

## \*\*\*Proposed Revisions - March 31, 2022\*\*\*

### ~~5123:2-2-07~~ 5123-2-07 Personal funds of the individual.

#### (A) Purpose

This rule establishes standards of accountability for a provider when the ~~individual plan or~~ individual service plan indicates the provider will be responsible for managing the individual's personal funds.

#### (B) Scope

This rule applies to persons and entities that provide specialized services regardless of source of payment, including but not limited to:

- (1) County boards and entities under contract with county boards;
- (2) Residential facilities licensed pursuant to section 5123.19 of the Revised Code, including intermediate care facilities for individuals with intellectual disabilities;
- (3) Providers of supported living certified pursuant to section 5123.161 of the Revised Code; and
- (4) Providers of services funded by medicaid home and community-based services waivers administered by the department.

#### (C) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "County board" means a county board of developmental disabilities.
- (2) "Department" means the Ohio department of developmental disabilities.
- ~~(3) "Earned income" has the same meaning as in rule 5160:1-2-01.9 of the Administrative Code. Rule 5160:1-3-03.3 of the Administrative Code shall be followed to determine whether sheltered workshop earnings are earned income or unearned income.—~~
- (3) "Earned income" means wages and net earnings from employment or self-employment. [Rule 5160:1-2-01.9 was rescinded 11/01/2017. This definition is used in rule 5123:2-3-11.]
- (4) "Immediate family member" means a spouse, parent or stepparent, child or stepchild, sibling or stepsibling, grandparent, or grandchild.
- (5) "Individual" means a person with a developmental disability.
- (6) ~~"Individual plan" or "individual~~ "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
- (7) "Intermediate care facility for individuals with intellectual disabilities" has the same

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meaning as in section 5124.01 of the Revised Code.

- (8) "Major unusual incident" has the same meaning as in rule ~~5123:2-17-02~~ [5123-17-02](#) of the Administrative Code.
  - (9) "Patient liability" means the individual's financial obligation toward the medicaid cost of care.
  - (10) "Person responsible for the estate of the individual" means the executor, administrator, commissioner, or person who filed pursuant to section 2113.03 of the Revised Code for release from administration of an estate.
  - ~~(11) "Personal funds" means earned income and unearned income retained by an individual after satisfying his or her obligations which may include but are not limited to, rent, individual specific expenses, or services; satisfying state requirements, including patient liability and/or monthly premiums for services funded by a home and community-based services waiver or the intermediate care facility for individuals with intellectual disabilities program; and satisfying federal requirements, including adherence to income restrictions necessary to maintain medicaid eligibility.~~
  - [\(11\) "Personal funds" means any financial resources, including but not limited to, earned income, unearned income, bank accounts, investment accounts, and monies from a trust fund or inheritance.](#)
  - (12) "Provider" means an agency provider or an independent provider that is certified by the department or a residential facility that is licensed by the department.
  - (13) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether a provider or entity under contract with a provider is providing specialized services, the provider or contract entity may request that the director of the department make a determination. The director's determination is ~~final~~ [not subject to appeal](#).
  - (14) "Team," as applicable, has the same meaning as in rule ~~5123:2-1-11~~ [5123-4-02](#) of the Administrative Code or means an interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
  - (15) "Unearned income" means all income that is not earned income including, but not limited to, social security disability income, supplemental security income, and other public benefits an individual receives.
- (D) [Establishment of roles and parameters for management of personal funds](#)
- [\(1\)](#) Each individual shall be afforded the opportunity to manage, to be taught to manage, to receive assistance in managing, and to access all records regarding ~~his or her~~ [the individual's](#) personal funds and, except when in conflict with a guardianship order or payee agreement, to manage ~~his or her~~ [the individual's](#) personal funds.

