

## TO BE RESCINDED

**5123:2-7-09 Intermediate care facilities - personal needs allowance accounts and other resident funds.**

(A) For the purposes of this rule, the following definitions shall apply:

- (1) "Interest-bearing" means a rate of return equal to or above the passbook savings rate at local banking institutions in the area.
- (2) "Intermediate care facility for individuals with intellectual disabilities" (or "intermediate care facility") means an intermediate care facility for the mentally retarded certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1396, other than a state-operated intermediate care facility.
- (3) "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) "Personal needs allowance" has the same meaning as in rule 5101:1-39-24 of the Administrative Code.
- (5) "Personal needs allowance account" means an account or petty cash fund that holds the money of a resident of an intermediate care facility and is managed for the resident by the intermediate care facility.
- (6) "Surety bond" means an agreement between the principal (i.e., the intermediate care facility), the surety (i.e., the insurance company), and the obligee (i.e., the resident and/or the department 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 an intermediate care facility will pay a resident, or the department on behalf of the resident, for losses occurring from any failure by the intermediate care facility to hold, safeguard, manage, and account for the resident's funds, including losses occurred 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. This paragraph does not require an intermediate care facility to change the obligee from the Ohio office of medical assistance to the department if the surety bond was in effect on the effective date of this rule unless after that date the intermediate care facility makes a change in the surety bond.

(B) Personal needs allowance account

- (1) A medicaid resident who receives care in an intermediate care facility is eligible to retain a personal needs allowance account in the amount set forth in rule 5101:1-39-24 of the Administrative Code for the purchase of items and services of his or her choice in accordance with 42 C.F.R. 483.420 (1991). In addition, an intermediate care facility licensed by the Ohio department of health shall comply with section 3721.15 of the Revised Code.
- (2) A personal needs allowance 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.

(C) Management of personal funds

- (1) An intermediate care facility shall allow residents to manage their financial affairs and teach them to do so to the extent of their capabilities in accordance with 42 C.F.R. 483.420 (1991). In addition, an intermediate care facility licensed by the Ohio department of health shall comply with section 3721.15 of the Revised Code.
- (2) An intermediate care facility shall not require a resident to deposit his or her personal needs allowance funds with the intermediate care facility. However, if a resident requests assistance from the intermediate care facility staff in managing his or her personal needs allowance account, the request shall be in writing.
- (3) Upon written request from a resident, an intermediate care facility shall hold, safeguard, manage, and account for the resident's personal needs allowance funds deposited with the intermediate care facility.
- (4) Upon written request from a resident, an intermediate care facility shall furnish written information about the resident's account to the resident or the resident's representative.
- (5) An intermediate care facility shall explain both verbally and in writing to a resident or the resident's representative that personal needs allowance funds are for the resident to use as he or she chooses. If a representative is the payee for the resident's personal needs allowance account, the representative shall be responsible for ensuring that the money is used to meet the personal needs of the resident.

(D) Deposit of personal needs allowance account funds and interest earned by intermediate care facilities licensed by the Ohio department health

- (1) If a resident's personal needs allowance account funds are one hundred dollars or less, an intermediate care facility licensed by the Ohio department of health may deposit the funds in an interest-bearing account, a non-interest-bearing account, or a petty cash fund.
- (2) If a resident's personal needs allowance account funds are in excess of one hundred dollars, an intermediate care facility licensed by the Ohio department of health shall deposit the funds in an interest-bearing account (or accounts) that is separate from any of the intermediate care facility's operating accounts within five banking days from the date the balance exceeds one hundred dollars.
- (3) An intermediate care facility licensed by the Ohio department of health shall credit any interest earned on a resident's personal needs allowance funds to the resident's personal needs allowance account. If pooled accounts are used, the intermediate care facility shall prorate interest per resident on the basis of actual earnings or end-of-quarter balance.
- (4) An intermediate care facility licensed by the Ohio department of health shall not charge a resident a fee for managing the resident's personal needs allowance account. Banks, however, may charge the resident a fee for handling the account.

(E) Accounting and records

- (1) An intermediate care facility shall establish and maintain a system that ensures full and complete accounting of each resident's funds.
- (2) An intermediate care facility shall not combine a resident's personal needs allowance funds with any of the provider's funds or with the funds of any individual other than another resident of the intermediate care facility.
- (3) An intermediate care facility shall furnish 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). The provider shall give the resident a receipt for every transaction.
- (4) An intermediate care facility shall obtain a resident's signature upon receipt by the resident of money from his or her personal needs allowance account. 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. Personal needs allowance funds shall not be withdrawn or utilized by the intermediate care facility for any purpose other than that requested by the resident to whom the fund belongs.

