

**SNT Beneficiaries are Among the Most Vulnerable--Once Their Parents Die,
Who's Looking Out for Them?
H. Amos Goodall, Jr., LL.M. (Stetson), CELA, FACTEC
State College, Pennsylvania**

TABLE OF CONTENTS

Child-Focused Planning

State Standards of Capacity	1
Federal Standards of Capacity	4
I. Power of Attorney	5
II. Supported Decision-Making Arrangements	7
III. Representative Payee, Advance Designation of Representative Payee and Successor Representative Payee	8
IV. Revocable Living Trust	9

Parent-Focused Planning

V. Special Needs Trust: Creation	10
VI. Special Needs Trust: Letter of Intent	12
VII. Special Needs Trust: Trust Protector	12
VIII. Special Needs Trust: Trust Committee	14
IX. ABLE Act	

Conclusion	17
-------------------	-----------

SNT Beneficiaries are Among the Most Vulnerable--Once Their Parents Die, Who's Looking Out for Them?

H. Amos Goodall, Jr., LL.M. (Stetson), CELA, FACTEC¹
State College, Pennsylvania

In counseling parents of special needs children,² whether or not the child is a candidate for needs-based benefits, there is at least one concern that is universally on parents' minds—who will look after their child when they are gone? Put another way, will someone who is not acting in their child's best interests control their child's destiny?

The goal of this session is to provide a prose discussion of items to consider, with a survey discussion of each item. Since most of these strategies are based on local rather than federal law, practitioners may want to use this material simply as a research guide for their own state law treatment.

CHILD-FOCUSED PLANNING

These strategies in this section suggest ways parents can maximize the child's right of self-determination. For a child with special needs, it is especially important to determine whether the child has the capacity to create the offices and relationships discussed below.

In most states, an adult person who does not have a plenary guardian retains all the rights that anyone else has and to the extent possible each person should be allowed to exercise those rights. The ethical principle of autonomy and the legal doctrine of informed consent are predicated on the idea that important life choices are being made by individuals who are exercising self-determination. Only when a person's decision making is sufficiently impaired, is legal intervention possibly necessary. In general, a person who has executed a document is presumed to have the capacity to do so, and the burden is on someone challenging the document to prove otherwise.³

State Standards of Capacity

Legal standards of decision making capacity have evolved slowly on a case-by-case basis. These standards, in Pennsylvania at least, have been codified to some extent in the

¹Thanks to Stetson 3L Henris Zaimaj, who assisted in the preparation of these materials.

²Although this paper uses "children" to describe the persons sought to be protected by this planning, the principals here apply to any persons for whom the clients wish to provide as much protection of their potential to maximize their lives as possible. Presumably, in many cases, even "children" will be adults by the time of their parents' deaths.

³Smith v. Lynch, 821 So. 2d 1197 (Fla. 4th Dist. App. 2002)

provisions dealing with the guardianship of incapacitated persons. See Chapter 55 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. § 5501-55. For purposes of the appointment of a guardian, an "Incapacitated person" means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety." 20 Pa.C.S.A. §5501.⁴ However, a finding that a person is incapacitated does not end the analysis, since the Court is required to determine whether other strategies are available to protect the person. For a discussion of the process used to determine where there is an alternative to guardianship for an incapacitated person, see In re Peery, 1999, 556 Pa.Supp. 125, 727 A.2d 539.⁵

There are, of course, a number of standards of capacity, depending on the act in question. In Estate of Angle, 2001, 2001 Pa. Super 144, 777 A.2d 114, the Court dealt with the capacity of a person to make a will. The holding was that testator who had suffered from Alzheimer's disease for some time prior to executing the Will which was under attack and whose physician testified that "because of the disease . . . [he] could not have had instances of lucidity during that month [in which he executed the Will]; and he was not competent to make testamentary decisions" during the year in which the testator executed a Will. The court found that the testator would be found to have capacity since, at the time he signed the document he recognized the natural objects of his affection and their general economic standing.⁶ The test for determining the existence of testamentary capacity, a quality every person sui juris is presumed to possess, is 'whether a man or woman has an intelligent knowledge regarding the natural objects of his bounty, the general composition of his estate, and what he desires done with it, even though his memory may have been impaired by age or disease.' " In re Brantlinger's Estate, 418 Pa. 236, 247, 210 A.2d 246, 252 (1965), In re Estate of Ziel, 1976, 467 Pa. at 531, 536, 359 A.2d at 28, 31. Raimi v. Furlong, 702 So. 2d 1273, 1286 (Fla. 3d Dist. App. 1997).⁷ Am. Red Cross v. Est. of Haynsworth, 708 So. 2d 602 (Fla. 3d Dist. App. 1998).

⁴Although Pennsylvania has a process and theoretical statutory preference for the appointment of a "limited" guardian whose authority would be limited to specific powers, 20 Pa.C.S. §5512.1(b) et seq., in the author's experience, a Court rarely invokes this provision.

⁵A similar analysis under Florida law is reported at Adelman v. Elfenbein, 174 So. 3d 516 (Fla. 4th Dist. App. 2015)

⁶Accord, Smith v. Lynch, 821 So. 2d 1179 (Fla. 4th Dist. App. 2002) (factual testimony of lay witnesses given greater weight than medical conclusions).

⁷*See also*, York v. Smith, 385 So. 2d 1110, 1111 (Fla. 1st Dist. App. 1980) (Court found Testator had capacity when he executed will but not when he acknowledged it, and ordered that it be accepted for probate. ". . . [T]estamentary capacity is required of the testator only when he makes his will, that is, when he signs it as his will, and that his testamentary incapacity when he later acknowledges his signature is inconsequential.")

In the context of capacity to execute a will, a decision by the Register of Wills of Montgomery County is instructive. In Lepo Will, Mont. Co. 2003, 24 Fiduc. Rep. 2d 141, competing wills were executed by the decedent on November 2, 1992 and March 18, 1999. Proponents of the earlier will challenged the later one on capacity grounds because two weeks prior to its execution date, the testator had been ruled incompetent and a limited guardian of her estate had been appointed. The Register held that ordinarily this would shift the burden from one requiring the challengers to the 1999 will proving testamentary incapacity to one requiring the proponents of the 1999 will proving that the testator retained capacity. However, in view of the guardian court's narrowly drawn decree, the Register found that no presumption of incapacity would arise from the limited guardianship decree. In reviewing the testimony, the Register found

Although some dysfunction was testified to, it was not overwhelming or in anyway [sic] contradictory to the findings of Judge Ott as to the time of execution or the opinions of the Court appointed counsel. Certainly, there is no evidence that arises to a clear and convincing evidence standard.

