

CF OPERATING PROCEDURE
NO. 175-59

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, October 18, 2006

Family Safety

MASTER TRUST FOR BENEFIT OF FAMILY SAFETY PROGRAM CLIENTS

1. Purpose. The purpose of this operating procedure is to establish requirements and guidelines for administration of a Master Trust. The Master Trust was authorized by the amendment to s. 402.17, Florida Statutes, by Chapter 96-402, Laws of Florida, section 1, effective October 1, 1996, to hold certain money and property for the benefit of certain Family Safety clients.
2. Scope. This operating procedure applies to all program clients defined in paragraph 5b of this operating procedure.
3. Authority. Chapter 96-402, Laws of Florida, effective October 1, 1996, amended section 402.17, Florida Statutes (F.S.), to clarify the authority of the Department of Children and Families (department) to hold in trust, as trustee, money and property of department clients. Pursuant to this clarification, a Master Trust was established by order of the Leon County Circuit Court, dated July 8, 1997, which includes certain program clients described in paragraph 5b of this operating procedure.
4. Correlation to Master Trust Declaration. This operating procedure is intended to outline the responsibility of the department as Trustee of the Declaration of Master Trust promulgated pursuant to the order of the Circuit Court of Leon County, dated July 8, 1997 (the "Master Trust Declaration"). In the event there is a conflict between the provisions of the Master Trust Declaration and of this operating procedure, the provisions in the Master Trust Declaration will take precedence and prevail over the provisions in this operating procedure.

PART I: ACCOUNTING AND CASE MANAGEMENT PROCEDURES

5. Explanation of Terms.

a. "Benefit payment" as defined in F.S. 402.33(1)(a) means cash payments from retirement, survivors, or disability insurance or from supplemental security income programs, and includes, but is not limited to, payments from social security, railroad retirement, and the United States Department of Veteran's Affairs.

b. "Expenditure plan" is a plan of action developed by the child's case manager and the supervisor to ensure that the child's countable assets do not exceed the asset limit for Supplemental Security Income (SSI) benefits.

c. "Family Safety program client beneficiary class" includes those clients under the age of 18 who are, or who are considered to be, in the legal custody, care or control of the department, and who have received, or will receive, money and tangible or intangible property for their sole use and benefit from any other person or entity, that is placed in the possession or control of the department and for whom a separate trust for such individual does not exist, and who are or who become program clients as the result of a dependency proceeding under Chapter 39, Florida Statutes; and,

This operating procedure supersedes CFOP 175-59 dated August 19, 1997.

OPR: PDFS

DISTRIBUTION: X: OSES; OSLS; PDFS; Zone/Region/District Family Safety staff; DLC(D1-15).

(1) Require licensed out of home care or are placed in independent living arrangements, as provided under Chapter 39 or 409, Florida Statutes; or,

(2) Have been placed in the legal custody of the department following the termination of parental rights as to that individual, as provided under Chapter 39 or 409, Florida Statutes.

d. "Fee Waiver" as defined in Florida Administrative Code (FAC) 65C-17.002(5) means a reduction or deferment of assessed fees pursuant to procedures established in FAC 65C-17.004 and 65C-17.005. Any child who is in the custody, care and control of the department in foster care pursuant to Chapter 39, F.S. is eligible to apply for a fee waiver.

e. "Irrevocable" means, in the context of the establishment of client trust accounts or subaccounts within the Master Trust, that there is no power to revoke, withdraw or cancel a client trust account or subaccount.

f. "Master Trust" means either the Master Trust Declaration, or refers to the designated client trust accounts or subaccounts created within the Master Trust. In all instances, neither the client, the client's family, nor the client's assistance group have any power or authority to alter, modify, change, amend or revoke the Master Trust Declaration as a whole, or as applied to that client's trust account, or any subaccount(s). The money or property placed in the trust account, or any subaccount, of the client is not available to the client's family or assistance group for their current needs. The department or CBC agency, as representative payee, will have access to revocable subaccounts that are created for the benefit of clients who receive Supplemental Security Income benefits or Social Security Act Title II benefits. Funds for the client's current needs will be disbursed by the department, as Trustee, within the context of sections 402.17 and 402.33, Florida Statutes. As to a particular client's account or subaccount(s), the Master Trust terminates when the client is no longer in the care and custody of the department.

g. "Plan for achieving self-support" or "PASS" is a plan submitted to and approved by the Social Security Administration for children who receive Supplemental Security Income (SSI). The primary purpose of this plan is to enhance the client's self-sufficiency or independent living skills and goals.

h. "Plan for achieving self-support (non-disabled)" or "PASS-ND" is a plan established and approved by the department for children who receive benefits or income other than through Supplemental Security Income (SSI). The purpose of this plan is to enhance the client's self-sufficiency or independent living skills and goals.

i. "Representative payee" as defined in F.S. 402.33(3) means an individual or entity who acts on behalf of a client as the receiver of any or all benefits owing to the client.

j. "Revocable" means, in the context of the establishment of client trust accounts or subaccounts within the Master Trust, that the power to revoke, withdraw or cancel a client trust account or subaccount has been retained by the Trustee.

k. "Special needs of a disabled child" pursuant to Part III of the Master Trust means the requisites for maintaining the good health, safety and welfare of a client beneficiary, as determined at the discretion of the Trustee. (Also see paragraph 6b(1)(a) and (b) of this operating procedure.)

l. "Subaccount" refers to one or more of the subaccounts that may be established within the Master Trust. As of the date this operating procedure is issued, the subaccounts listed under paragraph 6 below are authorized under the Master Trust Declaration; additional subaccounts may be permitted in the future by amendment to the Master Trust Declaration. Each client is authorized to have, at a minimum, a current needs subaccount. Additional subaccounts may be established as either necessary or appropriate to that client's particular circumstances, goals, and/or needs including one or

more disabled special needs subaccounts. Funds conserved under the Master Trust do not count toward the Title IV-E and Child in Care Medicaid asset limits.

m. "Trustee" means the department as Trustee under the Master Trust Declaration, represented by the district administrator or his or her designee. In certain instances, this may be the chief administrator of an institution or facility operated by the department, or his or her designee, by delegation from the district administrator of the district where the institution or facility is located.

6. Master Trust Sub Accounts.

a. Subaccounts for All Children (Disabled and Non-Disabled).

(1) Current Needs Subaccount. This account is the one most frequently opened for clients with income/assets. The funds in this account are used to meet the child's current, ongoing, monthly needs. Such needs may include clothing, shoes, personal items, school activities and trips, sports activities/equipment, computers, software, audio/visual equipment, and recreational activities. For children receiving Supplemental Security Income or Social Security Act Title II benefits, this subaccount is revocable so that the representative payee may access the child's money or property for the child's current needs. For children who do not receive either Social Security Act Title II or Supplemental Security Income benefits, this subaccount is irrevocable, but is freely accessible to meet the child's current needs. The money in this account does count toward the SSI asset limit.

(2) Long Term Subaccount. This account is intended to conserve and invest the funds for the child's long term needs, such as college education, vocational training and employment related costs. For children receiving Supplemental Security Income or Social Security Act Title II benefits, this subaccount is revocable so that the representative payee may access the child's money or property for the child's ongoing needs. For children who do not receive either Social Security Title II or Supplemental Security Income program benefits, this subaccount is irrevocable, and may not be accessed for any reason until the child reaches age 18, or leaves the care, custody or control of the department. The money in this account does count toward the SSI asset limit.

b. Subaccounts for Disabled Children Only.

(1) Disabled Special Needs Subaccount. This type of subaccount, also known as a "dedicated" subaccount, is established to hold retroactive lump sum, underpayments or past due benefits. The funds in this account are conserved and invested and are available to meet the "special needs" of the disabled child. Withdrawals/expenditures from this account can be made to meet specific "special needs of a disabled child" after legal review and written permission from the district/region administrator or designee. When this subaccount is used to hold such retroactive lump sum benefit payments from the Supplemental Security Income program, this subaccount is revocable, so that the department as representative payee, may access the child's money or property to meet the disabled child's special needs, otherwise, this subaccount is irrevocable. The department has designated two types of special needs subaccounts that can be established for children who will be in receipt of lump sum payments. The monies in these accounts do not count toward the SSI asset limit. These subaccounts, which have to be established prior to release of the funds from the Social Security Administration, are:

(a) The Zebley Lump Sum Subaccount. This subaccount holds a retroactive lump sum SSI benefit payment from the Social Security Administration as a result of the 1990 Sullivan v. Zebley federal lawsuit. Allowable expenditures for special needs are those that do not disqualify the foster child from Supplemental Security Income or Medicaid, such as:

1. Spending money;

- companion;
2. Additional food, clothing and health services not otherwise provided;
 3. Medical insurance;
 4. Reasonable and necessary traveling expenses for a traveling companion;
 5. Entertainment expenses;
 6. Transportation costs;
 7. Athletic events;
 8. Recreational equipment;
 9. Education and educational equipment not otherwise provided; and,
 10. Opportunities for training not otherwise available.

(b) The SSI Lump Sum Subaccount. This subaccount is established for receipt of a lump sum of retroactive SSI benefits; usually the lump sum payment is the result of the child winning an appeal after having initially being denied benefits. Allowable expenditures for special needs include the following:

1. Medical treatment;
2. Education or job skills training;
3. Personal needs assistance (other than basic maintenance costs), when beneficial to the child and related to the child's impairment;
4. Special equipment when beneficial to the child and related to the child's impairment;
5. Housing modifications when beneficial to the child and related to the child's impairment;
6. Therapy or rehabilitation when beneficial to the child and related to the child's impairment; and,
7. Other items or services that the Social Security Administration determines to be appropriate but only when beneficial to the child and related to the child's impairment and there is no other funding source.

(2) Medicaid Income Trust Subaccount. This subaccount is for children who are or who will be qualified for skilled nursing home care under the Medicaid program. Only the current monthly income of the client may be deposited into this account and is available to pay the client's share of the skilled nursing home care. The money in this account does count toward the SSI asset limit.

(3) Plan to Achieve Self-Support (PASS) Subaccount for Disabled Children. This plan is for older children who are disabled and are conserving funds to meet a vocational goal. The child and his/her case manager must complete a PASS plan that has to be approved by the Social Security Administration. For children receiving SSI Benefits, this subaccount is revocable so that the representative payee may access the child's money or property in connection with expenditures related

to the child's approved PASS plan, or for the reimbursement to the Social Security Administration of SSI benefit payments that were received in connection with the funding of the PASS plan prior to its transfer, amendment, abandonment or termination. As long as the approved PASS plan is in effect, funds placed in this subaccount do not count toward the SSI asset limit.

c. Subaccount for Non-Disabled Children. The PASS Non-Disabled trust account is established to conserve money for children who do not receive SSI benefits. The funds set aside in this subaccount are used to meet the child's vocational goal. Expenditures from this subaccount must be consistent with the approved PASS plan. For children receiving Social Security Act Title II benefits, this account is revocable so that the representative payee can access or transfer the child's Social Security Act Title II benefits into another appropriate subaccount in the event the child's PASS-ND plan is transferred, abandoned, amended or terminated. For children who do not receive either Social Security Act Title II or Supplemental Security Income benefits, this subaccount is irrevocable. The money in this account does not count toward the asset limit for Medicaid eligibility.

7. Processes/Procedures for Establishing a Master Trust Account. When a child enters the care and custody of the department, the assigned case manager for the child must determine if the child has or will receive income or property. If the income the child is expected to receive is in the form of ongoing benefit payments, the department or lead agency will apply to become representative payee of such benefits, as appropriate. The actions outlined below must be taken in anticipation of receipt of income and property on behalf of children in the care and custody of the department.

a. The assigned case manager must complete the Notarized Designation of Client Money and Property (form CF FSP 5222; available in eForms) and forward the completed form to the zone/CBC fiscal officer.

b. The Notarized Designation of Client Money and Property is to be used by the case manager to direct the zone/CBC fiscal office to establish the client's trust account and the appropriate subaccounts. The completed form must be signed and notarized. (There are two sets of boxes on the form, boxes A through E, and boxes "1" and "2".)

(1) Complete the top portion of the form as indicated.

(2) In all instances, check off box "A" which authorizes the creation of a current needs subaccount. If the client receives either SSI or Social Security Act Title II benefits, also check off the "revocable" box. Otherwise, check off the "irrevocable" box.

(3) If it is necessary for the client to have both a current needs and a long term needs subaccount, check off box "B". If the client receives either SSI or Social Security Act Title II benefits, also check off the "revocable" box. Otherwise, check off the "irrevocable" box.

(4) If a disabled client needs to have a disabled/special needs subaccount, check box "C". (If this account is being established due to the child's receipt of a Zebley or SSI lump sum payment, please indicate "Zebley" or "SSI Lump Sum" in the blank space.)

(5) Box "D" of the first set of boxes is used only when a client may need a Medicaid Income Trust (see paragraph 6b(2) above).

(6) If the client needs an independent living subaccount in connection with either PASS or PASS-ND, check off box "E". If the client receives either SSI or Social Security Act Title II benefits, also check off the "revocable" box. Otherwise, check off the "irrevocable" box.

(7) If either box "C" or "D" (for a disabled special needs trust subaccount or an income trust subaccount) is checked, then box "1" or "2" of the second set of boxes must be checked. If the

case manager knows that the child has a will or some other legal instrument concerning the disposition of his/her property after death, check box "1" and write in the name(s) of the persons designated in the will or other legal instrument as remainder/residual beneficiaries. Otherwise, check box "2". If there is any question concerning the validity or legal effect of any document that seeks to dispose of a child's property at death, the case manager should consult the child welfare legal services attorney or district legal counsel.

(8) In the space provided after the second set of boxes, describe the money and property of the client that is being deposited in the client's trust account at the time the form is completed by the case manager, if any.

(9) When circumstances warrant, more than one disabled special needs trust subaccount may be established. When more than one disabled special needs trust subaccount is required, execute a separate Notarized Designation of Client Money and Property form for each of these subaccounts.

c. Upon receipt of the completed form CF FSP 5222, the zone/CBC fiscal officer will:

(1) Establish the subaccount(s) as indicated on the form;

(2) Notate on the form that the subaccount(s) has (have) been established, sign and date the form;

(3) Maintain the original form in the child's fiscal file; and,

(4) Notify the case manager and the child welfare legal services attorney that the subaccount(s) for the child has been established by sending each person a signed and dated copy of the form.

d. The child welfare legal services office will notify the juvenile court of the establishment of a Master Trust account for the child. This may be accomplished by filing a copy of the Notarized Designation of Client Money and Property with the court.

NOTE: When a child enters care and is not receiving benefit payments, if the circumstances so warrant, the case manager should apply for benefits.

8. Accounting Procedures. The procedures established in 7 APM 3 and 7 APM 6 shall be followed for all money and property received in the Master Trust for the benefit of clients. When the department begins receiving a child's benefit payments, a personal needs allowance will be deducted and the remainder of the benefit payment will be applied to the child's cost of care. The personal needs allowance and any benefit payment amount left over after applying the cost of care will be deposited into the child's master trust account. Additionally, the following apply:

a. Special Instructions Regarding SSI Recipients. Any money or property of the child who receives SSI benefits that is conserved within his/her Zebley or SSI lump sum subaccount, or PASS subaccount is not counted toward the child's SSI asset limit. Conserved funds that are countable toward the SSI asset limit include funds in the current needs, the long term needs and the Medicaid Income Trust subaccounts. The total amount of countable funds held by the department in all trust subaccounts for a child receiving SSI benefits must never be allowed to exceed the \$2,000 SSI asset limit. In order to ensure that this does not occur, the procedures described in paragraph 9 below shall apply.

b. Pursuant to an agreement with the Economic Self-Sufficiency Services program, when the child's trust account balance reaches \$20,000, the situation must be reviewed by a panel to determine

whether additional funds may be deposited without affecting eligibility for certain public assistance benefits, whether an alternate arrangement, such as the promulgation of an individual trust declaration with a non-departmental trustee would be more appropriate, and whether, and under what circumstances, further review of the child's situation by the panel would be necessary or appropriate. This panel shall be convened by the zone/CBC fiscal office and shall be comprised of at least five members including a district Economic Self-Sufficiency Services program representative, a district Family Safety program representative, a zone/CBC fiscal office representative, the district legal counsel or child welfare attorney, and a representative from the Agency for Health Care Administration.

c. The department will maintain the child's trust account until one of the following events occurs:

(1) The child turns age 18 and thereby will no longer be in the legal custody of the department. The child welfare legal services attorney shall be consulted in regard to the disbursement of the funds. (See Part II below of this operating procedure.)

(2) The child turns age 18 and has a physical or mental disability or is otherwise incapacitated or incompetent to handle his or her own financial affairs,¹ and the department applies for a court order from a court of competent jurisdiction (court having jurisdiction over the child, court where the property is located, or court where the child's legal residence exists) establishing a separate trust for that individual.

(3) A child under the age of 18 who has been in the legal custody, care or control of the department leaves the care, custody and control of the department due to adoption or placement of the child with a relative, or as otherwise directed by a court of competent jurisdiction. The child welfare legal services attorney shall be consulted in regard to disbursement of funds. (See Part II of this operating procedure.)

NOTE: When the source of the child's income is SSI or SSA benefits, the Social Security Administration must be notified that the child is no longer in the custody of the department and the conserved funds must be returned to the Social Security Administration. The conserved funds and/or future benefits will be paid as determined by the Social Security Administration.

d. The zone/CBC fiscal office shall provide notice of the changed circumstances described in paragraph 8c above to the Agency for Health Care Administration using the Notice of Changed Circumstances – Client's Master Trust Account (Appendix U to this operating procedure, and available in eForms).

e. In the event of the death of the child while still in the custody of the department, any amount remaining in his/her trust account up to the total of medical assistance paid under Medicaid for the client shall be deducted and reimbursed to Medicaid prior to any other distribution to a designated remainder beneficiary pursuant to Section 11(5) of the General Provisions of the Master Trust Declaration or as otherwise provided by law. The department, as soon as possible, shall also honor all unsatisfied Medicaid Third Party liens under section 409.910, Florida Statutes, known to the department, which involve personal injury court judgments or personal injury settlements received by Master Trust beneficiaries.

f. With the exception of paragraph e. above, and except for certain allowable fees and costs, funds in the client's trust account are not subject to the debts of the client.

g. Each zone/CBC fiscal office shall maintain up-to-date accounting records for clients that have Master Trust accounts and subaccounts. The accounting record for each child shall include: (a)

¹ See subsection 402.17(7)(c), F.S.

type of benefit payment; (b) monthly benefit amount; (c) interest earned and any other adjustments; (d) monthly cost of care and other withdrawals/adjustments and (e) the current balance in each subaccount. An accounting record for each child shall be sent to the local case management unit on at least a quarterly basis. A copy of the client's most current quarterly accounting record shall also be sent to the child welfare attorney to be filed with the court at the time of each judicial review of the client's case.

h. When a child is in receipt of other personal property (e.g., stocks, bonds, copyrights, etc.) that may need to be transferred to the department, consultation regarding appropriate actions to take should be initiated with appropriate departmental attorney and the case management unit. Such property would normally come through a probated will or by substantial gift. The personal representative of the estate, or the maker of the gift, shall be requested to provide a written appraisal or other document to be placed in the client's file showing the fair market value of the property used in the probate of the estate or in transferring the gift. When an appraisal or statement of fair market value is not provided, then the case manager may have to arrange for a private appraisal with the costs to be charged to the child's trust account or subaccount. If the client is of sufficient age and ability to understand, he or she must be given the choice of retaining or liquidating the property (requires legal review; see Part II of this operating procedure). The value of the property or all or any portion of the liquidated funds shall be added to the long term needs subaccount, or where appropriate, the Disabled Special Needs Trust subaccount. If the property is income producing, or has potential income productivity (such as stocks which pay dividends), the district has the option of utilizing in-house resources or retaining appropriate expertise to manage the property, with the fee being charged against the child's subaccount. If the client is not of sufficient age or ability to understand, the district has the option of seeking a court determination as to disposition, or retaining the property (i.e., in a safe deposit box or in a brokerage account, etc., with the fee charged to the child's subaccount) for the child until he or she is able to exercise a choice, or the trust is terminated as to that child.²

i. If the child receives real property (land, rental property, homestead), the basic principles in paragraph h. above apply. If the real property is retained, and has income-producing potential, the district has the option of utilizing in-house resources or retaining a rental management firm to manage the property, with the fee being charged against the child's subaccount. Because of the impact of the homestead exemption for tax and debt collection purposes, the handling and disposition of any real property that is eligible for the homestead exemption is to be reviewed and documented on a case-by-case basis by the zone/CBC fiscal office and the district legal counsel.

j. Pursuant to the General Provisions of the Master Trust Declaration, each client, his or her parent(s) or legal guardian(s) (unless termination of parental rights has occurred), and, if applicable, the client's attorney or guardian ad litem, shall receive an annual accounting of the receipts, disbursements and current balance of the client's Master Trust account(s). Records regarding the client's account shall be available for review by the child, parent(s) or legal guardian(s), and, if applicable, the client's attorney or guardian ad litem, but are otherwise confidential.

k. Pursuant to section 10 of the General Provisions of the Master Trust Declaration, the department, as Trustee, shall be reimbursed from the Master Trust for necessary legal and administrative fees reasonably incurred and not covered by any other source on behalf of the clients of the Master Trust. Contractual legal services must be approved by the Department of Legal Affairs pursuant to section 402.17(5), Florida Statutes. Administrative fees related to pooled investments shall be deducted proportionately in accordance with 7 APM 3 and 7 APM 6. Allowable administrative fees must be within the scope of section 402.17(6)(b), Florida Statutes, and may include the following:

² As trustee, the department may delegate certain investment management functions as a "prudent investor" as permitted by section 518.112, Florida Statutes, as amended by Chapter 97-240, Laws of Florida.

