

# IRREVOCABLE LIVING TRUST AGREEMENT

\_\_\_\_\_, BENEFICIARY  
Living Trust Agreement, dated \_\_\_\_\_, 20XX

\_\_\_\_\_, Trustee

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

For the Benefit of  
\_\_\_\_\_, Beneficiary

Tax Identification Number of Trust: \_\_\_\_\_

Prepared by:  
Jane Doe  
Attorney at Law  
County Legal Aid Service  
1234 Main St  
Anytown, OR 12345



## ARTICLE 4

### DISTRIBUTION DURING BENEFICIARY'S LIFE

4.1 GENERAL DISTRIBUTION PLAN. During the lifetime of the beneficiary, the trustee shall use the beneficiary's income placed in the trust to pay:

- a. Personal Needs Allowance. The beneficiary's personal needs allowance or applicable OSIP standard;
- b. Administrative Costs. Reasonable administrative costs associated with the maintenance of this trust of up to \$50 per month to cover trustee fees, bank service charges, copy charges, postage, accounting and tax preparation fees, income taxes attributable to trust income, and guardianship or conservatorship fees and costs.
- c. Spouse and Family. Monthly maintenance needs allowance for spouse and family.
- d. Health Insurance Premium. The health insurance premiums of the beneficiary, the beneficiary's spouse, and the beneficiary's dependents.
- e. Other Reserves. Other incurred medical care costs that are not reimbursed by a third party. Contributions to reserves limited to child support, alimony, and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan with a maximum value of \$5000. Contributions to reserves for a home maintenance allowance may be made on a monthly basis if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.
- f. Patient Liability. Patient liability not to exceed the cost of waived services or nursing home care.
- g. Excess. Any excess income may be distributed to or on behalf of the beneficiary only to the extent allowed under the Oregon Administrative Rules governing Medicaid assistance. Excess income may be distributed to the State to repay it for any Medicaid assistance that it provided to the beneficiary, even if recovery for the past assistance is not required by federal or state law.

4.2 INITIAL DISTRIBUTION PLAN. The initial distribution plan of the trustee, beginning with the month of \_\_\_\_\_ 20XX, is as follows:

Total Monthly Income:	\$_____
Distributions:	
a. Personal Needs Allowance	\$_____
b. Room & Board (if applicable)	\$_____
c. Administrative Costs	\$_____
d. Community Spouse, Family	\$_____
e. Health Insurance Premiums	\$_____
f. Other Reserves	\$_____
g. Patient Liability	\$_____
h. Excess	\$_____

4.3 ANTICIPATED DISTRIBUTION PLAN CHANGE. The trustee anticipates that the distributions will change as follows beginning \_\_\_\_\_ 1, 20XX.

Total Monthly Income: \$ \_\_\_\_\_

Distributions:

- a. Personal Needs Allowance \$ \_\_\_\_\_
- b. Room & Board (if applicable) \$ \_\_\_\_\_
- c. Administrative Costs \$ \_\_\_\_\_
- d. Community Spouse, Family \$ \_\_\_\_\_
- e. Health Insurance Premiums \$ \_\_\_\_\_
- f. Other Reserves \$ \_\_\_\_\_
- g. Patient Liability \$ \_\_\_\_\_
- h. Excess \$ \_\_\_\_\_

4.4 CHANGES ARE ANTICIPATED. The cost of care will vary with changes in the beneficiary's income, the income cap amount, tax withholding, and allowable expenses. The representative of the state Medicaid program may from time to time notify the trustee of changes in the rules that affect the contribution to the cost of care. If the trustee determines that a change in the distribution plan is warranted, the trustee shall notify the worker assigned to the beneficiary's case.

## ARTICLE 5

### DISTRIBUTION AT TERMINATION

5.1 REMAINDER BENEFICIARIES NAMED. This trust shall cease and terminate at the death of the beneficiary, or earlier if the trustee determines that the existence of the trust is no longer necessary to establish or maintain Medicaid eligibility for the beneficiary. Upon the termination of this trust, the remaining trust property shall be distributed as follows:

- a. To any State that may have provided the life beneficiary with medical assistance up to an amount equal to the total medical assistance paid on behalf of the life beneficiary by a state plan for Medicaid assistance or through an approved waiver program; this provision is intended to meet the requirements of 42 USC 1396p as amended by OBRA '93; and
  
- b. Any remainder after the state's claim has been paid shall pass outside of probate to those residuary beneficiaries named in the beneficiary's will or trust; however, if the beneficiary leaves no will or trust, then the remainder shall be distributed outside of probate to those heirs as determined by the Oregon law of intestate succession.