- (5) An intermediate care facility shall maintain a detailed ledger account of revenue and expenses for each personal needs allowance account managed by the intermediate care facility. The ledger account shall meet all of the following criteria:
    - (a) Specify all funds received by or deposited with the intermediate care facility. For personal needs allowance account funds deposited in banks, monies shall be credited to the resident's bank account within three business days;
    - (b) Specify the dates and reasons for all expenditures;
    - (c) Specify at all times the balance due the resident, including interest earned as last reported by the bank to the intermediate care facility; and
    - (d) Be available to the resident or the resident's representative for review.
  - (6) Upon request, an intermediate care facility shall furnish receipts to a resident or the resident's representative for purchases made with the resident's personal needs allowance funds.
  - (7) Within thirty days after the end of the quarter, an intermediate care facility shall furnish a written quarterly statement to each resident or resident's representative of all financial transactions made by the intermediate care facility on the resident's behalf.
- (F) Notification of certain balances and transactions that may affect medicaid eligibility
- (1) Notice to resident
    - (a) An intermediate care facility shall give written notification to each resident who receives medicaid benefits and whose personal funds are managed by the intermediate care facility when the amount in the resident's personal needs allowance account reaches two hundred dollars less than the resource limits set forth in rules 5101:1-39-01.1 and 5101:1-39-05 of the Administrative Code.
    - (b) The notice shall inform the resident that he or she may lose medicaid eligibility if the amount in his or her personal needs allowance account, in addition to the value of his or her other nonexempt resources, reaches his or her resource limit amount.
    - (c) A copy of the notice shall be retained in the resident's file.
  - (2) Notice to the county department of job and family services

An intermediate care facility shall report to the county department of job and family services any personal needs allowance account balance in excess of the resource limit. The county department of job and family services shall apply the excess amount to the routine cost of the resident's intermediate care facility care according to rule 5101:1-38-20 of the Administrative Code.

- (3) If a resident is considering using personal needs allowance funds to purchase life insurance, grave space, a burial account, or other item that may be considered a countable resource, the intermediate care facility shall refer the resident or the resident's representative to the county department of job and family services for an explanation of the effect the purchase may have on the resident's medicaid eligibility.

(G) Release of funds upon discharge

Upon discharge of a resident, an intermediate care facility shall release all the resident's personal needs allowance account funds, up to and including the resource limit amount.

(H) Conveyance of funds upon death for an intermediate care facility licensed by the Ohio department of health

(1) First thirty days

An intermediate care facility licensed by the Ohio department of health shall not retain the money in a resident's personal needs allowance 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 intermediate care facility licensed by the Ohio department of health shall transfer the resident's personal needs allowance account funds 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 intermediate care facility 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 intermediate care facility licensed by the Ohio department of health shall transfer the resident's personal needs allowance 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 intermediate care facility licensed by the Ohio department of health shall transfer the resident's personal needs allowance account funds to the Ohio office of medical assistance no earlier than sixty and no later than ninety days after the resident's death, with the exception listed in paragraph (H)(3)(c) of this rule.
- (b) Personal needs allowance account funds transferred to the Ohio office of medical assistance shall be paid by check or money order made payable to "Attorney General of Ohio" and shall be accompanied by a completed Ohio office of medical assistance form 09405, "Personal Needs Allowance Account Remittance Notice" (revised July 2005). The payment and completed form 09405 shall be mailed to the Ohio attorney general's office.
- (c) If funeral or burial expenses for a deceased resident have not been paid and the only resource left to pay those expenses are the resident's personal needs allowance account funds, or all other resources of the resident are inadequate to pay the full amount, the resident's personal needs allowance account funds shall be used to pay the 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, the Ohio office of medical assistance shall transfer the resident's personal needs allowance account funds to the administrator, executor, commissioner, or person who filed the application for release from administration, unless the Ohio office of medical assistance is entitled to recover the money under section 5111.11 of the Revised Code.

(I) Conveyance of funds upon death for an intermediate care facility licensed by the department

For an intermediate care facility licensed by the department, conveyance of funds upon death shall be in accordance with rule 5123:2-3-14 of the Administrative Code.

(J) Financial security for an intermediate care facility licensed by the Ohio department of health

An intermediate care facility licensed by the Ohio department of health shall purchase a surety bond or provide other necessary assurances to the director of the department to ensure the security of all resident funds deposited with and managed by the intermediate care facility.

