

SHORT FORM BEHAVIORAL HEALTH TRUST CLAUSE

**Model Language for Family Governance Documents
For Substance Use Disorders and/or Mental Health Concerns**

Suggested Language Restricting Access To Principal And Income When A Beneficiary Or Family Member May Have Problems With Alcohol, Drugs, Other Behaviors and Activities Or Mental Health Concerns.

Grantor's Intent

It is the Grantor's intent that the Beneficiary:

- Remain drug free (other than prescribed medications);
- Submit to random substance abuse tests (blood, urine or other as the requesting person sees fit);
- Remain free of alcohol dependency, i.e., no alcohol-related arrests, no health problems related to alcohol, and no job-related impairment due to alcohol;
- Remain free of arrests or convictions for anything other than minor traffic violations;
- Have no illegal behavior, even if able to avoid arrest or conviction;
- Remain free of debts, whether for the Beneficiary himself or herself or for others, which are sufficiently large that the Beneficiary is unable to pay them off in a reasonable fashion based on the distributions to him from the Trust and his job-related income at the time the debt is incurred.

Notwithstanding that the language below are directed at Substance Use Disorders, It is my intent, that this provision be applicable to all Behavioral Health Disorders (Substance Use, Mental Health and other Behavioral Disorders) as defined in the DSM V,

While the provisions of this Trust direct the trustee to withhold distributions from a non-compliant Beneficiary with a Substance Use or other Behavioral Health Disorder, it is my intent that Trustee, in consultation with experts, provide minimal levels of support to assure that the Beneficiary has adequate medical care, housing and sustenance.

It is my further intent that the Trustee utilize qualified experts to advise the Trustee on behavioral health issues or concerns that might arise regarding the Beneficiary and that failure to utilize such experts is grounds for the Trustee's replacement. Keep in mind that beneficiaries with Behavioral Health Disorders are like mercury, give them a crack and they slip right through.

**Trustee Authority Regarding Substance Use Disorders, Mental Health Disorders
and other Behavioral Health Disorders and Concerns in a Beneficiary**
(Behavioral Health Trust Article)

**1. Sole Discretion of Trustee to Withhold Income or Principal, Notwithstanding
Any Other Provision of this Trust Agreement**

Notwithstanding any other requirements for distributions of income and principal in this Trust, the Trustee in his/her sole discretion, shall withhold distributions of principal, income or other withdrawals from any Beneficiary who has or may have: substance use

SHORT FORM BEHAVIORAL HEALTH TRUST CLAUSE

disorder(s), (addiction), other disorders, compulsive or destructive behaviors, mental health conditions or concerns or any combination of the foregoing (described hereafter as behavioral health disorders) as defined in in the DSM-V-TR (Diagnostic and Statistical Manual of Mental Disorders). The process for determining the presence of an alcohol use disorder is set forth in Section 4, below.

Retention of Distributions

The Trustee shall retain such distributions until such time as the Trustee determines, in his/her sole discretion, that the Beneficiary is in compliance with all treatment recommendations and, as applicable, has demonstrated continuous abstinence through drug testing or other objective criteria, as approved by experts advising the trustee.

Discretionary Administration of Trust

While mandatory distributions are suspended, the Trust will be administered as a discretionary trust to provide for the Beneficiary, as determined by the Trustee, including providing minimal support for a non-compliant Beneficiary or a Beneficiary in Early Remission. In addition, the Trustee is authorized to provide distributions to individuals to whom the Beneficiary owes a duty of support such as a spouse or child.

Authorization to Expend Funds for Treatment and Experts

The Trustee is authorized to expend funds for advice and services to implement this Article, including experts, treatment, post-treatment recovery, live in companions and related services, in the Trustee's sole discretion and/or as advised by experts.

2. Authorization to Hire and Rely on Professional Expertise to Implement this Appendix

The Trustee is authorized to employ and retain experts on substance use disorders, mental health disorders and other behavioral health disorders or concerns and resultant or related family conflict or any combination of the foregoing to advise him/her regarding any matters, issues or determinations herein. The Trustee may appoint such experts as authorized by the Uniform Trust Code (or relevant State UTC), hire experts directly for advice, as distribution advisors or as appointed to implement distribution standards established by the Trustee.

Expert's Credentials

Any experts utilized by the Trustee shall hold degrees from an accredited, reputable college or university or be licensed or credentialed as per applicable state standards and guidelines for the presenting behavioral health concerns with any professional authorized to prescribe medications certified by ASAM (Society of Addiction Medicine) or under the direct supervision and direction of an ASAM-certified professional.

3. Testing For Alcohol and Drug Use

The Trustee is directed to require testing at least twice per year to determine that the Beneficiary is not suffering from a Substance Use Disorder, as that term is defined in the

SHORT FORM BEHAVIORAL HEALTH TRUST CLAUSE

DSMV. The Trustee is further authorized to require the Beneficiary to submit to such additional tests (including daily testing) as the Trustee may determine in his/her sole discretion and/or as advised by the Trustee's expert.

24 Hour Notice

The Beneficiary shall submit to testing within 24 hours of the request. The Beneficiary shall keep the Trustee informed as to his/her current contact information to implement this testing requirement.

Testing Standards

Such testing may include (but not be limited to), laboratory tests of hair, tissue, or bodily fluids determined to be appropriate by a board-certified medical doctor, psychiatrist or other qualified expert selected by the Trustee. Tests may include daily monitoring services such as Sober Link or patches to detect drug use.

