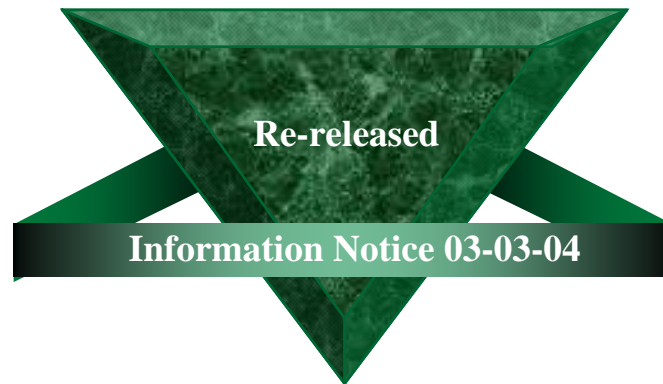




Ohio Department of Mental Retardation and Developmental Disabilities

Ted Strickland, Governor

John Martin, Director



To: CBMR/DD Superintendents
COG Directors
SSA Directors
Providers

From: Greg A. Mason, Deputy Director
Office of Audits
Division of Legal, MUI, and Audits

Date: December 11, 2008

Re: Oversight and Documentation of Individual Funds

As partners in serving individuals with disabilities, we know the importance of providing monitoring and oversight of an individual's personal funds, regardless of where the individual lives (licensed or non-licensed setting). This information notice has been reissued with these purposes in mind: 1) It provides references to provisions in the Ohio Administrative Code (rules) that apply to the procedures and practices required of licensed providers for the oversight and management of an individual's personal funds and how to best comport with those requirements; 2) County boards and providers should use the same criteria, policies and procedures identified in this notice to establish 'best practices' when developing the service parameters and responsibilities within service plans for individuals that live in non-licensed settings when those plans include the provider's management of an individual's personal funds, and 3) to address the increased purchase and use of gift cards by and on behalf of individuals.

Ohio Administrative Code (OAC) 5123:2-3-14 (Licensure Rule)

This Administrative Code Section prescribes the licensee's responsibilities when interaction with the personal funds occurs as it relates to individuals living in a licensed facility. The vast majority of audit findings and licensure rule citations that have been issued in the past were a result of noncompliance with various sections of the aforementioned code. The information contained within this notice will help licensees' eliminate some of the noncompliance issues that may result in future citations and findings.

Key provisions of the rule include:

- Personal funds are the exclusive property of the individual to use as he/she chooses to purchase goods and services of his/her choice after all other individual obligations have been met (for example: room & board expenses and/or patient liability). When the contract is silent in regard to identifying specific room and board costs or is not clearly written, the licensee has no authority to use any of the individual's funds to offset the room and board costs. The written informed consent of an individual is inherent in this principle. Personal funds may consist of earned and unearned income. Generally, earned income consists of wage earnings (outside employment) and/or workshop earnings. Unearned income may consist of SSI, SSA, VA, donations, inheritance, contributions, gifts and bequests, food stamps, etc. [O.A.C. 5123:2-3-18(B) or 5101:1-39-15] (Please note that the examples of income listed above are not all inclusive.)
- Misappropriation is defined as depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Ohio Revised Code, including Chapters 2911. and 2913. of the Revised Code. [OAC 5123:2-17-02].
- In a non-ICF/MR licensed facility, the individual's obligation for room and board payments should be stated in the contract between the County Board and the licensee as a fixed rate. The cost categories that make up the room and board cost should be identified in the contract (e.g., food, shelter, utilities, general telephone expenses, supplies, etc.). This will help eliminate the confusion between what should have been a licensee expense vs. an individual's expense and avoid any potential finding against a licensee. The contract should be specific enough for a reader to determine if the individual is responsible for items such as the cost of the long distance portion of the phone bills. [OAC 5123:2-3-18(B)]
- The licensee shall not use the funds of the individual or require an individual to use personal funds to purchase items that are reimbursed by the respective funding sources of the licensee. [O.A.C. 5123:2-3-14(D)]
- Assessment(s) should indicate the ability of the individual to manage his/her personal funds. The IP should be developed based on these assessments, indicating the parameters of the assistance to be provided to the individual regarding personal funds. [O.A.C. 5123:2-3-14(H)]
- Written policies and procedures should be in place to identify guidelines to be followed for maintaining and accounting for an individual's personal funds. The guidelines should be as detailed as possible to ensure that management's objectives and goals are maintained. Staff should be trained in the types of incidents involving individual funds that constitute an MUI.
- A licensee's interaction with the individual's personal funds depends upon the degree of the individual's ability to manage his/her funds as detailed in the IP. The following

documentation of purchases and maintenance of records requirements are stipulated when a licensee has control and/or possession of the individual's funds. [O.A.C. 5123:2-3-14(J)]