In Estate of McGovern v. State Employees' Appeal Board, 1984, 512 Pa. 377, 517 A.2d 523, the Court dealt with through a person's capacity to make a gift or enter into a contract. Although McGovern dealt with a contract, the Court cited gift cases. Here, the Court found that proof that a person acted with deliberation and understanding would establish capacity, even though the person labored under an apprehension that the Court found to be "from some points of view, thoughtless, against scientific probabilities, irrational, and when combined with what amounts to a testamentary disposition of property in favor of [an] ill person as opposed to another who seems to be health, it may even said to be selfish and heedless of the needs of others." 517 A.2d at 387. Under Florida law, it has been held that if the donor (a) has sufficient mental capacity to comprehend the transaction, (b) understands the extent and value of the donor's property, (c) what persons are the objects of the donor's bounty, and (d) the manner in which the donor is distributing the property among them, the gift will be valid.⁸

It is very interesting that a person's capacity to waive the most fundamental rights, as granted by a Constitution such as a right to a jury trial and the presumption of innocence are based on a very low standard. "The test [for determining a defendant's competence] must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 363 U.S. 402 (1960), cited in Smith v. Freeman, E.D.Pa.1990, 1990 WL 18775; see Commonwealth v. Melton, 1976, 465 Pa. 529, 351 A.2d 221, in which the Court allowed to stand the guilty plea of a defendant with an I.Q. of approximately 69 and the mentality of an eight or nine year old, based partly on the testimony of a lay witness who testified that the defendant "was the most articulate 69 I.Q. man that I heard on the witness stand." Id., 465 Pa. at 535, 351 A.2d at 224.

The power to create a trust, depends on the type of trust. For example, under the

⁸Hodges v. A. Nat. Bank of Jacksonville, 184 So. 875, 879-80 (Fla. 1938)

Uniform Trust Code, “the capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.”⁹ See *Freeman v. Lane*, 504 So. 2d 1297, 1300 (Fla. 5th Dist. Ct. App. 1987) (regarding the capacity to revoke a trust, holding that “[i]n order to revoke a trust, one merely needs to have the capacity to understand the nature of the transaction, not necessarily an aptitude in dealing with financial matters”). On the other hand, the capacity required to create an irrevocable trust is often equated to the capacity required to make a gift.¹⁰

Id. 24 Fiduc. Rep. 2d at 142.

In the past, capacity to execute a power of attorney has sometimes required a “contract” or “capacity to convey property” showing.¹¹ Other states have applied a “will” standard.¹² In consulting clients, a practitioner should not be dissuaded from exploring the establishment of a power of attorney for a child simply because he or she suffers from some condition in which mental health or intellect is challenged. Judges in Pennsylvania have used a tripartite analysis. In the face of a capacity challenge, at a minimum it is necessary to show that at the time of execution of the POA document, the principal understood the following: (1) the authority he or she was giving to the agent; (2) the assets that would be subject to that authority, and (3) the plain language of the Pennsylvania’s statutory notice.¹³

Federal Standards of Capacity

The POMS contains a process for determining the beneficiary’s capacity. Instructions to the caseworker on how to ascertain capacity are in GN 00502.001 through GN 00502.075. Essentially, the caseworker is to determine whether a beneficiary with a mental impairment lacks the ability to reason properly, appears disoriented, demonstrates seriously impaired judgment, or is unable to communicate with others. If the beneficiary can direct someone else to manage his

⁹Uniform Trust Code §601. 20 Pa.C.S. §7751. Note, there may be a different standard for irrevocable trusts. To create an irrevocable trust, the Uniform Law Commissioners suggest that the settlor must have the capacity that needed to transfer the property free of trust. See Comment to §601.

¹⁰Restatement (Third) of Trusts, §11.

¹¹See discussion in English, Goodall & Morgan, *Tax Estate and Financial Planning for the Elderly*, “Property Management” §13.02[2] (LexisNexis 2021) at 13-9.

¹²Id.

¹³*In re Robinson, Incapacitated Person*, 28 Fid. Rep. 2d 65 (Mont. Cty. O.C.2008). *Cited as authoritative* in *Hasson*, 2013 Phila. Ct. Com. Pl. LEXIS 511, 37 Pa. D. & C.5th 97.

or her benefits, he or she is not incapacitated.¹⁴ If the beneficiary has a physical impairment, the impairment must prevent him or her from managing or directing someone else to manage his or her benefits and is child on others to meet his or her daily needs. If the beneficiary can direct someone else to manage his or her benefits, he is not incapacitated, unless a voluntary conservatorship is in effect.¹⁵ “If a court establishes that the beneficiary is incompetent [sic], the beneficiary must receive benefits through a representative payee and no other capability development is necessary.”¹⁶ Absent such a court order, the caseworker is directed to develop and document lay and medical evidence.¹⁷

The issue of capacity applies to each child-focused planning strategy.

I. Power of Attorney¹⁸

A well-crafted power of attorney can create a succession of persons who are legitimately interested in the child’s welfare, often beginning (but not ending) with the clients themselves. Properly drawn, this authority will extend well after the end of the clients’ lives.

A power of attorney (POA) authorizes a person (the “agent” [or sometimes called “attorney-in-fact”]) to make decisions for another person (the “principal”). This delegation of authority is controlled by the law of each state. Pennsylvania has, for example, provided specific language which—if incorporated into the POA instrument—confers statutorily-defined authority, and has further limited certain other powers unless specifically set forth in an instrument. The old “anything I could do you can do for me” language is no longer effective. For example, in Pennsylvania if the POA instrument provides that the agent is “authorized to create a trust for my benefit”, the agent is only authorized to create a trust that pours back into the principal’s estate

¹⁴Social Security Administration, Program Operations Manual System (POMS), GN 00502.020 "Determining Capability – Adult Beneficiaries", <https://secure.ssa.gov/poms.nsf/lnx/00502020> (Last visited 8/31/21).

¹⁵Id.

¹⁶Social Security Administration, Program Operations Manual System (POMS), GN 00502.023 "Developing Legal Evidence of Capability", <https://secure.ssa.gov/poms.nsf/lnx/00502023> (Last visited 8/31/21).

¹⁷Social Security Administration, Program Operations Manual System (POMS), GN 00502.020 "Determining Capability – Adult Beneficiaries", <https://secure.ssa.gov/poms.nsf/lnx/00502020> (Last visited 8/31/21).