- (1) Bank or investment company charges and fees, including investment counseling and management charges;
- (2) Independent auditing charges;
- (3) Property management fees; and,
- (4) Other fees or charges reviewed and approved by the district administrator or designee.

I. The client, the client's parent(s) or legal guardian(s), or the client's legal representative may request review of any issues or transactions concerning the administration and management of a client's trust account or one or more of the subaccount(s) associated with the client's trust account. Initially, such review will be conducted by the supervisor for the assigned case manager. Where warranted, further review may be conducted by, as appropriate to the issue, the zone or district Family Safety program office, the zone/CBC fiscal office, the district administrator or his or her designee (acting as the representative of the Trustee) and district legal counsel or child welfare legal services attorney. It is intended that these consultations should resolve such issues through informal mediation in a non-adversarial manner.

9. Ongoing Client Trust Fund Case Management.

a. The assigned case manager must perform planning and budgeting functions by keeping track of the client's Master Trust Fund balance(s) (available from the zone/CBC fiscal office), monitoring the client's current and anticipated needs in relation to such balance(s) and the best interests of the child, and communicating such needs to the zone/CBC fiscal office in charge of the client's trust accounts within the Master Trust. The case manager must, in effect, function as any prudent parent who must budget both for the child's day to day needs and his or her future health, educational or vocational needs. These tracking functions may be accomplished by determining the child's needs and reasonable wishes, completing, executing and periodically updating the Master Trust Expenditure Plan (Appendix V to this operating procedure, and available in eForms).

b. Special Instructions Concerning SSI Recipients.

(1) The total countable funds held by the department in all trust subaccounts for a child receiving SSI benefits (other than the Zebley lump sum subaccount, the SSI lump sum subaccount and the PASS subaccount) must never be allowed to exceed the SSI asset limit at any time.

(2) Within 5 working days of receipt of the quarterly accounting report for the Master Trust client beneficiaries receiving SSI benefits (see paragraph 8g above) per local procedures, the designated zone/CBC staff person shall review the status of each foster child's total trust fund balance (other than the Zebley lump sum subaccount, the SSI lump sum subaccount and the PASS subaccount balances). If such balance totals \$1,500 or more:

(a) The appropriate case management unit shall develop and submit to the zone/CBC fiscal officer an expenditure plan for the upcoming three months, within 10 working days. The purpose of the expenditure plan is to ensure that the foster child's countable Master Trust fund balance (other than the Zebley lump sum subaccount, the SSI lump sum subaccount and the PASS subaccount balances) will not exceed the SSI asset limit.

(b) The expenditure plan shall first address the anticipated amount to be accumulated over the next three months that would jeopardize the child's ongoing eligibility for SSI benefits.

(c) The case management unit should then identify specific, current, or reasonably foreseeable future needs that could be met with the excess funds within the upcoming three months. The list shall be compiled in consultation with the beneficiary, parent(s), foster parent, guardian ad litem, teachers, health professionals and any other interested persons who are able to provide suggestions about the beneficiary's current and reasonably foreseeable future needs. Examples of possible purchases (excluding the cost of care which shall already have been deducted, and medical needs covered by Medicaid) include, but are not limited to:

1. Expenses for medical, psychological, psychiatric, or dental treatment which cannot, after reasonable diligent search or inquiry, be provided from other sources and which are not covered by Medicaid (for example, but not limited to: minor cosmetic surgery, contact lenses or laser (R-K) eye surgery, cosmetic orthodontia).

2. Clothing, footwear, and accessories (for example, but not limited to, "things the other kids are wearing," swimwear/sportswear/casual clothes and shoes, school clothes, shoes, boots, coats, jackets, formal/"church" clothes and shoes, prom dress or tuxedo rental and accessories, high school ring, purses, billfolds, satchels, backpacks, hair accessories, etc.).

3. Personal and/or comfort items or expenses such as, but not limited to, cosmetics, perfume, cologne, toys, hair dryer, radio, television, VCR, personal computer and associated equipment or special adaptations for the child's particular disability, camera, radio, tapes/CDs and player, alarm clock, bicycle, books, magazine subscriptions, posters or other decorative items for the child's room, art supplies, study lamp, sports equipment, physical therapy or other exercise training, special activity expenses or fees (movies, plays, concerts, swimming, ballet or music lessons, musical instrument, foreign language or other classes or lessons, etc.).

4. Educational or vocational needs including, but not limited to, vocational aptitude testing and counseling, remedial or other tutoring or classes, or tuition, fees, books and supplies for school or training, where there is no other funding source.

(d) The plan should also address whether a PASS plan is in effect or is appropriate for the child. If a PASS plan is appropriate and has not been initiated/developed, the case manager should take the steps necessary to apply for approval of a PASS plan. If the child has a PASS plan, steps should be taken to apply for an amendment to the plan.

NOTE: Also refer to the Disbursements section of 7 APM 3 and 7 APM 6.

(3) As representative payee for a SSI recipient under the age of 18 the department or CBC agency must ensure that the child is and has been receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits. The case manager is responsible for assuring that this responsibility of the representative payee is met, and to prepare the documentation to be available on request of the Social Security Administration showing the department's efforts to comply with 20 CFR section 416.635 and 20 CFR section 416.994a(f).

c. It is critical for the case manager to keep abreast of, and budget for the child's immediate and current needs, as well as for the reasonably foreseeable future needs of the child. The rationale for a planned expense for a child's reasonably foreseeable future needs should be documented in the child's case file. Current and upcoming needs are those personal portable (can be taken with the child when he or she leaves the substitute care home) items or expenses such as those listed in paragraph 9b(2)(c)3 of this operating procedure. Items which would normally be considered the responsibility of the substitute care parents (such as furniture, outdoor swing sets or other play equipment, kitchen or laundry appliances, etc.) shall not be purchased absent compelling circumstances. If it is determined that such items should be purchased from the child's trust account, there must be supervisory approval and a signed written agreement from the foster parent agreeing to purchase the item at fair market

value (with the money being replaced in the child's trust account) at the time the child leaves the foster home.

d. The case manager shall be responsible for keeping the client and family (unless parental rights have been terminated) informed of the status of the client's account and any subaccount(s) in the Master Trust, and the available options for utilizing the funds. The case manager must also notify the family/child of the right to request a fee waiver of assessed fees by the department for the child's cost of care and/or a change in personal allowance on behalf of the child. Notification and request are completed via use of form CF 0285D, "Notice of Fee Assessment and Rights of Foster Child Regarding Government Benefits" (available in eForms). Pages 1 and 2 of form 0285D should be completed and the entire form attached to each Judicial Review Social Study Report. If a fee waiver is requested, follow procedures outlined in Florida Administrative Code 65C-17.005.

e. Educational/Vocational Planning.

(1) For foster children receiving SSI, who are age 15 or older, a Plan for Achieving Self-Support (PASS) may be completed by the client with assistance of the case manager and, if necessary, the district legal counsel or child welfare attorney. The completed plan must be submitted to the Social Security Administration for approval. The plan can be downloaded at www.socialsecurity.gov/online/ssa-545.pdf.³ Once the plan is approved, a copy of the plan shall be kept in the case file and a copy shall also be filed with the court exercising jurisdiction over the child. As part of the plan, the case manager is responsible for ensuring that a vocational aptitude assessment and report is completed on each of these clients (SSI/15 or older) where needed and placed in the case file. Costs of such assessment may be charged against the client's applicable trust subaccount.

(2) A foster care SSI recipient under the age of 15 may, in certain circumstances, be eligible to participate in PASS. Please contact the Social Security Administration for additional information.

(3) For each foster child receiving SSA Title II benefits, Veterans' benefits, Railroad Retirement benefits, or other income, who is age 15 or older, a Non-Disabled Plan for Achieving Self-Support (PASS-ND) (Appendix W to this operating procedure, and available in eForms) may be completed by the child with assistance of the case manager and, if necessary, the district legal counsel or child welfare attorney. This plan, as well as those in paragraph (4) below, may serve as the required preparatory to independent living case plan or as a portion of that plan, pursuant to section 409.1451(4)(c)3., Florida Statutes. As part of the plan, the case manager is responsible for ensuring that a vocational aptitude assessment and report is completed on each of these clients (non-SSI/15 or older) where needed and placed in the case file. The original plan shall be kept in the case file and a copy shall be filed with the court exercising jurisdiction over the child. The PASS-ND is not submitted to or approved by the Social Security Administration.

(4) A PASS-ND plan may also be completed for those children in foster care age 15 or older who do not receive a public benefit allotment. As stated in paragraph (3) above, this plan may serve as all or part of the required Independent Living case plan. The original plan shall be kept in the case file, and a copy shall be filed with the court exercising jurisdiction over the child.

(5) A foster care (non-SSI) recipient under the age of 15 may, in certain circumstances, be eligible to participate in PASS-ND.

³ Guidelines entitled Working While Disabled – A Guide to Plans for Achieving Self Support is located at www.socialsecurity.gov/pubs/11017.pdf

f. The case manager is required to review the status of the client's trust accounts and subaccounts with the district legal counsel or child welfare attorney, in regard to any court disposition of the funds. Court disposition of the child's trust fund account may occur when:

(1) A foster child turns age 18 (and does not fall within the category described in paragraph (3) below) and thereby will no longer be in the legal custody of the department. The case manager shall initiate review with the supervisor and the appropriate child welfare legal services attorney at least 90 days prior to the child turning 18.

(2) A foster child who is approaching the age of 18 and has a physical or mental disability or is otherwise incapacitated or incompetent to handle his or her own financial affairs, the department must assess the child's situation and must, unless other provisions for the child's future welfare are in place, apply for a court order from a court of competent jurisdiction (court having jurisdiction over the child, court where the property is located, or court where the child's legal residence exists) establishing a separate trust for that individual. Such review will occur at least 6 months prior to the child turning 18 years old. The case manager will provide the appropriate departmental attorney with the names of individuals or entities that may be willing to serve as the trustee of the separate individual trust. The use of section 402.17(7)(c), F.S. authorizing the department to serve as trustee is to be avoided whenever possible.

(3) When a child under the age of 18 leaves the care, custody and control of the department due to adoption or placement of the child with a relative, or as otherwise directed by the court, the case manager shall initiate a review with the supervisor and the appropriate departmental attorney at least 90 days prior to the child leaving the care, custody and control of the department.

(4) When any extraordinary action seems to be required of the Trustee, as discussed in Part II, paragraph 10a of this operating procedure, the counselor shall initiate review with the supervisor and appropriate departmental attorney at least 90 days prior to the date the action is contemplated or required.

g. In the rare event a foster child becomes ineligible for Title IV-E or SSI related Medicaid, the case manager must take all necessary steps through Economic Self Sufficiency Services to obtain Medicaid coverage under another coverage group, including Medically Needy coverage, for the child.

PART II: LEGAL PROCEDURES

10. Definition of Terms Used in Part II.

a. "Extraordinary actions of the Trustee as to the money and property of certain clients who are under 18 years of age." Section 402.17(2)(a), Florida Statutes, as amended effective October 1, 1996, provides that "in the case of children in the legal custody of the department following the termination of parental rights as to that client until such client leaves the legal custody of the department due to the client's adoption, or attains the age of 18, or in the case of children who are otherwise in the custody of the department, the court having jurisdiction over such client shall have jurisdiction upon application of the department, or other interested party, to review or to approve any extraordinary action of the department acting as trustee as to the client's money or other property." As used in the Master Trust Declaration, the term "extraordinary" refers to the exercise of the following statutory powers of the Trustee, as described in section 737.402(2)(a), Florida Statutes, which include, but are not limited to, the following:

(1) To acquire or dispose of an asset for cash or any interest in it; and to encumber, mortgage or pledge a trust asset for a term within or extending beyond the term of the trust, as specified in section 737.402(2)(h), Florida Statutes, but not including the other powers specified therein;

(2) To grant an option involving disposition of a trust asset, as specified in section 737.402(2)(m), Florida Statutes, but not including the other powers specified therein;

(3) To hold property in the name of a nominee or in some other form without disclosures of the trust so that title to the property may pass by delivery, as specified in section 737.402(2)(q), Florida Statutes;

(4) To borrow money to be repaid from trust assets or otherwise, or the advance of money because of the holding or ownership of trust assets, or for advances with any interest, for which the trustee has a lien, on the trust assets as against the beneficiary, as provided in section 737.402(2)(s), Florida Statutes, but not including the other powers specified therein;

(5) To exercise any of the powers described in section 737.402(3), Florida Statutes, respecting termination of a trust with a value of under \$50,000; and,

(6) To exercise any of the powers described in section 737.4025, Florida Statutes, respecting environmental and health laws, and the presence of toxic substances in property owned, sold or acquired by the trust.

b. "Family Safety program client beneficiary class" – see definition in Part I, paragraph 5b of this operating procedure.

c. "Master Trust" – see definition in Part I, paragraph 5f of this operating procedure.

d. "Res of the trust" means any money, or any other tangible or real property (with more than a de minimus value, and excluding personal effects) or intangible property (for example, stocks, bonds, intellectual property rights or contractual rights that have an undetermined value or more than a de minimus value) belonging to, or that is otherwise transferred for the sole use and benefit of, such client and which comes into the possession or custody of the department. The initial res of the trust includes such designated money and property (whether tangible or intangible) of clients of the department, other than personal effects, that has been entrusted to the department for the sole personal use and benefit of such clients under the provisions of section 402.17, Florida Statutes, and for which a specific trust agreement or declaration respecting a particular client's money and property does not exist.

e. "Special needs of a disabled child" – see definition in Part I, paragraph 5k of this operating procedure.

f. "Trustee" – see definition in Part I, paragraph 5m of this operating procedure.

11. Legal Procedures.

a. A notice containing at least the following provisions must be provided, in a manner that affords appropriate due process, to the child, parent(s) or legal guardian(s), guardian ad litem, and, if applicable, the child's attorney in connection with the judicial proceeding under Chapter 39, Florida Statutes, in the court that has appropriate jurisdiction of the child. This notice must be provided no later than 30 days after the execution of the Notarized Designation of Client Money and Property form (form CF FSP 5222; available on eForms). The method of providing this notice is to be that method available in the particular judicial circuit, county or departmental service district which, in the professional judgment of the district legal counsel and the child welfare managing attorney, provides the greatest likelihood of actual notice, at the earliest practicable time to the child, parent(s) or legal guardian(s), guardian ad litem, and, if applicable, the child's attorney:

“Under section 737.303, Florida Statutes, this is to notify you that the Department of Children and Families has accepted the position of Trustee of a certain trust, promulgated on July 8, 1997, pursuant to the order of the Circuit Court of Leon County, dated July 8, 1997 (the “Master Trust”). The address of the Trustee is:

Agency Clerk
Florida Department of Children and Families
1317 Winewood Boulevard
Tallahassee, FL 32399-0700

Upon reasonable request, a beneficiary of this Master Trust and the beneficiary’s representative are entitled to a complete copy of the trust instrument, including amendments. Upon reasonable request, the Trustee will provide a beneficiary, or the beneficiary’s representative, with relevant information about the assets of the Master Trust related to that beneficiary and the particulars pertaining to administration of the Master Trust. If the child, a parent, or legal guardian has a question concerning this notice or a question or disagreement about the management of these funds in the Master Trust, the matter shall be directed to the District Administrator, acting for the Trustee, for review and response. The District Administrator, acting for the Trustee, may seek a court determination as to matters involving an apparent conflict of fiduciary duty.

If the child who is the subject of this proceeding is eligible for Social Security Act Title II, Supplemental Security Income, or Veterans’ benefits, the department will be applying to the Social Security Administration or Department of Veterans’ Affairs to be appointed as Representative Payee for the child. If appointed, the department will be receiving the child’s SSA/SSI/VA monthly checks instead of the parent or legal guardian. After setting aside a personal allowance for the child, the balance will be used to repay the state for the costs of room and board for the child. If amounts are received that are greater than the room and board costs, these excess amounts will also be set aside in the Master Trust for the child. Some of these trust funds will be unavailable to the child for current needs, and all of the funds will be unavailable to the parents or legal guardians, in accordance with section 402.17(2)(c), Florida Statutes.

If the child who is the subject of this proceeding has any significant amount of money, property (other than the normal personal possessions) or other income, it may be necessary for the court to direct that this money, property or income be placed with the department as Trustee in order to permit the department to appropriately act in the child’s best interests and provide for the child’s current needs, long term needs, and, if applicable the special needs for a disability, while the child is in the care, custody or control of the department.

Pursuant to sections 402.17(2)(c) and 402.33, Florida Statutes, children who receive services may be entitled to a waiver or reduction of the fees customarily charged. The department counselor or child welfare attorney can discuss these charges as well as procedures for review of assessed fees, pursuant to Rule 65-6.022, Florida Administrative Code (formerly Rule 10-6.022, Florida Administrative Code).

The department is required to notify the Agency for Health Care Administration of pending personal injury claims involving clients. Failure of a client to report such possible third party liability could result in ineligibility for Medicaid benefits.

