

PRESENTED AT

20th Annual Changes and Trends Affecting Special Needs Trusts

February 15-16, 2024
Austin, TX

Protecting and Maximizing Public Benefits

**H. Clyde Farrell
&
Christina Leshner**

Author contact information:

H. Clyde Farrell
Certified Elder Law Attorney
Farrell & Johnson, PLLC
1004 Mo-Pac Circle Suite 100
Austin, TX 78746
cfarrell@txelderlaw.com

Co-author contact information:

Christina Leshner
Law Office of Christina Leshner, P.C.
5615 Kirby Drive, Suite 412
Houston, TX 77005
clesher@lawlesher.com

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.

Copyright 2024 by H. Clyde Farrell

Protecting and Maximizing Public Benefits

I.	INTRODUCTION.....	1
II.	OVERVIEW OF AGENCIES ADMINISTERING BENEFITS IN TEXAS	2
A.	TEXAS AGENCIES.....	2
1.	<i>Health and Human Services Commission (HHS).....</i>	2
2.	<i>Department of State Health Services (DSHS).....</i>	2
3.	<i>Texas Workforce Commission.....</i>	3
4.	<i>Other Texas Agencies.....</i>	3
B.	FEDERAL AGENCIES.....	4
1.	<i>Social Security Administration (SSA).....</i>	4
2.	<i>Centers for Medicare & Medicaid Services (CMS)</i>	5
C.	EQUAL PROTECTION FOR PARTNERS IN SAME-SEX MARRIAGES.....	5
III.	SUPPLEMENTAL SECURITY INCOME (SSI).....	6
A.	ELIGIBILITY	6
1.	<i>“Categorical” Requirements: Aged, Blind or Disabled</i>	6
2.	<i>Citizenship/Immigration/Residency Status.....</i>	8
3.	<i>Income.....</i>	10
4.	<i>Resources</i>	20
B.	BENEFITS	22
1.	<i>Cash Benefits</i>	22
2.	<i>Medicaid Eligibility.....</i>	22
C.	TRUST RULES	22
1.	<i>Third-Party Settled Trusts.....</i>	23
2.	<i>Self-Settled Trusts</i>	24
3.	<i>Judicial Reformation of Wills.....</i>	33
4.	<i>Self-Settled Trusts-Key Provisions in 2018 POMS Revisions</i>	33
5.	<i>Restrictions on Early Termination Provisions in Self-Settled Trusts</i>	37
6.	<i>Factors Affecting Type of Trust and Selection of Trustee</i>	39
7.	<i>The Sole Benefit Rule</i>	42
8.	<i>Treatment of UTMA Accounts.....</i>	44
9.	<i>SSA's System for Evaluating SSI Trusts</i>	44
10.	<i>Texas Implements the ABLE Act</i>	45
11.	<i>Disabled Adult Child Support May Be Ordered Paid to a Special Needs Trust</i>	48
12.	<i>Child Support Paid from Self-Settled SNT is "Income" to the SNT Beneficiary</i>	49
13.	<i>Pooled Trust is Now an Alternative to a 142 Trust.....</i>	50
D.	TRANSFER RULES	50
E.	APPLICATION	53
F.	SSI SOURCES OF LAW.....	53
IV.	SOCIAL SECURITY DISABILITY INSURANCE (SSDI)	54

A.	ELIGIBILITY	54
1.	<i>Work History</i>	54
2.	<i>Disability</i>	55
B.	BENEFITS	55
1.	<i>Cash Benefits</i>	55
2.	<i>Medicare Benefits</i>	56
C.	APPLICATION	56
V.	MEDICARE	56
A.	ELIGIBILITY	56
1.	<i>Eligibility at Age 65</i>	56
2.	<i>Work Requirements</i>	57
3.	<i>Eligibility in Connection With Social Security and Railroad Retirement Disability Benefits</i>	57
4.	<i>Medicare Premiums</i>	57
5.	<i>Continuation of Medical Coverage After Total Disability Ends</i>	58
B.	BENEFITS	58
1.	<i>Hospital Services</i>	59
2.	<i>Nursing Facility Services</i>	59
3.	<i>Home Health Services</i>	60
4.	<i>Hospice Services</i>	60
5.	<i>Physician Services and Other “Part B” Benefits</i>	61
6.	<i>Part B Deductibles and Co-Pays</i>	61
7.	<i>Prescription Drugs</i>	62
8.	<i>Medicare Improvement Standard Abrogated</i>	64
C.	APPLICATION	65
VI.	CHILDHOOD DISABILITY BENEFIT & DISABLED ADULT CHILD MEDICAID	66
VII.	“FULL MEDICAID” BENEFITS	68
A.	ELIGIBILITY	69
B.	“PAYOR OF LAST RESORT”	70
C.	BENEFITS	70
1.	<i>General Scope of Benefits</i>	70
2.	<i>Texas Health Steps (THSteps)</i>	71
3.	<i>Prescription Medications</i>	72
VIII.	“LONG- TERM CARE” MEDICAID	73
A.	ELIGIBILITY	73
1.	<i>Income</i>	73
2.	<i>Resources (Countable Assets)</i>	75
3.	<i>Medical Need Requirements</i>	84
4.	<i>Citizenship/Immigration/Residence Status</i>	84
5.	<i>Age, Blindness or Disability</i>	85
B.	BENEFITS	85
1.	<i>Nursing Home Medicaid</i>	85
2.	<i>Community Care Services</i>	92
3.	<i>Home and Community Care under the Medicaid “Waiver” Programs</i>	94
C.	THE HCBS WAIVER “SPOUSAL PROTECTED RESOURCE AMOUNT”	98

