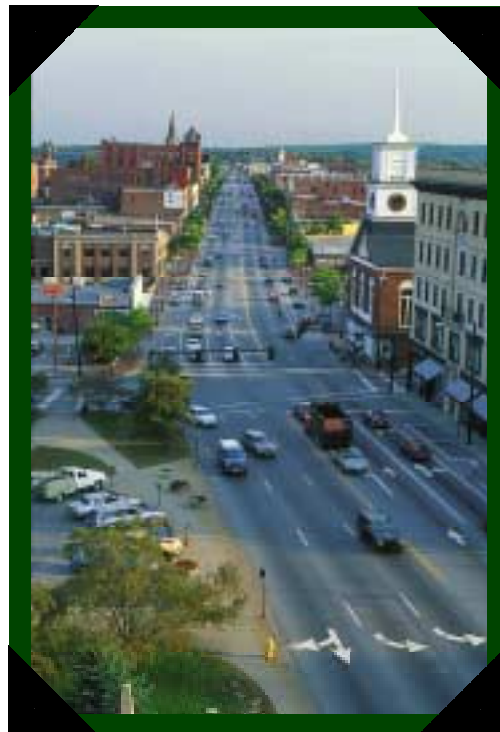


The New Hampshire Future Planning Guide



Volume 2

Legal & Financial Planning for a Person with a Disability

THE NEW HAMPSHIRE FUTURE PLANNING GUIDE

Volume 2: Legal & Financial Planning for a Person with a Disability

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PREFACE

The idea for the *New Hampshire Future Planning Guide* came from many individuals: consumers, parents, professionals, and community members. While other guides are available to assist with future planning, none were specific to New Hampshire's laws and services for people with disabilities and those who support them.

The *Guide* is divided into two volumes. *Volume 1: Life Planning for a Person with a Disability* will help you develop a *life plan* and a *letter of intent*. They can be used to share information, dreams, and aspirations for a person with a disability. While not a legal document, the *letter of intent* can accompany legal documents, such as a will or a trust, and communicates important information about the person. Developing a *life plan* or *letter of intent* sounds easy but many details can be overlooked without tools and lists to refer to. This *Guide* provides you with tools and lists to aid with planning.

Volume 2: Legal & Financial Planning for a Person with a Disability offers legal and financial information to assist you with legal and financial planning. It explains why planning is so important and provides valuable information about guardianships, public benefits considerations, special-needs trusts, and health care coverage. While not a replacement for the services of a financial planner or attorney, it will assist you to develop the proper legal and financial planning to support the vision outlined in your life plan.

The *Guide* has been designed to use in a variety of situations and at any point in a person's life. Younger parents, extended family members, aging caregivers, professionals, and others providing support will discover that the information included in the *Guide* is helpful when developing a future plan.

You don't need to use the entire *Guide*. Choose the most appropriate volume and sections for your situation. The *Guide* is a *do it yourself* tool, but may be completed with the guidance of a trained facilitator or service provider. It can also serve as a discussion tool for meetings or for reviewing and outlining important information prior to seeing an attorney or financial planner.

A future plan changes as your situation changes. Its content should be reviewed each year to make sure the information remains current. Federal and state laws and regulations do change. The services and supports available to people with disabilities fluctuate and situations change. Because of this, a future plan should be reviewed and updated at least annually.

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*To receive updates to the New Hampshire Future Planning Guide, please complete the **Update Card** found at the end of this Guide. Updates will also be available on our website, www.csni.org. For information on locating a facilitator, email info@csni.org.*

FUTURE PLANNING: LIFE, LEGAL AND FINANCIAL PLANNING

AN INTRODUCTION

What is “future planning” and why might it apply to you? Why should you plan and how do you start? These and many other questions are answered as we address myths about planning for the future and help guide you through the process.

FUTURE PLANNING LIFE, LEGAL, AND FINANCIAL PLANNING AN INTRODUCTION

Introduction by Deborah Merritt

What is future planning? Why should you plan? How do you start?

These and many other questions are answered as we address myths about planning for the future and help guide you through the process.

WHAT IS FUTURE PLANNING?

Future planning is thinking about the future for you, a family member, or a friend (*life planning*) and then identifying the people, resources, and supports needed to make all, or part, of the plan a reality (*legal and financial planning*). The focus can be on the future while you are still living, as well as after your death.

When you support a person with a disability, you may assist him/her in planning for the future. Just as it is important in your personal life, it is important to structure a legal and financial framework to support his or her needs, life plans, and goals.

Those supporting a person with a disability may encounter special issues related to his or her care and support. Issues may range from obtaining communication devices, education, employment, housing, and transportation to ensuring access to favorite foods, recreation and visits with friends.



The most important part of a future plan is that it reflects your situation and that it is flexible enough to allow for changes in the future. It encourages the person with a disability to make decisions while providing guidance only as needed. No one knows what the future holds, but it is empowering and reassuring to have thought about the possibilities for the future and to have planned accordingly.

Your plan will depend on whether you are planning for the near future or distant future. Some issues might be taken care of now while others are identified for future attention – either during your lifetime or after your death. If the person with a disability is young, it may not be possible, or appropriate, to make specific plans about adult issues like employment and support services. However, as adulthood approaches, you may revise the plan to include the relevant issues.

The key steps in legal and financial planning are to:

1. Identify current and future needs;
2. Identify goals;
3. Identify current and future costs for needs and goals;
4. Identify resources;
5. Identify ways to maximize resources;
6. Identify people that will help; and
7. Create a plan.

Whenever you hire a professional, hire one who understands disability issues, including public benefit eligibility. Different professionals may help you put the plan together. Seek an attorney who understands not only legal and financial planning issues but who is also knowledgeable about government benefits and understands and is sensitive to the needs of people with disabilities. The future plan may require the services of a financial planner, accountant, or life insurance broker to accomplish your goals. It may depend on family members, friends, and other advocates who are familiar with the service system as well as public and private resources available in the community.

WHY PLAN FOR THE FUTURE?

People with disabilities may need significant assistance and support from others. Changes involving the important people in their lives can be especially disruptive. A future plan allows those currently providing support to work with the person with a disability to set up alternatives in the event something happens that makes them unable to continue to provide support. Generally speaking, better and more comprehensive decisions are made when we plan rather than when we are reacting to a crisis.

Judy resides in Northern New Hampshire. She has cared for her daughter, Mary, at home since her birth. Judy is now in her late 70s and Mary is in her late 40s. Recently, Judy was admitted to the hospital with heart problems. When asked about her plans for Mary after she was no longer able to care for her, Judy responded that her plan was for Mary to go to a nursing home. Mary has no obvious medical needs that would require nursing home care and it is doubtful that such a setting would be approved by the State. Judy's lack of understanding of the options available for Mary could result in a crisis for her and her daughter.

The purpose of any plan is to provide options and control over what will happen when a significant event occurs. While the future is unknown, we know some things will happen, such as the eventual death of a parent or other person providing support. Many other major life changes, however, come as a surprise. For example, if a mother who has supported her son for his entire life suddenly becomes incapacitated or dies, someone else will need to support him. If his mother has developed a future plan, she may have arranged for people he is familiar with to help ease the transition. She also may have lined up support services with people familiar with her son's needs and interests.

For those receiving government financial assistance or health care benefits, financial planning is imperative. A future plan can ensure that a person with a disability keeps needed benefits and is able to use the additional assistance from others to purchase necessary items not covered by government programs.

Some people have disabilities that affect their capacity to manage money or make financial decisions. A future plan can name someone to manage assets on behalf of a person with a disability. The plan can be structured or somewhat flexible, but should be made keeping in mind the physical and emotional needs of the person. You can place assets in a trust to be managed by a trustee acting on behalf of the person. A trust can also own a house, cash, and other income from savings or life insurance proceeds or other property.

Lack of planning = Undesirable outcomes

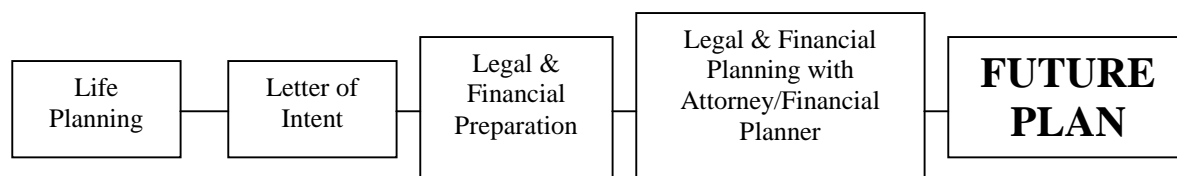
According to New Hampshire law, if you die without a will, your children will **directly** inherit money and other assets. If your son or daughter with a disability receives SSI and Medicaid (or could qualify for these benefits when he or she becomes an adult), the following is likely:

1. He or she will lose benefits and have to use the inheritance for daily living costs and health care. Few inheritances are large enough to cover these costs for long. The needs you intended to meet with your money could go unmet.
2. If he or she receives services funded by the Department of Health and Human Services, the inheritance can be claimed by the State to cover the cost of these services until it is depleted. These services typically cost tens of thousands of dollars a year for one person.

A future plan cannot make the future predictable, but it can establish a framework to deal with changes and minimize disruptions and transitions. Setting up a plan now enables the person with a disability, you and others who provide support to make informed decisions together, taking into consideration all options, rather than having to act under pressure or having a court make those decisions for you. It also allows you to act before a key person dies or cannot participate due to illness or other unexpected changes.

WHAT ARE LIFE, FINANCIAL, AND LEGAL PLANNING?

Future planning has two main parts: *life planning* and the *financial and legal plans* to support that life plan. Most people want to direct how money or assets will be distributed, minimize taxes, and choose who will care for their minor children. Those providing support may name people who will provide future support for a person with a disability who needs assistance. This is accomplished by creating a plan that includes a will, letter of intent, special needs trust, and/or other pertinent documents.



Life planning is thinking about life today and what you would like it to be in the future. Planning should include decisions about: home, employment, learning/education, health & well-being, relationships/affiliations, and lifestyle decisions. The same approach applies to planning for a person with a disability. Prior to considering your financial and other resources, you need to think about:

- What in the person’s current lifestyle is important to maintain in the future;
- What is desired for the future; and
- What supports will likely be needed to make this happen?

Developing this *life plan* will help you to set priorities and will guide legal and financial planning. Remember – it is natural and expected that plans will change over time.

To carry out the life plan, it is important to do the legal and financial planning to support the life plan. Legal and financial planning builds a legal and financial foundation to support lifetime needs.

Financial planning is the way people direct what will happen to money and other assets after their death. Financial planning can help people in all types of financial situations.

When we think of planning for the future, we often think of financial planning. Financial planning is actually the means to an end and should come after you’ve thought about a desired future. As a part of financial planning, you will identify costs of the plan, evaluate resources, consider what you can accumulate through investments, and identify other resources that might help. It is similar to planning for retirement. You know you need to save money but the amount depends on having a general idea of what you want to do after retirement and what you will need.

A good future plan has a financial section that identifies how assets are to be managed and spent on behalf of the person with a disability and names who will have authority to handle the assets. It may name someone who will help the person, if necessary, make other life decisions such as where he or she will live or what type of health care he or she will receive. It may name someone who will advocate for the person, make sure that appropriate supports are provided, and ensure that those supports are updated as the person’s needs change.

Legal planning is the creation of mechanisms to assist the person with a disability with personal and financial decision-making. When planning for the future, evaluate the need for future decision-making assistance for the person, how much assistance is needed and what method of assistance is best. Assistance includes, but is not limited to, an advocate, a durable power of attorney, living will, representative payee, and guardianship.

Planning may include exploring and applying for resources available to the person with a disability. He or she may be eligible for Medicare, Social Security benefits or private benefits through an employer. If the person has limited self-support, he or she may apply for public assistance such as Food Stamps, Financial Assistance or Medicaid to support food, clothing, shelter and medical needs. If you currently support him or her or supplement his or her public benefit, you may establish a special needs trust to provide the same type of support that you provide today, even after your death. The person may also need to consider a will and mechanisms for assistance such as powers of attorney or guardianship.

A legal and financial plan should help to:

- Ensure that basic needs are always met;
- Support the achievement of goals;
- Minimize disruption from life changes;
- Keep the supports in place that you worked hard to put in place; and
- Give you peace of mind

Planning is important whether you are rich or poor. Legal and financial planning is important for everyone.

WHEN SHOULD YOU START PLANNING?

It is never too early to start planning. And it is never too late either. The decisions that are part of future planning are not only legal and financial but also those that will determine what the life of the person with a disability will be like when you or other providers of supports are no longer available. Planning helps the person live where and with who he or she chooses.

Gregg has lived with his grandfather since a young age. Now in his early 80s, Gregg's grandfather realizes he must start to think about his grandson's future. Gregg has been relatively isolated from his community as his grandfather worries about his "outbursts" and has not wanted to worry that Gregg might scare someone. Originally he thought a neighbor would care for Gregg, however her health is failing and that is no longer an option. Gregg's grandfather realizes that he must begin to plan for Gregg's future, and that means helping Gregg re-enter community life while they are still together.

While this manual is about planning for an adult, it is never too early to plan. It is as important when someone is young as it is when he or she is an adult. Once established, the plan should be revisited and revised to meet life changes, changes in the law, and changes in support programs.

It is wise to establish a plan early in the person's life, and to adapt it as needs and capabilities change. Parents of minor children who do not receive government benefits may believe that they do not need to establish a future plan until their son or daughter becomes an adult or becomes entitled to benefits. But future planning looks at more than finances.

A future plan has you consider the person's life now and think about what it should be as he or she gets older. It requires you to ask yourself what you need to do to ensure that important supports will be there for this person so he or she can live the life you both want. If you have not already done so, evaluate where you are today and start planning for the future now.

Remember, a future plan may involve many parts that work together. Parts of the plan may be somewhat informal such as talking with others about your ideas for the person with a disability through a *Letter of Intent*. Other parts, such as trusts and wills, are very technical and usually require the assistance of an attorney knowledgeable about disability-related issues. Many things that impact people with disabilities are governed by New Hampshire law. It is essential to find an attorney familiar with those laws.

IS THERE ONLY ONE WAY TO DEVELOP A FUTURE PLAN?

No, one plan does not fit all. Each individual and situation is unique so each future plan will be unique. When you are preparing a future plan consider:

- As you get older, what might your needs be? How does that impact planning?
- Which other family members do you need to think about and talk with as you develop a future plan?
- What assets do you want to leave to the person with a disability? To others?
- What types of support does the person with a disability need? What will they need in the future?
- How can you maximize his or her independence and ability to enjoy the highest quality of life possible?
- Who else in the person's life should be involved in the planning process?
- How will you include the person with a disability in the planning process?

For each person asking these questions, the answers will vary. Your attorney will have certain legal issues to address, but your goals and expectations should be incorporated into the plan as fully as possible. Other professionals you consult should be willing to consider all possible planning options rather than fitting your situation into a *one-size-fits-all* plan.

Myths and Realities

Myth: *I have little money or few assets so I don't need to plan.*

Reality: Planning involves much more than finances. It is important to plan even when there is little or no money involved. Planning increases the likelihood that your wishes will be carried out.

Myth: *There is no guarantee that services will be available when we need them. The service system keeps changing so we shouldn't plan.*

Reality: If the exact support you specify isn't the same when it comes time to implement your plan, others you've chosen can work with the person with a disability to change details within the plan you've developed.

Myth: *After I die, the person with a disability will receive government benefits which will provide everything he or she needs.*

Reality: Government benefits, if available, only cover basic necessities, such as food, clothing, shelter and medical care. Usually, other items that impact quality of life, such as special equipment, personal, and household items are not covered.

Myth: *I have left everything to my other children who will take care of the person with a disability.*

Reality: While you may have faith in your other children, if you leave them money with the expectation that they will care for the person with a disability, without a written plan you have no way to control how they actually spend the money.

Myth: *If the person with a disability is not eligible or does not yet qualify to receive services from the Department of Health and Human Services, there's nothing I can do.*

Reality: Some have been able to help the person with a disability become more independent with little or no formal services, particularly when support needs aren't very great. Some have helped by renting an apartment and assisting with the cost of supports. Some people may not be able to get formal supports now, but may when their caregivers are not longer able to provide support. Planning helps direct how services should be provided if and when they do become available.

Myth: *I'm too old (too young) to start planning.*

Reality: Future planning is ongoing. The earlier you start thinking about a future plan, the better prepared you and the person with a disability will be for the future. However, it is never too late.

Myth: *I shouldn't establish a future plan in case the laws change.*

Reality: Laws do change, but a good plan is flexible enough to adapt to any changes. Plans should be reviewed and revised periodically. If you die without a will, the state decides where your money will go and this distribution could affect the person's future.

HOW DO I GET MY PLAN ON PAPER?

Let's get started planning. Where do you begin?

- Think about your present life and the life of the person with a disability.
- Look at the person's strengths, interests, and needs.
- Think about the future.

This *Guide* is divided into two volumes: ***Volume 1: Life Planning*** and ***Volume 2: Legal & Financial Planning***.

Volume 1: Life Planning is divided into two major categories: *life domains* (home, employment, learning/education, health & well-being, relationships/affiliations, and lifestyle) and *critical concerns* (decision-making, communication, and beliefs). There are a variety of planning tools for each section for you to choose from. Select the section and tools that work best for you, the person with a disability and your situation.

Each section has a series of questions that you may use when preparing your plan. The appropriateness of each question will depend on things like the person's age, the impact of his or her disability on independence and decision-making and other individual circumstances. By addressing all the sections of the plan that are pertinent to the life of the person with a disability, a comprehensive picture of his or her life will emerge and your vision and the vision of the person with a disability will come together.

Once you have developed the future plan, you can insert it into a *Letter of Intent*. You should write a Letter of Intent whether or not you develop a detailed plan and regardless of the age of the person with a disability. This familiarizes others with the person with a disability and expresses your expectations and wishes for his or her life. While not a legal document, the Letter of Intent accompanies your legal documents and serves as a reference when legal questions arise.

Volume 2: Legal and Financial Planning has important planning tools and facts to help you create a plan for your situation. A *legal and financial plan* should have three parts: a personal plan, a financial plan and an estate plan. The personal plan should address assistance in decision-making, assistance that may range from a power of attorney to a guardian. The financial plan should be a plan for how to meet the costs of the future and may include an investment or savings plan. The estate plan should be a plan for what will happen to assets and responsibilities after death.

This volume provides information on wills, cash assistance, health care coverage, public benefits, the Special Needs Trust, and assistance in personal and financial decision-making. As with the life planning volume, there are tools to assist you in your planning.

REMEMBER – Government benefits, laws, and regulations are always changing. It is important to understand that many of the programs described in this volume are subject to change. Please protect yourself by checking on the most recent changes before and while making plans for the person with a disability.

SOME FINAL THOUGHTS...

Planning for the future is critical to the quality of life of the person with a disability. A future plan is unique to each person and situation. There is no cookie-cutter model. Look at your goals and your needs, as well as the goals and needs of the person with a disability. Take a thorough accounting of income and resources, as well as expenses. Figure out how to meet the goals and needs of the future and create a plan. Decide what you want to happen after your death and after the person's death. Seek knowledgeable professional advice and assistance in planning when necessary. Address your unique situation, stay flexible, and stay in control.

We believe that the *Guide* will help you plan for the future of the person with a disability. This is a courageous undertaking and we trust the *Guide* makes the process just a bit easier.

LEGAL AND FINANCIAL PLANNING

Legal and financial planning are complex areas, particularly as they relate to eligibility for public benefits. We have tried to make this volume as clear and concise as possible while still giving you the important and detailed information that you need.

Different professionals are available and may help you put your legal and financial plan together. You may hire an attorney, a financial planner, or an insurance broker to assist you. Whenever you hire a professional, hire someone who understands disability issues and public benefit programs.

Government benefits, laws, and regulations are always changing. It is important to understand that many of the programs described here are subject to change. Please protect yourself by checking on the most recent changes before and while making plans for a person with a disability.

INTRODUCTION TO LEGAL AND FINANCIAL PLANNING

WHAT IS LEGAL AND FINANCIAL PLANNING?

Legal and financial planning is a process through which a person builds a legal and financial foundation to support lifetime needs. Many of us undertake legal and financial planning when we make plans for retirement and our elder years. We take jobs with pension plans and 401-Ks. We invest funds in money market accounts and individual retirement accounts (IRAs). We purchase long-term care insurance and disability insurance. We establish powers of attorney for health care and financial matters to ensure that the people close to us will make decisions for us if we become incapacitated. We sell our lifetime homes for retirement homes and reap capital gains benefits. We draw up wills to ensure that after our deaths our cherished items and other assets will go to the people we choose.

When you have a family member with a disability or support a person with a disability, you will likely assist him or her in planning for the future. Just as it is important in your life, it is important to structure a legal and financial framework to support his or her needs, life plans, and goals. Planning may include exploring and applying for resources available to the person with a disability. He or she may be eligible for Medicare, Social Security benefits, or private benefits through an employer. If there is limited self-support, he or she may apply for public assistance such as Food Stamps, Financial Assistance or Medicaid to support food, clothing, shelter, and medical care needs. If you currently provide support or supplement his or her frugal public benefits, you may establish a trust to provide the same type of support that you provide today, even after your death. The person with a disability may also need to consider a will and mechanisms for assistance such as powers of attorney or guardianship.

