

5160-3-16.5 **Nursing facilities (NFs): personal needs allowance (PNA) accounts and other resident funds.**

A NF resident's rights concerning his or her personal financial affairs shall be in accordance with 42 CFR 483.10 (~~June 27, 2013~~October 4, 2016).

(A) Definitions.

~~(1)~~ "Personal needs allowance" (PNA) has the same meaning as found in rule 5160:1-3-24 of the Administrative Code.

~~(2)~~(1) "Personal needs allowance (PNA) account" means an account or petty cash fund that holds the money of a NF resident and is managed for the resident by the NF provider.

~~(3)~~(2) "Letters of administration," also known as letters testamentary, means court papers allowing a person to take charge of the property of a deceased person in order to distribute it.

~~(4)~~(3) "Surety bond" means an agreement between the principal (i.e., the NF provider), the surety (i.e., the insurance company), and the obligee (i.e., the resident and/or the Ohio department of medicaid (ODM) acting on behalf of the resident), wherein the principal and the surety agree to compensate the obligee for any loss of the obligee's funds that the principal holds, safeguards, manages, and accounts for.

The purpose of a surety bond is to guarantee that a NF provider will pay a resident, or ODM on behalf of a resident, for losses occurring from any failure by the facility to hold, safeguard, manage, and account for the resident's funds, including losses incurred as a result of acts of error or negligence, incompetence, or dishonesty. The principal assumes the responsibility to compensate the obligee for the amount of the loss up to the entire amount of the surety bond.

(B) PNA.

(1) A medicaid resident who receives care in a NF certified to participate in the medicaid program is eligible to retain a PNA account ~~in the amount set forth in rule 5160:1-3-24 of the Administrative Code~~ for the purchase of items and services of his or her choice.

(2) The PNA account is the exclusive property of the resident, who may use the funds in the account as he or she chooses to meet personal needs.

- (3) Unless a medicaid resident receives additional irregular contributions from another source, all of his or her personal expenses shall be met through the PNA account.

(C) Management of personal funds.

- (1) A NF resident has the right to manage his or her personal financial affairs.
- (2) A NF provider shall not require a resident to deposit his or her PNA funds with the provider. However, if a resident requests assistance from the NF staff in managing his or her PNA account, the request shall be in writing.
- (3) Upon written authorization from a resident, a NF shall hold, safeguard, manage, and account for a resident's PNA funds deposited with the provider.
- (4) A NF provider shall explain verbally and in writing to the resident or the resident's representative that PNA funds are for the resident to use as he or she chooses. If a representative is the payee for the resident's PNA account, the representative shall be responsible for ensuring that the money is used to meet the personal needs of the resident.

(D) Deposit of PNA account funds and interest earned.

- (1) Funds of fifty dollars or less.

If a resident's PNA account funds are fifty dollars or less, a NF provider may deposit the funds in an interest-bearing account, a non-interest bearing account, or a petty cash fund.

- (2) Funds in excess of fifty dollars.

If a resident's PNA account funds are in excess of fifty dollars, the NF provider shall deposit the funds in an interest-bearing account (or accounts) that is separate from any of the NF provider's operating accounts within five banking days from the date the balance exceeds fifty dollars.

- (3) A NF provider shall credit any interest earned on a resident's PNA funds to the resident's PNA account balance. If pooled accounts are used, the provider shall prorate interest per resident on the basis of actual earnings or end-of-quarter balance.
- (4) A NF provider shall not charge a resident a fee for managing the resident's PNA account. Banks, however, may charge the resident a fee for handling the account.

(E) Accounting and records.