By law, a beneficiary, and the beneficiary’s representative are entitled to an annual statement of accounts of the Master Trust relevant to that beneficiary, and upon termination of the Master Trust as to that beneficiary. In addition, copies of these annual

accounting reports will be provided to the client's parent(s) or legal guardian(s), and, if applicable, the client's attorney if different from the beneficiary's representative. District accounting files are also available for inspection by these individuals. These requests may be directed to the zone/CBC fiscal office. A copy of the client's most recent quarterly accounting record will be filed in the official record of the court having jurisdiction over the client or the client's money and property at the time of each judicial review held in regard to the client.

b. The Leon County Circuit Court made a specific finding in the Order Promulgating Declaration of Trust that the trust is unavailable to the client, his or her family or assistance group, and that the Aid to Families with Dependent Children transfer of assets policy does not apply. This Order, a copy of which has been supplied to each district legal counsel, shall be accepted as dispositive by the district legal counsel that the money or property designated to the individual client's long term needs subaccount is unavailable when requested to do an asset availability or transfer of assets clearance pursuant to Economic Self-Sufficiency Services guidelines.

c. There may be circumstances where the counselor identifies a situation where the child who is coming into the care, custody and control of the department has significant assets (whether money, property or income, and other than normal personal possessions such as clothes, toys, etc.) and these assets are held by the child, the child's family or relatives, or by a legal representative (such as a guardian, trustee or custodian of a Florida Uniform Transfers to Minors Act [Chapter 710, Florida Statutes] account). Some or all of these assets may affect the department's ability to properly act in the child's best interests while the child remains in the care, custody and control of the department, including making application for assistance or in properly planning for the child's current needs, long term needs (or the reasonably foreseeable future needs of a child receiving SSI or other benefits), or the special needs of a disabled child. The counselor is required to report any discovered assets or resources of the child to the district legal counsel or child welfare attorney to determine whether, in these instances, a motion is to be made to the court having jurisdiction of the child for a court order that would direct that such assets be delivered to the department in its capacity as Trustee of the Master Trust to be held and managed for the child while the child is in the care, custody and control of the department. (See appendices A and B to this operating procedure for form motion and order.)

d. In addition to the form motion and order described above, see form motion and order (appendices C and D to this operating procedure) respecting circumstances where the child, who has attained the age of 18, has left the custody, care and control of the department, and has failed to direct how the child's money and property should be disbursed.

e. **INCLUDES ADULT PROTECTIVE SERVICES CASES:** Appendices E, F and G are a form motion, order, and declaration of trust for use when it is necessary to establish a Medicaid Income Trust for a client who is leaving the care, custody and control or receipt of services from the department. The counselor, if practicable, should provide the attorney presenting the motion to promulgate an individual declaration of trust with the names of individuals or entities that may be willing to act as the trustee of such individual declaration of trust being proposed to the court.

f. With the exception of paragraph 10b above, any further legal proceedings involving an individual client's trust account or any subaccount(s) will take place at the district level in a court of competent jurisdiction (being the court having jurisdiction over the child, court where the property is located, or court where the child's legal residence exists).

(1) Such proceedings will normally fall into one of the following categories:

(a) The client reaches age 18 and has a physical or mental disability, or is otherwise incapacitated or incompetent to handle that client's own financial affairs. In such cases, pursuant to section 402.17(7)(c), Florida Statutes, as added by section 1 of Chapter 96-402, Laws of

Florida, the department shall apply for an order from a court of competent jurisdiction to establish a trust on behalf of that client. Where there is no willing relative of the client or other person acceptable to the court available to serve as trustee of such proposed trust, the court may enter an order authorizing the department to serve as trustee of the separate trust under such terms and conditions as the court determines appropriate to the circumstances (see appendices H, I, and J to this operating procedure).

(b) A client under the age of 18 is the subject of an ongoing proceeding, or leaves the care, custody and control of the department due to adoption or placement of the client with a relative, or as otherwise directed by a court of competent jurisdiction. In such cases, pursuant to section 402.17(7)(d), Florida Statutes, the department shall notify that court of the existence of the money and property in the possession of the department either prior to, or promptly after, receiving knowledge of the change of custody, care or control. The department shall apply for an order from the court exercising jurisdiction over the client to direct the disposition of the money and property belonging to that client. The court order may establish a trust in which the money and property of the client will be deposited, appoint a guardian of property as to the money and property of the client, or direct the creation of a Uniform Transfers to Minors Act account (see Chapter 710, Florida Statutes) on behalf of that client, as the court finds appropriate and under the terms and conditions the court determines appropriate to the circumstances (see appendices K, L, M, N, O, and P to this operating procedure).

(c) NOTE: If practicable, the counselor should provide the district legal counsel or child welfare attorney with the names of individuals or entities that may be willing to serve as the trustee of an individual declaration of trust being proposed to the court in connection with items (a) and (b) above and the forms in appendices H, I, J, K, L, M, N, O and P.

(d) Pursuant to section 05(4) of the General Provisions of the Master Trust Declaration, and section 402.17(2)(a), Florida Statutes, in the event the action or proposed action of the Trustee as to the money and property held for the sole use or benefit of a particular client of the department, appears to create an apparent conflict between the provisions of Chapter 737, Florida Statutes (in particular the provisions of section 737.402, Florida Statutes), or of any other provision of federal or Florida law, administrative regulation or policy with the provisions of section 402.17, Florida Statutes, as amended, effective October 1, 1996, the Trustee is directed to comply with the applicable provisions of sections 737.402, 737.403, 402.17(2)(a), and 402.17(6)(b), Florida Statutes to bring the matter to the appropriate court of competent jurisdiction having jurisdiction over the client or the money and property being held for the sole use and benefit of that client for the court to determine what action the Trustee shall take (see appendices Q and R to this operating procedure for sample motion and order).

(e) "Extraordinary" actions of the Trustee. See appendices S and T to this operating procedure for sample motion and order.

(2) The department attorney of record shall provide notice of hearing in each of the above four legal proceedings to the Agency for Health Care Administration (see appendix U to this operating procedure; also available in eForms).

g. Pursuant to section 10 of the General Provisions of the Master Trust Declaration, the department, as Trustee, shall be reimbursed from the Master Trust for necessary legal and administrative fees reasonably incurred on behalf of the clients of the Master Trust. Contractual legal services must be approved by the Department of Legal Affairs, pursuant to section 402.17(5), Florida Statutes.

h. The counselor is required to review the status of the client's trust accounts and subaccounts with the district legal counsel or child welfare attorney, in regard to any court disposition of the funds on a regular periodic basis prior to each judicial review. A review of the client's trust account and trust

subaccounts must also be conducted in regard to any court disposition of such funds in sufficient time to allow for necessary filings and court preparation, which, unless emergency circumstances dictate otherwise, is to be no less than three (3) business days before the date of any court hearing or the filing of any document with the court, with respect to:

(1) A foster child turns age 18 (and does not fall within the category described in paragraph (3) below) and thereby will no longer be in the legal custody of the department.

(2) A foster child over the age of 18 (such as one enrolled in a full-time educational program pursuant to section 409.145(3), Florida Statutes, or one who overcomes a substantial physical, or other, injury and thus is no longer considered disabled) no longer requires the care, custody, control or services of the department.

(3) A foster child who attains the age of 18 has a physical or mental disability or is otherwise incapacitated or incompetent to handle his or her own financial affairs, and the department applies for a court order from a court of competent jurisdiction (court having jurisdiction over the child, court where the property is located, or court where the child’s legal residence exists) establishing a separate trust for that individual.

(4) A child under the age of 18 leaves the care, custody and control of the department due to adoption or placement of the child with a relative, or as otherwise directed by the court.

(5) There is extraordinary action of the Trustee (e.g., disposition of property).

i. The child welfare attorney shall be responsible for filing a copy of the client’s latest quarterly accounting record in the official record of the court exercising jurisdiction over the client or the client’s money and property at the time of each judicial review hearing held in regard to the client.

(Signed original copy on file)

LUCY D. HADI
Secretary

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

Reorganized the “flow” of the operating procedure to group together the duties for counselors/case managers and for fiscal staff; added definitions for “benefit payment”, “expenditure plan”, “fee waiver” and “representative payee”; added the Internet address for the SSA form for PASS accounts; added instructions for the fee waiver notification form; and, updated the legal procedures.

[Sample Motion for court order to transfer custody of child's assets to trustee
"in best interests of child"]

[Caption]

COMES NOW, the State of Florida, Department of Children and Families, as Movant herein, and for its Motion to Transfer Custody of Child's Assets to Trustee, respectfully shows the Court as follows:

1. Pursuant to Chapters 39 and 415, Florida Statutes, Movant, State of Florida, Department of Children and Families has statutory responsibility for exercising care, custody and control over certain children committed to it as directed by order of the Court.

2. Pursuant to an order of the Court dated _____, 20____, the child who is the subject of the above-referenced proceeding, _____, is a client of the Department.

3. It has been ascertained that the Child has substantial assets that are not being held in an irrevocable trust for the Child as the beneficiary, and that the current arrangements as to the ownership or control of these assets do not prevent the Child, or the child's family, from having immediate access or use of such assets, even if such access or use is now contrary to the best interests of the Child, or that such access or use may not serve the Child's current needs, special needs if the Child has a disability, or the Child's long term or reasonably foreseeable future needs. These assets are described as: [describe].

4. Permitting these assets to remain in the status quo will impede the Department's ability to exercise its statutory responsibility to protect the Child, to act in the best interests of the Child, pursuant to chapters 39 and 415, Florida Statutes, and to provide for the child's current needs and long term needs, as directed under section 402.17, Florida Statutes, unless the court directs the delivery of the above described assets to the Department, to act as Trustee of such money and property of the Child, pursuant to an existing Master Trust established pursuant to section 402.17, Florida Statutes, and a Master Trust Declaration promulgated by order of the Circuit Court for the Second Judicial Circuit of the State of Florida in and for Leon County, dated _____, 1997. Pursuant to section 402.17, Florida Statutes, and the Master Trust Declaration, the Child will be a beneficiary of such Master Trust Declaration with respect to these described assets, and any assets that are received for the sole use and benefit of the Child, in accordance with the respective provisions of section 402.17, Florida Statutes, and the Master Trust Declaration only during that period while the child is in the care, custody and control of the Department.

[If needed, add:] 5. The following further justifies the order of the Court sought by the Department: [describe].

WHEREFORE, Movant, State of Florida, Department of Children and Families prays that the Court direct the transfer of the assets of the Child as described above to that certain trust established under a Master Trust Declaration pursuant to the Order of the Circuit Court for the Second Judicial Circuit in and for Leon County, as provided under section 402.17, Florida Statutes.

[Sample Court order to transfer custody of child’s assets to trustee
“in best interests of child”]

[Caption]

UPON MOTION OF the Movant, the State of Florida Department of Children and Families, the Court having reviewed said motion, and it appearing that good cause having been shown, it is hereby

ORDERED and ADJUDGED that, it being in the best interests of the Child, the Court directs that the following described assets of the Child who is the subject of this proceeding, be promptly delivered to the Movant in its capacity as the Trustee of a certain Master Trust established pursuant to section 402.17, Florida Statutes, and by order of the Circuit Court for the Second Judicial Circuit of the State of Florida, in and for Leon County dated _____, 1997 to be held for the Child in accordance with section 402.17, Florida Statutes, and such Master Trust Declaration, to wit:

[described affected assets]

DONE and ORDERED in _____ County, Florida, on _____, 20_____.

Circuit Judge

[Sample Motion for direction as to disbursement of money and property in trust for person at least age 18 who has left the custody of the department (includes those former clients between ages 18 and 21 who have completed or terminated an education plan under section 409.145(3), Florida Statutes)]

[NOTE: If individual requires a Medicaid Disabled Trust, or requires a Medicaid Income Trust, utilize appropriate motion, form order and form trust rather than this form motion and order.]

[Caption]

COMES NOW, the State of Florida, Department of Children and Families, as Movant herein, and for its Motion for direction with respect to certain money and property of _____, formerly a client of the Department, respectfully shows the Court as follows:

1. _____ is an adult who, as a minor, has been in the legal custody, care and control of the Movant, or who has been receiving services from the Movant, or has been regarded as having been in the legal custody, care or control of the Movant, or has been regarded as having been receiving services from Movant.

2. _____, while under the age of 18 [*or, pursuant to section 409.145(3), Florida Statutes, under age 21*], had been a client of the Movant for the following reason [use only one:]

[as the result of a dependency proceeding under Chapter 39, Florida Statutes.]

[because the Beneficiary required substitute care, whether on a short term or a long term basis, or was placed in independent living arrangements, as provided under Chapters 39 and 409, Florida Statutes.]

[because the Beneficiary was placed in long term substitute care or independent living arrangements prior to age 18, and as an individual 18 to 21 years of age was enrolled: (a) in high school, (b) in a program leading to a high school equivalency diploma, (c) in a full time career education program, (d) a postsecondary vocational-technical education program, (e) a full-time community college program leading to a vocational or associate degree, or (f) as a full-time student in a university or college leading to a baccalaureate degree, pursuant to section 409.145(3), Florida Statutes.]

[because the Beneficiary was placed in the legal custody of the Department following the termination of parental rights as to that individual, as provided under Chapter 39, Florida Statutes, and is not being placed with a relative or other individual or for adoption.]

[because the Beneficiary was awaiting adoption, under Chapter 63, Florida Statutes, or placement with a relative or other individual under Chapters 39 and 409, Florida Statutes.]

[because the Beneficiary has a developmental disability, a physical or mental illness, or some other physical or mental incapacity, as provided under Chapters 393, 394 or 409, Florida Statutes.]

[because the Beneficiary came into the legal custody, care or control of the Department or who received services from the Department for (specify other reason).]

3. _____ is no longer a client of the Movant in that [specify circumstances, such as: he or she has attained the age of 18 and is no longer a client of the department.]

4. Under the provisions of section 402.17, Florida Statutes, the Movant is not authorized to retain the money and property of _____ once he or she is no longer a client of the Movant, and further, under section 402.17 (7)(a) and (b), the Movant is directed to disburse the money and property of a client who will no longer be in the legal custody of Movant as soon as practicable to the client, or as the client or a court directs.

5. _____ has not given a direction to the Movant as to the disbursement of the money and property of _____ currently held by Movant as Trustee. Accordingly, Movant is unaware of any circumstances to retain the money and property of _____ in trust, and therefore seeks direction from the Court as to the disbursement of the money and property of _____.

6. Movant proposes that the money and property of _____ be disbursed as follows:

[State proposed distribution.]

WHEREFORE, Movant, State of Florida Department of Children and Families, prays that the Court give direction to the Movant as Trustee, as to the disbursement of the money and property of _____, under such terms and conditions as the Court determines to be appropriate in the circumstances.

[Sample Court order for direction as to disbursement of money and property previously held in trust for person at least age 18 who has left custody of the department (includes those between age 18 and age 21 subject to section 409.1455(3), Florida Statutes, and who have completed or terminated an education plan under such section)]

[Caption]

UPON MOTION OF the Movant, the State of Florida, Department of Children and Families, with respect to certain money and property of _____, the subject of the above-caption proceeding, the Court having considered such motion, and it appears that good cause having been shown, it is hereby

ORDERED and ADJUDGED that the money and property of _____, be disbursed by the Movant, State of Florida, Department of Children and Families, as Trustee, as follows [subject to the following terms and conditions:]

[state directions as to disbursement]

[list any terms and conditions]

DONE and ORDERED in _____ County, Florida, on _____, 20__.

Circuit Judge

[Sample Motion for court order to direct disposition of property of a client who requires a separate Qualified Medicaid Income Trust]

[Caption]

COMES NOW, the State of Florida, Department of Children and Families, as Movant herein, and for its Motion to Promulgate a Declaration of Trust with respect to certain money and property of _____, respectfully shows the Court as follows:

1. _____ is an individual who has been in the legal custody, care and control of the Movant, or who has been receiving services from the Movant, or has been regarded as having been in the legal custody, care or control of the Movant, or has been regarded as having been receiving services from Movant.

2. _____ has been a client of the Movant for the following reason [use only one:]

[physical or mental disability, as provided under Chapter 393 or 394, Florida Statutes]

[incapacity, under Chapter 394 or 744, Florida Statutes]

[incompetency to manage his or her own financial affairs, under Chapter 394 or 744, Florida Statutes]

[inability to consent to the provision of services by Movant, as provided under Chapter 415 or 744, Florida Statutes]

[being brought into the legal custody, care or control of Movant or receiving services from Movant for any other reason]

3. _____, is no longer a client of the Movant in that [specify circumstances].

4. Under the provisions of section 402.17, Florida Statutes, the Movant is not authorized to retain the money and property of _____ once he or she is no longer a client of the Movant, except as provided in section 402.17(7)(b), Florida Statutes, as to clients over age 18 who no longer require the care, custody, control or services of Movant.

5. Under the above-cited provision, the Court is authorized to direct how Movant will disburse the money and property of a client from the Movant as soon as practicable.

6. The court is given wide discretion in giving direction to the Movant where an individual who has been a client continues to have a developmental disability, or some other physical or mental illness or incapacity, or who remains incompetent to handle his or her own financial affairs, or who otherwise lacks the capacity to consent to any act.

7. Such discretion includes the promulgation of a separate trust under such terms and conditions determined by the Court to be appropriate

8. _____ requires placement in a skilled nursing facility or its equivalent under the Medicaid Institutional Care program.

9. Movant has ascertained that _____ has received or will receive money or other income, and that the best interests of _____ will be served by the promulgation of a Declaration of Trust for _____ that will be treated as a qualified Medicaid Income Trust.

10. Movant has further ascertained that _____ may qualify for public assistance, including medical assistance, and that the best interests of _____ require that the money and property remain within a trust in order to conserve and maintain such money and property to the greatest extent possible during the lifetime of _____.

11. Movant proposes the following persons or entities who may be willing and qualified to serve as Trustee under the proposed Declaration of Trust: [names of nominees].

12. Attached hereto, and incorporated herein by this reference, is a proposed Declaration of Trust for promulgation by this Court which Movant believes will serve the best interests of _____.

WHEREFORE, Movant, State of Florida, Department of Children and Families, prays that the Court order the promulgation of the Declaration of Trust annexed to this instant Motion, under such terms and conditions as the Court determines to be appropriate in the circumstances.

[Sample Court order to direct disposition of property of a client who requires a separate Qualified Medicaid Income Trust]

[Caption]

UPON MOTION OF the Movant, the State of Florida, Department of Children and Families, with respect to certain money and property of _____, the subject of the above-caption proceeding, the Court having considered such motion, and it appearing that good cause having been shown, it is hereby

ORDERED and ADJUDGED that the Declaration of Trust with respect to the money and property of _____, as Beneficiary thereof, as proposed by Movant, State of Florida, Department of Children and Families, be, and is hereby promulgated [subject to the following terms and conditions:]

[list any terms and conditions]

IT IS FURTHER ORDERED that the Court hereby designates _____ to serve as the initial Trustee under the said Declaration of Trust, having been advised that _____ has agreed to accept the designation as the initial Trustee of said Declaration of Trust.

DONE and ORDERED in _____ County, Florida, on _____, 20____.

Circuit Judge

[Sample Qualified Medicaid Income Trust]

DECLARATION OF TRUST

This Declaration of Trust is executed pursuant to the order of the Honorable _____, Judge of the [Civil/Probate] Division of the Circuit Court for the _____ Judicial Circuit in and for _____ County, State of Florida, dated _____, 20__, as to certain assets for the use and benefit of _____, the beneficiary of the Trust created by this Declaration as to money and property previously in the custody and possession of the State of Florida Department of Children and Families as Trustee, for the use and benefit of _____, pursuant to section 402.17, Florida Statutes, on this, the ___ day of _____, _____. This Declaration of Trust applies to the designated monthly income to be paid to, or for the sole use or benefit of the Beneficiary, who needs care in a skilled nursing facility within the state of Florida, and who would qualify for Medicaid Assistance under the Florida Medicaid Institutional Care Program but for the fact that the Beneficiary has available income in excess of the maximum income eligibility limits allowed under the Florida Medicaid plan.