WHY UNDERTAKE LEGAL AND FINANCIAL PLANNING?

The most important reason to do legal and financial planning is that it will better enable you and the person with a disability to get what you both want and need out of life. You know better than anyone what your needs and goals are. You and the person with a disability are the best people to make this plan. If you do not create a legal and financial plan, a stranger may make many life-altering decisions for you and the person with a disability.

A legal and financial plan should help to:

- Ensure that basic needs are always met;
- Support the achievement of goals;
- Minimize disruption from life changes;
- Keep the supports in place that you worked hard to put in place; and
- Give you peace of mind.

Planning is important whether you are rich or poor. Legal and financial planning is important for everyone.

Meeting basic needs -- The basic needs of a person with a disability are more than food, clothing, shelter and health care. There is another level of basic needs critical to quality of life that may include communication devices, personal care attendants, or special transportation. Personal assets and public benefits may not cover all of these needs and a plan is important to make sure that these needs are met.

Supporting goals -- The person with a disability has goals. Goals may include recreation, employment, education, and more. Goals may also include learning to ride the bus alone or to cook basic meals. Some goals may be fairly easy to fulfill and others will be challenging. A plan should help to develop and support all goals.

Minimizing disruption from life changes -- We know that life changes will occur, but often we do not know when. It is especially important to plan for the life changes that we cannot time, such as sudden illness, incapacity, or death. It is much easier to plan ahead than to plan in the midst of a crisis. Dealing with your death will be difficult enough for the person with a disability without also having to deal with a complete disruption of his or her life.

Mary is 76 years old and has always been very healthy. She has a 55-year-old son, Alan, who has a developmental disability. He has lived with Mary all of his life. Alan has never worked and is dependent on Mary for his needs. Mary has made no plans for the future. She has always been able to care for Alan and preferred to provide his care. Mary had a stroke last week. She cannot walk, write or talk and will go to a nursing home. What happens to Alan?

Keeping supports in place that you worked hard to put in place -- Many people have worked hard to support the person with a disability. Many make sure that the best supports are in place and continue to watch for new supports and resources that may help make his or her life even better. Without a plan for the future, the person with a disability may lose the supports that many worked hard to put in place.

Sarah is 23 years old and has a severe disability. Sarah is expected to live well into her seventies. Sarah does not work, lives in a supported apartment and is very happy. Before they died, Sarah's parents worked very hard to help Sarah attain as much independence as possible.

Sarah's parents were a middle-class couple who loved their daughter very much but were not able to meet the high costs of her care. Sarah therefore depends upon public benefits—SSI and Medicaid. Public benefits leave little extra spending money. Fortunately, Sarah's parents were able to provide the extras. For example, Sarah's parents purchased a new motorized attachment for Sarah's wheelchair that Medicaid would not cover. They were able to purchase special clothing for people in wheelchairs that made Sarah feel better about herself.

In their will Sarah's parents left her \$20,000 so that Sarah could continue to get the extras that they always provided. The money went directly to Sarah. Sarah now has too much money to qualify for public assistance. Her public assistance has stopped and will not start again until she has only \$1,500 left. \$1,500 will not buy many extras over the next 50 years. If Sarah's parents had put the \$20,000 into a special needs trust, Sarah would have continued to qualify for public assistance and her parents would have continued to give her extras for a long time.

Getting peace of mind -- A legal and financial plan will remove much of the emotional and economic strain of caring for a person with a disability. It is empowering and comforting to have such a plan in place.

HOW DO YOU DO LEGAL AND FINANCIAL PLANNING?

The key steps in legal and financial planning are:

1. Identify current and future needs;
2. Identify goals;
3. Identify current and future costs for needs and goals;
4. Identify resources;
5. Identify ways to maximize resources;
6. Identify people that will help; and
7. Create a plan.

Different professionals are available and may help you to put the plan together. You may hire an attorney, a financial planner, or an insurance broker to assist you. Whenever you hire a professional, hire one who understands disability issues, including public benefit eligibility.

WHEN DO YOU DO LEGAL AND FINANCIAL PLANNING?

While this manual is about planning for an adult with a disability, it is never too early to do legal and financial planning. It is as important for a child as it is for an adult. Once established, the plan should be revisited and revised to meet life changes, changes in the law and changes in support programs.

WHAT SHOULD A LEGAL AND FINANCIAL PLAN LOOK LIKE?

A legal and financial plan should have three parts:

- A personal plan;
- A financial plan; and
- An estate plan.

The personal plan should address assistance in decision-making, assistance that may include a power of attorney or a guardian. The financial plan should be a plan for how to meet the costs of the future and may include an investment or savings plan. The estate plan should be a plan for what will happen to assets and responsibilities after death.

A legal and financial plan is unique to each situation. There is no cookie-cutter model. Look at your goals and your needs, as well as the goals and needs of the person with a disability. Take a thorough accounting of income and resources, as well as expenses. Figure out how to meet the goals and needs of the future and create a plan. Decide what you want to happen after death. Seek knowledgeable professional advice and assistance in planning when necessary. Address your unique situation, stay flexible, and stay in control.

WHAT DO YOU NEED TO KNOW?

There are important planning tools and facts that can help you create a plan for yourself and for the person with a disability. This volume provides information on:

- *Wills*: what a will is; how to create a will; the effect of leaving property to someone; how a will works for you; what property goes through probate; what happens if you die without a will; advantages and drawbacks of a will; and what provisions you should expect to see in your will.
- *Cash Assistance*: the cash assistance options available to the person with a disability for the purchase of basic needs (food, clothing and shelter). The options discussed include New Hampshire Financial Assistance, Supplemental Security Income, Food Stamps, and Social Security Federal Old-Age, Survivors and Disability Insurance. There is also a brief discussion of other options such as life insurance, pensions/retirement benefits, trusts, and burial funds.
- *Health Care Coverage*: the different types of medical care coverage available, including Medicaid, Medicare, and private health insurance.
- *Public Benefit Considerations*: the reimbursement requirements and asset transfer rules for public benefit programs.
- *The Special Needs Trust*: what a trust is; the reasons to create a trust; what a special needs trust is; and the differences between a special needs trust created with the assets of a person with a disability and a special needs trust created with your assets or another person's assets. There is also information on the selection of a trustee and what property to put into a trust.
- *Assistance in Personal and Financial Decision-Making*: what alternatives for decision-making assistance are available for the person with a disability. The discussion ranges from the least restrictive assistance alternative, an advisor, to the most restrictive alternative, guardianship. This section also includes information on other methods of assistance, such as, the durable power of attorney for health care, the living will, and more.

WILLS

What is a will? How do you create one? What happens if you don't have one? What are the advantages and drawbacks of a will? What should you see in your will?

WILLS

WHAT IS A WILL?

A will is a legally enforceable document that describes how you wish your property to be distributed after your death. A court will ensure that the directions that you make in your will are carried out.

When you support a person with a disability, a will serves as a tool to help you continue to provide for that person after your death, much as you did before your death. Through a will, you may provide financial support, property, a recommendation for a guardian, and more.

HOW DO YOU CREATE A WILL?

There are several ways to create a will. You may create a will by completing a pre-printed will form that you purchase from an office supply store. You may buy a book or search the Internet for instructions on how to create a will and create your own will. You may also have an attorney create a will for you.

When you support a person with a disability, it is advisable to have an experienced attorney create your will. To be legally enforceable, a will must be created according to state law. An attorney, and more specifically a *probate attorney*, is an expert in the law of wills and can ensure that your will is legally enforceable. You should also engage a probate attorney with experience in planning for someone with a disability.

If you support a person with a disability, it is likely that you have a much more complicated situation than if you did not. For example, if the person receives or is likely to need public benefits, such as Medicaid, public benefit eligibility should be considered when planning; an attorney with knowledge and experience in public benefit law can help address this situation.

HOW MAY THE RECEIPT OF PROPERTY AFFECT THE PERSON WITH A DISABILITY?

When you create a will you must consider how the receipt of property— whether money, personal items or real estate — will affect the person with a disability. This consideration makes it especially important that you engage an attorney who is knowledgeable about planning for a person with a disability. When you leave property outright to the person, the following may happen.¹

1. As the result of too many assets, the person may become ineligible for public benefits, such as Medicaid or SSI. If ineligible, he or she will be forced to deplete or spend down the assets left by you before becoming eligible again for public benefits.
2. The person may not be able to manage the inherited property and a guardian, not of your choosing, may be appointed to do so.

¹ See *Alternatives, A Family Guide to Legal and Financial Planning for the Disabled* by L. Mark Russell.

3. If the person is not competent, and therefore unable to create a valid will of his or her own, the probate court will determine the distribution of the property that remains at the person's death.
4. The State of New Hampshire may seize the property as a reimbursement for payments that the State previously made for the person under the State Financial Assistance or Medicaid programs.
5. Creditors of the person may seize the property.

An experienced attorney can help you with these matters.

HOW DOES YOUR WILL WORK FOR YOU?

Upon your death your *executor* begins the *probate* of your will. The executor is the person that you name in your will to represent you and carry out the provisions of your will. Probate is a proceeding in which the probate court establishes your will as a valid will. Within 30 days of your death, your executor will file papers to begin probate proceedings in the probate court. Your will remains in probate for 6 months. During this time, any party may challenge your will. (You should note, however, that not everything is put "on hold" during the probate period. During the probate period, the court may appoint a guardian for the person with a disability, if a guardian is necessary.)

The role of your executor is important. Your executor will act as the liaison between your estate and the probate court and manage the administration of your will. In the performance of these duties, the executor must use utmost care when carrying out all duties. In the following order, your executor will: (1) collect and manage the estate; (2) settle and pay your debts; and (3) according to the provisions of your will, distribute the remaining assets. If the executor wishes, he or she may employ an attorney to perform these duties.

MUST ALL OF YOUR PROPERTY GO THROUGH PROBATE?

The probate proceeding does not apply to all of your property. Non-probate property is property over which the probate court has no authority and includes life insurance policies, retirement benefits, property held in joint tenancy, trusts created during your lifetime, and gifts made by you during your lifetime. Non-probate property may be distributed immediately or in accordance with any distribution provisions that you made. These are often referred to as alternative ways of leaving property rather than leaving the property by will.

WHAT HAPPENS IF YOU DO NOT HAVE A WILL?

When you do not leave a will or you do not leave a will that is valid under the law, the probate court will step into your shoes. When there is no will, there is no executor named to represent you. Therefore, the probate court will appoint a personal representative, known as an administrator, to administer your estate.

Since the administrator has no will to direct the distribution of your property, the administrator must follow the distribution scheme outlined in New Hampshire law.

If you are survived by your spouse, your spouse receives:

- The entire estate, if you leave no surviving children, grandchildren or parents;
- The first \$50,000 plus one-half of the remainder of the estate, if—
 - You have one or more surviving parents but no surviving children or grandchildren;
 - You have surviving children or grandchildren and all are also children or grandchildren of your surviving spouse;
- One-half of the estate, if there are surviving children or grandchildren and at least one is not a child of the surviving spouse.

The remainder of the estate that does not pass to your surviving spouse or the full estate, if you have no surviving spouse, passes to the first surviving of the following:

- Your surviving children or grandchildren;
- Your parents;
- Your brothers or sisters and the children of your deceased brothers and sisters;
- The children of your brothers and sisters;
- Your grandparents;
- The children of your grandparents;
- The State of New Hampshire.

Notice that in this distribution scheme, there is no accommodation for the care of a person with a disability or for the preservation of his or her public benefits. If you do not make a will or other provisions for him or her, the probate court will make no special accommodations for the person with a disability.

WHAT ARE THE ADVANTAGES AND DRAWBACKS OF HAVING A WILL?

Each person has a unique set of circumstances and property. Therefore, each person must design a will, or select appropriate alternatives to a will, to meet their unique needs. In this process you should consider the advantages and drawbacks of a will.

Advantages of a will—

- You may designate to whom and how your property is distributed after your death.
- You may select the person (executor) who will administer your estate.
- You may create a testamentary trust for the person with a disability and name a trustee for that trust.
- You may leave funds and other assets to an existing trust for the person with a disability.
- You may nominate a guardian for the person with a disability for the court to consider when making a guardianship appointment.
- You may receive tax benefits by transferring property through a will or an associated mechanism, such as a trust.

There are drawbacks to a will. Probate may become time-consuming and expensive. Federal and state tax consequences may make passage of some property through a will less beneficial.

Alternatives to a will include leaving non-probate property, such as, life insurance benefits, retirement benefits, property in joint tenancy, trusts created during your lifetime, or property gifted by you during your lifetime. Joint tenancy between spouses, for example, may be very appropriate for a small estate, allowing for immediate passage (no probate) to your surviving spouse.

WHAT SHOULD YOU EXPECT TO SEE IN YOUR WILL?

In a nutshell, New Hampshire law requires that to be a valid and legally enforceable will the will must be:

1. Made by a person 18 years of age or older and of sane mind;
2. In writing;
3. Signed by the person creating the will (the *testator*); and
4. Signed by 2 or more witnesses.

When the will and these steps are completed, the will is complete or *executed*. However, the will is not final and enforceable until the death of the maker.

Your attorney should give you a rough draft of your will to review prior to your signing it. The list below outlines the different types of provisions that are commonly found in a will. Check the draft to be sure that it has all the provisions that you expect and that it is clear. The final copy of your will should have no erasures or corrections. Finally, make sure that you and at least two witnesses sign the final copy.

Common Will Provisions

- Statement of your intent to make a will
- Revocation of prior wills
- Provision for payment of debts
- Instructions for a funeral and burial
- Specific gifts of money or property
- Residuary clause (property remaining after all the gifts are made)
- Appointment of an executor and a back-up
- Recommendation of a guardian for the person with a disability
- Simultaneous death provision (for spouses)
- A trust
- Signature statement and your signature
- Witness statement and witness signatures

After you create a will, you may modify it by creating a *codicil* or *revoke* it when your situation or wishes change. You should periodically review your will to ensure that it continues to be appropriate and meets your wishes. You should also review your will when you experience significant life changes, such as a marriage or a divorce.

If you want to make a small change in your will, you may do so by creating a *codicil*. A *codicil* is an addition to a will that may modify or revoke a provision in your original will but does not entirely cancel the original will. It is important that you ask your attorney to draw up a *codicil*; the law requires that the *codicil* be created with all the legal formalities of a valid will.

If you want to make substantial changes to your will or cancel the will all together, you may revoke your will. A *revocation* makes the will inoperative. You can revoke your will in any number of ways. You may, for example, burn it, shred it, or write “revoked” or “cancelled” across it. It is best to destroy a revoked will.

You should keep your will in a safe and accessible place. You should not keep your will in your safety deposit box if no one else will have access to the box. When you die, your bank may seal the safety deposit box pending the probate of your will.

You should leave any papers that may affect what is done after your death with your will. For example, you should leave your Letter of Intent for the person with a disability with your will. Although the Letter of Intent is not legally binding, it will inform the probate court of your wishes and help the court to make decisions regarding the person with a disability.

The Checklist for Wills and Estate Planning found at the end of this volume, contains a checklist of items that your attorney should know when preparing a will and planning your estate. Terms related to wills and their definitions are found on the following page.

TERMS RELATED TO WILLS

Administrator: The personal representative appointed by the probate court to administer the estate of an individual who dies without a will.

Codicil: An addition to an existing will that modifies or revokes provisions in the will.

Distribution Scheme: The plan of distribution of the remainder of the estate, after payment of debts, to those legally entitled to the remainder.

Estate: All of the property owned by a person. "Estate" includes personal property and real estate.

Execution of Will: The writing, signing, and witnessing of a will.

Executor: The personal representative named in a will to represent and administer the estate after the death of the maker of the will.

Fiduciary: A person with the duty of utmost loyalty and trust and the duty to act in good faith, all for the benefit of another person.

Intestate: Without a will.

Joint Tenancy: The equal ownership of property (personal property or real estate) by two or more persons with right of survivorship.

Personal Property: All property that is not real estate. Personal property includes clothing, household items, money, life insurance and more.

Probate Court: A court having jurisdiction over the probate of wills.

Probate: A proceeding in which a court establishes a will as a valid will.

Real Property: Real estate or realty.

Residuary Clause: A clause in the will that disposes of the residue of the estate.

Residue: The remainder of a deceased person's estate after all debts of the estate are paid and specific gifts are made.

Revocation of will: Annulment of an existing will by an act of the maker of the will.

Testamentary: Having to do with a will.

Testate: Having made a valid will.

Testator: The maker of a will.

CASH ASSISTANCE

When a person does not have employment income or when a person has insufficient income, there are programs to draw on for cash assistance if the person meets eligibility requirements. Cash assistance helps pay for food, clothing, and shelter. Several options are discussed in this section.

- *New Hampshire Financial Assistance*
- *Supplemental Security Income*
- *Food Stamps*
- *Social Security Insurance*
- *Other – Life Insurance, Pensions or Retirement Benefits, Trusts, Burial Funds*

STATE FINANCIAL ASSISTANCE

New Hampshire Financial Assistance programs provide cash to individuals with insufficient income and resources so that they may pay for food, clothing and shelter. The State, through the New Hampshire Department of Health and Human Services, provides assistance to individuals through— Old Age Assistance (OAA); Aid to the Needy Blind (ANB); and Aid to the Permanently and Totally Disabled (APTD). An individual may apply for assistance under any of the three categories and if eligible for more than one, must choose one. If the person with a disability meets the requirements for OAA, ANB or APTD, he or she may also receive benefits for special living arrangements— the residential care facility, the community residence, or a home- and community-based care (HCBC) program.

Special Living Arrangement	Services
Residential Care Facility	Personal and social care to adults who are elderly or physically disabled who cannot live alone but do not require institutionalization.
Community Residence	Personal and social care to individuals with a mental illness or a developmental disability who cannot live alone but do not require institutionalization.
HCBC — Elderly or Chronically Ill, Developmentally Disabled, or Acquired Brain Injury	Home- and community-based services that an individual needs in order to prevent institutionalization.

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE?

To be eligible for Financial Assistance, a person must meet: (1) the general eligibility requirements, (2) the categorical eligibility requirements, and (3) the financial eligibility requirements.

General Eligibility Requirements

There are several general eligibility requirements for the New Hampshire Financial Assistance program, including residency and citizenship requirements. Areas of special interest to a person with a disability and those who support him or her are the liability of a parent, child, or spouse to help support the person with a disability, the requirement that a person with a disability develop all potential sources of income, and public assistance reimbursement requirements. (For more on reimbursement requirements, see *Reimbursement of Public Assistance Payments* under *Public Benefit Considerations*.)

Categorical Eligibility Requirements

The basic categorical eligibility requirements for New Hampshire's Financial Assistance programs are listed below. If a person qualifies under OAA, ANB or APTD, the person may also apply for assistance in a special living arrangement (a residential care facility, community residence, or home- and community-based care program) if the level of care in the living arrangement is appropriate.

Financial Eligibility Requirements

OAA Categorical Requirements

1. 65 years of age or older.

ANB Categorical Requirements

1. Central visual acuity of $\leq 20/200$ in the better eye, with correction; *or*
2. Field of vision limitation in which the widest diameter of visual field is under a 20° angular distance; *or*
3. Vision so defective that it prevents the performance of ordinary activities for which functional eyesight is essential.

APTD Categorical Requirements

1. Age 18 through 64; *and*
2. Physical or mental disability that is likely to result in death or expected to last for a continuous period of not less than 48 months.

To meet financial eligibility requirements, a person must be both income- and resource-eligible. The financial eligibility criteria are important to consider when planning for a person with a disability.

Income Eligibility

The income-eligible individual has a countable income that falls at or below the Financial Assistance income limit. The State looks at all of the income that is available to a person. As required by law, the State excludes some income and makes deductions from the income that remains. See examples of income, excluded income and deductibles below.

Examples of Income, Excluded Income, and Income Deduction

Income

Salary or wages
Tips or commissions
SSI payments
Pension benefits
Insurance benefits
Contributions
Dividends
Savings account interest

Excluded Income

Earned income tax credit
Scholarships
Federal fuel assistance
Food Stamps
Plan for Achieving Self-Support
Tax Refunds
VA Aid and Attendance Allowance
VISTA payments

Income Deduction

Income the person allocates to a dependent or spouse
Court-ordered alimony or child support
Wage garnishments
Training expenses

The income that is left after the exclusions and deductions is the countable income. If the countable income is at or below the State’s income limit, the person is income-eligible. In 2001, for example, a person may not have more than \$544 (\$797 for a couple) in countable income in a month, although income in a special living arrangement may be higher.

Resource Eligibility

A person is resource-eligible for Financial Assistance if the total value of his or her countable resources is \$1,500 or less. “Resources” are the personal property and real estate of a person. Some resources are excluded by law (See below). If at any time the person’s countable resources exceed a value of \$1,500, the person becomes ineligible for financial assistance and must spend down resources to become eligible again.

<p style="text-align: center;">Countable Resources - Examples</p> <p>Bank Accounts Individual Retirement Account Keogh Plan (established by individual) Stocks and bonds Revocable Trusts</p> <p style="text-align: center;">Excluded Resources - Examples</p> <p>Home Household Items Life Estate Life Insurance (if no cash surrender value) Loans Plan for Achieving Self Support Vehicle</p>
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If the person *transfers assets* to become eligible for Financial Assistance and the person receives less than a fair market value for the asset, he or she may become ineligible for benefits for a certain period of time. The rules on asset transfers are discussed in *Transfer of Assets* under *Public Benefit Considerations*.