¹⁸This paper addresses powers of attorney for business purposes. The same logic applies to health care powers of attorney.

upon death.¹⁹ If the goal is to create a revocable living trust that avoids probate (and estate recovery), this language is not sufficient. Similarly, language conferring general authority to make gifts limits the agent to making gifts below the annual gift tax exclusion absent specific language broadening the authority.²⁰

Nearly every state regulates the granting of powers in a POA. The goal is to provide authority to handle and make decisions for the child's property in a variety of foreseen and unforeseen circumstances. At least in Pennsylvania, a power of attorney provide for more than one agent who may be authorized to act jointly, severally or "in any other combination that the principal may delegate"²¹ and may divide powers delegated among specific agents.²² The instrument can provide for successor agents²³ and can authorize the agent and successor agents to appoint their own successors.²⁴ Incidentally, recognizing that a principal may someday lose capacity, in the author's practice, POAs sometimes designate a "POA Protector",²⁵ although this has not ever been challenged in the Court.

The existence of a power of attorney—if brought to the guardianship court's attention—can be a basis to deny a guardianship petition. In In re Conover,²⁶ cited approvingly in In re Sylvester,²⁷ the court determined that an incapacitated person had previously executed a durable power of attorney in favor of a stepsister with whom she had a long relationship. The was satisfied that she had acted wisely and then dismissed the guardianship proceedings as unnecessary and allowed the stepsister to continue in her function as power of attorney. In Florida, a court declined to appoint a guardian "if . . . there is an alternative to guardianship

¹⁹20 Pa.C.S. §§5603(b), 5604.4(a)(1).

²⁰20 Pa.C.S. §5601.4(d).

²¹20 Pa.C.S. §5603(b)(1).

²²20 Pa.C.S. §5603(b)(1.1).

²³20 Pa.C.S. §5603(b)2). In Florida, it is not clear that an agent has the power to designate his or her own successor. See Fla. Stat. Ann. § 709.2111.

²⁴20 Pa.C.S. §5603(b)(3).

²⁵See Trust Protector discussion, *infra*.

²⁶4 Fid.Rptr.2d 200 (Bucks Co.1984)

²⁷409 Pa. Super. 439, 454, 598 A.2d 76, 84, 1991 Pa. Super. LEXIS 3316 (Pa Superior Court 1991).

which will sufficiently address the problems of the incapacitated person”²⁸

Moreover, if the principal has nominated a guardian in his or her most recent power of attorney, “the court shall make its appointment in accordance with the principal’s most recent nomination . . . except for good cause shown”.²⁹ Finally unless the court orders otherwise, an incapacitated person’s durable power of attorney remains in effect unless modified by the order appointing a guardian.³⁰

II. Supported Decision-Making Arrangements

Under supported decision-making, the child designates a person to assist with making decisions, including specifying the type of decisions he or she needs help with. Usually, the decision may be communicated by the person assisting with the legal effect as if communicated by the child. Moreover, typically, the child does not lose the right to be the ultimate decision-maker.³¹

A number of states have adopted Supported Decision-Making legislation.³² Effective October 9, 2021, for example, New Hampshire has enacted a law providing for supported decision-making as an alternative to guardianship.³³ The statute contains a form of plain language agreement suggested by the legislature for use in designating someone to help with decision-making (called the “supporter”) as well as someone to supervise the supporter in financial matters (called the “monitor”).³⁴ Illinois has recently passed legislation without a specific provision for a monitor.³⁵ Under the statute, all adults are presumed to be capable of

²⁸Searle v. Bent, 137 So. 3d 1028, 1030 (Fla. 2d Dist. App. 2013); Smith v. Lynch, 821 So. 2d 1197 (Fla. 4th Dist. App. 2002)

²⁹20 Pa, C.S. §5604(c)(2).

³⁰20 Pa, C.S. §5604(c)(3).

³¹Zachard Allen et al, “More States Pass Supported Decision-Making Agreement Laws”, , 41 Bifocal 1 (ABA Commission on Law and Aging, Sept-Oct. 2019).

³²The National Resource Center for Supported Decision-Making maintains a directory, by state, of legislation proposed and/or adopted. www.supporteddecisionmaking.org (Last visited 9/16/21).

³³RSA 464-D:1, et seq. (NH 2021)

³⁴RSA 464-D:16 (NH 2021).

³⁵Public Act 102-0614 (IL 2021), <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0614> (Last visited 9/17/21).

managing their affairs and to have legal capacity.³⁶

III. Representative Payee, Advance Designation of Representative Payee and Successor Representative Payee

A representative payee collects the child's benefits from the Social Security administration, uses them for the child's benefit and accounts for the use. Clearly, a stream of income—even modest—is a potential source of income for a guardian.³⁷

It is likely that the child already has a representative payee, typically the client. If the client dies without a successor, there is a vacancy for a child who requires a representative payee, and the vacancy will be selected based on the judgment of the Social Security caseworker. A child who retains the capacity to designate a representative payee may do so in advance of need. This self-designation will take effect either when the Administration determines that the child needs a representative payee or when the office is vacant.

If there is not presently a Representative Payee, then under the Strengthening Protections for Social Security Beneficiaries Act of 2018,³⁸ a beneficiary may designate persons in advance to be representative payees in case they are needed.³⁹ Then, if the need for a representative payee arises, SSA will consider the persons so designated in the order set by the beneficiary.⁴⁰ The process is regulated by the POMS.⁴¹

If the client or another is presently acting as Representative Payee, then the client should consider suggesting this process to designate a successor in advance.

³⁶RSA 464-D:3 (NH 2021)

³⁷After completing a federal prison sentence for misconduct, the Philadelphia Inquirer reported that the defendant moved to Pennsylvania and eventually became the guardian in 93 cases (out of 6,800 in Philadelphia County), collecting fees in all of them. The Philadelphia Inquirer, "She Went to Prison for Fraud and Bad Checks. Then Courts Around Philly Let Her Manage the Finances for Elderly Residents", March 30, 2018.

³⁸Public Law 115-165, 132 Stat. 1257. Available at <https://www.congress.gov/115/plaws/publ165/PLAW-115publ165.pdf>.

³⁹42 U.S.C. 405(j)(1).

⁴⁰20 C.F.R. § 416.618.

⁴¹Social Security Administration, Program Operations Manual System (POMS), GN 00502.085 "Advance Designation of Representative Payee", <https://secure.ssa.gov/poms.nsf/lnx/00502085> (Last visited 8/31/21)

If the beneficiary has not designated a representative payee in advance of need, then the SSA will make its own determination and, while it may give preference to appointing persons based on priority set forth in the POMS⁴², there is no guarantee that a busy caseworker will bring the knowledge of needs and relationships that the client would. Moreover, arguably, the caseworker could find support in the POMS to give preference to a professional guardian.