1.	<i>Both Spouses at Home</i>	99
2.	<i>One Spouse in a Nursing Home</i>	101
D.	ELIGIBILITY RULES WHEN BOTH SPOUSES APPLY.....	102
E.	THE HCBS WAIVER PROGRAM INTEREST LISTS.....	104
1.	<i>Interest List Wait Times</i>	104
2.	<i>Bypassing the Interest Lists with “Money Follows the Person”</i>	105
F.	TRUST RULES	107
1.	<i>Third-Party-Settled Trusts</i>	107
2.	<i>Assets of the Spouse As Assets of the Beneficiary</i>	107
3.	<i>Self-Settled Trusts Generally</i>	108
4.	<i>Exceptions to General Rules Governing Trusts “Established By” The Client</i>	110
5.	<i>Excluded Assets Remain Excluded if Transferred to Revocable Trust—Except the Home</i>	113
G.	TRANSFER (“GIFTING”) RULES	114
1.	<i>Nature and Purpose</i>	114
2.	<i>Rules for Calculating the Penalty Period</i>	114
3.	<i>Treatment of Multiple Transfers</i>	115
4.	<i>How to Determine the “Start Date” of the Penalty Period</i>	115
5.	<i>Medicaid Programs Subject to the Transfer Penalty</i>	116
6.	<i>Disclaimers as Transfers</i>	117
7.	<i>What is “Compensation” Reducing a Transfer Penalty</i>	117
8.	<i>Cash Compensation or Returns of Transferred Assets</i>	118
9.	<i>Transfers by or to a Community Spouse</i>	122
10.	<i>Certain Transfers Excepted From Penalty</i>	123
11.	<i>Exception: Transfer Penalty Would Result in “Undue Hardship”</i>	125
12.	<i>Motor Vehicle Transfer on Death Avoids Transfer Penalty and MERP</i>	127
13.	<i>Gifts by Guardians</i>	128
14.	<i>Fees of Guardians Deductible From Copayment</i>	128
15.	<i>Exception: Transfers Solely for Non-Medicaid Purpose</i>	129
H.	APPLICATION	130
I.	AGREEMENTS OF EXCLUSIVITY BETWEEN ATTORNEYS AND SKILLED NURSING FACILITIES	130
J.	MEDICAID ESTATE RECOVERY PROGRAM	131
K.	ESTATE TRANSFERS THROUGH DEEDS.....	132
1.	<i>Lady Bird Deed</i>	132
2.	<i>Transfer on Death Deed: The New Lady Bird Deed?</i>	135
3.	<i>Comparison of TODD and LBD</i>	138
4.	<i>Joint Tenants with Right of Survivorship Deed</i>	143
L.	EFFECT OF COURT ORDERS TRANSFERRING ASSETS AND INCOME BETWEEN SPOUSES.....	144
M.	NON-WAIVER COMMUNITY-BASED LTC MEDICAID PROGRAMS	145
1.	<i>Community First Choice</i>	145
2.	<i>“Texas Dual Eligible Integrated Care Project” affects 6 counties</i>	147
N.	U. S. SUPREME COURT UPHOLDS PRIVATE CAUSE OF ACTION TO ENFORCE NURSING HOME STANDARDS	147
IX.	CHILDREN’S MEDICAID	149
A.	ELIGIBILITY	149
1.	<i>Residence and Citizenship</i>	149
2.	<i>Age 18 or Under</i>	149

