

MAINE STATE LEGISLATURE

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Bureau of Insurance

A Report to the Joint Standing Committee on Insurance and Financial Services of the 125th Maine Legislature

Stakeholder Meetings Held in June and August 2012
concerning LD 1717:

An Act to Establish a Preneed Life Insurance Producer License
and Preneed Life Insurance Product for Prearranged Funeral
Plans

October 2012

PROCEDURAL HISTORY

The Joint Standing Committee considered LD 1717, “An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans,” during the Second Regular Session of the 125th Legislature.¹ The bill would have established a limited license for funeral practitioners to offer and sell preneed insurance tied to the amount of the preneed funeral services contracts. The existing mechanisms of guaranteed service and credit for service mortuary trusts would remain available, and offering preneed insurance would not be a requirement for funeral practitioners, but it would be a new method for consumers to choose for making preneed arrangements in Maine.

The Bureau of Insurance (the Bureau) presented testimony to the Committee neither for nor against the bill that explained some technical concerns the Bureau would have should the bill pass. The Committee voted unanimously that the bill ought not to pass, but did send a letter to the Superintendent of Insurance requesting that the Bureau “facilitate further discussions of the proposal through meetings and other communication with stakeholders before the start of the 126th Legislature. We ask that you invite the participation of the various parties who testified on LD 1717 as well as committee members and staff. Please submit the findings of the interested parties, along with any recommendations and suggested legislation, to the committee by October 1, 2012.”²

The Superintendent convened a group of stakeholders, which held two meetings at the offices of the Bureau of Insurance, on May 9 and August 22, 2012.

The participants in the meetings represented a broad range of stakeholders including insurers, funeral practitioners, and insurance agents (producers) in particular. The stakeholders did not all reach consensus on certain fundamental issues, but some areas of flexibility and possible compromise were recognized.

PRENEED FUNDING IN MAINE

Funeral expenses represent a significant concern for many individuals. The cost of traditional funeral services can easily fall within a range approaching, and at times exceeding, \$10,000.³

There are various methods under which individuals can arrange in advance for funeral services. “Preneed” arrangements can enhance peace of mind and relieve concerns over whether the individual’s loved ones will be left with a financial burden. In addition, certain preneed mechanisms can remove assets from calculations used for Medicaid (in Maine, “MaineCare”) eligibility.

The two primary preneed mechanisms are mortuary trusts and life insurance. In Maine, these approaches may be generally broken down into the following categories:

¹ Attachment P: LD 1717

² Attachment A: Committee letter to the Superintendent

³ Attachment D: GAO Report, page 7

Guaranteed Service Mortuary Trust Agreement

Under a guaranteed services mortuary trust, the consumer enters into an agreement with the funeral practitioner to provide agreed upon funeral services in the future, at the time of the individual's death.⁴ The consumer pays the contracted price. The funds must be placed in trust in accordance with the restrictions contained in Maine law relating to Funeral Directors, in particular 32 M.R.S. §1401. These provisions are intended to assure that the funds will be safe and available when needed.

Such an arrangement can provide certainty that the services planned for have been paid for. Also, the amount paid into the trust can provide advantages to the consumer in the calculations for MaineCare eligibility. However, since the services are contracted for at the current time, to be provided at some indefinite point in the future, it can be difficult for the funeral practitioner to make such a commitment without assuming significant risk that the cost of providing such services will have increased by the time they are to be provided. Also, the consumer must of course pay the full amount into the trust amount from current assets, which may be difficult or impossible for some consumers.

Credit for Service Mortuary Trust Agreement

Under a credit for service arrangement the purchaser pays an amount into a mortuary trust, as with the guaranteed service arrangement described above. However, with the credit for service trust, the funeral practitioner does not agree to provide specific services in the future for the price paid now; rather, the agreement is that the amount in the trust will be applied towards whatever services are provided in the future, at the price in effect at that time.

The credit for service mortuary trust avoids obligating the funeral practitioner to provide services now at a price which may or may not fairly reflect their value when delivered at an unknown time in the future. However, it can create the opposite concern for the consumer, who cannot know whether the trust amount will be sufficient and therefore cannot be assured that "everything is taken care of." It has the advantage over the guaranteed service arrangement of allowing the purchaser to pay all at once or through further amounts in installments over time. The credit for service approach shares the same advantage as the guaranteed service mortuary trust regarding MaineCare eligibility.

Existing Life Insurance Policy

The purchaser may fund a credit for service mortuary trust in Maine with the proceeds of an existing life insurance policy. The obvious advantage of this is that the purchaser is not required to pay cash "up front."

If there is not already a life insurance policy in existence, the consumer may purchase coverage from a licensed life insurance producer. This coverage is not specifically tied to the preneed agreement, however, and will be subject to any applicable underwriting considerations, as with any life insurance policy.

⁴ Throughout this report, the term "funeral practitioner" is used to signify licensees for the practice of funeral service, as regulated by the Maine State Board of Funeral Service under 32 M.R.S. Chapter 21.

PRENEED INSURANCE

In 48 states, there is a permitted form of life insurance called “preneed,” which is specifically tied to the amount of the preneed funeral services contract between the purchaser and the funeral establishment. Preneed insurance may typically be sold directly by the funeral practitioner. The funeral professional would do so for a commission, and under a license issued by the state’s insurance regulatory authority. The license is specifically limited to preneed insurance in 14 states, and is a full life insurance producer license in 34 states.⁵ Preneed insurance is not currently allowed to be sold in this manner in Maine or New York.

The essential characteristics of preneed insurance in this context are that it is a life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. It provides a relatively small death benefit, such as \$10,000 or less, for the purposes of paying for a funeral. The premiums may be paid in monthly payments if desired and would typically be paid over a limited period of 3, 5, 7, or 10 years. After the premium period, the policy would be paid up for life. However, the death benefit would be available for the funeral immediately, even if only one payment has been made. As with any other life insurance, preneed insurance benefits are protected against the risk of insolvency of the insurer by the applicable state Life and Health Guaranty Association.⁶ A commission would be paid to the originator of the preneed policy, as with any other type of insurance.⁷

In addition, preneed policies may provide for an increasing death benefit to help offset the effects of inflation, and may be more readily issued to the elderly and those in infirm health, than may typically be the case with many other life insurance policies.⁸

SUMMARY OF THE DISCUSSIONS, FINDINGS, AND POSITIONS OF THE INTERESTED PARTIES

The major areas of discussion in the stakeholder meetings consisted of:

- the nature of the preneed insurance product;
- whether there is a need for this product;
- changes to Maine law that would be required regarding preneed insurance; and
- if preneed insurance were to be made available in Maine:
 - the proper role of the funeral practitioner in the sale of preneed insurance;
 - commissions and conflict of interest; and
 - limited licensing versus full licensing.

