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Fact Sheet: CARES Act Payment and Nursing Home Residents

This fact sheet is for LTC Ombudsman use in their advocacy for nursing home residents who have questions or concerns about their CARES Act payment. The following information is subject to change pending clarification/guidance from the Centers for Medicare & Medicaid Services (CMS), Department of Health (DOH), or other binding authority. The CARES Act included direct payments to individuals. These payments have been referred to by many names, including ‘refund,’ ‘recovery rebate,’ ‘stimulus check’ and ‘federal economic impact payment.’ For the purposes of this fact sheet, it will be referred to as “Payment”. The majority of nursing home residents, especially those who are on Medicaid, should qualify for the payment of \$1,200.

Does the Payment impact a resident’s Medicaid eligibility?

No. The CARES Act states: any payment “made to an individual under this title shall not be taken into account as income, and shall not be taken into an account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual for benefits or assistance under the Federal program or under any State or local program financed in whole or part with Federal funds.”

In other words, the Payment does not count as income towards government benefits including Medicaid (and SSI). However, if the funds are not spent within 12 months, the funds may be counted as an asset (resource) which could impact Medicaid eligibility for the following year. In addition, because the funds are not considered income, the money will not have to be given to the nursing home as part of the NAMI.

How will the Payment get to the residents?

The Payment is based on the resident’s tax returns (if applicable) from 2018 or 2019, and is issued based on how the resident filed the tax return. For example, if the resident filed with direct deposit, the payment will be sent to that account. Otherwise, it will be mailed to the address used in the 2018 or 2019 tax return, whichever is the most recent filing. For residents who do not file taxes, and receive Social Security benefits, payments will be issued to the account they receive their benefits. This has the potential to be problematic for a many reasons including: when the nursing home is the resident’s representative payee, and when residents have not been informed of the Payment.

If a resident or resident representative is unsure of where the Payment was (or will be) sent, they may want to review information available on <https://www.irs.gov/coronavirus/get-my-payment> and/or contact the facility.

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What is the facility's responsibility in handling these payments? Are there specific rules that must or should be followed?

Every resident has the right to manage their financial affairs. As detailed in our Resident Right: Finances Overview,¹ if a resident chooses to deposit personal funds with the facility, the facility must act as a fiduciary of those funds and hold, safeguard, manage, and account for the funds deposited by the resident with the facility. This includes the federal Payment. For residents who choose to deposit personal funds with the facility, the facility is required to issue quarterly statements to the resident, and also by resident request.

For residents whose care is paid for under Medicaid:

The facility must deposit the residents' personal funds in excess of \$50 in an interest bearing account that is separate from any of the facility's operating accounts. Ideally there is such an account for each resident who chooses to deposit funds with the facility. However, the funds can be in a pooled account so long as there is a separate accounting for each resident's share. The \$50 amount is referred to as the Personal Needs Allowance "PNA".

For other residents:

Same rules apply as stated above, except any amount in excess of \$100 must be deposited in an interest bearing account.

For all residents:

It is the facility's responsibility to ensure resident's have access to their funds. This means, such resident requests must be honored by facility staff as soon as possible, but no later than:

- The same day for amounts less than \$100 (\$50 for Medicaid residents); or
- Three banking days for amounts of \$100 (\$50 for Medicaid residents) or more.

As such, if a resident chooses to withdraw the entire Payment of \$1,200, the facility must provide the resident with the \$1,200 within three banking days. (It should be noted that unless the resident is going to quickly spend the money, doing this is risky.)

¹ Accessed here: <https://elderjusticenyny.org/wp-content/uploads/2019/02/Nursing-Home-Resident-Right-Finances.pdf>



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What happens to the money when the resident is discharged or expires?

Upon the discharge or death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days, the residents funds (including the PNA) and the accounting of those funds to the resident. In the event of resident death, those remaining funds will go to the resident's estate. As such, if the Payment is deposited with the facility and is not spent (either in part or full), the Payment follows the resident or the resident's estate.

How can the Payment be spent?

The Payment should be spent at the resident's directive. There are no limitations on the funds, and residents should be able to spend their Payment like they would be able to if they lived in a community home. Examples of what residents may want to spend the Payment on include: a cellphone or telephone in their room, television or other electronic device, personal internet access, clothing, books, etc. While residents can spend their Payment as they want, we do caution that some residents may be at risk for financial exploitation or other forms of abuse. Residents should be cautioned against using the Payment towards items that would count as a resource, for example, collectors coins as it could impact Medicaid eligibility.

Again, the Payment is for the resident, and not for the facility to spend. Residents should not be pressured or required to spend their Payment on items/services Medicare and/or Medicaid will cover, or bills owed to the facility.

If a resident has a representative with legal access to the Payment (for example, Guardian or POA), that representative should act within the scope of their legal authority and spend the Payment as the resident directs (if able) or spend the Payment as the resident would have wanted.

If a resident no longer has capacity and does not have a Guardian, POA, or active family to direct how the Payment will be spent, the question to ask is who controls the residents funds and where did the Payment go? If there is no one to direct how the funds will be spent, the facility should spend the money on items in a manner the resident would have wanted, or if that is unknown, in a way to benefit the resident. For example, the Payment could be used on music therapy or a robotic therapy pet.

What can the Long Term Care Ombudsman Program do?

We encourage LTC Ombudsmen to be proactive and reach out to facilities to emphasize the Payment is for use at the Residents discretion, and to verify what procedures are in place at the facility to ensure each resident (or representative depending on authority) knows when the Payment is issued, and how residents can access the Payment.

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In addition, LTC Ombudsmen may want to:

- Speak with Resident and Family Council presidents to discuss the Payment and offer to present at an upcoming meeting;
- Obtain the list of residents who have funds deposited with the facility and follow up with those residents;
- Encourage the facility to issue a mailer to residents and representatives about the Payment.

There is concern that Residents will be coerced/forced to use the Payment as directed by the facility (for example to pay a bill or pay for a covered service/item) or used by the facility without resident consent. In addition, there is concern that the Payment will be inappropriately used by resident representatives (ie financial exploitation). If LTC Ombudsmen have suspicions this is happening, or receive complaints from residents or family, we encourage complaints be made to the Medicaid Fraud Control Unit and the DOH.

Center for Elder Law & Justice (CELJ) Involvement

CELJ, Legal Liaison, Lindsay Heckler, is available to provide facility, resident council, and family council training on the Payment. This includes via phone, videoconference, and potentially in-person (depending on visitor restrictions). If there is suspicion of misappropriation of resident funds or financial exploitation, LTC Ombudsman may contact Lindsay Heckler directly to discuss a referral to CELJ. Lindsay Heckler is also available to discuss the Payment and ombudsman specific questions with LTC Ombudsmen directly. Lindsay Heckler may be contacted at (716) 853-3087 x 212 or via email lheckler@elderjusticenyny.org.

In addition, **CELJ has a free legal advice helpline that is currently open statewide and to all ages and income!** The helpline provides answers to brief legal questions and referrals as appropriate. This includes, and is not limited to, questions on the Payment, Medicare, Medicaid, long-term care, home care, unemployment, and more. Call 1-844-481-0973 any time and leave a message, or reach an attorney directly between 9am-11am. Individuals can also e-mail helpline@elderjusticenyny.org with their name and phone number. A licensed attorney will respond within 1 business day.

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