

RESOURCES

PRE-NEED FUNERAL AGREEMENTS

Pre-1997 Funeral Agreements

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)

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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 Medicaid A/Rs who are not seeking coverage of long-term care services (Community Coverage without Long-Term Care (see page 303.4) 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:

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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:

“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, **perpetual care of gravesite**, headstones, and headstone engraving are also considered burial space items. Non-burial space items include topical disinfection, **custodial care**, dressing/casketing, cosmetology, supervision for visitation and/or funeral service, hearse, death notices, flowers and out-of-town shipping.