If, after considering all the above factors, two payee applicants seem equally qualified, consider the following in making your final decision on the representative payee appointment . . . does the applicant have a past history of providing good service. . . . Organizational payees usually have access to greater resources and community contacts . . .⁴³

Unfortunately, the Regulations and POMS are silent with respect to the appointment of a successor Representative Payee when the Advanced Designation list has been exhausted. A pre-eminent practitioner in this field has suggested that the acting Representative Payee

sign a statement that lists in order of preference three individuals, who could serve as rep payee, and explain in a sentence or two why each one would be suitable ("My niece, Pebbles Flintstone, is our son's favorite cousin. She is an LCSW, frequently visits with our family, sees our son at least once a month, understands what I do as a representative payee and has stated that she would be willing to take on this responsibility after I am no longer able to function in this role."). I would have the statement witnessed and notarized and kept with the will and other important papers, with an original copy provided to the executor and/or rep payee designee. Perhaps it could be updated every couple of years so that the SSA is not presented with a statement that is 20 years old when the time arises. Anyone can apply to be a rep payee. The SSA uses a hierarchical scale to prioritize likely successors. See GN 00502.105. So, in the event a parent can no longer serve as rep payee, the document becomes a strong lead for the SSA as to who it should consider for the position. It's not foolproof, but, I think, it is better than nothing.⁴⁴

This is not a proven strategy, but it is certainly a way for the parents to maximize their influence in this area.

IV. Revocable Living Trust

⁴²Social Security Administration, Program Operations Manual System (POMS), GN 00502.130 "Factors to Consider in Evaluating Payee Applicants", <https://secure.ssa.gov/poms.nsf/lnx/0200502130> (Last visited 8/31/21)

⁴³Id.

⁴⁴Avram L. Sacks, Esquire, email to author, 9/1/21.

A child receiving needs-based benefits may have few assets and even fewer “countable” assets. Others may have more resources. However, any resources in the person’s individual name at the time of a guardianship proceeding become subject to the control of a predatory guardian.

Unless there are Medicaid asset-transfer restrictions in play, a parent can assist a child in transferring assets to the control of the trustee of a revocable living trust.

In fact, if brought to the Court’s attention, the existence of an effective revocable trust can be a basis to deny the guardianship petition.⁴⁵ When considering a petition for appointment of a guardian, one court found that the critical fact is whether or not the alleged incapacitated person needs a guardian. If a court finds that a person does not need a guardian, it does not matter whether he is incapacitated -- the court cannot proceed to the appointment of a guardian. A guardian is appointed only upon a finding that the person is partially incapacitated and in need of guardianship services.⁴⁶

Assets not titled in the individual’s name would not automatically come under the control of a guardian.⁴⁷ It is black letter law thinking that a guardian of a child has the right to control the child’s property, but not property that the child has previously transferred to a trustee, although at least one older, lower court Pennsylvania case has allowed a revocable living trust to be terminated—after a petition and hearing—to “end the unnecessary duplication of two fiduciaries' efforts”,⁴⁸ the trustee originally designated by the grantor would be a necessary party in interest in such a situation.

PARENT-FOCUSED PLANNING

V. Special Needs Trust: Creation

Every attendee should be familiar with special needs trusts.

Certain trusts are regulated by statute, which is interpreted by the Social Security Administration in its POMS, e.g., First Party Special Needs Trusts (funded by a Grantor who is disabled for his or her own benefit) and Trusts not giving rise to a Medicaid transfer penalty (funded by a Grantor for the sole benefit of a person's child or another under-65 year old disabled beneficiary). This article discusses other trusts which the clients may establish for a

⁴⁵20 Pa.C.S. §5512.1(a)(3).

⁴⁶In re Peery, 556 Pa. 125, 126, 727 A.2d 539, 539, 1999 Pa. LEXIS 860.

⁴⁷Weatherly v. Byrd, 566 S.W.2d 292, 293, 1978 Tex. LEXIS 342, *5, 21 Tex. Sup. J. 364

⁴⁸Estate of Gay, 3 Phila. 119, 1979 Phila. Cty. Rptr. LEXIS 74.

child.

Often called "common law" or third party trusts, These are not seen as regulated by statute, although Social Security and state Medicaid authorities review these instruments based on their own criteria, to determine whether they consider assets held by the trustees to be resources available to needs-based benefit beneficiaries. Although each state may have different requirements, typically, property held in trust by a person or entity for the benefit of another person who has no power to compel the trustee to make a distribution (sometimes called "pure discretion trusts") will not be deemed a resource for the beneficiary so long as the beneficiary was not the source of the trust assets.

Trusts complying with that general element may have a myriad of other features. For example, parents of an adult child with mental challenges whose other children were scattered among several countries believed their child would most benefit by the support and company of his siblings, and provided for biennial reunions at the expense of the trust they created.

For middle class folks, there is often an issue of how to fund a trust. While second-to-die insurance may or may not be a great investment, in Pennsylvania which has a \$500/month gift disregard for Medical Assistance Long Term Care applicants, paying for a policy with a monthly premium below that amount is a way for folks who could not afford a single premium life insurance policy to provide a substantial fund for their child after both their deaths.

Finally, the identify of the initial trustee and any successors is of paramount importance. Certain factors suggest naming a family member or other friend as trustee, since theoretically this persons best knows the child and in many trusts, a professional trustee commission would be relatively large in relation to the size of the trust. On the other hand, professional trustees often have greater investment expertise, enjoy a more detached view of child's needs in relation to his or her age and assets in the trust, and are less likely to engage in defalcation. Naming a friend and a bank as co-trustees would require careful apportionment of responsibility.

Under the Uniform Directed Trust Act, the power to direct a trustee to take certain action makes the person with the power of direction a "trust director". A trust director has the same fiduciary duties as a "trustee in a like position and under the circumstances."⁴⁹ On the other hand, a trustee subject to the direction of a trust director must not comply with a trust director's exercise or nonexercise of a power of direction . . . to the extent that by complying the trustee would engage in willful misconduct."⁵⁰ Moreover, while this may be modified in the trust

⁴⁹ Uniform Law Commissioners, Uniform Directed Trust Act (hereinafter "UDTA") §8(a). See Knorley and Sitkoff, "Making Directed Trusts Work: The Uniform Directed Trust Act", 44 Actec Law Journal 3 (Winter 2019).

