

## RESPONSIBILITIES OF A TRUSTEE-NURSING FACILITY

An income trust establishes income eligibility for nursing facility clients or HCBS (Home and Community Based Services) clients under Medicaid.

If the trust is used for **nursing facility** eligibility, the following instructions apply:

As a trustee, it is your responsibility to pay the nursing facility the “patient payment” each month. The technician at the county department for social/human services will inform you of the exact amount. Most often, it is the total amount of gross income received each month less a \$50.00 personal needs allowance for the Medicaid recipient. The county technician may grant an optional trust maintenance fee allowance of up to \$20.00 for expenses to maintain the existence of the trust, such as bank charges, if such expenses are expected to be incurred by the trust. If such charges are not expected to be incurred by the trust, then no allowance will be made.

Keep the trust bank account separate from any other accounts or funds. Do not write any checks from the account for any purpose other than the payment to the nursing facility, the personal needs allowance of \$50.00 per month, and any deductions approved by the county department of social/human services, such as a spousal allowance or trust maintenance fee allowance.

It is not necessary to change the name of the payee on the pension or social security checks from the Medicaid recipient to the name of the trust. In fact, many pension plans and social security will not allow you to do so. The income may be paid directly to the nursing facility if the facility is named as the representative payee for the income.

In accordance with 10 C.C.R. 2505-10, Section 8.110.52.B.5.a.1), the trust will automatically terminate upon the death of the Medicaid recipient, or prior to death, if the individual is no longer a Medicaid recipient in Colorado. When the trust terminates, any remaining funds in the trust account must be paid to the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203, to reimburse Medicaid for the cost of care. This includes any amount remaining from the trust maintenance fee allowance, if an allowance was granted. Please include with your trust check an accounting of income received and payments made out of the trust account. This need not be professionally done. It may be a check register if it is clear and legible.

## **RESPONSIBILITIES OF A TRUSTEE-HCBS**

If the trust is used to establish income eligibility for **HCBS**, the following instructions apply:

Each month the Medicaid client may retain a certain amount of income for his or her own use. This amount is three times the amount of Supplemental Security Income (SSI) and changes each year. The county technician will inform you of that amount. Any monthly gross income over that amount must be retained in the trust bank account and may be used only to reimburse Medicaid when the trust terminates.

If the Medicaid client is married, it may be allowable to use some of the trust as income for the non-Medicaid spouse. The county technician will also inform you if this is allowable in this case and the amount payable to the non-Medicaid spouse.

The county technician may also grant an optional trust maintenance fee allowance of up to \$20.00 for expenses to maintain the existence of the trust, such as bank charges, if such expenses are expected to be incurred by the trust. If such charges are not expected to be incurred by the trust, then no allowance will be made.

In accordance with 10 C.C.R. 2505-10, Section 8.110.52.B.5.a.1), the trust will automatically terminate upon the death of the Medicaid recipient, or prior to death, if the individual is no longer a Medicaid recipient in Colorado. When the trust terminates, any remaining funds in the trust account must be paid to the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203, to reimburse Medicaid for the cost of care. This includes any amount remaining from the trust maintenance fee allowance, if an allowance was granted. Please include with your trust check an accounting of income received and payments made out of the trust account. This need not be professionally done. It may be a check register if it is clear and legible.

**DECLARATION OF INCOME TRUST** – This type of trust may be used in cases where court approval is not necessary. The Medicaid applicant may establish the trust if he or she is capable of doing so, or a guardian, conservator or agent under a power of attorney may establish it. If the applicant is not capable, and no guardian, conservator or agent has been appointed, court approval is required.

