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Medicaid Eligibility Procedure Letter (MEPL) No. 164

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OAC Rules: 5160:1-3-03.10, 5160:1-3-05.3

To: All Medicaid Eligibility Manual Holders

From: Maureen M. Corcoran, Director

Subject: Treatment of Individual Retirement Accounts (IRAs) for Medicaid Eligibility Purposes

Reason for Change: The Ohio Department of Medicaid is clarifying its policy with regard to the treatment of funds received from IRAs for the purpose of determining eligibility for medical assistance.

Policy: Ohio Administrative Code (OAC) rule 5160:1-3-03.10 states that a retirement fund in which an individual has the legal ability to receive regular guaranteed lifetime payments will be treated as unearned income rather than as a resource. OAC 5160:1-3-03.10 further states that an individual is required to obtain the maximum available amount of payment from his/her retirement plan and that a retirement fund shall be evaluated as a potential resource only after it is determined to not be income. The Social Security Administration's (SSA's) Program Operations Manual System (POMS) SI 01120.210(E)(1) states, in reference to retirement accounts, that if an individual is eligible for either periodic payments or a lump-sum, the individual must choose to receive periodic payments.

Action Required: County Job and Family Services (JFS) offices must evaluate IRAs consistent with responses to the following frequently asked questions (FAQs):

1. What qualifies as an Individual Retirement Account (IRA)?

IRA is an umbrella term used to describe a personal retirement savings plan that provides the owner tax advantages for setting aside money for retirement. The IRA itself is not an

investment, but rather a holding account for investments. An IRA holds investment products like stocks, bonds, annuities, and mutual funds (among others). IRAs are considered “tax-favored” retirement plans.

2. What are required minimum distributions (RMDs)?

The IRS requires an IRA owner to take mandatory withdrawals from his/her IRA account (also known as RMDs) when the individual reaches a certain age (regardless of whether he/she needs or wants the income). RMDs are regular, periodic payments that are calculated from the Life Expectancy Tables published by the Internal Revenue Service (IRS). The age requirement for taking RMDs was adjusted when the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 became law on December 20, 2019. The SECURE Act increased the age at which individuals must begin taking RMDs. Prior to the SECURE Act, an individual born on or before June 30, 1949, was required to start taking RMDs for the year he/she reached the age of 70½. Under the SECURE Act, if an individual’s 70th birthday is July 1, 2019, or later, the individual is not required to take his/her first RMD until the year he/she reaches age 72. An individual who attained age 70½ prior to July 1, 2019, would fall under the old rules (before the SECURE Act) and would be required to receive RMDs for the year he/she reached age 70½. The deadline for an individual to take his/her first RMD is April 1 of the year following the year he/she turns age 72 (or 70½ depending on the individual’s date of birth).

3. Do all IRAs require RMDs upon reaching the age threshold?

The Roth IRA is the only type of IRA that does not have an IRS requirement for the owner to take RMDs; however, the individual must take regular, periodic payments from a Roth IRA in order for the IRA to be treated as income rather than as a resource for Medicaid purposes. Although an individual cannot take RMDs from a Roth IRA, he/she can elect to take regular, periodic payments. When an individual elects to receive regular, periodic payments from a Roth IRA, the funds must be counted as unearned income for Medicaid purposes (regardless of the amount of the payments). When an individual elects to not take regular, periodic payments, the entire value of the Roth IRA must be counted as a resource.

4. What constitutes regular, periodic payments?

Per IRS Publication 575, Pension and Annuity Income, regular, periodic payments are amounts paid at regular intervals (such as weekly, monthly, or yearly) for a period of time greater than one year. Regular, periodic payments are not based on the amount of the payment, but rather the frequency of the payment.

5. Can distributions from an IRA be considered both income and a resource at the same time?

A single distribution from an IRA would never count as both income and a resource at the same time. Payments from an IRA must always be evaluated as income first; only if an IRA is found to not be income would an IRA be treated as a resource. Payments from an IRA are considered unearned income when the IRA is in “payout status,” meaning the individual is taking regular, periodic payments from the account as described in OAC 5160:1-3-3.10(C). OAC 5160:1-3-03.10(D) explains how an IRA is treated when it is determined to be a resource. Each

distribution must be reviewed separately, as an individual could be receiving regular, periodic payments but also take an irregular lump-sum withdrawal. Each distinct distribution must be reviewed individually.

