

Proposed New Rule 5123:2-2-07 (Personal Funds of the Individual)
Clearance Period: June 26 - July 13, 2015
Comments Received with Department's Responses

Comment	By Whom	Department's Response
(C)(10): Add "premium" or "monthly premium" for individuals under Medicaid Buy-In for Workers with Disabilities program who are assigned a monthly premium.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	The paragraph was revised in accordance with your suggestion.
(D): Define and/or describe what is meant in by "guardianship order or payee agreement."	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	<p>The intent of the paragraph is to emphasize an individual's right to manage personal funds to the extent possible. The group reviewing the draft rule felt it important to acknowledge circumstances (such as having a court-appointed guardian or designated payee) where an individual may not have direct access to his or her funds. The paragraph was revised as indicated to make the intent clear:</p> <p>Each individual shall be afforded the opportunity, unless in conflict with a guardianship order or payee agreement, to manage, to be taught to manage, to receive assistance in managing, and to access all records regarding his or her personal funds <u>and, except when in conflict with a guardianship order or payee agreement, to manage his or her personal funds.</u></p>

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<p>(E)(1)-(E)(9), (G), (H), (K), (L), & (M): These paragraphs that state what needs to be addressed in the individual service plan are very prescriptive and not person-centered. Can this information live somewhere else besides the individual service plan? We are being asked to be less prescriptive and to truly individualize plans; having so many specific points in every plan is taking us back to whole sections that may look "canned."</p> <p>Adding canned language back into the plans will lead to county boards being cited by Provider Compliance for not having specific language in the plans versus holding providers accountable. I agree 100% that individuals should have control of their resources and spend their money the way they see fit. However, we support a lot of individuals that don't have any interest or desire in doing this, so the plan should really only speak to the supports and/or provider that the person has chosen.</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Paragraphs (E), (G), and (H) were revised in response to your concerns.
<p>(E)(2): This paragraph states that the individual service plan needs to include "supports necessary to assist the individual in increasing independence in managing his or her personal funds." What if this is not a desired outcome for someone? What if a person is assessed to have no understanding of the concept of money, let alone management of money?</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Paragraph (E) was restructured so this concept is now included in paragraph (E)(1)(c) as an example of supports that may be provided to an individual.
<p>(E)(4): Suggest rewording the paragraph: The maximum dollar amount, if appropriate, that the individual can handle <u>at any one time</u> independently;</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	The paragraph—now (E)(2)(a)—was revised in accordance with your suggestion.
<p>(E)(5): Suggest rewording the paragraph: The maximum dollar amount, if appropriate, that the provider may spend on behalf of the individual <u>for any one expenditure</u> without guardian and/or team approval;</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	The paragraph—now (E)(2)(b)—was revised in accordance with your suggestion.

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(E)(5) & (H): I really like the fact that this rule addresses money spent on behalf of an individual, if an individual is going to private-pay for a non-Medicaid service and that providers are prohibited from engaging in any financial transaction with an individual.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Spending on behalf of an individual is now addressed in paragraph (E)(2)(b). The language regarding financial transactions was revised and is now in paragraphs (H), (I), and (J).
(K)(1)(e): First, is the summary monthly? This summary of transactions should include all account balances (cash, savings, checking, food stamps, gift cards, and others) so that a meaningful analysis can be conducted to determine all is accounted for. The accountability needs to allow for multiple summary to be strung together to have a meaningful result.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Paragraph (K)(1)(e) requires the provider to present a summary upon request by the individual, guardian, team, or Department. Paragraph (L)(3)(h) addresses a provider's responsibility for reconciling the balance of an individual's cash every 30 days; this reconciliation applies to cash or resources that can be used as cash.
(K)(1)(g): Rather than outlining the system for reporting alleged acts of misappropriation and exploitation that is already covered in rule 5123:2-17-02, add a requirement to outline in policy the system to monitor for misappropriation and/or exploitation and the provider's responsibility to pay funds back to the individual in cases that are substantiated.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Paragraph (K)(1)(g) was revised as indicated: Outlines the system for <u>monitoring and</u> reporting alleged acts of misappropriation and exploitation in accordance with rule 5123:2-17-02 of the Administrative Code.
Former paragraph (J)(2)(i) and paragraph (L)(3)(h): For cash kept in the home or facility or other accessible location for which the individual has the ability to manage, the funds shall be reconciled, if necessary, as identified in the individual service plan... If someone can manage his or her money or a certain amount of money independently, the person, not the provider, should be holding onto that money. Why would this money need to be reconciled? The person should be able to spend it without having to account for it.	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	Former paragraph (J)(2)(i) was eliminated. Paragraph (L)(3)(h) was revised to address all cash maintained by the provider and applies only when an individual has been assessed to need assistance managing his or her personal funds.
(L)(4): Sentence structure is awkward. Suggestion: A person other than a person one who provides direct assistance to the individual with managing personal funds or a person one who maintains...	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	The paragraph was revised in accordance with your suggestion.

