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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 94 ADM-17

TO: Commissioners of
 Social Services

DIVISION: Health & Long
 Term Care

DATE: October 25, 1994

SUBJECT: Treatment of Personal Needs Allowance of Institutional
 Persons and Disposition Upon Death

SUGGESTED
 DISTRIBUTION: Directors of Medical Assistance
 Staff Development Coordinators

CONTACT
 PERSON: For additional information, contact Barbara Crumb at
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ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
88-INF-12 92-ADM-53	75-ADM-120	10 NYCRR 415.26(h) (5)	369(b)(i) & (ii) 42 CFR 438.10 Article 13 SCPA		

I. PURPOSE

The purpose of this Administrative Directive is to provide instructions concerning the treatment of the Personal Needs Allowance (PNA) by both the social services district and the nursing facility in one source. This directive also summarizes requirements and responsibilities concerning treatment of PNA funds on deposit with a nursing facility upon the discharge, transfer, or death of a Medical Assistance (MA) recipient who is an in-patient in a nursing facility.

II. BACKGROUND

Previously, the Department issued a number of releases regarding PNAs, discussing the responsibilities of both the facility and the social services district, the rights of the recipient with respect to use of PNA funds on deposit with the nursing facility, and the disposition of those funds upon the recipient's death. Since these releases were issued, there have been changes to the Department of Health regulations and the Surrogate Court Procedure Act (SCPA) regarding maintenance and disposition of PNA funds.

III. TREATMENT OF PNAs BY NURSING FACILITIES

A. Nursing facility responsibilities

1. Offer each resident who is an MA recipient (or his or her representative payee) the choice of managing his or her own PNA or placing the funds into an interest bearing account managed by the nursing facility.
2. When the recipient selects the nursing facility to manage his or her PNA funds, the nursing facility must:
 - a. Maintain an accurate accounting regarding the nature and dates of all deposits and withdrawals, including accumulated interest and current balance.
 - b. Document all transactions from the account.
 - c. Report to the social services district on a quarterly basis regarding each account maintained by the facility. The report must include the patient's case number, case identification number (CIN), last quarter balance, total receipts, total expenditures, and current balance.

- d. Abide by the Department of Health regulations that require the nursing facility to notify a recipient when the amount in the account reaches \$200 less than the SSI resource level for one person. They must also advise the recipient that if the amount in the account in addition to the value of other non-exempt resources reaches the SSI resource limit for one person, they may lose eligibility for SSI or MA.

B. Social services district responsibilities

1. Ensure that the amount of the PNA, in addition to any other non-exempt resources held by the patient, does not exceed the allowable resource level. (The WINR6222 Report, Excess Resource PNA Report, is available to assist districts.)
2. Make arrangements to have the nursing facility notify them at the same time they notify the recipient that the resource level may be approaching the allowable maximum. The requirements imposed by the Department of Health regulations should ensure that this notification will provide sufficient time for the social services district to take necessary action by reviewing the case, and determining the recipient's total resources. If appropriate, the social services district should advise the recipient or his or her representative to expend the resources for the benefit of the recipient.

IV. DISPOSITION OF PNA FUNDS MANAGED BY THE NURSING FACILITY:

- A. Discharge: Upon discharge, the facility shall provide the patient with a final accounting statement and a check in the amount of his close out balance
- B. Transfer: A patient being transferred to another facility shall have the option of following the above procedure, or of authorizing the facility to transfer the balance in the account to the new facility.
- C. Death: Under Section 369(2)(b)(i) and (ii) of the Social Services Law (SSL), as amended by Section 451 of Chapter 170 of the Laws of 1994, a social services district must recover the costs of MA correctly paid on behalf of the recipient from the estate of a recipient who was 55 years of age or older, if there is no surviving spouse, child under age 21, or child who is certified blind or certified disabled. This recovery is limited to the amount of MA paid out during the 10 years preceding the individual's death.

PNA funds on deposit with a nursing facility generally are payable to the estate of a deceased recipient. Generally there can be no distribution of a decedent's estate, and thus no recovery from an estate or payment of funds to the estate until a fiduciary has been appointed. (A fiduciary is an individual duly appointed to handle the financial affairs of another individual.) Federal regulations at 42 CFR 483.10(c)(6) require a nursing facility to convey any PNA funds on deposit, together with a final accounting of the funds, to the individual or probate jurisdiction administering the recipient's estate, within 30 days of the recipient's death. However, it is generally unlikely that an administrator or executor would be formally appointed to serve by the Surrogate Court within the 30 days following the recipient's death.