⁵⁰UDTA §9(b).

instrument,⁵¹ if persons are simply designated as co-trustees, then there is not a trust director, and the protections of a directed trustee do not apply to a co-trustee.⁵²

VI. Special Needs Trust: Letter of Intent

A letter of intent, while precatory, is a powerful guide to the exercise of discretion by any fiduciary. For example, a blatant, unexplained failure to follow the instructions in a letter of intent might not justify the removal of a fiduciary “for cause”, if there is a trust protector who has power to remove and replace a fiduciary “with or without cause”, it would provide ample justification for the exercise of that power.

Essentially, this document allows the parents to give information to the fiduciary AND OTHERS that should guide the latter in the exercise of discretion. A letter of intent “is a way of communicating your desires and concerns, as well as caregiving instructions to future caregivers, guardians, trustees, and advocates of dependents with special needs.”⁵³

The author’s firm’s template for a letter of intent is appended to these materials, as is an example from a formbook.⁵⁴ Achieva Family Trust has its own, longer suggested form, called its Personal Planning Guide.⁵⁵

VII. Trust Protector

In their trust for the child, the parents should include a provision for a trust protector. Historically, a trust protector role has been recognized for many years in offshore trusts, however, in an area of jurisprudence which develops with the speed of a glacier, trust protectors are relatively new concepts in special needs trust planning. The potential length of dynasty trusts and potential legislative changes just over the horizon, the almost certainty of changed circumstances gives this role increased importance.

⁵¹UDTA §12

⁵²UDTA §§2(5), 9.

⁵³Kelly Piacenti, ChSNC, 2021 NAELA News Online (September 8, 2021).
<https://www.naela.org/NewsJournalOnline/OnlineNewsArticles/OnlineSept2021/Letter.aspx>
(Last visited 9/16/21).

⁵⁴Michael Gilfix, et al., Tax, Estate and Financial Planning for the Elderly: Forms & Practice Form I:19.5 (©LexisNexis 2021 reproduced with permission).

⁵⁵<https://www.achieva.info/files/Family%20Trust%20Documents/Personal%20Planning%20Guide.pdf> (Last visited 8/31/21).

The Uniform Trust Code originally ratified the use of trust protectors without really defining their roles.⁵⁶

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

© The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.⁵⁷

Many states have adopted trust protector provisions in their statutes.⁵⁸ Florida has not,⁵⁹ but there is case law sanctioning the use of trust protectors.⁶⁰

Many trust instruments give the trustee the power to modify the terms of the instrument at least to preserve the beneficiary's entitlement to benefits among others, and an analysis all the

⁵⁶Uniform Law Commissioners, Uniform Trust Code §808. The Commissioners have suggested that their §808 be repealed in favor of the Uniform Directed Trust Act as a more comprehensive treatment of this issue. See Uniform Law Commissioners, Official Comment to §808, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=3d7d5428-dfc6-ac33-0a32-d5b65463c6e3&forceDialog=0> (Last visited 8/31/21).

⁵⁷UTC §808.

⁵⁸E.g., Pennsylvania (20 Pa.C.S. §7778), Delaware (12 Del.C. §3313). See “Introducing Trust Protectors: What’s Puzzling You is the Nature of their Game”, ACTEC Annual Meeting (March 4, 2021).

⁵⁹See discussion in David J. Lillesand et al, “Administration of Trusts in Florida: Special Needs Trusts”, AT FL CLE 17.1 (10 Ed. 2019).

⁶⁰Minassian v. Rachins, 152 So. 3d 719, 720, 2014 Fla. App. LEXIS 19608, 39 Fla. L. Weekly D 2502

duties is outside the framework of this session.⁶¹ The Uniform Directed Trust Act authorizes and provides a framework for regulation of the apportionment of fiduciary responsibility between the trustee and a trust “director”.

What is important for us is to give the Trust Protector the power to remove and replace the trustee. As an example:

Upon written request of the Beneficiary or any other person interested in the welfare of the Beneficiary, the Trust Protector shall have the authority to remove a Trustee with or without cause. The Trust Protector shall have the right to appoint as Trustee any person or entity who is qualified to serve as trustee under the other provisions of this trust, including a person or entity who has previously been removed as Trustee or who has ceased to serve for any reason. The Trust Protector has the authority to appoint one or more other Trustees to serve as Co-Trustees. However, a Trust Protector may not appoint himself, herself or itself as a Trustee. In exercising this power the Trust Protector shall not act as a fiduciary and shall give priority to the interests of the current beneficiary over the interests of the remainder beneficiaries.⁶²

Designating a Trust Protector (and providing for successors) allows the parents to have assurances that the Trustee they have chosen will be an active, concerned manager of the resources entrusted to the trustee for the benefit of the child. Under the Uniform Directed Trust Act, the power to appoint or remove a trustee, does not make the power holder a fiduciary.⁶³

VIII. Special Needs Trust: Trust Committee

A second method of safeguarding the interest of the child is to create a trust committee which simply has communications responsibilities.

A Trust Committee can act as an advocate for the Beneficiary.⁶⁴ Institutional trustees can sometimes seem removed from the appearance of direct concerns for the Beneficiary. Trust committee members, on the other hand, can interact directly with the Beneficiary, both to help

⁶¹The South Dakota statute, for example, lists fourteen non-exclusive powers that may be given to a trust protector. SD Codified L §§55-1B-6, 55-2-13.

⁶²This language is tendered for discussion only. The practitioner will need to determine what would be appropriate and enforceable in the client’s situation.

⁶³ Uniform Law Commissioners, Uniform Directed Trust Act, §5(b)(2) (Uniform Law Comm'n 2017).

⁶⁴See discussion in David J. Lillesand et al, “Administration of Trusts in Florida: Special Needs Trusts”, AT FL CLE 17.1 (10 Ed. 2019).

the Beneficiary understand the functioning of the trust and to be certain that the Trustee understands the individual situation and needs of the Beneficiary. These interactions can take place much more frequently than meetings with the Trustee.

I hereby create a Trust Committee made up of one or more members as initially set forth below. Each member shall be designated to appoint his or her successor. In the event of a vacancy in this office, the Trustee shall, with in consultation with the Beneficiary, appoint a successor.

1. Members of the Trust Committee shall be entitled to the same notice and information as a Beneficiary under the Pennsylvania Uniform Trust Act.⁶⁵
2. The Trustee shall consult with the Trust Committee with respect to distribution decisions under this instrument, recognizing, however, that Settlor has entrusted the Trustee to make these decisions.⁶⁶ The Trust Committee may, in addition, consult with the Beneficiary directly.
3. The Trust Committee shall have the power to bring its concerns to the attention of the Beneficiary, the Trustee or the Trust Protector.
4. I hereby designate [TRUST COMMITTEE MEMBER (e.g. Settlor's other child)] as the sole member of the Trust Committee, with the power to appoint her own successor.

