

THE _____
IRREVOCABLE
MEDICALLY NEEDED/QUALIFIED INCOME TRUST

This Irrevocable Qualified Income Trust Agreement is made this ___- day of____, 20____ by _____, <OR> by _____, **Attorney in Fact** for _____, (hereinafter, the "Grantor), whose Social Security number is ____-____-____, and _____, the Trustee; and

WHEREAS, the Grantor desires to create an income-only trust to hold all of her income, but not her principal or capital assets, (all of said property being hereinafter referred to as the "Trust Estate") for the purposes hereinafter set forth.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained, The Grantor agrees to execute such further instruments as shall be necessary to transfer said property to the trust and the Trustee agrees to hold the Trust Estate, IN TRUST, for the following uses and purposes and subject to the terms and conditions hereinafter set forth:

ARTICLE I
NAME OF THE TRUST

The name of this Trust shall be:

THE _____
IRREVOCABLE
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ARTICLE II
PURPOSE OF THE TRUST

The purpose of this Trust is to provide for the administration and disposition of the Trust Estate during and after the lifetime of the Grantor, in accordance with the terms and conditions of this Trust. This Trust is created pursuant to Section 1917(d)(4)(B) of the Social Security Act. This Trust document is created for the purpose of making the Grantor eligible for Medicaid. Any provisions inconsistent or contrary to the intent and provisions of the above referenced federal law shall be deemed to be void and of no further force or effect. All interpretations and actions taken by the Trustee pursuant to this trust shall be done for and with the purpose of complying with federal laws so as to ensure the continued eligibility of the Grantor for Medicaid benefits.

ARTICLE III DEFINITIONS

A. ADDITIONS TO CORPUS

The Grantor, or any other person with the consent of the Trustee, may add income belonging to the Grantor, as from time to time constituted, to the Trust Estate created herein by donation, grant or otherwise. Such additions shall be covered by the provisions hereof, the same as if originally included herein.

B. LAWS GOVERNING

This Agreement shall be construed, enforced and regulated in all respects by the State of Georgia and federal law, the applicable rules and policies of the Georgia Department of Community Health (hereinafter, the "Department") and the Georgia Department of Human Services and in the Courts of the State of Georgia.

C. BENEFICIARIES

The Grantor, **THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH**, and the residuary beneficiaries named below in Article 5(B) shall be the beneficiaries of this Trust. The Georgia Department of Community Health is the residuary beneficiary to the extent of the total medical assistance paid on behalf of the Grantor by the State of Georgia.

ARTICLE IV ADMINISTRATION DURING LIFETIME OF GRANTOR

A. IRREVOCABLE TRUST

This Trust may not be revoked, modified or amended, in whole or in part, by the Grantor at any time. This Trust is irrevocable and shall be administered by the Trustee in accordance with its terms. Notwithstanding anything to the contrary, however, the Trustee and/or a court of competent jurisdiction shall have the continuing right and/or jurisdiction to modify any provision of this Trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance of other public benefits under applicable law, taking into consideration the effective date of any such law and the date of the establishment of this Trust.

B. PAYMENTS

During the lifetime of the Grantor, the Trustee shall collect the income thereof and shall monthly and totally pay over or apply the Trust Estate only as follows:

- (1) The sum of Seventy (\$70.00) Dollars and/or such other amount as may be allowed, by the Georgia Department of Community Health and/or the Department of Human Services, to or for the benefit of the Grantor for personal needs allowance;
- (2) A sum approved by the Georgia Department of Community Health and/or the Georgia Department of Human Services time to time for Minimum Monthly Maintenance Allowance to the Grantor's spouse, if any, and to the Grantor's dependent child or children, if any;
- (3) Necessary Medical Expenses not subject to third party payment;
- (4) Bank fees;
- (5) The balance thereof to apply to the cost of nursing home expense of the Grantor (Patient Liability);
- (6) Any excess income shall accumulate and become part of the Trust estate;
- (7) In the event the Grantor is discharged from the nursing home other than a temporary discharge to another health care facility or psychiatric facility, the Grantor's monthly unearned income shall no longer be paid into the trust but shall instead be paid directly to the Grantor or the Grantor's legal representative. In such event, no money which has accumulated in the Trust prior to the Grantor's discharge shall be distributed to the Grantor but shall instead be distributed pursuant to Article 5(A) for reimbursement of the Georgia Department of Community Health for Medicaid benefits received by the Grantor.

