



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI

02903 (401) 274-4400

Peter F. Neronha
Attorney General

Attorney General Guidance to Rhode Island Nursing Homes, Assisted Living Facilities, and Other Long-Term Care Residential Facilities

AG Guidance 2020-05

TO: Rhode Island Nursing Homes, Assisted Living Facilities, and Other Long-Term Care Residential Facilities

FROM: Peter F. Neronha, Attorney General *PN*

DATE: June 11, 2020

SUBJECT: **Stimulus Payments Provided Pursuant to the CARES Act to Residents of Long-Term Care Facilities are the Property of Residents Only**

The Rhode Island Attorney General issues the following guidance concerning payments made to Rhode Islanders pursuant to recent federal legislation.

Background

Pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), direct cash assistance is provided to individuals and families affected by the coronavirus pandemic. Section 2201 of Title II of the CARES Act sets out means-tested eligibility criteria, providing for a one-time cash payment - called a “recovery rebate,” also commonly called a “stimulus payment” - of up to \$1,200.00 for each eligible individual. Individuals with higher incomes will receive a reduced payment or no payment if their incomes exceed the Act’s threshold. Payments to eligible recipients are direct deposited or mailed directly to their residences via a check or a prepaid debit card known as an Economic Impact Payment (EIP) card.

Some Rhode Island recipients of these stimulus payments are residents of nursing homes, assisted living facilities, or other long-term care facilities, and the payments have been or will be sent to these facilities. The Attorney General has received complaints of nursing homes and assisted living facilities confiscating stimulus payments from residents who are Medicaid beneficiaries. The below Guidance applies equally to Medicaid beneficiaries, Medicaid-eligible individuals, or private pay individuals.

Guidance

Nursing homes, assisted living facilities, and other long-term care facilities are not permitted to seize, retain, or otherwise confiscate stimulus payments from their residents, regardless of whether the resident is Medicaid-eligible or a Medicaid beneficiary, and regardless of any debts that may be owed to the facility by a resident.

In accordance with the CARES Act, recovery rebates are tax credits. 26 U.S.C. § 6428 (a), (c). Tax credits, including the recovery rebates, are not considered income for public benefit eligibility purposes. 26 U.S.C. § 6409. This means that a payment a resident receives through the CARES Act is not income for Medicaid eligibility purposes. Additionally, the funds are not considered assets for Medicaid eligibility purposes until twelve (12) months after receipt of the funds (May 2021). *Id.* Unless the resident retains the funds for a year from receipt of the payment, it is not considered resources for Medicaid eligibility purposes.

Nursing homes, assisted living facilities, and other long-term care facilities that receive recovery rebates in the mail for residents must immediately deliver the payments to the residents. For facilities that have already confiscated a payment from a resident, those facilities must immediately return the funds to the resident.

If facility administrators have concerns about delivering or returning payments because of the resident's incapacity, incompetence, or mental health, the Attorney General directs the administrators to take one of the following actions:

1. Contact the resident's guardian or legal representative.
2. If the resident does not have a guardian or legal representative, or if the facility has concerns that the existing guardian or legal representative may improperly use the resident's stimulus payment, contact the Attorney General's Office at 1-401-274-4400, prompt 6 or email elderabuse@riag.ri.gov.

The Rhode Island Attorney General has broad authority to enforce the laws of the State of Rhode Island and protect the health, safety, and welfare of its citizens. The Attorney General's Office is prepared to investigate and take action, including criminal prosecution, against facilities and/or responsible staff under any and all applicable statutes if stimulus funds are taken from and not returned to residents in long-term care facilities.

Frequently Asked Questions

Q: Is a stimulus payment considered income for tax purposes?

A: No. Under the CARES Act, a stimulus payment (also known as a “recovery rebate”) is not considered income for tax purposes.

Q: Does the stimulus payment affect a resident’s Medicaid eligibility?

A: The stimulus payments are not considered income, so those payments are not counted toward a resident’s income for calculating Medicaid eligibility. If a resident does not use the stimulus money by May 2021, that extra money will be counted toward a person’s assets which may affect a resident’s Medicaid eligibility.

Q: If a resident owes money to the nursing home or facility, can the facility use the stimulus money to pay the resident’s debts to the facility?

A: No. Stimulus payments belong to the resident only, to be used by the resident in any manner the resident chooses. A nursing home or any long-term care facility is prohibited by law from taking the stimulus payment for any reason, even if the resident owes a debt to the facility. The facility must not pressure, threaten, or engage in any manner to encourage the resident to use the stimulus money to pay outstanding debts owed to the facility.

Q: Can the stimulus payment be used to pay other debts?

A: The resident can choose to use the stimulus payment in any manner the resident chooses. A creditor cannot force a resident to use a stimulus payment for a debt, in court or otherwise. See AG Guidance 20-03, Debt Collection Protection Guidance to Rhode Island Financial Institutions and Credit Unions, Creditors, and Debt Collectors. If a competent resident chooses to use the payment to pay down other debt, then the resident may do that. The stimulus money is property of the resident for use in whatever manner the resident would like. The facility must not pressure, threaten, or engage in any manner to encourage the reside to pay debts with their stimulus money.

Q: If a resident is confused, incapacitated, or incompetent, should the nursing home keep the stimulus payment for the resident?

A: No. A nursing home or any long-term care facility is prohibited by law from keeping the stimulus payments that belong to a resident regardless of competency. If the facility has taken the resident’s stimulus money, the facility must immediately release the money directly to the resident. If the facility is concerned about the resident’s capacity, the facility should contact the resident’s Power of Attorney or guardian.

Q: What should a facility do if the facility has concerns that a resident's existing guardian or legal representative is using or may use the resident's stimulus payment for an improper purpose and not for the resident's needs?

A: Contact the Attorney General's Office at 1-401-274-4400, prompt 6 or email elderabuse@riag.ri.gov.