

RESOURCES

PRE-NEED FUNERAL AGREEMENTS

Description: As a result of a change in State law, effective January 1, 1997, all Medicaid A/Rs may establish a single irrevocable pre-need funeral agreement with a funeral firm, funeral director, undertaker, or any other person, firm or corporation which can create such an agreement. Moneys paid for such an agreement are held in trust and cannot be refunded to the Medicaid A/R or other purchaser of pre-need goods and services.

Policy: Because pre-need funeral agreements entered into by Medicaid A/Rs on or after January 1, 1997 are irrevocable, the moneys paid in connection with such agreements are not available resources of the A/R. In addition, as long as the A/R is paying fair market value for the goods and services to be furnished, the payment of moneys to the funeral director is a compensated transfer of assets, and thus does not result in a transfer-of-assets penalty. The A/R, therefore, can purchase non-burial space items in excess of \$1,500 through an irrevocable pre-need funeral agreement.

Generally, all pre-paid burial space items are covered under the irrevocable pre-need funeral agreement. However, certain burial space items purchased and paid for in full prior to entering into an irrevocable pre-need funeral agreement may remain outside the agreement, such as a cemetery plot, casket, urn, vault, mausoleum, crypt, or headstone.

SSI-Related A/Rs:

In certain situations, SSI-related A/Rs may supplement their irrevocable pre-need funeral agreement with a separate burial fund. To determine if a supplemental burial fund would be allowed, the local district determines the amount designated for non-burial space items in the irrevocable pre-need funeral agreement. If that amount does not equal \$1,500, the SSI-related A/R may choose to have a supplemental burial fund. Life insurance policies will be counted first toward the supplemental burial fund, as follows:

1. If the combined face value of the life insurance policies is \$1,500 or less, add the amount in the irrevocable pre-need funeral agreement designated for non-burial space items to the combined face value of the life insurance policies. If the total is less than \$1,500, a supplemental burial fund for the difference would be allowed.

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2. If the combined face value of the life insurance policies is greater than \$1,500, the cash value is a countable resource. Applicants/recipients may use this cash value to bring their non-burial space items up to the allowable \$1,500. The balance of the cash value is a countable resource, which must be earmarked for burial as specified in 91 ADM-19.

If the SSI-related A/R has more than \$1,500 designated for non-burial space items in the irrevocable pre-need funeral agreement, the entire amount paid in connection with the agreement is still disregarded. However, the SSI-related A/R is not allowed to have a separate burial fund.

NOTE: Even when a pre-need funeral agreement contains an amount of \$1,500 or more which is designated for non-burial space items, an SSI-related A/R is, nevertheless, ***entitled to a separate disregard of the cash value of life insurance policies with a combined face value of \$1,500 or less. (See page 303.3 for a discussion of burial space items.)***

Funeral directors should not be including non-applying spouses in the irrevocable funeral agreement, because the law only allows SSI A/Rs and Medicaid A/Rs to establish irrevocable pre-need funeral agreements. For a non-applying spouse, or other non-applying family member, pre-January 1, 1997 rules apply, which allow the SSI-related person to exclude from countable resources up to \$1,500 for a burial fund for a spouse. Also excluded are burial space items pre-purchased for immediate family members.

Non-SSI-Related A/Rs

On or after January 1, 1997, Medicaid A/Rs, regardless of category, may establish an irrevocable pre-need funeral agreement for any amount. Also excluded from countable resources are funeral agreements with a value of \$1,500 or less for each immediate family member not applying for Medicaid. One burial space per family member is also considered exempt. All other burial funds are considered a countable resource.

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A person who did not have Medicaid eligibility authorized prior to January 1, 1997, and who has a revocable funeral agreement worth more than \$1,500, must convert the agreement to an irrevocable pre-need funeral agreement in order to have the entire

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amount of the agreement disregarded. If the agreement remains revocable: for non-SSI-related A/Rs, the entire amount is countable since the equity value exceeds \$1,500; and for SSI-related A/Rs, only amounts designated for non-burial space items (up to \$1,500 for an individual and \$3,000 for a couple) can be disregarded. The A/R is allowed ten days from the date of notification to convert the revocable agreement to an irrevocable one. The ten-day period may be extended if more time is needed.

A Medicaid recipient whose receipt of Medicaid began prior to January 1, 1997 and who had a revocable pre-need funeral agreement in place, which was considered exempt, may either maintain the revocable agreement or establish an irrevocable agreement.

Reference:

SSL Sect. 209.6
141.6

General Business Law Sect. 453

Dept. Reg. 360-4.6(b)(1)
360-4.6(b)(2)(ii)
360-4.7(a)(3)

Interpretation:

Although the entire amount of money in an irrevocable pre-need funeral agreement is exempt, the local district reviews a copy of the pre-need burial agreement to make sure that it is irrevocable.

In determining whether a pre-need funeral agreement is irrevocable, the local social services district reviews:

1. the date of the agreement: pre-need funeral agreements entered into by Medicaid A/Rs on or after January 1, 1997 are required by law to be irrevocable; and
2. the language of the agreement. Irrevocable pre-need funeral agreements are required by law to contain the following disclosure statement:

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“New York Law requires this agreement to be irrevocable for applicants for receipt of supplemental security benefits under section two hundred nine of the Social Services Law or of Medical Assistance under section three hundred sixty-six of the Social Services Law, and for the moneys put into a trust under this agreement to be used only for funeral and burial expenses. If any money is left over after your funeral and burial expenses have been paid, it will go to the county. You may change your choice of funeral home at any time.”

In reviewing an irrevocable pre-need funeral agreement, the only reason for a local social services district to break out the non-burial space items from the burial space items is to determine whether an SSI-related A/R has paid at least \$1,500 for non-burial space items under the agreement. As described above, if less than \$1,500 has been paid for non-burial space items, the SSI-related A/R may establish a supplemental burial fund in addition to the pre-need funeral agreement.

Burial space items include conventional gravesites, crypts, vaults, mausoleums, caskets, urns, or other repositories customarily and traditionally used for the remains of deceased persons. Opening and closing the grave, headstones, and headstone engraving are also considered burial space items. Non-burial space items include topical disinfection, ***custodial care of the gravesite***, dressing/casketing, cosmetology, supervision for visitation and/or funeral service, hearse, death notices, flowers and out-of-town shipping.