6. What if an individual (applicant or his/her spouse) is not old enough to qualify for RMDs or is not required to take RMDs? Is the individual still required to take regular, periodic payments from his/her IRA for Medicaid purposes?

Yes, regardless of the individual's age or the type of IRA, an individual must take regular, periodic payments from his/her IRA in order for the funds to be considered income rather than a resource. An Individual who is not old enough to take RMDs or an individual who has a Roth IRA and is not required to take RMDs must place his/her IRA in payout status and take regular, periodic payments for Medicaid purposes (regardless of any penalties or fees that may be imposed for an early withdrawal). When an individual elects to not take regular, periodic payments from his/her IRA because of an early withdrawal penalty, the IRA is a countable resource to the extent of the funds available minus any penalties and fees.

An individual who is not yet required to take RMDs is not mandated to take a specific periodic payment amount, but he/she *may* elect to take payments based on the SSA's Life Expectancy Tables. When an individual needs guidance regarding how to compute a withdrawal based on the SSA's Life Expectancy Tables, he/she should consult a tax professional or the individual's Plan Administrator. Until an individual is mandated to take RMDs by age or when an individual is not required to take RMDs with a Roth IRA, regular, periodic payments of any amount will suffice for the IRA to be counted as income and not as a resource.

7. Do RMDs (or regular, periodic payments for those individuals who are not old enough or not required to take RMDs) satisfy the requirement at OAC 5160:1-3-03.10(C)(2) that states an individual must obtain the "maximum available amount of payment from the plan?"

For Medicaid purposes, the payment of RMDs from an IRA are considered the *maximum* benefit available to the individual over his/her lifetime, thus satisfying the requirement at OAC 5160:1-3-03.10(C)(2). For an individual who is not qualified for or not required to take RMDs, any regular, periodic payments (regardless of the amount) will satisfy the requirement at OAC 5160:1-3-03.10(C)(2).

8. How are non-periodic distributions or irregular withdrawals from IRAs treated for Medicaid?

Non-periodic distributions or irregular withdrawals from an IRA are always considered a resource. When an individual takes the required RMDs/periodic payments (counted as income), but then also takes out an additional irregular withdrawal, the irregular withdrawal is considered a resource and treated like a lump-sum payment, while the regular, periodic payments are considered income.

9. Do RMDs or regular, periodic payments, need to be taken monthly for Medicaid purposes?

No, RMDs or regular, periodic payments can be taken monthly, quarterly, or annually. The individual does not need to elect monthly RMDs for Medicaid purposes, as long as the total required RMD amount is satisfied by the end of the calendar year. When an individual has elected annual RMDs, the annual amount is prorated to monthly by dividing by twelve. When an individual has elected quarterly RMDs, the quarterly amount is prorated to monthly by dividing by three. Once an individual is receiving RMDs or regular, periodic payments, the distributions are counted as unearned income on a monthly basis (regardless of the actual frequency of the payment). When the total required RMD is taken annually, the investment is considered “actuarially sound,” regardless of the payout schedule. The term actuarially sound means the individual will receive his/her investment back within his/her life expectancy period as determined by the Social Security Administration actuarial charts or the Life Expectancy Tables published by the IRS.

10. How would a county JFS worker identify the frequency of regular, periodic payments or RMDs?

An individual should be able to provide the county JFS office with the most recent plan statement showing the frequency and type of payments coming from his/her IRA. Many plans require a form to document distributions, such as the “IRA Distribution Request Form” or “Periodic Distribution Request Form,” so a copy of one of those forms could also be provided to the county JFS office to document the payout schedule. The individual could also provide a letter from the IRA Plan Administrator to verify his/her payout schedule.

11. What if an individual elects to liquidate his/her entire IRA (taking one lump-sum payment) rather than taking regular, periodic payments?

