**From:** **Maureen M. Corcoran, Director**

**To:** **Ohio Department of Medicaid Clearance Reviewers**

**Subject:** **ABD and LTC FYRR**

This transmittal contains one rule to be amended, two rules to be rescinded, and two rules to be filed as new in Chapter 5160:1-3 and two rules to be amended in Chapter 5160:1-6 of the Administrative Code, adopted under section 111.15 of the Revised Code, as part of a five-year review.

The information contained in this clearance transmittal is for informational purposes only and is not intended to be part of the clearance review. Your review of and comments on the attached material are appreciated.

**Chapter 5160:1-3 Medicaid for the Aged, Blind, or Disabled**

**5160:1-3-02 Medicaid: criteria for age, blindness, or disability.**

This rule will be rescinded and filed as new to make updates as the result of five-year rule review to include replacing the term "if" with "when", adding and reorganizing language for clarity, and updating a reference date.

**5160:1-3-05.3 Medicaid: annuities.**

This rule will be being rescinded and filed as new to make updates as the result of five-year rule review to include reorganizing language for clarity.

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

This rule will be amended to make updates as the result of five-year rule review to include replacing the term “if” with “when”.

**Chapter 5160:1-6 Non Medicaid Medical Assistance Programs**

**5160:1-6-06.3 Medicaid: transfers involving life estates.**

This rule will be amended to make updates as the result of five-year rule review to include replacing the term “if” with “when”.

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

This rule will be amended to make updates as the result of five-year rule review to include replacing the terms “market” with “fair market” and “if” with “when”, adding language describing “knowledgeable source”, and updating a reference date.

**Fiscal Impact**

The Ohio Department of Medicaid (ODM) supplies funding to Ohio’s counties through the Department of Job and Family Services, which funds counties to conduct eligibility determinations and complete casework for the Medicaid program. The revisions to the rules in this clearance do not impose new requirements on county agencies and the implementation of these rules changes should result in no fiscal impact on the county agencies.

Questions pertaining to this clearance should be sent to Rules@Medicaid.Ohio.gov.

To receive notification when ODM posts draft rules for public comment please register via the Common Sense Initiative eNotifications Sign-up: eNotifications Sign Up | Governor Mike DeWine (ohio.gov). The Ohio Department of Medicaid will use this list to notify subscribers when draft rules are posted for public comment.

To receive notification when ODM original, revise, refile, or final files a rule package please register for Joint Committee on Agency Rules Review’s (JCARR) RuleWatch at www.rulewatchohio.gov where an account can be created to be notified of rule actions by the rule number or department.

The main Ohio Department of Medicaid (ODM) web page includes links to valuable information about its services, programs, and rules; the address is http://www.medicaid.ohio.gov.

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

5160:1-3-02 **Medicaid: criteria for age, blindness, or disability.**

(A) The medicaid program provides coverage for individuals who have been determined to meet the criteria for the limiting physical factors of age, blindness, or disability as set forth in section 1902 of the Social Security Act (as in effect on October 1, 2016). Age is determined by county departments of job and family services (CDJFS). Blindness and disability are determined by either the social security administration (SSA) or the Ohio department of medicaid (ODM) in accordance with rule 5160:1-3-02.9 of the Administrative Code. The criteria are as follows:

(1) Age: A person who is age sixty-five years or older meets the age requirement for medicaid. Verification of age is required.

(2) Blindness: A person is considered to be blind if he or she has central visual acuity of 20/200 or less in the better eye with correcting glasses, or a limited visual field of twenty degrees or less in the better eye.

(3) Disability. Disability is defined differently for adults and children. An individual is disabled if the individual is:

(a) An adult who is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(b) A child under the age of eighteen who has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than twelve months. No individual under the age of eighteen who engages in substantial gainful activity may be considered disabled.