(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 intermediate care facility, including interest earned and refundable deposit fees.
- (c) The surety bond shall provide for repayment of funds lost due to any failure of the intermediate care facility, whether by commission, bankruptcy, omission, or otherwise, to hold, safeguard, manage, and account for resident funds.
- (d) Except as provided in paragraph (J)(1)(f) of this rule, the surety bond shall designate either the resident, or the department 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.
- (f) Paragraph (J)(1)(d) of this rule does not require an intermediate care facility to change the obligee from the Ohio office of medical assistance to the department if the surety bond was in effect on the effective date of this rule unless after that date the intermediate care facility makes a change in the surety bond.

(2) Reasonable alternative to the surety bond

An intermediate care facility electing not to purchase a surety bond shall submit a proposal for an alternative to the department for approval. 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 or a similar entity are acceptable alternatives to a surety bond. 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 intermediate care facility, including interest earned and refundable deposit fees;
- (b) Except as provided in paragraph (J)(2)(f) of this rule, designate either the department or the residents of the intermediate care facility as the entity or entities that will collect payment for lost funds;
- (c) Guarantee repayment of funds lost due to any failure of the intermediate care facility, whether by commission, bankruptcy, omission, or otherwise, to hold, safeguard, manage, and account for resident funds;
- (d) Be managed by a third party unrelated in any other way to the intermediate care facility or its management; and
- (e) Not name the intermediate care facility as a beneficiary.
- (f) Paragraph (J)(2)(b) of this rule does not require an intermediate care facility to change the designee from the Ohio office of medical assistance to the department if the alternative to the surety bond was in effect on the effective date of this rule unless after that date the intermediate care facility makes a change in the alternative.

(K) Limitations on charges to the personal needs allowance account

- (1) An intermediate care facility shall not charge a resident's personal needs allowance account for items and services that the intermediate care facility is required to furnish in order to participate in the medicaid program, and that are included in medicaid payments made to the intermediate care facility.
- (2) An intermediate care facility shall inform each medicaid eligible resident of the medicaid program's coverage and limitations.
- (3) Items and services that may not be purchased with personal needs allowance account funds include, but are not limited to, the following:
  - (a) Nursing services;
  - (b) Dietary services;



- (c) Activities programs;
- (d) Room and bed maintenance services;
- (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;
- (f) Medically related social services;
- (g) Medical supplies such as irrigation trays, catheters, drainage bags, syringes, and needles;
- (h) Durable medical equipment;
- (i) Air conditioners or charges to resident for the use of electricity;
- (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 resident's personal needs allowance account funds may be used to purchase only those items and services requested by the resident, even if the items or services are requested by a physician.
- (2) When a resident requests an item or service for which a charge to the resident's personal needs allowance account will be made, the intermediate care facility shall inform the resident that there will be a charge and the amount of the charge.
- (3) An intermediate care facility shall not require a resident to request an item or service as a condition for admission to or continued stay in the intermediate care facility.

(M) Items and services that may be charged to the personal needs allowance account

- (1) An intermediate care facility shall accept medicaid payment as payment in full for items and services that are covered by the medicaid program. If a resident clearly expresses a desire for a particular brand or item not available from the intermediate care facility, the resident's personal needs allowance funds may be used as long as a comparable item of reasonable quality is available from the provider at no charge. The intermediate care facility 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 personal needs allowance account include, but are not limited to, the following:
  - (a) Telephone;
  - (b) Television or radio for personal use;
  - (c) Personal comfort items, including smoking materials, notions, novelties, and confections;
  - (d) Cosmetics and grooming items and services in excess of those for which payment is made under the medicaid program;
  - (e) Personal reading material;
  - (f) Stationary or stamps;
  - (g) Personal clothing;
  - (h) Specialty laundry services such as dry cleaning, mending, or hand-washing;
  - (i) Flowers or plants;
  - (j) Gifts purchased on behalf of a resident;
  - (k) Non-covered special care services such as privately hired nurses or nurse aides;
  - (l) Social events or entertainment offered outside the scope of the facility's activities program;
  - (m) Private rooms, except when therapeutically required for infection control or similar reasons;
  - (n) Specially prepared or alternative food instead of food generally prepared by the facility; and

(o) Burial plots.

(N) Monitoring

The county department of job and family services is responsible for monitoring personal needs allowance accounts. At least once a quarter, a designated county department of job and family services employee shall determine if an intermediate care facility is following the provisions of this rule, and shall report any questions concerning inappropriate use or inadequate record keeping of personal needs allowance funds to the department and to the Ohio department of health for further action. Inappropriate use of personal needs allowance account funds by a payee or an intermediate care facility does not, however, reduce the scope or duration of medicaid benefits for a medicaid recipient.

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CERTIFIED ELECTRONICALLY

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Certification

12/06/2019

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Date

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