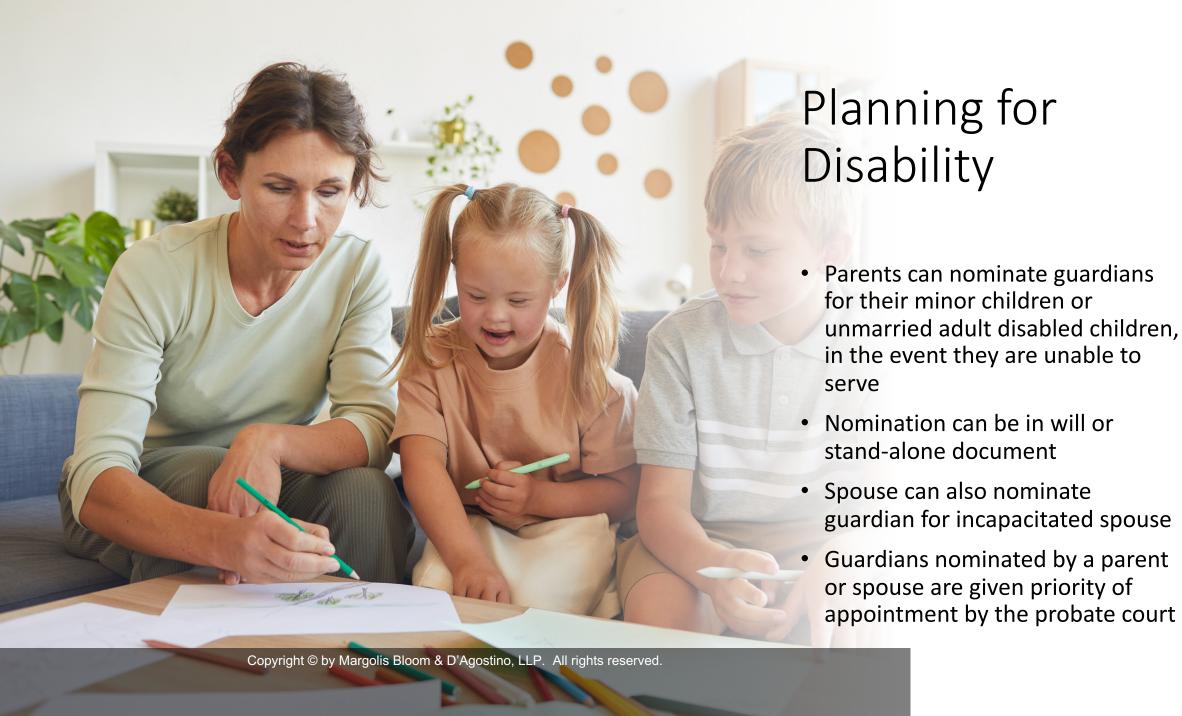




Disability Planning and Supplemental Needs Trusts

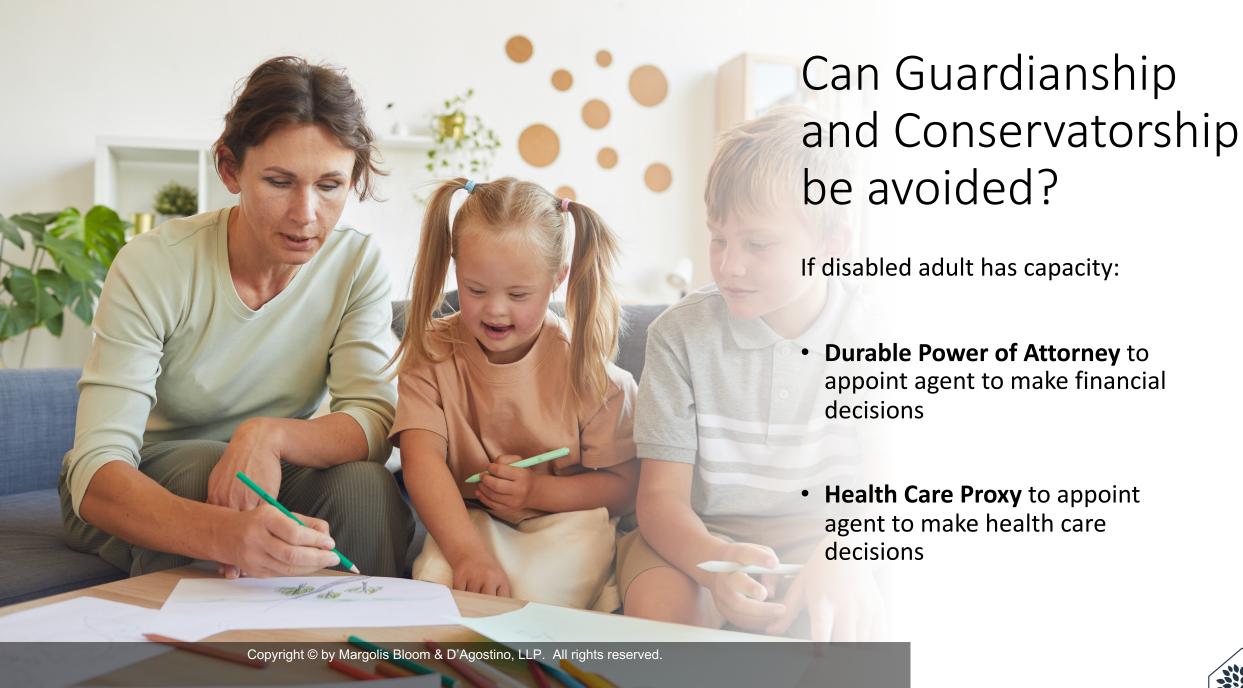
Laura Goodman, Esq.







