

30-10-11. Personal needs fund. (a) At the time of admission, each nursing facility provider shall furnish each resident and the resident's representative, if any, with a written statement that meets the following requirements:

(1) Lists all services provided by the provider, distinguishing between those services included in the provider's per diem rate and those services not included in the provider's per diem rate that can be charged to the resident's personal needs fund;

(2) states that there is no obligation for the resident to deposit funds with the provider;

(3) describes each resident's right to select one of the following alternatives for managing the personal needs fund:

(A) The resident or the resident's legal guardian, if any, may receive, retain, and manage the resident's personal needs fund;

(B) the resident may apply to the social security administration to have a representative payee designated for federal or state benefits to which the resident may be entitled; or

(C) except when paragraph (B) of this subsection applies, the resident may designate, in writing, another person to act for the purpose of managing the resident's personal needs fund;

(4) states that any charge for management of a resident's personal needs fund is included in the provider's per diem rate;

(5) states that any late fees, interest, or finance charges shall not be charged to the resident's personal needs fund for late payment of the resident liability;

(6) states that the provider is required to accept a resident's personal needs fund to hold, safeguard, and provide an accounting for it, upon the written authorization of the resident or representative, or upon appointment of the provider as the resident's representative payee; and

(7) states that, if the resident becomes incapable of managing the personal needs fund and does not have a representative, the provider shall be required to arrange for the management of the resident's personal funds as provided in subsection (j) .

(b)(1) The provider shall, upon written authorization by the resident, accept responsibility for holding, safeguarding, and accounting for the resident's personal needs fund. The provider may make arrangements with a federally insured or state-insured banking institution to provide these services. However, the responsibility for the quality and accuracy of compliance with the requirements of this regulation shall remain with the provider. The provider shall not charge the resident for these services.

Routine bank service charges shall be included in the provider's per diem rate and shall not be charged to the resident. Overdraft charges and other bank penalties shall not be allowable.

(2) The provider shall maintain current, written, and individual records of all financial transactions involving each resident's personal needs fund for which the provider has accepted responsibility. The records shall include at least the following:

- (A) The resident's name;
- (B) an identification of the resident's representative, if any;

(C) the admission date of the resident;

(D) the date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds, and the balance after each transaction;

(E) receipts indicating the purpose for which any withdrawn funds were spent;

and

(F) the resident's earned interest, if any.

(3) The provider shall provide to each resident reasonable access to the resident's own financial records.

(4) The provider shall provide a written statement, at least quarterly, to each resident or representative. The statement shall include at least the following:

(A) The balance at the beginning of the statement period;

(B) total deposits and withdrawals;

(C) the interest earned, if any; and

(D) the ending balance.

(c) Commingling prohibited. The provider shall keep any funds received from a resident for holding, safeguarding, and accounting separate from the provider's operating funds, activity funds, and resident council funds and from the funds of any person other than another resident in that facility.

(d) Types of accounts; distribution of interest.

(1) Petty cash. The provider may keep up to \$50.00 of a resident's money in a non-interest-bearing account or petty cash fund.

(2) Interest-bearing accounts. The provider shall, within 15 days of receipt of

the money, deposit in an interest-bearing account any funds in excess of \$50.00 from an individual resident. The account may be an individual account for the resident or may be pooled with other resident accounts. If a pooled account is used, each resident shall be individually identified on the provider's books. The account shall be in a form that clearly indicates that the provider does not have an ownership interest in the funds. The account shall be insured under federal or state law.

(3) The interest earned on any pooled interest-bearing account shall be distributed without reductions in one of the following ways, at the election of the provider:

(A) Prorated to each resident on an actual interest-earned basis; or

(B) prorated to each resident on the basis of the resident's end-of-quarter balance.

(e) The provider shall provide the residents with reasonable access to their personal needs funds. The provider shall, upon request or upon the resident's transfer or discharge, return to the resident, the legal guardian, or the representative payee the balance of the resident's personal needs fund for which the provider has accepted responsibility, and any funds maintained in a petty cash fund. When a resident's personal needs fund for which the provider has accepted responsibility is deposited in an account outside the facility, the provider, upon request or upon the resident's transfer or discharge, shall within 15 business days return to the resident, the legal guardian, or the representative payee the balance of those funds.

