



Date: October 12, 2015

DHCAA Operations Memo 15-38

To: Income Maintenance Supervisors  
Income Maintenance Lead Workers  
Income Maintenance Staff  
W-2 Agencies  
Workforce Development Boards  
Job Center Leads and Managers  
Training Staff  
Child Care Coordinators

<b>Affected Programs:</b>	
<input type="checkbox"/> BadgerCare Plus	<input type="checkbox"/> Caretaker Supplement
<input type="checkbox"/> FoodShare	<input type="checkbox"/> FoodShare Employment and Training
<input checked="" type="checkbox"/> Medicaid	
<input type="checkbox"/> SeniorCare	

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Bureau of Enrollment Policy and Systems  
Division of Health Care Access and Accountability

**Promissory Notes as Assets**

**CROSS REFERENCE**

Medicaid Eligibility Handbook, [Section 16.7 Liquid Assets](#), [Section 17.12 Promissory Notes](#)

**EFFECTIVE DATE**

Immediately

**PURPOSE**

This Operations Memo communicates new policy related to the treatment of promissory notes, as directed by the 2015-2017 state budget.

**BACKGROUND**

In order to be eligible to receive Medicaid for the Elderly, Blind, or Disabled, an individual is subject to nonfinancial and financial criteria, including an asset limit. In evaluating whether applicants or members meet that asset limit, Wisconsin law now requires the Department of Health Services to follow the example of other states in counting promissory notes as assets when they are not divestments.

Medicaid divestment statutes and policy prevent applicants or members from giving away assets or transferring assets for less than fair market value. Long term care members that divest assets or applicants that have divested assets during the five year “look-back” period prior to applying for Medicaid long-term care, are ineligible for long-term care services (i.e., nursing home or community waivers) otherwise covered by Medicaid for a period based on the value of the divested assets. This period of ineligibility is the divestment “penalty period.”

A promissory note is a written, unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party, which may be given in return for goods, money loaned, or services rendered. In an attempt to reduce assets below program thresholds, some applicants, members, or spouses have attempted to use promissory notes as a tool to convert countable resources, such as bank deposits or bonds, into unavailable assets, thus making the individuals financially eligible for Medicaid. In order to prevent such an agreement from being seen as a divestment, it must meet the following federal criteria, which are also codified in Medicaid Eligibility Handbook, [Section 17.12.2 Promissory Notes on or After 01/01/09](#):

- The note's repayment term is actuarially sound as determined in accordance with the standards determined by the Office of the Chief Actuary of the Social Security Administration;
- The note's payments are to be made in equal amounts during the term of the loan, with no deferral or balloon payments; and
- Cancellation of the note's balance upon the death of the lender is prohibited.

If a promissory note meets these criteria, the transfer is not a divestment under the current policy. To prevent further misuse of promissory notes to obtain long-term care, 2015 Wisconsin Act 55 included provisions that instruct the Department to treat these notes as assets when they are not divestments. Wisconsin Act 55 became effective on July 14, 2015.

## **POLICY**

A promissory note is a legally binding financial instrument that entitles the holder to receive payments. Promissory notes are liquid assets, but prior to the effective date of the new policy, promissory notes have not been considered in the asset assessment.

Beginning with promissory notes created on or after July 14, 2015, all promissory notes that are not considered divestments are negotiable liquid assets. The current market value will be assumed to be equal to the outstanding balance, and the promissory notes will be countable assets in a Medicaid eligibility determination.

An applicant who disputes the value used by the Income Maintenance (IM) worker must provide credible evidence from a knowledgeable source that the note is non-negotiable or has a different current market value.

Also, beginning with promissory notes created on or after July 14, 2015, notes that cannot be considered assets because they are non-negotiable, non-assignable, or have no market value may be considered divestments. The divestment will be effective either at the time the note was created, or at the time it was made non-negotiable, whichever is later.

**Example:** Jean gave her adult son \$50,000 in exchange for a promissory note, which was expected to be paid back in full during her life expectancy, with regular monthly payments. Later that year, Jean entered a nursing home and applied for Medicaid.

Since the terms of the promissory note were actuarially sound, meeting all the conditions laid out in Medicaid Eligibility Handbook, Section 17.12.2, the transfer was not considered a divestment. As of the date of Jean's application for Medicaid long-term care services, her son had repaid his mother only \$1,200 and the outstanding balance on the note was \$48,800.

The promissory note would be considered an available asset for Jean, with an assumed value of \$48,800.

### **CARES**

There are no CARES changes as a result of the new policy outlined in this memo.

### **CONTACTS**

BEPS CARES Information and Problem Resolution Center

DHS/DHCAA/BEPS/FM