WHAT ARE THE BENEFITS AND HOW ARE BENEFITS DISTRIBUTED?

To determine the amount of the cash benefit, the State compares the person’s countable income to the applicable program income limit. The difference between the person’s income and the income limit is the amount of the benefit. If the difference is less than two dollars, there is no benefit. The State issues benefits twice per month through electronic benefit transfer (EBT) or direct deposit; a guardian, conservator or protective payee may request payment by check.

Electronic Benefit Transfer

The State distributes most cash benefits through an EBT system. Under the EBT system a person accesses benefits with a debit card and Personal Identification Number (PIN). He or she may withdraw from the account free of charge up to four times per month and is charged a transaction fee for every additional withdrawal. The person is responsible both for the security of the EBT card and for withdrawing benefits regularly; if he or she does not withdraw benefits for 90 days, the State will remove any benefits remaining in the account. An authorized representative may assist the person in the EBT process.

Direct Deposit

The person may also have benefits transferred through direct deposit to a bank account. The bank account may be in the person's name or in the name of his or her representative. This, of course, requires that there is an open checking or savings account to receive the benefit. Here again, the person is responsible for the security of the account and the State will not replace lost benefits.

SUPPLEMENTAL SECURITY INCOME

The federal Supplemental Security Income (SSI) program provides cash assistance to individuals who are 65 years of age or older or who are blind or disabled. A person may be eligible for SSI benefits and may receive these benefits in addition to other benefits.

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR SSI?

To be eligible for SSI, a person must:

1. Be aged, blind or disabled;
2. Have a countable income at or below \$6,360 per year (2001); and
3. Have countable resources with a value at or below \$2,000 (2001).

(If a person has an eligible spouse, the income and resource figures for eligibility are \$9,552 and \$3,000, respectively.) You should know, however, that if a person lives in a public institution, such as a State hospital, he or she is probably not eligible for SSI benefits.

The Aged, Blind or Disabled Eligibility Requirement -- The “aged, blind, or disabled individual” is an individual who is: (1) 65 years of age or older, (2) blind; or (3) disabled. Under the SSI program, “blind” means having a central visual acuity of 20/200 or less in the better eye, with the use of a corrective lens.

A person is *disabled* if he or she is unable to engage in any “substantial gainful activity” (gainful work) because of a physical or mental impairment that has or can be expected to last 12 months or more or that can be expected to result in death. The disability must be so severe that it prevents the person from doing work that he or she previously did or any other “substantial gainful activity.” The Social Security Administration (SSA) measures “substantial gainful activity” by the ability to perform work or by the amount of money earned in a month. In 2002, for example, an individual is considered engaged in substantial gainful activity if the individual is blind and earns more than \$1,300 per month or has a disability and earns more than \$780 per month.

The Income Eligibility Requirement

In 2001, the income-eligible individual has a countable income that falls at or below \$6,360 per year. *Income* includes cash or income *in-kind*. *Income in-kind* is actual food, clothing, or shelter, or something that a person can use to get one of these; the value of an in-kind item is the current market value. *Shelter* includes room, rent, mortgage payments, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.

The SSA looks at all of the income available to a person. As required by law, the SSA excludes some income. (See examples on following page.) Countable income is income left after exclusions. If the person’s countable income is at or below the SSI income limit, he or she is income-eligible.

The SSA may also *deem* income to a person. *Deem* means to count another person’s income as available to the person with a disability. The SSA may deem income, for example, from a person’s spouse. The SSA deems the income regardless of whether or not the income is actually available to the person.

Excluded EARNED Income - Examples

- Federal income tax refunds or earned income tax credits
- Up to \$400 per month (not more than \$1,620/ year) for a child who is blind or disabled and regularly attending school
- Earned income used to pay certain work-related, including impairment-related, expenses
- Earned income used to fulfill a plan to achieve self-support

Excluded UNEARNED Income - Examples

- Food raised by the individual and consumed by the individual or the individual's household
- Interest and value appreciation earned on excluded burial funds if left to accumulate in the fund
- Housing assistance
- The value of a domestic commercial transportation ticket, received as a gift and not converted to cash
- Fuel assistance

Resource Eligibility Requirement

Under SSI, resources include cash and liquid assets, as well as real estate or personal property that a person (or his or her spouse) owns and may convert to cash. SSI considers the "liquid asset" to be property that may be converted to cash within 20 days. If the resource cannot be liquidated, the SSA will not consider the property a resource. The 2001 resource limit for an individual is \$2,000 and for a couple is \$3,000. As with income, SSI law excludes some resources from being counted. (See examples below.) Also, as with income, resources may be deemed.

Countable Resources - Examples

Bank Accounts
Stocks and bonds
Revocable Trusts

Excluded Resources - Examples

Home
Household Items
Life Estate
Life Insurance (if no cash surrender value)
Plan for Achieving Self Support
Vehicle

If a person *disposes of assets for less than a fair market value* during the 3-year period prior to applying for SSI or while receiving SSI, he or she may become ineligible for benefits for a period of time. The rules that govern this issue are much like those under Medicaid and State Financial Assistance and are discussed in a separate section entitled *Transfer of Assets* under *Public Benefit Considerations*.

Other Requirements

When a person applies for SSI, the person must also apply for any other benefit for which he or she may be eligible and accept appropriate vocational rehabilitation. A person must apply for all available benefits, whether the benefit is an ongoing benefit or a one-time payment; possible benefits include annuities, pensions, retirement benefits, disability benefits, veterans' benefits, worker's compensation payments, unemployment insurance benefits and Social Security insurance benefits. A person must also accept any appropriate vocational rehabilitation services offered, unless there is good reason not to.

WHAT ARE THE BENEFITS AND HOW ARE BENEFITS DISTRIBUTED?

The SSA determines the amount of the benefit by comparing a person's countable income to the maximum benefit allowed. The difference between the two is the benefit the person will receive. In 2002, for example, the maximum allowable benefit is \$545 per month (\$817 for a couple). When benefits go to someone with an eligible spouse, the SSA equally divides the benefit between the two spouses. The SSA will pay the benefit monthly by check or by direct deposit.

FOOD STAMPS

The Food Stamp program provides an allotment to households to purchase food. The New Hampshire Department of Health and Human Services manages the Food Stamp program in New Hampshire.

WHAT ARE THE ELIGIBILITY REQUIRMENTS FOR THE FOOD STAMP PROGRAM?

To be eligible for food stamps, a person must meet financial eligibility criteria. He or she must be both income- and resource-eligible. Both are discussed briefly below. You should note that income is assessed per “household.”

Income Eligibility Requirements

If a household is not receiving another form of public assistance, it must meet an income test. When *all* household members receive OAA, ANB, APTD or SSI, the household is automatically income-eligible for Food Stamps. (This does not include the Medicaid-only recipient.) When not automatically eligible, the person with a disability must meet an income test.

When determining Food Stamp eligibility, the State considers all available income. The State counts the income that is actually received on a regular basis, income that the household can reasonably expect to be able to use each month. As with other public benefit programs, the State, by law, must exclude some income and make certain deductions from the remaining income to determine countable income. (See examples of income, excluded income and deductions below.) To determine income eligibility, the State compares countable income to the income limits. In 2001, for example, a person with a disability may not have more than \$696 (\$938 for a couple) in countable income in a month.

Examples of Income, Excluded Income and Income Deductions

Income	Excluded Income	Income Deductions
Salary or wages	Income not in the form of money	Child or dependent
Tips or commissions	paid directly to the household	care costs
SSI payments	Earned income tax credits	Medical costs
Pension benefits	Scholarships	Child support costs
Insurance benefits	Federal fuel assistance	Shelter costs
Contributions	Loans	
Dividends	Plan for Achieving Self-Support	
Savings account interest	Tax Refunds	
	VA Aid & Attendance Allowance	

Resource Eligibility Requirements

The eligible household may have up to \$2,000 in countable resources and up to \$3,000 when the household includes an elder. Some resources are excluded from being counted by law. (See examples of countable and excluded resources below.) Households or individuals who are eligible for OAA, ANB, APTD or SSI are automatically resource-eligible.

<p style="text-align: center;">Countable Resources - Examples</p> <p>Bank Accounts Individual Retirement Account Keogh Plan (established by individual) Stocks and Bonds Revocable Trusts</p> <p style="text-align: center;">Excluded Resources - Examples</p> <p>Home Household Items Life Insurance Plan for Achieving Self Support Vehicle</p>

From the date of application to the Food Stamp Program, there is a three-month look back period at the *transfer of resources*. The food stamp applicant who, during the look-back period or after, knowingly transfers resources for the purpose of qualification may be disqualified for up to one year.

WHAT ARE THE BENEFITS AND HOW ARE BENEFITS DISTRIBUTED?

The amount of the food stamp benefit is based on household income. The assumption under the Food Stamp program is that the eligible household will spend approximately 30 percent of its income on food. Therefore, to determine the amount of the benefit, the State subtracts 30% of the countable income from the maximum benefit allowed. In 2001, for example, the maximum allowable benefit for one person is \$135 and for two it is \$248.

Electronic Benefit Transfer (EBT)

The State issues food stamp benefits to Electronic Benefit Transfer (EBT) accounts. A person authorizes the State to transfer food stamp benefits to an approved retailer account. The State establishes an account in the person's name and issues him or her an EBT card and personal identification number (PIN) to access the benefits. The minimum allotment to one or two persons is ten dollars.

WHAT ARE THE WORK REQUIREMENTS UNDER THE FOOD STAMP PROGRAM?

As a condition of participation in the food stamp program, physically and mentally fit individuals between 15 and 60 years of age must apply for work, participate in an employment and training program, and accept work at minimum or a comparable wage. Some individuals are exempt from the work requirement. (See exemptions below.)

Work Requirements Exemptions

Individual who is 16 or 17 years of age and who is:

- Not head of a household,
- Attending school, or
- In an employment training program at least half-time.

Individuals physically or mentally unfit for employment.

Parent or household member responsible for the care of a dependent child under age 6 or of an incapacitated person.

Individual employed or self-employed and working a minimum of 30 hours per week and earning the equivalent of 30 hours at minimum wage.

Student enrolled at least half time in a recognized school, training program or institution of higher education.

SOCIAL SECURITY

FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

Social Security insurance benefits are available to individuals who have paid for the benefits through Social Security employment taxes. A person may be qualified for Social Security insurance benefits on his or her own working record. A family member may also be qualified under your working record. Benefits include: retirement benefits, disability benefits, family benefits, survivor benefits, and Medicare benefits. The eligibility requirements and benefits for the first four are described below. Medicare benefits are discussed in the section, *Medicare*.

RETIREMENT BENEFITS

WHO IS ELIGIBLE FOR RETIREMENT BENEFITS?

The individual eligible for retirement benefits:

1. Is fully insured;
2. Is age 62 or older; and
3. Has applied for retirement benefits or was entitled to disability insurance benefits in the month before reaching retirement age.

To be fully insured an individual normally must have *40 quarters of coverage*. An individual earns quarters of coverage based on earnings. For example, in the year 2002 an individual earns one quarter of coverage for each \$870 of earnings, up to a maximum of four per year. If you do not have 40 quarters of coverage, you may be “fully insured” by another rule. Contact the Social Security Administration for your “insured” status.

WHAT ARE THE RETIREMENT BENEFITS?

Retirement benefits are benefits payable at “retirement age”, with early retirement benefits available at age 62. Full retirement age is age 65 for individuals born before 1938. Full retirement age incrementally increases with the year of birth to the maximum age of 67 for individuals born in 1960 or later.

<u>Year of Birth</u>	<u>Full Retirement Age</u>
1937 or earlier	65
1943 – 1954	66
1960 and later	67

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based on earnings averaged over a working lifetime and your age at the start of benefit collection. Based on age, the amount of the benefit is lowest at age 62, a full retirement benefit at age 65, and potentially increasing benefits with delayed retirement up to age 70.

The highest monthly benefit that an individual may qualify for may not be the amount paid; this is also true for family and survivor benefits. There is a maximum total benefit amount set for each individual; the benefit amount payable to an individual, or to family members, may be reduced to keep total benefits payable within the set limit. A family member entitled to family or survivor benefits and receiving a government pension may also receive a benefit amount reduced by the amount of the pension.

DISABILITY BENEFITS

WHO IS ELIGIBLE FOR DISABILITY INSURANCE BENEFITS?

Disability benefits are payable to individuals of any age who have sufficient Social Security coverage credits and a severe physical or mental impairment that is expected to prevent them from doing *substantial* work for a year or more or a condition that is expected to result in death. In 2002, earnings of \$780 or more per month are indicative of *substantial* work.

An individual is eligible for disability benefits if he or she:

1. Is insured for disability insurance benefits (see below);
2. Has not reached retirement age (see previous section);
3. Has applied for disability insurance benefits; and
4. Is under a disability (as defined by Social Security law).

There are four rules for determining an insured status for disability benefits. An individual must meet one of these rules. Briefly, those rules are:

Rule:	Insured Status:	Number of Quarters of Coverage:
1. 20/40 requirement.	Fully insured	20 or more in prior 40-quarter period
2. Disabled before age 31.	Not fully insured.	Quarters of coverage in at least half of the prior quarters, beginning at age 21.
3. Disabled again after age 31. (prior coverage under Rule 2)	Fully insured.	Quarters of coverage in at least half of the calendar quarters that occur from age 21 to the later period of disability— up to a maximum of 20 quarters of coverage out of 40 calendar quarters. (If less than 12 quarters of coverage, there must be at least 6 in the prior 12 quarter period.)
4. Blind.	Fully insured.	No requirement.

WHAT ARE THE DISABILITY BENEFITS?

The monthly disability benefit is equal to the retirement benefit amount that the individual would receive at age 62. The monthly benefit amount may be reduced by the amount of a worker's compensation payment received before age 62. Benefits may also be reduced by other retirement-age benefits received before age 65.

FAMILY BENEFITS

WHO IS ELIGIBLE FOR FAMILY BENEFITS?

When a person is eligible for retirement or disability benefits, the person's spouse or unmarried child may also receive benefits. (See below.) If a person is divorced, a former spouse may also be eligible for benefits based on the person's Social Security record.

Family Benefits – Eligible Family Members

Spouse:

Age 62 or older

Under age 62 and caring for a child under age 16

Under age 62 and caring for a child with a disability

Child:

Under age 18

Under age 19 and still in school

Age 18 or older if under a disability

WHAT ARE THE FAMILY BENEFITS?

The amount of the benefit varies with the relationship to the retired worker.

- **Spouse.** A spouse receives a benefit equal to one-half of the retired worker's full benefit unless the spouse collects before age 65; if collection begins before age 65 the spousal benefit is permanently reduced. If the spouse is caring for a child who is under age 16 or a child with a disability, the spouse receives a full benefit regardless of age. A spouse who is also eligible for retirement benefits receives his or her own benefit plus any additional amount necessary to equal the higher of the two benefits.
- **Child.** A child receives a benefit of up to one-half of the full benefit of the parent. If the child is entitled to a benefit on more than one parent's record, the child will normally receive only one benefit, the higher benefit.
- **Divorced Spouse.** A divorced spouse, age 62 or older and unmarried, may receive benefits on a former spouse's Social Security record if the marriage lasted 10 years or more.

SURVIVOR'S BENEFITS

WHO IS ELIGIBLE FOR SURVIVOR'S BENEFITS?

Family members may be eligible for survivor benefits upon the death of a fully insured family member. Family members who may benefit include: a surviving spouse, an unmarried child and dependent parents. (See below.) If the person was divorced, an ex-spouse may also be eligible for survivor's benefits.

Survivor Benefits – Eligible Family Members

Spouse:

- Age 60 or older
- Age 50 or older if a spouse with a disability
- Any age if caring for a child under age 16
- Any age if caring for a child with a disability

Child:

- Under age 18
- Under age 19 and still in school
- Age 18 or older if under a disability

Parent:

- Age 62 or older, not married since insured's death, not entitled to a larger benefit and received at least half of support from the insured at time of death or at the beginning of the disability period that ended in death

WHAT ARE THE SURVIVOR'S BENEFITS?

As with family benefits, survivor benefits vary with the relationship to the insured.

- Widow/widower. Generally, the widow or widower benefit is equal to the insured person's full retirement amount. The amount of the benefit may be altered— if the insured person died before reaching age 62, if the insured person earned delayed retirement credit, or the insured person elected to begin receiving benefits prior to age 65. Widows or widowers may receive widow or widower benefits at age 60 (age 50 if disabled) and collect their own benefits as early as age 62. If collecting as a mother or father, the benefit is equal to 75 percent of the insured person's primary insurance amount.
- Child. The child's benefit is equal to 75 percent of the insured person's full retirement amount.
- Parent. A dependent parent's benefit amount is equal to 82½ percent of the insured person's full retirement amount if there is only parent entitled to benefits and 75 percent of the insured person's primary insurance amount if there is another parent also entitled to benefits.

OTHER CASH ASSISTANCE

Cash assistance may come in forms other than public assistance or Social Security insurance. For example, cash assistance is possible through life insurance benefits, pension or retirement benefits, trust benefits, or burial fund benefits. You should use these as appropriate to your situation.

HOW MAY LIFE INSURANCE BE USED?

Person with Disability as Beneficiary

You may provide cash assistance to a person with a disability through a life insurance policy. There are many types of life insurance policies available and a life insurance policy is a popular choice of financial protection for family members. However, if the intended beneficiary is a person who is dependent upon public benefits, the critical consideration is the choice of beneficiary. If the public benefit recipient is the direct beneficiary of a life insurance policy, the benefit payments may be regarded as an asset to the person, rendering the person ineligible for public benefits until the asset is spent down to allowable limits.

To preserve public benefits and still provide supplementary assistance to the person, you may have policy benefits go to your estate, to a trust or to a person other than the person with a disability. Check current life insurance policies to ensure appropriate disbursement of policy benefits and structure future policies with the above considerations in mind.

Policy on Person with Disability

Often people take out life insurance policies on someone to pay for funeral and burial costs. This type of policy may be considered a resource in the public benefit eligibility determination unless the policy is clearly structured as a burial fund. (See more on burial fund below.) To be considered a burial fund, the life insurance policy should name a funeral director as the beneficiary.

If the policy is not a burial fund and the person with a disability is dependent upon public benefits, it is best if there is not a cash surrender value on the policy. A cash surrender value is the amount of money a policy would yield if “cashed in” before death. Although a portion of the value of such a policy would be excluded from a resource assessment, policies with a cash surrender value are not recommended. Furthermore, if you are considering purchasing a life insurance policy on a person for purposes other than to meet burial and funeral expenses, you should evaluate the true need of such a policy and examine possible alternative mechanisms.

HOW MAY PENSIONS OR RETIREMENT BENEFITS BE USED?

The person with a disability may benefit from his or her own pension or retirement benefits as well as from yours. If the person earns pension or retirement benefits through an employer, consider these benefits in planning for his or her future. If the person is or may be named as a survivor beneficiary to your pension or retirement benefits, this also must be considered.

Pension and retirement benefits, from either source, are income to the person in the public benefit eligibility determination. The amount of the benefit will be key in determining what public benefits he or

she may or may not be eligible for. Also, use the same beneficiary cautions for pension or retirement benefits that you would for life insurance benefits.

HOW MAY TRUSTS BE USED?

The trust is often recommended as a way to provide financial protection for a person with a disability. There is a great deal of flexibility with a trust and it may be funded from a variety of sources. Through a particular type of trust, a special needs trust, you may provide for the unique expenses of a person with a disability without disrupting public benefits. The trust may be funded in many ways. The trust may be named as the beneficiary of a benefit rather than naming the person with a disability as the beneficiary. For more on this option, see *The Special Needs Trust* section.

When public benefits are not a concern, there are a variety of trust options to consider. You should talk to your attorney and financial planner about such options.

HOW MAY BURIAL FUNDS BE USED?

Although often difficult to think about, it may be important for you to make arrangements for the person's funeral and burial. How you do this is especially important when he or she is dependent upon public benefits. Generally, public assistance programs exclude from the resource assessment the value of the burial plot and up to \$1,500 of the burial fund. The burial fund must be a separately identifiable fund designated for burial expenses. The fund may be in the form of a life insurance policy, a trust or some other arrangement.

HEALTH CARE COVERAGE

To access to health care today, a person should have health care coverage. Options for health care coverage discussed here are:

- *Medicaid*
- *Medicare*
- *Private Health Insurance*

MEDICAID

Through the New Hampshire Department of Health and Human Services, New Hampshire offers Medical Assistance (Medicaid) to adults through several programs— Old Age Assistance (OAA), Aid to the Needy Blind (ANB), Aid to the Permanently and Totally Disabled (APTD) and Qualified Medicare Beneficiary (QMB) programs. (See the section, *Medicare*, for more information on QMB and related programs.) Medicaid provides medical care coverage to individuals with insufficient income and resources. A person may apply for assistance under any of these categories and if eligible for more than one, must choose one. If the person with a disability meets the requirements for OAA, ANB or APTD, he or she may receive benefits for special living arrangements (see below)— the residential care facility, the community residence, a home- and community-based care (HCBC) program or a nursing facility.