For any individual who is applying for a non-MAGI eligibility category, including an individual who is seeking long-term care (LTC) services, liquidating an IRA by taking one lump-sum payment will result in the IRA being counted as unearned income in the month of receipt and as a countable resource in the month following the month of receipt. A lump-sum payment received and then disposed of must be evaluated to determine whether fair market value (FMV) was received in exchange for the asset. When FMV is not received for an asset, a penalty period, also known as a restricted Medicaid coverage period (RMCP), must be calculated and applied per OAC 5160:1-6-06.5. During an RMCP, Medicaid will not pay for LTC services for the individual.

12. What if an individual who is qualified to take RMDs elects to not take RMDs?

When an individual who is qualified to take RMDs fails to do so or when an individual is not reasonably expected to live longer than the guarantee period of his/her IRA, the individual is not receiving fair market value (FMV) for the IRA. When an individual is not receiving FMV, the entire amount of the IRA must be counted as a resource. This should be uncommon, as the IRS penalty for not taking RMDs is very high. For every RMD dollar not withdrawn, the IRS charges a 50% penalty, known as the excise tax, to the individual. When an individual is still working and cannot access the funds while employed, the IRA is not considered an available resource as long

as the individual remains employed. An IRA is not a countable resource if an individual must terminate employment in order to obtain payments.

13. What happens if an individual has more than one IRA? How are RMDs or regular, periodic payments handled from multiple IRAs?

When an individual has multiple IRAs, an RMD or regular, periodic payment must be calculated *separately* for each IRA account annually. An individual with multiple IRAs can elect to “aggregate” his/her separate RMD amounts into one consolidated RMD, withdrawing the combined total of all RMD amounts from only one IRA. It does not matter which IRA account the individual takes the RMD from, as long as he/she withdraws enough to satisfy the total annual RMD of all IRAs combined. As long as the combined total of all required RMDs/payments for the year are satisfied, the distributions must be counted as income and not as a resource. For example, if an individual calculates that he/she needs to take \$15,000 in RMDs/payments from one IRA and \$10,000 from another, the IRS does not require that the individual take these dollar amounts out of the corresponding IRA accounts. As long as the individual takes a total of \$25,000 in RMDs/payments out of one or both IRAs during the calendar year, he/she has met the IRS’s requirement for taking RMDs.

14. How are RMDs calculated? For an individual who is not qualified for or not required to take RMDs, how should his/her regular, periodic payments be calculated?

RMDs are calculated by dividing the year-end value of the IRA (monetary value of the IRA at the end of the previous calendar year) by the expected distribution period (life expectancy) that corresponds to the owner’s age on the “Uniform Lifetime Table” found in Appendix B of IRS Publication 590-B, Distributions from Individual Retirement Arrangements. RMD amounts must be rounded to the nearest whole dollar to follow Internal Revenue Service (IRS) rounding guidelines. Rounding to the nearest whole dollar is achieved by rounding any amounts *under* fifty cents to zero and by increasing any amounts from fifty cents to ninety-nine cents to the next highest dollar. For example, if an individual had \$500,000 in a traditional IRA at the end of 2020, and he/she is 75 years old, the Uniform Lifetime Table expects that the individual will live another 22.9 years. Dividing the value of the IRA at the end of the previous calendar year (\$500,000) by the expected distribution period for age 75 (22.9 years), results in a 2021 RMD of \$21,834.06 before rounding. After rounding to the nearest whole dollar, the appropriate RMD amount is \$21,834.00. The RMD amount can be taken monthly, quarterly, or annually, as long as the total RMD of \$21,834 has been taken by the end of the 2021 calendar year.

Most Plan Administrators will calculate RMDs for the individual. An individual can also calculate his/her own RMDs by using IRS Publication 590-B. For an individual who is not qualified for or not required to take RMDs, payments can be calculated by using the Social Security Administration actuarial charts in place of the IRS Uniform Lifetime Table; however, for an individual who is not qualified to take RMDs or an individual who has an IRA that does not require RMDs, the use of these tables is **not** required. Any regular, periodic payments from an IRA for an individual who is not qualified for or not required to take RMDs will meet the requirement of OAC 5160:1-3-03.10(C)(2).