- (1) A NF provider shall establish and maintain a system that ensures full, complete, and separate accounting of each resident's PNA account funds.
- (2) A NF provider shall not commingle a resident's accounts or funds with the provider's accounts or funds, or with the accounts or funds of any individual other than another NF resident.
- (3) A NF provider shall provide a resident with access to petty cash (less than fifty dollars) on an ongoing basis and shall arrange for the resident to access larger funds (fifty dollars or more). A NF provider shall give residents a receipt for every transaction, and the NF provider shall retain a copy.
- (4) A NF provider shall obtain a resident's signature upon the resident's receipt of PNA funds. If the resident is unable to sign his or her name, he or she shall acknowledge receipt of the money by marking an "X." Two persons shall verify through signature that they have witnessed the resident's action.
- (5) A NF provider shall maintain an individual ledger account of revenue and expenses for each PNA account managed by the facility. The ledger account shall meet all the following criteria:
 - (a) Specify all funds received by or deposited with the NF provider. For PNA account funds deposited in banks, monies shall be credited to the resident's bank account within three business days; and
 - (b) Specify the dates and reasons for all expenditures; and
 - (c) Specify at all times the balance due the resident, including interest earned as last reported by the bank to the provider; and
 - (d) Be available to the resident or the resident's representative for review.
- (6) Upon request, a NF provider shall provide receipts to a resident or the resident's representative for purchases made with the resident's PNA funds.
- (7) Within thirty days after the end of the quarter, a NF provider shall provide a written quarterly statement to each resident or resident's representative of all financial transactions made by the provider on the resident's behalf.

(F) Notification of certain balances or transactions that may affect medicaid eligibility.

- (1) Notice to resident.

- (a) A NF provider shall give written notification to each resident who receives medicaid benefits, and whose funds are managed by the NF provider, when the amount in the resident's PNA account reaches two hundred dollars less than the ~~resource limit in accordance with rules 5160:1-3-05 and 5160:1-3-01.1 of the Administrative Code~~supplemental security income resource limit specified in section 1611(a)(3)(A) or section 1611(a)(3)(B) of the Social Security Act.
- (b) The notice shall inform the resident that he or she may lose medicaid eligibility if the amount in his or her PNA account, in addition to the value of the other nonexempt resources, reaches the resource limit amount.
- (c) A copy of the notice to the resident shall be retained in the resident's file.
- (2) Notice to the county department of job and family services (CDJFS).
- (a) A NF provider shall report to the CDJFS any PNA account balance in excess of the resource limit. The CDJFS shall apply the excess amount to the routine cost of NF care ~~according to rule 5160:1-2-20 of the Administrative Code.~~
- (3) If a resident is considering using PNA funds to purchase life insurance, grave space, a burial account, or other item that may be considered a countable resource, the NF provider shall refer the resident or the resident's representative to the CDJFS for an explanation of the effect the purchase may have on the resident's medicaid eligibility.
- (G) Release of funds upon discharge.
- (1) Upon discharge of a resident, a NF provider shall release all the resident's funds, up to and including the maximum resource limit amount.
- (2) Other than for items and services that the resident has requested and that may be charged to the resident's PNA account in accordance with this rule, a NF provider shall not withhold PNA account funds to pay any outstanding balance a resident owes the provider at the time of discharge.
- (H) Conveyance of funds upon death.
- (1) First thirty days.

A NF provider shall not retain the money in a resident's PNA account beyond thirty days following the resident's death if letters testamentary or letters of administration are issued, or an application for release from administration is

filed under section 2113.03 of the Revised Code concerning the resident's estate within that thirty-day period. In these circumstances, the provider shall transfer the funds in the resident's PNA account and a final accounting of those funds to the administrator, executor, commissioner, or person who filed the application for release from administration. If these conditions for release are not met, the provider shall follow paragraph (H)(2) or (H)(3) of this rule.

(2) First sixty days.

If, within sixty days after a resident's death, letters testamentary or letters of administration are issued, or an application for release from administration is filed under section 2113.03 of the Revised Code concerning the resident's estate, the provider shall transfer the resident's PNA account funds and a final accounting of those funds to the administrator, executor, commissioner, or person who filed the application for release from administration.

