Operations Memorandum - Medicaid
OPS070206

2/26/07

SUBJECT: **Changes to Policy Regarding Promissory Notes, Loans and Mortgages**
TO: **Executive Directors**
FROM: **Joanne Glover, Director, Bureau of Operations**

Purpose

To provide policy and procedures that must be used for applicants, recipients and spouses of applicants of Medicaid/Long Term Care (LTC) services who transfer assets in exchange for promissory notes, loans, and mortgages.

The information provided in this Operations Memorandum takes precedence over any previous Policy Clarifications that have been issued or the policies and procedures that may be currently listed in the LTC Handbook. To ensure that all County Assistance Offices (CAOs) receive and apply the same policy and procedures on these topics, this information is issued by an Operations Memorandum versus a Policy Clarification.

Background

Section 6016(c) of the Deficit Reduction Act of 2005 (DRA) amends section 1924 of the Social Security Act regarding the treatment of promissory notes, loans and mortgages.

Discussion

Section 6016(c) of the DRA requires that transfers of assets with the receipt of promissory notes, loans and mortgages that do not meet specific requirements must be treated as transfers of assets for less than Fair Market Value (FMV). The value of the asset shall be the outstanding balance due as of the date of the individual's application for Medicaid/LTC. The outstanding balance due would include all outstanding, deferred, graduated, or balloon payments, interest, and any and all other payments due on the loan.

The policy and procedures described above apply to promissory notes, loans and mortgages created on or after February 8, 2006 based on an application dated on or after March 5, 2007.

Old Policy

If	**Then**
An individual applying for Medicaid/LTC held an outstanding promissory note, loan or mortgage,	The CAO only reviewed the terms of the document to determine if there was a transfer of assets for less than FMV and also

	determined if the promissory note, loan or mortgage was an available resource.

New Policy

If	**Then**
An applicant, recipient or spouse of an applicant of Medicaid/LTC transfers assets and in return receives a promissory note, loan or mortgage,	The CAO will review the terms of the document to determine if the repayment terms meet all of the following: • The repayment terms must be actuarially sound; • The document must provide for payments in equal amounts during the term with no deferred or balloon payments; and • There cannot be any provisions in the document that allow for cancellation upon the death of the lender.

New Policy

If	**Then**
The document fails to meet the three mandated requirements above,	The CAO will determine that there has been a transfer of assets for less than FMV and will calculate the appropriate penalty period.

If	**Then**
The document does meet the three mandated requirements above,	The CAO will make a determination as to whether it will be considered as an available resource.

New Policy Guidelines

- This policy applies to an individual and his/her spouse who began holding a promissory note, loan or a mortgage on or after February 8, 2006 and who also applies for Medicaid/LTC on or after March 5, 2007.

Note: This policy does not apply to an individual and his/her spouse who owe an outstanding balance on a promissory note, loan or mortgage.

- The CAO must review any applications for Medicaid/LTC to determine if there were any transfers of assets for less than FMV.
- In order to avoid being treated as a transfer of assets for less than FMV, the promissory note, loan or mortgage must meet all of the following requirements:
  - The repayment terms must be actuarially sound;
  - The repayment terms must provide for payments in equal periodic amounts throughout the term, with no deferral of payments and no balloon payments; and
  - The promissory note, loan or mortgage must not contain any provision allowing for the cancellation of the balance upon the death of the lender.

Note: Actuarially sound means that the repayment terms are designed to pay off the entire amount of the promissory note, loan or mortgage within the actual or expected lifetime of the applicant, recipient or spouse of applicant who transferred the asset.

- If the promissory note, loan or mortgage does not meet all three requirements, the promissory note, loan or mortgage must be treated as a transfer of assets for less than FMV.
- The value of the asset will be the outstanding balance due as of the date of the application. In order to determine the outstanding balance due on the promissory note, loan or mortgage, obtain the following information:
  - Any and all deferred payments due;
  - Any and all graduated payments due;
  - Any and all balloon payments due;
  - Any and all interest payments due; and
  - Any and all other payments due.
- If a transfer of assets for less than FMV has occurred, calculate the period of ineligibility for payment of LTC services by dividing the outstanding balance due by the average daily private pay rate (currently $222.17) in effect at the time of application.
- After determining the period of ineligibility for payment of LTC services, send a PA 162 Notice advising the individual of the denial of eligibility for payment of LTC services. The individual must also be notified of the Undue Hardship provisions.
- Evaluate whether the individual is eligible for Medicaid and provide the appropriate PA 162 Notice.
- If the CAO determines the instrument meets all the requirements above, the CAO must also then consider whether the promissory note, loan or mortgage is an available resource.

