

**19<sup>TH</sup> ANNUAL CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS  
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**Minor Child Support Paid into a SNT  
to Protect SSI Eligibility**

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## **Minor Child Support Paid into a SNT to Protect SSI Eligibility**

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A Special Needs Trust created pursuant to 42 USC 1396p(d)(4)(A) is intended to protect the trust beneficiary's potential or continued eligibility for Supplemental Security Income ("SSI") and/or Medicaid program benefits. (Medicaid is accessed through a program benefit, and there are over 100 Medicaid program benefits in Texas.)

When a minor child or adult with a disability receives funds from an inheritance, personal injury recovery or child support, the disqualifying funds can be directed to a Special Needs Trust pursuant to 42 USC 1396p(d)(4)(A) to protect that person's continuing eligibility for SSI and/or Medicaid program benefits.

Medicaid program benefits for individuals with disabilities include more than just health insurance. Some programs pay for durable and disposable goods, therapies, caregiver services, dental care, some small home renovations and more, depending on the program benefits. Eligibility for SSI gives a child with a disability automatic eligibility for a custom plan for health care. Thus, maintaining eligibility for SSI and/or Medicaid program benefits can truly be life saving for the child and create stability for the family unit.<sup>1</sup>

This paper will address the payment of child support into a Special Needs Trust for the benefit of a person with a disability in order to preserve the person's SSI and/or Medicaid program benefits. Because this paper addresses child support, the paper will address the effect on both minor children and adult children with disabilities or collectively as a "child with a disability."

Clearly child support from one or both parents cannot be paid directly to a minor child. Thus, a judge orders child support to be paid in the name of the parent, or the family court can order funds paid into a trust for the benefit of a child. The ability to direct child support payments

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<sup>1</sup> SSI/Medicaid is much broader than health insurance. It pays for:

- Regular checkups at the doctor and dentist.
- Medicine and vaccines.
- Hospital care and services.
- X-rays and lab tests.
- Vision and hearing care.
- Access to medical specialists and mental health care.
- Treatment of special health needs and pre-existing conditions.
- Home care and personal care, like having someone help monitor your child's health and help them with daily activities.
- Having somebody take your child to their medical appointments.

Also, if a child receives any Medicaid program benefit, that makes the child eligible for Medicaid subsidized caregiver services.

arises from Tex. Fam. Code 154.003(3), which provides that a court can order “the setting aside of property to be administered for the support of the child as specified in the order;...”<sup>2</sup>

But the child support payment is income to the child<sup>3</sup> and can result in loss of SSI/Medicaid or even loss of another standalone Medicaid program benefit, unless that income is directed to a protective Special Needs Trust. For years, upon petition, family courts have ordered a parent to pay the child support obligation into a Special Needs Trust in order to protect irreplaceable SSI and/or Medicaid program benefits pursuant to Tex. Fam. Code 154.003(4).

But can we still rely on family courts to order child support be paid into a SNT to protect the child’s SSI and/or Medicaid eligibility?

### **Adult Child with a Disability**

Tex. Fam. Code 154.001(4) and 154.302 authorize a judge to order payment of child support for an adult child with a disability for an unlimited time. However, income paid to the adult child with a disability<sup>4</sup> could cause the adult child to lose SSI and/or Medicaid program benefits that often cannot be duplicated unless the family is wealthy enough to pay privately for the health care costs, therapies, durable and disposable goods, caregiver services, and housing costs that will accumulate through the adult child’s lifetime.

It is clear from Tex. Fam. Code 154.302(c) that payment of child support for an adult child with a disability belongs to the child and that the family court can direct payment of the child support to a SNT so long as the family is not receiving Title IV-D Temporary Aid to Needy Families.

### **Minor Child with a Disability Whose Family is Receiving Temporary Aid to Needy Families (“TANF”)**

Title IV of the Social Security Act is the Temporary Aid to Needy Families statute. Under TANF, the family receives a small income, Supplemental Nutrition Assistance Program benefits (aka food stamps) and health care coverage under the TANF-related Medicaid program. HHS administers TANF and its attendant Medicaid as set out in the Texas Works Handbook.

Title IV-D requires that any funds collected by the Texas Child Support Enforcement office, which enforces child support payments for a child receiving TANF, be paid only to a parent, legal guardian or a caretaker relative who has custody/responsibility for the children. 42 USC 654(11); 45 CFR 302.38.

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<sup>2</sup> “Order directing former wife to pay a portion of her child support obligation into joint account for general health, maintenance, education, and welfare of child had effect of creating hybrid express trust for benefit of child even though intent, specific purposes, and specific duration were judicially designated, and thus under applicable trust guidelines and principles, trial court had authority to order, and did not abuse its discretion by so ordering, that any remaining funds in account be paid to child at time obligation to pay support ceased.” *Bailey v. Bailey*, 987 S.W.2d 206, 211 (Tex.App—Amarillo 1999, no pet).

<sup>3</sup> POMS SI 00830.420

<sup>4</sup> As defined by the Social Security Administration

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