A FINANCIAL SAFETY-NET
FOR YOUR CHILD WITH A DISABILITY

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As the parent of a child with a disability, you need to consider how your child will be maintained in a reasonable and comfortable manner after your death. At best, the typical array of governmental benefits that your child may receive will modestly provide for your child's food, clothing, shelter, and medical needs. Governmental benefits alone may not support your child in a standard of living that you consider appropriate.

There will likely be a gap between the governmental benefits your child will receive and what you believe is a reasonable standard of living for your child. You may wish to create a financial safety-net to bridge that gap by establishing an appropriate legal structure which is adequately funded to maintain your child in a reasonable lifestyle.

The proper legal structure for your child's financial safety-net usually involves the use of a trust to protect assets from the claims of creditors, predators, divorcing spouses, and the State of Connecticut. A trust can also preserve your child's eligibility for federal and state benefits.

When determining the amount of funding for your child's financial safety-net, you should consider (i) the nature and extent of your child's disability, (ii) the governmental resources that may be available to your child after your death, and (iii) the lifestyle you desire for your child.

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I. **Nature of Your Child's Disability.**

Your child's financial safety-net must take into account the nature of your child's disability. A safety-net that provides an appropriate standard of living for a paraplegic who is capable of making personal and financial decisions will be quite different from the safety-net for a person who is mentally retarded and will need the services of a group home, and neither of these safety-nets may be appropriate for a person who is mentally ill and receiving drug therapy and counseling.

Your child's financial safety-net must also take into account the extent of your child's disability. The safety-net for a high-functioning child with a disability may be dramatically different from the funding necessary for a child who has difficulty learning basic skills.

The possibility that your child's condition may change over time is an important consideration in formulating your child's financial safety-net. The prospects of a stable, improving, or deteriorating condition would each require a different response from your child's safety-net.

Understandably, there is not a one-size-fits-all financial safety-net for your child with a disability. Your child's financial safety-net must be formulated around your child's specific circumstances.

II. **Governmental Resources.**

An important resource for your child may be governmental benefits. Three common, federally-based benefits for which your child may be eligible are Social Security Disability Income (SSDI), Supplemental Security Income (SSI), and Title XIX benefits (Medicaid). There is also a state Supplemental Assistance Program.

A. **Social Security Disability Income (SSDI).**

The Social Security Disability Income (SSDI) program provides benefits based on contributions made to the Social Security system. This benefit is not based on need. If your child is diagnosed with a disability prior to the age of 22, he or she will be eligible for SSDI benefits if you are covered by Social Security and you subsequently retire, die, or become disabled. Though less likely, your child may, instead, qualify for SSDI benefits based on his or her own Social Security work history. The Social Security regulations define "disability" as the "inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." If your child does not have a Social Security work history, the amount of your child's SSDI benefits is based on your average earnings. Your child's SSDI benefits will not be reduced by his or her other assets. Regardless of your child's age, after your child has received SSDI benefits for two years, he or she will be eligible for the Medicare program. This is the same Medicare program that provides listed hospital and doctor's services to Social Security retirees.

B. <u>Supplemental Security Income (SSI)</u>.

The Supplemental Security Income (SSI) program provides benefits based on need. If your child meets the severely limited income and resource guidelines of SSI, and if your child is "disabled", then your child will be eligible for monthly cash payments. These cash payments are intended to supplement food, clothing, and shelter. Effective January 1, 2017, the maximum federal SSI benefit is $735 per month for an individual, and $1103 per month for a couple (the amounts go up every January 1).

C. <u>Title XIX (Medicaid)</u>.

The Title XIX (Medicaid) program provides an array of medical benefits for those who are chronically ill. Medicaid is federally funded, but is administered by the states, which have a great deal of flexibility in using the federal funds. Medicaid eligibility is similar to that for SSI, namely eligibility is based on both disability and need. Your child must have very limited assets in order to meet the Medicaid eligibility requirements. Medicaid provides a significant portion of the funding for state-sponsored residential living arrangements, and for many community based programs for individuals with developmental disabilities.

