

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Roberts</i>	DATE <i>5/13/13</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>- 000347</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Mr. Hecht</i> <i>Cleared 5/22/13, letter attached</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>5/23/13</i> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			



DALE M. KRAUSE, J.D., LL.M., 1234 ENTERPRISE DRIVE DE PERE, WI 54115 PHONE 920.330.0190 FACSIMILE 920.330.0191 DALE@DALEKRAUSELAW.COM

May 6, 2013

**Tony Keck, Medicaid Director**  
SC Dept. of Health & Human Services  
PO Box 8206  
Columbia, SC 29201

**RECEIVED**

MAY 09 2013

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

**RE: Medicaid & Promissory Notes**

Dear Tony:

The Deficit Reduction Act of 2005 ("DRA") specifically states that a Medicaid applicant is allowed to utilize a promissory note as an allowable spend-down to gain eligibility for institutional Medicaid. However, in order for the promissory note to be DRA compliant it must have the following features:

- 1) A repayment term that is actuarially sound pursuant to the tables published by the Office of the Chief Actuary of the Social Security Administration;
- 2) Payments must be in equal amounts during the repayment term – no deferral and no balloon payments; and
- 3) It must prohibit the cancellation of the balance upon the death of the lender.

Of these three features, the third repeatedly causes a problem. Typically, following the death of the lender/Medicaid recipient, the obligors/children ignore their obligation to continue making payments to the estate of the deceased – negating the opportunity for Medicaid to recover any portion of its claim.

In order to curb this abuse, in February of 2013, Wisconsin Governor Scott Walker, introduced Assembly Bill 40 ("AB40"). AB40 indicates that, "a promissory note in which the debtor is a presumptive heir of the lender....is considered canceled upon the death of the lender for purposes of divestment and eligibility for medical assistance."

Essentially, this legislation has outlawed intra-family promissory notes. I urge you to take a closer look at the provisions of Wisconsin's 2013 Assembly Bill 40.

Sincerely,

**Krause Law Office**

  
Dale M. Krause

DMK/stf





Log #000347

Anthony E. Keck, Director  
Nikki R. Haley, Governor

May 22, 2013

Dale M. Krause, Esquire  
Krause Law Office  
1234 Enterprise Drive  
De Pere, WI 54115

Re: Wisconsin Assembly Bill 40

Dear Mr. Krause:

Thank you for your letter dated May 6, 2013, regarding the introduction of Wisconsin Assembly Bill 40. The agency will continue to monitor the status of the legislation.

Sincerely,



Shealy B. Reibold  
Assistant General Counsel

SBR/b