(f) If a provider is a resident's representative payee and directly receives

monthly benefits to which the resident is entitled, the provider shall fulfill all of its legal duties as representative payee.

(g) Duties on change of provider.

(1) Upon change of providers, the former provider shall furnish the new provider with a written account of each resident's personal needs fund to be transferred and shall obtain a written receipt for those funds from the new provider.

(2) The provider shall give each resident's representative a written accounting of any personal needs fund held by the provider before any change of provider occurs.

(3) If a disagreement arises regarding the accounting provided by the former provider or the new provider, the resident shall retain all rights and remedies provided under state law.

(h) Upon the death of a resident who is a recipient of medical assistance, the provider shall take the following actions:

(1) The provider shall in good faith determine or attempt to determine within 30 days from the date of death whether there is a surviving spouse, minor or disabled children, or an executor or administrator of the resident's estate.

(A) If there is an executor or an administrator, the provider shall contact the executor or administrator and convey the monies in the personal needs fund as the executor or administrator directs.

(B) If there is no executor or administrator but there is a surviving spouse, the provider shall contact the surviving spouse and convey the monies in the personal needs fund as that surviving spouse directs.

(C) If there is no executor or administrator or surviving spouse, but there are minor or disabled children, the provider shall contact the guardian or personal representative of the minor or disabled children or, if appropriate, the adult disabled children and convey the monies in the personal needs fund as that person directs.

(D) If there is no surviving spouse, minor or disabled children, or executor or administrator, the provider shall convey within 30 days the personal needs fund to the estate recovery unit, which shall be responsible for notifying the appropriate court or personal representative of the receipt of the monies from the personal needs fund of the resident.

(2) The provider shall provide the estate recovery unit with a written accounting of the personal needs fund within 30 days of the resident's death. The accounting shall also be provided to the executor or administrator of the resident's estate, if any; the surviving spouse, if any; the guardian or representative of the surviving minor or disabled children, if any; the personal representative of the resident, if any; and the resident's next of kin.

(i) The provider shall purchase a surety bond and submit a report on forms designated by the state licensing agency. The provider shall give assurance of financial security in an amount equal to or greater than the sum of all residents' funds managed by the provider at any time .

(j) If a resident is incapable of managing the resident's personal needs fund, has no representative, and is eligible for supplemental security income (SSI), the provider shall notify the local office of the social security administration and request that

a representative be appointed for that resident. If the resident is not eligible for SSI, the provider shall refer the resident to the local agency office, or the provider shall serve as a temporary representative payee for the resident until the actual appointment of a guardian, conservator, or representative payee.

(k) Resident property records.

(1) The provider shall maintain a current, written record for each resident that includes written receipts for all personal possessions deposited with the provider by the resident.

(2) The property record shall be available to the resident and the resident's representative.

(l) Providers shall keep all personal needs funds in the state of Kansas.

(m) Personal needs funds shall not be turned over to any person other than a duly accredited agent or guardian of the resident. With the consent of the resident, if the resident is able and willing to give consent, the administrator shall turn over a resident's personal needs fund to a designated person to purchase a particular item. However, a signed, itemized, and dated receipt shall be required for deposit in the resident's personal needs fund envelope or another type of file.

(n) A receipt for each transaction shall be signed by the resident, legal guardian, conservator, or responsible party. Recognizing that a legal guardian, conservator, or responsible party is not necessarily available at the time each transaction is made for or on behalf of a resident, the provider shall have a procedure that includes a provision for receipts to be signed on at least a quarterly basis.

(o) The provider shall provide and maintain a system of accounting for expenditures from the resident's personal needs fund. This system shall follow generally accepted accounting principles and shall be subject to audit by representatives of the agency.

(p) Suspension of program payments may be made if the agency determines that any provider is not in compliance with the regulations governing personal needs funds. Thirty days before suspending payment to the provider, written notice shall be sent by the agency to the provider stating the agency's intent to suspend payments. The notice shall explain the basis for the agency's determination and shall explain the necessary corrective action that shall be completed before payments are released.

(q) This regulation shall be effective on and after May 1, 2005. (Authorized by and implementing K.S.A. 39-708c; effective E-74-43, Aug. 16, 1974; effective, E-74-44, Aug. 28, 1974; effective May 1, 1975; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended May 1, 1992; amended Jan. 4, 1993; amended Jan. 3, 1994; amended July 1, 2002; amended May 1, 2005.)