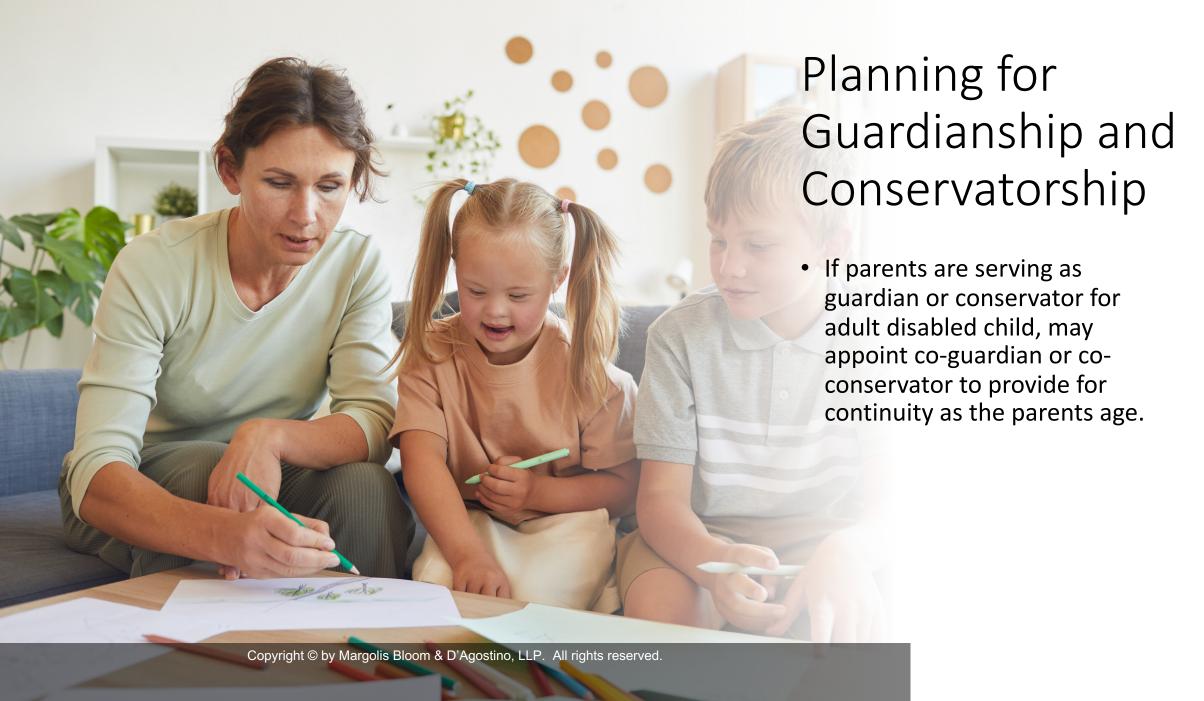














Planning for a Disabled Person's Inheritance

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Outright inheritance vs. inheritance in trust

Maintaining eligibility for public benefits

Management of inherited assets



Solution

Estate plan should direct a disabled person's inheritance to a supplemental needs trust (SNT) for the disabled person's benefit.

 Assets in the SNT will be available for disabled person's benefit, and allow them to maintain eligibility for public benefits such as MassHealth and SSI



Why not leave everything to the sibling?

- Lack of control
- Creditors
- Divorce
- Increases the sibling's assets (e.g. income taxation, financial aid, taxable estate)



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How is SNT created?

