

13-42-122 Trust account.

- (1) All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. No later than two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.
- (2) A provider whose agreement contemplates the settlement of an individual's debt for less than the principal amount of the debt may request or require the individual to place money in an account to be used to pay a creditor or the provider's fees, or both, if:
 - (a) the money is held in an insured account at a bank;
 - (b) the individual owns the money held in the account and is paid any interest accrued on the account;
 - (c) the entity administering the account is not the provider or an affiliate of the provider, unless the affiliate is described in Subsection 13-42-102(2)(b)(iv);
 - (d) the entity administering the account does not give or accept any money or other compensation in exchange for a referral of business involving debt-management services; and
 - (e) the individual may terminate the agreement at any time without penalty and on termination must receive all money in the account, other than money earned by the provider in compliance with this section.
- (3) If an agreement contemplates the reduction of finance charges or fees for late payment, default, or delinquency, and the provider complies with Subsection (1), the provider may request or require the individual to make payment to be used for both distribution to creditors and payment of the provider's fees.
- (4) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.
- (5) A provider shall:
 - (a) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;
 - (b) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:
 - (i) the provider may delay payment to the extent that a payment by the individual is not final; and
 - (ii) if a plan provides for regular periodic payments to creditors, the disbursement shall comply with the due dates established by each creditor; and
 - (c) promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.
- (6) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.
- (7) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.
- (8) If a provider has established a trust account pursuant to Subsection (1), the provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If

the provider or its designee has more than one trust account, each trust account shall be individually reconciled.

- (9) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, no later than five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.
- (10) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under Section 13-42-123.
- (11) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

Amended by Chapter 152, 2012 General Session