3.	<i>Resources</i>	149
4.	<i>Income</i>	150
B.	BENEFITS	152
C.	TRUST AND TRANSFER RULES	152
X.	PREGNANT WOMEN’S MEDICAID	152
A.	ELIGIBILITY	152
1.	<i>Residence and Citizenship</i>	152
2.	<i>Resources</i>	152
3.	<i>Income</i>	152
B.	BENEFITS	152
C.	TRUST AND TRANSFER RULES	153
XI.	PARENTS & CARETAKER RELATIVES MEDICAID	153
A.	HISTORY AND RELATION TO TANF	153
B.	ELIGIBILITY	153
1.	<i>Relationship to Dependent Child</i>	153
2.	<i>Resources</i>	154
3.	<i>Income</i>	154
C.	BENEFITS	155
D.	TRUST AND TRANSFER RULES	155
E.	APPLICATION	155
XII.	BREAST CANCER & CANCER CONTROL SERVICES AND MEDICAID	155
A.	ELIGIBILITY	156
1.	<i>Income</i>	156
2.	<i>Resources</i>	156
B.	APPLICATION	156
XIII.	MEDICALLY NEEDY PROGRAM	157
A.	ELIGIBILITY	157
1.	<i>Age & Gender</i>	157
2.	<i>Income</i>	157
3.	<i>Resources</i>	158
B.	BENEFITS	158
C.	TRUST RULES	158
D.	TRANSFER RULES	158
E.	APPLICATION	159
XIV.	THE TEXAS CHILDREN’S HEALTH INSURANCE (CHIP) PROGRAM	159
A.	ELIGIBILITY	159
1.	<i>Age</i>	159
2.	<i>Residence/Citizenship</i>	159
3.	<i>Waiting Period</i>	159
4.	<i>Income</i>	160
5.	<i>Resources</i>	160
6.	<i>Exclusions</i>	160

B.	BENEFITS AND COSTS	161
C.	TRUST RULES	161
D.	TRANSFER RULES	161
E.	APPLICATION	161
XV.	THE COMING OF MEDICAID MANAGED CARE	162
A.	HISTORICAL BACKGROUND IN TEXAS.....	162
B.	CHANGES SHOULD NOT ADVERSELY AFFECT CLIENTS	163
C.	CHANGES IN PROGRAM NAMES	164
D.	MORE CHOICES IN SERVICE DELIVERY	165
E.	VALUE-ADDED SERVICES	166
XVI.	EMERGENCY ASSISTANCE TO UNDOCUMENTED ALIENS	166
A.	ELIGIBILITY	166
B.	BENEFITS	166
XVII.	QMB AND OTHER MEDICARE SAVINGS PROGRAMS	167
A.	ELIGIBILITY AND BENEFITS	167
1.	<i>Qualified Medicare Beneficiaries (QMB)</i>	168
2.	<i>Specified Low-Income Medicare Beneficiaries (SLMB)</i>	168
3.	<i>Qualifying Individuals (QI)</i>	168
4.	<i>Qualified Disabled and Working Individuals (QDWI)</i>	168
5.	<i>Income Methodology of the Medicare Savings Programs</i>	169
6.	<i>Resource Methodology of the Medicare Savings Programs</i>	169
B.	TRUST AND TRANSFER RULES	169
C.	APPLICATION	170
XVIII.	MEDICAID BUY-IN PROGRAM	170
A.	ELIGIBILITY	170
1.	<i>Disability</i>	170
2.	<i>Income</i>	171
3.	<i>Resources</i>	172
4.	<i>Calculation of Monthly Premium</i>	172
B.	BENEFITS	173
C.	APPLICATION	173
XIX.	MEDICAID BUY-IN FOR CHILDREN PROGRAM.....	173
A.	PROGRAM DESCRIPTION	173
B.	ELIGIBILITY REQUIREMENTS	174
1.	<i>Financial requirements</i>	174
2.	<i>Non-financial requirements</i>	174
C.	MBIC PREMIUM AMOUNTS	175
1.	<i>HIPP without Employer Sponsored Health Insurance</i>	175
2.	<i>HIPP with Employer Sponsored Health Insurance</i>	175
3.	<i>Employer Sponsored Health Insurance without HIPP</i>	175
D.	EXEMPTIONS AND WAIVERS	176
XX.	HELP WITH INSURANCE PREMIUMS—THE HIPP PROGRAM	176