**ARTICLE V
ADMINISTRATION UPON DEATH OF GRANTOR**

A. EXPENSES AND COST OF ESTATE SETTLEMENT

Upon the death of the Grantor, the Trustee shall comply with the provisions of law as to the payment of confirmed debts and bills of the Grantor including reimbursement due to the Georgia Department of Community Health for Medicaid benefits received by the Grantor.

B. DISTRIBUTION

Upon the death of the Grantor, the balance of the Trust Estate, after the payments aforesaid, if any, shall be held, managed and distributed to or for the benefit of _____ in equal shares, *per stirpes*.

ARTICLE VI GENERAL PROVISIONS

A. JURISDICTION

This Trust shall be administered expeditiously consistent with its terms, free of any judicial intervention and without order, approval or other action by any court, subject only to the jurisdiction of a court which is invoked by the Trustee or other interested party or as otherwise provided by law.

B. MODIFICATION OR TERMINATION BY COURT OF COMPETENT JURISDICTION

During the Grantor's lifetime, this Trust shall only be subject to modifications or termination as set forth in Article 4 above.

C. TRUST PROPERTY NOT SUBJECT TO PROBATE

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

D. 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 the Georgia Department of Community Health for the purpose of obtaining trust distributions in accordance with this Trust declaration and applicable federal or state laws and administrative regulations.

ARTICLE VII POWERS AND DUTIES OF TRUSTEES

A. POWERS

The Trustee may exercise all the powers and privileges specifically set forth in Official Code of Georgia Annotated §53-12-261, as same exists at the time of execution of this trust Agreement or as same may be amended from time to time during the existence of this Trust. The right to pay principal or income from the Trust for the benefit of the Grantor shall be exclusively vested in the Trustee. However, any power which would cause this Trust to lose qualification as a Qualified Income Trust shall not be exercisable by the Trustee hereunder.

B. CONTINGENT POWERS

In the event of a change in relevant federal or state laws, rules or policies concerning irrevocable income trusts, then the Trustee is instructed to administer and distribute the trust assets and income, including the Beneficiary's monthly contributions, according to such revised laws, rules and policies.

C. ACCOUNTING

The Trustee shall not be obligated to prepare and file annual or periodic accounting to any person or entity except that the Trustee shall account to the Georgia Department of Community Health and otherwise furnish to that department deposit and/or withdrawal information, expense, payment, and income information and other information as from time to time may be requested by that Department.

D. DISABILITY OR INCOMPETENCY OF TRUSTEE

(1) Definition: Any Trustee shall be automatically and forthwith discharged and removed from authority and duties of a fiduciary or trustee hereunder, should he or she be deemed disabled or incompetent as defined herein. A Trustee ("the Questionable Trustee") shall be deemed so disabled or incompetent to act as a trustee if any other Trustee hereunder shall receive in his possession any one of the following: (a) a writing from the Questionable Trustee's physician and a writing from the Questionable Trustee's immediate family or another Trustee stating that the Questionable Trustee is too disabled or incompetent to make rational or prudent judgments or handle his or her personal affairs; (b) a court order holding that the Questionable Trustee is legally incompetent to act in his or her own behalf of appointing a guardian of his or her person and/or property to act for him/her; (c) duly executed, witnessed and acknowledged written certificates of two licensed physicians (each of whom represents that he or she is certified by a recognized medical board), each certifying that he has examined the Questionable Trustee and has concluded that, by reason of accident, physical or mental illness, progressive or intermittent physical or mental deterioration or other similar cause, the Questionable Trustee is incompetent or disabled to act rationally or prudently in the Questionable Trustee's best interests, the interests of the Grantor or the interest of other beneficiaries hereunder; (d) evidence deemed credible and currently applicable that the Questionable Trustee has disappeared, is unaccountably absent or is being detained under duress and, thus unable to effectively and prudently look after his or her financial interests or that of the Grantor or other beneficiaries hereunder; (e) proof that the Questionable Trustee is an inmate of or has entered into confinement, residence or daily care of a nursing home, mental institution, jail or prison; (f) proof that the questionable Trustee (or someone on his or her behalf) has applied for, is being considered for, intends to apply for or is entitled to receive (but for availability of payments or distributions to be made or which may be made under this Agreement) governmental assistance funds based on financial need of such Questionable Trustee, by reason to the Questionable Trustee's health, physical or mental conditions.

(2) Restoration of Trusteeship Authority: If any of the writings, proofs, certificates or orders as noted above in Subparagraph 1 be negated, changed, canceled, or abrogated, the Questionable Trustee who was removed from fiduciary authority shall automatically be restored to full fiduciary power and authority and rights of decision or election reserved to him or her by this Agreement.