⁵ Attachment C: June 1, 2012 letter and chart from Homesteaders Life Insurance Company

⁶ In Maine, this is the Maine Life and Health Insurance Guaranty Association. See generally, 24-A M.R.S. Ch. 62. The existence of the Guaranty Association may not be used in connection with the solicitation of the insurance, however. 24-A M.R.S. §4620

⁷ This summary of features is based in particular on Attachment I: Assurant comments.

⁸ Attachment E: ICCFA Guidelines

THE NATURE OF AND NEED FOR THE PRODUCT, AND WHETHER IT IS ALREADY AVAILABLE

Some of the statements made during the discussions in the stakeholder meetings suggested that preneed insurance is in fact already available in Maine. Indeed, life insurance may be purchased through licensed producers for the purpose of securing a death benefit that will defray funeral expenses. Policies that are of modest size and purchased for this purpose are sometimes referred to as “final expense” policies; however, as defined for purposes of this report, such policies are not “preneed” policies tied specifically to the funeral practitioner’s preneed agreement with the purchaser.

Assurant, an insurer, noted in its written comments that “preneed policies are assigned to pay for a specific set of goods and services. The preneed policy is purchased after a consumer preplans their funeral and then that policy is assigned to a funeral home. In turn, the funeral home guarantees that a \$6,000 funeral today will be \$6,000 in the future. The family of the policyholder will not pay more than that amount, regardless of when the policyholder dies.”⁹

Assurant also asserted that to claim that “other insurance products already exist in the market that are nearly identical to preneed insurance … is fundamentally incorrect. Preneed insurance is not a stand-alone insurance product. It is linked to a funeral services contract.”¹⁰

Under current Maine law, funeral practitioners are prohibited from being licensed to sell insurance.¹¹ These restrictions prevent the sale of preneed insurance that is directly linked to the preneed agreement between the funeral practitioner and the consumer.

As noted, the product is available in all states except Maine and New York. The American Council of Life Insurers (ACLI) commented that its member companies involved with this product “wish to serve Maine consumers by making the same products available in Maine as they do throughout the United States. When legitimate companies in business for years face constraints on doing business in Maine, as they do in this particular instance, Maine’s reputation as a place to do business is not enhanced.”¹²

⁹ Attachment I: Assurant comments

¹⁰ Assurant also requested that this report dispel a concern about the safety of the preneed product. See Attachment I. As noted there, some concerns were raised in the Committee’s deliberations and in the stakeholders’ meetings about preneed insurance being unsound, leading to some consumers having been left without coverage they had purchased. It appears that such concerns arose out of some past incidents relating to the sale of death benefits by certain fraternal benefit societies that became financially unsound. Fraternal benefit societies are not regulated the same as insurers, however, and their benefits are assessable to the society’s members in the event of a shortfall, and are not protected by the guaranty association. Preneed insurance as discussed in this report, and as contemplated by LD 1717, is fully regulated life insurance, with the same consumer protections, guaranty fund coverage, and Bureau oversight as any other form of life insurance.

¹¹ 24-A M.R.S. §2176. See also Attachment N for SCI’s discussion of additional limitations found in the laws directly regulating Funeral Directors.

¹² Attachment H: ACLI comments

INVOLVEMENT OF FUNERAL PRACTITIONERS IN THE SALE OF INSURANCE

The Maine Funeral Directors Association¹³ expressed its concern throughout the discussions that the professional role of funeral practitioners is unique and should not be combined with the sale of insurance. There were distinctly differing views among the stakeholders on this point, with others, including some funeral practitioners, seeing the practitioner's role in providing the insurance option to consumers as complementary to, rather than at odds with, the practitioner's function.

Bureau representatives pointed out their role as facilitators of the discussions, rather than arbiters of policy decisions concerning the funeral profession. As such, this question is legitimately a matter within the purview of the Legislature and the funeral profession's regulatory body.¹⁴ The insurance product question in itself is not particularly controversial; in other words, the product is regulated as with any other form of insurance and if the Legislature sees fit to authorize funeral practitioner involvement with the offering of preneed insurance, the Bureau of Insurance is equipped to regulate the product and activity within the insurance regulatory scheme.¹⁵

COMMISSIONS AND CONFLICT OF INTEREST

The participants speaking on behalf of the Maine Funeral Directors Association maintained the Association's opposition to the concept of funeral practitioners receiving commissions for the sale of preneed insurance. They expressed their opinion that receiving a commission for an insurance product that then pays for the service they are also selling presented an insurmountable conflict of interest.

Others questioned whether there was any difference between the sale of other products for a markup, such as caskets, and the sale of insurance for a commission. The Association representatives asserted that there is Federal Trade Commission (FTC) regulation of the products and services sold by funeral practitioners. Others, however, noted that this oversight concerns disclosure of retail pricing, not the direct regulation thereof.¹⁶

Some participants pointed out that the payment of commissions for the sale of insurance products is a standard practice in every state. Indeed, commissions are the industry standard generally. Some participants asserted that therefore there is no conflict; other positions were that even if there is a conflict of interest due to the nature of commissions, it is a matter that can be addressed through adequate disclosures.

¹³ The Maine Funeral Directors Association is a membership organization.

¹⁴ The Funeral Directors Board is the state regulatory authority. The Board chairman attended the stakeholder meetings and reported that the Board did not take an official position on LD 1717.

¹⁵ One commenter has asserted: "In order to comply with the Committee's charge, the Bureau must develop and recommend a solution for the implementation of preneed life insurance product for prearranged funeral plans." See Attachment L: SCI comments, for this quote and similar commentary on the issue.

Whether to permit preneed insurance is within the Legislature's policy making role. Further, the Bureau does not regulate the funeral industry. The Superintendent was charged with facilitating discussions among stakeholders, and presenting any recommendations, all of which this report is intended to address. The fundamental question of whether to enact such legislation remains within the purview of the Legislature.

¹⁶ Attachment M: FTC Funeral Industry Rules

Assurant pointed out in its written comments that the payment of a commission for a preneed funeral contract or prearrangement that is funded by a preneed insurance policy is a standard practice in forty-eight states, and that the National Funeral Directors Association (NFDA) has promulgated a “Model Consumer Protection Guidelines for State Preneed Funeral Statutes” that inherently recognizes the practice.¹⁷

Homesteaders Life Insurance Company, another insurer participant in the stakeholder process, asserted that no funeral practitioner should be forced to participate in the marketing of preneed insurance, but that the choice to do so is desirable for both practitioners in general and consumers:

We feel you must give those funeral providers that do want to receive commissions as insurance producers a chance to do so and not continue to permit this choice to be negated by those funeral providers who do not want to receive commissions. By providing such a choice, nothing would force any funeral provider to receive commissions, but the choice should be there.

