

2640.10.20.20 COMPENSATION BY SERVICES AGREEMENT, PERSONAL NEEDS CONTRACT, PERSONAL CARE CONTRACT OR OTHER SIMILAR AGREEMENTS

The below policy applies to new applications filed on or after July 24, 2024.

For purposes of this section, “agreement” refers to a service agreement, personal needs contract, a personal care agreement, or other similar agreement where services are provided in return for compensation.

All Agreements must be sent to PAL for review.

To be considered an allowable transfer of assets, an agreement must⁸⁶:

1. Be in writing.
2. List the services provided to an applicant or member.
3. List the payment rate of the services provided to the applicant or member.
4. List the care provider or providers.
5. Be signed by each party.
6. Be notarized at the time the agreement is made.
7. The requirements in the above sections 1-6 are not required when documentation is submitted to the office stating payments for services were made at the time the services were rendered (such as cashed checks or bank statements). The fair market value of the services provided, and the payment made will still be reviewed for a potential transfer of property penalty. Lump sum payments or rolling credit accounts for services previously provided are not considered payments at the time of the service.

The rate of pay for care provided to an applicant or a member in an agreement must be commensurate with a reasonable wage, based on fair market value, frequency, and duration of the services.

A detailed log of the services provided to an applicant or a member in an agreement must be maintained and include the following:

- The monetary value.
- Frequency and duration of the services.
- Description of the services provided.

An agreement must provide for services for the benefit of an applicant or a member and cannot be retroactively dated or applied before the date the contract was notarized.

Lump sum payments for future services are not valid and may result in a transfer of property penalty.

An individual care provider under an agreement cannot provide services to an applicant or a member for more than sixteen (16) hours a day. Duplicate services cannot be provided by multiple care providers to the same applicant or member.

Valid services do not include being on call or available to provide potential services to an applicant or a member.

Services provided under an agreement for an applicant, or a member may include the following:

- Preparing meals.
- Managing medication.
- Housekeeping.
- Paying household bills.
- Transportation to medical appointments.

For ongoing Medicaid members, an agreement cannot duplicate services already provided or allowable under the Medicaid program.⁸⁷

~~The value of services provided, or agreed to be provided, in exchange for the property is based on the market value of such services and the frequency and duration of the services. In order for services to have adequate consideration, there must have been agreement at the time the services were provided that compensation was to be paid in return for the services.~~

⁸⁶ 42 U.S.C. 1396p(c)(2)

⁸⁷ 405 IAC 2-3-27