- 1) A bank account(s) should be established for each individual's personal funds. If several individuals' funds are combined into a single bank account, more care is required in that the licensee would need to account for each individual's funds and allocate any interest to each individual proportionate to the amount of funds maintained for each individual. [O.A.C. 5123:2-3-14(J)(1)]
- 2) The individual's personal funds transaction record should contain the following criteria in the maintenance of those funds: [O.A.C. 5123:2-3-14(J)(2)]
 - a) the individual's name
 - b) the amount and date funds were received and/or disbursed
 - c) the source of the funds received
 - d) the signature or initials of the person debiting/crediting the account
 - e) the amount withdrawn and date of withdrawal
 - f) the signature of the person receiving the debited amount, unless electronically withdrawn
 - g) checking and/or savings accounts should be balanced on a periodic basis, normally monthly, to the bank statements
 - h) cash maintained in the facility for use by the individual(s) should be balanced as funds are disbursed and as any change is returned
 - i) licensee personnel, other than the employee who maintains the transaction record, should balance the individual's personal funds transaction record at least once every sixty days. The employee who performed the reconciliation should initial and date the reconciliation document and note any discrepancies by type and amount.
- 3) Personal funds received on behalf of an individual by the licensee should be made available to the individual within five working days from the date received by the licensee. This includes earned income where the licensee handles the individual's paycheck. [O.A.C. 5123:2-3-14(J)(3)]
- 4) When personal funds are expended by the licensee on behalf of the individual, a receipt should accompany the expense. At a minimum, the receipt should contain the following: [O.A.C. 5123:2-3-14(K)]
 - a) a description of the item purchased
 - b) the date of purchase
 - c) the amount of the expense

Note: If a third party receipt is not available, other proof of purchase should be provided (i.e., a handwritten note/receipt containing the elements noted above, signed by the individual and the licensee).

- 5) When the individual expends personal funds on his/her own behalf, a receipt should be required for any single expenditure exceeding \$50. As noted above, when a receipt is unavailable, the licensee should try to obtain other proof of purchase, for example: verification/letter from vendor noting what was purchased and amount of purchase, loan agreements, contracts, or timely entry to individual's inventory record of item(s) purchased, etc. Unless the ISP states a minimum amount that can be spent by the individual without a receipt, a receipt is required for all purchases. [O.A.C. 5123:2-3-14(L)]

- ***Automated Teller Machines (ATM's)***

ATM's are raising concerns of how to properly validate this type of transaction activity. Individual's bank accounts can be accessed with debit and/or credit cards for cash advances. It is possible that an individual could have his/her ATM card stolen and the perpetrator may not only try to steal cash from the individual's account, but may even try to apply for a separate card assuming the identity of the individual.

Tighter fiscal accountability measures need to be implemented to protect individuals' personal funds. Individuals' ATM cards need to be properly accounted for and protected. The individual's personal identification number (PIN) access code needs to be properly secured. Possible controls that can be established should include, but are not limited to, the following:

- 1) lock the ATM card in a safe or locking filing cabinet when not in use
- 2) secure the personal identification number (PIN) so that a very limited number of staff that work directly with the individual have access to it
- 3) maintain a sign out/in sheet for the ATM card so a staff member becomes responsible for it when it is removed from the facility
- 4) require the staff member and individual sign the ATM receipt acknowledging the cash withdrawals of funds
- 5) establish a system to ensure that purchases made with ATM funds are supported by receipts
- 6) perform a monthly reconciliation of the account to which the ATM card is attached by someone other than the staff member that takes care of the individual
- 7) ATM transactions should be documented using the same criteria as discussed in the previous section regarding non-ATM transactions

Some possible, but not all, inclusive indicators (red flags) that an individual's funds may be subject to theft or fraud are:

- 1) unexplained ATM withdrawals
- 2) a pattern of ATM withdrawals at the maximum amount allowed

