GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES MEDICAID POLICY MANUAL			
Chapter:	**2300**	**Effective Date:**	**July 2022**
Policy Title:	**Contracts: Promissory Notes, Loans, and Property Agreements**		
Policy Number:	**2313**	**Previous Policy Update:**	**MT 59**

REQUIREMENTS

The resource value of a promissory note, loan or property agreement is determined for all ABD Medicaid COAs. This determination is made effective May 1, 2005, on existing notes, loans or property agreements that were previously excluded and on newly established contracts.

This policy does not apply to Family Medicaid COAs.

BASIC CONSIDERATIONS

The context of the instructions in this section assumes that the individual is the creditor (lender of money or seller of property) and therefore the owner of the promissory note, loan or property agreement.

For the owner of the agreement (the seller), a contract is a resource. The property itself is not a resource because the seller cannot legally convert it to cash while it is encumbered by the agreement.

For the buyer of the property (debtor/borrower), the contract is not a resource. However, the property purchased may be a countable resource in the month following the month of the transaction.

Legal Contracts may consist of:

- 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. It may be given in return for goods, money loaned, or services rendered. It may NOT be for real estate property; however, it may be used as evidence of a **debt** for the transfer of the property.
- A loan is a transaction whereby one-party advances money to or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement may be written or oral and must be enforceable under state law. A written loan agreement is a form of promissory note. Refer to Section 2347, Loans, for procedures for the Borrower.

BASIC CONSIDERATIONS (cont.)

Legal Contracts may consist of (cont.):

- A property agreement is a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period. Property agreements on real estate generally are referred to as mortgages but also may be called land contracts, contracts for deed, deeds of trust, etc. Personal property agreements such as a pledge of crops, fixtures, inventory, etc., are commonly known as chattel mortgages. Property agreements may NOT be in the form of an oral loan.

Terminology

Actuarially Sound

Actuarially sound means that the average number of years of expected life remaining for the owner of the contract must be equal to or more than the number of years stated in the contract to be paid. Refer to Section 2339 Annuities, "Life Expectancy Table" on page 8.

Amortized

Amortized means the payments are equal with a reasonable interest rate (at least 1% interest) so that the last payment is the same as the previous payments. For Medicaid purposes, payments must be monthly only. Any other schedule of payments is not considered as amortized.

Negotiable Agreement

A negotiable agreement is an agreement whereby the ownership of the instrument itself and the whole amount of money expressed on its face can be transferred (e.g., sold) from one person to another. If the agreement may be sold, it is negotiable.

Non-Negotiable Agreement

If the contract plainly states that it is not transferable under any circumstance, it is non-negotiable. A non-negotiable contract is considered a transfer of assets for less than the value unless it is:

- Actuarially sound,
- Fully amortized with a reasonable rate of interest,
- Free of any conditional or self-canceling clauses.

Original Principal Balance

The original principal balance is the amount owed to the creditor when the agreement was established.

BASIC CONSIDERATIONS (cont.)

Terminology (cont.)

Outstanding Principal Balance

The outstanding principal balance is the balance in the month for which a determination is being made (amount loaned less amount paid on principal).

Oral Loans

Oral loans are not valid for promissory notes or property agreements. If the **Loan** is an Oral Loan Agreement, obtain a statement from each of the parties involved (Lender and Borrower) acknowledging the borrower's obligation to repay and obtaining the following information:

- The date and amount of the original loan
- Any collateral used
- The schedule and amount of payment if any, or other plan for repayment (e.g., borrower plans to repay the loan when s/he receives expected income)
- The outstanding principal balance
- The interest rate
- Copies of checks or receipts of payments showing principal and interest

If both parties agree that an oral loan exists, consider the oral loan to be a contract. Otherwise, the oral loan agreement is not a contract, and therefore not a resource to the lender. Consider a transfer of resources. Refer to Section 2342, Transfer of Resources.

PROCEDURES

Follow the steps below to determine the treatment of a contract created prior to 10/1/2006:

Step 1 From the A/R or PR, obtain a copy of the contract for the file, including payment schedule and amounts.

Step 2 Determine the original principal balance using the contract. Cease development, if including the original principal balance, as shown in the contract DOES NOT cause ineligibility in resources. Count the original principal balance as a resource. Count the interest portion of the payment as income. Proceed to Step 8. For computing interest portion of payment, outstanding principal balance, etc., refer to "Computations", page 9, in this section.

If the original principal balance along with the other resources exceeds the resource limit, proceed to Step 3.

PROCEDURES (cont.)