D. <u>State Supplemental Assistance Program (State Supp)</u>.

Connecticut State Supplemental Assistance (a/k/a State "Cash Assistance" or "Aid to the Aged, Blind, and Disabled") is a need-based welfare benefit. State Supp is designed to provide supplemental assistance to those who receive low income from Social Security, SSI, a pension, or Veterans' Administration benefits. The State Supplement program pays a large part of the cost of group homes in Connecticut.

III. <u>Impact of Governmental Benefits on Safety-Net Funding</u>.

The amount of funding that will be needed for your child's financial safety-net will be affected not only by your child's eligibility for governmental benefits, but also by whether it is in your child's best interest to preserve those governmental benefits.

If your assets are limited and your child is eligible for governmental benefits, then preserving those benefits may be crucial to maintaining your child in a reasonable lifestyle. Alternatively, your child may not be eligible for benefits, or you may determine that preserving available benefits would result in an unacceptable standard of living for your child. In either of these circumstances, you may plan for your child to forego all governmental benefits and be supported only by the private resources you make available. A safety-net that supplements (but does not eliminate) governmental benefits in order to maintain your child in a reasonable lifestyle may require considerable funding. A safety-net that pays all costs of maintaining your child without relying on governmental benefits will require dramatically more funding.

IV. <u>Funding Your Child's Safety-Net</u>.

The basic support of governmental benefits may provide only a modest lifestyle. There will likely be a gap between the basic support that governmental benefits provide and what you believe is a reasonable standard of living for your child. You may wish to bridge that gap for your child by providing the funding to address the shortfall. If no governmental benefits are available to your child, or if preserving them is not desirable, then it falls to you to fund all of the costs of a desired standard of living.

Before you can determine the amount needed to fund your child's safety-net, and the means of doing so, your own financial future must be secured. Financial planning can provide a realistic strategy for addressing your own needs for the rest of your life. Financial planning can also give you some idea of what resources may be available to fund your child's safety-net. The obvious assets that may be available to address your needs, and the needs of your child after your death, include such things as stocks, bonds, cash, real estate, retirement plan assets, life insurance, and annuities. Less obvious resources include possible gifting and inheritances, and resources that other family members may want to dedicate to your child's needs. If the financial plan reveals that there are not enough assets to meet your child's anticipated needs, a strategy to fund the shortfall (such as the use of life insurance) can be thoughtfully implemented.

V. <u>Structure of Your Child's Safety-Net</u>.

The structure of your child's financial safety-net will affect whether your child is eligible for governmental benefits, and whether the safety-net assets are protected from your child's creditors, predators, and divorcing spouse. Additionally, the structure will affect whether the State of Connecticut has a right of recovery against the safety-net assets. Your child will be indebted to the State for many of the governmental benefits that he or she receives. The State has a right to recover against gifts or inheritances received by the child to repay that indebtedness unless the gifts or inheritances are properly protected.

The strategies that parents often consider in creating a financial safety net for their child include outright transfers to their child, transfers to third parties for their child, and transfers to a trust for their child. In assessing how your child will be protected after your death, you must be aware of the risks and rewards of each strategy that you consider.

A. <u>Outright Transfers to Your Child</u>.

Though usually inappropriate, your child's safety-net can take the form of an outright gift or inheritance (i.e. a gift or inheritance given directly to your child). This alternative is only suitable where your child is capable of managing his or her financial affairs, and is not receiving need based (means tested) governmental benefits. The advantage of an outright transfer is that it is simple. There are many disadvantages to an outright transfer to your child. The assets may be too large and complex for your child to manage. Also, once the assets belong to your child, they are available to satisfy the claims of his or her creditors (including recovery claims by the State of Connecticut for services provided to your child in the past). Additionally, assets in your child's hands may make your child a target for financial predators. Finally, assets in your child's name may render your child ineligible for need-based governmental benefits.

If outright transfers to your child are not appropriate, it is important to inform grandparents, aunts, uncles, and other family members. Well-intentioned gifts or inheritances from family members can cause serious problems for your child.