- 3) individual's mailing address has been changed
- 4) issuance of replacement cards with a new PIN

- ***Gift Cards***

The use of gift cards for personal use and as gifts is becoming more popular but can also be an area of financial vulnerability for those we serve. Gift cards, which are redeemable for goods and/or services and carry a value equivalent to cash, can be easily misused if appropriate tracking mechanisms are not in place. Since gift cards do not typically identify the individual they are intended for, these cards can be used by anyone in possession of the card or even the card number. Recommended strategies for ensuring appropriate use of gift cards can include, but is not limited to:

- 1) Keep gift cards and the activation receipts from the purchase of the cards in a secure location as you would cash.
- 2) Treat gift card balances as cash and log usage on a financial transaction record. If the individual you are supporting is giving a gift card, make a notation of the amount of gift card, the name of recipient and the date it was given.
- 3) Make a record of gift card purchases including the gift card number and maintain a receipt of the purchase(s) made with the gift card. Many retailers can track where and when gift cards are used. If stolen, you can contact the company and in some cases, the retailer will replace the card if you have the receipt.
- 4) If possible, register the gift card on the company's website as a way to protect the gift card in case of theft or loss.
- 5) When assisting with a purchase of a gift card, examine the package (especially those sold on publicly displayed racks). If the card's PIN number is visible, put the card back and choose a different one. PIN numbers can be copied from gift cards and thieves can periodically check to see if the card has been purchased/activated and use the PIN number online to make purchases.

- ***Rewards Cards***

The practice of employees using their own personal reward cards when purchasing groceries and other items for individuals resulting in discounted gas, food or other items to benefit the employee is strongly discouraged. It is important that individuals have the opportunity to choose where they want to shop and make these choices independently.

- ***Management of Personal Funds***

When an individual needs assistance in the management of his/her personal funds, the licensee's interaction with such funds is measured by the specific amount of assistance that is to be given to the individual, as specified in the IP. It is essential that the IP clearly indicate the type and amount of assistance to be given by the licensee and that the licensee provides such services within the framework of the IP's specifications. If the individual and their team so choose, the individual can elect that the plan identify an amount of money that the provider can spend on behalf of the individual for discretionary expenditures. A licensed provider must ensure that discretionary funds are not used for items that are required of the Licensee, as listed in the first part of this notice.

Additionally, it is required that these expenditures be made in accordance with Licensure rule 5123:2-3-14, which describes the standards of accountability of the licensee when handling an individual's personal funds.

The amount of assistance by the licensee can vary from minor assistance in specified situations to complete assistance when the licensee expends funds on the individual's behalf and exerts control of the individual's funds. The amount of scrutiny by the Department will vary in direct relationship to the amount of interaction between the licensee and the individual's personal funds. When contradictions are evident between the IP's specifications of assistance and the licensee's action, the licensee should seek assistance from the CBMR/DD to ensure the IP's specification and what is provided coincide.

When the provider also acts as a payee for the individual they are serving, they have the ability to make decisions regarding how an individual uses Social Security benefits to secure food, clothing and shelter. A payee does not have the ability to make decisions about the use of personal funds or wages. If the Licensee is the payee, it is strongly recommended that the IP clearly indicate an amount that the payee can spend on behalf of the individual without specific team approval.

Overpayments made to individuals should result in a team meeting. The team should discuss the amount of the over payment and how it should be spent.

- ***Financial Training for Individuals***

The amount and degree of training should be determined by the individual's needs (as determined by the Level of Care Assessment and other assessments) and their desire to participate in managing their personal financial affairs, as detailed in their IP. The specific services/training goals should be detailed in the IP.

- ***Limited Guardianship***

Limited Guardianship is a tailored guardianship, that is, each individual who is to be a Ward in Limited Guardianship has different areas that need the oversight of another person because the individual is not legally capable of dealing with those challenges (See Ohio Revised Code Section 2111.02(B)(1). For example:

"Sam", who may need help going to the doctor and deciding whether to undergo certain medical treatments, MAY have a limited guardianship authorizing the court-appointed guardian to ensure that Sam gets to the doctor and that any proposed treatment is given proper consideration with regard to the risks and benefits before an informed consent to undergo such treatment is given. Sam's guardian is limited to acting upon only those areas described in the limited guardianship as filed in the probate court. The guardian cannot, for example, make any decisions regarding Sam's bank account or any of Sam's decisions affecting where to live or whether to take a vacation.

