

PERSONAL FUNDS OF DECEASED CLIENTS – PROVIDER OBLIGATIONS

When a client or resident passes away, DD service providers are often faced with the question of what to do with the deceased individual's personal funds. This update describes DD providers' specific responsibilities with respect to this issue and outlines what action should be taken to ensure compliance with relevant law.

1. INTERMEDIATE CARE FACILITIES FOR THE INTELLECTUAL AND DEVELOPMENTALLY DISABLED (ICFS/IDD)

In the ICF/IDD setting, the law regarding what action must be taken with respect to the personal needs allowance ("PNA") funds of deceased residents is very specific and is largely governed by the probate process.

Assuming an application for authority to administer the estate has been filed, when a deceased individual has a will, and the will is admitted to probate, the probate court appoints an executor of the estate. The executor is responsible for seeing that the estate is properly settled. When an individual dies without a will (or if the will fails to appoint an executor who is able to serve), the probate court appoints an administrator (whose duties are essentially the same as an executor). When the appointment of an executor or administrator is complete, the court will send the executor or administrator a written authorization to act on behalf of the estate. This authorization is called "Letters of Authority." When an estate is below a certain amount, an authorized party may also file a request with the court that the estate be resolved without the regular process of administration, which is called an "application for release from administration."

As a general rule, an ICF/IDD may not retain the money in a resident's PNA account longer than thirty days following the resident's death if a Letters of Authority have been issued, or if an application for release from administration has been filed within that thirty-day period. If one of these documents has been issued or filed within thirty days of the resident's death, providers are required to transfer the funds in a deceased resident's PNA account, as well as a final accounting of those funds, to the administrator, executor, or person who filed the application for release from administration.

If a provider receives notice that Letters of Authority have been issued or an application for release from administration has been filed within sixty days of the resident's death, the same procedure should be followed; that is, the resident's PNA account funds and a final accounting of those funds should be transferred to the administrator, executor, or person who filed the application for release from administration. However, if Letters of Authority concerning the resident's estate are not issued or an application for release from administration is not filed within sixty days, and if the resident was a recipient of Medicaid benefits, providers are required to transfer all of the resident's PNA account

funds to ODJFS no earlier than sixty and no later than ninety days after the resident's death. PNA account funds transferred to ODJFS must be paid by check or money order made payable to "Attorney General of Ohio" and accompanied by a completed ODJFS "Personal Needs Allowance Account Remittance Notice" (Form 09405). The payment and completed form should then be mailed to the Ohio Attorney General's office.

If funeral or burial expenses for a deceased resident have not been paid within sixty days of the resident's death, and the only resource left to pay those expenses are the resident's PNA account funds, or all other resources of the resident are inadequate to pay the full amount, the resident's PNA account funds may be used to pay the expenses and do not need to be transferred to ODJFS.

2. LICENSED RESIDENTIAL FACILITIES AND UNLICENSED SETTINGS

The law regarding the distribution of the personal funds of individuals who live in licensed residential facilities that are not also certified as an ICF/IDD is less specific than the law applicable to ICF/IDD residents' PNA funds. It requires that, "in the event of an individual's death and when the licensee has control and/or possession of an individual's personal funds, the licensee shall dispose of the individual's funds in accordance with state regulations and shall document such disposition." Unfortunately, at this time, there are no specific requirements found in DD law relative to the disposition of client funds in a licensed non-ICF/IDD setting.

For an unlicensed setting, Ohio law is silent as to client funds. Although there is no ODODD specific law or rule regarding a provider's obligations for licensed non-ICF/IDD providers and for unlicensed facilities, the Department suggests that the safest course of action is for licensed and unlicensed providers to follow similar procedures to those identified in the law for ICF/IDD's. Accordingly, if a provider receives notice that Letters of Authority have been issued or an application for release from administration has been filed regarding the resident's death, the resident's personal funds and an accounting of those funds should be transferred to the administrator, executor, or person who filed the application for release from administration. If Letters of Authority concerning the resident's estate are not issued or an application for release from administration is not filed, we suggest that providers wait to hear from the executor, administrator, or probate court for further guidance regarding the disposition of various assets from the estate, including any payments that might be owed to ODJFS, as the law is silent as to payments to ODJFS for individuals who resided in non-ICF/IDD settings or unlicensed settings.

For all settings, there may be tasks that may need to be completed in order to wind up a deceased individual's affairs. A provider may not bill Medicaid for services performed once an individual is deceased. Therefore, we recommend that those tasks either be

performed by the SSA, or that the provider be reimbursed for these types of non-Medicaid services from their local County Board out of local funds.