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Medicaid Eligibility Manual Transmittal Letter No. _____

To: All Medicaid Eligibility Manual Holders

From: Helen E. Jones-Kelley, Director

Subject: Qualified Long Term Care Partnership

Ohio Revised Code section 5111.18 instructs the Department of Job and Family Services to establish a qualified state long-term care insurance partnership (QLTCP) program consistent with the definition of that term in 42 U.S.C. 1396p(b)(1)(C)(iii).

To that end, attached are a new rule (5101:1-38-11) and an amended rule (5101:1-39-31).

Your review and comments of this material are appreciated.

Chapter 2

5101:1-38-11 Medicaid: *qualified long term care partnership*

This new rule defines the QLTCP program as per O.R.C. section 5111.18.

Chapter 3

5101:1-39-31 Medicaid: *treatment of the home*

This rule has been amended to clarify that (per July 27, 2006 CMS guidance) a QLTCP disregard can not be used to offset or reduce the home equity restriction in paragraph (C)(5) of this rule.

Fiscal Impact

The revisions to the rules in this clearance do not impose any new requirements on county agencies and therefore, the implementation of these rule changes should result in no fiscal impact on the county agencies.

Training Statement

The revisions to the rules in this clearance will require training and technical assistance to be provided to county staff by ODJFS. Clarification regarding these rules will be available to county staff through the Medicaid Eligibility Technical Assistance staff, who can be reached via email at MEDICAID_ELIGIBILITY_TA@odjfs.state.oh.us.

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5101:1-38-11 Medicaid: treatment of qualified long term care insurance policies.

(A) This rule describes the qualified long term care partnership (QLTCP) program under which an individual's assets or resources are disregarded in eligibility determination(s) and at estate recovery in the amount of benefits paid to or on behalf of the consumer by a QLTCP policy.

(B) Definitions.

(1) "Estate recovery" means the program set out in rule 5101:1-38-10 of the Revised Code.

(2) "Qualified long term care partnership (QLTCP)" means the program established under section 5111.18 of the Revised Code, under which an individual's assets or resources are disregarded in eligibility determination(s) and at estate recovery in the amount of benefits paid to or on behalf of the consumer by a QLTCP policy.

(3) "Third party" is defined in rule 5101:1-38-02.2 of the Administrative Code.

(C) A QLTCP policy is one that meets all of the following requirements.

(1) On the date the policy was issued, the state in which the insured resided had in place an approved state plan amendment which provides, pursuant to 42 U.S.C. 1396p(b) (as in effect on May 1, 2007), for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of a QLTCP policy; and

(2) The policy is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986; and

(3) The policy meets the requirements set forth by the Ohio department of insurance.

(D) At application or reapplication for long term care services, HCBS, or PACE (as established in Chapter 5101:1-39 of the Administrative Code), an individual's assets or resources will be disregarded, up to the dollar amount of benefits paid to or on behalf of the individual by a QLTCP policy.

(1) The administrative agency shall determine medicaid eligibility in accordance with the eligibility rules contained in Chapters 5101:1-37 to 5101:1-42 of the Administrative Code.

(2) An individual may apply for long term care services before exhausting the benefits of a QLTCP policy. If the consumer applies and is eligible for

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medicaid coverage before the QLTCP policy is exhausted, the QLTCP insurer must make payment for medical care to the maximum extent of their liability before medicaid funds may be used to pay providers for covered services as established in rule 5101:1-38-02.2 of the Administrative Code.

(3) If an individual who has applied for and been found eligible for medicaid receives additional assets, the individual continues to be eligible for medicaid to the extent that the individual's total assets do not exceed the individual resource allowance after applying the QLTCP disregard.

(E) Estate recovery.

(1) The amount of insurance benefit payments made to or on behalf of an individual who is a beneficiary of a QLTCP policy will be disregarded during estate recovery pursuant to rule 5101:1-38-10 of the Administrative Code.

(2) The following assets, which are not considered a resource at eligibility determination, will not be disregarded during estate recovery:

(a) Special needs trusts as established in rule 5101:1-39-27.1 of the Administrative Code;

(b) Pooled trusts as established in rule 5101:1-39-27.1 of the Administrative Code; and

(c) Annuities as described in rule 5101:1-39-22.8 of the Administrative Code.

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5101:1-39-31 **Medicaid: treatment of the home.**

(A) This rule describes the treatment of an individual's home for purposes of determining eligibility for medical assistance.

(B) Definitions.

(1) "Administrative agency" means the county department of job and family services, the Ohio department of job and family services, or other entity that determines eligibility for a medical assistance program.

(2) "Home", for the purpose of this rule, means any property in which an individual has an ownership interest in and which serves as the individual's principal place of residence. Home includes the structures and land appertaining to the home property. Appertaining land must be contiguous to adjoin the land on which the home property is located and must not be separated by intervening land property owned by others.

(3) "Individual" means an applicant for or recipient of a medical assistance program.