We see commissions for funeral director agents working well in the industry and see no need for them to not be available in Maine.¹⁸

The issue of disclosure received significant attention in the discussions as to how to address the commission question. While the representatives of the Maine Funeral Directors Association did not indicate that disclosure would resolve their fundamental concerns, all parties agreed that disclosure is a positive consumer protection tool. If the Legislature chooses to enact legislation that will facilitate the sale of preneed insurance, this report suggests that a disclosure requirement be included as an element.¹⁹

LIMITED VERSUS FULL LICENSING

LD 1717 contemplated a limited license specifically tailored for funeral practitioners to engage in the sale of preneed insurance in an amount that corresponds directly to the pricing of the preneed funeral arrangement. The Maine Insurance Agents Association expressed its objection in the discussions to the concept of creating such a limited license. Its premise was that limited licenses should not be added to the Insurance Code, and that anyone selling insurance should be qualified to explore all potentially relevant products, which could lead to more appropriate recommendations to particular consumers. The representative for the Association expressed concern that preneed products may not be as simple and straightforward as some may believe.

By way of background, the distinction between limited and full licensing is that full licensing refers to insurance licenses that allow insurance agents (technically licensed as “producers”) to sell various lines of insurance. Producers become qualified by exam in order to be licensed to sell Life, Health, Property, and

¹⁷ Attachment I: Assurant comments; Attachment F: National Funeral Directors Association suggested Guidelines

¹⁸ Attachment K: Homesteaders Life Insurance Company written comments

¹⁹ Two approaches for accomplishing such disclosures are found in Attachment J: Proposed legislation presented by Assurant, and Attachment O: NAIC Model Disclosure Regulation, Section 6.

Casualty lines of insurance. Such authorities are available individually or in combination, and are the necessary licensing authorities for insurance professionals.²⁰

There are also occasions when individuals in other fields market insurance. Classic examples would include credit insurance, title insurance, and travel insurance. Limited licenses are available to enable such transactions without requiring these individuals to become fully licensed. The difference primarily amounts to the nature of the qualifications (for some limited licenses there is a limited exam and for some there is no qualifying exam).²¹ In addition, limited licensees are not typically required to comply with continuing education requirements.

The possibility of limited licensing for funeral practitioners implicates a slightly different principle than other, existing limited license categories as described above. Those allow a person who is not otherwise an insurance professional to be involved with a narrow category through a less burdensome qualification process than that required for full licensing. Any such individual, however, could also legally choose to become fully licensed, provided that they do comply with such requirements.

Funeral practitioners, however, are currently prohibited from becoming licensed insurance producers even if they are willing to take the full exam.²² Therefore, the establishment of a limited preneed license as contemplated by LD 1717 would allow funeral practitioners to be involved with insurance sales activity in the first place, rather than to create a more streamlined insurance license process for such individuals.

The representative for the Maine Insurance Agents Association indicated that while the Association would not be inclined to actively support legislation implementing the sale of preneed insurance through funeral practitioners, it would not oppose it if full life insurance producer licensing were required rather than limited licensing.

Homesteaders Life noted that “limited licensing for preneed agents is a widely accepted practice. Of the [forty-eight] states where preneed insurance is sold and a commission is available, there are fourteen states that permit a limited license. The other thirty-four states require full licensure.” They asserted that they do business “in all forty eight of those states and either arrangement works effectively.”²³

The proponents generally indicated that they considered either full or limited licensing acceptable. Therefore, should the Legislature authorize the sale of preneed insurance through funeral practitioners, it is anticipated that, among the participants in the stakeholder process, either full or limited licensing would meet with objections from the Maine Funeral Directors Association due to their underlying fundamental concerns, but the primary objection from the Maine Insurance Agents Association would be addressed through requiring full licensure.

²⁰ 24-A M.R.S. §1420-F

²¹ *Ibid.*

²² 24-A M.R.S. §2176, and corresponding provisions in Funeral Director statutes and regulations

²³ Attachment K: Homesteaders Life Insurance Company comments

POSSIBLE APPROACHES PRESENTED, AND THE RECOMMENDATIONS OF THE INTERESTED PARTIES

The Committee's charge included submitting any recommendations and suggested legislation. The following possibilities arose from the stakeholder discussions. It should also be noted that any legislative approach other than maintaining the status quo will also require corresponding amendments to the regulations currently in place relating to funeral practitioners.

Maintain the status quo

This can fairly be stated to be the recommendation of the Maine Funeral Directors Association.

Establish a limited license for the sale of preneed products through funeral practitioners

LD 1717 as originally proposed would create a limited license for this purpose. It would create the license category and some related training and qualification requirements. It did not, as drafted, address the disclosure issues that received generally favorable discussion in the stakeholder meetings.

As more fully discussed above, limited licenses exist in 14 states. Establishment of a limited license in Maine, however, would likely be opposed by some of the stakeholders, notably the Maine Funeral Directors Association and the Maine Insurance Agents Association.

Allow full insurance licensing for funeral practitioners

Repeal of the restrictions against funeral practitioners becoming licensed as insurance producers, as found in the Insurance Code and corresponding sections of the laws and regulations directly concerning funeral practitioners, would allow for the sale of the preneed product. Although this would require less involved legislation, it also would fail to establish further safeguards for consumer protection, notably disclosure requirements.

Full licensing is the standard in 34 states. Establishment of full licensing, with disclosure and related consumer protections, would appear to satisfy the insurers and other proponents of allowing the preneed insurance option to be made available to Maine consumers. It is anticipated that it would not resolve the concerns raised by the Maine Funeral Directors Association, but that the Maine Insurance Agents Association would not oppose such an approach.

Allow the participation of producers in the preneed process without commissions payable to funeral practitioners.

Late in the discussion process, during the second meeting of the stakeholder group, a participant orally raised the prospect of an alternative approach. The proposal was to allow licensed life insurance producers to sell preneed coverage that is directly linked to the funeral practitioner's preneed contract. Such an approach would require changes to the way preneed funeral contracts may currently be presented to consumers, but would allow for the insurance product to be made available to Maine consumers while potentially allaying concerns about funeral practitioners receiving commissions. The representatives for the Maine Funeral Directors Association indicated the possibility of bringing this alternative to the attention of the Association's Board.

