

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

The policy below applies to new applications filed on or after July 26, 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.** If there is an agreement in place, even if it has not been paid, it must be provided at the time of application for review. The agreement and logs must clearly display the services provided, the dates and hours of services, the names of the caregiver/s, proof that the value of services is commensurate with fair market value, verification of payments made, and the total amount paid to each caregiver.

To be considered an allowable transfer of assets, an agreement must<sup>1</sup>:

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 cash 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.<sup>ii</sup>

The approval process will occur more efficiently if the logs are provided with the details below:

- Name of the caregiver and the total amount paid to the caregiver/s
- Date services provided
- A detailed breakdown of the services provided
- Total hours
- Checks written are in order by date with clear documentation that the checks were written for caregiver services
- Verification from the member or authorized representative that the services provided are commemorate with fair market value
- Verification of payments made (such as canceled checks)

If any of the required information is missing or not clear and concise, the agreement may result in a transfer of property penalty.

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<sup>i</sup> 42 U.S.C. 1396p(c)(2), 405 IAC 2-3-1.1

<sup>ii</sup> 405 IAC 2-3-27