On the other hand, "Joe" may need help in monitoring his finances so that he is not victimized due to his incapacity to recognize financial scams. Joe's limited guardianship would allow the court-appointed guardian the right to make decisions on Joe's behalf with regard to his finances in certain specified areas. Unless the limited guardianship noted any other areas in which Joe was considered legally incapable of handling, Joe's guardian does not have the authority to go beyond the specified area of financial decisions on his behalf.

Each limited guardianship is specific to the individual. If the guardian has authority to make certain specified decisions about the individual's funds (a limited guardianship of the person's "estate"), then the guardian has the power to determine how the individual's funds are handled, but only in those specified areas. A licensee shall not be granted guardianship over the individual they serve since that would be a conflict of interest (and it would contravene the restriction established in Section 5123.93, Revised Code).

The provider shall follow the requirements of the Ohio Administrative Code when managing an individual's funds regardless if the individual is their own guardian or has a court-appointed limited guardian.

Frequently Reported Licensure Citations and Audit Findings

The Department has summarized some of the more frequent licensure citations and audit findings below to help provide assistance in the area of individuals' personal funds. The following scenarios represent some of the more frequent problem areas that have been noted by the Department in its review of individual fund records. The noted problem areas should help the licensee in organizing an individual's records.

1. Room and board expense – excess earnings

In non-ICF/MR licensed facilities, there have been occasions when an individual's monthly resources (earned and unearned income) for various month(s) exceeded the room and board expense for those months. The excess earnings were not returned to the individual. Personal funds are the exclusive property of the individual to use as he/she chooses to purchase goods and services of his/her choice. Any excess earnings, after all appropriate obligations have been deducted, should be returned to the individual.

The Department has noted instances where a licensee has determined room and board expense based on actual costs. The problem has been that the licensee did not maintain the appropriate receipts, such as utility bills, rental agreements, etc., as supporting documentation for the amounts charged to the individual's personal funds. Audit findings have been issued and have been upheld in O.A.C. 5123:2-17-01 hearings in favor of the individual for various room and board expenses that were not properly supported by receipts. If room and board expenses are being charged to the individual based on actual costs, the licensee must maintain the appropriate receipts as supporting documentation.

2. Receipts for individual expenses are not kept by the licensee when required

If the IP indicates that the individual needs assistance with the purchase of goods or services and the licensee in any way controls or manages those funds, personal funds expended by the licensee on behalf of an individual must be accompanied by a receipt for the expenditure. At a minimum, Ohio Administrative Code 5123:2-3-14 (K) states: “The receipt shall identify the item(s) procured, the date, and the amount of the expenditure. The licensee shall obtain other proof of purchase if a receipt is unavailable”. There have been numerous findings and citations as a result of the licensee maintaining inadequate receipts based on this requirement.

Only when the IP indicates that the individual is capable of independently managing his/her funds, are no receipts required. The IP should outline the parameters of such spending. For example:

John will be given \$25 each week to spend independently on personal items of his choosing that do not require a receipt.

In this case, the \$25 given to John must be documented in his account as given to John by staff person Bill on March 25, 2008. However, receipts for the \$25 do not need to be kept.

In another situation, however, based on how the IP is written, the requirements would be different as follows:

Staff will accompany John weekly to the mall where he will choose personal items for up to \$25. Staff will pay for the items.

In this case, since the licensee is actually managing John’s money, receipts would be required for all purchases made with John’s money.

Note: Licensure rules require that receipts must be maintained for all purchases, unless otherwise indicated in the IP. Any single expenditure of \$50 or more needs to be accompanied by a receipt regardless if the IP indicates that the individual is independent in maintaining his/her own funds.

3. The services in the IP are not consistent with the assessment

For example, the assessments indicate that John is capable of handling his funds independently. The IP, however, indicates that staff will go shopping with John monthly to buy personal items. When contradictions like this are present, for the protection of the individual, the Department will apply the most conservative standard when conducting a review. In this case, receipts would be required for any of the expenditures by staff for John, even if John is present when the purchase is made. (See above example).

4. **Consents for purchases not evident**

The IP should clearly indicate when an individual has agreed to pay for specific items and the cost categories that are included as room and board. Examples of this include payments for medical services, supplies and/or equipment, household items, repair and maintenance costs of the facility and personal items (personal hygiene, over the counter medication, etc.). Anything that is considered beyond a routine expense should be identified in the IP.

