacy Braveman Cloyd, *New POMS Clarification on Fee Approval Requirements* at this conference.

More information in page 58 of materials

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NEW STATUTE OKS PAYING ADULT DISABLED CHILD SUPPORT TO SNT

- New Texas Family Code 152.304(c): 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 (child support to be paid to the state).
- Does not apply to child support for a *minor* child with a disability. However, it does *not prevent* such an order in a case involving support of a minor child.
- Problem: A federal regulation applying to the Texas AG’s child support enforcement says who may receive child support payments for minor children and does not include Special Needs Trusts--yet.

More information in pages 58-59 of materials

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SNT SHOULD NOT PAY CHILD SUPPORT FOR BENEFICIARY

- Payments of child support by an SNT on behalf of the trust's beneficiary with a duty of support are treated as income to the SNT beneficiary.
- The Result: Beneficiary required by Medicaid to pay a copayment that is impossible to pay; nursing home may discharge for nonpayment.
- The Fix: Move to modify the child support order.

More information in page 60 of materials

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RETIREMENT ACCOUNTS: STATUS OF POLICY

- HHSC (Texas Medicaid) exempts some IRAs from counting as “resources”
- Policy not yet published. Maybe this summer?
- Policy is more favorable to applicants than federal law requires—so nobody is filing suit.
- Sources of information:
 - Slides from presentations of Shari Nichols
 - Texas Chapter of NAELA Listserv
 - Each law firm's own experience

More information in pages 87-88 of materials

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