



## **INSTRUCTIONS FOR COMPLETING THE IRREVOCABLE INCOME TRUST AGREEMENT FORM**

The “Irrevocable Income Trust Agreement Form” published by the Department may be used if an individual is required to establish an income trust to receive or maintain medical assistance eligibility. Utilizing this Form is the preferred method for establishing an income trust since any trusts established with an alternative form may result in additional review time to confirm that the trust meets the requirements of C.R.S. § 15-14-412.7 and C.C.R. 2505-10, Section 8.100.7.E.6.a. The applicant/member or their representative should consult with the individual’s eligibility site to determine whether an income trust is necessary.

If the applicant or member utilizes the “Irrevocable Income Trust Agreement Form” to establish an income trust, then the eligibility site should confirm the form is fully completed prior to submitting it to the Department. A completed form should include the following information in the blank spaces:

1. Introduction Paragraph - Date income trust was executed, name of applicant or member (Settlor), and name of the initial trustee;
2. Section 1.01 - Name of Trust (this is necessary to establish the bank account for the trust and should include the first and last name of the applicant or member);
3. Section 1.02 - Name of applicant or member;
4. Last Page -
  - a. Signature of Settlor (Note: If a spouse or any other individual is signing the trust on behalf of the applicant member, then that individual should sign their own name and designate that they are signing on behalf of the applicant/member as their agent, guardian, conservator or pursuant to court order. This individual will also need to provide proof of their authority to act on behalf of the applicant/member. Proof of authority may include a copy of a power of attorney document or a court order designating a guardian, conservator, or another individual the express authority to establish a trust on behalf of the applicant/member);
  - b. Signature of initial trustee;
  - c. Mailing address and email, if any, for the initial trustee;
  - d. Notarization is not required for the trust to be valid but is preferred;
5. Schedule A - Description of each income source along with the amount and frequency; and
6. Appointment of Successor Trustee - Must be completed if applicant/member is designated as the initial trustee, otherwise, this form is optional.

### Frequently Asked Questions:

- Who is the trustee and what do they do? The trustee is the individual or entity who ensures that income received is deposited into the trust account and distributed or retained in the trust, in accordance with the terms of the trust and the applicable rules and regulations concerning income trusts. The applicant/member may name themselves the trustee if a successor trustee is named.
- Is a successor trustee required? It is highly recommended that a successor trustee is always named at the time the trust is established but an income trust will not be denied for failing to name a successor trustee unless the applicant/member names themselves as the initial trustee. Although the successor trustee is not required to sign the income trust agreement, it is advised that they are informed of the existence of the trust and their possible duties as successor trustee.
- What are the trustee's responsibilities?
  - Establish a dedicated bank account for the income trust that is titled in the name of the trust and kept separate from any of the member's accounts or funds held outside of the trust. The dedicated account can be either a checking or savings account and the trustee should ensure that the member's income is placed into the trust account each month. If it is not possible to directly deposit income into the trust account, then the trustee should ensure that the income required to be retained in trust, if any, is transferred into the trust account by the end of the month. For example, Social Security does not allow payments to be directly deposited into a trust account so such benefits may be paid directly to the member's personal bank account or to the nursing facility as representative payee, and the trustee must then transfer any amount remaining after the patient payment into the trust account. Verification of this account must be provided to the eligibility site and the Department.
  - The trustee should request information from the member or their representative on the exact amount that is required to be retained in trust and/or paid as the member's patient payment. If the member resides in a nursing facility, it is the trustee's responsibility to ensure the member's "patient payment" is made to the nursing facility each month from the income placed into the trust account during that month. The member or their representative should report any known changes in income to the eligibility site and remit any additional income to the trustee for deposit into the trust bank account. The eligibility site should be using the published "Income Trust Ledger" to document the required monthly deposits into the trust for each year, updating as necessary in the interim for disclosed changes in income, and compare these required deposits to

the bank statements for the trust account to ensure the proper amount is accumulating in the trust. If the trustee has a release on record, the trustee may request this same document for their records to ensure proper funding.

- Upon the death of the member, or if the trust no longer has a purpose due to the loss of eligibility, the trustee must contact the Colorado Department of Health Care Policy & Financing. The preferred method of contact is email at [medicaid.trusts@state.co.us](mailto:medicaid.trusts@state.co.us). The balance of the trust must first be used to reimburse the Department for the medical assistance benefits received by the member. Generally, this is the entire balance of the trust. The Department will notify the trustee if they do not need to remit the entire balance. Along with payment, the trustee should also remit a completed record of deposits and withdrawals for the trust, sometimes referred to as trust accounting. A copy of bank statements for the trust account is often sufficient for this purpose.