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- ~~(E)~~ (2) An individual's ability to manage ~~his or her~~ personal funds shall be addressed through the use of formal and/or informal assessments and consideration of what is important to the individual and what is important for the individual.
- ~~(4)~~ (3) When an individual has been assessed to need assistance managing ~~his or her~~ personal funds, the ~~parameters and areas of focus for support shall be identified in the individual plan or~~ individual service plan ~~and address~~ shall include:
- (a) The name of the person or entity responsible for assisting the individual with managing personal funds and the specific personal funds to which the person or entity will have access;
  - ~~(b) The dollar amount anticipated to be available to the individual upon request for personal spending; and~~
  - ~~(e)~~ (b) The specific type of supports to be provided (e.g., bill-paying, shopping, budgeting, or increasing the individual's independence in managing ~~his or her~~ personal funds):
- ~~(2) When an individual has been assessed to need assistance managing his or her personal funds, the individual plan or individual service plan shall, when applicable, address:~~
- (c) The dollar amount anticipated to be available to the individual upon request for personal spending;
  - ~~(a)~~ (d) The maximum dollar amount that the individual may independently manage at any one time;
  - ~~(b)~~ (e) The maximum dollar amount that the provider may spend on behalf of the individual for any one expenditure without ~~guardian, payee, and/or~~ team approval; and
  - ~~(e)~~ (f) The name of the person or entity responsible for providing payee services.
- ~~(3)~~ (4) When an individual has been assessed to need assistance managing ~~his or her~~ personal funds, the qualified intellectual disability professional or service and support administrator, as applicable, shall maintain the following information in the ~~individual plan or~~ individual service plan, ~~as applicable~~, or in the individual's official record:
- (a) The name of the person responsible for the estate of the individual in the event of the individual's death; and
  - (b) When applicable, the name of the person or entity assigned as guardian of the estate.
- ~~(F)~~ (5) Each individual, other than an individual who has been assessed to need assistance managing ~~his or her~~ personal funds, shall have access to ~~his or her~~ personal funds to use as ~~he or she~~ the individual chooses to purchase items, goods, and services ~~of his or her preference~~.
- ~~(G)~~ (6) In no circumstance shall an individual be required to use personal funds to purchase

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or pay for items or services that are reimbursed by medicaid or any other funding source of the provider.

### ~~(H)~~ (E) Avoiding conflicts of interest

- (1) Providers, immediate family members of providers, employees of providers, and immediate family members of employees of providers shall not ask for, otherwise try to secure, or accept loans in any amount from an individual the provider or employee serves.
- ~~(H)~~ (2) Providers, immediate family members of providers, employees of providers, and immediate family members of employees of providers shall not sell items to an individual the provider or employee serves unless the transaction is authorized in writing in advance by the team.
- ~~(H)~~ (3) Providers, immediate family members of providers, employees of providers, and immediate family members of employees of providers shall not buy items from an individual the provider or employee serves unless the transaction is authorized in writing in advance by the team.

### ~~(K)~~ (F) Management of an individual's personal funds by a provider

- (1) Each provider responsible for managing an individual's personal funds shall:
  - ~~(H)~~ (a) Develop and implement a written policy regarding management of individuals' personal funds that:
    - ~~(a)~~ (i) Includes a system of accounting principles by which the provider retains, safeguards, and accounts for the individual's personal funds;
    - ~~(b)~~ (ii) Requires the provider to deposit an individual's personal funds in the individual's account within five calendar days of receipt;
    - ~~(c)~~ (iii) Prohibits an individual's personal funds to be co-mingled with the provider's funds;
    - ~~(d)~~ (iv) Prohibits use of an individual's personal funds to supplement or replace the personal funds of another individual or the provider on a temporary or permanent basis except in situations where a practical arrangement (e.g., individuals take turns purchasing household supplies) is agreed upon and documented in writing;
    - ~~(e)~~ (v) Requires a summary of financial transactions be made available to the individual, the individual's guardian, team, or the department upon request;
    - ~~(f)~~ (vi) Describes how the provider will ensure that the individual has access to ~~his-~~  
~~or her~~ personal funds upon request, but no later than three calendar days from the date of request; and
    - ~~(g)~~ (vii) Outlines the system for monitoring and reporting alleged acts of

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misappropriation and exploitation in accordance with rule ~~5123:2-17-02~~ 5123-17-02 of the Administrative Code.