1.01. Beneficiary Defined. This Trust is established to hold in trust the monthly income intended for the use and benefit of _____ (the "Beneficiary"), an individual who has been in the legal custody, care or control, or who has been receiving services from, the State of Florida Department of Children and Families ("the department"), or is an individual who has been considered to be in the legal custody, care or control of the department, or who has been considered to have been receiving services from the department. Further, the Beneficiary is an individual who became a client of the department [use only one:]

[as the result of a physical or mental disability, as provided under Chapter 393 or 394, Florida Statutes]

[as the result of being incapacitated, under Chapter 394 or 744, Florida Statutes]

[as the result of being declared incompetent to manage the Beneficiary's own financial affairs, under Chapter 394 or 744, Florida Statutes]

[as the result of being unable to consent to the provision of services by the department, as provided under Chapter 415 or 744, Florida Statutes]

[who came into the legal custody, care or control of the department or who received services from the department for any other reason (specify).]

The Beneficiary is a person for whom a separate trust must be established as the Beneficiary is no longer, or will no longer be a client of the department, and further the Beneficiary has received, or will receive, money and tangible or intangible property as monthly income for the Beneficiary's sole use and benefit from any other person or entity that must be placed in the possession or control of a Trustee under a trust that is qualifying Medicaid Income, in accordance with section 1917(d)(4)(B) of the Social Security Act (42 U.S.C. section 1396p(d)(4)(B)).

1.02. Res of Trust Defined. The initial res of this Trust is described in particularity in Schedule "A" of this Declaration of Trust, and is incorporated within this Declaration of Trust as if fully set forth. The initial res of this Trust include such current monthly income of the Beneficiary that has been entrusted to the Trustee for the sole personal use and benefit of the Beneficiary. Such income is to be held by the Trustee, in accordance with the provisions of this Declaration of Trust.

1.03. Objectives of Trust. The Trust created by this Declaration of Trust is established, as applicable, in order to:

(1) Provide the authority for the Trustee to provide for the lifelong care of the Beneficiary in a manner that provides for a life with dignity, and that may be unavailable to the Beneficiary except through the designation of the Beneficiary's monthly income as governed by the provisions of this Declaration of Trust. Accordingly, the provisions of this Declaration of Trust are intended to be applied to the monthly income of the Beneficiary as a qualified Medicaid Income Trust, under the provisions of Section 1917 (d)(4)(B) of the Social Security Act (42 U.S.C., section 1396p(d)(4)(B)), as amended by the Omnibus Budget Reconciliation Act of 1993, and to permit the Trustee to classify and disburse such income of the Beneficiary in a manner that permits the Beneficiary to qualify for Medicaid, where: (a) the Beneficiary is or will be a patient in a skilled nursing facility within the state of Florida; (b) the Beneficiary would qualify for Medicaid Assistance under the Florida Medicaid Institutional Care Program, but for the fact that the Beneficiary has available income in excess of the maximum income eligibility limits allowed under the Florida Medicaid Plan; and (c) the Trustee is designating sufficient income under this Declaration of Trust in order for the Beneficiary to qualify for such assistance.

2. Accept the monthly income of the Beneficiary for such individual's sole personal use or benefit, whether direct or indirect, for a short term or a long term, that is being entrusted to the Trustee, subject to the usual fiduciary standards and responsibilities as any other trustee under Chapter 737, Florida Statutes, for the management and conservation of such money and property, in accordance with the provisions of Chapter 737.

1.04. Irrevocable status of trust. This Trust is irrevocable; however, no person other than the Trustee, or a court of competent jurisdiction, on motion of the Trustee, has the power to amend this Declaration of Trust, and the power to amend this Declaration of Trust is limited to circumstances where the amendment is required in order to conform its provisions to subsequent changes in any federal law, federal administrative rule, or federal policy issuance that affects the appropriate treatment of the money or property of any Beneficiary under this Declaration of Trust, or any subsequent changes in any Florida law, Florida administrative rule or Florida policy issuance that likewise affects the appropriate treatment of the money or other property of any Beneficiary under this Declaration of Trust. No Beneficiary will, in any event, retain the power to alter, modify, change, amend or revoke this Declaration of Trust.

1.05. Powers, duties and liabilities of Trustee.

(1) *Powers of Trustee.* The Trustee is granted the powers specified in sections 737.402 and 737.4025, Florida Statutes, subject to the limitations specified therein (except that the limitations on the powers of trustees in section 737.402(4)(a), Florida Statutes, do not apply to this Declaration of Trust except as otherwise specified, limited or modified herein under this Declaration of Trust).

(2) *Permitted disbursements from Trust.* To the extent then permitted under the statutes, rules and policies of the Medicaid program in Florida, the Trustee may make the following payments from the monthly income of the Beneficiary, and provided the total monthly amount of such transfer does not exceed such amounts as would constitute a disqualifying transfer of assets under the laws, rules and policies governing qualifying Medicaid Income Trusts under section 1917(d) of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1993, Public law 103-55, section 13611 (42 U.S.C., section 1396p(d)):

(A) Payment to the community spouse, if any, of the spouse's Community Spouse Income Allowance and/or Family Allowance; and/or Medical Assistance;

(B) The Beneficiary's monthly needs allowance, as set from time to time by the state Medicaid agency;

(C) Such health insurance costs, including Medicare premiums, as authorized to be paid by the state Medicaid agency;

(D) Payment of the patient responsibility amount to the nursing care facility, or to another facility providing a level of care equivalent to nursing facility service, or to home-based or community based services provided under section 1915(c) or (d) of the Social Security Act, as set from time to time by the state Medicaid agency;

(E) Payments of expenses related to the maintenance of the Trust, including but not limited to bank account service charges, preparation of federal and state income or other applicable tax returns, and payment of income taxes or other taxes; payment of attorney's fees and accountant's fees; postage; mortgage payments; insurance premiums; court and mediation expenses; and cost of the Beneficiary's legal representatives (other than the Trustee).

(F) Payment from the principal or accumulated income in the Trust (or making such application for assistance to the Beneficiary with respect thereto) for the Beneficiary's special needs to maintain the Beneficiary's good health, safety and welfare, as permitted under the laws, rules and policies governing the Medicaid Program in Florida, and to the extent such an expenditure may be made without affecting the amount of the benefits received or the eligibility of the Beneficiary under the Florida Medicaid Institutional Care program.

(3) *Discretion of Trustee.* The Trustee is to exercise sole and absolute discretion to distribute the remaining income or principal of the Trust to the Beneficiary directly, or for that Beneficiary's sole use or benefit, as the Trustee deems essential for the needs and circumstances of the Beneficiary. It is intended that the Trustee will not distribute any remaining income or principal to the Beneficiary until a distribution of income or principal can be made by the Trustee without disqualifying the Beneficiary from any public assistance benefits, including medical assistance benefits, or causing a diminution in such benefits. The Trustee, in exercising its sole and absolute discretion to distribute income or principal from the Trust, has the responsibility to identify, investigate and determine the existence of any available resources, and the applicable asset, income and resource limitations of any government or private assistance programs for which the Beneficiary may be eligible, and whether any distribution by the Trustee would reduce or eliminate the Beneficiary's eligibility for benefits from such programs, including Supplemental Security Income and Medicaid.

(4) *Responsibility of Trustee as to public assistance or other resources for Beneficiary.* The Trustee, as the representative payee for the Beneficiary, will take possession of the unearned income upon receipt and deliver such income to the Trustee exclusively for the uses and purposes set out in this Declaration of Trust. No property other than the Beneficiary's income will be used to fund the qualified Medicaid Income Trust created by this Declaration of Trust. The Trustee may accept designation as a representative payee by the Social Security Administration for a Beneficiary who is the recipient of payments from a program authorized under any title of the Social Security Act, including the Supplemental Security Income program, and may act as a representative of the Beneficiary as to any other program paying benefits from the United States Department of Veteran's Affairs, any other government agency, or from any employee benefit or pension benefit contract, plan, or arrangement.

(5) *Court approval not required for exercise of specified powers of Trustee.* Unless specifically required elsewhere in this Declaration of Trust, court approval is not required as to the exercise of the powers described in section 737.403, Florida Statutes.

1.06. Termination of Trust prior to Beneficiary's death. In the event the Beneficiary is discharged from the nursing facility (other than for a temporary discharge into another health care facility or to a psychiatric facility), the Beneficiary's unearned monthly income is no longer to be paid into this

Declaration of Trust. All accumulated income therein will be held for distribution upon the death of the Beneficiary, as provided in the following paragraph 1.07 of this Declaration of Trust.

1.07. Disbursement of designated account or subaccount upon death of Beneficiary. Upon the death of the Beneficiary, all remaining funds in the Trust will be paid over to the state Medicaid agency in Florida, as then designated by law, up to the total amount of all medical assistance paid on behalf of the Beneficiary through the Medicaid Institutional Care program in Florida. Any residual funds then remaining will then be distributed by the Trustee to the person(s) or other entities specified as remainder beneficiaries under this Declaration of Trust.

1.08. Applicability of usual fiduciary standards upon Trustee. The provisions of Part III of Chapter 737, Florida Statutes, concerning the duties and liabilities of trustees, as well as the decisional case law of the courts sitting in the State of Florida as to the fiduciary responsibilities and obligations of Trustees, are applicable to the Trustee under this Declaration of Trust. The Trustee is subject to the prudent investor rule of sections 737.302, 518.11 or 518.12, Florida Statutes, and compliance with such provisions is not waived. With respect to section 737.12 and 737.13, Florida Statutes, respecting provisions concerning underproductive property and charges against income and principal, and section 737.402(4) with regard to a corporate principal who is both Trustee and a beneficiary, compliance with such provisions is waived.

1.09. Spendthrift Provisions. Neither the principal nor income of the Trust is to be liable for any of the Beneficiary's present or future debts to any creditor, public or private, other than as specified within this Declaration of Trust, and neither the Trustee, the Beneficiary, any remainder beneficiary, nor any guardian, conservator, nor next friend, of the Beneficiary has any authority to anticipate, alienate, encumber, sell, assign, mortgage, pledge or otherwise dispose of all or any part of the Beneficiary's money or property, whether principal or income, that is included in any portion of this Trust, or the principal or income therein. Further, any money or property of the Beneficiary held pursuant to this Declaration of Trust is not subject to the probate of the Beneficiary's estate, nor subject to any claims against the estate of the Beneficiary, nor liable for the debts or obligations, including alimony or any residual beneficiary, nor subject to attachment, execution, or any other legal or equitable process. These restrictions do not apply to the state Medicaid agency in seeking disbursements by the Trustee, nor bar the state Medicaid agency from seeking any judicial remedy in order to cause the disbursement of funds as permitted under the laws, rules and policies governing the state Medicaid Institutional Care program.

1.10. Accounting and records inspection concerning Beneficiary accounts. The Court, the Beneficiary, the parent or guardian, and the legal representative or attorney of the Beneficiary, will receive an annual accounting of the assets, receipts and disbursements of the Trust. Records respecting the Trust will be available for inspection to the parent or guardian, the legal representative or the attorney of the Beneficiary.

1.11. Trustee compensation. When the initial Trustee is an agency of the State of Florida, and since there is no express statutory authorization for the payment of compensation to the agency as a Trustee or fiduciary thereto, no compensation is authorized herein to the initial Trustee, when such is an agency of the State of Florida. In the event the court elects to designate one or more corporate trustees or one or more individual trustees, as the initial Trustee(s), the court may authorize compensation for the Trustee in such amounts as the court will direct.

1.12. General trust procedures for Beneficiary money and property.

(1) *Investing the Beneficiary's money for investment; treatment of earned interest.* The Trustee may invest the money of the Beneficiary, and all interest or gains thereon will be the property of the Beneficiary.

(2) *Management of money and property.* The Trustee's management of the Beneficiary's money and property, including income earned thereon, will be in accordance with the duties and powers of trustees generally as provided in Chapter 737, Florida Statutes. The money and property of the Beneficiary may be designated into one or more accounts, as appropriate to the particular Beneficiary's needs, requirements, and circumstances in order to optimize the effective use of that Beneficiary's money and property, including the segregation of the Beneficiary's money and property, or other money or property designated to the personal use or benefit of that Beneficiary, so that: (a) both the long term and short term needs of the Beneficiary can be met; (b) the need of the Beneficiary to qualify for public assistance, including medical assistance, (in particular, Supplemental Security Income and Medicaid) can be met with the optimum level of such assistance; and (c) that, if appropriate, the special needs of the Beneficiary who is physically or mental ill, or disabled, or incapacitated, or incompetent, can be met.

(3) *Discretion of Trustee as to special designation of Beneficiary money or property.* The Trustee will have the absolute discretion to request the Court to amend this Declaration of Trust to qualify the Beneficiary's assets into some other qualified Medicaid Trust and designate the applicability of such provisions to the Beneficiary under this Declaration of Trust, in order to best manage and conserve the money and property of the Beneficiary, and to establish that Beneficiary's eligibility for any public assistance program, including medical assistance, and to minimize the depletion and dissipation of the Beneficiary's money and other property held under this Declaration of Trust.

1.13. Trustee held to substantial good faith compliance standard. Because of the status and continuing uncertainty of the law, rules and administrative procedures and policies with regard to the implementation of provisions in 42 U.S.C., section 1396p, as amended by the Omnibus Budget Reconciliation Act of 1993, as well as other adopted changes, or potential changes, in other federal and state law, rules, and policies, including those changes that may be adopted after the date this Declaration of Trust is executed, the Trustee may not be able to comply with each and every provision of this Declaration; therefore, the Trustee is only required to make a good faith effort to comply with all of the provisions within this Declaration of Trust, as may involve the interpretation and application of the above referenced federal and state laws, any implementing and interpretative rules and policies of these laws, as well as any future enactment of federal or state law, adoption of federal or state rule or promulgation of federal or state policy that may affect the Trust created by this Declaration of Trust and will be exonerated from a failure to comply with any provision herein due to the statute and uncertainty of these laws, rules and policies.

1.14 Liability of Trustee. The Trustee is not liable in the exercise of good faith and ordinary diligence for any action taken or not taken or the loss or depreciation in value of property of the Beneficiary, whether due to an error or judgment or otherwise. In accordance with the statutory and case law concerning the fiduciary responsibilities of trustees generally, the Trustee, under this standard, will be held to the faithful performance of the Trustee's actions hereunder, but except in the case of bad faith, is not liable for the acts of prior or subsequent Trustees.

1.15 Situs of Trust. The initial situs of this trust is within the City of _____, County of _____, State of Florida.

1.16. Applicable law. This Declaration of Trust is to be governed under and construed in accordance with the laws of the State of Florida and the United States of America.

1.17 Effective date of designation to Beneficiary's income. The application of this Declaration of Trust to the Beneficiary's income is effective upon the earlier of either (a) the first day of the first month of the Beneficiary's qualification for Medicaid benefits in the Institutional Care program; or (b) the first day of the month in which the designation of the Beneficiary's income under this Declaration of Trust is made.

SCHEDULE "A" TO DECLARATION OF TRUST

<u>Money, Property or Income Source</u>	<u>Date of Transfer</u>	<u>Value at Date of Transfer</u>	<u>Name of Transferee</u>
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[Sample Motion for promulgation of separate qualified Medicaid disabled trust for person who is disabled]

[Caption]

COMES NOW, the State of Florida Department of Children and Families, as Movant herein, and for its Motion to Promulgate a Declaration of Trust with respect to certain money and property of _____, a person under age 65 [18] with disabilities, and respectfully shows the Court as follows:

1. _____ is an individual under the age of 65 [18] who has been in the legal custody, care and control of the Movant, or who has been receiving services from the Movant, or has been regarded as having been in the legal custody, care or control of the Movant, or has been regarded as having been receiving services from Movant due to a developmental disability, or some other physical or mental illness or incapacity, or who was incompetent to handle his or her own financial affairs, or who was unable to consent to the provision of services by Movant.

2. _____, while under the age of 18, [or use: under the age of 21, pursuant to section 409.145(3), Florida Statutes,] has been a client of the Movant: [select one of the following to use where Beneficiary is less than 18 years, or is between 18 years and 21 years pursuant to section 409.415(3), Florida Statutes:]

[as the result of a dependency proceeding under Chapter 39, Florida Statutes.]

[because the Beneficiary required substitute care, whether on a short term or a long term basis, or who was placed in independent living arrangements, as provided under Chapters 39, 409 or 415, Florida Statutes.]

[because the Beneficiary was placed in the legal custody of the Department following the termination of parental rights as to that individual, as provided under Chapter 39 or 409, Florida Statutes, and who is not being placed with a relative or other individual or for adoption.]

[because the Beneficiary was awaiting adoption, under Chapter 63, Florida Statutes, or placement with a relative or other individual in foster care under Chapter 39, 409, or 415 Florida Statutes.]

[who has a developmental disability, a physical or mental illness, or some other physical or mental incapacity, as provided under Chapters 393, 394 or 409, Florida Statutes.]

[because the Beneficiary was placed in long term substitute care or independent living arrangements prior to age 18, and as an individual between the ages of 18 to 21 years of age, is enrolled: (a) in high school, (b) in a program leading to a high school equivalency diploma, (c) in a full time career education program, (d) a postsecondary vocational-technical education program, (e) a full-time community college program leading to a vocational or associate degree, or (f) as a full-time student in a university or college leading to a baccalaureate degree, pursuant to section 409.145 (3), Florida Statutes.]

[who came into the legal custody, care or control of the Department or who received services from the Department for (specify other reason).]

[use one of the following if the Beneficiary is more than 18, less than 65 and not subject to section 409.145(3), Florida Statutes:]

2. _____, has been a client of the Movant due to: [use only one:]

[a physical or mental disability, as provided under Chapter 393 or 394, Florida Statutes.]

[being incapacitated, under Chapters 394 or 744, Florida Statutes.]

[incompetency to manage his or her own financial affairs, under Chapters 394 or 744, Florida Statutes.]

[being unable to consent to the provision of services by Movant, as provided under Chapter 415 or 744, Florida Statutes.]

[being brought into the legal custody, care or control of Movant or receiving services from Movant (specify other reason).]

3. _____, is no longer a client of the Movant in that [specify circumstances]

4. Under the provisions of section 402.17, Florida Statutes, the Movant is not authorized to retain the money and property of _____ once he or she is no longer a client of the Movant, except as provided in

[use following for clients less than age 18:] section 402.17(7)(c), Florida Statutes, as to clients under age 18 who are leaving the care, custody, control of Movant. Under these provisions, (1) the Movant is required to apply to the Court to promulgate a trust on behalf of such client, and (2) that if there is no willing relative of the client acceptable to the court available to serve as trustee of such proposed trust, then the court may enter an order authorizing Movant to serve as trustee of the separate trust under such terms and conditions as the Court determines to be appropriate to the circumstances.

[use following for clients more than age 18 and less than age 65:] section 402.17(7)(b), Florida Statutes, as to clients over age 18 and under age 65 who no longer require the care, custody, control or services of Movant. Under this provision, the Court is authorized to direct how Movant will disburse the money and property of a client from the Movant as soon as practicable. Accordingly, the court is given wide discretion in giving direction to the Movant where an individual who has been a client continues to have a developmental disability, or some other physical or mental illness or incapacity, or who remains incompetent to handle his or her own financial affairs, or who otherwise lacks the capacity to consent to any act, and such discretion includes the promulgation of a separate trust under such terms and conditions determined by the Court.

5. Movant has ascertained that _____ has received or will receive money or tangible or intangible property, and that the best interests of _____ will be served by the promulgation of a Declaration of Trust for _____ that will be treated as a qualified Medicaid Disabled/Special Needs Trust.

6. Movant has further ascertained that _____ may qualify for public assistance, including medical assistance, and that the best interests of _____ require that the money and property remain within a trust in order to conserve and maintain such money and property to the greatest extent possible during the lifetime of _____.

