2640.10.25.30 LOANS, PROMISSORY NOTES AS TRANSFERS OF ASSETS

This provision applies to loans established on and after November 1, 2009. It applies to individuals who loan money directly to another as well as those who may purchase a loan or promissory note that was originally entered into between 2 other persons. The likelihood of the latter may be small, however given the concern that many private loans are merely gifts appearing to be loans, it is important to understand the possible transactions that may occur by someone trying to shelter assets to become eligible for Medicaid.

Whenever an individual has a promissory note, loan agreement, or mortgage as presumed evidence that a transfer of money was not a gift but was made with the expectation of full repayment, the arrangement will be considered an improper transfer unless all of the following criteria are met:

1. a) The repayment term is actuarially sound in accordance with the Life Expectancy Table included at the end section 2640.10.25.10,
   b) The agreement provides for payments to be made in equal amounts during the term of the loan, with no deferral of payments and no balloon payments, and
   c) The promissory note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan or mortgage, that does not satisfy the requirements above and is established on or after 11-1-09, the value of such contract considered as an improper transfer will be the outstanding balance due as of the date of the individual’s application for Medicaid or date of LTC admission, whichever is later. In the case of HCBS, the balance to be used is the amount as of the date of the Cost Comparison Budget approval.

When determining if the loan is actuarially sound, refer to the person’s age on the Life Expectancy Table as of the date the loan is established. If the loan cannot be repaid within the person’s life expectancy, it is not actuarially sound, and is therefore an improper transfer.

The interest amount of the loan payments are countable income.

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i 405 IAC 2-3-1.1(d)(1)(G)

ii U.S. Code 1396p