Step 3 Determine the outstanding principal balance and if the contract provides for payments to be made monthly. If the contract is not in the form of monthly payments, STOP. If this is a new application, count the outstanding value of the contract as a resource. If this is a review, give the A/R 30 days in which to have the contract converted to monthly payments. If payments **are** made monthly proceed to Step 4.

Step 4 Cease development, if including the outstanding principal balance DOES NOT cause ineligibility in resources. Count the outstanding principal balance as a resource. Count the interest portion of the payment as income. Proceed to Step 8.

If the outstanding principal balance along with other resources is over the resource limit, notify the A/R of closure/denial, possibility of transfer of assets, and the right to rebut the value of the outstanding principal balance. See Appendix F, "Notice of Review of Promissory Note, Loan or Property Agreement". If this is an initial application, deny the case as over resources pending rebuttal. If this is a review, leave the case open pending receipt of a rebuttal. If a rebuttal is not received, close the case on the 31st day allowing for timely notice. If the contract is rebutted, proceed to Step 5 on rebuttal process.

Step 5 In order to rebut the value of the contract, the A/R or RP must obtain sworn affidavits from two independent and knowledgeable sources that buy notes. One of these sources shall be chosen by DFCS. To effectively rebut the outstanding principal balance, the affidavit must show that the Current Market Value (CMV) of the contract is less than its outstanding principal balance and must include the following information:

- Do you buy contracts?
- What type?
- How long have you been buying contracts?
- How are you knowledgeable about the business?
- Would you be willing to buy this contract?
- If yes, how much would you pay for this contract?
- If not, why wouldn't you buy the contract?
- What factors did you use to arrive at this amount?

NOTE: The broker does not have to buy the contract. They only need to appraise the contract, provide a value and the other information listed.

Knowledgeable sources include anyone regularly engaged in the business of making such evaluations, such as banks or other financial institutions, private investors or real estate brokers.
Knowledgeable sources may be found in the telephone book, yellow pages or

PROCEDURES (cont.)

Step 5 (cont.)

internet. The estimate must indicate the name, title, and address of the source.

Calculating Value After Rebuttal	
IF	**Then**
Both brokers provide a value of the contract,	count the higher offer as a resource, even if it is higher than the outstanding principal balance.
Only one broker provides a value of the contract,	count that amount as a resource.
both brokers provide a zero value to the contract,	it has a zero-resource value.

If the broker rebutted value along with other resources is above the resource limit, the A/R is ineligible. Close/deny the case as over resources, using the "Notice of Termination of Medicaid Benefits" found in Appendix F. Waive Georgia Gateway generated notice.

If the broker value along with other resources is below the resource limit, use the rebutted amount as the countable resource value of the note in the eligibility determination process. Count the interest portion of the payment as income. Proceed to Step 6.

Step 6 Determine if the contract is amortized, actuarially sound, and negotiable/non-negotiable with exceptions. See Terminology definitions on pages 2-3. If the contract is NOT amortized, NOT actuarially sound or non-negotiable, it is considered invalid. Using the chart below, compute a transfer of assets penalty from the date the note was established using the difference between the original principal balance and the rebutted value. Any penalty will begin with the month the contract was established. The look back period would begin from the month of application. If all or part of the contract is returned to the owner of the contract, recompute any penalty using the new value of the contract. Refer to Section 2342, Transfer of Resources.

Type of Asset in Contract	Contract Is Valid	Contract Is Invalid
Real property	No transfer penalty	Yes transfer penalty
Goods & services	No transfer penalty	Yes transfer penalty
Money	Yes transfer penalty	Yes transfer penalty

PROCEDURES (cont.)

Step 7

Result of the Penalty		
IF the penalty period:	**Then the Resource Value is:**	**And Then the Countable Income is:**
Has expired,	the rebutted or outstanding value of the contract, if not rebutted,	only the interest portion of the payment. Proceed to Step 8.
Has NOT expired,	the rebutted or outstanding value of the contract, if not rebutted,	the interest portion of the payment, if the AU remains open. Notify the A/R of the transfer penalty. Proceed to Step 8.

Step 8 Proceed with the eligibility determination process, including basic eligibility criteria, income/resource eligibility and PL/CS as applicable to the COA.

NOTE: Use the interest payment at the time of application unless it changes significantly from month to month (Refer to Section 2558.) Then annually change to the interest rate in the month of annual review.

DRA- Contracts created 10/1/06 or after

Follow the steps below to determine the treatment of a contract created on or after 10/01/2006.

Step 1 From the A/R or PR, obtain a copy of the contract for the file, including payment schedule and amounts.

