

## **\*\*\*Proposed Amendments - October 28, 2022\*\*\***

### **5123-7-09 Intermediate care facilities for individuals with intellectual disabilities - personal needs allowance accounts.**

#### **(A) Purpose**

This rule establishes requirements and procedures regarding personal needs allowance accounts of residents of an intermediate care facility for individuals with intellectual disabilities (ICFIID).

#### **(B) Definitions**

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

- (1) "Patient liability" means an individual's financial obligation toward the medicaid cost of care.
- (2) "Personal needs allowance" means a required deduction in the computation of patient liability for needs of a resident of an ICFIID.
- (3) "Personal needs allowance account" means an account or petty cash fund that holds the money of a resident of an ICFIID and is managed for the resident by the ICFIID.

#### **(C) Management of resident funds**

- (1) An ICFIID ~~shall~~ will 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, as in effect on the effective date of this rule.
- (2) An ICFIID ~~shall~~ will hold, safeguard, manage, account for, and convey a resident's funds in accordance with rule ~~5123:2-2-07~~ 5123-2-07 of the Administrative Code.

#### **(D) Personal needs allowance account**

- (1) A medicaid-eligible resident of an ICFIID may retain a personal needs allowance account in the amount set forth in section 5163.33 of the Revised Code.
- (2) A personal needs allowance account is the exclusive property of the resident, who may use the funds as ~~he or she~~ the resident chooses in any lawful manner.
- (3) An ICFIID shall not require a resident to deposit ~~his or her~~ personal needs allowance funds with the ICFIID; a resident wishing to do so shall submit a request to the ICFIID in writing.
- (4) An ICFIID shall explain both verbally and in writing to a resident or the resident's representative, as applicable, that personal needs allowance funds are for the resident to use as ~~he or she~~ the resident chooses. If a resident's representative is the payee for the resident's personal needs allowance account, the resident's representative shall be responsible for ensuring that the funds are used to meet the personal needs of the resident.

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### **(E) Notification of certain balances and transactions that may affect medicaid eligibility**

- (1) When the funds in a personal needs allowance account of a medicaid-eligible resident reach two hundred dollars less than the resource limit set forth in rule 5160:1-3-05.1 of the Administrative Code or section 5163.092 of the Revised Code, as applicable, the ICFIID shall:
  - (a) Give written notice to the resident or the resident's representative, as applicable, that the resident may lose medicaid eligibility if the amount in the personal needs allowance account, in addition to the value of other nonexempt resources, exceeds the resource limit and retain a copy of the written notice in the resident's file; and
  - (b) Work with the resident or the resident's representative, as applicable, and the county department of job and family services to coordinate a spenddown plan.
- (2) An ICFIID 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 ICFIID services.
- (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 ICFIID shall refer the resident or the resident's representative, as applicable, 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.

### **(F) Limitations on charges to the personal needs allowance account**

- (1) An ICFIID shall not charge a resident's personal needs allowance account for items and services that the ICFIID is required to furnish in order to participate in the medicaid program and that are included in medicaid payments made to the ICFIID. An ICFIID shall provide or arrange for, at no charge to a resident, any item or service that is ordered by a physician, determined medically necessary by the resident's team, and does not conflict with any state or federal regulations.
- (2) Items and services that may not be purchased with personal needs allowance account funds include, but are not limited to:
  - (a) Nursing services;
  - (b) Dietary services;
  - (c) Activities programs;
  - (d) Room and board maintenance services;
  - (e) Routine personal hygiene items and services required to meet the needs of the

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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, feminine hygiene products, towels, washcloths, hospital gowns, over-the-counter medication, hair and nail hygiene services, 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.

### **(G) 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.
- (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 ICFIID shall inform the resident that there will be a charge and the amount of the charge.
- (3) An ICFIID shall not require a resident to request an item or service as a condition for admission to, or continued stay in, the ICFIID.

### **(H) Items and services that may be charged to the personal needs allowance account**

- (1) An ICFIID 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 ICFIID, the resident's personal needs allowance funds may be used as long as a comparable item of reasonable quality is available from the ICFIID at no charge.
- (2) Items and services that may be charged to a resident's personal needs allowance account include, but are not limited to:
  - (a) Telephone, television, or radio for the resident's exclusive use;
  - (b) Personal comfort items, including smoking materials, notions, novelties, and confections;
  - (c) Cosmetics and grooming items and services in excess of those for which payment

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is made under the medicaid program;

- (d) Personal reading material;
- (e) Stationary or stamps;
- (f) Personal clothing in excess of that required by paragraph ~~(G)(1) of rule 5123:2-3-04~~ (H)(1) of rule 5123-3-04 of the Administrative Code;
- (g) Specialty laundry services such as dry cleaning, mending, or hand-washing;
- (h) Flowers or plants;
- (i) Gifts ~~purchased on behalf of a resident~~ the resident purchases for others;
- (j) Social events or entertainment offered outside the scope of the ICFIID's activities program; and
- (k) Burial plots.

### (I) Monitoring

The county department of job and family services ~~shall~~ will monitor personal needs allowance accounts in accordance with section 5163.33 of the Revised Code. At least once a quarter, a designated employee of the county department of job and family services ~~shall~~ will determine if an ICFIID 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 funds by a payee or an ICFIID does not, however, reduce the scope or duration of medicaid benefits for a medicaid recipient.

### (J) Disposition of personal needs allowance account funds in the event of a resident's death

- (1) A department-operated ICFIID that has possession of a resident's personal needs allowance account funds at the time of the resident's death will dispose of the funds in accordance with section 5123.28 of the Revised Code.
- (2) An ICFIID other than a department-operated ICFIID that has possession of a resident's personal needs allowance account funds at the time of the resident's death will dispose of the funds in accordance with paragraphs (J)(2)(a) to (J)(2)(c) of this rule, as applicable.
  - (a) If funeral or burial expenses for a deceased resident have not been paid and the only resource left to pay those expenses is 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 will be used to pay the expenses.

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- (b) If, within sixty days after the 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 ICFIID will 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.
- (c) If, within sixty days after the resident's death, letters testamentary or letters of administration 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 ICFIID will transfer the resident's personal needs allowance account funds to the Ohio department of medicaid no earlier than sixty days and no later than ninety days after the resident's death, with the exception of the amount used for funeral or burial expenses in accordance with paragraph (J)(2)(a) of this rule. Personal needs allowance account funds transferred to the Ohio department of medicaid will be accompanied by a completed Ohio department of medicaid form 09405, "Personal Needs Allowance Account Remittance Notice" (revised April 2021) in accordance with the instructions on the form.