



COLORADO

**Department of Health Care
Policy & Financing**

Department of Health Care Policy & Financing
1570 Grant Street
Denver, CO 80203

DECLARATION OF INCOME TRUST

ARTICLE I – INTENT OF TRUST

This trust is established for the benefit of _____ (*Enter Name of Medicaid Applicant Here*) in accordance with C.R.S. § 15-14-412.7 for the purpose of establishing or maintaining income eligibility for certain medical assistance benefits.

ARTICLE II – EFFECTIVE DATE OF TRUST

The Effective Date of this trust will be determined by the county eligibility site in accordance with 10 C.C.R. 2505-10, Section 8.100.3.E. The Effective Date shall be any time within the three months preceding the date of application, or as of the date the person became eligible for Medical Assistance, whichever is later.

ARTICLE III – TRUST ESTATE

Settlor hereby grants and assigns to the trustee the gross monthly unearned income described in "Schedule A," attached hereto and incorporated herein by reference. The trustee acknowledges receipt in trust of said property. No property other than the principal beneficiary's gross monthly unearned income shall be used to fund this trust.

ARTICLE IV – DISPOSITION OF INCOME

4.01 Distributions of income: The entire corpus of the trust, or as much of the corpus as may be distributed each month without violating federal requirements for federal financial participation, shall be distributed each month for expenses related to nursing home care or home- and community-based services for the beneficiary. An amount may be retained in the trust for trust expenses, such as bank charges, if such charges are expected to be incurred by the trust. If such charges are not expected to be incurred by the trust, then no allowance shall be made for trust expenses.

Deductions may be made from the monthly trust distribution to the same extent that deductions from income of a nursing home resident who is not a trust beneficiary are allowed under the Colorado Medical Assistance Program, which shall include the following:

- a) A monthly personal needs allowance;
- b) Payment to the beneficiary's community spouse or dependent family members as provided and in accordance with Title XIX of the federal "Social Security Act," 42 U.S.C. § 1396r-5, as amended, and C.R.S. § 25.5-6-101, as amended;

- c) Specified health insurance costs and special medical services provided under Title XIX of the federal "Social Security Act," 42 U.S.C. § 1396a(r), as amended; and,
- d) Any other deduction allowed in the rules of the Colorado Department of Health Care Policy and Financing, and as determined by the county department of human/social services.

In no event shall more than the applicable Medicaid reimbursement rate be distributed to the nursing facility on behalf of the principal beneficiary. If any money remains after the monthly distributions and deductions from the trust, such funds shall be retained and accumulate in the trust.

4.02 Distribution of funds when trust terminates: The trust shall automatically terminate upon the death of the principal beneficiary or if the trust is not required for medical assistance eligibility in Colorado.

Upon termination, the trustee shall deliver any amounts remaining in the trust, up to the total amount of medical assistance paid on behalf of the principal beneficiary, to the Colorado Department of Health Care Policy and Financing as reimbursement to the Colorado Medicaid program for the nursing facility care or other Medicaid services provided during the beneficiary's lifetime.

In the event that any trust assets are remaining after payment to reimburse the Medical Assistance Program of the State of Colorado as set forth above, the balance will be paid to the primary beneficiary, if surviving. If the primary beneficiary is deceased, then the balance shall be paid to the primary beneficiary's personal representative for distribution in accordance with the terms of his or her will, if any, or if none, to those persons who would have inherited from the primary beneficiary had he or she died intestate owning such trust assets.

ARTICLE V – TRUST ADMINISTRATIVE AND PROTECTIVE PROVISIONS

5.01 Jurisdiction: This trust shall be administered consistent with its terms, free of any judicial intervention and without order, approval or other action by the court, subject only to the jurisdiction of a court which is invoked by the trustee or other interested parties or as otherwise provided by law.

5.02 Trust property not subject to probate: Any property payable to this trust shall not be subject to claims against the estate of the beneficiary following death, nor shall such benefits be subject to the control of the personal representative of the beneficiary nor be included in the property administered as part of the probate estate of the beneficiary.

5.03 Inalienability: No beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the trust estate, nor shall any part of the trust estate including income, be liable for the debts or obligations, including alimony, of any beneficiary or be subject to attachment, garnishment, execution, creditor's bill, or any other legal or equitable process. This provision shall not bar any remedy sought by either the Colorado Department of Health Care Policy and Financing or the county department of social/human services for the purpose of obtaining trust distributions in

accordance with this trust declaration and applicable federal/state laws and administrative regulations.