(B) If SSA makes a finding of presumptive disability based upon the available evidence which reflects a high degree of probability that the individual will meet the disability requirements, the applicant for medical assistance meets the disability requirements necessary to qualify for medical assistance. If it is later determined that the SSA decision was erroneously made and the individual was without fault in the

determination, no attempt shall be made to recover payments for medical assistance made on behalf of the individual.

Replaces: 5160:1-3-02

Effective:

Five Year Review (FYR) Dates:

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| Promulgated Under: | 111.15 |
| Statutory Authority: | 5160.02, 5163.02 |
| Rule Amplifies: | 5160.02, 5163.02 |
| Prior Effective Dates: | 09/03/1977, 01/01/1981, 09/06/1984, 08/01/1985, 08/01/1986 (Emer.), 10/03/1986, 07/01/1987 (Emer.), 08/03/1987, 01/01/1988 (Emer.), 03/28/1988, 10/01/1988 (Emer.), 12/20/1988, 04/01/1990, 10/01/1991 (Emer.), 12/01/1991, 12/02/1991, 12/20/1991, 01/01/1992 (Emer.), 03/20/1992, 12/22/1992 (Emer.), 01/01/1993 (Emer.), 02/11/1993, 03/20/1993, 09/01/1993, 08/01/1995 (Emer.), 10/30/1995, 04/01/1999, 10/01/2002, 11/25/2002, 01/01/2005, 01/22/2015, 08/01/2016, 09/01/2017 |

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5160:1-3-02 **Medicaid: criteria for age, blindness, or disability.**

(A) The medicaid program provides coverage for individuals who have been determined to meet the criteria for the limiting physical factors of age, blindness, or disability as set forth in section 1902 of the Social Security Act (as in effect on October 1, 2024). Age is determined by county departments of job and family services (CDJFSs). Blindness and disability are determined by either the social security administration (SSA) or the Ohio department of medicaid (ODM) in accordance with rule 5160:1-3-02.9 of the Administrative Code.

(B) The criteria for age, blindness, and disability are as follows:

(1) Age: An individual who is age sixty-five years or older meets the requirement for medicaid on the basis of age. Verification of age is required.

(2) Blindness: An individual is considered to be blind when he or she has:

(a) Central visual acuity of 20/200 or less in the better eye with use of a correcting lens; or

(b) An eye with limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(3) Disability. Disability is defined differently for adults and children. An individual is disabled when the individual is:

(a) An adult who is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(b) A child under the age of eighteen who has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death, or that has lasted or can be expected to last for a continuous period of not less than twelve months. No individual under the age of eighteen who engages in substantial gainful activity may be considered disabled.

(C) When the SSA makes a finding of presumptive disability based upon the available evidence which reflects a high degree of probability that the individual will meet the disability requirements, the applicant for medical assistance meets the disability

requirements necessary to qualify for medical assistance. When it is later determined that the SSA decision was erroneously made and the individual was without fault in the determination, no attempt shall be made to recover payments for medical assistance made on behalf of the individual.

Replaces: 5160:1-3-02

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TO BE RESCINDED

5160:1-3-05.3 **Medicaid: annuities.**

(A) This rule describes the treatment of annuities for the purposes of determining eligibility for medical assistance.

(B) Definition. An "annuity" provides fixed, periodic payments, either for life or a term of years. When an individual purchases an annuity, he or she generally pays the entity issuing the annuity a lump sum of money, in return for which the issuing entity promises regular payments in a specified amount to the individual or designated beneficiary. These payments may continue for a fixed period of time or for the lifetime of the individual or designated beneficiary. The annuity typically contains a remainder clause under which, if the annuitant dies, the contracting entity converts whatever is remaining in the annuity into a lump sum and pays it to a designated beneficiary.

(C) Treatment of annuities in the determination of eligibility for medical assistance.

(1) Any resource meeting the definition of an annuity in paragraph (B) of this rule shall be considered an excluded resource.

(2) Any payments from an annuity shall be considered as unearned income to the individual or designated beneficiary.

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5160:1-3-05.3 **Medicaid: annuities.**

(A) This rule describes the treatment of annuities for the purpose of determining eligibility for medical assistance.