7. Attached hereto, and incorporated herein by this reference, is a proposed Declaration of Trust for promulgation by this Court, that Movant believes will serve the best interests of _____.

8. Movant proposes the following persons or entities as persons who may be willing and qualified to serve as Trustee under the proposed Declaration of Trust: [names of nominees]

WHEREFORE, Movant, State of Florida Department of Children and Families, prays that the Court order the promulgation of the Declaration of Trust annexed to this instant Motion, under such terms and conditions as the Court determines to be appropriate in the circumstances.

[Sample Court order promulgating a Declaration of Trust for a separate qualified Medicaid disabled trust for a person less than 18, or a person greater than 18 and less than 65]

[Caption]

UPON MOTION OF the Movant, the State of Florida Department of Children and Families, with respect to certain money and property of _____, the subject of the above-caption proceeding, the Court having considered such motion, and it appears that good cause having been shown, it is hereby

ORDERED and ADJUDGED that the Declaration of Trust with respect to the money and property of _____, as Beneficiary thereof, as proposed by Movant, State of Florida Department of Children and Families, be, and is hereby promulgated [subject to the following terms and conditions:]

[list any terms and conditions]

IT IS FURTHER ORDERED that the Court hereby designates _____ to serve as the initial Trustee under the said Declaration of Trust, having been advised that _____ has agreed to accept the designation as the initial Trustee of said Declaration of Trust.

DONE and ORDERED in _____ County, Florida, on _____, 20____.

Circuit Judge

SAMPLE DECLARATION OF TRUST

This Declaration of Trust is executed pursuant to an order dated _____, _____, of the Honorable _____, Judge of the [Civil/Juvenile/Probate] Division of the Circuit Court for the _____ Judicial Circuit in and for _____ County, State of Florida, as to certain assets for the use and benefit of _____ [a minor], the Beneficiary of the Trust created by this Declaration as to money and property of _____ previously in the custody and possession of the State of Florida Department of Children and Families as Trustee, for the use and benefit of _____, pursuant to section 402.17, Florida Statutes, on this, the ___ day of _____, _____. This Declaration of Trust applies to the designated money and income to be paid to, or for the sole use or benefit of the Beneficiary, being disabled as defined in section 1614(a)(3) of the Social Security Act (42 U.S.C. section 1382(a)(3) (1996) and who would qualify for Medicaid Assistance under the Florida Medicaid Program.

1.01. Applicability. This Declaration of Trust applies to the designated money and property, including income to be paid to, or for the sole use or benefit of, the Beneficiary, who is a disabled person as defined in section 1614(a)(3) of the Social Security Act, 42 U.S.C. section 1382 (a)(3). It is the intent of this Declaration of Trust to provide the authority for the Trustee to provide for the lifelong care of the Beneficiary, and provide for the needs of the Beneficiary other than support and maintenance which are basic to a life with dignity, and that may be unavailable to the Beneficiary except through the money and property of the Beneficiary, including income, being governed by the provisions of this Declaration of Trust.

1.02. Beneficiary Defined. This Trust is established to hold in trust the money and property intended for the use and benefit of _____, (the "Beneficiary"), an individual under the age of [65] [18] who has been in the legal custody, care or control, or who has been receiving services from, the State of Florida Department of Children and Families ("the Department"), as an individual who has been, or who has been considered to be in the legal custody, care or control of the Department, or who has been receiving services from the Department. Further, the Beneficiary is an individual who initially became a client of the Department [use only one:]

[due to a developmental disability, a physical or mental illness, or some other physical or mental incapacity, as provided under Chapters 393, 394 or 409, Florida Statutes.]

[due to incompetency to manage the Beneficiary's own financial affairs, as provided under Chapters 394 or 744, Florida Statutes.]

[due to inability to consent to the provision of services by the Department, as provided under Chapter 415 or 744, Florida Statutes.]

[who came into the legal custody, care or control of the Department or who received services from the Department for any other reason. (specify).]

The Beneficiary is a person for whom a separate trust must be established as the Beneficiary is, or will no longer be, a client of the Department, and further, the Beneficiary has received, or will receive, money and tangible or intangible property for the Beneficiary's sole use and benefit from any other person or entity that must be placed in the possession or control of a Trustee under a trust that is a qualifying Medicaid Disabled Special Needs Trust, in accordance with section 1917(d)(4)(C) of the Social Security Act (42 U.S.C. section 1396p(d)(4)(C)).

1.03. Res of Trust Defined. The Trustee is authorized to accept and hold in trust any money, or any other tangible or real property (with more than a de minimis value, and excluding personal effects) or

intangible property (such as but not limited to stocks, bonds, intellectual property rights or contractual rights that have an undetermined value or more than a de minimis value) belonging to, or that is otherwise transferred for the sole use and benefit of, the Beneficiary and which comes into the possession or custody of the Trustee. The initial res of this Trust is described in particularity in Schedule "A" of this Declaration of Trust, and is incorporated within this Declaration of Trust as if fully set forth. The initial res of this Trust includes all money and property (whether tangible or intangible) of the Beneficiary, other than personal effects, that were previously entrusted to the Department for the sole personal use and benefit of the Beneficiary under a Master Trust Declaration dated _____, 1997, established by the order of the Circuit Court for the Second Judicial Circuit of the State of Florida in and for Leon County pursuant to section 402.17, Florida Statutes.

1.04. Objectives of Trust. The Trust created by this Declaration of Trust is established, as applicable, in order to:

1. Accept the money and property of the Beneficiary for such individual's sole personal use or benefit, whether direct or indirect, for a short term or a long term, that is being entrusted to the Trustee, subject to the usual fiduciary standards and responsibilities as any other trustee under Chapter 737, Florida Statutes, for the management and conservation of such money and property, in accordance with the provisions of Chapter 737. Such money or property for the sole personal use and benefit of the Beneficiary that comes to the Trustee's possession and control may occur: (a) by transfer to the Beneficiary; (b) as a gift to the Beneficiary; (c) as an inheritance or bequest to the Beneficiary; (d) as a settlement of, or as the result of a judgment in, a civil action in any court or any administrative proceeding; (e) when otherwise directed by a court of competent jurisdiction in any proceeding, or (f) by any other means. Notwithstanding this, no assets, whether in the form of money, property or income, may be added to this Trust, once the Beneficiary attains the age of 65. The Trustee is authorized to establish such other trust arrangements with respect to such money, property or income of the Beneficiary, as appropriate, including the designation of such assets into separate trusts, as the Trustee finds appropriate in the Trustee's sole discretion.

2. This Declaration of Trust is expressly intended to provide for the Beneficiary's extra and supplemental care, maintenance, support and education in addition to and over and above the benefits the Beneficiary may otherwise receive or may receive from any government agency, including the Department, or from any private or nonprofit entity that provide services or benefits to persons who are developmental disabled, incapacitated or disabled, and that this Trust or the specific account of the Trust is to be used only to supplement other benefits received by the client.

3. Preserve the money or property of the Beneficiary entrusted to the Trustee in a manner that limits or precludes the classification or treatment of such money and property, with respect to determining eligibility for any form of public assistance, as available income, assets or resources of the Beneficiary, or being considered as available to such Beneficiary, when that Beneficiary is an applicant or recipient of any form of public assistance, including medical assistance, under federal or Florida law (in particular, Supplemental Security Income (SSI) and Title XIX of the Social Security Act (Medicaid)). The Trustee will manage the Beneficiary's money and property so as to prevent the complete or partial disqualification of the Beneficiary from eligibility and receipt of such public assistance to the fullest extent possible under federal or Florida law, while maintaining the money and property of such Beneficiary, as appropriate for that Beneficiary's short term and long term needs;

4. Provide a mechanism for the Trustee to reconcile the differing requirements imposed upon the Beneficiary as to the treatment, classification and ownership of the Beneficiary's money and property, including the varying requirements of public assistance programs, including medical assistance programs, under federal law and the laws of Florida, and the need to adapt the arrangements concerning the Beneficiary's money and property to changes in federal laws and programs, Florida laws and programs, and the changing long term and short term needs of the Beneficiary. It is expressly intended that the Trustee retains the greatest flexibility possible to manage

and conserve the money and property of the Beneficiary entrusted to it in response to such changes in federal and Florida law, rules and policies, and the programs authorized thereunder, that may be applicable to the Beneficiary.

1.05. Irrevocable status of trust and circumstances of termination. This Trust is irrevocable; however, no person other than the Trustee, or a court of competent jurisdiction, on motion of the Trustee, has the power to amend this Declaration of Trust, and the power to amend this Declaration of Trust is limited to circumstances where the amendment is required in order to conform its provisions to subsequent changes in any federal law, federal administrative rule, or federal policy issuance that affects the appropriate treatment of the money or property of the Beneficiary under this Declaration of Trust, or any subsequent changes in any Florida law, Florida administrative rule or Florida policy issuance that likewise affects the appropriate treatment of the money or other property of the Beneficiary under this Declaration of Trust. The Beneficiary will not, in any event, retain the power to alter, modify, change, amend or revoke this Declaration of Trust, as a whole or as applied to the Beneficiary's money and property. This Trust terminates when the Beneficiary is no longer a disabled person, no longer resides within the State of Florida, or dies, or when the Court that approved the creation of this Trust enters an order respecting the Beneficiary and which may include a direction to terminate this Trust.

1.06. Powers, duties and liabilities of Trustee.

(1) *Powers of Trustee.* The Trustee is granted the powers specified in sections 737.402 and 737.4025, Florida Statutes, subject to the limitations specified therein, and except as otherwise specified, limited or modified herein under this Declaration of Trust.

(2) *Powers of Trustee concerning Beneficiary's special needs.* The Trustee will seek support and maintenance for the Beneficiary from all available public and private resources including but not limited to:

- (a) the Supplemental Security Income (SSI) program;
- (b) Social Security disability payments
- (c) the Supplemental Income program (FIP) of Florida or any other state;
- (d) the Institutional Care Facility program for the Developmentally Disabled (ICF-OO) of Florida or any other state;
- (e) the Old Age Survivor and Disability (OASDI) program;
- (f) the Medicaid program; and,
- (g) any additional, similar or successor programs, including support and maintenance from nonprofit organizations.

(3) *Discretion of Trustee.* The Trustee is to exercise sole and absolute discretion to distribute the income or principal of the Trust to the Beneficiary directly, or for that Beneficiary's sole use or benefit, as the Trustee deems advisable for the needs and circumstances of the Beneficiary. The Trustee, in exercising its sole and absolute discretion to distribute income or principal from the Trust, will investigate and determine whether any government or private assistance programs exist for which the Beneficiary may be eligible, and whether any distribution by the Trustee would reduce or eliminate the Beneficiary's eligibility for benefits from such programs, including Supplemental Security Income and Medicaid.

(4) *Trustee Discretion to make payments from Trust or designated account.* The Trustee will:

(a) Pay or apply for the sole benefit of the Beneficiary for the Beneficiary's lifetime, such amounts from the principal or income, up to the whole amount thereof, as the Trustee, in the Trustee's sole discretion, may from time to time deem necessary or advisable for the satisfaction of the Beneficiary's special needs. Any income of the Beneficiary (including income designated to a specific

account of the Trust) not distributed will be added annually to the principal held in the Trust or the designated account of the Trust.

(b) Take into consideration the applicable asset, resource and income limitations of any public assistance program for which the Beneficiary is eligible when determining whether to make any discretionary distributions. In no event will the Beneficiary's money or property placed in the Trust or in a designated account be used to provide basic food, clothing and shelter, nor will it be available to the Beneficiary for conversion to such items or in such a manner that any benefit or assistance from any public or governmental financial assistance program for which the Beneficiary is, or would be, eligible is in any way reduced, diminished, altered or denied.

(c) Take steps to further the intent of this Declaration of Trust that no part of the money or property in the Trust or an account designated under this Declaration is used to supplant or replace public assistance benefits available to the Beneficiary through any county, state, federal or other governmental agency, and to the greatest extent possible segregate the Beneficiary's money and property in the Trust or designated account so that no part of the principal or income is considered to be available to the Beneficiary. The Trustee has complete discretion with regard to acting in the best interests of the Beneficiary as to such issues, and to settle or compromise any such issues in a manner that is in the best interests of the Beneficiary.

(d) Maintain the Beneficiary in a manner that respects human dignity and humane care, and to apply this standard in making any distributions from the Trust or the designated account while simultaneously considering that the Trust is not to be invaded by creditors, subjected to any liens or encumbrances, or administered in such a manner as to reduce, deny or terminate any public assistance benefits.

(e) Apply the money or property vested in the Trust to the extent reasonable or necessary prior to the Beneficiary's death; that is, to give preference to the Beneficiary's interests, even when giving simultaneous consideration to the interests of any remainder beneficiaries. Accordingly, the Trustee is authorized, subject to the applicable provisions of this Declaration and whenever in its discretion the Trustee determines that it is reasonable and appropriate to do so, to liquidate property vested in the Trust.

(f) Prevent the use of the money and property in the Trust from supplanting or replacing any benefits due from any insurance carrier under any insurance policy covering the Beneficiary.

(g) Give special consideration, prior to the death of the Beneficiary, to paying any outstanding expenses of the administration of the Trust, and the purchase of a reasonable burial plan to pay expenses relating to the funeral of the Beneficiary.

(h) Have discretion, in the event of the death of the Beneficiary, while the money and property of the Beneficiary remain(s) in the Trust, to pay the expenses of the Beneficiary's last illness and funeral, and any administrative expense related to this Trust, any guardianship for the Beneficiary, and including any reasonable attorney's fees or accountant's fees, if the Trustee's sole discretion, other satisfactory arrangements have not been made for the payment of such expenses.

{5} *Responsibility of Trustee as to public assistance or other resources for Beneficiary.* The Trustee has the responsibility to identify any available resources, and the applicable asset, income and resource limitations of any public assistance programs for which the Beneficiary may be eligible. The Trustee may accept designation as a representative payee by the Social Security Administration for the Beneficiary if the beneficiary is the recipient of payments from a program authorized under any title of the Social Security Act, including the Supplemental Security Income program, and may act as a representative of the Beneficiary as to any other program paying benefits from the United States

Department of Veteran's Affairs, any other government agency, or from any employee benefit or pension benefit contract, plan, or arrangement.

(6) *Court approval not required for exercise of specified powers of Trustee.* Unless specifically required under this Declaration of Trust, court approval is not required as to the exercise of the powers described in section 737.403, Florida Statutes.

1.07. "Special Needs" of client. In making any distributions from the client's account or subaccount governed under this Part, the Trustee is authorized to consider, in the Trustee's sole discretion, the reasonableness or advisability of making distributions in satisfaction of the client's "special needs."

(1) *Special Needs of Client.* As used in this Declaration of Trust, "special needs" refers to the requisites for maintaining the good health, safety and welfare of the client when, in the discretion of the Trustee, such requisites are not being otherwise provided by any public assistance program, including medical assistance, or nonprofit entity, or any other public or private source; however, the Trustee is not required to consider and may, in the exercise of the Trustee's discretion, disregard these other sources in making a distribution to, or for the use and benefit of, the client.

(2) *Examples of "Special Needs."* "Special needs" specifically refers to expenses, which include and are not limited to:

(a) expenses for medical, psychological, psychiatric, or dental treatment, including procedures or treatments that are more sophisticated than might otherwise be available to the client through a public assistance program, including medical assistance;

(b) premiums for medical, health and hospitalization insurance to cover expenses for medical, psychological, psychiatric, or dental treatment, including procedures or treatments that are more sophisticated than might otherwise be available to the client through a public assistance program, including medical assistance;

(c) travel;

(d) the lease or purchase of a motor vehicle as transportation for the client;

(e) transportation expenses, including the expense to incorporate special modifications to a motor vehicle to allow the client to travel in a vehicle, or, if the client is capable of doing so safely, to operate such motor vehicle;

(f) entertainment;

(g) office and computer equipment, including computer equipment, peripherals and software, and the cost of equipping an office (whether at home or elsewhere) or residence for the use of the client;

(h) education and training programs, and programs designated to prepare the client, when appropriate, for independent living arrangements; and

(i) the rent or purchase of a residence for the client (whether a single family residence, townhouse, or condominium apartment), and further provided, that the client may reside therein without payment of rent and the Trustee has first determined that such an arrangement does not jeopardize any significant rent subsidy or housing assistance payment for which the client would otherwise be eligible.

1.08. Distribution of Trust assets upon death of client. Upon the death of the Beneficiary, the State of Florida will receive all amounts remaining in the corpus of the Trust up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the Florida Medicaid plan, and will then pay over any remainder to [Remainder Beneficiary], of [address].

1.09. Applicability of usual fiduciary standards to Trustee. The provisions of Part III of Chapter 737, Florida Statutes, concerning the duties and liabilities of trustees, as well as the decisional case law of the courts sitting in the State of Florida as to the fiduciary responsibilities and obligations of Trustees, are applicable to the Trustee under this Declaration of Trust. The Trustee is subject to the "prudent investor rule" of sections 737.302, 518.11 or 518.12, Florida Statutes, and compliance with such provisions is not waived. With respect to section 737.12 and 737.13, Florida Statutes, respecting provisions concerning underproductive property and charges against income and principal, and section 737.402(4) with regard to a corporate principal who is both Trustee and a beneficiary, compliance with such provisions is waived.

1.10. Spendthrift Provisions. Any money or property of the beneficiary held pursuant to this Declaration of Trust is not subject to the probate of the Beneficiary's estate, and is not subject to any claims against the estate of the beneficiary with the exception of a claim by the Florida Medicaid agency for the recovery of any payments made for medical services to the beneficiary after attaining the age of 55. The Trustee, the Beneficiary, or any guardian, conservator nor next friend of the beneficiary, nor any remainder beneficiary, may anticipate, sell, assign, alienate, encumber, mortgage, pledge or otherwise dispose of all or any part of the Beneficiary's assets in this Trust, or the principal or income that is included within this Trust. Neither the principal nor income of the Trust is to be liable for any of the Beneficiary's present or future debts to any creditor, public or private, other than as specified within this Declaration of Trust.

1.11. Accounting and records inspection concerning Trust. The Beneficiary, the parent, guardian, or legal representative of the Beneficiary (if any), or the attorney of the Beneficiary (if any), will receive an annual accounting of the assets, receipts and disbursements of the Trust. Records respecting the Trust will be available for inspection to the Beneficiary, the parent, guardian, or legal representative of the Beneficiary (if any), or the attorney of the Beneficiary (if any).

1.12. Trustee compensation. When the initial Trustee is an agency of the State of Florida, and since there is no express statutory authorization for the payment of compensation to the agency as a Trustee or fiduciary thereto, no compensation is authorized herein to the initial Trustee, when such is an agency of the State of Florida. In the event the court elects to designate one or more corporate trustees or one or more individual trustees, as the initial Trustee(s), the court may authorize compensation for the Trustee in such amounts as the court will direct.

1.13. General trust procedures for Beneficiary money and property.

(1) *Investing the Beneficiary's money for investment; treatment of earned interest.* The Trustee may invest the money of the Beneficiary, and all interest or gains thereon will be the property of the Beneficiary.

(2) *Management of money and property.* The Trustee's management of the Beneficiary's money and property, including income earned thereon, will be in accordance with the duties and powers of trustees generally as provided in Chapter 737, Florida Statutes. The money and property of the Beneficiary may be designated into one or more accounts, as appropriate to the particular Beneficiary's needs, requirements, and circumstances in order to optimize the effective use of that Beneficiary's money and property, including the segregation of the Beneficiary's money and property, or other money or property designated to the personal use or benefit of that Beneficiary, so that: (a) the long term needs, current needs, and independent living needs of the Beneficiary can be met; (b) the need of the Beneficiary to qualify for public assistance, including medical assistance, (in particular,

Supplemental Security Income and Medicaid) can be met with the optimum level of such assistance; and (c) that, if appropriate, the special needs of the Beneficiary who is physically or mental ill, or disabled, or incapacitated, or incompetent, can be met.