This approach was not developed in great detail and no further written submission has been made to date, however, it may be a concept that the parties may explore further.²⁴

SUGGESTED LEGISLATION PROPOSED BY SOME OF THE STAKEHOLDERS

The three preneed insurance providers that participated in the Bureau's LD 1717 stakeholder discussions – Assurant, Homesteaders Life Company, and National Guardian Life Insurance Company - submitted proposed legislation, which was included with Assurant's written comments.²⁵ Assurant explained that it was intended to be "responsive to a number of concerns raised by members of the stakeholder group. As was noted by Gerry Krauss of Homesteaders Life, preneed insurance providers work effectively with all funeral home owners in forty-eight other states."

Assurant's further description of the insurers' joint suggested legislation was that it "makes no changes to the licensure of life insurance agents. The proposal maintains the prohibition against solicitation of prearranged funerals and funeral business while allowing a funeral director to discuss a preneed insurance option for a consumer who has approached the funeral home to preplan a funeral, just as is done currently with a trust. The proposal also adopts the Model Consumer Protection Guidelines set forth by the NFDA that require disclosure to the consumer of the payment of a commission and the identity of the individuals or entities to whom it is paid." This proposal is included as Attachment J to the report.²⁶

CONCLUSION

The stakeholder process on this question showed that there are differing opinions on how or whether preneed insurance should be marketed to Maine consumers. Some areas of disagreement appear to require fundamental policy questions to be answered. Others, such as the need for disclosures and (should the overall concept be endorsed) the question of full as opposed to limited licensing, were more amenable to flexibility and differing approaches that addressed some stakeholder concerns.

Thank you for the opportunity to explore and report on these issues. My staff and I will of course be happy to provide further information as the need arises.

Respectfully submitted,

Eric A. Cioppa, Superintendent of Insurance

²⁴ The Maine Funeral Directors Association representatives indicated that the Board was unlikely to consider the matter prior to the deadline for the submission of this report.

²⁵ Attachment J: Proposed Pre Need Insurance Legislation

²⁶ This proposal was submitted following the final stakeholders meeting; this report does not address and the Bureau cannot speak to the consideration, if any, which the other stakeholders may give to this proposal.

LIST OF ATTACHMENTS

- A. Letter from the Joint Standing Committee on Insurance and Financial Services of the 125th Maine Legislature to Superintendent of Insurance dated February 15, 2012
- B. List of participants in stakeholders meetings
- C. Letter dated June 1, 2012, and chart from Homesteaders Life Company summarizing state limited versus full licensing requirements for preneed insurance
- D. General Accounting Office report on Death Services, December 2011 (provided to stakeholders group by Assurant, and Appendix II of the report also provided by Service Corporation International (SCI) as SCI "Exhibit 5")
- E. International Cemetery and Funeral Association (ICCFA) Guidelines for Insurance-Funded Prearrangements (provided to stakeholders group by Assurant)
- F. National Funeral Directors Association suggested Model Consumer Protection Guidelines for State Preneed Funeral Statutes (provided to stakeholders group by Assurant, and by SCI as SCI "Exhibit 4")
- G. Massachusetts Preneed Regulations (provided to stakeholders group by Assurant, and stakeholders by SCI as SCI "Exhibit 6")
- H. Written comments on behalf of the American Council of Life Insurers (ACLI), dated September 17, 2012
- I. Written comments on behalf of Assurant, Inc., dated September 17, 2012
- J. Proposed Pre Need Insurance Legislation presented on behalf of Assurant, September 17, 2012
- K. Written comments of Homesteaders Life Company, dated September 14, 2012
- L. Written comments on behalf of SCI, dated September 17, 2012
- M. Federal Trade Commission, Trade Regulation Rules, Funeral Industry Practices (provided to stakeholders by SCI as SCI "Exhibit 1")
- N. SCI statement of apparent impediments in current law (provided to stakeholders by SCI as SCI "Exhibit 2")
- O. NAIC Life Insurance Disclosure Model Regulation (provided to stakeholders by SCI as SCI "Exhibit 3")
- P. LD 1717

SENATE

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 JOSEPH C. BRANNIGAN, District 9

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State of Maine
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON INSURANCE AND FINANCIAL SERVICES

February 15, 2012

Eric A. Cioppa
 Superintendent
 Maine Bureau of Insurance
 34 State House Station
 Augusta, Maine 04333-0034

Re: LD 1717, An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans

Dear Superintendent Cioppa,

We are writing on behalf of the Joint Standing Committee on Insurance and Financial Services relating to LD 1717, An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans. As you know, the bill proposed to establish a limited line preneed life insurance producer license and to repeal the current prohibition on insurance companies retaining a funeral home or its employees as insurance producers. While the committee unanimously voted “Ought Not to Pass” on the bill, we are not opposed to continuing dialogue among the interested parties.

To that end, we request that the Bureau of Insurance facilitate further discussions of the proposal through meetings and other communication with stakeholders before the start of the 126th Legislature. We ask that you invite the participation of the various parties who testified on LD 1717 as well as committee members and staff. Please submit the findings of the interested parties, along with any recommendations and suggested legislation, to the committee by October 1, 2012.

Thank you for your consideration.

Sincerely,

Rodney L. Whittemore

Senator Rodney L. Whittemore
 Senate Chair

Wesley E. Richardson
 Representative Wesley E. Richardson
 House Chair

LD 1717 Interested Parties Meeting attendees - May 9, 2012

Steve Clay – Maine Funeral Directors Association (MFDA)
Jim Ferland – MFDA
Connie Hagan – FAPCO Admin Services
Michael Hall – MFDA
Jim Lynch – MFDA
Ed Pineau – Pineau Policy LLC
Cate Pineau – Pineau Policy LLC
Robert Barnes – Maine State Board of Funeral Service
John Delahanty – Pierce Atwood/ACLI
Dan Bernier – NAIFA, ME
Bruce Gerrity – SCI
Colleen McCarthy-Reid – IFS Committee
Gerry Kraus – Homesteaders Life
Mark Neidinger – NGL Insurance
Newell Augur - Assurant
Michael Mortel – SCI
Harry Bassett – Assurant
TJ Smart – SCI

LD 1717 Interested Parties Meeting Attendees – August 22, 2012

Gerry Kraus – Homesteaders Life
Mark Neidinger – NGL
Robert Barnes – Maine State Board of Funeral Services
Dan Bernier – NAIFA, ME
Colleen McCarthy-Reid – IFS Committee
John Delahanty – Pierce Atwood/ACLI
Michael Martel – SCI
Bruce Gerrity – SCI
Newell Augur – Assurant
Harry Bassett – Assurant
Ed Pineau – Pineau Policy LLC
Cate Pineau – Pineau Policy LLC
Steve Clay - MFDA