(4) "Nursing facility", for the purpose of this rule, refers to a nursing facility, intermediate care facility for the mentally retarded, or other medical institutions.

(5) "Principal place of residence" means the dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return. Principal place of residence can be real or personal property, fixed or mobile, and located on land or water.

[\(6\) "Qualified long term care partnership \(QLTCP\)" is defined in rule 5101:1-38-11 of the Administrative Code.](#)

(C) Treatment of the home when long-term care facility (LTCF) services, home and community based services (HCBS) waiver or program of all inclusive care for the elderly (PACE) services are requested.

(1) For the value of the home to be exempt:

(a) The home must be the individual's or the individual's spouse principal place of residence; and

(b) The deed to the home must be in the individual's or individual's spouse name; and

(c) The home must comply with the provisions in paragraphs (C)(5) to (C)(7) of this rule.

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- (2) The home is no longer considered to be the principal place of residence if the individual resides in a nursing facility, intermediate care facility for the mentally retarded (ICF-MR), or other medical institution for a continuous period of thirteen months or longer. The administrative agency must consider the home a countable resource when the individual has continuously resided in a nursing facility, ICF-MR, or other medical institution for thirteen months or longer; however, the home is not a countable resource if any of the following individuals are residing in the home:
 - (a) The individual's spouse; or
 - (b) The individual's child who is under age twenty-one, or blind or disabled as defined in Chapter 5101:1-39 of the Administrative Code; or
 - (c) The individual's child who is age sixty-five or older and is financially dependent upon the individual for housing. Verification of financial dependency in this situation is determined by comparing the aged child's countable income to the Ohio works first (OWF) payment standard defined in Chapter 5101:1-40 of the Administrative Code; or
 - (d) The individual's sibling who has a verified equity and ownership interest in the home and has resided in the home for at least one year immediately before the date the individual was admitted to the nursing facility.
- (3) The thirteen month home exemption period begins the first month in which the individual is both eligible for medicaid and residing in a nursing facility, ICF-MR, or other medical institution.
- (4) If a thirteen month home exemption period is interrupted because the individual has resided in a nursing facility, ICF-MR, or other medical institution for less than thirteen months or the individual is ineligible for medicaid for any month during the thirteen month home exemption period, then a new thirteen month home exemption period must begin as outlined in paragraph (C)(2) of this rule.
- (5) For applications filed on or after January 1, 2006, an individual is not eligible for LTCF services, a HCBS waiver or PACE if the individual's equity interest in the individual's home exceeds five hundred thousand dollars. The home equity restriction of five hundred thousand dollars is applicable even though the home is considered the principal place of residence as defined in this rule.
 - (a) The equity value in excess of five hundred thousand dollars restriction does not apply to an individual if any of the following persons are lawfully residing in the individual's home:
 - (i) The individual's spouse; or

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(ii) The individual's child who is under age twenty-one, or blind or disabled as defined in Chapter 5101: 1-39 of the Administrative Code.

(b) Nothing in paragraph (C)(5) of this rule should be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home below the five hundred thousand dollars restriction.

(c) The requirements in this paragraph must be waived in the case of a demonstrated hardship as outlined in paragraph (D) of this rule.

(6) The home equity restriction of five hundred thousand dollars is applicable even when a consumer is a recipient of QLTCP benefits. A QLTCP disregard can not offset or reduce home equity for the purposes of paragraph (C)(5) of this rule.

~~(6)~~(7) An individual who applies for and is determined eligible for long-term care (LTC) services before January 1, 2006 is not subject to the home equity restriction; however, if the individual has a break in LTC eligibility on or after January 1, 2006, the home equity restriction described in paragraph (C)(5) of this rule applies.

(D) Home equity and undue hardship.

(1) The administrative agency must deny or terminate LTC services, HCBS waiver or PACE payment when an individual's equity interest in the individual's home exceeds five hundred thousand dollars, with the exception in paragraph (C)(5)(a) of this rule.

(2) The individual will not be subject to a denial or termination of benefits resulting from home equity in excess of five hundred thousand dollars if the denial or termination will result in an undue hardship. An undue hardship exists when denial or termination of LTC services, HCBS waiver or PACE would deprive the individual of the following:

(a) Medical care such that the individual's health or life would be endangered; or

(b) Food, clothing, shelter, or other necessities of life.

(3) The individual must first document an attempt was made to reduce the home equity value below five hundred thousand dollars.

(4) An undue hardship exemption may be requested by the individual or, with the consent of the institutionalized individual or the authorized representative, by the nursing facility on behalf of the institutionalized individual.

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- (5) Undue hardship does not exist when the institutionalized individual has taken action to restrict access to the excess home equity.
- (6) For the purpose of this rule, individuals determined to be incompetent, who do not have another individual to act on their behalf, must be referred to the county prosecutor or the administrative agency's own legal staff.
- (E) The individual must provide verification, as defined in Chapter 5101: 1-37 and Chapter 5101: 1-38 of the Administrative Code.