15. How are regular, periodic distributions from an IRA that are paid annually or quarterly treated when calculating an institutionalized individual's post-eligibility treatment of income (PETI)/patient liability for an individual who is receiving LTC services?

Regardless of frequency (annually or quarterly), unless the individual already elected monthly payments, regular, periodic payments from an IRA must be converted to a monthly amount to complete a proper monthly PETI/patient liability calculation. Distributions received annually must be divided by twelve and quarterly payments must be divided by three to calculate monthly PETI/patient liability. When an individual is receiving regular, periodic distributions from an IRA, the payments are treated as unearned income on a monthly basis, regardless of the actual frequency of the payment.

16. How are previous lump-sum withdrawals from an IRA treated (before the individual applied for LTC, but during his/her lookback period)?

Any withdrawal meeting the definition of a lump-sum payment in accordance with OAC 5160:1-3-05.8 is considered unearned income in the month of receipt and as a countable resource in the month following the month of receipt. When a lump-sum withdrawal is received and then disposed of prior to the time of application but during an individual's lookback period, the payment must be evaluated to determine whether fair market value (FMV) was received in exchange for the asset. When FMV is not received for an asset, a penalty period, also known as a restricted Medicaid coverage period (RMCP), must be calculated and applied per OAC 5160:1-6-06.5. During an RMCP, Medicaid will not pay for long-term care services for the individual. When an individual retained funds from a lump-sum withdrawal that was received during his/her lookback period, the remaining funds (as of the date of the application) must be compared to the Medicaid resource limit.

17. How are a community spouse's IRAs treated in the community spouse resource allowance (CSRA) calculation?

The county JFS office should review the snapshot value, the age of the community spouse (CS), and the IRA payout status early in the determination process. When a CS is receiving regular, periodic payments or RMDs from his/her IRA, the funds are not countable in the CSRA calculation because the payments are considered unearned income. When the CS fails to take RMDs or regular, periodic payments from his/her IRA, the IRA is a countable resource in the CSRA calculation. The countable value of the IRA for the CSRA calculation is the total amount the CS can withdraw from the IRA minus any penalties and fees.

18. What happens if a community spouse (CS) fails to take RMDs from his/her IRA as of the snapshot date (regardless of the CS's age or the category of his/her IRA), but then starts taking RMDs at or before the time of the institutionalized spouse's application for Medicaid?

When a CS fails to take RMDs or regular, periodic payments from his/her IRA as of the snapshot date, the funds are considered a countable resource to the CS and the total value of the IRA (less any penalties and fees) must be counted in the community spouse resource allowance (CSRA) calculation and used to determine the institutionalized spouse's Medicaid eligibility. When the CS is receiving regular, periodic payments from his/her IRA as of the snapshot date,

the account must not be counted in the CSRA calculation and must not be used to determine the institutionalized spouse's Medicaid eligibility; the IRA payments must be considered unearned income to the CS only. If a CS had failed to take RMDs as of the snapshot date but then started taking (or applied to take) RMDs/mandatory withdrawals at or before the time of the institutionalized spouse's application for Medicaid, the IRA must no longer be counted as a resource, but rather considered unearned income to the community spouse.

Example:

Jeffrey had a stroke on March 9, 2020 and was admitted to the hospital. While in the hospital, Jeffrey's condition slowly deteriorated, and his 65-year-old wife Linda realized she would not be able to care for him at home. The decision was made on May 5, 2020 to transfer Jeffrey to a nursing facility. Jeffrey will need to apply for Medicaid to pay for his continued care. On June 1, 2020, a Medicaid application was submitted for Jeffrey. The snapshot date was Jeffrey's original hospitalization date of March 9, 2020. As of the snapshot date, Jeffrey's wife in the community, Linda, had an IRA with an available balance of \$130,000. The IRA was NOT in a payout status. Linda, the CS, advised she was not taking RMDs because she is under age 70½ and she does not want to pay a penalty. When an individual elects to not take regular, periodic payments, even if the reason is fear of an imposed penalty, the IRA is considered an available resource to the extent of the funds available minus any penalties and fees. Regardless of age, a CS must elect to take periodic payments or RMDs from his/her IRA if the CS does not want the entire IRA balance to be considered a resource. Because the CS Linda was not receiving periodic payments from her available retirement fund as of the snapshot date, the fund was considered a countable resource (minus any penalties and fees) for the purposes of determining the CSRA and IS Jeffrey's Medicaid eligibility. If Linda decided to start taking periodic payments as of Jeffrey's application date, the funds would then be considered unearned income to Linda only.

