Ohio Administrative Code

Rule 5160:1-6-06.4 Medicaid: transfers involving promissory notes, property agreements, and loans.

Effective: June 9, 2025

(A) This rule describes how to treat transfers involving promissory notes, property agreements, and loans held by an institutionalized individual, or his or her spouse, when the institutionalized individual is requesting medicaid payment for long-term care (LTC) services.

(B) Assets used to purchase or obtain a promissory note, property agreement, or loan are considered to be improperly transferred unless the the purchase of the note, agreement or loan was for fair market value and the terms of the promissory note, property agreement, or loan:

(1) Have 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 October 1, 2024);

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

(3) Prohibit cancellation of the balance upon the lender's death; and

(4) Allow for the transfer or sale of the note, agreement, or loan.

(C) When the promissory note, property agreement, or loan does not satisfy the requirements in paragraph (B) of this rule, the value of such note, agreement, or loan shall be its outstanding balance as of the date the institutionalized individual requests medicaid payment for LTC services and must be considered improperly transferred in accordance with rule 5160:1-6-06 of the Administrative Code.

(1) Any resulting restricted medicaid coverage period (RMCP) shall not be reduced based upon anticipated, estimated, or projected future payments made under the note, agreement, or loan.

(2) For any resulting RMCP to be reduced because of a repayment, the promissory note, property agreement, or loan must be repaid in full.

(D) When an institutionalized individual transfers or sells a promissory note, property agreement, or loan for an amount less than the outstanding balance of such note, agreement, or loan, the difference will be considered improperly transferred as of the note, agreement, or loan's sale date.

(E) The institutionalized individual may rebut the finding that the purchase or transfer of a promissory note, property agreement, or loan is improper by providing at least one of the following:

(1) Credible evidence from a knowledgeable source establishing that the fair market value was less than its outstanding principal balance. The knowledgeable source must:

(a) Be clearly identified and limited to the following:

(i) In the case of real property, entities who have experience in the sale or valuation of the type of real property in question: county auditors, real estate brokers, real estate agents, real estate appraisers, United States department of agriculture (USDA) rural development service center offices, USDA farm service agency service center offices, banks, savings and loan associations, mortgage companies and similar lending institutions, and the county extension service offices.

(ii) In the case of personal property, any professional, business owner or operator, or expert who has experience in the sale, trade, restoration, or valuation of the type of personal property in question.

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

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

(2) Documentation clearly showing the institutionalized 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 fair market value of assets originally given in exchange for the note or

agreement; or

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