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<p>(O): In general, is the only mechanism for oversight a Major Unusual Incident? Is this going to be developed to be included as part of the compliance review?</p> <p>Is the provider allowed to self-monitor, find issues, and restore consumer funds without being a Major Unusual Incident?</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	<p>Requirements of the rule will be incorporated into the compliance review process and monitored by Service and Support Administrators.</p> <p>A provider may correct an error and restore funds as long as the error does not constitute "misappropriation" as defined in rule 5123:2-17-02.</p>
<p>(O)(1): The provider's failure to implement the individual plan or individual service plan as written results in the loss of the individual's funds. Suggest that instead of it being the failure of implementing the individual plan or individual service plan, it should be the provider's failure to follow their policy for personal funds management that results in a loss of individual's funds.</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	<p>Paragraph (O)(1) was maintained and a new paragraph (O)(2) was added:</p> <p><u>The provider's failure to follow its written policy regarding management of individuals' funds results in the loss of an individual's funds; or</u></p>
<p>(O)(3): Suggest striking out "and the individual's major unusual incident prevention plan requires the provider to restore funds." The provider needs to pay that money back to the individual whether or not they include it in the prevention plan language.</p> <p>I would suggest adding additional language around misappropriation and exploitation related to these topics. And more clearly stating that if the provider does not follow this rule they will have return the money to the individual.</p> <p>There are some situations where a provider has taken advantage of their role as payee. In these cases, we add additional language to the individual's plan. We do not, however, advocate that we add this to all plans across the board.</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	<p>We appreciate your position that a provider should be held accountable, however, restoration of an individual's funds may jeopardize criminal prosecution of a perpetrator. It is the responsibility of the Investigative Agent to determine appropriate action in the major unusual incident prevention plan.</p>
<p>(P): We don't completely understand the intent of paragraph (P). Some county boards currently contract with providers to provide payee services as a standalone service in some situations. Is this section prohibiting this from occurring?</p>	Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities	<p>No; the rule does not prohibit this arrangement.</p>