Special Living Arrangement	Services
Residential Care Facility	Personal and social care to adults who are elderly or physically disabled who cannot live alone but do not require institutionalization.
Community Residence	Personal and social care to individuals with a mental illness or a developmental disability who cannot live alone but do not require institutionalization.
HCBC — Elderly or Chronically Ill, Developmentally Disabled, or Acquired Brain Injury	Home- and community-based services that an individual needs in order to prevent institutionalization.
Nursing Facility	Health-related care and services on a daily in-patient basis.

WHAT DOES THE MEDICAID PROGRAM COVER?

The New Hampshire Medicaid program provides financial coverage for medical services and items. For example, the New Hampshire Medicaid program provides coverage for medically necessary—

- Inpatient and outpatient hospital services;
- Prenatal care;
- Physician services;
- Nursing homes and intermediate care facilities for the mentally retarded;
- Family planning services and supplies;
- Home health care;
- Laboratory and x-ray services;
- Personal care services;
- Medical equipment;
- Prescribed drugs; and
- Rehabilitation and physical therapy services.

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR MEDICAID?

To be eligible for Medicaid, a person must meet: (1) the general eligibility requirements, (2) the categorical eligibility requirements, and (3) the financial eligibility requirements.

General Eligibility Requirements

There are several general eligibility requirements for the New Hampshire Medicaid program, including residency and citizenship requirements. Areas of special interest to persons with disabilities and those who support them are the requirements that a person with a disability develop all potential sources of income and public assistance reimbursement requirements. (For more on reimbursement requirements, see *Reimbursement of Public Assistance Payments* under *Public Benefit Considerations*.)

Categorical Eligibility Requirements

The basic categorical eligibility requirements for the New Hampshire Medicaid program are listed below. If a person qualifies under OAA, ANB, or APTD, the person may also apply for assistance in a special living arrangement (a residential care facility, community residence, home- and community-based care program, or nursing facility), if the level of care in the living arrangement is appropriate.

OAA Categorical Requirements

1. 65 years of age or older.

ANB Categorical Requirements

1. Central visual acuity of $\leq 20/200$ in the better eye, with correction; *or*
2. Field of vision limitation so that the widest diameter of visual field is under a 20° angular distance; *or*
3. Vision so defective as to prevent the performance of ordinary activities for which functional eyesight is essential.

APTD Categorical Requirements

1. Ages 18 through 64; *and*
2. Physical or mental disability that is likely to result in death or expected to last for a continuous period of not less than 48 months.

Financial Eligibility Requirements

To meet financial eligibility requirements, a person must be both income- and resource-eligible. The financial eligibility criteria are important to consider when planning for a person with a disability.

Income Eligibility – The income-eligible person has a countable income that falls at or below the Medicaid income limits. The State looks at all of the income that is available to the person. As required by law, the State excludes some income (See examples of income, excluded income and income deductibles on page 51) and makes deductions from the income that remains. Countable income is income left after the exclusions and deductions. If the person's countable income is at or below the State's income limit, he or she is income-eligible.

Examples of Income, Excluded Income and Income Deductions

Income	Excluded Income	Income Deductions
Salary or wages	Earned income tax credits	Income the person allocates to a dependent or spouse
Tips or commissions	Scholarships	Court-ordered alimony or child support
SSI payments	Federal fuel assistance	Wage garnishments
Pension benefits	Food Stamps	Training expenses
Insurance benefits	Loans	
Contributions	Plan for Achieving Self-Support	
Dividends	Tax Refunds	
Savings account interest	VA Aid & Attendance Allowance	
	VISTA payments	

There are two sets of income limits under the Medicaid program— *categorically needy* and *medically needy*. The *categorically needy* income limits are the same as the income limits under the New Hampshire Financial Assistance program. The *medically needy* income limits are for individuals who have too much income to qualify for categorically needy assistance but have medical expenses that offset the excess income. Through payment of medical expenses, individuals in the medically needy category *spend down* their income to the medically needy income limit in order to become Medicaid eligible. In 2001, for example, an individual may not have more than \$544 (\$797 for a couple) of income in a month to meet categorically needy eligibility, although income limits in special living arrangements may be slightly higher. The 2001 spend down limit for the medically needy program is \$544.

Resource Eligibility -- A person is resource-eligible for Medicaid if the total value of his or her countable resources is at or below:

- \$1,500 for Medicaid for the categorically needy, or
- \$2,500 for Medicaid for the medically needy (\$4,000 for assistance group of 2; \$4,100 for assistance group of 3).

Resources are the personal property and real estate of the person. Some resources are excluded by law (See example on below). If at any time a person's countable resources exceed a value of \$1,500 (\$2,500 for medically needy), the person becomes ineligible for Medicaid and must spend down resources to become eligible again.

Countable Resources - Examples

Bank Accounts
 Individual Retirement Account
 Keogh Plan (established by individual)
 Stocks and bonds
 Revocable Trusts

Excluded Resources - Examples

Home
 Household Items
 Life Estate
 Life Insurance (if no cash surrender value)
 Loans
 Plan for Achieving Self Support
 Vehicle

If a person lives in an institution and has a spouse who lives in the community, a resource that is usually countable may be a protected resource, a resource set aside for the use of the community spouse and not countable in the person's resource assessment. (See below.)

The Protected Resource for the Community Spouse

The spousal share is one-half of the combined resources of the individual and the individual's community spouse at the time of the individual's institutionalization.

The protected resource amount for the community spouse is the higher of the:

- Spousal share, up to a maximum of \$87,000;
- The minimum spousal resource standard of \$17,400;
- Amount transferred to community spouse by a court support order; or
- The amount determined by a State Appeals Unit.

If a person *transfers assets* to become eligible for Medicaid and the person receives less than a fair market value for the asset, he or she may become ineligible for benefits for a period of time. The rules on asset transfers are discussed in *Transfer of Assets* under *Public Benefit Considerations*. This is important if the person receives or is expected to receive Medicaid coverage for institutional care, such as care in a nursing home, or for HCBC services.

HOW MUCH MUST THE PERSON WITH A DISABILITY CONTRIBUTE TO THE COST OF CARE?

If the person receives Medicaid for care at an institutional level of care, such as in a nursing home, or under a HCBC program, he or she will be expected to contribute to the cost of that care. The contribution will come from income that the person receives. To determine how much income the person must contribute, the State basically looks at all of his or her income, except income excluded by law, and from that income:

- Deducts SSI benefits;
- Deducts a personal allowance (ranging from \$50 to \$90 per month for one person)
- Deducts a maintenance allowance for HCBC recipients;
- Deducts medical costs not covered by Medicaid; and
- Deducts a VA Aid and Attendance allowance, if received.

The income that remains goes towards the cost of care.

WHAT IS MEDICAID IN AND OUT?

Medicaid In and Out is available to a person whose income is insufficient to meet medical costs or who has unpaid prior medical debt. The person eligible for Medicaid In and Out meets all eligibility requirements except that his or her income exceeds the medically needy income limit.

If a person is eligible for Medicaid In and Out, he or she must choose a one-month or six-month spend-down period and applications are good for no more than a six-month consecutive period. The spend-down amount is the difference between the medically needy income limit and the person's net income. Assistance begins on the day that the person meets the spend-down. The person is responsible to notify the State of that spend-down status.

Allowable medical expenses for the spend-down are medical expenses remaining after third-party payments (such as health insurance payments) are made. Allowable medical expenses include: current medical expenses; health insurance premiums; over-the-counter medications that are part of a treatment plan supervised by a physician; medical transportation; adult day care; and medical debt. Allowable medical expenses also include medical costs not covered under the Medicaid program.

MEDICARE

Medicare is a health insurance program for people who are elderly or for people with a disability or end-stage renal (kidney) disease. The Medicare program is divided into two parts — *Part A*, a hospital insurance program, and *Part B*, a supplementary insurance program.

Most people find that Medicare coverage alone is insufficient to meet their needs. This is especially true if a person requires long-term care. Medicare coverage is primarily for short-term episodes of illness with limited long-term care coverage. For the person who requires long-term care services, including services provided through a home- and community-based service system or through an institutional setting, the Medicare program provides very limited coverage. Private supplementary insurance coverage, often referred to as Medi-Gap coverage, may bridge some of the coverage gaps. Long-term care insurance coverage is also beneficial. If someone has substantial long-term care needs and minimal financial resources, the Medicaid program may be the best choice for a “Medi-Gap” type of insurance.

WHO IS ELIGIBLE FOR MEDICARE?

Medicare Part A Without a Monthly Premium

A person entitled to Medicare Part A receives coverage without paying an insurance premium. To be entitled, a person must fall under one of these three categories.

Category One — The person is:

- Age 65 or older; and
- Eligible for benefits under the Social Security, Railroad Retirement, or Medicare-covered government employment programs.

Category One Exception: Eligibility for Social Security retirement benefits requires “40 hours” of Medicare-covered employment. However, an individual with 30 to 39 hours of Medicare-covered employment may also be *entitled* to Medicare coverage and receive that coverage at a reduced premium. (For example, the premium in 2002 is \$175.)

Category Two — The person:

- Is under age 65; and
- For at least 24 months, has been entitled to disability benefits under the Social Security (including Medicare-covered government employment) or Railroad Retirement programs.

Category Three — The person:

- Does not meet the criteria of Category One or Category Two; and
- Has end-stage renal disease.

Medicare Part A as a Premium Hospital Insurance

By paying a premium, Medicare Part A coverage is also available to those who do not fall under the categories listed above. In 2002, for example, the Part A premium is \$319 per month. A person is eligible for Part A as a premium insurance if he or she falls under one of these two categories—

Category Four — The person:

- Is age 65 or over;
- Is a resident of the United States and a citizen or an alien meeting certain requirements; and
- Is entitled to Medicare Part B or is eligible for and has enrolled for Medicare Part B.

Category Five — The person:

- Is under age 65;
- Is entitled to Medicare Part A on the basis of entitlement to Social Security disability benefits;
- Continues to have a disability;
- Loses entitlement to disability benefits solely because of excess earnings (relating to substantial gainful activity); and
- Is not otherwise entitled to Medicare Part A.

To receive Medicare Part A coverage as a premium insurance, a person must enroll during specified enrollment periods.

Medicare Part B

Medicare Part B is a voluntary medical insurance program for people who are aged or have a disability and who choose to participate in the program and pay premiums for the coverage.

The person eligible for Part B is:

1. Entitled to Part A benefits, Categories One, Two or Three); or
2. Is 65 years of age or older, a resident and a citizen of the United States or an alien meeting certain requirements.

The person may or may not be required to actually enroll in Medicare Part B. The person who is entitled to Medicare Part A (See Categories One, Two or Three on the previous page) is automatically enrolled in Part B. In all other circumstances, the eligible individual must actually enroll during a specified enrollment period or be enrolled by the State as part of a buy-in agreement. If the individual enrolls after the initial enrollment period or re-enrolls after termination of coverage, the premium is increased by ten percent for every full twelve-month period of missed enrollment. In 2002, for example, the standard monthly premium for Medicare Part B is \$54 per month.

WHAT ARE THE MEDICARE BENEFITS?

Medicare Part A (hospital insurance) provides coverage for medically necessary inpatient hospital services, related after-hospital services, home health services and hospice care. As with private insurance, there are limitations on the number of days of coverage, conditions on service coverage, and deductibles and coinsurance costs.

Medicare Part B provides supplemental medical coverage to Medicare Part A. Each is described on the following pages.

Medicare Part A – In-Patient Hospital Coverage

Coverage is available for each day of in-patient hospital care, up to a maximum coverage of 90 days per “spell of illness”; if the hospital stay exceeds 90 days, the individual may also use days from a 60-day lifetime reserve. (This does not include inpatient psychiatric care for which there is a 190-day lifetime maximum limit.)

<p>In-Patient Hospital Benefits Include:</p> <ul style="list-style-type: none"> Semi-private hospital room accommodations; Nursing and related services, not including private duty nursing services; Inpatient hospital services; Medical social services; Drugs and biologicals; Certain diagnostic and therapeutic services; Supplies, appliances and equipment; and Transportation services, including ambulance services

For in-patient hospital care, the individual has deductible and coinsurance costs. There is a deductible for the first 60 days of in-patient services, a coinsurance charge for days 61 through 90, and a doubled coinsurance charge for lifetime reserve days. The 2002 Medicare Part A deductible and coinsurance costs for hospitalization are listed below as an example.

MEDICARE PART A DEDUCTIBLES AND COINSURANCE	
Year 2002	
Inpatient hospital deductible	\$812 per benefit period*
Coinsurance - days 61 through 90 of hospitalization	\$203 per day
- lifetime reserve days	\$406 per day
- days 21 through 100 of extended care in a skilled nursing facility . . .	\$101.50 per day

* A “benefit period” begins the day of admission to a hospital or skilled nursing facility. The benefit period ends after 60 consecutive days of no hospital or skilled nursing care. There is no limit on the number of benefit periods a beneficiary may have.

Medicare Part A – After-Hospital Skilled Nursing Facility Coverage

Coverage for after-hospital nursing home care is available to a person hospitalized for at least three days and who was admitted to the nursing home usually within 30 days of discharge from the hospital. To receive this coverage, a person must require skilled nursing care or other skilled rehabilitation services on a daily basis.

Coverage extends to up to 100 days per *spell of illness*. Medicare pays for all covered services in the first 20 days of nursing home care and there is a coinsurance charge for days 21 through 100.

After-Hospital Nursing Home Benefits Include:
Supervised nursing care;
Semi-private room accommodations;
Physical, occupational or speech therapy;
Medical social services;
Drugs;
Supplies, appliances and equipment;
Some hospital services; and
Other services generally provided by a skilled nursing facility.

Medicare Part A – Home Health and Hospice Coverage

Home health service coverage is available under Part A or Part B. Home health services are for a person who is:

- Confined to the home;
- Under the care of a physician;
- Periodically in need of skilled services, including nursing care, physical therapy, speech-language therapy and occupational therapy;
- Under a plan of care; and
- Receiving services from a Medicare-qualified home health agency.

Medicare provides coverage for an unlimited number of home health service visits, although there are limitations on the coverage of durable medical equipment. There is no coinsurance charge.

Under certain conditions, Medicare Part A may also provide coverage for hospice care during two periods of 90 days each and an unlimited number of subsequent 60 day periods. There are coinsurance and co-payment costs associated with hospice care.

Home Health & Hospice Benefits Include:
Nursing services
Physical, occupational and speech therapies
Medical social services
Home health aide services
Medical supplies (not drugs)

Medicare Part B

The Medicare Part B program provides supplemental medical insurance coverage to Medicare Part A. Part B coverage includes payment for:

- Physician services;
- Home health services;
- Outpatient physical therapy and occupational therapy;
- Outpatient rehabilitation facility services;
- Ambulatory surgical center services;
- Prosthetic devices and orthotics and prosthetics; and
- Partial hospitalization services provided by a community mental health center.

There is a \$100 annual Part B deductible. Generally, the Medicare beneficiary must also pay 20% of the service charge and there are some required co-payments. There is no charge to the beneficiary, however, for home health services (not including durable medical equipment) and clinical laboratory services.

HOW CAN YOU GET HELP TO PAY MEDICARE COSTS? — THE QMB, QDWI, SLMB, SLMB135, SLMB175 PROGRAMS

There are several Medicaid programs that provide assistance to those unable to meet Medicare costs, including premiums, deductibles and coinsurance costs. The assistance available under these programs is listed below.

MEDICAID ASSISTANCE PROVIDED IN THE QMB, QDWI, SLMB, SLMB135, SLMB175	
Assistance Program:	Assistance in the payment of Medicare:
Qualified Medicare Beneficiary (QMB)	Part A and Part B premiums Premium penalties for late enrollment Deductibles Coinsurance costs
Qualified and Working Individual (QDWI)	Part A premium for individuals with disabilities who lost Medicare due to earnings.
Specified Low-Income Medicare Beneficiary (SLMB, SLMB135, SLMB 175)	Part B premiums <ul style="list-style-type: none">• SLMB and SLMB135 – Full premium payment• SLMB175 - Payment of the home health service portion of the Part B premium. Premium penalties for late enrollment

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR QMB, QDWI, SLMB, SLMB135, AND SLMB175?

As with other State assistance programs, eligibility requirements for these programs vary somewhat with the assistance group size and with the person’s living arrangement (independent living, residential care, etc.). Key requirements are presented here.

Reimbursement Requirements

A person who is 55-years-old or older and receives QMB, QDWI, SLMB, SLMB135, or SLMB175 Medicaid must reimburse the State for the payments made under the Medicaid program. To find out more about reimbursement requirements, see the section, *Reimbursement of Public Assistance Payments* under *Public Benefit Considerations*.

Categorical Eligibility Requirements

The categorical eligibility requirements for the QMB, QDWI and SLMB programs are listed below.

<p align="center">NEW HAMPSHIRE QMB, QDWI AND SLMB PROGRAMS CATEGORICAL ELIGIBILITY REQUIREMENTS</p>		
<p>Qualified Medicare Beneficiary (QMB)</p>	<p>Qualified Disabled and Working Individual (QDWI)</p>	<p>Specified Low-Income Medicare Beneficiary (SLMB)</p>
<p>Entitled to and enrolled in Medicare Part A.</p>	<p>1. Entitled to enroll in Medicare Part A; 2. Disabled and working; 3. Lost Medicare coverage due to earnings; and 4. Not eligible for other Medicaid programs.</p>	<p>1. Entitled to Medicare Part B; and 2. For SLMB135 and SLMB175- individual may not be eligible for other Medicaid programs.</p>

Financial Eligibility Requirements

To be eligible for the QMB, QDWI and SLMB programs, a person must be both income-eligible and resource-eligible.

Income Eligibility – A person is income-eligible if his or her countable income falls below the program income limits. The State looks at all of the income that is available to the person. By law, the State excludes some income and makes certain deductions from the income that remains. Countable income is income left after the exclusions and deductions. If a person’s countable income is at or below the State’s income limit (see 2001 limits listed below), he or she is income-eligible.

Income Limits for QMB, SLMB & QDWI (2001)		
Medicare Assistance Status	Income Limit Individual	Income Limit Couple
QMB	\$716	\$968
SLMB	\$859	\$1,161
SLMB135	\$967	\$1,307
SLMB175	\$1,253	\$1,694
QDWI	\$1,432	\$1,935

Resource Eligibility -- A person is resource-eligible if his or her countable resources have a value of no more than \$4,000 for an individual and \$6,000 for a couple.

PRIVATE HEALTH INSURANCE

Due to the high cost of health care today, some form of health care coverage is essential. For those able to meet the cost, individual private health insurance policies are available in New Hampshire. However, few insurance companies sell individual health insurance plans in New Hampshire. The Consumer Services division at the New Hampshire Department of Insurance can give you the latest information on the companies that sell individual plans.

An individual health insurance plan works much like the plan that many have through an employer. For a monthly premium and after an annual deductible, the plan pays for medical services and supplies in and out of the hospital. The services and items covered will vary with the plan. You should carefully examine the available policies to make sure that the coverage fits your needs.

Costs for an individual plan will vary significantly. The annual deductible may range from \$1,000 to \$10,000. Premiums may range, for example, from \$170 to \$370 per month. Premium costs vary with age, the individual's health status and the amount of the annual deductible (the higher the deductible, the lower the premium). There are preferred premiums and standard premiums, with the standard premium being higher. The lower preferred premium is for someone who is a non-smoker, not overweight, not regularly on medications and generally healthy. There may also be co-payment fees or other fees.

PUBLIC BENEFIT CONSIDERATIONS

There are public assistance rules to keep in mind when planning for the future. There are rules against transferring assets in order to become resource-eligible for public assistance. There are rules that require some of those receiving assistance to reimburse the State for that assistance. An overview of these rules is presented in this section.

- *Transfer of Assets*
- *Reimbursement of Public Assistance Payments*

TRANSFER OF ASSETS

Each type of public assistance program has its own rules regarding the transfer of assets. Be sure that you know the rules specific to the type of public assistance that applies to your situation.

Federal and State law requires that if a person, or the person's spouse, disposes of assets for less than a fair market value within a specified period of time, the person becomes ineligible for public benefits for a period of time. The law allows certain asset transfers without penalty. These are important rules to be aware of.

New Hampshire applies the asset transfer law to applicants and recipients of Financial Assistance and some Medicaid-only services, HCBC and institutional services. As of January 2000, the Social Security Administration (SSA) also applies asset transfer rules to SSI eligibility.

WHAT IS AN ASSET AND WHOSE ASSET TRANSFERS MATTER?

Under New Hampshire asset transfer rules, the term *assets* refers to income and resources. This includes income and resources that a person is entitled to but does not receive because of his or her own actions, such as, waiving a pension income, waiving the right to receive an inheritance, not accepting an injury settlement or diverting a settlement into a trust. This does not include the circumstances where a person cannot afford the cost of obtaining the asset or the cost to obtain the asset is greater than the asset value.

The assets of concern are the assets of the *individual* who applies for or receives State public assistance. When the term *individual* is used in regard to asset transfers, the term includes the person and:

- His or her spouse;
- Someone with the legal authority to act for the person or his or her spouse; or
- Someone acting under the direction of the person or his or her spouse.

The Social Security Administration (SSA) has yet to address in detail the asset transfer provisions for SSI applicants and recipients. The SSI law became effective in January of 2000.

WHAT ARE ASSET TRANSFERS?

