



## Protecting & Maximizing Public Benefits

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## What are public benefits?

Social Security

Medicare

Medicaid

Veterans' benefits  
(see paper by  
Lori Leu & Erin  
Peirce)

Low-Income  
Housing (Including  
Section 8)

Benefits specific  
local/county or  
region- e.g. Harris  
County Gold Card

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## \*\*The Recipe of Public Benefits

Income Test

Asset Test  
(Usually)

Medical  
requirement

Where is  
client  
located?

Interest/ wait  
list

109\* different  
Medicaid  
programs

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## Using Public Benefits for Care From Home to Facility

Create scenarios for clients on how to pay for care

- Home/ Community Living
- Assisted Living/ Group Homes
- Nursing home

Review estate planning documents

- Testamentary Supplemental Needs Trust for spouses
- Intervivos SNT for non-spouse, e.g. child
- 3<sup>rd</sup> party SNT- gift/inheritance- no payback at death
- 1<sup>st</sup> party SNT- assets of the bene, payback (other requirements)
- Check bene designations.

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## \*\*Will Reformation Under Texas Estates Code

Texas Estates Code § 255.451-455 allows for the reformation of a will when: "the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent."

Reform to include distribution to SNT instead of directly to Medicaid beneficiary.

SNT does not need a payback.

Section 255.453 of the Estates Code provides that the court may direct that an order modifying or reforming a will has retroactive effect.

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## Some terms to know

- **Community Spouse-** married couple, the spouse not in the nursing home & not on a "waiver" home care program
- **Institutionalized Spouse-** married couple, the spouse in the nursing home or on a "waiver" home care program
- **Look Back Period-** Medicaid (a few exceptions) penalizes applicants for giving away assets (yes this includes disclaimers!)
  - 5 year look back period for long-term care Medicaid, penalty period based on the amount given and the divisor rate. ( $\$237.93 = 1$  day of penalty)
- **Penalty Period** 5 year look back period for long-term care Medicaid, penalty period based on the amount given and the divisor rate.

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Title search: Maximizing Public Benefits

Also available as part of the eCourse

[2022 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the  
18<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Maximizing Public Benefits"