

**REMINDER FOR LONG-TERM CARE NURSING FACILITIES (NFs) ON
PROPER STEWARDSHIP OF RESIDENTS' PERSONAL NEEDS ALLOWANCE
ACCOUNTS**

Please take the time to read the following information as a reminder of the proper use and management of a Medicaid long-term care facility resident's personal needs allowance (PNA), and share the information with the appropriate staff.

A Resident's Personal Needs Allowance is the Property of the Resident

A resident's personal needs allowance is an amount required to be deducted from the computation of a resident's patient liability to be used for the purchase of goods and services of the individual's choosing that are not covered under Medicare or Medicaid. Ohio Administrative Code (OAC) rule 5101:3-3-16.5 "*Personal Need Allowance (PNA) Accounts and Other Resident Funds for Nursing Facilities (NFs)*" paragraph (B)(2) states that "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.**"*(emphasis added)* Examples of items and services that the resident may request which would be chargeable to their PNA account includes, but is not limited to, items such as personal clothing, reading materials, and social events or entertainment offered outside of the facility's activities program. Though not required to, the resident may request the assistance of the NF to manage their PNA account. If the resident requests such assistance through written authorization, the funds still remain the property of the resident to use as they choose and are to be released, up to and including the resource limit amount, to that resident upon discharge. OAC 5101:3-3-16.5(G)(2) specifically states that "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.**"*(emphasis added)* Likewise, upon the death of the resident, the balance of the resident's PNA funds become a part of the deceased resident's estate (OAC 5101:1-39-05(H)) and are to be handled pursuant to the provisions of OAC 5101:3-3-16.5(H).

Notification and Handling of PNA Funds Exceeding Resource Limits

As part of the responsibility of a NF provider to hold, safeguard, manage and account for a resident's PNA funds deposited with them, the NF provider shall give written notification to each resident receiving Medicaid when the amount in the resident's PNA account reaches two hundred dollars (\$200.00) less than the resource limits referenced in OAC 5101:1-39-05 and OAC 5101:1-39-01.1. Any PNA balances that exceed the applicable resource limits must be reported to the county Department of Job and Family Services, who shall apply the excess amount to the routine cost of NF or ICF-MR care in accordance with OAC 5101:1-38-20 "*Medicaid and Covered Families and Children Medicaid: Overpayments.*" Please refer to OAC 5101:3-3-16.5(F) for further information regarding this matter.

Regarding Representative Payees Appointed by the Social Security Administration

If the NF provider has been appointed as an Organizational Representative Payee by the Social Security Administration (SSA) for purposes of managing the resident's Social Security or Supplemental Security Income (SSI), Social Security Publication No. 17-013 "Guide for Organizational Representative Payees" (available through the Social Security website at <http://www.socialsecurity.gov/payee/NewGuide/toc.htm>) requires that for an institutional beneficiary's personal spending "Representative payees should set aside a minimum of \$30 a month for personal needs for all beneficiaries residing in an institution such as a hospital, nursing home, or other type of group living facility" (OAC 5101:1-39-24(C)(2)(c) requires a minimum base of \$40.00). Publication No. 17-013 also states that "(the representative payee) may satisfy a beneficiary's outstanding past debt that occurred before the first month (the representative payee) started to receive the Social Security and/or SSI benefits if the beneficiary's current and reasonably foreseeable needs are met. If your organization **is also a creditor**, such as the beneficiary's landlord or an institution in which the beneficiary is residing, **you must obtain SSA's (Social Security Administration's) approval before reimbursing your organization for any debts owed to the organization.**" (*second emphasis added*) Publication No. 17-013 further states:

Misuse of benefits occurs when the payee uses any portion of a beneficiary's benefits for something other than the use and benefit of that beneficiary. If money is left after meeting the beneficiary's current needs, save it for future needs...SSA investigates all allegations of misuse, gathers facts and evidence, and makes a formal determination of whether or not misuse has occurred in order to protect the best interests of the beneficiary. If SSA determines benefits have been misused, SSA may appoint a new representative payee or make direct payment to the beneficiary. If you or an employee of your organization misuses a beneficiary's funds, you must immediately report it to SSA. Your organization has a legal obligation to repay the misused funds. If your organization is an approved FFS payee, your organization must also forfeit the fee(s) charged for the month(s) of misuse. If your organization does not repay the misused funds immediately, the law allows SSA to collect the misused amount from you. SSA will refer all determinations finding misuse for consideration of criminal prosecution. The penalty upon conviction may be a fine of up to \$250,000, imprisonment up to 10 years, or both. SSA may also impose a civil monetary penalty up to \$5,000 for each violation and an assessment of not more than twice the amount of the misused benefits.

The Online Social Security Handbook, Chapter 16, also provides guidance for representative payees on and proper handling of Social Security/SSI funds. The handbook can be found on the Social Security website at http://www.ssa.gov/OP_Home/handbook/. Please bear in mind that a representative payee manages only the Social Security and/or the SSI funds, so resident balances from sources other than Social Security and/or SSI are out of the authority of the representative payee. For any questions regarding the proper use of PNA funds derived from Social Security and/or SSI, please contact the Social Security Administration for further guidance.

Resident's Responsibility for Patient Liability

Even though a NF provider may not withhold the resident's PNA allowance, the resident is responsible for any final patient liability determined in their resource assessment process. OAC 5101:1-39-24 "*Medicaid: Determining Patient Liability*" paragraph (D) states that "The individual must pay the patient liability amount to the entity as directed." Failure to pay for care is one of the conditions under which a resident may qualify for transfer or discharge from the facility. Ohio Revised Code (ORC) 3721.13 "*Residents' rights.*" paragraph (A)(30) states that the resident has "The right not to be transferred or discharged from the home unless the transfer is necessary because of one of the following:"

<ORC 3721.13(30)(e)>

(e) The resident has failed, after reasonable and appropriate notice, to pay or to have the medicare or medicaid program pay on the resident's behalf, for the care provided by the home. A resident shall not be considered to have failed to have the resident's care paid for if the resident has applied for medicaid, unless both of the following are the case:

(i) The resident's application, or a substantially similar previous application, has been denied by the county department of job and family services.

(ii) If the resident appealed the denial pursuant to division (C) of section 5101.35 of the Revised Code, the director of job and family services has upheld the denial.

ORC 3721.16 "*Residents' rights concerning transfer or discharge.*" sets forth the requirements and protocol that must be followed when the transfer or discharge of a resident is proposed. In most cases, written notification to the resident and their sponsor, if applicable, is required at least 30 days in advance of the proposed transfer or discharge. Information regarding exceptions to the 30-day notification requirement, the items that are required to be in the notification, the method of delivery of the notification(s), resident appeal rights, and the NF provider's responsibilities are also included in this statute.

Copies of the Ohio Administrative Code rules may be obtained from the ODJFS website at <http://jfs.ohio.gov/> . Once on the ODJFS welcome page, select "eManuals" under "For More Info". On the eManuals page, locate the "Legal Services" folder and select "ODJFS Ohio Administrative Code". Then select "5101:3 Medical Assistance", and use the drop-down box to select the specific OAC rule which you wish to view. Copies of the Ohio Revised Code may be obtained from <http://codes.ohio.gov/oac> .

For questions regarding a resident's personal needs allowance, please contact your county Department of Job and Family Services.