(3) After sixty days.

(a) If, within sixty days after a resident's death, letters testamentary or letters of administration concerning the resident's estate are not issued, or an application for release from administration is not filed under section 2113.03 of the Revised Code concerning the resident's estate, and if the resident was a recipient of medicaid benefits, the provider shall transfer all the resident's PNA account funds to ODM no earlier than sixty and no later than ninety days after the death of the resident, with the exception listed in paragraph (H)(3)(c) of this rule.

(b) PNA account funds transferred to ODM shall be paid by check or money order made payable to "Attorney ~~General of Ohio~~ General's Office" and shall be accompanied by a completed ODM 09405 ~~(7/2014)~~ (rev. 4/2017) entitled "Personal Needs Allowance (PNA) Account Remittance Notice." The payment and completed ODM 09405 shall be mailed to the Ohio attorney general's office.

(c) If funeral and/or burial expenses for a deceased resident have not been paid, and all the resident's resources other than the PNA have been exhausted, the resident's PNA account funds shall be used to pay the funeral and/or burial expenses.

(d) If, sixty-one or more days after a resident dies, letters testamentary or letters of administration are issued, or an application for release from administration under section 2113.03 of the Revised Code is filed concerning the resident's estate, ODM shall transfer all the resident's

PNA account funds received by the department to the administrator, executor, commissioner, or person who filed the application for release from administration, unless ODM is entitled to recover the money under section 5162.21 of the Revised Code.

(I) Financial security.

A NF provider shall purchase a surety bond or provide a reasonable alternative as described in this rule in order to protect all resident funds deposited with and managed by the NF provider.

(1) Surety bond.

- (a) A surety bond shall be executed by a licensed surety company pursuant to Chapters 1301., 1341., and 3929. of the Revised Code.
- (b) At a minimum, surety bond coverage shall protect at all times the full amount of resident funds deposited with the NF provider, including interest earned and refundable deposit fees.
- (c) The surety bond shall provide for repayment of funds lost due to any failure of the NF provider, whether by commission, bankruptcy, omission, or otherwise, to hold, safeguard, manage, and account for resident funds.
- (d) The surety bond shall designate either the NF provider, or ODM on behalf of the resident, as the obligee.
- (e) If an entity purchases a surety bond that covers more than one of its facilities, the surety bond shall protect the full amount of all resident funds on deposit in all the entity's facilities.

(2) Reasonable alternative to the surety bond.

A reasonable alternative to the surety bond shall provide protection equivalent to that afforded by a surety bond. Neither self insurance nor deposit of funds in bank accounts protected by the federal deposit insurance corporation (FDIC) or a similar entity are acceptable alternatives to a surety bond. A NF provider electing not to purchase a surety bond shall submit a proposal for an alternative to ODM for approval. An acceptable alternative shall meet all of the following criteria:

- (a) At a minimum, protect at all times the full amount of resident funds deposited with the NF provider, including interest earned and refundable deposit fees; and

- (b) Designate either ODM or the residents of the NF as the entity or entities that will collect payment for lost funds; and
- (c) Guarantee repayment of funds lost due to any failure of the NF provider, whether by commission, bankruptcy, omission, or otherwise, to hold, safeguard, manage, and account for resident funds; and
- (d) Be managed by a third party unrelated in any way to the NF provider or its management; and
- (e) Not name the NF provider as a beneficiary.

(3) Provision of assurance to ODM.

A NF provider or entity ~~who~~that operates multiple facilities shall submit copies of either the multi-facility surety bond or a reasonable alternative to the multi-facility surety bond to ODM upon request for review and approval. If the NF provider, surety company, or issuer of an ODM-approved surety bond alternative cancels the surety bond or reasonable alternative to a surety bond, they shall notify ODM by certified mail thirty days prior to the effective date of cancellation.

(J) Limitations on charges to the PNA account.