5.2 WINDING UP AFFAIRS OF TRUST. At the termination of this trust, trustee shall wind up the affairs of the trust before distribution, paying for all administrative costs and for preparation of the final tax return. The trustee shall have the sole discretion to claim any tax deductions useful to reduce the taxation of the living trust. After winding up the trust, the trustee shall distribute the remainder, if any, as provided above.

## **ARTICLE 6**

It is the intent of the parties hereto that this Income Cap Trust be construed as a “grantor trust” under Internal Revenue Code Section 677(a). All income received, distributed, held, or accumulated by this trust shall be taxable to the grantor. The trustee may distribute directly to the taxing authority such amounts of income or principal of the trust as are necessary to satisfy the beneficiary’s tax obligations.

## **ARTICLE 7**

### **AUTHORITY OF TRUSTEE**

The trustee’s discretion in choosing which non-support disbursements to make is final as to all interested parties. The trustee’s sole and independent judgment, rather than any other person’s determination, is intended to be final.

## **ARTICLE 8**

### **SPENDTHRIFT/NONASSIGNMENT**

No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or be subject to any creditor’s claim or to legal process prior to its actual receipt by the beneficiary. No beneficiary shall have the power to sell, assign, transfer, encumber, or in any other manner anticipate or dispose of the beneficiary’s interest in the trust or the income produced thereby, prior to its actual distribution by the trustee for the benefit of the beneficiary in the manner authorized by this agreement. No beneficiary shall have any assignable interest in any trust created under this agreement or in the income therefrom. Neither the trust principal nor income shall be liable for any debts of the beneficiary. The limitations herein shall not restrict the exercise of any power of appointment or disclaimer.

## **ARTICLE 9**

Grantor retains no right to modify, change, alter, or revoke this trust, as it is intended to be an irrevocable trust. The beneficiary has no power to modify, change, alter, or revoke the trust.

## **ARTICLE 10**

### **GOVERNING LAW**

The validity and construction of this agreement shall be determined under Oregon law in effect on the date this agreement is signed.

## **ARTICLE 11**

### **POWERS OF TRUSTEE**

The trustee shall have all powers granted to trustees by Oregon law as now existing or later amended, except to the extent limited by the other provisions of this trust. In addition, the trustee shall have the power:

11.1 **MANAGE ASSETS.** To manage and distribute assets.

11.2 **RETAIN ASSETS.** To retain assets.

11.3 **MANNER OF MAKING DISTRIBUTION.** To make any distribution on behalf of the beneficiary, directly to the person or organization.

11.4 **PRINCIPAL AND INCOME.** The trustee may allocate items of income or expenditure to either income or principal and create reserves out of income all as provided by law, and to the extent not so provided, to allocate to income or principal or create reserves, on a reasonable basis, and the fiduciary's decision made in good faith with respect thereto shall be binding and conclusive upon all persons.

11.5 **UNDISTRIBUTED INCOME.** Income accrued or undistributed at the termination of a beneficiary's interest in a trust shall be added to and become part of the principal of that trust, and the rights of the beneficiary to that income shall terminate.

11.6 **EMPLOYMENT OF AGENTS.** The trustee may engage persons, including attorneys, auditors, investment advisors, tax advisors or agents to advise or assist the fiduciary at the cost of the trust estate.

11.7 **DO OTHER ACTS.** Except as otherwise provided in this instrument, to do all acts that might legally be done by an individual in absolute ownership and control of property and which in the trustee's judgment are necessary or desirable for the proper and advantageous management of the trust estate.

11.8 TRUSTEE LIABILITY; USE OF FUNDS TO RESEARCH PROGRAMS. It is recognized that the trustee is not licensed nor skilled in the field of Social Services. The trustee may seek the counsel and assistance of the beneficiary's guardian or conservator, if any, and any State and local agencies that have been established to assist the elderly or disabled in similar circumstances. The trustee may use these resources to aid the beneficiary, or the beneficiary's guardian or conservator, as appropriate, in identifying programs which may be of social, financial, and/or developmental assistance to the beneficiary. However, the trustee shall not in any event be liable to beneficiary, the remainder beneficiaries of the trust, or any other party for the trustee's acts as trustee hereunder so long as the trustee acts reasonably and in good faith. For example, the trustee, the beneficiary, and the beneficiary's guardian or conservator, if any, shall not be liable for the failure to identify each program or resource that might be available to the beneficiary.

11.9 POWER TO AMEND. The trustee may amend the trust to conform with future changes in federal or state law, to better effect the purposes of this trust.