5.04 Reports: Periodic reports to the court shall not be made unless required by the regulations of the Colorado Department of Health Care Policy and Financing. The trust records shall be open at all reasonable times to inspection by the beneficiary of the trust, the county department of social/human services which approved the beneficiary's assistance case, and their accredited representatives. An annual accounting of trust income and expenditures and an annual statement of trust assets shall be submitted to the county department of social/human services and to the Colorado Department of Health Care Policy and Financing, also upon reasonable request by the Department, and to both agencies upon any change of trustee. At termination, a full and complete accounting of trust income and expenditures shall be submitted to the Colorado Department of Health Care Policy and Financing.

ARTICLE VI – TRUSTEE SUCCESSION & ADMINISTRATIVE PROVISIONS

6.01 Resignation, Removal or death of the trustee:

- (a) Any trustee may resign by giving written notice to the county eligibility site which approved the beneficiary's assistance case, the beneficiary, and the Colorado Department of Health Care Policy and Financing. In the event the current trustee resigns, the successor trustee as provided in section 6.03 is appointed. The current trustee's resignation shall be effective from the date of the successor trustee's written acceptance of the position. Notice of the change of trustee shall be given as provided in section 6.02.
- (b) In the event the trustee dies while holding office, the successor trustee as set forth in section 6.03 is appointed.
- (c) Any interested person may petition a court in the State of Colorado which has jurisdiction to hear the matter for removal of a trustee for cause, and the court shall have complete discretion in deciding the issue of removal. Unless the court rejects for cause the successor trustee proposed within the removal proceedings and appoints someone else, the successor trustee appointed by the court shall become the new trustee upon the successor trustee's written acceptance of the position. Notice of the change of trustee shall be given as provided in section 6.02.

6.02 Change of Trustee or Trustee Address: Notice of any trustee address changes or change of trustee(s) shall be made in writing within 30 calendar days and delivered to the county department of social/human services which approved the beneficiary's assistance case, the beneficiary, and the Colorado Department of Health Care Policy and Financing.

6.03 Vacancy:

- (a) Should the successor trustee be unavailable or unwilling to serve, the current trustee may nominate and appoint a successor trustee. In this event, the successor trustee's appointment shall become effective only when the successor trustee is notified and

accepts the position of trustee in writing, with a copy of the written acceptance being given no later than 30 days from date of acceptance to the county eligibility site which approved the beneficiary’s assistance case, the beneficiary, and the Colorado Department of Health Care Policy and Financing.

(b) Should the successor trustee be unavailable or unwilling to serve and the acting trustee is unwilling or unable to nominate and appoint a successor trustee, then any interested person may nominate a successor trustee to serve and petition a court in the State of Colorado which has jurisdiction to hear the matter for appointment of the nominated successor trustee. The court shall have complete discretion in deciding the issue of appointment of a successor trustee in this instance. Unless the court rejects the nominated successor trustee for cause and appoints someone else, the nominated successor trustee shall become the new trustee upon the successor trustee’s written acceptance of the position.

6.04 No bond: No trustee, or any successor, shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute or rule of court, no sureties shall be required.

ARTICLE VII – DEFINITIONS

Except as otherwise provided, definitions of terms in this trust shall be in accordance with the Colorado Probate Code, as amended after the date of this trust.

Any reference in this trust to the Colorado Department of Health Care Policy and Financing, the county eligibility site, or the Colorado Medical Assistance Program, shall include any successor public agency or program which becomes vested with the responsibility for providing publicly supported nursing home care or home- and community-based services to eligible Colorado residents.

ARTICLE VIII – CONSTRUCTION.

In case of ambiguity or conflict, this trust should be construed in such a manner and shall be deemed to comply with the provisions of C.R.S. §§ 15-14-412.7 and 25.5-6-103, as amended.

SETTLOR:

NAME: _____

Relationship of Settlor to the Medicaid Client (please mark only one):

- Medicaid applicant
- Agent with Power of Attorney
 - Guardian
 - Conservator

TRUSTEE:

NAME: _____

ADDRESS: _____

SUCCESSOR TRUSTEE:

NAME: _____

ADDRESS: _____

IN WITNESS WHEREOF, this Declaration of Income Trust is executed by the Settlor and the Trustee on _____, 20_____.

(Settlor signature)

(Trustee signature)

Notarized in the STATE OF COLORADO, COUNTY OF _____

Subscribed, sworn to, and acknowledged before me by **SETTLOR** on _____, 20_____.

Witness my hand and official seal. My commission expires _____.

Notary Public