(B) Definition. An "annuity" provides fixed, periodic payments, either for life or a term of years.

(1) When an individual purchases an annuity, he or she generally pays the entity issuing the annuity a lump sum of money, in return for which the issuing entity promises regular payments in a specified amount to the individual or designated beneficiary.

(2) Annuity payments may continue for a fixed period of time or for the lifetime of the individual or designated beneficiary.

(3) The annuity typically contains a remainder clause under which, when the annuitant dies, the contracting entity converts whatever is remaining in the annuity into a lump sum and pays it to a designated beneficiary.

(C) Treatment of annunities in the determination of eligibility for medical assistance.

(1) Any resource meeting the definition of an annuity in paragraph (B) of this rule shall be considered an excluded resource.

(2) Any payments from an annuity shall be considered unearned income to the individual or designated beneficiary.

Replaces: 5160:1-3-05.3

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*** DRAFT - NOT YET FILED ***

## 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 the ~~purposes~~purpose of determining eligibility for medical assistance.

(B) Definitions.

(1) "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.

(2) "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, 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~~purpose 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~~purpose of this rule, the property agreement recording date held by the appropriate government agency is considered the date of transfer.

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

(5) A promissory note or property agreement has no value ~~if~~when the individual adequately documents that 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.

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5160:1-6-06.3 **Medicaid: transfers involving life estates.**

(A) This rule describes the treatment of transfers involving life estates when an institutionalized individual is requesting medicaid payment for long-term care services.

(B) The following steps must be taken to determine whether a transfer involving a life estate, as defined in rule 5160:1-3-05.17 of the Administrative Code, was an improper transfer in accordance with rule 5160:1-6-06 of the Administrative Code:

(1) Review the life estate instrument to determine the nature of the life estate and the rights, responsibilities, and~~/or~~ restrictions placed on the life estate owner and~~/or~~ the remainderman, as defined in rule 5160:1-3-05.17 of the Administrative Code.

(2) Determine the effective date of the creation of a life estate in accordance with rule 5160:1-3-05.17 of the Administrative Code.

(3) Calculate the fair market value of a life estate in accordance with rule 5160:1-3-05.17 of the Administrative Code.

(C) Life estates established with an institutionalized individual's property.

(1) ~~If~~When the life estate was established within the applicable look-back period and the terms of the establishing instrument prohibit the life estate from being sold or transferred, the fair market value of the life estate will be presumed improperly transferred.

(2) ~~If~~When an institutionalized individual improperly transferred ownership of his or her home but retained a life estate in the home, the improper transfer amount, with respect to the home transfer, is the difference between the fair market value of the home and the fair market value of the life estate.

(D) Life estates held by an institutionalized individual.

(1) An institutionalized individual's purchase of a life estate interest in another individual's home within the applicable look-back period is presumed to be an improper transfer, unless the institutionalized individual resided in the home for a period of at least one year after the date of purchase. ~~If~~When such purchase is deemed improper, the fair market value of the life estate will be the improper transfer amount.

(2) ~~Where~~When the purchase price of a life estate in another individual's home is greater than the fair market value of the life estate, the amount of the difference will be considered improperly transferred, even ~~if~~when the individual resided in the home for at least one year after the date of purchase.

(E) ~~If~~When an institutionalized individual transfers or sells a life estate held by the institutionalized individual within the applicable look-back period, the institutionalized individual must receive fair market value, calculated in accordance with rule 5160:1-3-05.17 of the Administrative Code, for the life estate. ~~If~~When the institutionalized individual receives less than fair market value for the life estate, the fair market of the life estate will be presumed improperly transferred.

Effective:

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

(A) This rule describes how to treat transfers involving promissory notes, property agreements, and loans held by an institutionalized ~~individuals~~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, ~~2016~~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;~~ and~~

(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) ~~If~~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 ~~request~~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) ~~If~~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).~~; or~~

(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.

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