- Parents or other relatives can create a SNT by working with an attorney who specializes in disability planning
- Non-profit agencies manage pooled disability trusts
 - PLAN of Massachusetts and Rhode Island
 - ARC of Bristol County
 - Guardian Trust



First-Party vs. Third-Party Trusts

First-Party / "Self-settled" trust

• Funded with the disabled person's own money – e.g. savings, employment income, outright inheritance, legal settlement, lottery winnings



First-Party vs. Third-Party Trusts

First-Party / "Self-settled" trust

- (d)(4)(A) Trust
 - Established by the disabled person, disabled person's parent or grandparent, or a court
 - Must be established and funded before disabled person turns 65
- (d)(4)(C) Pooled Trust
 - Managed by non-profit agency
 - No age limit to apply for trust account.





Self-settled trusts must include a Medicaid payback provision:

Upon beneficiary's death, state Medicaid agency can recoup money from the trust up to the amount of Medicaid benefits it paid out during the beneficiary's life.



First-Party vs. Third-Party Trusts

Third-Party Trust

- Funded with funds from a third party (e.g. a parent or other relative)
- No Medicaid payback requirement
- Disabled person's own funds cannot be contributed to a third-party trust





ABLE Accounts

- Similar to 529 plans for education
- Must have "qualifying disability" that began prior to age 26.
- Funds can be contributed by the disabled individual or anyone else.
- Up to \$16,000 per calendar year. If more than \$100,000 accumulates in the account, SSI benefits are suspended.





ABLE Accounts

- "Qualified expenses" include: assistive technology, housing, basic living expenses, education, transportation and more.
- If ABLE account funds are used on unqualified expenses, may incur penalties.
- Disabled beneficiary may be able to manage account themself; otherwise, parent or authorized representative can manage for them.
- Funds in ABLE Account are subject to estate recovery upon the beneficiary's death



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Supplemental Needs Trust as Beneficiary of Retirement Assets

SECURE Act

- Impacts inherited retirement accounts
- Restricts the ability for beneficiaries to "stretch" retirement distributions over their lifetime
- Now, most non-spouse beneficiaries of inherited retirement benefits must withdraw all retirement funds within 10 years



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Supplemental Needs Trust as Beneficiary of Retirement Assets

SECURE Act

- Exception to the new SECURE Act rules: retirement benefits payable to a Supplemental Needs Trust
- If retirement benefits are payable to a SNT, distributions can be stretched over the life expectancy of the disabled individual.
 - Example: if disabled individual is 40 when IRA owner dies, IRA funds can be stretched over 42 years (female) or 38 years (male).
- SNT must be carefully drafted and include certain terms in order to qualify for this exception
- Important to consult with attorney who specializes in disability planning if you are planning to name a SNT as beneficiary of a retirement account



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Supplemental Needs Trusts: General Rules

- Discretionary trust. Trustee must have sole discretion to make payments of income or principal to the disabled person ("beneficiary") or on their behalf.
- Beneficiary can have no right to amend, revoke, or demand payment from the trust.
- Beneficiary cannot serve as trustee.
- Trustee can be a relative, trusted friend, or professional/independent trustee, such as a lawyer or bank.



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Supplemental Needs Trusts: Administration

- Assets held in properly-drafted and administered SNT are not countable
- Income generated by SNT is countable only to the extent distributed to the beneficiary
- Best practice: funds in the trust can be paid to vendors or other third-parties directly, rather than distributing money out to the beneficiary directly.
- Special rules when beneficiary receives Supplemental Security income (SSI).



Supplemental Needs Trusts: Administration

Examples of Permissible Distributions for SSI:

Automobile/van	Accounting fees	Acupuncture	Appliances	Public transportation costs
Clubs and club dues	Dental work not covered by Medicaid	Home furnishings	Fitness equipment	Funeral expenses
Gasoline	Haircuts/salon services	Home improvements	House cleaning	Laundry service
Legal fees	Musical instruments	Non-food grocery items (toiletries, paper products)	OTC medications and supplements	Personal care services not covered by Medicaid
	Pet care and supplies	Travel / vacations	Utility bills	



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Supplemental Needs Trusts: Administration

Examples of Distributions that will Reduce SSI Benefits:

- Paying for rent/shelter expenses
- Paying for food (e.g. groceries or restaurant meals)
- Cash distributions to the beneficiary
- Paying for a service already paid for by another source
- Distribution not for the beneficiary (i.e., made primarily for the benefit of another person)



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Supplemental Needs Trusts: Administration

- Once trust is funded, must provide notice of the trust to any public agencies from which the disabled person receives benefits (e.g. MassHealth, Social Security, housing authority).
- Once funded, trust will receive its own tax ID number and trustee will need to file income tax returns each year.



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Supplemental Needs Trusts: Choosing a Trustee

- Family member
- Trusted friend
- Legal/financial experience is helpful, but not necessary (can hire advisors)
- Professional trustee (bank, law firm)
- Pooled trust



Q & A & THANK YOU



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