TO BE RESCINDED

5160:1-3-32.1 **Medicaid: property agreements.**

(A) This rule describes the consideration of property agreements as resources.

(B) Definitions.

(1) "Administrative agency" means the county department of job and family services, the Ohio department of job and family services, or other entity that determines eligibility for a medical assistance program.

(2) "Arms length" describes an agreement made by two parties freely and independently of each other, and without some special relationship, such as being a relative, having another deal on the side, or one party having complete control of the other.

(3) "Assets" are defined in rule 5101:1-39-05 of the Administrative Code.

(4) "Individual" means an applicant for or recipient of a medical assistance program.

(5) "Look-back period" is defined in rule 5101:1-39-07 of the Administrative Code.

(6) " Property agreement" means a pledge or security of a 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 are generally referred to as mortgages but may be called land contracts, contracts for deed, deeds of trust, etc.

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

(7) "Negotiable instrument" means a written instrument that is signed by the maker or drawer that includes an unconditional promise or order to pay a specified sum of money, is payable on demand or at a definite time, and is payable to order or to bearer.

(C) Treatment of property agreements.

(1) The administrative agency must determine the effective date of a property

agreement as follows. The recording date is the date the property agreement is recorded with the county auditor, county recorder, or other appropriate governmental agency charged with the responsibility of recording real estate transfers and titles. The date of signature is the date the person authorized to enter into the property agreement actually signed the instrument creating the agreement.

(a) For property agreements recorded within six months after the date of signature, the administrative agency must consider the date of signature to be the effective date of the agreement.

(b) If a property agreement is recorded more than six months after the date of signature, the individual must produce documentation from other sources verifying that the agreement was established on the date of signature rather than the date of recording. Such documentation may consist of financial records from lending institutions, tax records from governmental agencies, or records from other agencies or private or public institutions. The individual may provide statements from persons to whom the property was conveyed or from persons who participated in the establishment of the property agreement. The administrative agency must accept the statements of these persons only upon a finding that their statements are corroborated and credible. If the individual fails to produce documentation verifying the date of signature, the administrative agency must use the date of recording as the effective date of the agreement.

(c) If a transfer is not recorded at all, the individual must record the agreement. The individual must produce documentation evidencing the transfer. Such documentation may consist of financial records from lending institutions, tax records from governmental agencies, or records from other agencies or private or public institutions. The individual may provide statements from persons to whom the property was transferred or other persons who participated in the creation of the agreement. The administrative agency must accept the statements of these persons only upon a finding that their statements are corroborated and credible. If the individual fails to produce documentation verifying the date of signature, the administrative agency must use the date of recording as the effective date of the transfer.

(2) A copy of the property agreement must be obtained for the case record.

(3) For a negotiable property agreement, its value as a resource means its outstanding principal balance.

(a) The individual must receive fair market value as a result of arm's length negotiations.

(b) The fair market value of the property agreement at the time of the transfer must be equal to the fair market value of the property given by the individual in exchange for the property agreement.

(c) Fair market value is defined in the resource requirement rule in Chapter 5101:1-39 of the Administrative Code.

(d) To establish the fair market value of the property agreement, the individual must present documentation from two knowledgeable sources who are regularly engaged in the business of the public trade, sale, or exchange of the type of property agreement presented, attesting to the market value of the property agreement on the date of the transfer.

(4) For non-negotiable property agreements, if the terms of the agreement prohibit or prevent the sale of the agreement, then the assets given in exchange for the agreement will be deemed improperly transferred in accordance with the provisions in the transfer of resources rule in Chapter 5101:1-39 of the Administrative Code, if the exchange occurred within the applicable look-back period.

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

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

(c) The individual may seek a new eligibility determination and/or a recalculation of the restricted period of coverage based only upon actual repayments made under the terms of the agreement.

(d) If the sum total of all repayments made under the agreement are less than the original value of the assets given in exchange for the agreement, then the difference will be deemed improperly transferred if the exchange occurred within the applicable look-back period.

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

(a) Providing credible evidence from a knowledgeable source establishing that the market value at the time of sale of the agreement was less than its outstanding principal balance. The knowledgeable source must be clearly identified. The knowledgeable source must provide a written explanation regarding its opinion of the market value. The knowledgeable source must affirmatively indicate that the decreased market value was not caused in whole or part by the terms of the agreement and that the decrease in value was entirely outside the control of the individual or his or her representatives. Knowledgeable sources include anyone regularly engaged in the business of the public trade, sale, or exchange of commercial paper; or,

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

(c) The individual may provide documentation clearly showing that the lower sale price of the agreement was accepted by the individual as payment of a debt owed by the individual to the purchaser.

(6) If ownership of the property agreement is shared, documentation must be provided by the individual verifying the individual's proportionate share of the agreement.

Effective:

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Certification

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