Listed below are examples of asset transfers that the State would look at for Financial Assistance applicants and recipients or Medicaid-only HCBC or institutionalized applicants and recipients.

ASSET TRANSFERS – N.H. FINANCIAL ASSISTANCE & MEDICAID

- Title or ownership of an asset passes from the individual to another person.
- The individual gives another person access to assets through joint ownership.
- The individual completes a document to transfer an asset (including title) at a future date and delivers the document to the person who will receive the asset.
- The individual acts to reduce or eliminate the individual's ownership or control of an asset.
- The individual gives another person access to an asset through joint ownership and the individual or another acts to reduce or eliminate the individual's ownership of the asset.
- The individual transfers title or ownership of an otherwise excluded home to another person/entity, including a home which has become income-producing.
- The individual places assets into an irrevocable trust or similar legal device, including an annuity.
- The individual obtains a reverse mortgage, home equity conversion mortgage, or similar loan on an otherwise excluded home or other real property and transfers the proceeds to another person.
- The individual converts a countable asset.
- The individual is entitled to an asset but does not receive the asset because of action:
 - By the individual or the individual's spouse;
 - By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

Some asset transfers are allowable. Transfers that are allowable under NH Medicaid and SSI law are listed on the following page.

ALLOWABLE ASSET TRANSFERS

*Applicable to: Medicaid-only HCBC and institutionalized applicants/recipients
and
SSI applicants/recipients*

Transfer of home and title from an institutionalized individual to:

- Spouse,
- Child under age 21,
- Child who is blind or permanently and totally disabled,
- Child who meets all of the following:
 - Over age 21,
 - Not blind or permanently and totally disabled,
 - Resided in the home for at least 2 years immediately before the individual's institutionalization, and
 - Provided care to the individual so as to permit the individual to reside at home rather than in an institution.
- A sibling who:
 - Has an equity interest in the home, and
 - Resided in the home for at least 1 year immediately before the individual's institutionalization.

Asset transfer:

- To the spouse or to another person solely for the benefit of the spouse;
- From the spouse to another for the sole benefit of the spouse;
- To a child who is blind or permanently and totally disabled or to a trust established solely for the benefit of such a child (including the self-settled special needs trust); or
- To a trust established solely for the benefit of an individual less than 65 years of age who is disabled (including the self-settled special needs trust).

Asset transfer in which a satisfactory showing is made to the State that:

- The individual intended to dispose of the assets for fair market value or other valuable consideration;
- The exclusive purpose of the asset transfer was other than to qualify for assistance benefits; or
- All assets transferred for less than fair market value have been returned to the individual; or
- The eligibility penalty for the asset transfer would result in an undue hardship for an institutionalized individual.

WHAT IS A TRANSFER FOR FAIR MARKET VALUE?

For New Hampshire Financial Assistance applicants and recipients and Medicaid-only: HCBC or institutionalized applicants or recipients, the following definitions of *fair market value* is used.

Fair market value is an estimate of the prevailing price of the asset at the time that it was transferred. New Hampshire describes the value simply as “the price at which a willing seller and a willing buyer will trade.”

For an asset transfer to be classified as a transfer for fair market value, a person must receive compensation with real value. A transfer for love or similar reasons is not considered a transfer for fair market value. A transfer to a relative as compensation for care provided in the past is not a transfer for fair market value unless the person can show that there was an agreement for this at the time that the relative provided care.

WHAT IS THE LOOK-BACK PERIOD?

Under the law, for applicants and recipients of Financial Assistance and Medicaid-only HCBC or institutional care, the State will look at any asset transfers made during a *look-back period* of 36 months or 60 months. The State will also look at transfers made while an assistance application is pending or transfers made while an individual is receiving assistance.

Under the Medicaid program, the look-back period begins on the date that a person is both institutionalized (or begins receiving HCBC services) and has applied for Medicaid. Under the Financial Assistance program, New Hampshire begins the look-back period on the date of application.

Generally, the look-back period for a transfer of assets is 36 months. When the asset transfer involves payment from a trust or assets disposed of through a trust, the look-back period is 60 months. Assets disposed of through a trust include: (1) payments made from a revocable trust that are not to or for the person; and (2) establishment of an irrevocable trust from which no payment may be made to the person. (For further discussion on the trust asset, see the section *The Special Needs Trust*.)

For SSI applicants and recipients, the look-back period for a transfer of assets under the SSI program is 36 months regardless of whether or not the transfer involves a trust. The look back begins on the date of application, although a transfer occurring after the date of application will also be examined.

A **revocable trust** is a trust which can be revoked or cancelled by the creator of the trust. This includes trusts that are called irrevocable but which will terminate if some action is taken by the grantor.

An **irrevocable trust** is a trust which cannot in any way be revoked or cancelled by the creator of the trust.

WHAT IS THE PERIOD OF INELIGIBILITY?

A Financial Assistance applicant or recipient who transferred assets for less than fair market value within a look-period or after, becomes ineligible for Financial Assistance for a period of time. The person is ineligible for financial assistance for:

- 60 months from the date of transfer of an asset to an irrevocable trust; and
- 36 months from the date of all other asset transfers.

A Medicaid-only HCBC or institutionalized applicant or recipient who transfers assets for less than fair market value within the look-period or after becomes ineligible for certain services provided under the Medicaid program. The person becomes ineligible for nursing facility and similar services, as well as HCBC services.

The State calculates the period of ineligibility by the following formula:

$$\frac{\text{Uncompensated value of assets} + \text{average monthly nursing facility private pay rate}}{\text{Number of months of ineligibility}} =$$

The period of ineligibility begins on the first day of the month in which the person transferred the asset. The period is unlimited and runs continuously. When two or more penalty periods overlap, the State imposes the penalties sequentially.

The SSI applicant or recipient who transfers assets for less than fair market value within the look-period or after, becomes ineligible for SSI benefits for a prescribed period of time. The SSA calculates the period of ineligibility in the following manner:

$$\frac{\text{Uncompensated value of assets} + \text{Maximum monthly benefit payable}}{\text{Number of months of ineligibility}} =$$

The penalty period may not be longer than 36 months.

HOW IS DISPOSAL OF PROPERTY BY A SPOUSE TREATED?

For Medicaid-only HCBC or institutionalized applicants and recipients and SSI applicants and recipients, when a spouse disposes of a person's assets, the penalty may be divided between the person and the spouse.

REIMBURSEMENT OF PUBLIC ASSISTANCE PAYMENTS

Many people who receive public assistance must reimburse the State for payments that the State made on their behalf under Financial Assistance programs or under the Medicaid program. New Hampshire usually recovers these payments from the person's estate, after the death of the person, although there are circumstances where the State may recover earlier. The State may also recover the cost of assistance payments from judgments or settlements that a person receives from other parties who are liable for the cost of the person's care.

REIMBURSEMENT THROUGH ESTATE RECOVERY

WHAT CIRCUMSTANCES REQUIRE REIMBURSEMENT?

Federal law requires that the State recover certain Medicaid payments that it made for a person. Federal law restricts recovery to the recovery of payments made to those listed in the table below ("Recovery from"). Also, the State may only recover under certain circumstances ("Recovery restricted to").

RECOVERY OF MEDICAID PAYMENTS	
Recovery from:	Recovery restricted to:
Individual who is: <ul style="list-style-type: none">• Institutionalized; and• Is not reasonably expected to be discharged and return home.	The individual's estate or the sale of the property that is subject to a lien.
Individual who was 55 years of age or older when receiving Medicaid.	Medicaid payments for: <ul style="list-style-type: none">• Nursing facility services,• Home and community-based services, and• Related hospital and prescription drug services.

New Hampshire also requires reimbursement from certain people who receive Financial Assistance. In summary, New Hampshire requires the following people to reimburse the State for assistance payments:

- OAA Financial or Medicaid recipients;
- APTD Financial Assistance recipients;
- APTD Medicaid recipients who are age 55 or older;
- QMB, QDWI, SLMB, SLMB135 or SLMB175 who are age 55 or older; and
- Medicaid recipients who own real estate and who are permanently institutionalized.

WHEN DOES THE STATE RECOVER?

The State typically recovers assistance payments from the person's estate, after his or her death, but may do so earlier under some circumstances. The State may recover Financial Assistance payments from the estate of the person or the estate of his or her spouse. The State may recover Medicaid payments after the death of the person, both from his or her estate, and from a revocable trust of the person.

For the Person Who Received Financial Assistance—

New Hampshire law prohibits recovery of financial assistance prior to the death of the person and prohibits recovery of a home while a surviving spouse occupies the house.

For the Individual Who Received Medicaid—

Under federal and State law, the State may only recover Medicaid payments after the death of the person's spouse, if any, and when there is no surviving child under 21 years of age or a child that is blind or disabled. When the State has imposed a lien on the home of an institutionalized person, the State may not recover while the people listed below reside in the home and have done so continuously since the institutionalization of the person.

- A sibling who was living in the person's home for at least one year immediately before the date of the person's admission to the institution; or
- A son or daughter who was residing in the person's home for at least two years immediately before the date of the person's admission to the institution, and who establishes that he or she provided care to the person which permitted the person to reside at home rather than in an institution.

Undue Hardship Waiver --

Under federal and State law, the State may waive recovery in a case of undue hardship or when recovery would not be cost-effective.

STATE LIENS ON A PERSON'S PROPERTY

To recover the amount of Financial Assistance paid by the State, New Hampshire imposes a lien against the real estate (home or land) of the person or his or her spouse. The State places the lien on the property during the lifetime of the person and collects on the lien at the death of the person or spouse.

To recover the amount of Medicaid paid by the State, New Hampshire will usually impose a lien only upon the death of the person. Federal and State Medicaid law allows the State to impose a lien against property prior to the death of a person in only two circumstances:

1. When ordered by a court in order to recover assistance benefits that were incorrectly paid to the person; or
2. Against real property when a person:
 - Is institutionalized, and
 - Is not reasonably expected to be discharged and return home.

In the second circumstance, federal and State Medicaid law imposes two conditions. First, the State may not impose a lien on the home of the person if any of the following are residing in the home:

- The person's spouse;
- The person's child, if the child is under 21 years of age, blind or disabled; or
- The person's sibling, if the sibling has an equity interest in the home and resided in the home for at least one year immediately before the person's institutionalization.

Second, the lien must dissolve if the person is discharged from the institution and returns home.

STATE RECOVERY OF AN INDIVIDUAL'S SETTLEMENT OR JUDGMENT

Federal law requires the State to take all reasonable measures to determine the legal liability of others (third parties) for a person's medical costs. By law, the Medicaid program is the payor of last resort. When another party is legally liable, the State must seek reimbursement from that party for Medicaid payments that the State made on behalf of a person.

Federal law also requires that the Medicaid applicant assign to the State any rights that the person has to support and to payment for medical care from a third party. By State law, when a person *accepts* public assistance, he or she *automatically* makes this assignment. Therefore, if *after* a person becomes eligible for Medicaid, he or she receives a court judgment or settlement, the State may claim those funds. The State may claim the amount it has paid on behalf of the person under Medicaid. (See also *Treatment of the Judgment or Settlement* in the discussion of *The Self-Settled Special Needs Trust* in the section *The Special Needs Trusts*.)

THE SPECIAL NEEDS TRUST

The special needs trust is a planning tool that allows people to provide for the extra costs of a disability or to supplement the public benefit lifestyle of a person with a disability without disrupting his or her eligibility for public benefits. The special needs trust may be funded with the person's assets (self-settled trust) or with someone else's assets, such as yours (third-party trust). Both are discussed in this section.

- *The Self-Settled Special Needs Trust*
- *The Third-Party Special Needs Trust*

THE SPECIAL NEEDS TRUST

To the degree that they are able, family members and others often provide support for the person with a disability. Support may be food, clothing, shelter and medical care. When able, those providing support supplement these basics. A special needs trust (SNT) is a way to manage ongoing support to meet the needs of a person with a disability. It is a way to manage assets and oversee matters as basic as providing food, clothing and shelter to meeting the unique needs of a disability. Family members or others may establish and implement the trust during their lifetime as a financial planning mechanism or as a management tool. Importantly, a SNT may provide for a person even after the death of the person providing support.

Not all family members or others are able to provide for all of the basic costs of food, clothing, shelter and medical needs for the person with a disability. As a result, many people with a disability must rely on public benefit programs that provide for these basic needs. Fortunately, many family members and others are able to assist the person by providing items and services that are not covered under the public programs. This type of assistance enhances the person's quality of life. Unfortunately, those who assist a person with a disability will not always be able to oversee this assistance themselves.

A SNT, structured so that it is not deemed an asset in the public benefit eligibility determination, is a tool that allows assistance to a person with a disability without disturbing public benefits. A SNT is a trust that provides for the supplemental needs of the person, those needs that are not basic needs and those needs that are not met by public benefit programs. For many parents the SNT does for the person what you have done all along. Through a SNT, you may direct the spending for the person that is similar to the spending that you have done for him or her. The trust, however, will continue to provide for this person in the event that you become incapacitated or after your death. Importantly, a properly structured SNT is not regarded as a financial resource under public benefit programs and therefore does not effect public benefit eligibility. Through the SNT, you may enhance the quality of the person's life as much as you are able.

As someone who supports a person with a disability, you should understand what a SNT is. This section first looks at some basics— what a trust is and why to use a trust. This is followed by a look at the SNT, a particular type of trust, and the differences between a SNT that is established with the assets of the person with a disability versus a SNT established with your assets or the assets of others. The concentration here is on preservation of public benefits, although a SNT is certainly a very beneficial tool for the person not dependent upon public benefits. When public benefits are not a concern, some of the cautions presented here are not necessary.

A word of advice— This is not intended to be an instruction manual for you to create a trust by yourself. The creation of a valid trust takes legal expertise. A special needs trust must be carefully structured to meet many requirements under law. Hire an attorney to do this for you. Importantly, hire an attorney knowledgeable in special needs trusts and public benefit law.

WHAT IS A TRUST?

A trust is a legal arrangement in which one person (*settlor* or *grantor*) transfers property that he owns to a second person (*trustee*) to invest and spend for the benefit of a third person (*beneficiary*).

Example: Alice gives Ben \$30,000 to hold and invest for the benefit of Alice's daughter, Carol.

The *settlor*, Alice, creates the trust. The *trustee*, Ben, manages the trust. The *beneficiary*, Carol, enjoys the trust.

There are two main parts to a trust—the *principal* and the *income*. The principal is the capital or the property of the trust. The income is the gain or the return from investing the principal.

Example: The \$30,000 that Alice gives to Ben is the principal of the trust. The interest earned on the principal is the income of the trust.

WHY CREATE A TRUST?

A trust is a practical way to transfer property for the benefit of someone else. Property may be cash, stocks, or a home. A trustee takes over management of the property, perhaps relieving others of that responsibility. With a trust, a settlor may provide funds to support family members, provide funds for a college education, obtain professional financial management of property, or create a mechanism to avoid probate.

When you support a person with a disability who relies on public benefits, a particular type of trust, a SNT, is a way to provide for him or her without disrupting public benefit eligibility. If the person receives means-tested public benefits, such as Medicaid or SSI, the person cannot keep those benefits if his or her income or resources are more than the program eligibility rules allow.

Example: Carol has a disability and receives Medicaid and SSI. While her mother was alive, she helped Carol buy extras that public benefits did not pay for and made Carol's life a little more comfortable. In her will, Alice leaves \$30,000 to Carol to continue to help Carol live a little more comfortably.

To be eligible for Medicaid, Carol cannot have more than \$2,500 in resources. To be eligible for SSI, Carol cannot have more than \$2,000 in resources. When Carol receives the \$30,000 from her mother she loses her Medicaid and SSI benefits. In order to regain Medicaid eligibility, Carol must spend down the \$30,000 until all that is left is \$2,500. Carol must spend down to \$2,000 to regain SSI eligibility. As Carol's medical expenses are high, this does not take long. However, Carol then has only \$2,000, instead of \$30,000, to make the rest of her life a little more comfortable.

A trust, and more specifically a SNT, is a way to help the person with a disability without disturbing necessary public benefits.

Example: In her will, Alice leaves \$30,000 to Carol in a trust that is a SNT. The trustee, Ben, will manage and invest the trust principal (the \$30,000) and continue to provide for Carol as Alice did when she was alive. Carol never loses her Medicaid or SSI benefits. Carol will live a “little more comfortably” for a long time.

WHAT IS A SPECIAL NEEDS TRUST (SNT)?

The SNT, sometimes called a supplemental needs trust, is a critical planning tool for the person with a disability who is dependent upon public benefits. Public benefits provide for basic food, clothing and shelter needs, as well as basic medical care. The SNT is a way to enable the person with a disability to access items and services that public benefits do not cover. The SNT may also provide for recreational and social activities that are important to the person’s quality of life. Most importantly, the properly created SNT will not disrupt public benefit eligibility.

To be classified as a SNT that is not considered an asset in the public benefit eligibility determination, the trust document must be carefully structured. The *key* to preserving public benefits is to clearly make the principal and income of the trust assets that are not *available* to the beneficiary, the person with a disability. The trust terms must only allow the trustee to spend money from the trust to *supplement* and *not* to provide for the basic food, clothing, and shelter needs of the person.

The assets for the principal of the SNT can come from any person, including the person with a disability. When the assets are the person’s, it is a *self-settled* trust. When the assets come from someone other than the person with a disability, it is a *third-party* trust.

Example: Alice establishes a SNT for Carol and puts Carol’s savings account money into the trust. This is a self-settled SNT.

Example: Alice puts \$30,000 of her own money into a SNT for her daughter, Carol. This is a third-party SNT.

There are different rules for the self-settled SNT as compared to the third-party SNT.

THE SELF-SETTLED SPECIAL NEEDS TRUST

Federal law allows a person with a disability to create a trust. This self-settled SNT is not counted as a resource in the Medicaid or SSI eligibility determination. (This exemption does not apply to the New Hampshire Financial Assistance or Food Stamp programs.) Also, this law applies to two types of self-settled trusts: (1) a trust for a person under age 65; and (2) a pooled trust for a group of people of any age. Remember, the law applies only to the self-settled trust, a trust created with the assets of the person with a disability.

HOW IS THE SPECIAL NEEDS TRUST TREATED IN PUBLIC BENEFIT ELIGIBILITY DETERMINATIONS?

Under federal and State law, the SNT is not a resource if it meets the requirements of the law. However, any distribution from the SNT to the beneficiary is income to the beneficiary.

Example: Alice establishes a SNT for Carol and puts Carol's savings account money, \$5,000, into the trust. Carol also has \$1,200 in another savings account. In the Medicaid eligibility determination, the State does not count the SNT as one of Carol's resources. Carol is eligible for Medicaid because the total value of her countable resources is \$1,200, which is less than the \$2,500 Medicaid limit.

Example: Alice establishes a SNT for Carol and puts Carol's savings account money, \$5,000, into the trust. In the Medicaid eligibility determination, the State does not count the SNT as one of Carol's resources. Carol is eligible for Medicaid. One month, Ben gives (distributes to) Carol \$350 from the trust to buy a television. The State counts the \$350 as income. If, as a result of receiving the \$350, Carol has more income than the State allows under the Medicaid program, Carol loses Medicaid eligibility that month.

However, if the trustee makes a distribution from the trust to a vendor, the State will not count the distribution as income, as long as the distribution was for a supplemental item or service.

Example: Alice establishes a SNT for Carol and puts Carol's savings account money, \$5,000, into the trust. In the Medicaid eligibility determination, the State does not count the SNT as one of Carol's resources. Carol is eligible for Medicaid. Ben pays ABC Appliances \$350 for a television for Carol. The State does not count the \$350 as income to Carol. Carol does not lose Medicaid eligibility.

WHAT ARE THE RULES FOR A SELF-SETTLED SPECIAL NEEDS TRUST FOR AN INDIVIDUAL UNDER AGE 65?

The law allows a person with a disability under age 65 to establish a trust with his or her assets. The trust must be for his or her own benefit and the trust must provide for a Medicaid pay-back upon the death of the person. This SNT is not a countable resource under public benefit eligibility.

However, public benefit programs will only exempt a SNT that strictly meets the rules of the law. The rules are listed in the table below along with some facts that you should know about some of the rules. If these rules are not followed, the trust will be counted as a resource in eligibility determinations for public benefits.

SELF-SETTLED SPECIAL NEEDS TRUST FOR THE INDIVIDUAL UNDER AGE 65	
Rules:	What else you should know about the rule:
1. The trust contains the assets of the individual.	Although this SNT is a self-settled trust, the federal policy is that the trust may contain assets of others in addition to the assets of the person with a disability.
2. The individual is under age 65.	The trust is not considered an asset as long as the person with a disability is under age 65. The trust will also not be considered an asset after age 65. However, any addition or change to the trust after age 65 may be treated as an available asset.
3. The individual is disabled (by government standards).	
4. The trust is established for the benefit of the individual by a parent, grandparent, legal guardian or a court.	Federal policy is that the trust is established for the <u>sole</u> benefit of the individual. It cannot also benefit someone else. This requirement does not prevent: <ul style="list-style-type: none"> - Reasonable compensation to the trustee; or - Disbursal to other beneficiaries upon the death of the individual, after the state's claim is satisfied
5. The trust provides that the State will receive all amounts remaining in the trust at the death of the individual, up to an amount equal to the amount of the total Medicaid payments made on behalf of the individual.	The self-settled trust document <u>must</u> contain a provision that states this. If the trust document does not state this, it will likely be counted as a resource.