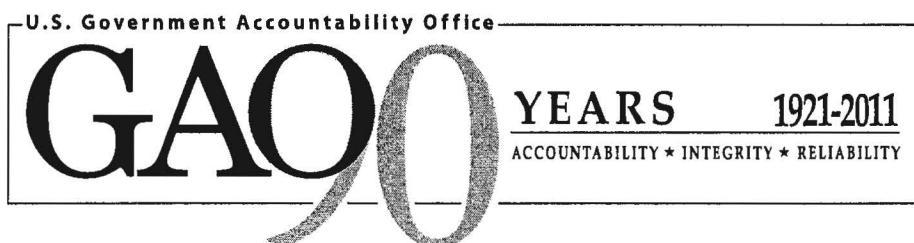
States With Special Insurance Licensing for Policies Sold to Fund Preneed Contracts

State	Authority/Citation	Is there prelicensing education required?	Who administers the examination?	Are there size limits? If yes, what are they?	Are there continuing education requirements?
AR	ACA 23-64-202(c)(7)	No	<u>No exam</u>	\$15,000	No
CA	CIC Div.1, Pt 2, Ch.5-7:1676©	No	Regulator	\$15,000	No
DE	Title 18, Pt. 1, Ch. 17-1707(b)(2)	No	Regulator	None	No
FL	Fla. Stat. Ch. 497.466 / FAC 69K-5.003	No	Regulator	Initial funding cannot exceed amount set by law which is indexed to CPI (now at \$15,150)	No
IN	IC 27-1-15.6-19	No	Regulator	None	5 hrs/year for 2-year license; 10 hrs/year for 4-year license; None after January 2012
KS	KAR §40-4903	No	Regulator	None	2 hrs/year
MD	MD Code Ins. 10-104	No	Regulator	None	No
NC	NC Gen. Stat. 90-210.67	No	Regulator	None	No
OH	OAC 3901-5-09 (F)(1)(d)	No	<u>No exam</u>	None	No
SC	SC Code 38-43-50	No	Regulator	None	No
TX	TX Ins. Sec. 4054.151-54	Yes, 5 hrs	<u>Insurer</u>	None	No
VA	VA Code 38.2-1800	No	Regulator	None	No
WV	WV Code Reg. 142-8-4	No	Regulator	None	No
WY	Ins. Regs, Ch.2	No	Regulator	None	No

December 2011

DEATH SERVICES

State Regulation of
the Death Care
Industry Varies and
Officials Have Mixed
Views on Need for
Further Federal
Involvement



Highlights of GAO-12-65, a report to congressional requesters.

Why GAO Did This Study

Media reports have identified instances of desecration of graves and human remains at cemeteries, and in one instance, reported that bodies were removed from graves and the sites resold. Allegations have also surfaced about the mismanagement of pre-need plans that are designed to provide consumers the opportunity to fund funeral and cemetery arrangements before they are needed. The FTC's Funeral Rule requires that, among other things, funeral providers give consumers lists that disclose the cost of funeral goods and services before they enter into funeral transactions. Proposed legislation introduced in March 2011 would increase the federal government's role in regulating the industry by, among other things, requiring that the FTC regulate aspects of cemetery operations. GAO was asked to review the regulation of the death care industry. This report discusses (1) how federal and state governments regulate the industry and how regulation has changed since 2003 and (2) state regulators' views on the need for additional regulation.

GAO reviewed FTC's Funeral Rule and interviewed officials representing the FTC and national industry and consumer associations; surveyed state officials to gather data on state regulation of the death care industry; and, where possible, compared the results of the 2011 surveys with those of similar surveys GAO conducted in 2003. The response rate for our 2011 surveys ranged from 78 to 84 percent. GAO also reviewed laws and regulations. GAO is not making any recommendations in this report.

View GAO-12-65 or key components. For more information, contact William O. Jenkins, Jr. at (202) 512-8777 or jenkinswo@gao.gov. To view the e-supplement online, click on GAO-12-91SP.

December 2011

DEATH SERVICES

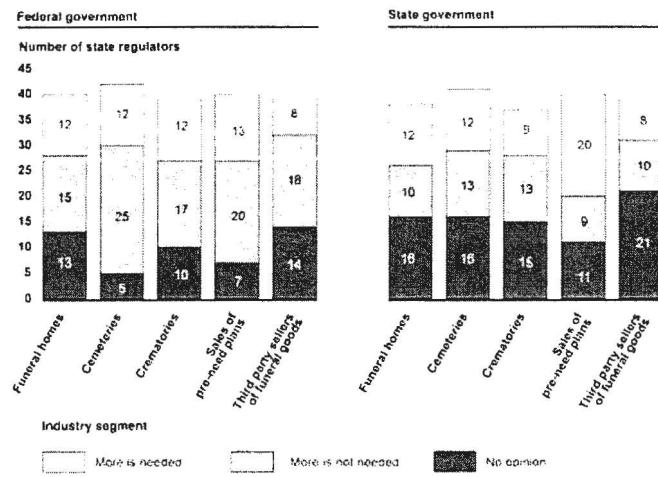
State Regulation of the Death Care Industry Varies and Officials Have Mixed Views on Need for Further Federal Involvement

What GAO Found

The extent to which the federal and state governments regulate the death care industry—funeral homes, cemeteries, crematories, pre-need funeral plans, and third party sales of funeral goods—varies, as does the extent to which regulation has changed since GAO last reported on the regulation of the death care industry in 2003. The Federal Trade Commission (FTC) continues to annually conduct undercover shopping at various funeral homes to test compliance with the Funeral Rule. Of the over 2,400 funeral homes that the FTC shopped since 1996, the FTC reported an overall compliance rate of about 85 percent. With respect to state regulation, consistent with GAO's findings in 2003, the way in which states regulate the industry varies across industry segments and states. Also, the extent to which state regulators reported that they had specific rules or regulations for each industry segment in both 2003 and 2011 varied. Most consistent across states in both years was reporting that there were specific rules or regulations for funeral homes (94 and 95 percent in 2003 and 2011, respectively). In contrast, 77 percent of state regulators of cemeteries reported that their states had specific rules or regulations for cemeteries in 2003, and 88 percent reported this in 2011. Certain state regulators also reported that their states made various statutory or regulatory changes since 2003, primarily to clarify legislation or regulation or to enhance consumer protections, and that they believe these changes strengthened their regulatory program to varying degrees. State regulators reported that these changes came about for a variety of reasons, including accounts of desecration of human remains or proposals from state agencies and industry groups.

State regulators' views on the need for additional federal and state regulation of the industry varied, as shown in the figure below.

State Regulators' Views on the Need for the Federal and State Governments to Take a More Active Role in Regulating the Death Care Industry, as Reported in 2011



The FTC provided technical comments, which GAO incorporated where appropriate.

