TO BE RESCINDED

5160:1-3-05.5 **Medicaid: promissory notes, property agreements, and loans.**

(A) This rule describes the treatment of promissory notes, property agreements, and loans for purposes of determining eligibility for medical assistance.

(B) Definitions.

(1) "Assets" includes all income and resources of the individual and of the individual's spouse. This includes any income or resources the individual or the individual's spouse is entitled to, but does not receive, because of an action taken to avoid receipt of the assest by:

(a) The individual or the individual's spouse; or

(b) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(c) Any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(2) "Look-back period" is defined in rule 5160:1-3-07.2 of the Administrative Code.

(3) "Promissory note" means a written, unconditional promise signed by a person to pay a specified sum of money at a specified time, or on demand, to the person, corporation, or institution named on the note. It may be given in return for goods, money loaned, or services rendered. A promissory note making periodic payments is not considered an annuity.

(4) "Property agreement" means a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period.

(a) Property agreements on real estate generally are referred to as mortgages but also may be called real estate or land contracts, contracts for deed, deeds of trust, and etc.

(b) Personal property agreements (e.g., pledges of crops, fixtures, inventory, etc.) are commonly known as chattel mortgages.

(C) Promissory notes or property agreements held by an individual.

(1) A promissory note or property agreement is an available resource.

(a) The resource value is its outstanding principal balance unless the individual furnishes evidence that it has a lower cash value.

(b) The property itself is not a resource.

(2) Payments received by an individual toward the principal balance of a promissory note or property agreement are not income. The interest portion of payments received is unearned income to the individual.

(3) A copy of the property agreement must be recorded with the county auditor, county recorder, or other appropriate government agency charged with the responsibility of recording property agreements.

(a) For the purposes of this rule, a property agreement is not considered effective until the date it is recorded with the county auditor, county recorder, or other appropriate government agency charged with the responsibility of recording property agreements. The administrative agency shall disregard any property agreement that is not properly recorded and shall consider the entire property as an available resource to the individual.

(b) For the purposes of this rule, the property agreement recording date held by the appropriate government agency is considered the date of transfer.

(4) If the terms of the promissory note or property agreement prohibit or prevent the transfer or sale of the note or agreement, the assets given in exchange for the note or agreement must be considered improperly transferred, in accordance with the transfer of resources rule 5160:1-3-07.2 of the Administrative Code.

(a) The total value of resources improperly transferred is the value of the assets originally exchanged for the note or agreement, reduced by the sum total of any repayments made on or before the date of application for medical assistance.

(b) The restricted medicaid coverage period shall not be reduced based upon anticipated, estimated, or projected future payments made under the note or agreement.

(c) The individual may seek a new eligibility determination and/or a recalculation of the restricted medicaid coverage period based upon repayment of the note or agreement. For the restricted medicaid coverage period to be recalculated, the note or agreement must be paid in full and in accordance with rule 5160:1-3-07.2 of the Administrative Code.

(5) If the individual sells a promissory note or property agreement for an amount less than the value of assets given in exchange for the note or agreement, the difference will be considered improperly transferred as of the note's or property's sale date. The individual may rebut the findings of an improper transfer by:

(a) Providing credible evidence from a knowledgeable source establishing the market value was less than its outstanding principal balance. The knowledgeable source must:

(i) Be clearly identified; and

(ii) Provide a written explanation regarding its opinion of the market value; and

(iii) Affirmatively indicate the decreased market value was not caused in whole or part by the terms of the note or agreement and the decrease in value was entirely outside the control of the individual or the individual's representative(s).

(b) Providing documentation clearly showing the individual received payments under the terms of the note or agreement prior to the sale, and such payments equal or exceed the difference between the sale price and the value of assets orginally given in exchange for the note or agreement; or

(c) Providing documentation clearly showing that the lower price of the note or agreement was accepted by the individual as payment of a debt owed by the individual to the purchaser.

(6) Documentation must be provided by the individual verifying his or her proportionate share of the note or agreement if ownership of the note or agreement is shared.

(7) A promissory note or property agreement has no value if the individual adequately documents the obligations under the promissory note or property agreement were discharged by order of a bankruptcy court.

(D) Loans held by an individual.

(1) Money an individual borrows or money received as the principal repayment of a bona fide loan is not considered income.

(a) Any interest received on money loaned is unearned income.

(b) Retained proceeds of a loan in the month following the month of receipt are counted as a resource.

(2) The value of the loan is the outstanding balance due as of the individual's application date for medical assistance.

(E) Funds used to purchase a promissory note, property agreement or loan.

(1) With respect to a transfer of assets, as referenced in rule 5160:1-3-07.2 of the Administrative Code, funds used to purchase a promissory note, property agreement, or loan are considered an asset unless the promissory note, preoperty agreement, or loan:

(a) Has a repayment term that is actuarially sound as determined in accordance with actuarial publications of the office of the chief actuary in 26 C.F.R. 20.2031-7 (as in effect on February 1, 2016);

(b) Provides for payments made in equal amounts during the term of the promissory note, property agreement, or loan, with no deferral and no balloon payments made; and

(c) Prohibits the cancellation of the balance upon the lender's death.

Effective:

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Certification

Date

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