XXI.	FOOD STAMPS (SNAP)	177
A.	ELIGIBILITY	178
1.	<i>Resources</i>	178
2.	<i>Trust Rules</i>	179
3.	<i>Transfer Rules</i>	179
4.	<i>Income</i>	180
5.	<i>Citizenship/Immigration Status</i>	180
B.	BENEFITS	181
1.	<i>Work Requirements</i>	181
C.	APPLICATION	181
XXII.	THE AFFORDABLE CARE ACT	181
A.	INTRODUCTION	181
B.	CHANGES PUT INTO EFFECT BEFORE 2013	182
1.	<i>The “Federal Risk Pool”</i>	182
2.	<i>“Money Follows the Person”</i>	182
3.	<i>Coverage for Children With Pre-Existing Conditions</i>	182
4.	<i>Coverage for Children Until Age 26</i>	182
5.	<i>Medicare Part D “Donut Hole” Reduction</i>	182
6.	<i>Part D Cost-Sharing Eliminated for Waiver Program Beneficiaries</i>	183
7.	<i>Nursing Home Disclosures Required</i>	183
C.	CHANGES EFFECTIVE JANUARY 1, 2014	183
1.	<i>No Pre-Existing Condition Requirement</i>	183
2.	<i>Sliding-Scale Premiums Based on Income</i>	183
3.	<i>Sliding-Scale Cost Sharing Based on Income</i>	185
4.	<i>Spousal Impoverishment Rules Apply to Waiver Programs</i>	185
5.	<i>No Annual or Lifetime Caps</i>	185
6.	<i>Medicaid Coverage Based on Low-Income</i>	186
7.	<i>Effect of the ACA on Special Needs Practices</i>	186
XXIII.	TEXAS MENTAL HEALTH & INTELLECTUAL DISABILITY PROGRAMS- NOT UPDATED FOR 2024	188
A.	ELIGIBILITY	188
1.	<i>Medicaid-Funded Services</i>	188
2.	<i>Non-Medicaid-Funded Services</i>	189
B.	BENEFITS	191
1.	<i>Mental Health Facilities</i>	191
2.	<i>Intellectual Disability Services</i>	191
3.	<i>Community Services</i>	192
4.	<i>Group Homes</i>	193
C.	TRUST RULES	193
D.	TRANSFER RULES	195
XXIV.	LOCAL MEDICAL ASSISTANCE PROGRAMS & OTHER BENEFITS	196
A.	LOCAL MEDICAL ASSISTANCE PROGRAMS	196
B.	EMERGENCY ROOM ASSISTANCE.....	197
C.	INDIGENT-CARE RESPONSIBILITIES OF HOSPITALS	197

D.	LOCAL NONPROFIT AGENCIES	197
E.	PROPERTY TAX EXEMPTIONS.....	198
F.	UNLISTED AGENCIES & BENEFITS	198
XXV.	APPLICATION FOR TEXAS HHS BENEFITS	198
A.	FILE PAPER APPLICATION BY FAX	198
B.	PITFALLS WITH FILING ONLINE.....	199
C.	APPLICATION PROCESSING AND DETERMINATIONS	199
D.	ADVOCATING DURING THE APPLICATION PROCESS	201
1.	<i>Step 1: Medicaid Eligibility Specialist</i>	<i>201</i>
2.	<i>Step 2: Service Improvement Manager in the Office of Eligibility Services (OES)</i>	<i>202</i>
3.	<i>Step 3: Office of the Ombudsman.....</i>	<i>203</i>
E.	TWO KINDS OF APPLICATIONS: INITIAL & RENEWAL	203
1.	<i>Initial Applications.....</i>	<i>204</i>
2.	<i>Renewal Applications.....</i>	<i>208</i>
XXVI.	NUTS AND BOLTS OF MEDICAID HOME CARE	210
A.	WHICH MEDICAID HOME CARE PROGRAM TO APPLY FOR?	211
1.	<i>Requirements for Community Attendant Services</i>	<i>211</i>
2.	<i>Requirements for STAR+PLUS Waiver Home Care.....</i>	<i>213</i>
B.	MANAGING RECRUITMENT OF HOME CARE WORKERS.....	216
C.	APPLYING FOR COMMUNITY ATTENDANT SERVICES	216
D.	APPEALING THE COMMUNITY ATTENDANT SERVICES DECISION	218
E.	APPLYING FOR STAR+PLUS WAIVER	218
F.	APPEALING THE STAR+PLUS WAIVER DECISION	221
G.	SOURCES OF MANAGED CARE LAW AND POLICY	226
XXVII.	DEFENDING CLIENTS’ MEDICAID ELIGIBILITY DURING THE “UNWINDING” OF THE PANDEMIC PROTECTIONS	227
A.	THE TEXAS HHS PLAN FOR “THE UNWINDING”	227
B.	THE NEED TO FIND AND REMOVE ANY BASIS FOR DENIAL	228
C.	ELIGIBILITY RENEWAL STEP BY STEP.....	229
D.	TRANSFER PENALTY FOR TRANSFERS DURING THE PHE.....	229
APPENDIX 1:	2024 BENEFIT ELIGIBILITY NUMBERS	231
APPENDIX 2:	HOW TO CALCULATE “PRO RATA SHARE” OF HOUSEHOLD EXPENSES.....	233
APPENDIX 3:	THREE WAYS DIFFERENT MEDICAID PROGRAMS DEFINE “INCOME”	234
APPENDIX 4:	LIMITS ON ELIGIBILITY OF ALIENS FOR PUBLIC BENEFITS IN TEXAS.....	239
APPENDIX 5:	SOURCES OF FREE AND REDUCED PRICE PRESCRIPTION MEDICATIONS	241
APPENDIX 6:	SELECTED BIBLIOGRAPHY	242
APPENDIX 7:	HHS REGIONAL DIRECTORS.....	246
APPENDIX 8:	HHS ORGANIZATIONAL CHART	248
APPENDIX 9:	CHECKLIST FOR TERMINATION OF SPECIAL NEEDS TRUST WITH MEDICAID PAYBACK PROVISION	249