## **IRREVOCABLE INCOME TRUST AGREEMENT**

This Irrevocable Income Trust Agreement is executed on \_\_\_\_\_, \_\_\_\_, 20\_\_, by and between \_\_\_\_\_, as the Settlor, and \_\_\_\_\_, as the Trustee. For medical assistance eligibility purposes, this trust shall be effective upon the initial transfer of the settlor's income to the trustee.

### **ARTICLE 1 - NAME OF TRUST AND BENEFICIARIES**

Section 1.01 Name of Trust: This trust shall be known as the \_\_\_\_\_ Irrevocable Income Trust. [Note: The name of the trust should include the member's first and last name]

Section 1.02 Beneficiaries: This trust is established by or on behalf of \_\_\_\_\_ (referred to herein as "member"). The sole lifetime beneficiaries of this trust are the member and the Colorado Department of Health Care Policy and Financing.

### **ARTICLE 2 - IRREVOCABLE NATURE OF TRUST**

This agreement shall be irrevocable, and the settlor shall have no right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke or terminate this agreement, or any of the terms of this agreement, in whole or in part, or to designate the persons who shall possess or enjoy the trust estate, or the income from the trust estate. Notwithstanding the foregoing, this trust may be amended by the trustee to the extent such an amendment is necessary to comply with the rules and regulations concerning income trusts, including 42 U.S.C. § 1396p(d)(4)(B), C.R.S. § 15-14-412.7, and the rules adopted by the medical services board pursuant to C.R.S § 25.5-6-103.

### **ARTICLE 3 - PURPOSE OF TRUST**

As of the date of this trust, the member's gross income exceeds 300% of the individual Supplemental Security Income (SSI) benefit level ("300% level") but is below the average private pay rate for nursing facilities in the geographic region in which the member resides and intends to remain. Based on the foregoing, this trust is required to establish and maintain income eligibility for Long-Term Care services, which includes Long-Term Care institution care, Home and Community Based Services (HCBS), and the Program of All Inclusive Care for the Elderly (PACE). This trust shall not be effective for establishing or maintaining income eligibility for any other category of public assistance.

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 42 U.S.C. § 1396p(d)(4)(B), C.R.S. § 15-14-412.7 and any rules adopted by the medical services board pursuant to C.R.S § 25.5-6-103.

#### ARTICLE 4 - TRUST ESTATE

This trust shall consist only of the member's pension income, social security, and other monthly income, in addition to any accumulated income in the trust. The settlor hereby agrees to transfer to the trustee the member's gross monthly income identified in "Schedule A," attached hereto and incorporated herein by reference, and any additional income received after the date of this trust. Notwithstanding the foregoing, earned income, if any, may be retained outside of the trust account but shall reduce the amount distributable to or on behalf of member under Article V below. The trustee acknowledges receipt in trust of said property and shall accept additions of the member's income into the trust. Any addition of the member's resources, as defined by the Colorado Department of Health Care Policy and Financing's rules and regulations, shall not be accepted by the trustee.

#### ARTICLE 5 - ADMINISTRATION OF TRUST

Section 5.01 Distributions for Member: During the term of the trust, the trustee may make distributions but only to the extent such distributions are permissible under C.R.S. § 15-14-412.7 and any rules adopted by the medical services board pursuant to C.R.S § 25.5-6-103. As of the date of this trust, permissible distributions are as follows:

- (a) *If Member is receiving HCBS or enrolled in PACE:* During any period of time that the member is receiving Home and Community Based Services (HCBS) or enrolled in the Program of All Inclusive Care for the Elderly (PACE) and not residing in a long term care institution, the trustee shall distribute to or for the benefit of the member an amount from the income received each month that is equal to the 300% level, as adjusted for inflation, reduced by any earned or other income retained outside of the trust. This entire monthly amount is distributable directly to the member unless they reside in an Alternative Care Facility (ACF). If the member resides in an ACF, then the trustee should instead distribute this monthly amount as follows: (1) an amount equal to the maintenance allowance, which is based on the current Old Age Pension Standard, to the member; and (2) an amount equal to the client payment (PETI) to the facility on behalf of the member (per regulation, the member's monthly income is limited to the 300% level for the purpose of determining the applicable PETI amount). To the extent the income received is insufficient to distribute the

entire monthly amount, such income shall first be applied to the PETI amount owed, if any. Additional distributions are limited to only those amounts needed to comply with 10 CCR 2505-10, Section 8.100.7.R or T. No distributions shall be made for the member's room and board, such expense must be paid by the member from their maintenance allowance. Any excess income received but not distributed shall be retained in the trust.