5. **Individual funds are not made available to the individual within five working days of the licensee's receipt of the funds**

This requirement applies to earned income as well as unearned income such as SSI, SSA and other benefits. If a licensee is the payee for benefits and those funds are sent to a central or corporate location, the licensee is still responsible to ensure that the funds are credited and made available to the individual's account within five working days of receipt. If the licensee handles the individual's paycheck, it must be deposited into his/her account or otherwise given to the individual within the five working day requirement.

6. **On occasion, withdrawals made from an individual's account by the licensee are not always properly supported by documentation**

For example, a withdrawal of \$100 is made from an individual's account (petty cash, savings, or checking) and the withdrawal slip for \$100 is properly approved by the licensee and/or individual. The licensee uses the withdrawal slip as the receipt. If the personal funds are expended by the licensee on behalf of the individual, the licensee would still need to maintain receipts for all purchases made with the \$100. Withdrawing funds from a bank account is not a purchase and the withdrawal slip does not indicate how or for what the funds were used. If the individual is identified as independent in the IP and expends personal funds on his/her own behalf, receipts would only be required for a single expenditure of \$50 or more unless otherwise specified in the IP. If receipts are missing or withdrawals were not properly documented, the funds will be considered to have been improperly removed and any amounts withdrawn or unaccounted for must be reimbursed to the individual. To help avoid audit findings or citations, the licensee needs to adhere to the receipt requirements in O.A.C. 5123:2-3-14.

7. **Use of personal funds for vacations**

The IP should clearly indicate when an individual contributes to the cost of a vacation (that includes both the individual's and guardian's costs). This includes costs associated with paying staff, travel and lodging for the individual and any staff. *If the waiver is being billed for services during the vacation, no additional payments can be made by the individual for staff costs.* The IP should indicate the time and duration of the vacation and include the individual's desire and written consent to go on the vacation and expend the indicated costs. The requirement with regards to maintaining receipts also applies to this

situation for items purchased on vacation. Receipts may include ticket stubs, handwritten receipts or other items to document expenditures.

Note: If handwritten receipts or other items are required to document the expense, the receipt must identify the item(s) procured, the date, the amount of the expenditure, and the signature of the individual and licensee, where applicable.

8. Account transaction record

Individual account transaction records(s) do not always contain a record of the expense charged to the individual's personal funds, or it only contains partial entries (no description or a partial description, change from the purchase was not recorded in the individual's personal records as returned). Beginning and/or ending ledger/account balances were not always in agreement from month to month. It is important that the frequency of the reconciliation of the recorded balance to the actual funds available be performed timely as required. This will help the licensee to reconcile the account transaction record and make the appropriate adjustment/corrections in a timely manner. The longer an error goes undetected, the more effort will be required to correct the problem(s) found. The licensee will be responsible for reimbursing the individual if the transaction record and actual funds of the individual are not in agreement.

9. Clothing and personal belongings

Individual clothing and personal belongings inventory are sometimes not posted to the individual's inventory listing in a timely manner. O.A.C. 5123:2-3-12(C) (3) requires that any single item with a purchase price of \$50 or more shall be added to the individual's inventory record when acquired. Clothing and personal belongings purchased, whether a receipt is maintained or not, should be added to the inventory.

Summary

It is the provider's responsibility to maintain individual funds and personal items in accordance with the requirements established in OAC 5123:2-3-14 and 5123:2-3-12. The information provided above should give licensees additional insight to potential problems found in previous reviews that may be avoided in the future.

Should the licensee, their Independent Public Accountant, or the county mrdd board wish to perform a review on an individuals' record(s), the Department will provide its audit protocols and technical assistance in the performance of those reviews.

It is equally important that the individual's IP be as specific as possible in identifying the financial capabilities of the individual. The IP should also identify transaction/activities that will be expensed/paid for by the licensee versus those expensed/paid for by the individual. This process will help eliminate the issues found in previous individual fund reviews. The

individual's financial management capabilities need to be clearly explained to avoid areas of misinterpretation and disagreement.

The goal in providing the above information is to identify potential problem areas that will ultimately benefit individuals to further ensure that their personal funds have been properly maintained and accounted for.

If you have any questions, please contact Greg Mason, Office of Audits at 614-728-0125 or Kelly Miller, Office of Provider Standards and Review at 614-728-2520.