Full Disclosure – Signing of Releases

The Trustee shall request the Beneficiary to consent to full disclosure of all test results, verbal or written reports of any diagnosis and treatment, including progress and recommendations, from testing services, counselors, physicians, treatment centers, or anyone else providing assistance to the Beneficiary regarding his/her behavioral health issues. The Trustee, in his/her sole discretion may share such information with other professionals, treatment providers, and family members/friends of the beneficiary in order to further the goal of encouraging the Beneficiary to seek help and comply with treatment recommendations.

Withholding Distributions in the Event of Non-Compliance.

The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to the Affected Beneficiary, until he or she consents to the examinations and disclosures specified herein.

4. Determination as to Substance Use Disorders (and other Disorders, as applicable).

The following standards apply to Substance Use Disorders and other Behavioral Health Disorders, as applicable. The criteria for establishing the presence of a Substance Use Disorder are set forth in the DSM V for various substances (drugs). As an example, the DSM-V criteria for "Alcohol Use Disorder" are appended hereto as Exhibit A.

If the Trustee reasonably believes that any trust beneficiary:

- (a) Routinely or frequently uses or consumes any illegal drugs or other illegal chemical substances so as to lead to clinically significant impairment or distress as defined in the DSMV criteria for that drug or substance, **or**
 - (b) Routinely or frequently uses or consumes alcohol or any other legal drug or chemical substance that is not prescribed by a board-certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist;
- and**

SHORT FORM BEHAVIORAL HEALTH TRUST CLAUSE

(c) If the Trustee reasonably believes that as a result of such use or consumption the beneficiary (i) is incapable of caring for him- or herself or (ii) is likely to dissipate his or her financial resources, or (iii) otherwise meets the criteria for one or more Mild, Moderate or Severe Substance Use Disorder(s) as defined in the DSM V

Then, this Behavioral Health Article is applicable to the Beneficiary and the Trustee shall follow the requirements set forth in this Article, including testing, treatment and utilizing experts to advise and assist in implementing this Article.

5. Treatment

If in the opinion of the expert (doctor, psychiatrist or other qualified professional) testing, behaviors or reports from reliable persons indicates current or recent use of a drug or substance as described above, the Beneficiary shall consult with the expert to determine an appropriate method of treatment for him or her (for example, counseling, or treatment on an in-patient basis at a qualified, rehabilitation facility). If the Beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the income or principal otherwise authorized or required to be distributed to the Beneficiary.

If the Beneficiary disagrees with or is otherwise unwilling to follow the recommendations of the expert, the Trustee, in consultation with the expert, may in his/her sole discretion, try different approaches to encourage the Beneficiary to seek help, including recover coaches, therapy, and other activities designed to increase self-awareness as to the behaviors in question. In the event of consistent resistance to seeking help, the Trustee, in consultation with experts, may provide minimal levels of support to assure that the Beneficiary has adequate medical care, housing and sustenance.

6. Exoneration Provision

The Grantor declares that it is not her intention to make any the Trustee (or any doctor, psychiatrist, expert or other personnel retained by the Trustee) responsible or liable to anyone for the Affected Beneficiary's actions or welfare. The Trustee, and experts and other personnel employed by the trustee, shall have no duty to inquire whether the Beneficiary uses drugs or other substances as described in this Behavioral Health Trust Article. The Trustee (and any doctor, psychiatrist, expert or other personnel retained by the Trustee) shall be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Article , including any failure to request that the Beneficiary submit to testing and including a decision to distribute suspended amounts to the Beneficiary.

See Attached Exhibit A for Alcohol Use Disorder Standards

End

For education purposes only. Always consult an attorney for advice.

Drafted by WF Messinger, JD

SHORT FORM BEHAVIORAL HEALTH TRUST CLAUSE

EXHIBIT A

Alcohol Use Disorder DSM-V

As defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition – DSM 5 (p. 490)

Diagnostic Criteria

A. A problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:

1. Alcohol is often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
3. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects.
4. Craving, or a strong desire or urge to use alcohol.
5. Recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol.
7. Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
8. Recurrent alcohol use in situations in which it is physically hazardous.
9. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol.
10. Tolerance, as defined by either of the following:
 - a. A need for markedly increased amounts of alcohol to achieve intoxication or desired effect.
 - b. A markedly diminished effect with continued use of the same amount of alcohol.
11. Withdrawal, as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for alcohol (refer to Criteria A and B of the criteria set for alcohol withdrawal, pp. 499-500).
 - b. Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms.

Specify if:

In early remission: After full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use disorder have been met for at least 3 months but for less than 12 months (with the exception that Criterion A4, “Craving, or a strong desire or urge to use alcohol,” may be met).

In sustained remission: After full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use disorder have been met at any time during a period of 12 months or longer (with the exception that Criterion A4, “Craving, or a strong desire or urge to use alcohol,” may be met).

Specify if:

In a controlled environment: This additional specifier is used if the individual is an environment where access to alcohol is restricted.

Specify if:

305.00 (F10.10) Mild: Presence of 2-3 symptoms

303.90 (F10.20) Moderate: Presence of 4-5 symptoms

303.90 (F10.20) Severe: Presence of 6 or more symptoms

Because the first 12 months following a Substance Use determination is a time of particularly high risk for relapse, this period is designated Early Remission