- ~~(2)~~ (b) Ensure that each person responsible for managing an individual's personal funds is trained in the requirements of this rule and follows the provider's written policy regarding management of individuals' personal funds.
- ~~(3)~~ (c) Ensure that the team is notified when:
  - ~~(a)~~ (i) An individual's personal funds are projected to exceed or exceed the maximum amount allowed for the individual to maintain eligibility for medicaid, supplemental security income, or social security disability insurance; or
  - ~~(b)~~ (ii) An individual receives a lump sum payment (e.g., benefits back payment) or inheritance.
- ~~(M)~~ (2) All personal funds expended by the provider on behalf of an individual shall be accompanied by a receipt for the expenditure unless the ~~individual plan or~~ individual service plan indicates otherwise. The receipt shall identify the item procured, the date, and the amount of the expenditure. When required to maintain receipts, the provider shall obtain other documentation or written explanation if a receipt is unavailable.
- ~~(N)~~ (3) When, based on the parameters identified in the ~~individual plan or~~ individual service plan, the provider gives personal funds from an individual's ~~personal funds~~ account to the individual or the individual's guardian to expend on the individual's behalf, a receipt is required for a single expenditure of fifty dollars or more unless otherwise specified in the ~~individual plan or~~ individual service plan. When a receipt is unavailable, the provider shall obtain other proof of purchase which includes written verification for the amount of personal funds given to the individual or the individual's guardian and what was purchased with the personal funds.
- ~~(P)~~ (4) When the provider has been appointed to act as the payee for the individual's benefits, ~~the~~:
  - (a) The provider shall follow all requirements set forth by the governing authority (e.g., social security administration or veterans' administration).
  - ~~(b)~~ (b) ~~When the provider has been appointed to act as the payee for the individual's benefits and is paid by the individual or from another funding source for acting as payee, the~~ The provider shall not request or accept reimbursement through the individual's home and community-based services waiver for providing payee services if the provider is paid by the individual or from another funding source for acting as payee.
  - (c) Provisions of this rule apply without regard to the provider's role (i.e., acting in the capacity of payee or acting in the capacity of provider).
- ~~(R)~~ (5) When the provider has possession of an individual's personal funds, the provider

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shall release any balance of cash to the individual or the individual's guardian, as applicable, after deducting for actual or estimated expenditures owed by the individual, within five calendar days of the time the individual is no longer served by the provider. Within fourteen calendar days of termination of service, the provider shall prepare a final itemized statement of the individual's personal funds accounts and shall release any remaining personal funds to the individual or the individual's guardian, as applicable, with the itemized statement.

### ~~(F)~~ (G) Accounts established for individuals' personal funds

- (1) When the provider has possession of an individual's personal funds, the provider may establish a banking account on behalf of the individual or the individual may establish ~~his or her~~ the individual's own account. When the provider establishes a banking account on behalf of an individual:
  - (a) The provider may establish a separate banking account for each individual's personal funds, combine multiple individuals' personal funds in one banking account, or a combination of both. When multiple individuals' personal funds are combined in one banking account, the provider shall separately account for each individual's personal funds and allocate interest, if earned, to each individual proportional to the amount of personal funds each individual maintains in the account.
  - (b) The individual's personal funds may be maintained in a checking account or a savings account or a combination of both.
  - (c) The provider shall ~~, to the extent possible,~~ do so in a manner that minimizes banking fees paid by the individual.
- (2) A cash account may be maintained by the provider ~~as identified in the individual plan or as specified in the~~ individual service plan.
- (3) An investment account opened in accordance with the Achieving a Better Life Experience Act program and section 529A of the Internal Revenue Code may be maintained by the provider as specified in the individual service plan.
- ~~(3)~~ (4) For each type of account established for the individual, the provider shall maintain a written or electronic system of accounting which shall contain:
  - (a) The individual's name;
  - (b) The source, amount, and date of all personal funds received;
  - (c) The signature of the person depositing personal funds to the account, unless electronically deposited;
  - (d) The purpose, amount, recipient, and date of all personal funds withdrawn;
  - (e) The signature of the person withdrawing personal funds from the account, unless electronically withdrawn;