B. <u>Transfers to Third Parties</u>.

You may consider creating your child's safety-net by transferring assets to a third party, such as a sibling of your child, with an informal understanding that the assets will be used only for your disabled child. The disadvantages of this structure for your child's safety-net are significant. Foremost, there is no legal obligation that the third party actually use the property for your child's benefit. Additionally, even where the third party has good intentions, the arrangement can fail simply because of unforseen circumstances, such as the death, disability, divorce, or insolvency of the third party. In short, this structure for your child's safety-net offers little real financial protection for your child.

C. <u>Trusts</u>.

The most reliable structure for your child's safety-net is a "trust" for his or her benefit. A trust is a legally enforceable arrangement where one person (a "Trustee") holds assets for the benefit of another (the "Beneficiary"). A trust for your child will usually be drafted to give the Trustee broad discretion to manage the financial assets, and address your child's future needs. Importantly, a trust can also be structured to help insulate the trust assets from the claims of your child's creditors, and to protect trust assets from unscrupulous predators and divorce. Where appropriate, a trust can be structured so that the trust assets will not cause your child to be ineligible for need-based governmental benefits, and the assets of such a trust are not subject to recovery claims by the State of Connecticut for services provided to your child in the past.

1. <u>The Special Needs Trust</u>. If your child may be eligible for governmental benefits, and preserving those benefits is crucial to maintaining your child in a reasonable lifestyle, then the appropriate structure for your child's safety-net is a Special Needs Trust (a/k/a Supplemental Needs Trust). A Special Needs Trust is designed to supplement (but not eliminate) the benefits otherwise available through governmental sources by helping bridge the many gaps that exist in the benefits system, and addressing quality of life issues that governmental benefits do not reach.

A properly drafted Special Needs Trust can accomplish four important goals. A Special Needs Trust can (a) help maintain your child in a reasonable lifestyle, (b) help preserve your child's need based governmental benefits, (c) help protect assets from the claims of your child's creditors (including recovery claims by the State of Connecticut for services provided to your child in the past), and (d) help protect assets from unscrupulous predators and divorcing spouses.

2. <u>The Asset Protection Trust</u>. If your child will not be eligible for governmental benefits, or if preserving governmental benefits is either not important or not in your child's best interests, then an Asset Protection Trust may be the appropriate structure for your child's safety-net. An Asset Protection Trust can allow trust assets to be used to maintain your child in a reasonable lifestyle. Additionally, an Asset Protection Trust can help protect assets from the claims of your child's creditors (including recovery claims by the State of Connecticut for services provided to your child in the past), and from unscrupulous predators and divorcing spouses. If using an Asset Protection Trust results in your child being ineligible for governmental benefits, then the trust assets will be used to support your child.

3. <u>Choice of Trustee</u>. Using a trust as the legal structure for your child's safety-net requires appointing a Trustee (or multiple Trustees). The Trustee must be capable of managing the trust assets. The Trustee must also be willing and able to regularly assess and provide for the continuing needs of your child. The Trustee can be a family member; a trusted friend, advisor, or business colleague; or a professional Trustee, such as a bank or trust company, accountant, or attorney. For Special Needs Trusts in Connecticut, the Trustee can also be the Planned Lifetime Assistance Network of Connecticut, Inc. ("PLAN"). PLAN is a charitable organization in Connecticut that serves only as Trustee of trusts for individuals with a disability. PLAN is unique in many respects, but, notably, in that at least 51% of its Board of Directors

must have a family member with a disability. PLAN can be reached at (860)523-4951. More information about PLAN can be found at www.planofct.org.

VI. **Summary**.

As the parent of a child with a disability, you should consider how your child will be maintained in a reasonable standard of living after your death. If your child is eligible for governmental benefits but has no financial safety-net, his or her lifestyle may be more modest than you might wish. If your child is not eligible for governmental benefits and has no financial safety-net, his or her lifestyle may be worse.

These materials are intended as a broad overview. Your child's financial safety-net must be formulated on the basis of your family's specific circumstances, desires, and limitations. Therefore, you cannot rely on these materials as legal advice, or as a substitute for individualized estate planning.