- (1) A NF provider shall not charge a resident's PNA account for items and services that the provider is required to furnish in order to participate in the medicare and medicaid programs, and that are included in medicare and medicaid payments made to the provider.
- (2) A NF provider shall inform residents of the coverage and limitations of the medicare and medicaid programs. If a resident's representative is the payee for the resident's PNA account, the NF provider shall also explain the coverage and limitations to the representative.
- (3) A NF provider shall not use a resident's PNA account funds to pay for costs associated with guardianship proceedings, including but not limited to the costs for assessments, medical exams, and filing fees.

(K) Items and services covered by medicare or medicaid.

- (1) A NF provider shall not charge a resident's PNA account for items and services that the provider is required to furnish in order to participate in the medicare and medicaid programs.

(2) Items and services that may not be purchased with PNA account funds include, but are not limited to, the following:

(a) Nursing services; and

(b) Dietary services; and

(c) Activities programs; and

(d) Room and bed maintenance services; and

(e) Routine personal hygiene items and services required to meet the needs of the resident, including but not limited to hair hygiene supplies, comb, brush, bath soap, disinfecting soap or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, deodorant, incontinence care supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry; and

(f) Medically related social services; and

(g) Medical supplies such as irrigation trays, catheters, drainage bags, syringes, and needles; and

(h) Durable medical equipment; and

(i) Air conditioners, or charges to residents for the use of electricity; and

(j) Therapy or podiatry services; and

(k) Charges for telephone consultation by physicians or other personnel.

(L) Resident requests for items and services.

(1) A NF provider shall not charge a resident's PNA account for any item or service not requested by the resident, whether or not the item or service is requested by a physician.

(2) A NF provider shall not require a resident or the resident's representative to request an item or service as a condition for admission to or continued stay in the NF.

- (3) When a resident requests an item or service for which a charge to the resident's PNA account will be made, the NF provider shall inform the resident that there will be a charge and the amount of the charge.

(M) Items and services that may be charged to the PNA account.

- (1) If a resident clearly expresses a desire for a particular brand or item not available from the NF provider, PNA funds may be used as long as a comparable item of reasonable quality is available to the resident from the NF provider at no charge. The NF provider may charge the resident only the difference in cost between the available item and the resident's preferred item.
- (2) Items and services that may be charged to a resident's PNA account include, but are not limited to, the following:
 - (a) Telephone, including a cellular phone; and
 - (b) Television, ~~or radio~~, personal computer, or other electronic device for personal use; and
 - (c) Personal comfort items, including smoking materials, notions, novelties, and confections; and
 - (d) Cosmetics and grooming items and services in excess of those for which payment is made under the medicaid or medicare programs, including hair cuts, permanent waves, hair coloring, and relaxing performed by barbers and beauticians; and
 - (e) Personal reading material; and
 - (f) Stationary or stamps; and
 - (g) Personal clothing; and
 - (h) Specialty laundry services such as dry cleaning, mending, or hand-washing; and
 - (i) Flowers or plants; and
 - (j) Gifts purchased on behalf of a resident; and
 - (k) Non-covered special care services such as privately hired nurses or nurse aides; and

- (l) Social events or entertainment offered outside the scope of the NF provider's activities program; and
- (m) Private rooms, except when therapeutically required for infection control or similar reasons; and
- (n) Specially prepared or alternative food requested instead of food generally prepared by the NF provider; and
- (o) Burial plots.

(N) Monitoring.

The CDJFS is responsible for monitoring PNA accounts. At least ~~once a quarter~~ annually, a designated CDJFS employee shall determine if a NF provider is following the provisions of this rule, and shall report any questions concerning inappropriate use or inadequate record keeping of PNA funds to ODM and to the Ohio department of health (ODH) for further action. Inappropriate use of PNA account funds by a payee or a NF provider does not, however, reduce the scope or duration of medicaid benefits for a medicaid recipient.

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Certification

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