Estates of more than \$10,000 do not qualify for settlement without court administration, and require appointment of an executor or administrator by the Surrogate Court before any payments of PNA funds on deposit may be made by the nursing facility to the estate.

Estates in which the gross value of the decedent's individually owned personal property is \$10,000 or less may be settled without court administration under Article 13 of the SCPA. For purposes of this directive, personal property is defined as anything owned by the A/R except real property.) The nursing facility may convey PNA funds on deposit to the estate within 30 days of the recipient's death in these cases.

1. Under Article 13 of the SCPA, estates may be settled without the formality of court administration by an executor or voluntary administrator appointed under Section 1303 of the SCPA. If the decedent had a will, the executor or alternate executor named in the will has the first right to act as the voluntary administrator.
If the decedent did not have a will, certain relatives in an order specified in the SCPA are entitled to act as a voluntary administrator, with the decedent's spouse given first preference. If there is no executor or relative willing or able to act as voluntary administrator, the chief fiscal officer of the county, or in New York City the Borough Public Administrator, may act in that capacity.
2. Under Section 1310(3) of the SCPA, the nursing facility also can pay not more than \$15,000 on deposit to any of the following people: the recipient's surviving spouse, one or more of their children age 18 or older, brother sister, father mother, niece nephew, creditor of the decedent, or any person who has paid or incurred the decedent's funeral expenses upon the request of the surviving spouse or aforementioned relatives. Payment may be made upon an affidavit submitted by one of the aforementioned relatives upon whose request payment is made. The affidavit must contain the following statements:

- the decedent's date of death;
- the relationship of the person making the affidavit to the decedent;
- that no fiduciary has been qualified or been appointed;
- the names and addresses of the persons entitled to and who will receive the funds paid; and
- that the payment being made and any other payments by the nursing facility by all debtors known by the person making the affidavit, after diligent inquiry do not exceed \$15,000 in the aggregate.

Under Section 1310(4) of the SCPA, in cases where the decedent did not leave a surviving spouse or minor child and less than \$5,000 is owed by the nursing facility to the estate, when six months have passed from the date of death the nursing facility can pay up to \$5,000 to the decedent's heir, creditor, or any person who has paid or incurred the decedent's funeral expenses. The person to whom the funds are to be paid must make an affidavit establishing:

- the decedent's date of death;
- that a fiduciary has not been appointed or qualified to serve;
- that the person making the affidavit is entitled to payment;
- that the decedent was not survived by a spouse or minor child; and
- that the payment and all other payments made under Section 1310 of the SCPA by all other debtors know to the person making the affidavit after diligent inquiry, do not exceed \$5,000 in the aggregate.

Under certain circumstances, the nursing facility can make payment of the deceased recipient's PNA funds on deposit directly to a social services district. If the decedent was not survived by a spouse or minor child, the nursing facility is permitted by Section 1310(8) to make payment of not more than \$5,000 of PNA funds on deposit with the nursing facility to the Department or a social services district, if the Department or the social services district has a right of recovery against the deceased recipient for the costs of MA furnished to or on behalf of the decedent. The payment is made under the terms of Section 1310(4) of the SCPA. The social services district must submit an affidavit to the nursing facility which establishes:

- the decedent's date of death;
- that a fiduciary has not been appointed or qualified to serve;
- that the social services district is entitled to payment;
- that the decedent was not survived by a spouse or minor child;
and
- that the payment and all other payments made under Section 1310 of the SCPA by all other debtors known to the social services district after diligent inquiry, do not exceed \$5,000 in the aggregate.

Note: Provisions of this section also apply to other personal property of the patient, and any other personal equipment, such as wheel chairs, hearing aids, etc.

Nursing facilities should refer any aforementioned relatives of the decedent who are submitting an affidavit to obtain payment of the decedent's PNA funds on deposit to their own attorney or the Surrogate Court to assure that the affidavit is properly prepared.

Social services districts should become familiar with the procedures outlined in this Administrative Directive to maximize available recoveries from deceased recipients of nursing facility care out of PNA funds on deposit with the nursing facility.

V. SYSTEMS IMPLICATIONS

There are no systems implications.

VI. EFFECTIVE DATE

The provisions of this Directive are effective October 1, 1994, retroactive to January 1, 1994

Sue Kelly
Deputy Commissioner
Division of Health and Long Term Care