Clearly, a Beneficiary with special needs stands in a diminished position to the trustee of his or her trust. Having an advocate can make the bargaining positions of the parties more equal. While it is important that spokespersons for trust committees be articulate, there is no particular reason

IX. ABLE Act

Assets in an ABLE Act account can legitimately provide incredible flexibility to a person subject to needs-based fiscal restrictions. These are the elements of the right to own an ABLE Act account:

- the beneficiary is qualified to have an ABLE Act Account⁶⁷

⁶⁵20 Pa.C.S. §7780.3; see UTC §813.

⁶⁶The purpose of this is to avoid having the Trust Committee to be deemed a trust director under the Uniform Directed Trust Act. Compare UDTA §2(9) with §8(a).

⁶⁷Basically, disability onset date prior to age 26.

- ABLE Act deposits do not exceed the statutorily defined annual limit⁶⁸
- The size of the account remains within statutory limits,⁶⁹ and
- Withdrawals are used for authorized purposes⁷⁰

If these requisites are met, an ABLE Act account is available to provide improve the quality of life for the Beneficiary.⁷¹

If, at the time of application, a Beneficiary lacks capacity to create an ABLE Act account, the account may be established by a Fiduciary for the Beneficiary. In Pennsylvania, for ABLE Act purposes, a Fiduciary who can open the account is defined as the Beneficiary’s parent or guardian, a person or legal entity designated in writing by the parent or guardian, the trustee of a trust for which the eligible individual is a beneficiary, the Beneficiary’s representative payee, or any other person or entity authorized under section 529A of the Internal Revenue Code.⁷²

For account owners who lack the capacity to contract, the Fiduciary maintains control over the account unless relinquished.⁷³ Moreover, in Pennsylvania it is possible to designate a third party who can receive information about the account and, moreover, if so authorized, make withdrawals of transact other business with the assets of the account.⁷⁴

Thus, in creating an ABLE Act account for their child, parents should take care to designate a

⁶⁸Basically annual exclusion amount for gift tax purposes plus certain earned income additions. A deposit by a person of otherwise excess resources into his or her own ABLE Account is not subject to a fair consideration analysis. Inez Titus, Director Bureau of Operations, Pennsylvania Department of Human Services, "Operations Memorandum #17-07-01" (July 10, 2017). http://services.dpw.state.pa.us/oimpolicymanuals/ma/c_263043.pdf (Last visited 8/31/21).

⁶⁹\$100,000 for SSI qualifying purposes; the State’s §529 limit for all other qualifying purposes

⁷⁰“Qualified Disability Expense” a broadly defined term. Note: there are restrictions on the timing of housing-related distributions.

⁷¹This includes strategies for expenditures that might not otherwise be available to needs-based beneficiaries, including housing expenditures without reducing an SSI benefit.

⁷²§501(b).

⁷³Commonwealth of Pennsylvania, Department of the Treasury, PA Able, “Program Overview”, <https://www.paable.gov/overview/> (Last visited 8/31/21).

⁷⁴Commonwealth of Pennsylvania, Department of the Treasury, PA Able, “Enrollment Application”, <https://www.paable.gov/lib/pdf/Enrollment-Application.pdf> (Last visited 8/31/21).

third party who can supervise the account and quickly ascertain whether a predatory guardian has sought to assert control over the asset.

CONCLUSION

Parents may not have absolute certainty that their child will have the same degree of protection and nurture as they are able to provide. However, if the planner addresses these points with them, they will have assurances that the parents have taken reasonable steps to maximize their likelihood.

FORM I:19.5 Client Handout: Letters of Instruction or Guidance**COMMENT**

The questions depend substantially on the nature of the disability and the level of the individual's functioning. Accordingly, some questions are appropriate for some families, while other are not.

A. Instructions Regarding Food and Meals

1. What are your child's favorite foods?
2. Are there foods that he likes at particular times of day?
3. Are there foods that he likes at particular meals (breakfast, lunch, dinner)?
4. Is there an order in which food should be presented to your child?
5. Are there particular ways your child's favorite food should be prepared?
6. If you have concerns about your child's nutrition, how do you deal with that?
7. Are there any "comfort foods" that particularly please your child?
8. Are there any foods that have the effect of calming down your child if he becomes agitated or upset?
9. Are there any foods that create problems of any nature or to which your child is allergic?

B. Recreational Activities

1. What activities does your child particularly enjoy?
2. Are there activities that are appropriate for your child only if he has a companion with him? If so, what is the nature of the companion?
3. Are there recreational activities that your child enjoys, but that present problems or challenges? If so, should your child be prevented from engaging in these activities?
4. Are there recreational activities that are appropriate for your child to do alone?
5. Are there recreational activities that your child resists, but that are nevertheless appropriate or important for your child?

C. Educational Activities

1. If your child has a learning disability, how would you describe it?
2. What are your child's interests and strengths in the realm of education?
3. What approaches by teachers are particularly successful in stimulating your child?
4. What approaches are likely to be unsuccessful in teaching or stimulating your child?
5. Are there particular interests your child has that are important to the development of your child's educational plan?
6. Are there subjects with which your child needs particular assistance if your child is to succeed?

D. If You Could Design a Perfect Day for Your Child, What Would it Entail?**E. What Mistakes Might a Well Meaning Individual Make In Dealing with Your Child?****F. Do You Have Special Concerns About Your Child's Health?**

1. What can supportive individuals do to address this?
2. Is there a song or story that gives your child joy or comfort?
3. Is there a particular type of music that gives your child enjoyment or that can calm your child down?

G. Medications

1. If your child is dependent on medications, are there warning signs if your child is about to stop taking his medications willingly?
2. If your child has stopped taking his medications, are there identifiable behavioral changes?

3. If your child has stopped taking his medications, what steps are effective in convincing him to again take his medications?

H. Housing

1. If your child is permanently living in a facility, are there special issues?

A. If you are particularly concerned about homelessness, what steps can be taken to convince your child to accept housing?