- (b) *If Member is residing in LTC Institution:* During any period of time that the member is receiving care in a long-term care institution, including a nursing facility, the trustee shall distribute to the institution an amount equal to the member's patient payment from the income deposited each month. In addition, the trustee shall distribute to the member an amount equal to their personal needs allowance, as determined annually by the Colorado Department of Health Care Policy and Financing, along with any other applicable monthly income adjustments, including the Monthly Income Allowance for the community spouse, Family Dependent Allowance, Home Maintenance Allowance, Mandatory Income Tax Withheld, Mandatory garnishments repaying Federal assistance overpayment, Medicare Part B during the first and second month in the nursing facility, Medicare penalties for failure to elect coverage, ongoing Medicare Part D premiums, and any Nursing Facility PETI-approved expenses. As of the date of this trust, the patient payment and any applicable allowable monthly income adjustments are computed on the member's "Status of Long-Term Care Institution Care Form" (AP-5615 Form). Notwithstanding the foregoing, distributions shall not exceed the member's income deposited for that month. To the extent the income received is insufficient to distribute the entire monthly amount, such income shall first be applied to the patient payment owed, if any. Any excess income received but not distributed shall be retained in the trust.
- (c) *Other Expenses:* A monthly amount not to exceed \$20.00 may be retained and distributed for actual expenses that are expected to be incurred by the trust. No other deductions or expenses may be paid from the trust, including, but not limited to, trustee fees, attorney fees and costs (including attorney fees and costs incurred in establishing the trust), accountant fees, court fees and costs, fees for guardians ad litem, funeral expenses, past-due medical bills and other debts.

Section 5.02 Termination and Distribution: This trust shall terminate upon the earlier of (i) the death of the member, or (ii) if the trust is no longer required for medical assistance eligibility in Colorado due to the loss of eligibility for Long-Term Care services, a change in the member's gross income, or any other circumstance. Upon termination of the trust, the trustee shall distribute any amount remaining in the trust,

up to the total amount of medical assistance paid on behalf of the member, to the Colorado Department of Health Care Policy and Financing no later than three (3) months from the date that the trust is required to terminate. An extension of time may be granted by the Colorado Department of Health Care Policy and Financing if a written request is submitted within two (2) months of the terminating event. No expenses may be paid from the trust and no person is entitled to payment from the trust until the Colorado Department of Health Care Policy and Financing has been reimbursed. The trustee shall distribute the remaining balance, if any, to the member, if then living, and if not, then to the member's estate.

## ARTICLE 6 - TRUSTEE SUCCESSION & ADMINISTRATIVE PROVISIONS

Section 6.01 Appointment of Successor Trustee: The settlor, or if settlor is deceased or incapacitated, the then serving trustee, may designate an individual, bank or trust company to serve as successor trustee. If a vacancy arises and no successor is designated, then any interested person or their duly authorized agent, may petition a court of competent jurisdiction to designate a successor trustee to fill such vacancy.

Section 6.02 Resignation: A trustee may resign by giving written notice to the beneficiaries, including the Colorado Department of Health Care Policy and Financing. The resignation shall be effective on the date of the successor trustee's written acceptance.

Section 6.03 Compensation: Except as otherwise provided under Section 5.01(c) above, the trustee shall not be entitled to compensation or reimbursement for expenses.

Section 6.04 Reports: An accounting of trust income and expenditures and an annual statement of trust assets shall be submitted to the eligibility site administering the member's medical assistance benefits and to the Colorado Department of Health Care Policy and Financing on an annual basis and upon any change of trustee or termination of the trust. In addition, the trustee must notify the Colorado Department of Health Care Policy and Financing of any trustee changes, including a change of address, within thirty (30) calendar days.

Section 6.05 Powers and Duties: The trustee may perform any act reasonably necessary to administer the trust and shall have a duty to make reasonable efforts to obtain information from the member or the eligibility site administering member's medical assistance benefits to determine the amount distributable under Section 5.01, above. In administering the trust, the trustee may exercise certain powers set forth in the Colorado Fiduciaries' Powers Act, as amended after the date of this agreement. The trustee's powers under the Act shall be limited to only those powers which are

reasonably necessary to accomplish the purposes of this trust while maintaining liquidity and preserving the trust property. In consideration of the foregoing, the trustee is prohibited from making loans.