(3) *Discretion of Trustee as to special designation of Beneficiary money or property.* The Trustee will have the absolute discretion to request the Court to amend this Declaration of Trust to qualify the Beneficiary's assets into a separately qualified Medicaid Disabled Special Needs Trust account and a separately qualified Medicaid Income Trust account and designate the applicability of such provisions to separate accounts of the Trust established under this Declaration of Trust, in order to best manage and conserve the money and property of the Beneficiary, and to establish that Beneficiary's eligibility for any public assistance program, including medical assistance.

1.14. Trustee held to substantial good faith compliance standard. Because of the status and continuing uncertainty of the law, rules and administrative procedures and policies with regard to the implementation of provisions in 42 U.S.C. Section 1396p, as amended by the Omnibus Budget Reconciliation Act of 1993, as well as other adopted changes, or potential changes, in other federal and state law, rules, and policies, including those changes that may be adopted after the date this Declaration of Trust is executed, the Trustee may not be able to comply with each and every provision of this Declaration; therefore, the Trustee is only required to make a good faith effort to comply with all of the provisions within this Declaration of Trust, as may involve the interpretation and application of the above referenced federal and state laws, any implementing and interpretative rules and policies of these laws, as well as any future enactment of federal or state law, adoption of federal or state rule or promulgation of federal or state policy that may affect the Trust created by this Declaration of Trust and will be exonerated from a failure to comply with any provision herein due to the statute and uncertainty of these laws, rules and policies.

1.15. Liability of Trustee. The Trustee is not liable in the exercise of good faith and ordinary diligence for any action taken or not taken or the loss or depreciation in value of property in any account or subaccount(s) of any Beneficiary, whether due to an error of judgment or otherwise. In accordance with the statutory and case law concerning the fiduciary responsibilities of trustees generally, the Trustee, under this standard, will be held to the faithful performance of the Trustee's actions hereunder, but except in the case of bad faith, is not liable for the acts of prior or subsequent Trustees.

1.16. Situs of Trust. The situs of this trust is to be located in within the City of _____, County of _____, State of Florida.

1.17. Applicable law. This Declaration of Trust is to be governed under and construed in accordance with the laws of the State of Florida and the United States of America.

SCHEDULE "A" TO DECLARATION OF TRUST

Money, Property or Income Source	Date of Transfer	Value at Date of Transfer	Name of Transferee
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[Sample Motion for promulgation of trust for person less than age 18 who is being adopted, placed with relative or some other direction by Court]

[Caption]

COMES NOW, the State of Florida Department of Children and Families, as Movant herein, and for its Motion to Promulgate a Declaration of Trust with respect to certain money and property of _____, a minor, and respectfully shows the Court as follows:

1. _____ is a minor who has been in the legal custody, care and control of the Movant, or who has been receiving services from the Movant, or has been regarded as having been in the legal custody, care or control of the Movant, or has been regarded as having been receiving services from Movant.

2. _____, while under the age of 18, has been a client of the Movant:
[use only one:]

[due to a dependency proceeding under Chapter 39, Florida Statutes.]

[because the Beneficiary required foster or substitute care, whether on a short term or a long term basis, or who was placed in independent living arrangements, as provided under Chapters 39, 409 or 415, Florida Statutes.]

[because the Beneficiary was placed in the legal custody of the Department following the termination of parental rights as to that individual, as provided under Chapter 39 or 409, Florida Statutes, and who is not being placed with a relative or other individual or for adoption.]

[because the Beneficiary was awaiting adoption, under Chapter 63, Florida Statutes, or placement with a relative or other individual in foster care under Chapter 39, 409, or 415 Florida Statutes.]

[because of a developmental disability, a physical or mental illness, or some other physical or mental incapacity, as provided under Chapters 393, 394 or 409, Florida Statutes.]

[who came into the legal custody, care or control of the Department or who received services from the Department for any other reason (specify).]

3. _____, [will no longer be/is no longer] a client of the Movant in that [specify circumstances, such as: [he or she] has been placed with a relative, or placed with the prospective adoptive parents prior to adoption.]

4. Under the provisions of section 402.17, Florida Statutes, the Movant is not authorized to retain the money and property of _____ once he or she is no longer a client of the Movant, except as provided in the last sentence of section 402.17(2)(a) and in section 402.17(7)(d), Florida Statutes. Under these provisions, (1) the Movant is required to notify the Court of the existence of the money and property in the possession of the Department either prior to, or promptly after, receiving knowledge of, the change of custody, care or control, (2) that the Movant is to apply for a court order directing the disposition of the money and property belonging to that client, and (3) that the court order may establish a trust, establish a guardianship of the property of the client, or direct the creation of a uniform transfers to minors act account.

5. Movant has ascertained that _____ has received or will receive money or tangible or intangible property, and that the best interests of _____ will be served by the promulgation of a Declaration of Trust for _____ prior to _____'s adoption, placement with a relative or such other direction as has been determined by the Court, in order to preserve this money and property for the use and benefit of _____ until the time _____ attains the age of 18 years.

6. In addition, Movant has ascertained that _____ may qualify for public assistance, including medical assistance, and that the best interests of _____ require that the money and property remain within a trust in order to conserve and maintain such money and property to the greatest extent possible until _____ attains the age of 18 years, so as to be placed in the best possible circumstances to function as an adult once _____ attains the age of 18.

7. Movant [has further ascertained that _____, who is a potential trustee/guardian/custodian [is/is not] suitable to act in such capacity due to (describe circumstances). Movant] proposes the following persons or entities as persons who may be willing and qualified to serve as Trustee under the proposed Declaration of Trust: [names of nominees]

8. Attached hereto, and incorporated herein by this reference, is a proposed Declaration of Trust for promulgation by this Court, that Movant believes will serve the best interests of _____ until [he or she] attains the age of 18.

WHEREFORE, Movant, State of Florida Department of Children and Families, prays that the Court order the promulgation of the Declaration of Trust annexed to this instant Motion, under such terms and conditions as the Court determines to be appropriate in the circumstances, including the designation of an initial Trustee for such Declaration of Trust.

[Sample Court order promulgating a Declaration of Trust for a person under 18 who is being adopted, placed with a relative or some other direction by court]

[Caption]

UPON MOTION of the Movant, the State of Florida, Department of Children and Families, with respect to certain money and property of _____, the subject of the above-captioned proceeding, the Court having considered such motion, and it appears that good cause having been shown, it is hereby

ORDERED and ADJUDGED that the Declaration of Trust with respect to the money and property of _____, as Beneficiary thereof, as proposed by Movant, State of Florida, Department of Children and Families, be, and is hereby promulgated [subject to the following terms and conditions:]

[list any terms and conditions]

It is FURTHER ORDERED that the Court hereby designates _____ to serve as the initial Trustee under the said Declaration of Trust, having been advised that _____ has agreed to accept the designation as the initial Trustee of said Declaration of Trust.

DONE and ORDERED in _____ County, Florida, on _____, 20____.

Circuit Judge

SAMPLE DECLARATION OF TRUST

This Declaration of Trust is executed pursuant to an order dated _____, _____, of the Honorable _____, Judge of the [Civil/Juvenile/Probate] Division of the Circuit Court for the _____ Judicial Circuit in and for _____ County, State of Florida, as to certain money and property previously in the custody and possession of the State of Florida Department of Children and Families as Trustee, for the use and benefit of _____, pursuant to section 402.17, Florida Statutes, on this, the ____ day of _____, ____.

1.01. Beneficiary Defined. This Trust is established to hold in trust the money and property intended for the use and benefit of _____, (the "Beneficiary"), a minor, who is under the age of 18 and who is or has been in the legal custody, care or control of the State of Florida Department of Children and Families ("the Department"). Further, the Beneficiary is an individual who, while under the age of 18 became a client of the Department [use only one:]

[as the result of a dependency proceeding under Chapter 39, Florida Statutes.]

[because the Beneficiary required foster or substitute care, whether on a short term or a long term basis, or who was placed in independent living arrangements, as provided under Chapters 39, 409 or 415, Florida Statutes.]

[because the Beneficiary was placed in the legal custody of the Department following the termination of parental rights as to that individual, as provided under Chapter 39 or 409, Florida Statutes, and who is not being placed with a relative or other individual or for adoption.]

[because the Beneficiary was awaiting adoption, under Chapter 63, Florida Statutes, or placement with a relative or other individual in foster care under Chapter 39, 409, or 415 Florida Statutes.]

[who came into the legal custody, care or control of the Department or who received services from the Department for any other reason (specify).]

The Beneficiary is a person who: (a) has left or is leaving the legal custody, care or control of the Department, due to the Beneficiary's adoption, or placement with a relative of the Beneficiary, or, as otherwise directed by a court of competent jurisdiction, and, therefore for whom a separate trust must be established in maintain the conservation of the money and property belonging to the Beneficiary, including those assets that have been designated for the long term needs or the independent living needs of the Beneficiary, or the disabled special needs of the Beneficiary, if disabled, and (b) has received, or who will receive, money and tangible or intangible property for the Beneficiary's sole use and benefit from any other person or entity that, during the existence of this Trust, must be placed in the possession or control of a designated Trustee until the Beneficiary attains the age of 18 years.

1.02. Res of Trust Defined. The initial res of this Trust is described in particularity in Schedule "A" of this Declaration of Trust, and includes any money, or any other tangible or real property (with more than a de minimis value, and excluding personal effects) or intangible property (such as but not limited to stocks, bonds, intellectual property rights or contractual rights that has an undetermined value or more than a de minimis value) belonging to, or that is otherwise transferred for the sole use and benefit of, the Beneficiary, and is incorporated within this Declaration of Trust as if fully set forth. Such money and property are to be held by the Trustee in accordance with the provisions of this Declaration of Trust.

1.03. Objectives of Trust. The Trust created by this Declaration of Trust is established, as applicable, in order to:

1. Accept the money and property of the Beneficiary for such individual's sole personal use or benefit, whether direct or indirect, for a short term or a long term, that is being entrusted to the Trustee, subject to the usual fiduciary standards and responsibilities as any other trustee under Chapter 737, Florida Statutes, for the management and conservation of such money and property, in accordance with the provisions of Chapter 737. Such money or property for the sole personal use and benefit of the Beneficiary that comes to the Trustee's possession and control may occur: (a) by transfer to the Beneficiary; (b) as a gift to the Beneficiary; (c) as an inheritance or bequest to the Beneficiary; (d) as a settlement of, or as the result of a judgment in, a civil action in any court or any administrative proceeding; (e) when otherwise directed by a court of competent jurisdiction in any proceeding, or (f) by any other means;

2. Preserve, to the greatest extent practicable, the money and property that are designated for the sole use and benefit of the Beneficiary so that the designated money and other property are available for the Beneficiary when such Beneficiary attains the age of 18 years.

3. Preserve the money or property of the Beneficiary that is entrusted to the Trustee in a manner that limits or precludes the classification or treatment of such money and property, with respect to determining eligibility for any form of public assistance, as available income, assets or resources of the Beneficiary, or being considered as available to such Beneficiary, when that Beneficiary is an applicant or recipient of any form of public assistance, including medical assistance, under federal or Florida law (in particular, Supplemental Security Income (SSI) and Title XIX of the Social Security Act (Medicaid)). The Trustee will manage the Beneficiary's money and property so as to prevent the complete or partial disqualification of the Beneficiary from eligibility and receipt of such public assistance to the fullest extent possible under federal or Florida law, while maintaining the money and property of such Beneficiary, as appropriate for that Beneficiary's short term and long term needs;

4. Provide a mechanism for the trustee to reconcile the differing requirements imposed upon the Beneficiary as to the treatment, classification and ownership of the Beneficiary's money and property, including the varying requirements of public assistance programs, including medical assistance programs, under federal law and the laws of Florida, and the need to adapt the arrangements concerning each Beneficiary's money and property to changes in federal laws and programs, Florida laws and programs, and the changing long term and short term needs of each Beneficiary. It is expressly intended that the Trustee retains the greatest flexibility possible to manage and conserve the money and property of each Beneficiary entrusted to it in response to such changes in federal and Florida law, rules and policies, and the programs authorized thereunder, that may be applicable to each such Beneficiary.

1.04. Irrevocable status of trust. This Trust is irrevocable; however, no person other than the Trustee, or a court of competent jurisdiction, on motion of the Trustee, has the power to amend this Declaration of Trust, and the power to amend this Declaration of Trust is limited to circumstances where the amendment is required in order to conform its provisions to subsequent changes in any federal law, federal administrative rule, or federal policy issuance that affects the appropriate treatment of the money or property of any Beneficiary under this Declaration of Trust, or any subsequent changes in any Florida law, Florida administrative rule or Florida policy issuance that likewise affects the appropriate treatment of the money or other property of any Beneficiary under this Declaration of Trust. No Beneficiary will, in any event, retain the power to alter, modify, change, amend or revoke this Declaration of Trust.

1.05. Powers, duties and liabilities of Trustee.

(1) *Powers of Trustee.* The Trustee is granted the powers specified in sections 737.402 and 737.4025, Florida Statutes, subject to the limitations specified therein (except that the limitations on the powers of trustees in section 737.402(4)(a), Florida Statutes, does not apply to this Declaration of Trust except as otherwise specified, limited or modified herein under this Declaration of Trust.

(2) *Discretion of Trustee.* The Trustee is to exercise sole and absolute discretion to distribute the income or principal of the Trust to the Beneficiary directly, or for that Beneficiary's sole use or benefit, as the Trustee deems essential for the needs and circumstances of the Beneficiary. It is intended that the Trustee will not distribute any income or principal to the Beneficiary until the Beneficiary attains the age of 18, except where a distribution of income or principal can be made by the Trustee without disqualifying the Beneficiary from any public assistance benefits, including medical assistance benefits, or causing a diminution in such benefits. The Trustee, in exercising its sole and absolute discretion to distribute income or principal from the Trust, has the responsibility to identify, investigate and determine the existence of any available resources, and the applicable asset, income and resource limitations of any government or private assistance programs for which the Beneficiary may be eligible, and whether any distribution by the Trustee would reduce or eliminate the Beneficiary's eligibility for benefits from such programs, including Supplemental Security Income and Medicaid.

(3) *Responsibility of Trustee as to public assistance or other resources for Beneficiary.* The trustee may accept designation as a representative payee by the Social Security Administration for a Beneficiary who is the recipient of payments from a program authorized under any title of the Social Security Act, including the Supplemental Security Income program, and may act as a representative of the Beneficiary as to any other program paying benefits from the United States Department of Veteran's Affairs, any other government agency, or from any employee benefit or pension benefit contract, plan, or arrangement.

(4) *Court approval not required for exercise of specified powers of Trustee.* Unless specifically required elsewhere in this Declaration of Trust, court approval is not required as to the exercise of the powers described in section 737.403, Florida Statutes.

1.06. Applicability of usual fiduciary standards to Trustee. The provisions of Part III of Chapter 737, Florida Statutes, concerning the duties and liabilities of trustees, as well as the decisional case law of the courts sitting in the State of Florida as to the fiduciary responsibilities and obligations of Trustees, are applicable to the Trustee under this Declaration of Trust. To the extent the Trustee is subject to the "prudent investor rule" of sections 737.302, 518.11 or 518.12, Florida Statutes, compliance with such provisions is not waived. With respect to section 737.12 and 737.13, Florida Statutes, respecting provisions concerning underproductive property and charges against income and principal, and section 737.402(4) with regard to a corporate principal who is both Trustee and a beneficiary, compliance with such provisions is waived.

1.07. Spendthrift Provisions. Neither the principal nor income of the Trust is to be liable for any of the Beneficiary's present or future debts to any creditor, public or private, other than as specified within this Declaration of Trust, and neither the Trustee, the Beneficiary, nor any guardian, conservator, nor next friend of the Beneficiary, has any authority to anticipate, alienate, or encumber any portion of the Beneficiary's account in this Trust, or the principal or income therein.

1.08. Accounting and records inspection concerning Beneficiary accounts. The Court establishing this Trust, the Beneficiary, the parent, guardian, or legal representative of the Beneficiary, or the attorney of the Beneficiary (if any), will receive an annual accounting of the assets, receipts and disbursements of the Trust. Records respecting the Trust will be available for inspection to the Beneficiary, the parent, guardian or legal representative of the Beneficiary, or the attorney of the Beneficiary(if any).

1.09. Trustee compensation. When the initial Trustee is an agency of the State of Florida, and since there is no express statutory authorization for the payment of compensation to the agency as a Trustee or fiduciary thereto, no compensation is authorized herein to the initial Trustee, when such is an agency of the State of Florida. In the event the court elects to designate one or more corporate trustees or one

or more individual trustees, as the initial Trustee(s), the court may authorize compensation for the Trustee in such amounts as the court will direct.

1.10. General trust procedures for Beneficiary money and property.

(1) *Investing the Beneficiary's money for investment; treatment of earned interest.* The Trustee may invest the money of the Beneficiary, and all interest or gains thereon will be the property of the Beneficiary.

(2) *Management of money and property.* The Trustee's management of the Beneficiary's money and property, including income earned thereon, will be in accordance with the duties and powers of trustees generally as provided in Chapter 737, Florida Statutes. The money and property of the Beneficiary may be designated into one or more accounts, as appropriate to the Beneficiary's particular needs, requirements, and circumstances in order to optimize the effective use of that Beneficiary's money and property, including the segregation of the Beneficiary's money and property, or other money or property designated to the personal use or benefit of that Beneficiary, so that: (a) both the long term and short term needs of the Beneficiary can be met; (b) the need of the Beneficiary to qualify for public assistance, including medical assistance, (in particular, Supplemental Security Income and Medicaid) can be met with the optimum level of such assistance; and (c) that, if appropriate, the special needs of the Beneficiary who is physically or mental ill, or disabled, or incapacitated, or incompetent, can be met.

(3) *Discretion of Trustee as to special designation of Beneficiary money or property.* The Trustee will have the absolute discretion to request the Court to amend this Declaration of Trust to qualify the Beneficiary's assets into a qualified Medicaid Disabled Special Needs Trust or some other qualified Medicaid Trust and designate the applicability of such provisions to the Beneficiary under this Declaration of Trust, in order to best manage and conserve the money and property of the Beneficiary, and to establish that Beneficiary's eligibility for any public assistance program, including medical assistance, without depleting and dissipating the Beneficiary's money and other property held under this Declaration of Trust.

1.11. Trustee held to substantial good faith compliance standard. Because of the status and continuing uncertainty of the law, rules and administrative procedures and policies with regard to the implementation of provisions in 42 U.S.C. Section 1396p, as amended by the Omnibus Budget Reconciliation Act of 1993, as well as other adopted changes, or potential changes, in other federal and state law, rules, and policies, including those changes that may be adopted after the date this Declaration of Trust is executed, the Trustee may not be able to comply with each and every provision of this Declaration; therefore, the Trustee is only required to make a good faith effort to comply with all of the provisions within this Declaration of Trust, as may involve the interpretation and application of the above referenced federal and state laws, any implementing and interpretative rules and policies of these laws, as well as any future enactment of federal or state law, adoption of federal or state rule or promulgation of federal or state policy that may affect the Trust created by this Declaration of Trust and will be exonerated from a failure to comply with any provision herein due to the statute and uncertainty of these laws, rules and policies.