APPENDIX 10: DRAFTING FOR USE OF POOLED TRUSTS	250
APPENDIX 11: LIST OF MEANS-TESTED PUBLIC BENEFIT PROGRAMS IN TEXAS	252
APPENDIX 12: SOCIAL SECURITY CLAIM NUMBER SUFFIXES	269
APPENDIX 13: SOURCES OF LAW	270

I. INTRODUCTION

This overview of the most significant public benefits for persons with disabilities in Texas 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.

2024 UPDATES

The authors propose a simplified definition of “special needs payments”	18
Major improvements to the Medicare Part D Extra Help (Low-Income Subsidy) benefit, effective January 1, 2024	63
Updates to Texas HHS Medicaid Policy re Required Minimum Distributions from Retirement Accounts; and discussion of exclusion of “inaccessible” retirement accounts of persons currently employed (typically community spouses)	81
Personal Needs Allowance increased from \$60 to \$75 per month	85
Medicaid Payment of Pre-Eligibility Medical Expenses (PEME)	86
U. S. Supreme Court Upholds Private Cause of Action to Enforce Nursing Home Standards	147

Expanded explanation of how income is measured by the Medicaid and CHIP programs for children and pregnant women, with tables showing income maximums for the various programs	150
Two Kinds of Applications: Initial and Renewal: Different application forms and different lists of required documents apply to a long-term care Medicaid application, depending on whether it is for initial eligibility or renewal of eligibility. We cover those issues step-by-step for each type of application.	203
Nuts and Bolts of Medicaid Home Care—because clients want home care like their lives depend on it.	210
Defending Clients’ Medicaid Eligibility During the Unwinding (replaces discussion of automatic continuation of Medicaid during the pandemic)	227
Appendix 1: 2024 Benefit Eligibility Numbers	231

II. OVERVIEW OF AGENCIES ADMINISTERING BENEFITS IN TEXAS

A. TEXAS AGENCIES

1. *HEALTH AND HUMAN SERVICES COMMISSION (HHS)*

The Texas Health and Human Services Commission (HHS) administers the government programs Special Needs Trust beneficiaries need the most often:

- Long-Term Care Medicaid (nursing home and home care programs)
- Medicaid for children and their caregivers
- SNAP (food stamps)
- TANF (cash assistance for families)
- Behavioral Health Services
- Intellectual Disability Services
- Women's Health Services

HHS also licenses long-term care facilities and certifies certain nursing facilities as Medicaid providers.

2. *DEPARTMENT OF STATE HEALTH SERVICES (DSHS)*

Within HHS, the Texas Department of State Health Services (DSHS) manages birth and death records, gathers and shares public health data, collects data to monitor for chronic and infectious

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Protecting and Maximizing Public Benefits

Also available as part of the eCourse

[Answer Bar: Considering a Special Needs Trust](#)

First appeared as part of the conference materials for the
20th Annual Changes and Trends Affecting Special Needs Trusts session
"Maximizing Public Benefits: Overview"