<u>SPECIFIC STEPS:</u>

1. Review the application for Medicaid/LTC services to determine if there are any promissory notes, loans or mortgages that were created on or after February 8, 2006 by the applicant or the applicant's spouse.
2. If the applicant or the applicant's spouse has a promissory note, loan or mortgage that was created on or after February 8, 2006 , review the documentation to determine if the promissory note, loan or mortgage:
   - Is actuarially sound;
   - Provides for payments in equal periodic amounts with no deferral or balloon payments throughout the term of the contract; **and**
   - Does not contain any provision allowing for the cancellation of the balance upon the death of the lender.
3. Determine the value of the asset, which is the outstanding balance due as of the date of application on the promissory note, loan or mortgage, by obtaining the following:
   - Any and all deferred payments due;
   - Any and all graduated payments due;
   - Any and all balloon payments due;
   - Any and all interest payments due; and
   - Any and all other payments due.
4. If the promissory note, loan or mortgage does not meet all three of the mandated requirements, determine the period of ineligibility for payment of LTC services as follows:
   - Divide the value of the promissory note, loan or mortgage as of the date of application by the average daily private pay rate in effect at the time of the application (currently $222.17); and
   - The period of ineligibility for payment of LTC services begins the date the individual would otherwise be eligible for Medicaid.
5. Send a PA162 Notice to the applicant, the representative and the provider advising of the denial of eligibility for payment of LTC services. The applicant must also be notified of the Undue Hardship provisions.
6. Evaluate whether the individual is eligible for Medicaid and provide the appropriate PA 162 Notice to the applicant, the representative and the provider.
7. Complete the Third Party Liability screens and set an alert 30 days prior to the end of the period of ineligibility to send an application for a determination of eligibility for payment of LTC services.
8. If the CAO determines the promissory note, loan or mortgage meets all of the mandated requirements and FMV was received, the CAO must make a determination as to whether the promissory note, loan or mortgage is an available resource.

Example 1: Transfer of Assets for Less Than FMV

9. Mr. Smith, age 86, loaned his son $30,000 on February 7, 2007. In exchange for this loan, the son provided Mr. Smith with a promissory note for $30,000.

10. The terms of the promissory note require that the son repay his father over a 20 year period. There is also a provision in the promissory note that the loan is forgiven should Mr. Smith die prior to the end of the payment period.
11. Mr. Smith was admitted to a nursing facility on March 5, 2007, and at the time of admission was otherwise eligible for Medicaid, having no other resources.
12. On March 5, 2007, the CAO received an application for Mr. Smith requesting Medicaid/LTC services effective March 5, 2007.
13. Upon review, the CAO determined the promissory note was a transfer of assets for less than FMV:
    - The promissory note contains a provision canceling the repayments should Mr. Smith die prior to the end of the payment period; and
    - The repayment period of 20 years is not within the life expectancy of Mr. Smith (4.85 years, see Policy Clarification PMN13293440), and therefore not actuarially sound.
14. Since the son had not yet made any payments, the value of the promissory note was still $30,000. The CAO determined the period of ineligibility to be 135 days:
    - $30,000 ÷ $222.17 = 135 days
15. The CAO determined Mr. Smith would otherwise be eligible for Medicaid effective March 5, 2007.
16. The CAO authorized Medicaid effective March 5, 2007, issued a Notice to Applicant (PA 162) indicating eligibility for Medicaid and ineligibility for payment of LTC services for the period March 5, 2007 through July 17, 2007, and the availability of an Undue Hardship Waiver process.
17. The CAO completed the TPL file and set an alert for 30 days prior to the end of the period of ineligibility (June 17, 2007) to send Mr. Smith an application to determine eligibility for payment of Medicaid/LTC services effective July 18, 2007.

Example 2: Transfer of Assets for FMV

1. Mr. Jones, age 74, transferred his resident property, valued at $100,000, to his son on February 18, 2007. In exchange, the son provided a promissory note for $100,000.
2. The terms of the promissory note specify that payments are to be made in equal monthly installments over a ten-year period; the promissory note does not include a cancellation clause.
3. Mr. Jones was admitted to a nursing facility on March 5, 2007 and had no other resources.
4. On March 15, 2007, the CAO received an application for Mr. Jones requesting Medicaid/LTC services effective March 5, 2007.
5. Since this promissory note meets all three of the mandated requirements, it is not treated as a transfer of assets for less than FMV. However, the value of the promissory note is considered an available resource.
6. The CAO rejects the application for Medicaid/LTC services and issues a PA 162 rejection notice.

7. Mr. Jones is not eligible for Medicaid/LTC services until his countable resources are less than the resource eligibility limit.

Next Steps

1. Review this Operations Memorandum with appropriate staff.
2. Contact your Area Manager if you have questions.
3. This Operations Memorandum will become obsolete upon release of the revised Handbook pages.