WHAT ARE THE RULES FOR A SELF-SETTLED SPECIAL NEEDS POOLED TRUST?

The law allows a person with a disability, at any age, to establish a SNT with his or her own assets through a pooled trust. The *pool* is a trust established by a non-profit organization with the assets of a number of people with disabilities. The non-profit organization maintains separate accounts for each person and pools funds for investment. Upon the death of the person, the trust may retain some or all of the funds remaining. The trust document, however, must provide for a Medicaid pay-back with funds not retained by the trust.

As with the individual SNT, public benefit programs will only exempt a pooled SNT that strictly meets the requirements of the law. The rules for the pooled trust are listed in the table below along with some facts that you should know about some of the rules. If the rules are not followed, the trust will be counted as a resource in public benefit eligibility determinations.

SELF-SETTLED POOLED SPECIAL NEEDS TRUST	
Rules:	What else you should know about the rule:
1. The trust contains the assets of the individual.	Although this SNT is a self-settled trust, the federal policy is that the trust may contain assets of others in addition to the assets of the individual.
2. The individual is disabled (by government standards).	
3. The trust is established and managed by a non-profit organization.	
4. The non-profit organization maintains a separate account for each beneficiary, pooling the funds for purposes of investment and management.	
5. The trust accounts are established solely for the benefit of the individual by the individual, a parent, grandparent, legal guardian or a court.	Federal policy is that the trust is established for the <u>sole</u> benefit of the individual. It cannot also benefit someone else. This requirement does not prevent: <ul style="list-style-type: none"> – Reasonable compensation to the trustee; or – Disbursal to other beneficiaries upon the death of the individual, after the state’s claim is satisfied
6. Upon the death of the individual, the trust pays the state an amount equal to the amount of Medicaid payments made on behalf of that individual from the amounts remaining in the beneficiary’s trust account that are not retained by the trust.	The pooled trust may retain a portion of the individual’s funds upon the death of the individual. However, the trust document <u>must</u> have a provision for payment to the state for Medicaid costs. If the trust document does not state this, it will likely be counted as a resource.

The pooled trust offers much to the person with a disability and potentially to the disability community. The pooled trust offers the benefit of higher returns on combined assets, which is especially helpful to the person with a small fund. Initial costs may also be less than for an individual trust. Upon the death of the person, the balance may be left to the trust to be used for charitable purposes rather than to be used for Medicaid reimbursement. The pooled trust is also the only SNT solution for the person over age 65 who would like to establish a trust with his or her own assets.

Some pooled trust programs also offer services such as guardianship, representative payee, visitor and advocacy services.

ARE THERE ANY OTHER PROVISIONS THAT SHOULD BE IN THE SELF-SETTLED SNT?

Aside from the obvious rule requirements described previously, there are required and recommended provisions that come from New Hampshire trust law and from many court interpretations of public benefit law. Many of the recommended provisions presented in the following section on the third-party trust may be appropriate for the self-settled trust. For example, a self-settled SNT should have a spendthrift clause that protects the trust from seizure by creditors.

CAN A JUDGMENT OR SETTLEMENT BE THE ASSETS OF A SELF-SETTLED SPECIAL NEEDS TRUST?

Many see the self-settled SNT as a way to preserve legal settlements and judgments obtained from lawsuits. For this purpose, “timing is everything.”

As discussed in the section *Reimbursement of Public Assistance Payments under Public Benefit Considerations*, when a person applies for and accepts public assistance he or she automatically gives the State any rights to payment for medical care that he or she may receive from a third party. Therefore, if a person is already eligible for Medicaid when he or she receives a judgment or settlement, the State has a claim to those funds up to the amount that the State has paid on behalf of that person under Medicaid. This is true even if the judgment or settlement is placed in a SNT. If, however, the person receives the judgment or settlement payment prior to the eligibility determination, the funds may be fully transferred to a self-settled SNT as described previously.

THE THIRD-PARTY SPECIAL NEEDS TRUST

With a carefully structured third-party SNT, those providing support to a person with a disability may supplement public benefits with their assets without disturbing public benefit eligibility. Many providing supports do not have the means to fully support the person with a disability. Many, however, have the means to supplement the frugal lifestyle and limited services of public benefits to improve the person's quality of life for a long time, perhaps even the lifetime. The third-party SNT allows people to do just that, even after their deaths.

CAUTION – State agencies have successfully classified some third-party SNTs as an asset that is *available* to the person with a disability, resulting in the interruption of public benefit eligibility and forcing spend-down of trust assets. There are no federal or New Hampshire laws that provide an outright exemption for the third-party SNT. The legal reliance instead is upon the opinions of different courts as to what trust may be counted as a resource in public benefit eligibility determinations.

WHAT ARE THE ALTERNATIVES TO A THIRD-PARTY SPECIAL NEEDS TRUST?

Those concerned about the above caution may think that alternatives to a SNT are *safer* solutions. This is not necessarily so. An outright gift to a person with a disability, for example, readily becomes a countable asset for public benefit programs. The same would be true if you gave the funds directly to his or her guardian.

Some plan to leave funds to a relative for the care of the person with a disability despite the fact that this is often not a *safe* thing to do. An arrangement with a relative does not impose a legal obligation on the relative to use those funds as you might wish. When you leave funds to a relative, those funds become the relative's. As a result, the funds may:

- Increase the tax obligations of the relative;
- Be claimed in a legal proceeding involving the relative, such as a divorce or lawsuit;
- Be claimed by bill collectors of the relative;
- Have to be spent down if the relative should become disabled; and
- Be disbursed in ways that do not benefit the person with a disability if the relative should predecease him or her.

WHAT ARE THE BENEFITS OF A THIRD-PARTY SPECIAL NEEDS TRUST?

The carefully created third-party SNT provides a number of protections and benefits. It allows the person with a disability to keep public benefits without interruption. It creates legal obligations in the use of the funds. It protects against bill collectors and other claimants. It provides a way to maximize the value of the funds through careful investment and disbursement. It allows you to choose who will receive the remainder of the funds upon the death of the person with a disability.

WHAT SHOULD YOU FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST?

Court opinions show that there are certain trust provisions that should be a part of a third-party SNT document. Those provisions are listed in the table below, with an explanation as necessary.

TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST	
The terms of your trust should:	Why:
<input type="checkbox"/> Identify the source of funding as that of a third party by identifying that party.	To show that these are not the assets of the person with a disability.
<input type="checkbox"/> Identify the trustee(s) and the beneficiary(ies).	Standard trust provision. The settlor, the trustee and the beneficiary should all be identified.
<input type="checkbox"/> Describe the purpose of the trust, such as:	
<input type="checkbox"/> To supplement, not replace public benefits;	To show that these funds are not intended to replace public benefits.
<input type="checkbox"/> To supplement and not provide for the basic needs of food, shelter and clothing;	To show that the funds are for <u>supplementary</u> items and services and not for the basic needs that are covered by public benefit programs.
<input type="checkbox"/> To provide for items and services that improve quality of life (not for support);	To further show the supplementary purpose of the funds and the overall intent.
<input type="checkbox"/> Examples of trust fund uses, such as funding of: <ul style="list-style-type: none"> • Medical and dental items/services not covered under public programs, • Differentials in housing costs for private verses shared rooms, • Transportation , • Recreation, • Periodic travel and vacation, • Television and telephone services, • Hair care; 	To further show the supplementary purpose of the funds as well as to give examples of the supplementary items or services that you think would be appropriate for the person with a disability.
<input type="checkbox"/> For the lifelong benefit of the person with a disability.	To show that the funds are expected to be used over a long period of time and not to be spent down quickly. Rapid spend down would occur if the funds were used to meet the high costs of food, clothing, shelter and medical care. This provision emphasizes a “supplementary” purpose and the intent not to disturb public benefits.

TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST

The terms of your trust should:

Why:

Identify Trustee powers:

- The powers given by state law, except as added to or limited by the trust;
- Broad to full discretionary power (decision-making power);
- The power to initiate legal steps to initiate or continue public benefits.

Standard trust provision. (Identify the state.)

To show that the Trustee has the same control over the funds that you had and that the person with a disability has no control or expectations.

To show that the trustee has the authority to fund legal measures to ensure public benefits.

Identify Trustee duties:

- The duties required by state law, except as added to or limited by the trust;
- The duty to visit the person with a disability at a minimum frequency so to maintain familiarity with the person and his/her circumstances.
- The duty to know and consider income and resource limitations of the public benefit programs.
- The duty to know the items or services that public or private benefit programs are obligated to pay for and to resist payment for these.
- The duty to make payments directly to vendors of goods and services and not to the person with a disability;
- The duty to consider lifelong needs of the the person with a disability so as to maximize the use of resources

Standard trust provision. (Identify the state.)

To further show that you do not want public benefits interrupted and to show that the trustee must be aware of public benefit program requirements.

To further show that you do not want public benefits interrupted and to show that the trustee must be aware of public benefit program provisions.

To prevent the Trustee from giving the person with a disability income or what may be interpreted as income.

1. To further direct distribution of funds.
2. To further show that the funds are expected to be used over a long period of time and not to be spent down quickly. Rapid spend down would occur if the funds were used to meet the high costs of food, clothing, shelter and medical care. This emphasizes a “supplementary” purpose and the intent not to disturb public benefits.

TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST

The terms of your trust should:

Why:

<p><input type="checkbox"/> Include a spendthrift provision:</p> <p><input type="checkbox"/> Limit the beneficiary powers by prohibiting the person with a disability to compel or expect distribution, to transfer or to revoke the trust.</p> <p><input type="checkbox"/> Prohibit legal attachment by a creditor, private or public.</p>	<p>1. To further show the lack of control over and expectation of funds of the person with a disability.</p> <p>2. To prevent the bill collector of the person with a disability from attaching the funds.</p> <p>To show that the person with a disability <u>does not own</u> the trust.</p> <p>To show that no one, including the state, may seek funds owed by the person with a disability from the trust.</p>
<p><input type="checkbox"/> Include a termination provision directing when the trust will end and how the Trustee will distribute the remaining principle and income. (Name remainder beneficiaries.)</p>	<p>Standard trust provision. This also shows that you intend the remaining funds to go, for example, to another family member, friend, or charity. You may decide, for example, that the person with a disability may only benefit from the investment of trust funds or other property (just use the interest) and that the property will return to a family member after the death of the person with a disability.</p>
<p><input type="checkbox"/> Name successor trustees.</p>	<p>Standard trust provision. Always have an alternate trustee should the first trustee be unable to serve.</p>
<p><input type="checkbox"/> Include a choice of law provision.</p>	<p>Standard trust provision. For example, this provision may be that the trust is administered in accordance with the laws of the State of New Hampshire even if the person with a disability lives in Massachusetts.</p>

Optional Trust Provisions

<p><input type="checkbox"/> Forfeiture provision or second termination provision. Terminate the trust if the trust impacts the availability of public benefits. (The impact may occur, for example, because of a change in law.)</p>	<p>To show that the trust was not intended to replace public benefits and, if it impacts those benefits, it must be terminated so as to prevent interruption of the benefits. In this provision, you may also direct the distribution of the funds to the remainder beneficiaries with hopes that they may use those funds as described in the trust— although they have no legal obligation to do so.</p>
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TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST

The terms of your trust should:

Why:

<input type="checkbox"/> Spray provision. Name multiple trust beneficiaries.	<ol style="list-style-type: none"> 1. To diminish the interest in the trust of the person with a disability and to show the interest of others in the trust. 2. To further justify the duty of the Trustee to limit fund distribution.
<input type="checkbox"/> Remainder obligation. Require that the Trustee consider the interest of remainder beneficiaries (beneficiaries of the trust after the death of the person with a disability) and conserve distribution so as to ensure that there will be trust funds available for distribution to the remainder beneficiaries.	<ol style="list-style-type: none"> 1. To justify preserving funds, so that there are funds available for later distribution to remainder beneficiaries. 2. To further show that this is a supplementary trust. This emphasizes that if the trust were spent down for food, clothing, shelter or medical care, there would be no funds for remainder beneficiaries.
<input type="checkbox"/> Reference to letter of intent. Refer to the letter of intent compiled for the person with a disability for an understanding of your expectations for the person with a disability.	<p>To demonstrate the full scope of intentions for the person with a disability and how trust funds will likely be used.</p>
<input type="checkbox"/> No obligation to support. In a testamentary trust (trust created and funded by your will), include a provision stating the absence of your obligation to support the person with a disability after your death.	<p>If you are a parent, this emphasizes that you realize that you have no obligation to further support your child's basic needs after your death. If your child relies on Medicaid only (not New Hampshire Financial Assistance), you may use this provision during your lifetime also.</p>
<input type="checkbox"/> Name the State as a claimant. You may include a provision to allow the State to recover public payments made on behalf of the person with a disability after the person with a disability's death.	<p>This would essentially create a trust that meets the requirements for the self-settled Medicaid-payback trust discussed above, as long as all other rules for that type of trust are met.</p>

Keep in mind that there is no set format for creating a trust. The trust items listed here may be found under different headings in different trusts. Your trust may not look exactly like the trust your friend has. Each attorney will create a trust in the way that he or she was taught and there is no set way for doing this. Your attorney will also be addressing your own unique situation.

WHO SHOULD BE THE TRUSTEE FOR THE SPECIAL NEEDS TRUST?

You should carefully select the trustee of the SNT, as well as successor trustees. Although a trustee can never replace you, the SNT trustee will step into your shoes to supply those extras that ensures the person with a disability a better quality of life. The trustee will also be responsible for wise management of the trust.

The trustee that you select should be able to oversee the supplemental needs of the person with a disability, including oversight of those needs in light of his or her disability and public benefits. The trustee should understand the person's capabilities and limitations. The trustee should understand his or her medical status and the present and future effects of that status. Finally, the trustee should be knowledgeable of the public benefit programs, including income and resource eligibility limitations, as well as benefits.

The trustee that you select should also be able to manage the trust. Your directions in the trust document should clearly state how the trustee should use the trust. It can be further clarified through the letter of intent that you create for the person with a disability. The trustee is also responsible for investment of trust funds, filing tax returns on the trust, and maintaining an accounting of the trust. Wise administration of the trust is essential to the availability of funds over the lifetime of the person and for the availability of remainder funds for those who will inherit upon the termination of the trust.

You may select a family member, friend, non-profit organization, or financial institution to be the trustee. Your attorney will help you with this decision. Selection may depend on the amount of funds in the trust, the extent of the non-financial services the trustee must perform, or the willingness of a particular person to become trustee. A family member may manage small trusts in an easy and straightforward way. Larger trusts may require more expertise than a family member is able or willing to provide. Certain non-profit organizations may provide needed support services in addition to financial management. A financial institution may provide trustee services only for trusts over a certain amount. You should explore these issues with your attorney.

You may also need to compensate a trustee. Compensation may be arranged for in the trust document. Family members or friends may provide these services at no cost. Non-profit organizations and financial institutions will charge for trustee services.

WHAT PROPERTY DO YOU PUT INTO A SPECIAL NEEDS TRUST?

What property that you put into a SNT and when you put the property in is entirely up to you. You may, for example, put cash, stocks, or a home into the trust. Life insurance benefits may be left to a trust. You may advise others to leave inheritances to the trust rather than directly to the person with a disability. You may fund your trust all at once or over time. Your attorney will advise you on when and what to place in the trust, as well as advising you on tax considerations.

When deciding what property to place in your trust, you need to think about the person's needs that you are trying to fulfill and what property or how much money will be needed to do that. You should consider—how much you contribute to the support of the person now; the costs of supplementary items and services that you expect he or she will need; and what standard of living you would like to help him or her achieve. Consider the person's expenses, such as:

- Educational or vocational expenses;
- Costs for supports and advocacy services, that are not otherwise covered;
- Equipment and assistive technology costs;
- Medical and dental expenses not covered under Medicaid;
- Expenses related to the upkeep and maintenance of a home;
- Miscellaneous emergency reserves;
- Expenses related to hobbies, vacations, recreation, and seeing friends and relatives;
- Other items like televisions, stereos and furniture; and
- Other personal expenses.

(See the *Checklist for a Person with a Disability*.) Your attorney or financial planner can help you to evaluate these costs and estimate costs for the future.

SOME FINAL THOUGHTS...

The SNT is a very valuable and recommended tool for those supporting a person with a disability. Seek out a qualified attorney to create the SNT for you. The attorney you choose should have experience with the SNT and have knowledge of public benefit law. If you already have a trust, check it and make sure that it has all of the necessary provisions.

ASSISTANCE IN DECISION MAKING

The person with a disability may need assistance in making decisions – personal or financial. There are a variety of ways of providing that assistance. From the least restrictive to the most restrictive alternative, the different ways to provide assistance are discussed here as well as how to select a person to provide assistance.

- *Advisor or Advocate – Informal Assistance*
- *Benefit Program Assistance*
- *Health Care Assistance – Durable Power of Attorney for Health Care and Living Will*
- *Guardianship*
- *Other Assistance – Durable Power of Attorney, Conservator, & Trusts*
- *Selecting Someone to Assist The Person with a Disability*

ASSISTANCE IN PERSONAL AND FINANCIAL DECISION-MAKING

New Hampshire law presumes that an adult is capable of making his or her own personal or financial decisions. The presumption is that, with the support and guidance of parents, children learn how to make decisions as they develop. Parents, as the natural guardians of children, make many decisions for their children during the child's period of development. As the years pass, children become more and more able to make both personal and financial decisions. At age 18, the law presumes them sufficiently capable to make decisions and the natural guardianship of parents automatically dissolves. Not every adult, however, attains this capability.

Parents often continue to provide decision-making assistance to their adult sons and daughters, even parents who do not have a son or daughter with a disability. However, when planning for the future or helping a son or daughter transition to a more independent lifestyle, the need for further decision-making assistance, how much assistance is necessary, and what method of assistance is best for him or her must be evaluated.

There are a number of possibilities for assistance for an adult. New Hampshire law and policy support implementation of the least restrictive alternative. Possibilities range from methods that minimally restrict the decision-making independence of the person with a disability to severely restricting it. Assistance may be an informal arrangement where a family member, friend, or team of these acts as advisor or advocate to the person. More formal assistance may come in the form of a representative payee, durable power of attorney, or a trust. Another formal arrangement, and potentially the most restrictive arrangement, is a guardianship. These alternatives are explained in the discussion that follows.

When you make a decision about assistance for the person with a disability, there are several important considerations.

- The person's capacity to make person decisions.
- The person's capacity to make financial decisions.
- The decision-making capacity that you expect him or her to develop.
- The realistic amount of support available to the person from family and friends.
- The assistance the person is or will be comfortable with.
- When assistance is necessary, what is the least restrictive alternative?

ADVISOR OR ADVOCATE – INFORMAL ASSISTANCE

An advisor or advocate is an informal type of decision-making assistance for the person with a disability. *Informal* means that it is not enforceable by law. Reliable and trustworthy family and friends may provide this type of assistance. It is the least restrictive form of decision-making assistance.

WHAT IS AN ADVISOR?

An advisor assists with particular types of decision-making. A family member or a trusted friend, or a team of these, may act as advisor to the person if he or she needs assistance to make only certain types of decisions. For example, if the person needs help making decisions beyond the day-to-day decisions, such as purchasing a large appliance or evaluating the need for elective surgery, an advisor arrangement may be beneficial and sufficient. The advisor arrangement is an informal arrangement that is not enforceable by law. You or the person with a disability may know of someone or a team of people who could be relied on for this type of support. It perhaps is the assistance arrangement that is most like a family support system.

WHAT IS AN ADVOCATE?

The advocate is similar to the advisor as it is an informal arrangement of support. It is different from the advisor as it offers a little more support. Again, a family member, friend or team of these, familiar with the person, could provide informal advocacy for him or her. An advocate could help the person with decision-making, even making some decisions, advocating, and monitoring services, as necessary. An advocate should be someone who is aware of the community resources available for the person. As with the advisor, this is not a legal arrangement.

BENEFIT PROGRAM ASSISTANCE

Social Security and New Hampshire public assistance programs (Financial Assistance, Medicaid, and Food Stamp programs) allow for adult representation for individuals who require assistance in meeting eligibility requirements or managing benefits. You should consider the rights and responsibilities of public programs when deciding whether or not the person with a disability should have assistance. The New Hampshire public assistance rights and responsibilities are presented below and are typical of public benefit programs. Following this is an explanation of the types of public benefit assistance a person might choose.

Under the **New Hampshire Financial Assistance** and **Medicaid** programs, an applicant or recipient has a number of rights and responsibilities. For example, a person has several rights relative to the application process and eligibility.

- The person may select and appoint someone (an authorized representative) to help in any part of the eligibility process.
- The State must notify the person of the eligibility requirements, the eligibility decision, the actions the State must take if the person does not comply with eligibility requirements and any changes that affect the amount of his or her benefit or level of eligibility.
- The person must receive a timely eligibility decision (45 calendar days for ANB and OAA, 90 calendar days for APTD).
- The person must not be discriminated against.
- If the person is dissatisfied with the State's decision or lack of action, the person is entitled to a review of the circumstances of the case and a fair hearing.
- The person is entitled to confidentiality.