1.12. Liability of Trustee. The Trustee is not liable in the exercise of good faith and ordinary diligence for any action taken or not taken or the loss or depreciation in value of property of the Beneficiary, whether due to an error or judgment or otherwise. In accordance with the statutory and case law concerning the fiduciary responsibilities of trustees generally, the Trustee, under this standard, will be held to the faithful performance of the Trustee's actions hereunder, but except in the case of bad faith, is not liable for the acts of prior or subsequent Trustees.

1.13. Situs of Trust. The initial situs of this trust will be within the City of _____, County of _____, State of Florida.

1.14 Applicable law. This Declaration of Trust is to be governed under and construed in accordance with the laws of the State of Florida and the United States of America.

SCHEDULE "A" TO DECLARATION OF TRUST

<u>Money, Property or Income Source</u>	<u>Date of Transfer</u>	<u>Value at Date of Transfer</u>	<u>Name of Transferee</u>
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[Sample Motion for Promulgation of Trust for person under age 18 who is subject of an ongoing proceeding]

[Caption]

COMES NOW, the State of Florida, Department of Children and Families, as Movant herein, and for its Motion to Promulgate a Declaration of Trust with respect to certain money and property of _____, a minor during the pendency of the above-captioned proceeding, and respectfully shows the Court as follows:

1. _____ is a minor who has been in the legal custody, care and control of the Movant, or who has been receiving services from the Movant, or has been regarded as having been in the legal custody, care or control of the Movant, or has been regarded as having been receiving services from Movant.

2. _____, while under the age of 18 [or, pursuant to section 409.145(3), Florida Statutes, under age 21], has been a client of the Movant: [use only one]

[As the result of a dependency proceeding under Chapter 39, Florida Statutes.]

[Because the Beneficiary required foster or substitute care, whether on a short term or a long term basis, or who was placed in independent living arrangements, as provided under Chapter 39 or 409, Florida Statutes.]

[Because the Beneficiary was placed in long term foster care or independent living arrangements before age 18, and is enrolled as an individual between age 18 and age 21 in (a) high school, (b) a program leading to a high school equivalency diploma, (c) in a full time career education program, (d) a postsecondary vocational-technical education program, (e) a full-time community college program leading to a vocational or associate degree, or (f) as a full-time student in a university or college leading to a baccalaureate degree pursuant to section 409.145(3), Florida Statutes.]

[Because the Beneficiary was placed in the legal custody of the Department following the termination of parental rights as to that individual, as provided under Chapter 39, Florida Statutes, and who is not being placed with a relative or other individual or for adoption.]

[Because the Beneficiary was awaiting adoption under Chapter 63, Florida Statutes, or placement with a relative or other individual in foster care under Chapter 39 or 409, Florida Statutes.]

[Who has a developmental disability, a physical or mental illness, or some other physical or mental incapacity, as provided under Chapter 393 or 394, Florida Statutes.]

[Who came into the legal custody, care or control of the Department for any other reason (specify).]

3. _____ is no longer a client of the Movant in that [specify circumstances, such as: he or she has been placed with a relative, or placed with the prospective adoptive parents prior to adoption.]

4. Under the provisions of section 402.17, Florida Statutes, the Movant is not authorized to retain the money and property of _____ once he or she is no longer a client of the Movant, except as provided in the last sentence of section 402.17(2)(a) and in section 402.17(7)(d), Florida Statutes. Under these provisions:

(a) the Movant is required to notify the Court of the existence of the money and property in the possession of the Department either prior to, or promptly after receiving knowledge of, the change of custody, care or control;

(b) the Movant is to apply for a court order directing the disposition of the money and property belonging to that client;

(c) the court may establish a trust, establish a guardianship of the property of the client, or direct the creation of a uniform transfers to minors act account, and

(d) the Movant is permitted to hold money or property of a former client who is under the age of 18 and who is the subject of a court proceeding, as a trustee of a separate trust, during the pendency of that proceeding.

5. Movant has ascertained that _____ has received or will receive money or tangible or intangible property, and that the best interests of _____ will be served by the promulgation of a Declaration of Trust for _____ during the pendency of the above-referenced court proceeding.

6. During the pendency of this proceeding, Movant has further ascertained that _____ may qualify for public assistance, including medical assistance, and that the best interests of _____ require that the money and property remain within a trust in order to conserve and maintain such money and property to the greatest extent possible until _____ attains the age of 18 years, so as to be placed in the best possible circumstances to function as an adult once _____ attains the age of 18.

7. Movant proposes the following persons or entities, other than Movant, who may be willing and qualified to serve as Trustee under the proposed Declaration of Trust: [names of nominees].

8. Attached hereto, and incorporated herein by this reference, is a proposed Declaration of Trust for promulgation by this Court, that Movant believes will serve the best interests of _____ during the pendency of the above-referenced proceeding.

WHEREFORE, Movant, State of Florida, Department of Children and Families, prays that the Court order the promulgation of the Declaration of Trust annexed to this instant Motion, under such terms and conditions as the Court determines to be appropriate in the circumstances.

[Sample Court order promulgating a Declaration of Trust for a person under 18 who is the subject of ongoing proceedings during its pendency]

[Caption]

UPON MOTION OF the Movant, the State of Florida Department of Children and Families, with respect to certain money and property of _____, the subject of the above-captioned proceeding, the Court having considered such motion, and it appears that good cause having been shown, it is hereby

ORDERED and ADJUDGED that the Declaration of Trust with respect to the money and property of _____, as Beneficiary thereof, as proposed by Movant, State of Florida, Department of Children and Families, be, and is hereby promulgated [subject to the following terms and conditions:]

[list any terms and conditions]

It is FURTHER ORDERED that the Court hereby designates _____ to serve as the initial Trustee under the said Declaration of Trust, having been advised that _____ has agreed to accept the designation as the initial Trustee of said Declaration of Trust.

[If the Department is designated as Trustee, add:

FURTHER ORDERED that the term of the initial Trustee is limited under section 402.17, Florida Statutes, to only that period of time during which the above-captioned proceeding remains pending, and that upon the settlement or judgment thereof, a successor Trustee is to be appointed by the Court.]

DONE and ORDERED in _____ County, Florida, on _____, 20__.

Circuit Judge

SAMPLE DECLARATION OF TRUST

This Declaration of Trust is executed pursuant to an order dated _____, _____, of the Honorable _____, Judge of the [Civil/Juvenile/Probate] Division of the Circuit Court for the _____ Judicial Circuit in and for _____ County, State of Florida, as to certain money and property previously in the custody and possession of the State of Florida Department of Children and Families as Trustee, for the use and benefit of _____, pursuant to section 402.17, Florida Statutes, on this, the ___ day of _____, _____.

1.01. Beneficiary Defined. This Trust is established to hold in trust the money and property intended for the use and benefit of _____, (the "Beneficiary"), an individual under the age of 18 who has been in the legal custody, care or control of the State of Florida Department of Children and Families ("the Department"). Further, the Beneficiary is an individual who, while under the age of 18 became a client of the Department [use only one:]

[as the result of a dependency proceeding under Chapter 39, Florida Statutes.]

[because the Beneficiary required foster or substitute care, whether on a short term or a long term basis, or who was placed in independent living arrangements, as provided under Chapters 39, 409 or 415, Florida Statutes.]

[because the Beneficiary was placed in the legal custody of the Department following the termination of parental rights as to that individual, as provided under Chapter 39 or 409, Florida Statutes, and who is not being placed with a relative or other individual or for adoption.]

[because the Beneficiary was awaiting adoption, under Chapter 63, Florida Statutes, or placement with a relative or other individual in foster care under Chapter 39, 409, or 415 Florida Statutes.]

[who has a developmental disability, a physical or mental illness, or some other physical or mental incapacity, as provided under Chapters 393, 394 or 409, Florida Statutes.]

[who came into the legal custody, care or control of the Department or who received services from the Department for any other reason (specify).]

The Beneficiary is a person who: (a) is now the subject of a pending court proceeding for whom a separate trust must be established in maintain the conservation of the money and property belonging to the Beneficiary, including those assets that have been designated for the long term needs or the independent living needs of the Beneficiary, or the disabled special needs of the Beneficiary, if disabled, and (b) has received, or who will receive, money and tangible or intangible property for the Beneficiary's sole use and benefit from any other person or entity that, during the existence of this Trust, must be placed in the possession or control of a designated Trustee during the pendency of that certain proceeding in the _____ Division of the Circuit Court of the _____ Judicial Circuit of the State of Florida, in and for _____ County, formally known as _____, [Civil Action/Juvenile/Probate] File Number _____.

1.02. Res of Trust Defined. The initial res of this Trust is described in particularity in Schedule "A" of this Declaration of Trust, includes any money, or any other tangible or real property (with more than a de minimis value, and excluding personal effects) or intangible property (such as but not limited to stocks, bonds, intellectual property rights or contractual rights that has an undetermined value or more than a de minimis value) belonging to, or that is otherwise transferred for the sole personal use and benefit of, the Beneficiary, and is incorporated within this Declaration of Trust as if fully set forth. Such

money and property are to be held by the Trustee in accordance with the provisions of this Declaration of Trust.

1.03. Objectives of Trust. The Trust created by this Declaration of Trust is established, as applicable, in order to:

1. Accept the money and property of the Beneficiary for such individual's sole personal use or benefit, whether direct or indirect, for a short term or a long term, that is being entrusted to the Trustee, subject to the usual fiduciary standards and responsibilities as any other trustee under Chapter 737, Florida Statutes, for the management and conservation of such money and property, in accordance with the provisions of Chapter 737. Such money or property for the sole personal use and benefit of the Beneficiary that comes to the Trustee's possession and control may occur: (a) by transfer to the Beneficiary; (b) as a gift to the Beneficiary; (c) as an inheritance or bequest to the Beneficiary; (d) as a settlement of, or as the result of a judgment in, a civil action in any court or any administrative proceeding; (e) when otherwise directed by a court of competent jurisdiction in any proceeding, or (f) by any other means;

2. The Trustee is to exercise sole and absolute discretion to distribute the income or principal of the Trust to the Beneficiary directly, or for that Beneficiary's sole use or benefit, as the Trustee deems essential for the needs and circumstances of the Beneficiary. It is intended that the Trustee will not distribute any income or principal to the Beneficiary until the Beneficiary attains the age of 18, except where a distribution of income or principal can be made by the Trustee without disqualifying the Beneficiary from any public assistance benefits, including medical assistance benefits, or causing a diminution in such benefits. The Trustee, in exercising its sole and absolute discretion to distribute income or principal from the Trust, has the responsibility to identify, investigate and determine the existence of any available resources, and the applicable asset, income and resource limitations of any government or private assistance programs for which the Beneficiary may be eligible, and whether any distribution by the Trustee would reduce or eliminate the Beneficiary's eligibility for benefits from such programs, including Supplemental Security Income and Medicaid.

3. Preserve the money or property of the Beneficiary entrusted to the Trustee in a manner that limits or precludes the classification or treatment of such money and property, with respect to determining eligibility for any form of public assistance, as available income, assets or resources of the Beneficiary, or being considered as available to such Beneficiary, when that Beneficiary is an applicant or recipient of any form of public assistance, including medical assistance, under federal or Florida law (in particular, Supplemental Security Income (SSI) and Title XIX of the Social Security Act (Medicaid)). The Trustee will manage the Beneficiary's money and property so as to prevent the complete or partial disqualification of the Beneficiary from eligibility and receipt of such public assistance to the fullest extent possible under federal or Florida law, while maintaining the money and property of such Beneficiary, as appropriate for that Beneficiary's short term and long term needs;

4. Provide a mechanism for the Trustee to reconcile the differing requirements imposed upon the Beneficiary as to the treatment, classification and ownership of the Beneficiary's money and property, including the varying requirements of public assistance programs, including medical assistance programs, under federal law and the laws of Florida, and the need to adapt the arrangements concerning each Beneficiary's money and property to changes in federal laws and programs, Florida laws and programs, and the changing long term and short term needs of each Beneficiary. It is expressly intended that the Trustee retains the greatest flexibility possible to manage and conserve the money and property of each Beneficiary entrusted to it in response to such changes in federal and Florida law, rules and policies, and the programs authorized thereunder, that may be applicable to each such Beneficiary.

1.04. Irrevocable status of trust and circumstances of termination. This Trust is irrevocable. No person other than the Trustee, or a court of competent jurisdiction, on motion of the Trustee, has the

power to amend this Declaration of Trust, and the power to amend this Declaration of Trust is limited to circumstances where the amendment is required in order to conform its provisions to subsequent changes in any federal law, federal administrative rule, or federal policy issuance that affects the appropriate treatment of the money or property of any Beneficiary under this Declaration of Trust, or any subsequent changes in any Florida law, Florida administrative rule or Florida policy issuance that likewise affects the appropriate treatment of the money or other property of any Beneficiary under this Declaration of Trust. No Beneficiary will, in any event, retain the power to alter, modify, change, amend or revoke this Declaration of Trust, as a whole or as applied to that Beneficiary's account or subaccount(s). This Trust terminates when the court proceeding respecting the Beneficiary is concluded, or when the Court that approved the creation of this Trust enters an order respecting the Beneficiary and which may include a direction to terminate this Trust. Unless otherwise directed by such court, the trust created by this Declaration of Trust terminates when the Beneficiary attains the age of 18 years.

1.05. Powers, duties and liabilities of Trustee.

(1) *Powers of Trustee.* The Trustee is granted the powers specified in sections 737.402 and 737.4025, Florida Statutes, subject to the limitations specified therein, and except as otherwise specified, limited or modified herein under this Declaration of Trust.

(2) *Discretion of Trustee.* The Trustee is to exercise sole and absolute discretion to distribute the income or principal of the Trust to the Beneficiary directly, or for that Beneficiary's sole use or benefit, as the Trustee deems advisable for the needs and circumstances of the Beneficiary. The Trustee, in exercising its sole and absolute discretion to distribute income or principal from the Trust, will investigate and determine whether any government or private assistance programs exist for which the Beneficiary may be eligible, and whether any distribution by the Trustee would reduce or eliminate the Beneficiary's eligibility for benefits from such programs, including Supplemental Security Income and Medicaid.

(3) *Responsibility of Trustee as to public assistance or other resources for Beneficiary.* The Trustee has the responsibility to identify any available resources, and the applicable asset, income and resource limitations of any public assistance programs for which the Beneficiary may be eligible. The Trustee may accept designation as a representative payee by the Social Security Administration for a Beneficiary who is the recipient of payments from a program authorized under any title of the Social Security Act, including the Supplemental Security Income program, and may act as a representative of the Beneficiary as to any other program paying benefits from the United States Department of Veteran's Affairs, any other government agency, or from any employee benefit or pension benefit contract, plan, or arrangement.

(4) *Court approval not required for exercise of specified powers of Trustee.* Unless specifically required elsewhere in this Declaration of Trust, court approval is not required as to the exercise of the powers described in section 737.403, Florida Statutes.

1.06. Applicability of usual fiduciary standards to Trustee. The provisions of Part III of Chapter 737, Florida Statutes, concerning the duties and liabilities of trustees, as well as the decisional case law of the courts sitting in the State of Florida as to the fiduciary responsibilities and obligations of Trustees, are applicable to the Trustee under this Declaration of Trust. To the extent the Trustee is subject to the prudent investor rule of sections 737.302, 518.11 or 518.12, Florida Statutes, compliance with such provisions is not waived. With respect to section 737.12 and 737.13, Florida Statutes, respecting provisions concerning underproductive property and charges against income and principal, and section 737.402(4) with regard to a corporate principal who is both Trustee and a beneficiary, compliance with such provisions is waived.

1.07. Spendthrift Provisions. Neither the principal nor income of the Trust is to be liable for any of the Beneficiary's present or future debts to any creditor, public or private, other than as specified within this Declaration of Trust, and neither the Trustee, the Beneficiary, nor any guardian, conservator, nor next friend of the Beneficiary, has any authority to anticipate, alienate, or encumber any portion of the Beneficiary's interest in this Trust, or the principal or income therein.

1.08 Accounting and records inspection concerning Beneficiary accounts. The Court, the Beneficiary and the parent or guardian, the legal representative or the attorney of the Beneficiary, will receive an annual accounting of the assets, receipts and disbursements of the Trust. Records respecting the Trust will be available for inspection to the parent or guardian, the legal representative or the attorney of the Beneficiary.

1.09. Trustee compensation. When the initial Trustee is an agency of the State of Florida, and since there is no express statutory authorization for the payment of compensation to the agency as a Trustee or fiduciary thereto, no compensation is authorized herein to the initial Trustee, when such is an agency of the State of Florida. In the event the court elects to designate one or more corporate trustees or one or more individual trustees, as the initial Trustee(s), the court may authorize compensation for the Trustee in such amounts as the court will direct.

1.10. General trust procedures for Beneficiary money and property.

(1) *Investing the Beneficiary's money for investment; treatment of earned interest.* The Trustee may invest the money of the Beneficiary, and all interest or gains thereon will be the property of the Beneficiary.

(2) *Management of money and property.* The Trustee's management of the Beneficiary's money and property, including income earned thereon, will be in accordance with the duties and powers of trustees generally as provided in Chapter 737, Florida Statutes. The money and property of the Beneficiary may be designated into one or more accounts, as appropriate to the particular Beneficiary's needs, requirements, and circumstances in order to optimize the effective use of that Beneficiary's money and property, including the segregation of the Beneficiary's money and property, or other money or property designated to the personal use or benefit of that Beneficiary, so that: (a) both the long term and current needs of the Beneficiary can be met; (b) the need of the Beneficiary to qualify for public assistance, including medical assistance, (in particular, Supplemental Security Income and Medicaid) can be met with the optimum level of such assistance; (c) the needs for any approved plan for independent living or self-sufficiency arrangements can be met, and (d) that, if appropriate, the special needs of the Beneficiary who is physically or mental ill, or disabled, or incapacitated, or incompetent, can be met.

(3) *Discretion of Trustee as to special designation of Beneficiary money or property.* The Trustee will have the absolute discretion to request the Court to amend this Declaration of Trust to qualify the Beneficiary's assets into a qualified Medicaid Disabled Special Needs Trust or any other qualified Medicaid Trust and designate the applicability of such provisions to one or more accounts of the Beneficiary under this Declaration of Trust, in order to best manage and conserve the money and property of the Beneficiary, and to establish that Beneficiary's eligibility for any public assistance program, including medical assistance.

1.11 Trustee held to substantial good faith compliance standard. Because of the status and continuing uncertainty of the law, rules and administrative procedures and policies with regard to the implementation of provisions in Title 42, United States Code, Section 1396p, as amended by the Omnibus Budget Reconciliation Act of 1993, as well as other adopted changes, or potential changes, in other federal and state law, rules, and policies, including those changes that may be adopted after the date this Declaration of Trust is executed, the Trustee may not be able to comply with each and every provision of this Declaration; therefore, the Trustee is only required to make a good faith effort to

comply with all of the provisions within this Declaration of Trust, as may involve the interpretation and application of the above referenced federal and state laws, any implementing and interpretative rules and policies of these laws, as well as any future enactment of federal or state law, adoption of federal or state rule or promulgation of federal or state policy that may affect the Trust created by this Declaration of Trust and will be exonerated from a failure to comply with any provision herein due to the statute and uncertainty of these laws, rules and policies.

1.12. Liability of Trustee. The Trustee is not liable in the exercise of good faith and ordinary diligence for any action taken or not taken or the loss or depreciation in value of property in any account or subaccount(s) of any Beneficiary, whether due to an error or judgment or otherwise. In accordance with the statutory and case law concerning the fiduciary responsibilities of trustees generally, the Trustee, under this standard, will be held to the faithful performance of the Trustee's actions hereunder, but except in the case of bad faith, is not liable for the acts of prior or subsequent Trustees.