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Abbreviations

FTC Federal Trade Commission

[View GAO-12- 91SP key component](#)

*DEATH SERVICES: 2011 Surveys of State Regulators (GAO-12-91SP),
an E-supplement to GAO-12-65*

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United States Government Accountability Office
Washington, DC 20548

December 15, 2011

The Honorable Herb Kohl
Chairman
Special Committee on Aging
United States Senate

The Honorable G.K. Butterfield
Ranking Member
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
House of Representatives

The Honorable Bobby L. Rush
House of Representatives

In recent years, the media has reported on instances of desecration of graves and human remains at cemeteries and, in at least one instance, reported that at Burr Oak Cemetery in Illinois, bodies were removed from graves and the sites were resold. Concerns have also arisen over the sale and management of pre-need plans—plans that involve the prepayment and prearrangement of funeral and cemetery goods and services to be provided at the time of death—because of allegations of the mishandling of funds.¹ Aside from the Federal Trade Commission's (FTC) Funeral Rule—a rule that affords consumers certain rights when making funeral arrangements, such as requiring funeral providers to provide price lists to consumers—the federal government generally does not regulate the marketing practices of the death care industry, which includes businesses that provide funeral and cemetery goods and services.² Recent concerns have inspired a discussion regarding whether the federal government should take a greater role in regulating various segments of the death care industry. For example, federal legislation introduced in March 2011—the Bereaved Consumer's Bill of Rights Act of

¹ For more information on pre-need plans and reported incidents regarding these plans, see app. II.

² See 16 C.F.R. pt. 453 (codifying the FTC's Trade Regulation Rule on Funeral Industry Practices, commonly referred to as the "Funeral Rule").

2011—would, if enacted, expand the FTC’s role in protecting consumers in arranging death care transactions, including services at cemeteries.³

The death care industry encompasses (1) funeral homes, (2) cemeteries, (3) crematories, (4) pre-need plans, and (5) third party sales of funeral goods.⁴ Our prior work on the death care industry found that most regulation of the industry occurred at the state level and that states varied in their approaches to regulating the death care industry. We reported in both 1999 and 2003 that it is not possible to determine the extent of the problems in the death care industry since accurate data on the number and types of consumer complaints made against the industry were not available.⁵ However, in light of recent concerns over instances of wrongdoing and allegations of mismanagement within the industry, you asked us to update our previous work on state and federal regulation. This report follows up on our previous work and discusses (1) how the federal and state governments regulate the death care industry, and how regulation has changed since 2003, and (2) to what extent regulators believe that more regulation is needed.

To address our objectives, we analyzed the FTC’s Funeral Rule, as well as proposed federal legislation relevant to the death care industry—the Bereaved Consumer’s Bill of Rights Act. We also analyzed FTC documents to gain a better understanding of the Funeral Rule, such as reports on funeral providers’ compliance with the Funeral Rule and consumer and industry guides. We also contacted the National Association of Attorneys General to obtain perspectives on states’ coordination with the FTC. Further, we reviewed national association documents relevant to the management and regulation of the industry, such as model guidelines and consumer guides. In addition, we interviewed officials from the FTC and six national associations to obtain their views on the level of state and federal regulation, how it has

³ See H.R. 900, 112th Cong. (1st Sess. 2011). A substantially similar bill had been introduced in September 2009. See H.R. 3655, 111th Cong. (2d Sess. 2009).

⁴ Third party sellers of funeral goods includes retailers of caskets, urns, monuments, that are not affiliated with a funeral home or cemetery.

⁵ GAO, *Funeral-Related Industries: Complaints and State Laws Vary, and FTC Could Better Manage the Funeral Rule*, GAO/GGD-99-156 (Washington, D.C.: Sept. 23, 1999), and *Death Care Industry: Regulation Varies across States and by Industry Segment*, GAO-03-757 (Washington, D.C.: Aug. 25, 2003).

(Portions of the 108 page GAO report have not been included as attachments, to conserve resources.)

Appendix II: Pre-Need Plans, Consumer Education and Protection, and Allegations of Fraud and Mismanagement

Pre-Need Contracts for Funeral and Cemetery Arrangements

For the purposes of this report, a pre-need plan is defined as a contractual agreement whereby funeral arrangements, cemetery arrangements, or both are preplanned and prepaid for by an individual prior to his or her death.¹ Generally, the pre-need contract is between the individual for whom the services will be provided and the funeral director or cemetery operator. The options for paying pre-need expenses vary from state to state, and according to industry information and state regulators we contacted, the most commonly used options are trust accounts and insurance policies. Upon the individual's death, the representative of the funeral home or cemetery uses the trusted funds or the amount covered by the insurance policy to provide the designated goods and services.

- With an insurance-funded plan, generally the consumer purchases, either in a lump sum or by installments, an insurance policy that upon the consumer's death is paid out to provide the goods and services as specified in the contract.² These pre-need insurance policies typically have an increasing death benefit to cover future increases in the prices of funeral goods and services.
- With a trust-funded plan, the seller is generally required to deposit a certain percentage of the funds into a trust that is established in accordance with state law and managed by one or several trustees. State laws vary on how much of the pre-need funds must be placed into a trust, who can qualify as a trustee—such as a bank or other financial institution—and who receives any interest earned on a trust account.³ The rationale behind this funding method is that interest earned on the trust account will accumulate over time and can be used to cover all or most of any increases in the cost of the goods and

¹ For our survey, we noted that the term "pre-need funeral plans" refers only to the purchase of funeral goods and services to be provided at a later date when the death of the individual for whom the purchase was made occurs. It does not refer to the purchase of a final expense insurance policy from which the beneficiary would claim and receive payment on the policy and be responsible for paying any costs for funeral goods and services on behalf of the deceased.

² Another option is to purchase an insurance annuity. Following the death of the purchaser, the annuity is paid out by the insurer to the death care provider to cover final expenses.

³ The purchaser of the pre-need contract may be responsible for paying taxes on any trust account interest earned.

services purchased between the time the trust is established and the goods and services are provided, which may be a number of years.

According to state regulators from our five case study states, they have seen more insurance-funded pre-need contracts than trust-funded contracts in recent years. Pre-need insurance policies and trusts are generally regulated in accordance with state laws and regulations, which vary across states and set out specific requirements in terms of sales, licensing of sellers, and trusting or investing requirements. There is no uniform approach among states for regulating the pre-need industry.

Pre-need arrangements differ from funeral or cemetery arrangements made at the time of death (often referred to as "at-need" arrangements). Pre-need plans also differ from other methods a consumers may set up to cover some or all of their funeral or burial expenses, such as payable-on-death savings accounts and final expense insurance, which provide funds to pay funeral and cemetery expenses but in which the final disposition arrangements have not been made.⁴ Another form of death care service is cemetery perpetual care, also called endowment care. This differs from pre-need plans in that it does not involve direct care of the individual at the time of death. Perpetual or endowment care refers to the general care and maintenance of developed portions of a cemetery and memorials or markers erected thereon and is financed from the income of an established trust fund.

