



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