

CMS Informal Memo to Wisconsin Medicaid

Email

From: Le-Yuen, Mai (CMS/CMCHO)

To: Mandel, Sabrina - DHS

CC: LaPhillip, John O - DHS; Matano, Alfred - DHS; Coleman, ReneVanessa (CMS/CMCS); Coffey, Gene (CMS/CMCS)

Sent: 5/23/2016 2:52:02 PM

Subject: Wisconsin treatment of promissory notes

Good afternoon Sabrina,

Hope you are doing well. Below is a summary of our discussion on May 5th. Please let me know if you have any questions. Thank you. Mai

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We at the Centers for Medicare & Medicaid Services (CMS) thank you for taking the time to discuss this matter with us on Thursday, May 5, 2016. As discussed on the call, we are writing to recapitulate what we discussed in our conversation.

Section 1917(c) of the Social Security Act directs that during the 60-month look-back period for an individual a penalty will be imposed upon the individual if the individual transferred assets at less than fair market value (FMV). Under section 1917(c)(1)(i), purchasing a promissory note is not a transfer subject to the transfer penalty, as long as the promissory note

- 1) has a repayment term that is actuarially sound,
- 2) makes payments in equal amounts over the course of the loan without deferral or balloon payments, and
- 3) prohibits the cancellation of the balance upon death of the lender.

Only if the above criteria are not met can the purchase of the promissory note be treated as an asset transfer. In determining the amount of the asset transfer, the value of the note, loan or mortgage is the outstanding balance due as of the date of the individual's application for Medicaid coverage of services listed in section 1917(c)(1)(C) of the Act.

The fact that the purchase of a promissory note is not considered an asset transfer does not mean, however, that the note itself is not considered an asset for eligibility purposes. This latter determination is based on SSI methodologies, which, for cash loans, directs that promissory notes are indeed countable assets, unless a note is non-negotiable, in which case it is not an asset. Please reference the Social Security Administration's (SSA's) Program Operations Manual System (POMS) provision at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501120220>.

Of concern, Wisconsin enacted laws, Wis. Stat. §§49.452 and 49.453(4c), which along with your state Medicaid agency guidance dated October 12, 2015, Operations Memo 15-38, appear to impose a stricter standard for the treatment of promissory notes compared to the rules described above. The newly enacted laws, as confirmed by the Operations Memo, direct that a promissory note purchased after June 14, 2015, must be treated either as an asset transfer or a countable asset. As described above, however, it is possible that a promissory note transaction is a not an asset transfer for less than FMV and does not produce a countable resource. A state policy that prohibits such a circumstance is in conflict with federal law.

We ask Wisconsin to review the foregoing. Once you confirm your review, we will schedule a follow-up conversation to discuss next steps.

Thank you,

Gene Coffey and Rene Vanessa Coleman