Summary Of Our Wishes

Prepared by:



Steinbacher • Goodall • Yurchak

Your elder care and special needs law firm

Quality representation in litigation

800.351.8334

www.paeldercounsel.com

Copyright 2020 Steinbacher • Goodall • Yurchak

OUR INTENT

This summary is intended to provide guidance to those who will have a role of great importance as guardian, caregiver, or trustee for our son/daughter at the time of our death or incapacity. This document represents the vision we have for our son/daughter, and contains details that will help guide those with whom our son/daughter's well-being is entrusted. This document is to be considered binding to the greatest extent possible. While we recognize that there may be circumstances or decisions that are beyond the scope of our anticipation, we request that all parties concerned act in accordance with the wishes expressed herein. We direct our son/daughter's guardian to be aware of, and carry out our wishes and vision related to the personal care, nurturing, education, spiritual development and social growth of our son/daughter while acting in their capacity as guardian. We further direct our trustee to support our son/daughter's guardian to the greatest extent possible, in order that they may be able to implement our vision as they care for our son/daughter.

We are providing the information included herein so that our son/daughter may continue to benefit from our devotion, judgment, and planning. We have included details that will encourage a seamless transition for our son/daughter, family, friends and caregiver, and that will improve the ability of all concerned to remain an influence in our son/daughter's life.

INITIAL INSTRUCTIONS

Upon our death or incapacity, our son/daughter will become the responsibility of the appointed guardian, identified as follows:

Name
Address
Phone

Upon our death or incapacity, and as soon as our son/daughter is placed in the custody of their guardian, please notify the following family members, friends, and organizations of our death or incapacity, and of the location of our son/daughter:

Name: _____ Relationship: _____
Telephone: _____ Address: _____
Telephone: _____

Name: _____ Relationship: _____
Telephone: _____ Address: _____
Telephone: _____

Name: _____ Relationship: _____
Telephone: _____ Address: _____
Telephone: _____

Name: Julie Steinbacher Relationship: Attorney
Telephone: (570) 322-2077 Address: 413 Washington Blvd
Telephone: _____ Williamsport, PA 17701

Initial instructions (continued)

Name: _____ Relationship: _____
Telephone: _____ Address: _____
Telephone: _____

Name: _____
Telephone: _____
Telephone: _____

**MISCELLANEOUS INSTRUCTIONS RELATED TO THE TIME IMMEDIATELY FOLLOWING
OUR DEATH OR INCAPACITY**

TELLING OUR SON/DAUGHTER ABOUT OUR DEATH OR INCAPACITY: *We ask that you talk to our son/daughter about our death or incapacity in the following manner:*

DETAILS ABOUT OUR SON/DAUGHTER'S LIVING SITUATION: *We request that information about our son/daughter's living situation be given out to involved family, friends, and organizations in the following manner:*

ADVOCACY: It is crucial that the level of advocacy we have provided for our son/daughter continue when we are no longer able to advocate for her. The following details will guide you in this most important responsibility:

IMPORTANT DETAILS REGARDING FAMILY INVOLVEMENT: *It is important to us that the family involvements that we have shared in the past continue to be a resource to our daughter. Family gatherings and family activities have meant a great deal to us and to our son/daughter. In the future, please consider our wishes regarding the holiday celebrations:*

Miscellaneous instructions (continued)

CONTINUING OUR VISION FOR OUR SON/DAUGHTER'S RELIGIOUS AND SPIRITUAL GROWTH: *Because our family's spiritual customs are important to us, it is our wish that our son/daughter be raised in the following religious tradition, and with the following spiritual routines and values:*

OVERVIEW OF OUR SON/DAUGHTER'S MEDICAL HISTORY AND CURRENT TREATMENT NEEDS: *The following information is provided so that all concerned will be able to fully understand the nature of our son/daughter's disability and medical requirements, and our wishes and vision for continued medical management. We have included our understanding of son/daughter's diagnosis, information about how this affects his/her day to day life, the impact that this diagnosis will have on our son/daughter's future, and information about the treatment options that are recommended:*

OUR EDUCATIONAL PREFERENCES FOR OUR SON/DAUGHTER: *Mental stimulation is an important part of our son/daughter's day. Please be aware of her preference and opportunities as follows:*

ACTIVITIES AND RECREATION: *As a family, our hobbies, interests and recreational pursuits have been special times of great enjoyment. We would especially like our son/daughter to share in exposure to and enjoyment of the following pursuits:*

DISCIPLINE: *It is important to us that our child be disciplined in a manner consistent with our values and child-rearing practices. We believe that our child should not be punished for developmentally appropriate behaviors. Rather, we prefer that our guardian use distraction, redirection, negotiation or other non-punitive methods of guiding our child's behavior so that the guardian and our child can live together in peace. The following methods of discipline are totally unacceptable to us, and if our guardian feels he or she requires these methods, we wish that person to decline to accept the guardianship of our child:*

Miscellaneous instructions (continued)

FINANCIAL NEEDS: *There is a need to make sure that our son/daughter's financial needs are met at that point that we are no longer able to oversee. We have established a trust that will provide funds to ensure his/her quality of life. Please make sure that the following is addressed:*

PERSONALITY TRAITS AND PREFERENCES: *Our impressions of our life with our daughter to this point are described so that all concerned will understand the nature of our interactions, the overall personality that we understand, and any preferences that we are aware of. We have included likes and dislikes, hobbies, favorite activities and foods, information about our son/daughter's abilities and disabilities and a snapshot of the daily routines and interactions that have worked so effectively.*

IDENTIFYING INFORMATION: *The following personal information will be helpful at the time of our death or incapacity, and may be useful to our son/daughter and their caregiver in the future:*

Our Son/Daughter

_____ NAME	_____ SOCIAL SECURITY NUMBER	_____ BIRTH DATE
_____ HOME ADDRESS:	_____ CITY, STATE	_____ ZIP
_____ TELEPHONE NUMBER :		

Parents

_____ MOTHER'S NAME	_____ SOCIAL SECURITY NUMBER	_____ DOD if applicable
_____ HOME ADDRESS:	_____ CITY, STATE	_____ ZIP
_____ TELEPHONE NUMBER	_____ DATE OF BIRTH	
_____ FATHER'S NAME	_____ SOCIAL SECURITY NUMBER	_____ DOD if applicable
_____ HOME ADDRESS	_____ CITY, STATE	_____ ZIP

TELEPHONE NUMBER

DATE OF BIRTH

Identifying Information (continued)