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<p>(P): OPRA initiated the drafting of this rule in order to provide best practice standards in personal funds management and to provide for consistency in reviews by the Department and county boards. We continue to have concerns about the content of the rule, including the lack of delineation of representative payee duties vs. Homemaker/ Personal Care money management tasks and how these specific services will be paid for and by whom. In response to our [earlier] question concerning payment for representative payee services, the Department replied that a provider may not bill the waiver for services as defined by the Social Security Administration. This is troubling as this is current practice throughout the state. The other source of payment we believe you are referring to is payment from the individual's Social Security Administration/Social Security Income monthly check. The vast majority of individuals receiving waiver services live below the poverty line. They cannot afford to give up an additional \$35.00 a month. Another concern continues to be the lack of inclusion of a standardized review process and protocol. Current practice is that each county board (or each individual reviewer) has their own format for reviewing the personal funds service. This is because no rule currently exists. The promulgation of this rule is a great first step but does not go far enough in that there is no standardized means of assessing a provider's compliance. This will not change current review practice, which is chaotic at best. In addition, this rule provides no usable data for the field and gives little useful direction to reviewers. Providers need to know what the standards are and by what metrics they will be reviewed. Individuals and family members should be aware of the standards so that they know what to reasonably expect from their provider. We request that the Department reconvene the Personal Funds workgroup and in conjunction with stakeholders, address the money management vs. representative payee issues and develop a standardized protocol for the review of the personal funds service, such as the one used by the Social Security Administration for the review of representative payees. Until such a protocol is developed, we do not consider this rule complete and ask that it be pulled from the clearance process.</p>	<p>Anita Allen, Vice President, Ohio Provider Resource Association</p>	<p>Paragraph (P) was revised as indicated:</p> <p>When the provider has been appointed to act as the payee for the individual's benefits, the provider shall follow all requirements set forth by the governing authority (e.g., social security administration or veterans' administration) and may not request reimbursement from any other funding source for providing payee services.</p> <p>A provider may be paid for providing payee services as part of Homemaker/ Personal Care services, as identified in the individual service plan, as long as the provider is not being paid from any other source for providing payee services. A new paragraph (Q) was added to clarify the Department's position:</p> <p><u>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 provider shall not request or accept reimbursement through the individual's home and community-based services waiver for providing payee services.</u></p> <p>The Department is exploring development of a money management service under all three Medicaid waivers administered by the Department.</p>

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<p>(R): "Releasing the individual's funds <u>within three working days</u>, any balance of personal funds after deducting for actual or estimated expenses at the time the individual is no longer served by the provider..." may cause a problem for someone moving into a new situation, especially an apartment where a security deposit and/or first/last month's rent needs to be paid. This actually feels like the person has much less control over his/her funds and that the provider has much more control. Also, within the same paragraph, the provider is supposed to prepare a final itemized statement and release any remaining personal funds to the individual within 30 days. Sounds contradictory to the first part of the paragraph that the balance of personal funds needs to be released within three working days unless you mean the reconciled amount between the estimated expenses vs. actual expenses that was deducted prior to releasing the balance within the three working days?</p>	<p>Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities</p>	<p>The paragraph was revised as indicated:</p> <p>When the provider has control <u>and/or</u> possession of an individual's personal funds, the provider shall release within three working days, any balance of personal funds <u>cash</u> to the individual or the individual's guardian, as applicable, after deducting for actual or estimated liabilities <u>expenditures</u> owed by the individual, <u>within five days</u> [meaning calendar days] of the time the individual is no longer served by the provider. Within thirty calendar <u>fourteen</u> days [meaning 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.</p>
<p>(S)(1)(a): First sentence is confusing. Should it read: "The provider shall release the personal funds to the person or entity responsible for the individual's personal funds <u>estate of the individual</u> in the event of the individual's death..."</p>	<p>Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities</p>	<p>Paragraph (S)(1)(a) was revised as indicated:</p> <p>The provider shall release the personal funds to the person or entity responsible for the individual's personal funds in the event of the individual's death as identified in the individual plan or individual service plan <u>person responsible for the estate of the individual</u> if the provider receives a request for the personal funds in writing from that person within ninety days of the individual's death.</p> <p>"Person responsible for the estate of the individual" is defined in paragraph (C)(8).</p>

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<p>Former paragraph (Q): County boards are uncomfortable with this language. Individuals or guardians may ask the Service and Support Administrator to monitor personal funds. When there is an allegation of misappropriation, the county board's Investigative Agent, probably with assistance from the Service and Support Administrator, needs to audit the personal funds.</p>	<p>Lori Stanfa, Medicaid Services Coordinator, Ohio Association of County Boards Serving People with Developmental Disabilities</p>	<p>The paragraph was eliminated.</p>