Pre-need plans, and their associated contracts, may include a variety of differing provisions. Provisions can vary across states because of differing state laws and regulations, and by individual contract. Table 6 defines some of these provisions.

⁴ For example, with a payable-on-death savings account, funds deposited by an individual remain available to that individual until his or her death, at which time the account becomes payable to a designated beneficiary, such as a funeral home or cemetery, for the purpose of covering funeral and related expenses. With a final expense insurance plan, the beneficiary would claim and receive payment on the policy and be responsible for paying any costs for funeral goods and services on behalf of the deceased. The beneficiary is generally not, however, legally bound to use the funds for their intended purpose. Typically, a spouse or close relative is the beneficiary of a final expense policy in order to carry out the policyholder's final wishes.

Appendix II: Pre-Need Plans, Consumer Education and Protection, and Allegations of Fraud and Mismanagement

Table 6: General Definitions of Pre-Need Contract Provisions

Price-guaranteed and non-price-guaranteed	<ul style="list-style-type: none">• Price-guaranteed goods and services refer to those items that are guaranteed for the price stated in the pre-need contract. Price guaranteed ensures that no additional funds are due at the time of death regardless of the actual cost of the goods and services at that time.• Non-price-guaranteed goods and services refer to those items where the price is not guaranteed in the pre-need contract. The contract holder may be required to pay additional funds at the time of death if the costs for the goods and services have increased.
Revocable and irrevocable	<ul style="list-style-type: none">• A revocable pre-need contract is one which the consumer may cancel and the money paid is refundable. A cancellation fee may apply.• An irrevocable pre-need contract is one which the funds paid in are not refundable if the contract is canceled.
Portability or transferability	Portability or transferability refers to the ability of the consumer to move or transfer a pre-need contract, if at all, to another funeral or cemetery provider within the same state, or transfer to a provider in another state. Transfer limitations and fees may apply, and can vary among the states.
Trusting requirements	Trusting requirements include the amount of funds paid by the consumer for a trust-funded pre-need contract that the seller must deposit in a trust account. At the time of the consumer's death, the funds are to be used to pay for goods and services as specified in the pre-need contract. The percentage of funds that a seller must place in trust varies depending upon applicable state requirements. For example, Colorado law requires a seller to trust at least 75 percent of funds for funeral goods and services, while Oregon requires a seller to trust 90 percent for a guaranteed pre-need sale and 100 percent for a nonguaranteed pre-need sale. ^a

Source: GAO analysis based on death care-related documents from state regulators and associations.

^aIn addition, the amount of funds that a seller is required to trust can vary across the type of goods and services, depending on state law. For example, the Illinois law ultimately requires 95 percent trusting of the purchase price for funeral services, personal property, and merchandise, but 85 percent trusting for the purchase price of outer burial containers. It further requires 50 percent trusting for cemetery goods and services. An official representing a national consumer association also pointed out that some states do not require that all funds be retained in the trust account after initial deposit. For example, the association official explained that some states allow a percentage of trust funds (including 100 percent of all interest earned in some cases) to be withdrawn for administrative expenses.

Some industry associations have developed guidelines for pre-need laws that states can consider in developing their laws and regulations. Specifically, the National Funeral Directors Association and the International Cemetery, Cremation, and Funeral Association developed guidelines for pre-need statutes. However, according to one association's guidelines, the guidelines are not intended to provide states with exact statutory language or to be used in their entirety, but rather are intended

to provide states with things to consider when developing requirements.⁵ Furthermore, the National Association of Insurance Commissioners published model regulations for advertising life insurance and life insurance disclosures that also mention disclosure requirements for pre-need insurance. In addition, the association published a model regulation that discusses minimum standards for establishing reserve liability and nonforfeiture values.⁶ However, this model regulation states that pre-need insurance is not well defined and recognizes that what constitutes pre-need insurance is subject to different interpretations by states. To view the survey covering pre-need plans and the responding states' answers to the survey questions regarding their state's laws and regulations, go to GAO-12-91SP.

Complete Data on Consumer Funds Invested in Pre-Need Contracts Are Not Available

Complete current data on the total funds invested in pre-need plans are not available. According to our survey of state regulators of pre-need plans, less than half of the state regulators responding (18 of 40) reported that they tracked the amount of funds invested in pre-need funeral plans. Of the 18 states reporting the tracking of pre-need funds, 9 provided data on the amount of funds invested in pre-need plans in their state, with amounts for all 9 states totaling \$5.9 billion and amounts ranging from \$1 million to \$2.9 billion in each state. According to a 2011 study by a

⁵ We do not have any basis to determine if these guidelines are appropriate or a best practice.

⁶ A reserve liability may be described as an amount representing actual or potential liabilities kept by an insurer to cover debts to policyholders. According to the International Risk Management Institute, in a whole life insurance policy, the nonforfeiture value is defined as benefits that accrue to the insured when the policy lapses because of nonpayment of the premium.

death care industry consulting company, the estimated total dollars in pre-need accounts may have been nearly \$35 billion in 2009.⁷

Federal and State Consumer Guides Help Educate and Protect Consumers

Since making funeral arrangements is often one of the most emotional experiences and expensive purchases a consumer will make, the FTC and some states have developed information to educate and help protect consumers. For example, FTC publishes a consumer guide that discusses some of the benefits of preplanning. Specifically, the guide states that

"Thinking ahead can help you make informed and thoughtful decisions about funeral arrangements. It allows you to choose the specific items you want and need and compare the prices offered by several funeral providers. It also spares your survivors the stress of making these decisions under the pressure of time and strong emotions."

However, FTC's guide also states that

"You may wish to make decisions about your arrangements in advance, but not pay for them in advance. Keep in mind that over time, prices may go up and businesses may close or change ownership. However, in some areas with increased competition, prices may go down over time. It's a good idea to review and revise your decisions every few years, and to make sure your family is aware of your wishes."

With regard to prepaying, FTC's guide goes on to say that

⁷ Daniel M. Isard, *Funeral Preneed; In Force and Growth Over the Past Three Decades in the United States* (Phoenix: The Foresight Companies LLC, 2011). The report provides information on trust and insurance pre-need accounts, but does not include individually funded funeral arrangements such as personal life insurance, final expense life insurance or bank accounts marked "POD" or Paid on Death. The author of the study explained that there is no central depository for pre-need trust or insurance data, and that many companies consider this to be proprietary information. He said that his study represents an estimate done for economic understanding rather than a study of scientific measurement. He said that pre-need trust and insurance data had to be approximated to the nearest billion because banks and many state funeral associations keep their pre-need trust data confidential, and many insurance companies sell a variety of insurance and do not make their pre-need portfolios available. GAO was unable to determine the reliability of this report because data sources could not be identified and confirmed.