1.13. Situs of Trust. The situs of this trust will be located within the City of _____, County of _____, State of Florida.

1.14. Applicable law. This Declaration of Trust is to be governed under and construed in accordance with the laws of the State of Florida and the United States of America.

SCHEDULE "A" TO DECLARATION OF TRUST

Money, Property or Income Source	Date of Transfer	Value at Date of Transfer	Name of Transferee
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[Sample Motion to direct action where conflict of responsibility exists for the department. NOTE: Paragraphs two to four are an example of a conflict of responsibility related to payment of cost of care reimbursement under sections 402.33 and 402.17, Florida Statutes]

[Caption]

COMES NOW, the State of Florida Department of Children and Families, as Movant herein, and for its Motion to Direct Action of Department as Trustee Due to Conflict of Responsibility, respectfully shows the Court as follows:

1. Movant is the Trustee of a Master Trust for the money and property of clients of the Movant, established pursuant to section 402.17, Florida Statutes, and a Declaration of Trust promulgated by order of the Honorable _____, Judge of the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida dated _____. (Movant is hereafter referred to as "Trustee.")

2. _____ is a Beneficiary of the Department whose money and property has been accepted by the Trustee into the Master Trust.

3. Pursuant to the direction of section 402.17, Florida Statutes, the Department, as a Trustee with fiduciary responsibility for the money and other property of its clients, is to protect both the short term and long term interests of the clients of the Department for whose benefit it is holding such money and property. Further, the Department, pursuant to sections 402.17(2)(c) and 402.33, Florida Statutes, is directed to act in its own interest to reimburse itself for the cost of care of such clients. Before withdrawing money for the current needs of a client, section 402.17(2)(c), Florida Statutes, directs the Department, acting in its own interest, and as Trustee, to take into account the need of the Department, as trustee of a client's money and property, to provide for the long term needs of a client, including, but not limited to, to provide for the need of a client under the age of 18 to have financial resources available to be able to function as an adult upon reaching the age of 18, or to provide for the needs of a client over the age of 18, but under the age of 21, pursuant to section 409.145(3), Florida Statutes, to have financial resources available to be able to function as an adult upon completion of the educational program, as authorized by section 409.145(3), Florida Statutes, or to meet the special needs of a client who has a disability and whose special needs cannot otherwise be met by any form of public assistance or family resources, or to maintain the client's eligibility for public assistance, including medical assistance, under state or federal law.

4. In addition, the Declaration of Trust promulgating the master trust authorized under section 402.17, Florida Statutes, and established by a court order of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, in particular, paragraph 1.03 states that the trust is established in order to "preserve the money or property of the client * * * in a manner that limits or precludes the classification or treatment of such money or property with respect to determining eligibility for any form of public assistance, including medical assistance, as being available as income, assets or resources of the client, or being considered as available to the client * * *". The Department, as Trustee, shall manage the client's money and property so as to prevent the complete or partial disqualification of the client from eligibility and receipt of such public assistance, including medical assistance to the fullest extent possible under federal or Florida law, while maintaining the money and property of such client, as appropriate for that client's short term and long term needs."

5. The deduction of the cost of care by the Department under sections 402.33 and 402.17, Florida Statutes, constitutes payments for the current living expenses of the client, and as such, reduces or eliminates the client's eligibility for public assistance, including medical assistance, and is contrary to the fiduciary responsibilities of the Department as Trustee for the client's money and

property, in that it is contrary to meeting the obligations of the Department, as Trustee, to provide for the client's long term needs.

6. [Describe specific additional facts and statutory, administrative, regulatory and trust provisions applicable to the conflict situation.]

7. The Department, as Trustee, is uncertain as to the conflicting statutory directions, and pursuant to section 402.17, Florida Statutes, and paragraph 1.05(4) of the master trust, is moving the Court to direct what action(s) the Department shall take in its own behalf, and as Trustee with a fiduciary responsibility to the Beneficiary.

WHEREFORE, the Movant prays that this Court determine any and all issues relevant to the conflicting obligations of the Department as described herein, and determine what action(s) the Department shall take with respect to the money and property of the Beneficiary in light of the above-described statutes, regulations, and policies, and the above-described Declaration of Trust.

[Sample Court order directing Trustee as to conflict]

[Caption]

UPON MOTION OF the Movant, the State of Florida Department of Children and Families, the Trustee of a certain master trust established pursuant to section 402.17, Florida Statutes, and by order of the Circuit Court for the Second Judicial Circuit of the State of Florida on or about _____, with respect to certain money and property of a Beneficiary, _____, of such trust, the Court having considered such motion, and it appears that good cause having been shown, it is hereby

ORDERED and ADJUDGED that the Movant, as Trustee of the above-described master trust and with respect to the money and property of _____, a Beneficiary of such trust, is directed to act as follows:

[directions]

DONE AND ORDERED this ____ day of _____, 20__, at _____, Florida.

Circuit Judge

[Sample Motion for court review and approval of “extraordinary” action of trustee]

[Caption]

COMES NOW, the State of Florida, Department of Children and Families, as Movant herein, and for its Motion for Review and Approval of Extraordinary Action of Trustee, respectfully shows the Court as follows:

1. Movant is the Trustee of a Master Trust for the money and property of clients of the Movant, established pursuant to section 402.17, Florida Statutes, and a Declaration of Trust promulgated by order of the Honorable _____, Judge of the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida, dated _____. (Movant is hereafter referred to as “Trustee.”)

2. _____ is a client of the Department under the age of 18 years [or under age 21, pursuant to section 409.145(3), Florida Statutes] whose money and property have been entrusted to the Department as Trustee of a certain Master Trust pursuant to an order entered by the Honorable _____, Judge of the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida, dated _____, and is therefore a beneficiary of the master trust, and is hereafter referred to as “Beneficiary.”

3. The Trustee has [proposed to take] [taken] the following action with respect to the money or other property of the Beneficiary, namely [describe], that is considered to be “extraordinary” under the terms of Paragraph 1.05(5) of the Master Trust.

4. Pursuant to section 402.17(2)(a), Florida Statutes, the court having jurisdiction over the Beneficiary is authorized, upon application of Trustee or other interested party, to review or approve any extraordinary action of the Trustee as to the Beneficiary’s money or other property.

5. The Trustee has [proposed] [has taken] the above described action with respect to described money or other property of the Beneficiary for the following reason(s): [describe].

6. Such action is an appropriate action on the part of the Trustee because: [describe].

WHEREFORE, Movant, State of Florida Department of Children and Families, in its capacity as Trustee of that certain trust established pursuant to section 402.17, Florida Statutes, and pursuant to the order of the Honorable _____, Judge of the Circuit Court in and for the Second Judicial Circuit establishing such trust, prays that its [proposed] action with respect to the money or other property of the Beneficiary, _____, following a review thereof, be approved by this Court.

[Sample Court order reviewing and approving “extraordinary” action of trustee]

[Caption]

UPON MOTION OF the Movant, State of Florida Department of Children and Families, the Trustee of a certain Master Trust established pursuant to section 402.17, Florida Statutes, and by order of the Circuit Court for the Second Judicial Circuit of the State of Florida, dated _____, 20__, with respect to certain property of a Beneficiary, _____, of such trust, the Court having reviewed said motion, and it appearing that good cause having been shown, it is hereby

ORDERED AND ADJUDGED that the extraordinary action of such Trustee, with respect to the money and property of the Beneficiary, _____, is approved by the Court, pursuant to section 402.17(2)(a), Florida Statutes.

DONE and ORDERED at _____, Florida, on _____, 20__.

Circuit Judge



**NOTICE OF CHANGED CIRCUMSTANCES
(Client's Master Trust Account)**

DATE:

TO: General Counsel, Agency for Health Care Administration

FROM: Department of Children and Families District _____ Fiscal Office

District Contact Person: _____ Tel.#: _____

Client's Name: _____ DOB: _____ SS#: _____

- The above client has turned age 18 and thereby will no longer be in the legal custody of the department.
- The above client, who is over the age of 18, no longer requires the care, custody, control or services of the department.
- The above client, who has attained the age of 18, has a physical or mental disability or is otherwise incapacitated or incompetent to handle his or her own financial affairs, and the department is applying for a court order from a court of competent jurisdiction to establish a separate trust for the client.
- The above client, under the age of 18, who has been in the legal custody, care or control of the department, is leaving the care, custody and control of the department due to adoption or placement of the child with a relative, or as otherwise directed by a court of competent jurisdiction.

NOTE: THE ABOVE INFORMATION IS CONFIDENTIAL AND EXEMPT FROM THE PUBLIC RECORDS PROVISIONS OF CHAPTER 119, FLORIDA STATUTES. UNAUTHORIZED DISSEMINATION MAY RESULT IN CRIMINAL PENALTIES.



MASTER TRUST EXPENDITURE PLAN

Client Name: _____

Counselor: _____

SSN: _____

Unit: _____

DOB: _____

Trust Balance as of _____ = \$ _____
Date

Monthly Accumulation: _____ X 3 = \$ _____
+

Total excess for upcoming 3 months: \$ _____

CHILD'S SPECIAL NEEDS:

Medical: _____

Mental: _____

Educational: _____

PASS plan in effect: Yes No

PASS plan appropriate for child: Yes No

PLAN TO MEET NEEDS OF CHILD (FORMAL OR INFORMAL)

Monthly expenses:	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____

Anticipated Expenses:	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____
	_____	\$ _____

Date Plan Prepared: _____

Counselor's Signature Date

Supervisor's Signature Date

District/Region Administration designee Date



State of Florida, Department of Children and Families
**PLAN FOR ACHIEVING SELF-SUPPORT
 (NON-DISABLED)**

Name: _____ SSN: _____

PART I – YOUR GOAL

A. What is your work goal? (Indicate the specific job you expect to have at the end of the plan. If you are undergoing vocational evaluation to determine a feasible goal, show “VR Evaluation.” If your goal involves a supported employment position, indicate the amount of job coaching you expect to need after the plan is completed compared to the amount you currently receive or will receive when you begin working.)

B. Describe the duties you will be expected to perform in this job:

C. How much do you currently earn (gross) each month in wages or self-employment income? \$_____/month

How much do you expect to earn each month (gross) after your plan is completed? \$_____/month

How do you expect to find a job by the time your plan is completed?

D. If your goal involves self-employment, explain why you believe that operating your own business is more likely to result in self-support than if you worked for someone else.

PART II – VOCATIONAL/EDUCATIONAL BACKGROUND

A. List the types of jobs you have had most often in the past few years and those you have had which are similar to your work goal. Also show how long you worked (i.e., how many months or years) in each type of job.

Job Title	Type of Business	Dates Worked	
		From:	To:

--	--	--	--

B. Check the line which describes the highest education level you have completed:

- Elementary school
 High school graduate or G.E.D.
 Trade or vocational school
 Other (specify): _____

If you completed one or more courses in a trade or vocational school, list the trade(s) you learned: _____

C. Describe any other training you have received: _____

D. Have you ever undergone a vocational evaluation? Yes No

If yes, show the name, address and phone number of the person or organization who conducted the evaluation:

E. Have you ever had a Plan for Achieving Self-Support before? Yes No

If yes, please answer the following:

When was your prior plan approved (month/year): _____

When did it end (month/year)? _____

What was your goal in the prior plan? _____

Why did your prior plan not enable you to become self-supporting?

Why do you believe that this plan will be successful?

PART III – YOUR PLAN

List the steps, in sequence, that you will take to reach the goal and show the dates you expect to begin and complete each step. Be sure to show when you expect to purchase the items or services listed in Part IV.

Step	Beginning Date	Completion Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

PART IV – PLAN EXPENDITURES AND DISBURSEMENTS

A. List the items or services you are buying or will need to buy in order to reach your goal. Be as specific as possible. Where applicable, include brand and model number of the item. **(Do not include expenses you were paying prior to the beginning of your plan, only additional expenses incurred because of your plan can be approved.)** Explain why each is needed to reach your goal. Also explain why less expensive alternatives will not meet your needs. Part III should show when you will purchase these items or services.

1. Item/service: _____ Cost: \$ _____

Vendor/provider: _____

Why needed: _____

How will you pay for this item (e.g., one-time payment, monthly payments)?

How did you determine the cost: _____

2. Item/service: _____ Cost: \$ _____

Vendor/provider: _____

Why needed: _____

How will you pay for this item (e.g., one-time payment, monthly payments)?

How did you determine the cost: _____

3. Item/service: _____ Cost: \$ _____

Vendor/provider: _____

Why needed: _____

How will you pay for this item (e.g., one-time payment, monthly payments)?

How did you determine the cost: _____

4. Item/service: _____ Cost: \$ _____

Vendor/provider: _____

Why needed: _____

How will you pay for this item (e.g., one-time payment, monthly payments)?

How did you determine the cost: _____

5. Item/service: _____ Cost: \$ _____

Vendor/provider: _____

Why needed: _____

How will you pay for this item (e.g., one-time payment, monthly payments)?

How did you determine the cost: _____

B. If you proposed to purchase, lease or rent a vehicle, please provide the following additional information:

1. Do you currently have a valid driver's license? Yes No

If no, **Part III** must include the steps necessary to attain a driver's license.

2. Explain why alternate forms of transportation (e.g., public transportation, cabs, having friends or relatives drive you) will not allow you to reach your goal.

3. If you are proposing to purchase a vehicle, explain why renting or leasing are not sufficient.

4. If you are proposing to purchase a new vehicle, explain why purchasing a reliable used vehicle is not sufficient.

5. Explain why you chose the particular vehicle rather than a less expensive model.

C. If you propose to purchase computer equipment or other expensive equipment, please explain why a less expensive alternative (e.g., rental or purchase of less expensive equipment) will not allow you to reach your goal. Explain why you need the capabilities of the particular computer/equipment you identified. Also, if you attend (or will attend) a school with a computer lab for student use, explain why use of that facility is not sufficient to meet your needs.

D. If you indicated in Part II that you have a college degree or specialized training, and your plan includes additional education or training, explain why the education/training you already received is not sufficient to allow you to be self-supporting.

PART V – INCOME/RESOURCE EXCLUSION

A. List any items you already own (e.g., equipment or property) which you will use to reach your goal. Show the value of each item and explain why you need each of the items to attain your goal.

B. What money do you already have saved to pay for the expenses listed in Part IV?
 (Indicate the total amount of cash on hand or money in a bank account): \$ _____

C. Other than the earnings shown in Part I, what income do you receive (or expect to receive)? (Show how much you receive and how frequently you receive or expect to receive it.)

Income Source	Frequency (i.e. monthly, weekly)	Amount
		\$
		\$
		\$

D. How much of this money will you use each month to pay for the expenses listed in Part IV? \$ _____

E. Do you plan to save any or all of this money for a future purchase, which is necessary to complete your goal? Yes No

If yes, explain how you will keep the money separate from other money you have. (If you will keep the savings in a separate bank account, give the name and address of the bank and the account number.):

F. What are your current living expenses each month (e.g., rent, food, utilities, etc.)? \$ _____

If the amount of income you will have available for living expenses after making payments or saving money for your plan expenses is less than your current living expenses, explain how you will pay for those living expenses.

G. Do you expect any other person or organization (e.g., Vocational Rehabilitation) to pay for or reimburse you for any part of the items and services listed in Part IV or to provide any other items or services you will need? Yes No

If yes, please provide details as follows:

Item/Service	Who will pay for item or service	When will item or service be purchased?	Amount
			\$
			\$

			\$
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PART VI – REMARKS

PART VII – AGREEMENT

If my plan is approved, I agree to:

- * Comply with all of the terms and conditions of the plan as approved by the Department of Children and Families;
- * Report any changes in my plan to the department immediately;
- * Keep records and receipts of all expenditures I make under the plan until the next review of my plan at which time I will provide them to the department;
- * Use the income or resources set aside under the plan **only** to buy the tems or services approved by the department.

I realize that if I do not comply with the terms of the plan or if I use the income or resources set aside under my plan for any other purpose, the department will count the income or resources that were excluded and I may have to repay the additional benefits I received. I also realize that the department may not approve any expenditures for which I do not submit receipts or other proof of payment.

I know that anyone who makes or causes to be made a false statement or representation of material fact in an application for use in determining a right to payment commits a crime punishable under Federal law and/or State law. I affirm that all the information I have given on this form is true.

Signature: _____ Date: _____

YOUR REPORTING AND RECORDKEEPING RESPONSIBILITIES

If we approve your plan, you must tell the department about any changes to your plan. You must tell us if:

- * You are unable to follow your plan.
- * You decide not to pursue your goal or decide to pursue a different goal.
- * You decide that you do not need to pay for any of the expenses you listed in your plan.
- * Someone else pays for any of your plan expenses.
- * You use the income or resources we exclude for a purpose other than the expenses specified in your plan.
- * There are any other changes to your plan.

You must tell us about any of these things within 10 days following the month in which it happens. If you do not report any of these things, we may stop your plan.

You should also tell us if you decide that you need to pay for other expenses not listed in your plan in order to reach your goal. We may be able to modify your plan or change the amount of income we exclude so you can pay for the additional expenses.

YOU MUST KEEP RECEIPTS OR CANCELLED CHECKS TO SHOW WHAT EXPENSES YOU PAID FOR AS PART OF THE PLAN. You need to keep these receipts or cancelled checks until we contact you to find out if you are still following your plan. When we contact you, we will ask to see the receipts or cancelled checks. If you are not following the plan, you may have to pay back some or all of the benefits you received.

PASS (Non-Disabled-ND) Special Instructions

Outside Resources

- A. The PASS-ND plan may be used as part or all of the Independent Living case plan required under section 409.165(b)1., Florida Statutes. Currently, only children receiving SSI may utilize a PASS plan to increase the monthly SSI allotment. However, it may be possible to seek such an increase from SSA, the Veterans' Administration, and Railroad Retirement for individual children, based on resources that might have been available to the deceased parent (e.g., tax credit for prepaid college tuition plan, veterans' college benefits, any educational funding or plan available through Railroad Retirement).
- B. Since the amount of a child's SSA, Veterans, or Railroad Retirement benefits are dependent on the deceased parent's earnings, a request for increase need not be based on received or anticipated income or resources apart from the child's benefit allotment. However, such income or resources can be used to support a request for increase. Such outside income or resources, dependent on individual circumstances, may include, but are not limited to:
1. Personal allowance (\$15 mo.).
 2. Fee waiver (see Chapter 11, HRSOP 55-7, Fee Assessment and Collection, April 1, 1995).
 3. Approved allowance from child's individual current needs trust account (dependent on individual circumstances).
 4. AFDC/WAGES eligibility (to be determined from AFDC/WAGES rate structure; benefits from AFDC versus WAGES benefits must be compared and the higher amount claimed).
 5. Child's income from employment.
- C. Items 1 and 4 should always be listed under Section V, Part C of the PASS-ND form.
- D. Item 2 shall be listed on Section V, Part C of the PASS application only after a request for fee waiver has been approved through the district fee waiver committee.
- E. Item 3 may be claimed upon supervisory approval and notification to the district fiscal office to establish a PASS-ND trust subaccount for the child and deposit an amount equal to the approved allowance in the PASS-ND account on a monthly basis to be saved for the educational/vocational needs of the child as specified in his or her PASS-ND plan.
- F. A SSA, VA, or Railroad Retirement benefit recipient under the age of 15 may be eligible for PASS-ND participation if a current need or justification for such participation can be established. For example, the child's outstanding scholastic achievement or special talent or aptitude might support a PASS-ND plan to fund prepaid college tuition insurance, a specialized apprenticeship, or other specialized training. In such cases, a PASS-ND plan should be completed in accordance with the above guidelines.