In return, the person must: supply accurate information; report, within 10 days of the change, all changes in circumstances that might affect eligibility or the amount of assistance; comply with program requirements; and provide verification of eligibility information when requested.

The State reviews or re-determines eligibility at least annually and it may also review eligibility when there are changes in the person's circumstances. Changes in circumstance include changes in: a source of income; the amount of income received; resources available; a lump sum payment or settlement; residence; or medical insurance coverage.

If ensuring the rights, fulfilling program responsibilities or managing a small budget would be burdensome or difficult for the person, someone may be designated to provide assistance. Four types of assistance are available: a *representative payee*, an *authorized representative*, a *protective payee* and a *vendor payee*.

WHAT IS A REPRESENTATIVE PAYEE?

Social Security programs allow for a *representative payee* who is a formally appointed assistant for a person unable to manage payments due to a mental or physical condition or due to his or her young age. The representative payee is appointed through a Social Security Administration (SSA) process.

To select the payee who will best serve the interests of the person, the SSA considers the following preferences:

- A legal guardian, spouse, other relative or friend who has custody of the person or who demonstrates strong concern for his or her personal welfare;
- An agency or institution that has custody of the person; or
- A person who is qualified to carry out the responsibilities of a payee and who is able and willing to serve as a payee.

The SSA looks for a *continuing relationship* to the person and a continuing responsibility for his or her care.

The SSA pays the person's benefits to the representative payee. The representative payee must use the benefit payments for the costs of food, shelter, clothing, medical care and personal comfort items. When there is money remaining and there are no reasonably foreseeable needs, the payee must invest the payment. SSI rules state that the "preferred investment" is the U.S. Savings Bond or deposit in an interest or dividend paying account.

Warning: The SSA does not recognize a "power of attorney" as a substitute for a "representative payee."

WHAT IS AN AUTHORIZED REPRESENTATIVE?

New Hampshire Financial Assistance, Medicaid and Food Stamp programs allow for an *authorized representative* who is a person who acts on behalf of the assistance recipient in some or all of the eligibility requirements. Any adult may act as an authorized representative for the person with a disability as long as he or she is designated as such in writing on a form provided by the State. The authorized representative must, however, be someone who is concerned for the well being of the person with a disability and knows or is able to obtain information about his or her circumstances. The representative may represent the person in the eligibility process and in receipt of benefits. The representative pays the costs of basic needs that the person incurs and maintains an accounting of the person's funds. When a person has severe mental or physical disabilities, the authorized representative may assume all applicant and recipient functions.

WHAT IS A PROTECTIVE PAYEE?

New Hampshire Financial Assistance allows for a *protective payee* who is a person who receives the assistance recipient's monthly payment and pays the recipient's bills according to a budget planned with the recipient. When the State determines that direct payment of the Financial Assistance benefit is not in the best interest of the person with a disability, the State may temporarily authorize the appointment of a protective payee to receive and control the payment. The State will find that direct payment is not in the "best interest" of the person when it finds that he or she is persistently mismanaging funds. Importantly, it should be noted that physical or mental incapacity alone is not a valid reason for the appointment of a protective payee.

The role of the protective payee is temporary. When a payee is necessary, the State encourages the person with a disability to participate in the selection. During the appointment, the payee must pay and account for all bills. At the same time, the protective payee must work closely with the person, to teach him or her how to manage a household budget and to encourage him or her to participate in the cash management. The State reviews the need for protective payments every six months and terminates the arrangement on a finding that the person is able to manage funds or that protective payments are not in his or her best interest. The appointment of a guardian or other legal representative will also terminate the protective payee arrangement.

WHAT IS A VENDOR PAYEE?

New Hampshire Financial Assistance allows for a *vendor payee* who is a person or business that the State pays directly for the goods or services that the person or business provides to a Financial Assistance recipient. A person with a disability or an authorized representative may request direct vendor payment through Electronic Fund Transfer and the State will authorize such payments when they are in the person's best interest. The State will not, however, authorize vendor payments when the person with a disability has a guardian or conservator.

HEALTH CARE ASSISTANCE

Through a durable power of attorney for health care and through a living will, a person (a *principal*) can choose someone else (an *agent*) to make health care decisions for him or her in the event that he or she becomes incapacitated. Through these documents, a person may also express wishes and beliefs regarding end-of-life care and other care to inform and guide the decision-maker.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Competent adults (age 18 or older) may appoint another adult to make health care decisions for them in the event that they become incapacitated and unable to make those decisions for themselves. Appointment happens through a document known as the durable power of attorney for health care (DPOAHC). Through a DPOAHC the person with a disability may give another person, an agent, the authority to make any and all health care decisions on the person's behalf, if and when he or she becomes incapacitated. This means that the agent may consent, refuse to consent, or withdraw consent to any care, treatment, or facility admission.

There are some limitations on what the agent can do. The law does not allow the agent to consent to voluntary admission to a state institution, voluntary sterilization, or withholding life-sustaining treatment from a pregnant woman under certain conditions. In the DPOAHC, the person may list additional limitations on the decision-making power of the agent.

WHEN DOES A DPOAHC BECOME EFFECTIVE?

A DPOAHC becomes effective only when a physician certifies that the person with a disability is unable to make health care decisions. The law explains that this means that the person no longer has "the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care."

WHAT IS THE AGENT'S DECISION-MAKING PROCESS?

When making a health care decision for someone with a disability, the agent must consult with the person's health care providers and must also consider the person's wishes and religious beliefs. Therefore, it is important to discuss these issues with the agent or include them in the DPOAHC. This helps make the agent's decision-making more like that of the person with a disability. If the person has not communicated his or her wishes and beliefs, the law requires that the agent consider the person's "best interest" along with accepted medical practice. The agent may also access or disclose any of the person's health care information, such as medical records.

WHAT IS THE ROLE OF THE HEALTH CARE PROVIDER?

A health care provider, such as a physician or a residential care provider, must follow the decisions and directions of the agent. However, if a provider believes that the decision made by the agent is contrary to moral or ethical standards, the provider may transfer the person with a disability to another facility without liability.

Also, despite the DPOAHC and the incapacity of the person, health care providers may not withhold or give treatment over the objections of the person with a disability. New Hampshire law requires that the attending physician make a reasonable effort to inform the person of proposed or withheld treatment, despite his or her incapacity.

HOW DOES GUARDIANSHIP AFFECT THE ROLE OF THE AGENT?

A court may suspend or revoke an agent's authority upon request by a guardian or when the court appoints a guardian. The court must consider the preferences of the person with a disability, as expressed in the DPOAHC. Unless there is clear and convincing evidence that the agent is not in the best interest of the person, the court will leave the agent named in the DPOAHC.

HOW DO YOU CREATE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

You may create your own DPOAHC or have an attorney do this. The law requires that the document be "substantially in the form" presented in New Hampshire law, RSA 137-J:15. (See form at the end of this section.)

MAY YOU REVOKE A DURABLE POWER OF ATTORNEY FOR HEALTH CARE?

A person may revoke a DPOAHC at any time. This may be done in writing or orally. A DPOAHC is automatically revoked upon the completion of a new DPOAHC or upon divorce if the spouse was the named agent. (In the case of divorce, if there is an alternate agent to the spouse, the alternate automatically becomes the named agent.)

THE LIVING WILL

New Hampshire recognizes the rights of a person to control his or her own medical care decisions. In turn, the law provides another vehicle that a person may use to communicate health care decisions when no longer able to participate actively in the decision making. With a *living will*, a competent person is able to declare written instructions to a physician regarding the provision, withholding or withdrawing of life-sustaining procedures when the person is in a terminal or permanently unconscious condition.

WHO MAY CREATE A LIVING WILL?

Only a *competent* person creates a valid living will. The living will law defines a competent person as a person “of sound mind who is 18 years of age or older.”

HOW DO YOU CREATE A LIVING WILL?

New Hampshire law provides an example of a living will that may be but need not be followed. (See example at end of this section.) Importantly, artificial nutrition and hydration may not be withdrawn or withheld unless there is a clear expression of such intent in the document. The person with a disability may request that his or her attending physician place the document, or a copy of the document, into his or her permanent medical record; the physician must fulfill such a request.

The living will becomes effective only when the person is “permanently incapable of participating in decisions about his or her care.” He or she may revoke a living will by: destroying the document; oral revocation in the presence of two or more witnesses; or written revocation, signed and dated in the presence of two or more witnesses.

WHAT IS THE PHYSICIAN’S RESPONSIBILITY?

The attending physician must follow the directions of the document as closely as possible within the bounds of responsible medical practice. If, based on his or her own personal beliefs or conscience, the physician does not wish to comply with the document, he or she must notify the family of his or her position and allow referral to another physician without delay.

GUARDIANSHIP

A *guardian* is a person or an institution that has the legal right and duty to care for a person, a person's property or both because he or she is not capable of doing so. The person that a guardian provides care for is called a *ward*.

If guardianship is the least restrictive alternative of assistance, you should consider just how restrictive the guardianship should be. Under New Hampshire law, there is a legal presumption that the person with a disability is capable. The court may only impose an order of guardianship to the extent that is necessary to address the *functional* limitations of the person. You can vary the level of restriction by the type of guardianship and by restricting the powers and duties of the guardian.

WHAT IS GUARDIANSHIP OF THE MINOR?

New Hampshire law distinguishes guardianship of the *minor*, a child under 18 years of age, from guardianship of the adult and recognizes the parent as the natural guardian of the minor person. Father and mother are joint guardians. Upon death of one parent, the surviving parent is the sole guardian. However, this natural guardianship does not continue into adulthood, even for the person with a disability or incapacity. Without court appointment, as described below, at age 18 the person with a disability is automatically without a guardian.

WHAT IS GUARDIANSHIP OF AN ADULT?

New Hampshire law provides many protections for the rights of the involuntary ward. The State's policy is to encourage the development of self-reliance, to encourage rehabilitative care, and to impose guardianship only to the extent demanded by a person's unique functional limitations. A guardianship for the person with a disability, therefore, must:

- Leave the person with as much independence as possible;
- Recognize the functional capabilities of the person;
- Be designed to address the unique functional limitations of the person;
- Ensure that, where appropriate, steps are taken to lessen or eliminate the person's functional limitations in order to lessen or eliminate the need for guardianship; and
- End if and when the person's functional limitations are lessened or eliminated so that the person with a disability no longer needs a guardian.

You should also be aware that guardianship in itself does not deprive the person of any legal rights. Unless the court specifically finds otherwise, the person under guardianship still has the right to marry, to obtain a driver's license, to testify in court or in a hearing, to make a will, to convey or hold property, or to contract.

HOW IS A GUARDIAN APPOINTED?

Any interested person may file a petition for guardianship with the probate court. The person with a disability may also file in his or her own behalf. When someone files for guardianship, the court will ensure that the person has a lawyer to represent him or her alone. If the person does not already have a lawyer, the court will appoint one.

The person that files for guardianship must prove beyond a reasonable doubt that the person with a disability has functional limitations that require him or her to have a guardian. In the law, *a functional limitation is a behavior or a condition that impairs the ability of the person to perform basic activities to ensure proper food, clothing, shelter, health care and safety.* The person filing must show that the person with a disability is suffering harm or is likely to suffer harm because he or she is unable to provide for personal needs or manage his or her financial affairs. The person filing must demonstrate this by showing more than an isolated mistake. The person filing must give specific examples of the functional limitations of the person with a disability. *The fact that the person has a disability is not enough.*

If the person filing proves that the person with a disability has such functional limitations, the court may appoint a guardian if it also finds that:

1. Guardianship is necessary to provide continuing care, supervision, and rehabilitation for the person with a disability, or to provide management of his or her property and financial matters;
2. There are no available and appropriate alternatives; and
3. Guardianship is the least restrictive alternative for the person.

The court may appoint a *guardian of the person*, a *guardian of the estate* or a *plenary guardian* (a guardian of the person and of the estate). The court may also customize these to meet the needs of the person with a disability.

Guardian of the Person--

A guardian of the person manages the personal affairs of the ward. A guardian of the person may make sure that the person with a disability receives the necessary food, shelter and clothing as well as medical care, education and rehabilitation. New Hampshire law gives the guardian of the person certain powers and duties. However, the court may limit these powers and duties or add to them. (See a listing of the powers and duties of the guardian of the person as provided in New Hampshire law at the end of this section.)

Guardian of the Estate --

A guardian of the estate manages the financial affairs of the ward. A guardian of the estate may provide for the person's support costs, invest for him or her, and seek public benefits for the person with a disability. As with the guardian of the person, New Hampshire law gives the guardian of the estate certain powers and duties. Again, the court may limit these powers and duties or add to them. (See a listing of the powers and duties of the guardian of the estate as provided in New Hampshire law at the end of this section.)

WHO MAY BE A GUARDIAN?

Almost any competent person who agrees may be appointed guardian, including an institution or an agency, or a representative of the Office of Public Guardian. However, the court may not appoint an institution or agency that provides care and custody for the person with a disability unless no other person can be found to serve. Importantly, any competent adult may nominate a person to be his or her guardian or exclude a person from being his or her guardian (other than a public guardian). The court will appoint the nominee as long as the nominated person is legally qualified, willing and able.

HOW IS A GUARDIANSHIP TERMINATED?

A guardian may end, resign from or be removed from the guardianship appointment. The guardian may file with the court to end the guardianship or resign from the guardianship. The ward or any interested person may file for removal of the guardian. In any event, the court must give approval to terminate the guardianship.

MAY A GUARDIAN ENGAGE IN ESTATE PLANNING FOR THE PERSON WITH A DISABILITY?

New Hampshire law allows the probate court to authorize a guardian to undertake estate planning for a ward. The guardian must file a request to do estate planning and the guardian must present a proposed estate plan with supporting information to the court. The court may authorize a guardian of the estate to make gifts from the person with a disability's estate during his or her lifetime. The court may also authorize a guardian to plan for the distribution of his or her estate through a will. Both must be done in a way that is consistent with the wishes of the person.

If the person's wishes cannot be determined, the court may authorize the guardian to plan for the distribution of the person's estate, upon his or her death, in a way that minimizes taxes or in a way that helps with the distribution of his or her estate to family, friends, or charities who would be likely recipients of gifts from the person.

WHAT IS THE PUBLIC GUARDIANSHIP AND PROTECTION PROGRAM?

Public guardianship law provides for guardianship and protective services that are required by law and are not otherwise available. There are two New Hampshire laws, one for adults with developmental disabilities and one for adults with mental illness, that authorize the probate court to appoint a public guardian when no relative, friend or other interested person is available, willing or able to serve as a guardian. The probate court may also appoint a public guardian in other instances if there are funds available to pay for the services. The person with a disability or his or her estate bears the cost of public guardianship services.

The public guardian has the same powers and duties as a private guardian. The public guardian must also file an annual report with the probate court, which the court reviews to ensure compliance with the law, to ensure that the person receives appropriate care and services, and to ensure that the guardian maintains the highest ethical standards.

OTHER ASSISTANCE

WHAT IS A DURABLE POWER OF ATTORNEY?

A *power of attorney* is a document in which one person appoints another to act for him or her in legal and financial matters, with either broad or limited powers. If a person with a disability is competent, he or she may establish a power of attorney that takes effect immediately. When a power of attorney is *durable*, it remains effective even if the person is later determined incompetent. However, you should note that if the person is later determined incompetent, the probate court may appoint a guardian for the person and either the individual with a power of attorney will report to the person's guardian or the guardian may terminate the power. Unless revoked sooner, a power of attorney ends upon the death of the person with a disability.

WHAT ARE TRUSTS?

A *trust* is a legal arrangement established by a person (*settlor* or *grantor*) who transfers money or other assets that he or she owns to a second person (a *trustee*) to invest and spend for the benefit of a third person (a *beneficiary*). The trust document directs how the assets are to be invested and disbursed. The arrangement may be customized to meet individual needs, as well as to eliminate the need for a guardian of the estate.

Those who support a person with a disability who is dependent upon public benefits should consider a special needs trust as described in the section *The Special Needs Trust*. The properly structured special needs trust will not be regarded as an asset in the public benefit eligibility determination. Other types of trusts may be considered assets under the public benefit programs.

SELECTING SOMEONE TO ASSIST THE PERSON WITH A DISABILITY

When selecting someone to nominate or to ask to assist the person with a disability, there are several actions you should take.

1. Choose someone you and the person know and who you know to be trustworthy.
2. Make sure that the individual you choose is capable of the level of assistance that the person with a disability will require.
3. Talk to the individual about the assistance and ask if he or she is willing to help.
4. Present your letter of intent for the person with a disability to the individual that you choose so that that he or she is aware of your expectations and you are aware of his or her response.
5. Decide when this assistance should begin.
6. Once you and the person with a disability select someone, tell others who may be affected by the choice.
7. Do these same things for alternate people who may be called upon to assist the person with a disability if the first individual that you choose should become unable to help.
8. Take all of these actions and make these decisions with the person with a disability as much as possible.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE
(RSA 137-J:15)

I, _____, hereby appoint _____ of _____ as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document or as prohibited by law. This durable power of attorney for health care shall take effect in the event I become unable to make my own health care decisions.

STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING HEALTH CARE DECISIONS.

For your convenience in expressing your wishes, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment is defined as procedures without which a person would die, such as but not limited to the following: cardiopulmonary resuscitation, mechanical respiration, kidney dialysis or the use of other external mechanical and technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a section which allows you to set forth specific directions for these or other matters. If you wish you may indicate your agreement or disagreement with any of the following statements and give your agent power to act in those specific circumstances.

1. If I become permanently incompetent to make health care decisions, and if I am also suffering from a terminal illness, I authorize my agent to direct that life-sustaining treatment be discontinued. (YES) (NO) (Circle your choice and initial beneath it.)
2. Whether terminally ill or not, if I become permanently unconscious I authorize my agent to direct that life-sustaining treatment be discontinued. (YES) (NO) (Circle your choice and initial beneath it.)
3. I realize that situations could arise in which the only way to allow me to die would be to discontinue artificial feeding (artificial nutrition and hydration). In carrying out any instructions I have given above in #1 or #2 or any instructions I may write in #4 below, I authorize my agent to direct that (circle your choice of (a) or (b) and initial beside it):

(a) artificial nutrition and hydration not to be started or, if started, be discontinued,

-or-

(b) although all other forms of life-sustaining treatment be withdrawn, artificial nutrition and hydration continue to be given to me. (If you fail to complete item 3, your agent will not have the power to direct the withdrawal of artificial nutrition and hydration.)
4. Here you may include any specific desires or limitations you deem appropriate, such as when or what life-sustaining treatment you would want used or withheld, or instructions about refusing any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason. You may leave this question blank if you desire.

(attach additional pages as necessary)

In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as my health care agent, I hereby appoint _____ of _____ as alternate agent.

I hereby acknowledge that I have been provided with a disclosure statement explaining the effect of this document. I have read and understand the information contained in the disclosure statement.

The original of this document will be kept at _____ and the following persons and institutions will have signed copies:

In witness whereof, I have hereunto signed my name this _____ day of ____, 19 __

Signature

I declare that the principal appears to be of sound mind and free from duress at the time the durable power of attorney for health care is signed and that the principal has affirmed that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness: _____ Address: _____

Witness: _____ Address: _____

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 19 __, by _____

Notary Public/Justice of the Peace
My Commission Expires:

LIVING WILL
(RSA 137-H:3)
DECLARATION

Declaration made this ____ day of ____ (month, year). I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition or a permanently unconscious condition by 2 physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized or that I will remain in a permanently unconscious condition and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary to provide me with comfort care. I realize that situations could arise in which the only way to allow me to die would be to discontinue artificial nutrition and hydration. In carrying out any instruction I have given under this section, I authorize that artificial nutrition and hydration not be started or, if started, be discontinued. (yes) (no) (Circle your choice and initial beneath it. If you do not choose "yes," artificial nutrition and hydration will be provided and will not be removed.)

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physicians as the final expression of my right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Signed _____
State of _____
_____ County

We, the following witnesses, being duly sworn each declare to the notary public or justice of the peace or other official signing below as follows:

1. The declarant signed the instrument as a free and voluntary act for the purposes expressed, or expressly directed another to sign for him.
2. Each witness signed at the request of the declarant, in his presence, and in the presence of the other witness.
3. To the best of my knowledge, at the time of the signing the declarant was at least 18 years of age, and was of sane mind and under no constraint or undue influence.

_____ Witness
_____ Witness

The affidavit shall be made before a notary public or justice of the peace or other official authorized to administer oaths in the place of execution, who shall not also serve as a witness, and who shall complete and sign a certificate in content and form substantially as follows:

Sworn to and signed before me by _____, declarant _____ and _____, witnesses on _____.

Signature _____
_____ Official Capacity

Note: “‘Artificial nutrition and hydration’ means invasive procedures such as but not limited to the following: nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include sustenance.” N.H. RSA 137-H:2 VIII.

