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2021 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.

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 2021

What follows is a listing of the major changes in the 2021 edition of this paper.

Topic & Summary of Change		Page
IRAs with RMDs and annuities within IRAs are exempt		90
COVID related Medicaid policies		205
2021 Eligibility Numbers	As always, we provide at Appendix 1 the new Medicaid and Medicare eligibility and benefit numbers	210

II. OVERVIEW OF TEXAS HEALTH AND HUMAN SERVICE AGENCIES

A. TEXAS AGENCIES

The Texas Health and Human Services Commission (HHSC) 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.

HHSC also licenses long-term care facilities, certifies certain nursing facilities as Medicaid providers. HHSC licenses all childcare providers within the state. They also operate all state-supported living centers (residential facilities for persons with intellectual disability) and state hospitals (residential centers for persons receiving behavioral health services).[1]

[1] In 2016-2017 the Texas Health and Human Services agencies went through a massive reorganization. The Department of Aging and Disability Services (DADS)'s functions were transferred to direct control of HHSC and DADS was abolished. HHSC took on the childcare facility licensing, previously done by the Texas Department of Family and Protective Services (DFPS), and DFPS became its own independent agency. *See* Tex. Health & Human Services Comm'n, Agencies & Departments, https://hhs.texas.gov/about-hhs/agencies-departments. Similarly, responsibilities of the Department of Assistive and