

**PRESENTED AT**

15<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts  
February 7-8, 2019  
Austin, TX

**A View from the HHSC**  
*Questions*

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## QUESTIONS FOR HHSC AT 2019 UT SNT CONFERENCE

First, let me thank you on behalf of the attendees of the UTSNT 2019 Conference for consideration of the following questions. While some of the questions do not specifically relate to the creation, distribution or termination of a Special Needs Trust, the questions often arise during the administration of the Trust.

A Trustee is charged with preserving the Trust assets for the benefit of the beneficiary and so the questions noted below have relevance to the administration and proper administration of trust assets. Finally, a number of the questions are very much like the questions submitted over the years for your consideration. However, it is imported to track any changes in policy.

### TRUST ISSUES

(1) Uncle leaves assets in a testamentary trust for a nephew, requiring the trust to terminate at age 35 and pay any remaining funds outright to the nephew. The nephew has disabilities and is currently receiving Medicaid benefits through the CLASS waiver program. The Trustee of the Testamentary Trust files an action to judicially amend the trust to continue the Trust for the beneficiary's (nephew's) life instead of terminating at age 35. When the petition is filed, the nephew is 26 years old. Does the State need to be joined as a party in the Petition to Amend the Trust? Or does the agency prefer that we give notice informally by sending a copy of the petition to the Office of General Counsel of HHSC without naming the agency as a party?

(2) Judicial reformation of a special needs trust – in 2017, Tex. Prop. Code § 112.054 was amended allowing reformation of a trust in order to qualify a distributee for government benefits and such reformation can be applied retroactively. Upon annual review, the Medicaid Agency determines that the previously approved SNT is defective. The trustee reforms the trust claiming that the settlor's (Judge's) purpose in creating the trust was to protect the beneficiary's eligibility for Medicaid and thus there was a mistake in wording that occurred when the trust was drafted and that the reformation shall be applied retroactively.

Will the Agency accept that the trust was retroactively cured and with no penalty to the beneficiary?

(3) Client lives in an assisted living facility receiving Star Plus Waiver benefits and has a 42 U.S.C. §1396p(d)(4) SNT funded with personal injury funds. Client has a minor child. Texas Family Code §154.005 authorizes a Judge to force a Trustee to pay child support from the SNT. Pursuant to the Family Code a judge has ordered the Trustee to pay child support in the amount of \$300 per month out of the Trust. Failure to pay the child support from the trust could subject the Trustee to an Order of Contempt. The Star Plus Waiver recipient has no control in this matter. He has no personal income to pay the child support since he must pay all of his income except for a minimal monthly allowance (\$85) to the assisted living facility as his co-payment. Would the agency take any adverse action against the disabled individual's continued

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First appeared as part of the conference materials for the  
15<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"A View from the HHSC"