ARTICLE VIII APPOINTMENT OF TRUSTEES

A. APPOINTMENT OF SUCCESSOR TRUSTEE

Upon the resignation, death, or incapacity of the initial Trustee, _____ is hereby designated as Successor Trustee. In the event _____ shall for any reason fail to qualify or serve as Successor Trustee, the initial Trustee or any Successor Trustee may appoint one or more persons or entities to serve as a Successor Trustee to himself or herself, to take effect upon death, incompetency, resignation or discharge of himself or herself. Such appointment shall be accomplished by a writing, duly witnessed and attached to the Trust agreement.

B. RESIGNATION

Any Trustee may resign by giving thirty days written notice to the Grantor and to each beneficiary, including the Legal Services Section of the Georgia Department of Community Health. Such resignation shall be effective thirty days from the date such notice is given. In the event that Trustee dies or becomes incapacitated while holding office, and there is no named Successor Trustee willing or able to serve, then any interested person and/or the Georgia Department of Community Health or its agents may petition the court for the appointment of a Successor Trustee.

C. RIGHTS

Any Successor Trustee shall have all rights, powers, duties and discretion conferred or imposed upon the original Trustee. No Successor Trustee shall be obliged to examine the accounts and actions of any previous Trustee. No Trustee shall be liable for any act or omission unless the same be due to such Trustee's own fault. In no event shall a Corporate Trustee be a corporation owned or controlled by any beneficiary hereof.

D. RESPONSIBILITY

Any successor Trustee shall become responsible for the applicable Trust Estate only when, as and if the same shall be received by said Successor Trustee and, in determining such estate, such Successor Trustee shall only be responsible to make a reasonable inquiry from the records of the prior Trustee which are available.

E. NEW APPOINTMENT

If none of the above-named Trustee or a Successor Trustee shall be serving as such, whether by reason of death, resignation, incompetency or discharge, the Grantor or the Grantor's legally appointed Guardian shall appoint a Successor Trustee or Trustees. Such Successor Trustee(s) must be one or more competent adults, a trust company, bank or attorney qualified to act as such, and if a bank or trust company, must possess trust powers. In the event the Grantor or his or her legally appointed guardian shall fail to designate promptly a Successor Trustee, then the Georgia Department of Community Health may apply to a court for such an appointment and for settlement of account.

F. SIGNATURES AND DECISIONS

Unless expressly provided otherwise, in the event there are Co-Trustees hereof in this agreement, the decision, act or deed of any one of the Trustees shall be binding on all. All acts, deeds and transactions, including but not limited to, banking securities and real estate transactions of any sort, with regard to this Trust Agreement or pursuant thereto shall require the signature of only one Trustee even though there shall be Co-Trustees available to act.

G. BOND

It is the Grantor's request and directions that no bond or other security shall be required of any Trustee named or serving as such hereunder unless as otherwise ordered by a court of competent jurisdiction.

H. DISCRETION

All decisions, acts, transactions and deeds of a named Trustee herein shall be deemed discretionary and not subject to judicial review in any jurisdiction unless fraudulent, wanton, criminal or gross negligent acts of a Trustee are first proven against him or her. No Trustee shall be liable or responsible for an erroneous act or omission made in good faith.

ARTICLE IX
MISCELLANEOUS

The paragraph and article headings used herein are for convenience only and shall not be resorted to for interpretation of the Trust. Wherever the context so requires, the masculine gender shall include feminine gender (and vice versa) and the singular shall include the plural (and vice versa). Wherever the terms "Grantors" or "Trustees" (plural) are noted they shall also mean "Grantor" or "Trustee" (singular), as the case may be, and vice versa, unless the context would preclude such interpretation. If any portion of this Trust is held to be void or unenforceable, the balance of this Trust shall nevertheless be carried into effect.

IN WITNESS WHEREOF, I, the Grantor have signed and sealed this Trust Agreement as of this ___ day of _____, 20____.

Grantor <or> by _____,
Attorney in Fact for Grantor
(Attach copy of power of attorney)

WITNESS TO GRANTOR SIGNING

Signature of Witness

Signature of Witness

Printed Name of Witness

Printed Name of Witness

STATE OF GEORGIA
COUNTY OF _____

The foregoing instrument was acknowledged before me on the ____ day of _____, 20____, by _____, by _____, Attorney in Fact for _____, the Grantor, who is known to me.

Notary Public
My commission expires:

ACCEPTANCE BY TRUSTEE

The undersigned accepts the Trust imposed by the foregoing Trust Agreement and agrees to serve as Trustee upon the terms and conditions therein set forth.

Initial Trustee