## ARTICLE 7 - GENERAL PROVISIONS

Section 7.01 Applicable Law: The validity and construction of this agreement shall be determined by the laws of Colorado. Questions of administration shall be determined by the laws of the situs of administration of the trust.

Section 7.02 Construction: Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

Section 7.03 Counterparts: This agreement may be executed in counterparts and each such counterpart shall constitute one and the same agreement

Section 7.04 Definitions: Except as otherwise provided herein, the word "Trustee" shall always refer to the original trustee as well as to any successor, replacement or additional person, corporation or other entity from time to time serving and any other terms shall be as defined in the Colorado Probate Code, as may be amended after the date of this agreement. Any reference in this trust to the Colorado Department of Health Care Policy and Financing shall include any successor public agency or program which becomes vested with the responsibility for providing public medical assistance benefits to eligible Colorado residents.

Section 7.05 Distributions Alternatives: The trustee may make any distributions under this trust:

- (a) Directly to the member;
- (b) In any form allowed by applicable state law for gifts or transfers to minors or persons under incapacity;
- (c) To the member's guardian, conservator, or caregiver for the benefit of the member; and
- (d) By direct payment of the member's expenses.

Section 7.06 The receipt of any such distribution, if such distribution is made in a manner consistent with the proper exercise of the trustee's fiduciary duties hereunder, shall fully discharge the trustee.



Section 7.07 Headings and Titles: Headings and paragraph titles are for reference only.

Section 7.08 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. Further, this trust shall not be subject to claims of the settlor's creditors pursuant to C.R.S. § 15-5-505(1.5)(b). Notwithstanding the foregoing, nothing provided in this paragraph is intended to limit the Colorado Department of Health Care Policy and Financing's right to reimbursement for medical assistance benefits paid upon termination of the trust.

Section 7.09 Incapacity: For the purposes of this agreement, an individual may be treated as being incapacitated if so declared or adjudicated by an appropriate court; or if a guardian, conservator, or other personal representative of such individual's person or estate or both has been appointed by an appropriate court; or if certified in writing by such individual's personal physician to be unable to properly manage their financial affairs; or if such individual is a minor.

Section 7.10 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.

Section 7.11 Member: As used throughout this agreement, the word "member" shall always refer to the individual whose income is placed into this trust for the purpose of receiving certain medical assistance benefits.

Section 7.12 Severability: If any part of this agreement shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

Section 7.13 Tax Identification Number: The trust is a grantor trust for tax purposes and the member's social security number shall be used as its Employer Identification Number (EIN), also known as a federal tax identification number.

Section 7.14 Trust property not subject to probate: Any property payable to this trust shall not be (i) subject to claims against the estate of the member following death, (ii) subject to control of the personal representative of the member, or (iii) included in the property administered as part of the probate estate of the member.

IN WITNESS WHEREOF, the Settlor and the Trustee have executed this trust on the day and year first written above.

\_\_\_\_\_  
SETTLOR

If not signed by settlor, individually, then  
by \_\_\_\_\_

on behalf of settlor as:

Agent with Power of Attorney

Guardian

Conservator

Other: \_\_\_\_\_

\_\_\_\_\_  
TRUSTEE

Trustee's Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Trustee's Email Address:

\_\_\_\_\_

State of \_\_\_\_\_ )

)

County of \_\_\_\_\_ )

Signed, sworn to, and acknowledged before me by \_\_\_\_\_, as  
Settlor, on \_\_\_\_\_, 20\_\_.

Notary Signature: \_\_\_\_\_

Seal:

Commission Expiration: \_\_\_\_\_

State of \_\_\_\_\_ )

)

County of \_\_\_\_\_ )

Signed, sworn to, and acknowledged before me by \_\_\_\_\_, as  
Trustee, on \_\_\_\_\_, 20\_\_.

Notary Signature: \_\_\_\_\_

Seal:

Commission Expiration: \_\_\_\_\_



**APPOINTMENT OF SUCCESSOR TRUSTEE**

I, \_\_\_\_\_ (print name) of \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (insert address)  
am the Settlor/Trustee (circle one) of the \_\_\_\_\_  
Irrevocable Income Trust, dated \_\_\_\_\_, 20\_\_\_. Pursuant to the terms  
of such trust, I hereby nominate and appoint \_\_\_\_\_  
(print name of successor trustee) to serve as successor trustee. The successor trustee's  
contact information is as follows:

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

This appointment shall be effective from and after the date that the initial trustee  
becomes unable or unwilling to serve.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date