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(f) For checking accounts and savings accounts, a current account balance reconciled to the most recent bank statement which is signed and dated by the person conducting the reconciliation; and

(g) For any cash accounts maintained by the provider, including gift cards or gift certificates belonging to an individual, a verification of the reconciliation of the documented balance to the actual personal funds available no less than once every thirty calendar days which is signed and dated by the person conducting the reconciliation.

~~(4)~~ (5) A person other than the one who provides direct assistance to the individual with managing personal funds or the one who maintains the written or electronic system of accounting for the provider shall conduct the reconciliations required by paragraphs ~~(L)(3)(f) and (L)(3)(g)~~ (G)(4)(f) and (G)(4)(g) of this rule. The person or entity who will conduct the reconciliations is to be identified through the team process.

### ~~(H)~~ (H) Restoration of an individual's personal funds

(1) A provider shall restore personal funds to the individual when:

~~(1)~~ (a) The provider's failure to implement the ~~individual plan or~~ individual service plan as written results in the loss of the individual's personal funds; or

~~(2)~~ (b) The provider's failure to follow its written policy regarding management of individuals' personal funds results in the loss of an individual's personal funds; or

~~(3)~~ (c) The provider or an employee of the provider is the subject of a substantiated misappropriation major unusual incident which results in the loss of the individual's personal funds, in which case:

(i) The ~~and the~~ individual's major unusual incident prevention plan ~~requires~~ will compel the provider to restore the funds in a timely manner.

(ii) The provider will restore funds as specified in the major unusual incident prevention plan.

(iii) A major unusual incident case will remain open until the county board documents that the provider has restored funds.

(2) An individual's team will ensure that restoration of funds is structured so that it does not jeopardize the individual's eligibility for medicaid, supplemental security income, or social security disability insurance.

### ~~(S)~~ (I) Disposition of personal funds in the event of an individual's death

In the event of an individual's death and when the provider has possession of an individual's personal funds, the provider shall dispose of the individual's personal funds in accordance with the following:

(1) A provider other than a state-operated developmental center

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- (a) The provider shall release the personal funds to the person responsible for the estate of the individual when the provider receives a request for the personal funds in writing from that person within ninety calendar days of the individual's death.
- (b) When the provider does not receive a request for the personal funds in writing from the person responsible for the estate of the individual within ninety calendar days of the individual's death and if the individual was a recipient of medicaid benefits, the provider shall mail the [personal](#) funds along with a completed Ohio department of medicaid form 09405, "Personal Needs Allowance Account Remittance Notice" (revised ~~July 2014~~ [October 2017](#)), to the address indicated on the form.
- (c) When the provider does not receive a request for the personal funds in writing from the person responsible for the estate of the individual within ninety calendar days of the individual's death and if the individual was not a recipient of medicaid benefits:
  - (i) If the provider is a government entity, the provider shall dispose of the [personal](#) funds in accordance with section 9.39 of the Revised Code.
  - (ii) If the provider is not a government entity, the [personal](#) funds shall be considered unclaimed funds within the meaning of division (P) of section 169.02 of the Revised Code and the provider shall dispose of the [unclaimed](#) funds in accordance with Chapter 169. of the Revised Code.
- (2) A state-operated developmental center shall dispose of the personal funds in accordance with section 5123.28 of the Revised Code.