**INSTRUCTIONS FOR COMPLETING THE DECLARATION OF INCOME TRUST**

FILL IN THE NUMBERED BLANKS AS FOLLOWS:

1. Name of settlor. *The settlor is the person who establishes the trust. This person may be the Medicaid applicant, if he or she is capable of signing legal documents. If not, the settlor may be a guardian, conservator or agent under a power of attorney.*
2. **State which of the following describes the relationship of the settlor to the Medicaid applicant: the Medicaid applicant, guardian, conservator, or agent under a power of attorney. If the Medicaid applicant signs as settlor, he or she must sign the consent form. Others must attach proof of appointment.**
3. Name of Medicaid applicant.
4. Name of Medicaid applicant.
5. Name of trustee.
6. Mailing address of trustee.
7. If another person is willing to serve as trustee if the original trustee cannot, insert that person's name in this space.
8. Name of settlor.
9. Name of trustee.
10. Date trust signed.
11. Effective date of trust, the date of Medicaid eligibility.
12. Signature of settlor.
13. Name of settlor. Settlor's signature must be notarized.
14. Signature of trustee.
15. Name of trustee. Trustee's signature must be notarized.
16. List each source and gross amount of monthly income.

## DECLARATION OF INCOME TRUST

This declaration of trust is signed by \_\_\_\_\_ (1) as settlor, and as \_\_\_\_\_ (2), regarding the income of \_\_\_\_\_ (3) the principal beneficiary.

### ARTICLE I – NAME OF TRUST.

This trust shall be known as the \_\_\_\_\_ (4) trust.

### ARTICLE II – APPOINTMENT OF TRUSTEE.

Settlor hereby appoints \_\_\_\_\_ (5) as the trustee of this trust. The trustee's mailing address is \_\_\_\_\_ (6).

### 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:** Each month the entire amount of trust income shall be distributed to the principal beneficiary's nursing facility for cost of care. An amount not to exceed \$20.00 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 monthly personal needs allowance; 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. sec. 1396r-5, as amended, and section 26-4-506, C.R.S., as amended; specified health insurance costs and special medical services provided under Title XIX of the federal "Social Security Act," 42 U.S.C. sec. 1396a(r), as amended; and any other deduction allowed in the rules of the Colorado Department of Health Care Policy and Financing. 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 Maintaining the existence of the trust:** Each month an amount not to exceed \$20.00 may be retained in the trust from the gross income which is paid into the trust for that month 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. If the allowance for trust expenses is not used for payment of such expenses, it shall be retained in the trust and distributed at termination as set forth in Article 4.03.

**4.03 Distribution of funds when trust terminates:** This trust shall automatically terminate upon the death of the principal beneficiary. It shall also automatically terminate if the principal beneficiary is no longer eligible or no longer receiving Medicaid benefits in Colorado or if the principal beneficiary's income falls below the maximum level for Medicaid and the trust is no longer necessary to retain eligibility. 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.

#### **ARTICLE V – TRUST ADMINISTRATIVE AND PROTECTIVE PROVISIONS.**

**5.01 Jurisdiction:** This trust shall be administered expeditiously 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 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 or to the Colorado Department of Health Care Policy and Financing upon reasonable request or 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 or death of the trustee:** Any trustee may resign by giving thirty days written notice to the county department of social/human services which approved the beneficiary's assistance case and to the beneficiary. Such resignation shall be effective 30 days from the date notice is given. In the event the trustee resigns or dies while holding office, the successor trustee in 6.03 is appointed.

**6.02 Change of Trustee or Trustee Address:** The Colorado Department of Health Care Policy and Financing must be notified in writing of any trustee address changes or change of trustee(s) within 30 calendar days.

**6.03 Vacancy:** If the trustee shall fail to qualify or cease to act, \_\_\_\_\_ (7) is appointed trustee.

**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 department of social services, 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 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 §§15-14-412.7 and 26-4-506.6, C.R.S., as amended.



**SCHEDULE A**

**GROSS MONTHLY INCOME: (List name and amount of each source)**  
**(16)**

**CONSENT**

I, \_\_\_\_\_, understand that to be eligible  
Name of Medicaid Applicant

for Medicaid, my income must be transferred into an income trust. I consent to that  
transfer and to the appointment of \_\_\_\_\_  
Name of Trustee  
as trustee.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Medicaid Applicant

**NOTE:**

**This form must be signed only if the Medicaid applicant is acting as settlor in  
establishing the trust.**