Step 2 Determine if the contract is secure or unsecure.
Secure Contracts – with collateral
Unsecure Contracts – without collateral

Step 3 Determine if the contract meets all of the following:

- The repayment terms must be actuarially sound;
- Payments must be amortized (made in equal monthly amounts during the term of the loan) with no deferral of payments and no balloon payments;
- Must not contain a prepayment clause; and
- The note, loan, or mortgage must prohibit cancellation of the debt upon death of the lender.

PROCEDURES (cont.)

DRA- Contracts created 10/1/06 or after (cont.)

Step 4 If the contract is unsecure and meets **all** of the above criteria, stop and count the monthly payment as unearned income.
If the contract is secure and meets all the above criteria, it is still a countable resource if it has value and can be sold.
If the contract (secure or unsecure) does not meet all of the above criteria, it must be treated as a transfer of assets.

Step 5 Develop a transfer of assets penalty on the entire outstanding balance due as of the month of the individual's application for Medicaid coverage for long-term care. You must verify by cancelled check, bank statement, or other reliable source the repayment terms according to the contract and payment schedule.

NOTE: If the payor of the note dies prior to paying the debt in full, the Medicaid member must take legal action to recover the remaining balance of the note from the payor's estate and provide documentation of such action. If the member fails to provide documentation of such action, the remaining balance is considered a transfer of assets and penalty should be applied.

SPECIAL CONSIDERATIONS

Non-Payment on Contracts: As long as the requirements for the contract are met and payments made directly to the A/R, no transfer has occurred.

- If the A/R should "forgive" payments on the contract, compute a transfer penalty on the outstanding balance, not deducting forgiven payments from the original balance. The penalty start date would be the first month in which a payment was forgiven.
- If the A/R is not actually receiving the payments because the payments are made to a third party, compute a transfer penalty on the outstanding balance not deducting the payments made to the third party.
- If the A/R reduces the outstanding principal balance of the contract by purchasing items for people other than the spouse or by giving away a portion of the outstanding principal balance, then compute a transfer penalty based on the amount of the purchased item or the amount that was given away.

SPECIAL CONSIDERATIONS (cont.)

Defaulting on payments: Should the borrower default on payments on contracts that are actuarially sound and fully amortized, including so called "paid ahead contracts", the owner of the contract:

- MUST take legal action to foreclose on the contract within 60 days of the default.
- Must provide verification of the action being taken.
- If no action to foreclose on the contract is taken, the owner of the contract is considered to have transferred assets equal to the remaining value of the contract. The effective date of this transfer is the date the payments stopped.

NOTE: A contract in which the full interest payment is not made monthly is considered as a default of the payment.

Questionable Contracts: For any questionable contracts, such as real estate property which has been put in a promissory note or oral loan, contact your Medicaid Program Specialist for instructions**.**

INTEREST COMPUTATIONS

Step 1. To determine the amount of interest to be paid on a contract, multiply the original contract amount by the interest amount (ex. $50,000 X .03 = $1500 interest amount to be paid.)

a. _____________ original contract amount

b. X____________ interest on contract in decimal point

c. = ____________yearly interest to be paid on the loan

Step 2. To obtain the monthly amount that should be paid in interest the first year of the contract, divide the interest amount to be paid by 12
(ex. $1500/12 = $125 monthly amount of interest paid).

a. _____________ (1.c) yearly interest due on loan

b. divided by 12 months =

c. _____________monthly amount of interest to be paid (count as monthly income)

Step 3. To determine the outstanding principal balance, subtract the monthly amount of interest paid from the monthly payment to be made
(ex. Monthly payment is $200 - $125 = $75 monthly principal payment).

a. ____________total amount of monthly payment

b. -___________ (2.c) monthly amount of interest to be paid

c. = _______________ monthly payment on principal

Step 4. Next multiply the monthly payment amount on the principal by the number of actual payments made to date by the A/R (ex. 10 payment made to A/R X $75 = $750).

a. ____________ (3.c) monthly payment on principal

b. X __________ number of monthly payments made to date

c. = ___________amount of principal paid to date

Step 5. The outstanding principal balance, could then be computed by subtracting the actual payments made to date from the original amount of the contract
(ex. $50,000 - $750 = $49,250 outstanding principal balance).

a. ____________ (1.b) original contract amount

b. - ____________ (4.c) amount of principal paid to date

c. = ____________Outstanding Principal Balance.

Annual Review: Each year at review this process will need to be redone. The interest payments should go down each year. The next year, however, instead of using the original amount of the contract, start with the outstanding principal balance obtained in Step 5 the previous year. That will be the amount used beginning with Step 1.