

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.

NOTE: Effective January 1, 2010 the resource test applies ONLY to Medicaid A/Rs who are SSI-related.

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:

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1. 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 **RESOURCES** BURIAL SPACES 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.

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An SSI-related A/R 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 amount of the agreement disregarded. If the agreement remains revocable 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.

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The SSI-related 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.

An SSI-related 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. 366
366-ee
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)

ADMs 10 OHIP/ADM-01
04 OMM/ADM-6

GIS 09 MA/027

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.

NOTE: Although SSI-related Medicaid A/Rs who are not seeking coverage of long-term care services (Community Coverage without Long-Term Care (See **RESOURCES DOCUMENTATION REQUIREMENTS**)) may attest to the amount of their resources, they must provide a copy of their irrevocable pre-need funeral agreement to the local social services district for verification of the type of agreement.

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