Siblings

NAME

SOCIAL SECURITY NUMBER

BIRTH DATE

HOME ADDRESS

CITY, STATE

ZIP

TELEPHONE NUMBER

Guardian

NAME

RELATIONSHIP TO SON/ DAUGHTER

TELEPHONE NUMBER

ZIP

NAME

RELATIONSHIP TO SON/ DAUGHTER

TELEPHONE NUMBER

ADDRESS

CITY, STATE

ZIP

Trustee(s) of The Supplemental Needs Trust

TRUSTEE'S NAME

RELATIONSHIP TO SON/ DAUGHTER

TELEPHONE NUMBER

ADDRESS

CITY, STATE

ZIP

TRUSTEE'S NAME

RELATIONSHIP TO SON/ DAUGHTER

TELEPHONE NUMBER

ADDRESS

CITY, STATE

ZIP

NAME OF SUCCESSOR TRUSTEE

RELATIONSHIP TO SON/ DAUGHTER

TELEPHONE NUMBER

ADDRESS

CITY, STATE

ZIP

CONTACTS: *Individuals, organizations, professional groups, government agencies, or other important contacts providing or coordinating services for our son/daughter are provided in order that a seamless communication exist that will allow a smooth transition for our son/daughter and all concerned.*

ORGANIZATION NAME	RELATIONSHIP TO SON/DAUGHTER	TELEPHONE NUMBER
ADDRESS	CITY, STATE	ZIP
CONTACT PERSON		
SERVICES PROVIDED OR REASON TO BE CONTACTED:		

ORGANIZATION NAME	RELATIONSHIP TO SON/ DAUGHTER	TELEPHONE NUMBER
ADDRESS	CITY, STATE	ZIP
CONTACT PERSON		

ORGANIZATION NAME	RELATIONSHIP TO SON/ DAUGHTER	TELEPHONE NUMBER
ADDRESS	CITY, STATE	ZIP
CONTACT PERSON	ACCOUNT NUMBER	

Steinbacher, Goodall & Yurchak	Attorney	(570) 322-2077
ORGANIZATION NAME	RELATIONSHIP TO SON/DAUGHTER	TELEPHONE NUMBER
413 Washington Blvd	Williamsport, PA	17701
ADDRESS	CITY, STATE	ZIP
Julianne Steinbacher, Esq.		
CONTACT PERSON		

ORGANIZATION NAME	RELATIONSHIP TO SON/DAUGHTER	TELEPHONE NUMBER
ADDRESS	CITY, STATE	ZIP
CONTACT PERSON		

Medical Information: *Information about our son/daughter's current physicians, therapists, specialists, medications and insurance is provided as a resource to ensure that there will be continuity in treatment and medical care.*

PROFESSIONAL'S NAME: _____
ADDRESS: _____
ADDRESS: _____
CITY/STATE: _____
ZIP: _____
TELEPHONE: _____
FAX: _____
SPECIALTY: _____
APPOINTMENT SCHEDULE: _____

COMMENTS: _____

PROFESSIONAL'S NAME: _____
ADDRESS: _____
ADDRESS: _____
CITY/STATE: _____
ZIP: _____
TELEPHONE: _____
FAX: _____
SPECIALTY: _____
APPOINTMENT SCHEDULE: _____

COMMENTS: _____

PROFESSIONAL'S NAME: _____
ADDRESS: _____
ADDRESS: _____
CITY/STATE: _____
ZIP: _____
TELEPHONE: _____
FAX: _____
SPECIALTY: _____
APPOINTMENT SCHEDULE: _____
COMMENTS: _____

PROFESSIONAL'S NAME: _____
ADDRESS: _____

CITY/STATE: _____

ZIP: _____

TELEPHONE: _____

FAX: _____

SPECIALTY: _____

APPOINTMENT SCHEDULE: _____

COMMENTS: _____

Insurance Information: *The following insurance and benefits are currently in place:*

MEDICARE NUMBER: _____ MEDICARE COMPLIMENT: _____
CONTACT INFORMATION _____
MEDICAID NUMBER: _____
CONTACT INFORMATION _____

HEALTH INSURANCE PROVIDER: _____
POLICY NUMBER: _____
HOSPITAL USED FOR TREATMENT: _____
DEPARTMENT: _____
ADDRESS: _____
CITY/STATE: _____
TELEPHONE: _____
FAX: _____

CONTACT INFORMATION: _____
GROUP NUMBER: _____
HOSPITAL USED FOR TREATMENT: _____
DEPARTMENT: _____
ADDRESS: _____
CITY/STATE: _____
TELEPHONE: _____
FAX: _____

MEDICATION	PURPOSE	DOCTOR'S NAME	DATE OF PRESCRIPTION
_____	_____	_____	_____
_____	_____	_____	_____

Non- prescription medication and equipment: *The following non - prescription medications and assistive equipment are currently used:*

MEDICATION	PURPOSE
_____	_____
_____	_____

COMMENTS: _____

EQUIPMENT	PURPOSE
_____	_____
_____	_____
_____	_____

COMMENTS: _____

Income and asset information: *The following information relates to all income that our son/daughter receives, and all assets available to our daughter:*

Supplemental Security Income (SSI):

Social Security Disability Insurance (SSDI):

SSDI on name's own account:

SSDI on a parents account as an adult disabled child:

Disability pension:

Disbursements from a trust:

Comments about these disbursements:

Regular gifts from a parent or family member include:

Real estate:

Other income or assets available to our son/daughter:

Our Powers of Attorney are located: _____

Our Attorney Julieanne E, Steinbacher also has a copy of these.

Our Wills are located: _____

Our attorney also has a copy of these

Income/asset Information (continued)

Son/daughter's Supplemental Needs Trust should be reviewed with Attorney Steinbacher for complete understanding of the terms and the duties of the trustee

Our PIN numbers for Bank accounts are as follows:

Miscellaneous Information:

End of life issues: *Because we feel that each event in life is relevant, we have planned for the end of life issues that could arise for our son/daughter. Included in this planning has been the development of durable powers of attorney, or advance directive. A copy of this document is attached.*

In addition to this, it is our wish that _____ handle funeral arrangements:

Signed this _____ day of _____, 2021.

Signature: _____

Signature: _____

Prepared by:



Steinbacher • Goodall • Yurchak

Your elder care and special needs law firm

Quality representation in litigation

800.351.8334

www.paeldercounsel.com

Copyright 2020 Steinbacher • Goodall • Yurchak

Adapted by Steinbacher, Goodall & Yurchak, from a letter of intent prepared by Reginald H. Turnbull of Turnbull Law Office, P. C., Turnbull Law Office, P. C., 200 East High Street, Jefferson City, MO 65101, phone: 573-634-2910; Fax: 573-634-7418; Email: Ribull@aol.com adapted from a Letter of Intent prepared by John W. Nadworny, CFP, ChFC, and Cynthia R. Haddad, CFP, Bay Financial Associates. LLC, 95 Sawyer Road, Waltham, MA 02453, phone: 781-893-0909, email: info@specialneedsplanning.com, website: www.specialneedsplanning.com and also from a Social Security Administration form, Function Report Adult – Third Party, SSA Form 3380-BK.