

Administrative Notice DMMA-05-2007

TO: All DMMA Staff

DATE: April 17, 2007

SUBJECT: Promissory Notes, Loans, and Property Agreements

BACKGROUND

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in section 1917(c)(1) of the Social Security Act. A new paragraph (I) was added to include transfers of certain notes and loans assets.

DISCUSSION

In the past some individuals have made an effort to avoid the transfer of assets penalty by obtaining a promissory note, loan, or mortgage. These documents would be offered as verification of loans, not gifts. Section 6016(c) of the DRA amends the Social Security Act by adding rules related to the purchase of these instruments. Promissory notes, loans, and/or mortgages that are held by the long-term care Medicaid applicant/recipient must be:

- actuarially sound;
- make payments in equal amounts with no deferral or balloon payments; and
- prohibit the cancellation of the balance at the death of the lender.

If these conditions are not met the note, loan, or mortgage will be considered a transfer for less than fair market value. A penalty period will be imposed based on the outstanding balance of the note, loan, or mortgage as of the date of the individual's Medicaid application.

If it is determined that fair market value was received, States must still consider whether the note, loan, or mortgage is a countable resource.

ACTION REQUIRED

- Obtain verification regarding the promissory note, loan, or property agreement
- Determine if the note, loan, or mortgage is:
 - Actuarially sound;
 - Payments are to be made in equal amounts during the term of the loan with no deferral of payments and no balloon payments; and
 - Prohibited from the cancellation of the balance upon death of the lender.
- If conditions are not met count the outstanding principal balance at time of application as a transfer of assets.
- Provide the individual a chance to formally rebut the transfer. (see DSSM 20350.13)
- If rebuttal is denied, provide individual with information regarding hardship waiver process. (see DSSM 20350.11)
- If hardship waiver is denied impose penalty period based on outstanding principal balance at time of Medicaid application.
- Review DSSM policy 20330.3

DIRECT INQUIRIES TO

Barbara L Lewis

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Signed - April 19, 2007

HARRY B. HILL, DIRECTOR

DIVISION OF MEDICAID & MEDICAL ASSISTANCE