GUARDIAN OF THE PERSON
(RSA 424-A:25 & RSA 424-A:35)

POWERS AND DUTIES OF THE GUARDIAN OF THE PERSON

Powers

- Maintain custody of the ward and establish the ward's place of abode within or without the state.
- Admit to a state institution in accordance with the following:
 1. Prior approval of the court and a court finding that, beyond a reasonable doubt, placement is in the ward's best interest and is the least restrictive placement available.
 2. Without prior approval of the court, with written certification by a licensed physician that placement is in the ward's best interest and is the least restrictive placement available.
 3. With approval by the court for an admission, authority to readmit within 60 days of discharge from the institution.
- Give consent or approval for medical or other professional care, counsel, treatment, or service or withhold consent for a specific treatment, if the court authorizes such authority. (No guardian, however, may give consent for psychosurgery, electroconvulsive therapy, sterilization, or experimental treatment of any kind without court approval.)
- Upon a finding that treatment compliance is in the best interest of a ward and by court authorization, request the assistance of law enforcement to restrain and/or transport the ward to receive the treatment.
- Authorize a health care provider to restrain or forcibly administer treatment, or both, to the ward.

Duties

- If entitled to custody of the ward: provide for the care, comfort and maintenance of the ward; when appropriate, arrange for the ward's training, education or rehabilitation; and, take reasonable care of the ward's clothing and personal effects.
- Adhere to a previously executed and valid living will and/or durable power of attorney for health care of the ward.
- Act with respect to the ward in a manner that safeguards, to the greatest extent possible, the civil rights of the ward, and restrict the personal freedom of the ward only to the extent necessary.
- File an annual report with the court.

GUARDIAN OF THE ESTATE
(RSA 424-A:26 & RSA 424-A:36)

POWERS AND DUTIES OF THE GUARDIAN OF THE ESTATE

Powers

- Perform every act which persons of prudence, discretion and intelligence and exercising judgment and care as in the management of their own affairs would perform for the purposes of the guardianship, including, but not limited to, the powers specified in the uniform trustees' powers act (RSA 564-A:3).

Duties

- Take possession, not title, of all of the ward's real and personal property, the rents, income, and benefits therefrom, and of the proceeds arising from the sale, mortgage, lease or exchange thereof.
- In regards to the estate:
 - Protect and preserve it;
 - Retain, sell and invest it as provided by law;
 - Prosecute or defend actions, claims or proceedings for the protection of the estate's assets;
 - Account for it faithfully;
 - Perform all other duties required by law; and
 - At the termination of the guardianship, deliver the assets of the ward to the persons entitled thereto.
- Apply the money and property of the estate for the support, care, and education of the ward.
- Not use funds from the estate for room and board provided by the guardian or the guardian's spouse, parent, or child unless the court so approves.
- Institute proceedings to compel any person or agency under a duty to support the ward, or a duty to pay sums for the welfare of the ward, to perform this duty.
- Take a receipt of the ward/legal representative, to whom the guardian pays or delivers the property of the ward, and file the receipt with the probate office.
- File an annual account with the probate court.

SELECTING AND HIRING AN ATTORNEY

SELECTING AND HIRING AN ATTORNEY

It is often important to work with an attorney when creating a legal and financial plan. Finding the right attorney is the first and most difficult step. You must not only find an attorney who is knowledgeable about disability and public benefit issues, but you must also find an attorney with whom you can work comfortably and whom you can trust.

HOW DO I FIND AN ATTORNEY?

You may start by “word of mouth”. Many of you found physicians and services through recommendations from other families in situations similar to yours. Many of you will find an attorney in the same way. Local agencies may also have recommendations for attorneys in your area.

You may not, however, find an attorney in your own community who has experience in this type of work. Many of you might ask, “Should I settle for the attorney who practices in my town and has at least a little experience with these matters?” Or you might ask, “I heard about a great attorney on the other side of the State. Is it worth traveling two or three hours to this attorney?” Think of the attorney who is experienced in these matters as you would the good medical specialist. Seek out the legal specialist. Legal and financial planning involves very important issues for you and for the person with a disability. Do not settle. It is worth driving two or three hours for an experienced attorney.

WHAT DO I ASK WHEN I CALL AN ATTORNEY’S OFFICE?

Calling an attorney’s office for the first time can be intimidating. Being prepared will help making this call easier. Do your homework. Use this document to get an idea of what you need to do and to understand some of the legal terms involved. Reading, attending seminars and networking with other families will also help you. Then make the phone call.

When you call—

1. Tell the attorney what types of services you need. (For example, a will, a durable power of attorney for health care, a special needs trust.) When you meet, the attorney will help you to sort out your planning needs for your particular situation in order to meet the unique needs of your situation.
2. As appropriate, ask the attorney about his or her experience with -
 - ❑ Wills
 - ❑ Special Needs Trusts or other types of trusts, as well as tax implications
 - ❑ Public benefits: SSI, Social Security Insurance, State Financial Assistance, Medicaid and Medicare
 - ❑ Guardianship and other alternatives
 - ❑ Health insurance
 - ❑ Life insurance
 - ❑ Community service options

- ❑ The capabilities and needs of people with disabilities and their families.

The more the attorney knows about all of these items, the better prepared the attorney will be to assist you.

3. Ask the attorney about fees such as—

- ❑ What is the charge for the first meeting?
- ❑ Does he or she require an advance payment (retainer fee) or payment when the work is complete?
- ❑ Does he or she bill by the hour or charge a flat fee?
- ❑ What are the fees per document?
- ❑ Are there other fees?

Remember— *you are hiring someone to do a service for you.* Do not hire an attorney until you are comfortable that the attorney can do the job well and that the attorney is someone whom you can work with and trust.

CHECKLIST FOR WILLS & ESTATE PLANNING

**FOR THOSE PROVIDING SUPPORT TO THE
PERSON WITH A DISABILITY**

**CHECKLIST FOR WILL & ESTATE PLANNING
FOR THOSE PROVIDING SUPPORT FOR THE PERSON WITH A DISABILITY**

To prepare a will and an estate plan, your attorney will want to know many facts about you. The following checklist should provide your attorney with the necessary information. Your attorney may also ask you to fill out his or her own checklist.

FAMILY INFORMATION

Family Members	
You	Name: _____ Address: _____ Date of birth: _____ Health status: _____ Marital status: _____ Occupation: _____ SS#: _____
Your spouse	Name: _____ Address: _____ Date of birth: _____ Health status: _____ Marital status: _____ Occupation: _____ SS#: _____
Child 1	Name: _____ Address: _____ Date of birth: _____ Health status: _____ Marital status: _____ Occupation: _____ SS#: _____ Children/Ages: _____ Adopted: <input type="checkbox"/> Yes <input type="checkbox"/> No Disability: <input type="checkbox"/> Yes <input type="checkbox"/> No Special issues: _____
Child 2	Name: _____ Address: _____ Date of birth: _____ Health status: _____ Marital status: _____ Occupation: _____ SS#: _____ Children/Ages: _____ Adopted: <input type="checkbox"/> Yes <input type="checkbox"/> No Disability: <input type="checkbox"/> Yes <input type="checkbox"/> No Special issues: _____

FAMILY INFORMATION, continued

Child 3 Name: _____
Address: _____
Date of birth: _____
Health status: _____
Marital status: _____
Occupation: _____
SS#: _____
Children/Ages: _____
Adopted: Yes No Disability: Yes No
Special issues: _____

Other Dependent Name: _____
Relationship: _____
Address: _____
Date of birth: _____
Health status: _____
Marital status: _____
Occupation: _____
SS# _____ Disability: Yes No
Special issues: _____

Other Dependent Name: _____
Relationship: _____
Address: _____
Date of birth: _____
Health status: _____
Marital status: _____
Occupation: _____
SS#: _____ Disability: Yes No
Special issues: _____

Deceased children? Yes No
Children or grandchildren of deceased children? Yes No

Previous Marriage

Previous marriage 1 Husband Wife
Terminated by: Annulment Divorce Death
Previous spouse name: _____ From _____ to _____
Children Name: _____ SS#: _____
Date of birth: _____ Living Deceased
Name: _____ SS#: _____
Date of birth: _____ Living Deceased

Outstanding obligations: _____

Previous marriage 2 Husband Wife
Terminated by: Annulment Divorce Death
Previous spouse name: _____ From _____ to _____
Children Name: _____ SS#: _____
Date of birth: _____ Living Deceased
Name: _____ SS#: _____
Date of birth: _____ Living Deceased

Outstanding obligations: _____

FAMILY INFORMATION, continued

Other Children

Children by other persons? Yes No

Family Matters

Pre-nuptial agreements _____
Ante-nuptial agreements _____
Child, parent or other relative with a disability _____
Disability _____
Public benefits Cash assistance Medicaid SSI
Other benefits SSDI Medicare Other: _____
Trusts _____
Safety deposit box location _____
Persons to be disinherited _____
Property previously transferred _____

Family Advisors	Name	City
------------------------	-------------	-------------

Accountant	_____	_____
Appraiser	_____	_____
Attorney	_____	_____
Bank	_____	_____
Doctors	_____	_____
	_____	_____
Insurance agents	_____	_____
	_____	_____
Investment counselor	_____	_____
Religious leader	_____	_____
Other:	_____	_____

REAL ESTATE INFORMATION

Residences	Address	City	County	State
-------------------	----------------	-------------	---------------	--------------

Residence	_____	_____	_____	_____
Second home	_____	_____	_____	_____
Business	_____	_____	_____	_____
Land holdings	_____	_____	_____	_____

BUSINESS INFORMATION

Business

Business name _____
Business address _____
Type of business _____
Type of ownership Sole Proprietorship Partnership Corporation
Other: _____

FINANCIAL INFORMATION (ASSETS)

Cash	You	Your Spouse	Joint	
Checking accounts	\$	\$	\$	
Savings accounts	\$	\$	\$	
Certificates of deposit	\$	\$	\$	
Money market accounts	\$	\$	\$	
Totals	\$	\$	\$	
Stocks and Bonds	You	Your Spouse	Joint	Name/Number
Stock shares	\$	\$	\$	
Stock options	\$	\$	\$	
U.S. government bonds	\$	\$	\$	
Municipal bonds	\$	\$	\$	
Mutual funds	\$	\$	\$	
Other:	\$	\$	\$	
Totals	\$	\$	\$	
Personal Property	You	Your Spouse	Joint	Name/Number
Furniture/household goods	\$	\$	\$	
Antiques	\$	\$	\$	
Jewelry	\$	\$	\$	
Motor vehicles (model/yr.)	\$	\$	\$	
Collections (art, coin, etc.)	\$	\$	\$	
Other vehicles (boats, RV, etc.)	\$	\$	\$	
Clothes and personal items	\$	\$	\$	
Other:	\$	\$	\$	
Totals	\$	\$	\$	
Real Estate (approximate value)	You	Your Spouse	Joint	Mortgage/Home Equity Line
Residence	\$	\$	\$	\$
Business	\$	\$	\$	\$
Second home	\$	\$	\$	\$
Land holding	\$	\$	\$	\$
Timeshares	\$	\$	\$	\$
Other	\$	\$	\$	\$
Totals	\$	\$	\$	\$
Other Benefits	You	Your Spouse	Beneficiaries (as appropriate)	
Pension plan	\$	\$		
Profit-sharing plan	\$	\$		
I.R.A.	\$	\$		
Social Security	\$	\$		
Union benefits	\$	\$		
Veterans benefits	\$	\$		
Other:	\$	\$		
Totals	\$	\$		
Interest in Trusts	You	Your Spouse	Beneficiaries	
Trusts	\$	\$		
Totals	\$	\$		

FINANCIAL INFORMATION (ASSETS), continued

Insurance and Annuities			
	You	Your Spouse	Joint
Life insurance	\$	\$	\$
Other:	\$	\$	\$
Totals	\$	\$	\$

Miscellaneous				Name
	You	Your Spouse	Joint	
Patents	\$	\$	\$	
Copyrights	\$	\$	\$	
Royalties	\$	\$	\$	
Other:	\$	\$	\$	
Totals	\$	\$	\$	

Current Income					
	Salary	Interest	Dividends	Social Security	Pension
You	\$	\$	\$	\$	\$
Your spouse	\$	\$	\$	\$	\$
Totals	\$	\$	\$	\$	\$

Liabilities			
	You	Your Spouse	Joint
Promissory notes	\$	\$	\$
Mortgages	\$	\$	\$
Payments on contracts	\$	\$	\$
Charge accounts	\$	\$	\$
Loans	\$	\$	\$
Loans on insurance policies	\$	\$	\$
Business debts	\$	\$	\$
Pledges to charitable organizations	\$	\$	\$
Taxes owed	\$	\$	\$
Other (substantial)			
Totals	\$	\$	\$

Life Insurance Policies	
Company name	_____
Policy owner	_____
Insured	_____
Beneficiary	_____
Primary	_____
Secondary	_____
Type	____ Term ____ Whole Life ____ Universal ____ Other
Face amount	\$ _____
Company name	_____
Policy owner	_____
Insured	_____
Beneficiary	_____
Primary	_____
Secondary	_____
Type	____ Term ____ Whole Life ____ Universal ____ Other
Face amount	\$ _____

Other	
Are you owed money?	_____
Are you expecting a substantial inheritance?	_____

OTHER CONSIDERATIONS

Current Planning Position

Do you currently have a:	You	Your Spouse
Will?	_____	_____
Durable power of attorney for health care?	_____	_____
Living will?	_____	_____
Other estate planning documents?	_____	_____

Nominees

Executor of will	Primary	Alternate/Successor
Names	_____	_____
Addresses	_____	_____
Guardians	Primary	Alternate/Successor
Names	_____	_____
Addresses	_____	_____
Trustees	Primary	Alternate/Successor
Names	_____	_____
Addresses	_____	_____
Durable power of attorney – Health Care	Primary	Alternate/Successor
Names	_____	_____
Addresses	_____	_____
Living Will	Primary	Alternate/Successor
Names	_____	_____
Addresses	_____	_____
Durable power of attorney – Financial	Primary	Alternate/Successor
Names	_____	_____
Addresses	_____	_____

CHECKLIST FOR PERSON WITH A DISABILITY

CHECKLIST FOR THE PERSON WITH A DISABILITY'S PLAN

PERSONAL INFORMATION

The Person	
Person	Name: _____
	Address: _____
	Date of birth: _____
	Disability: _____
	Marital status: _____
	Occupation: _____
	SS# _____
Person's Spouse	Name: _____
	Address: _____
	Date of birth: _____
	Health status: _____
	Occupation: _____
	SS#: _____
Children/Ages	_____

Person's Advisors	Name	City
Attorney	_____	_____
Bank	_____	_____
Doctors	_____	_____
Guardian	_____	_____
Authorized representative .	_____	_____
Representative payee	_____	_____
Insurance agents	_____	_____
Religious leader	_____	_____
Other: _____	_____	_____

CURRENT BENEFITS (check applicable benefits)

Public Benefits	Person	Spouse	Children
Financial Assistance	_____	_____	_____
Medicaid	_____	_____	_____
SSI	_____	_____	_____
Food Stamps	_____	_____	_____
Other Benefits	Person	Spouse	Children
Social Security Insurance	_____	_____	_____
Medicare	_____	_____	_____
Private health insurance	_____	_____	_____
Trust	_____	_____	_____
Other: _____	_____	_____	_____

FINANCIAL INFORMATION - RESOURCES

Cash	Person	Spouse	Joint	
Checking accounts	\$	\$	\$	
Savings accounts.	\$	\$	\$	
Certificates of deposit.	\$	\$	\$	
Money market accounts	\$	\$	\$	
Totals	\$	\$	\$	
Stocks and Bonds	Person	Spouse	Joint	
Stocks	\$	\$	\$	
Bonds	\$	\$	\$	
Mutual funds	\$	\$	\$	
Totals	\$	\$	\$	
Personal Property	Person	Spouse	Joint	
Furniture/household goods . . .	\$	\$	\$	
Motor vehicles	\$	\$	\$	Model/year:
	\$	\$	\$	Model/year:
Other vehicles (boats, RV, etc.)	\$	\$	\$	
Collections (art, coin, etc.) . . .	\$	\$	\$	
Clothes and personal items. . .	\$	\$	\$	
Other: _____	\$	\$	\$	
Totals	\$	\$	\$	
Real Estate (approximate value)	Person	Spouse	Joint	Mortgage/Home Equity Loan
Residence	\$	\$	\$	\$
Income-Producing Property . . .	\$	\$	\$	\$
Other: _____	\$	\$	\$	\$
Totals	\$	\$	\$	\$
Other Benefits	Person	Spouse		
Pension plan	\$	\$		
Keogh Plan (contractual)	\$	\$		
Keogh Plan (non-contractual). .	\$	\$		
Profit-sharing plan	\$	\$		
I.R.A.	\$	\$		
Union benefits	\$	\$		
Veterans benefits	\$	\$		
Other: _____	\$	\$		
Totals	\$	\$		
Trusts	Person	Spouse		
Trust, self-settled	\$	\$		
Trust, third-party	\$	\$		
Totals	\$	\$		
Insurance and Annuities	Person	Spouse		
Life insurance				
Face value	\$	\$		
Cash surrender value	\$	\$		
Other: _____	\$	\$		
Totals	\$	\$	\$	

FINANCIAL INFORMATION – RESOURCES, continued

Other	Person	Spouse	Joint
Burial Fund	\$	\$	No. of Burial Plots Owned:
Other: _____	\$	\$	\$
	_____	_____	_____
Totals	\$	\$	\$

FINANCIAL INFORMATION – INCOME (Monthly)

Earned Income – Source:	Person	Spouse	Examples of Earned Income:
	\$	\$	Wages, salaries, tips and commissions
	\$	\$	Federal work and training programs income
	\$	\$	Income in-kind for work performed
	\$	\$	Lump sum or contract income for work performed
	\$	\$	Rental income
	\$	\$	Self-employment income
	\$	\$	
Totals	\$	\$	

Unearned Income – Source:	Person	Spouse	Examples of Unearned Income :
	\$	\$	Alimony
	\$	\$	Benefits - annuities; disability; insurance; pension;
	\$	\$	retirement; trust disbursements;
	\$	\$	unemployment or worker’s compensation
	\$	\$	Interest or dividends
	\$	\$	Social Security benefits
	\$	\$	Boarder income
	\$	\$	
Totals	\$	\$	

CURRENT MONTHLY EXPENSES

(Pro-rate annual costs to monthly costs by dividing annual costs by 12.)

Expenses	Person	Spouse	
Rent/Mortgage	\$	\$	
Electricity	\$	\$	
Heat	\$	\$	
Telephone	\$	\$	
Cable	\$	\$	
Groceries	\$	\$	
Gasoline	\$	\$	
Hair care	\$	\$	
Clothing	\$	\$	
Vehicle insurance	\$	\$	
Vehicle maintenance	\$	\$	
Vehicle registration	\$	\$	
Home insurance	\$	\$	
Property taxes	\$	\$	
Water	\$	\$	
Work-related expenses . . .	\$	\$	Costs for items and services that a person with a disability needs in order to work
Medical expenses	\$	\$	Out-of-pocket medical costs including: - health insurance premiums (including Medicare Part B), coinsurance payments, and deductibles; - cost of care not covered by insurance; and - cost of care not covered by Medicaid.
Alimony payment	\$	\$	Court-ordered alimony payment.
Child support payment . . .	\$	\$	Court-ordered child support payment.
Child care expenses	\$	\$	Day care costs
Training expenses	\$	\$	Monthly costs of training that include: - Regular attendance on at least a half-time basis; - Structured training toward gainful employment; - Sponsored by the government, or offered by private schools for a particular trade; and - No outside reimbursement of cost.
Entertainment	\$	\$	Movies, theatre, sports. etc.
Magazines, newspapers	\$	\$	
Club memberships	\$	\$	
Spending money	\$	\$	
Other: _____	\$	\$	
_____	\$	\$	
_____	\$	\$	
Totals	\$	\$	

DOCUMENTS

Current Planning Position

Does the person currently have a:

Will? Yes No Execution Date: _____
 Durable power of attorney for health care? Yes No Execution Date: _____
 Living will? Yes No Execution Date: _____
 Durable power of attorney? Yes No Execution Date: _____

ASSISTANCE IN DECISION-MAKING

Assistance:	Current (Name, if applicable.)	Expected need (Name of nominee)
Advisor	_____	_____
Advocate	_____	_____
Representative Payee (Social Security)	_____	_____
Authorized Representative (N.H. public benefits)	_____	_____
Guardian	_____	_____
of the person	_____	_____
of the estate	_____	_____
of the person & estate	_____	_____

Appendix A

ACRONYMS

Appendix A

ACRONYMS

This Appendix will help you define acronyms and words that you may find in reading the *Guide* and other documents related to disabilities and government programs. An *acronym* is a word formed from the first letter of other words. The authors have used as few as possible, however, there are some common ones you may need to know.

ACRONYMS

ANB	Aid to the Needy Blind
APTD	Aid to the Permanently and Totally Disabled
CCW	Community Care Waiver
DBH	Division of Behavioral Health
DDS	Division of Developmental Services
DEAS	Division of Elderly and Adult Services
DHHS	Department of Health and Human Services
EBT	Electronic Benefit Transfer
EFT	Electronic Fund Transfer
HCBC-ABD	Home- and Community-Based Care for Individuals with Acquired Brain Disorder
HCBC-DD	Home- and Community-Based Care for the Developmentally Disabled
HCBC-ECI	Home- and Community-Based Care for the Elderly and Chronically Ill
OAA	Old Age Assistance
QDWI	Qualified Working Individual
QMB	Qualified Medicare Beneficiary
SLMB	Specified Low-Income Medicare Beneficiary
SSA	Social Security Administration
SSDI	Social Security Disability Income
SSI	Supplemental Security Income