19. How is an IRA converted to an annuity handled?

IRA funds converted to an annuity are considered under annuity rules, but IRA funds converted to an annuity are handled differently than annuities purchased through other types of funds. Retirement funds converted to an annuity for an individual who is not seeking or receiving long-term care services are considered in accordance with OAC 5160:1-3-05.3 because a retirement-related annuity is not subject to the additional requirements in OAC 5160:1-3-03.10. An annuity that's considered either an individual retirement annuity under section 408(b) of the Internal Revenue Code (IRC) or is deemed an Individual Retirement Account under a qualified employer plan under section 408(q) of the IRC, will not be considered a transfer for less than fair market value and will not be subject to the irrevocability, actuarially sound, and equal monthly payments requirements. When an individual who previously did not receive long-term care services transitions to long-term care, his/her annuity must be further examined using OAC 5160:1-6-06.1.

20. What is the “Name on the Check Rule” and how does it relate to IRAs?

The “Name on the Check Rule” describes a practice whereby an institutionalized spouse makes his/her community spouse the sole recipient of his/her IRA annuity payments. The CS’s name being the only name on the check (solely receiving the RMDs/periodic payments from the fund) allows the IS to avoid increasing his/her income so the payments do not become part of the IS’s patient liability. When RMDs or regular, periodic payments from an IRA annuity are only paid to the CS (even when the IRA annuity is in the IS’s name), the payments must be considered unearned income to the CS only. Per 42 U.S.C. §1396r-5(b)(2)(A)(i), “if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse.”

21. What happens when IRA income makes an individual ineligible for Medicaid?

An individual receiving or requesting long-term care (LTC) services may choose to establish a Qualified Income Trust (QIT), also known as a Miller Trust, when his/her countable income exceeds the special income level (SIL).

22. Under the CARES Act, can an individual waive his/her RMDs for 2020?

Changes to required minimum distributions occurred in 2020 due to the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Setting Every Community Up for Retirement Enhancement (SECURE) Act. Section 2203(a) of the CARES Act added a new subsection I to Section 401(a)(9) of the Internal Revenue Code, allowing the suspension of required minimum distributions (RMDs) during 2020; however, the CARES Act did not change the treatment of retirement accounts for Medicaid. When an individual is eligible to receive periodic payments, those payments are unearned income to the individual and per POMS SI 01120.210, when the individual is eligible for either periodic payments or a lump-sum, the individual must choose to receive periodic payments. When the individual was receiving periodic payments and chose to not receive those payments in 2020 based on the CARES Act legislation, the value of the retirement account would then count as a resource to the individual.

23. How does an individual verify the payout status of his/her IRA for Medicaid purposes?

To verify the status of an IRA, an individual can provide documents including, but not limited to:

- A letter from the Plan Administrator that includes details of the IRA
- A current IRA statement
- A transaction history that includes withdrawals/RMDs from the IRA in prior year(s)
- IRS data (e.g., Form 1099-R, Form 5498)
- An IRA award letter
- An IRA denial letter (or IRA termination letter)
- A severance letter from the individual’s employer that includes IRA amounts
- A current IRA payment stub
- A copy of the IRA distribution request form received by the plan

This information is also available on the Ohio Department of Medicaid website and may be accessed at:

Resources for Providers > Policies & Guidelines > Medicaid Eligibility Procedure Letters (MEPLs)

<https://medicaid.ohio.gov/wps/portal/gov/medicaid/resources-for-providers/policies-guidelines/medicaid-eligibility-procedure-letters/medicaid-eligibility-procedure-letters>