## ARTICLE 12

### TRUST ADMINISTRATION AND COURTS

This trust shall be administered according to its terms expeditiously and without order, approval or other action by any court. However, the trustee or any interested person may petition the court as allowed in this trust agreement, or by Oregon law. A court, however, shall have the continuing jurisdiction to modify any provision of this trust to the extent necessary to maintain the eligibility of the beneficiary for medical assistance or other public benefits under applicable law.

## ARTICLE 13

### TRUSTEE SUCCESSION AND GENERAL ADMINISTRATIVE PROVISIONS

13.1 RESIGNATION OF TRUSTEE. The trustee may resign the trusteeship at any time. Any resignation shall be in writing, and shall become effective only after thirty (30) days from the date of mailing of the written notice to the beneficiary and to the first remainder beneficiary, and to the successor trustee named herein, mailed to the most current addresses known to the trustee; now the addresses are:

Beneficiary's Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

First Remainder Beneficiary:  
State of Oregon  
Department of Human Services  
Estate Administration Unit  
PO Box 14021  
Salem, OR 97309-5024

Trustee's Address \_\_\_\_\_  
\_\_\_\_\_

or the most current addresses then known to the trustee.

13.2 DESIGNATION OF SUCCESSOR TRUSTEE. The successor trustee shall be \_\_\_\_\_. The second nominated successor trustee shall be \_\_\_\_\_. Any named trustee may nominate and appoint additional successor trustees to serve if the persons initially nominated as successors are unavailable or unwilling to serve.

13.3 NO TRUSTEE. If the trust at any time has no trustee, and no successor has been nominated as described above, then a Court having jurisdiction may appoint, after notice to the beneficiary and an opportunity to be heard, a successor trustee at the request of any person interested in the trust, including the trust beneficiary.

13.4 TRANSFER TO SUCCESSOR TRUSTEE. Every successor trustee shall have all the rights, title, powers, privileges and duties conferred on or imposed upon the original trustee, without any conveyance or transfer. All right, title and interest to the trust property shall immediately vest in the successor trustee, upon the successor trustee executing a document accepting the office. The prior trustee shall, without warranty, transfer the existing trust property to the possession and control of the successor trustee. The successor trustee shall not have any duty to examine the records or actions of any former trustee, and shall not be liable for the consequences of any act or failure to act of any former trustee.

13.5 REMOVAL OF TRUSTEE. Any interested person herein may petition any Oregon Circuit Court for removal of any trustee. While any interested person may petition for removal of any trustee, the decision on whether to remove any trustee shall be in the exclusive discretion and control of an Oregon Circuit Court.

13.6 REPLACEMENT OF TRUSTEE. Any trustee may be replaced by a successor trustee, upon the death, resignation, removal or incapacity of the prior trustee. Also, should no successor trustee have been nominated, any Oregon Circuit Court shall have the power to fill any vacancy in the trusteeship resulting from the death, resignation, removal, or incapacity of a trustee.



13.7 TRUSTEE'S REPORTING RESPONSIBILITY. The trustee shall report, at least every twelve months, to the beneficiary and his/her legal representative, if any, and to the next successor trustee, at the most recent address then known to the trustee. The trustee's report shall advise of any change in the beneficiary's eligibility for public benefit programs and shall list all of the receipts, disbursements, and distributions occurring during the reporting period, along with a complete list of the assets held by the trust. A copy of the most recent bank account statement and a copy of the most recently filed trust tax return shall be attached to the accounting. The account shall be deemed to have been delivered when it has been placed in the United States Mail addressed to that person at the person's last known address.

13.8 AVAILABILITY OF RECORDS. The records of the trustee, such as all trust documentation and annual accountings, shall be made available to the trust beneficiary, and/or the beneficiary's legal representative, and the trust remaindermen, including but not limited to the State of Oregon, Department of Human Services, within 10 days of notice to the trustee.

13.9 TRUSTEE COMPENSATION. The trustee may receive reasonable compensation and reimbursement for expenses such as travel costs (if automobile, at the then-current IRS mileage expense allowance), postage, copy and fax charges, and long distance telephone charges required to administer the trust estate.

13.10 TRUSTEE INDEMNIFICATION. Trustee is entitled to be indemnified, to his or her reasonable satisfaction, against liabilities lawfully incurred in the administration of this trust, at the cost of the trust.

13.11 BOND. No bond shall be required of any trustee.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20XX

\_\_\_\_\_  
,GRANTOR

\_\_\_\_\_  
,TRUSTEE