Appendix II: Pre-Need Plans, Consumer Education and Protection, and Allegations of Fraud and Mismanagement

"Laws of individual states govern the prepayment of funeral goods and services; various states have laws to help ensure that these advance payments are available to pay for the funeral products and services when they're needed. But protections vary widely from state to state, and some state laws offer little or no effective protection."

FTC's guide also outlines some things consumers may want to consider before entering into a pre-need contract. Specifically, FTC's guide states that

"If you're thinking about prepaying for funeral goods and services, it's important to consider these issues before putting down any money:

- What are you paying for? Are you buying only merchandise, like a casket and vault, or are you purchasing funeral services as well?
- What happens to the money you've prepaid? States have different requirements for handling funds paid for prearranged funeral services.
- What happens to the interest income on money that is prepaid and put into a trust account?
- Are you protected if the firm you dealt with goes out of business?
- Can you cancel the contract and get a full refund if you change your mind?
- What happens if you move to a different area or die while away from home? Some prepaid funeral plans can be transferred, but often at an added cost."

Furthermore, FTC's guide suggests that a consumer tell their family about the plans they have made and where the documents are filed. FTC cautions that

"If your family isn't aware that you've made plans, your wishes may not be carried out. And if family members don't know that you've prepaid the funeral costs, they could end up paying for the same arrangements. You may wish to consult an attorney on the best way to ensure that your wishes are followed."

States' guides provide similar educational information and cautions. For example, a pamphlet published by an Oregon regulator discusses pre-need planning and resources and notes that there are many honest and reputable people and companies that offer pre-need funeral planning. However, the pamphlet also cautions consumers to become educated and obtain complete information on the laws and their rights because "there are unscrupulous con artists who sell overpriced plans or will take your money with no intention of fulfilling their promises." Likewise, a

Massachusetts consumer guide states that preplanning gives consumers the opportunity to shop around and the ability to designate their own preferences. The Massachusetts guide also provides a summary of consumer rights that are protected by law, and includes a checklist for pre-need funeral planning and arrangements. For example, Massachusetts informs consumers that if they wish to prepay for their funerals, the funeral director is to provide a standardized contract approved by the Board of Registration in Embalming and Funeral Directing, which includes an itemized statement of funeral goods and services that is FTC compliant, and a trust document with a bank or insurance policy. Funeral directors are also required to

- itemize all costs associated with the funeral and burial specifying those items where the cost is guaranteed and those items where the price may change,
- explain what will happen if they go out of business or if their funeral home is sold,
- disclose if they will receive a commission on the sale of an insurance policy, and
- provide written verification of where funds are being held if a trust account is used.

Massachusetts's checklist suggests that, when prearranging and prepaying for a funeral, consumers should

- use the standardized state contract,
- know which costs are guaranteed and which may change,
- know the name of the bank trustee if the contract is funded through a trust account or know the insurance company and policy number if the contract is funded through an insurance policy,
- know whether the funeral director received a commission if the contract is funded through an insurance policy,
- know what happens if the funeral home is sold or goes out of business,
- know whether and how the contract can be changed,
- know they have 10 days from signing to cancel the contract and get a refund, and
- notify a family member or legal representative of this arrangement.

California is an example of another state that has also developed a consumer guide—the Consumer Guide to Funeral and Cemetery Purchases. Like other states' guides, the California guide encourages pre-need planning and states that

"Planning in advance for your own disposition after death can spare your loved ones the anguish of making difficult decisions while in a state of grief. Shopping ahead of time, getting correct information, and planning in advance allows you to make informed decisions before you purchase, and may save you money."

Also, like other states, the California guide discusses various aspects of pre-need insurance and trusts, and provides information to educate consumers what is allowable under California law. California's guide also advises consumers that they should visit and inspect several funeral establishments; and compare services restrictions, rules, and prices; and consider doing the following before they enter into a pre-need contract:

- ask for a guaranteed price plan and obtain a written estimate of any charges for any items or services that are not included in the plan,
- ensure that the contract includes a cancellation clause,
- ask if the funeral arrangements can be transferred to another funeral establishment, and
- find out where the money is being invested and who the trustees are.

Like Massachusetts' guide, California's guide suggests that consumers check the license status of a funeral provider, and provides links explaining key terms and required disclosures.

Allegations of Fraud and Mismanagement of Pre-Need Funds

The pre-need segment of the industry has also come under increasing scrutiny in recent years because of various allegations of fraud and mismanagement of pre-need funds. These allegations have arisen in various states across the country and involve the potential loss of millions of dollars in consumers' investments in pre-need trusts or insurance contracts. Some of these allegations involve criminal indictments for wire, bank, and mail fraud, and theft of pre-need deposits, while others involve civil litigation over the potential misappropriation of funds. Some of these allegations are currently pending either as criminal suits, civil suits, or both in various state and federal courts. The following are examples of reported incidents involving the sale of pre-need funeral and cemetery plans.

National Prearranged Services, Inc. In 2010, the U.S. Attorney for the Eastern District of Missouri filed a 50-count federal indictment against officials of National Prearranged Services, a Missouri-based company that sold prepaid funeral services. The indictment alleges fraud and other crimes for conduct spanning at least 35 states with approximate losses to purchasers, funeral homes, and state insurance guarantee associations ranging from \$450 million to \$600 million.⁸ Missouri and Texas represent the two most affected states, where, according to media reports, 85,000 pre-need customers were affected. Charges alleged in the indictment included wire, bank, mail, and insurance fraud; money laundering; and multiple conspiracy charges involving the sale of pre-need funeral services. The violations allegedly took place from 1998 to 2008 and involved a number of illegal schemes. For example, the indictment alleged that officials withheld pre-need funds from trust and insurance accounts and removed funds from existing accounts for unauthorized purposes. The indictment also alleged that company employees used white-out or cross-outs to change the names of beneficiaries on pre-need insurance applications, including naming the company as sole beneficiary, in order to extract money without the customers' knowledge. Additionally, the indictment alleged that the defendants concealed their practices from insurance regulators. As a result of the various fraudulent schemes, the company and its associated entities were unable to meet their mounting obligations and collapsed in 2008. The case is ongoing in federal and various state courts.

Forest Hill. In 2007, the District Attorney General for Shelby County, Tennessee and the Commissioner of the Tennessee Department of Commerce and Insurance filed a complaint in Shelby County against the owners and other officials of Forest Hill Cemeteries and Funeral Homes seeking injunctive and other relief. Subsequently, according to a Shelby County District Attorney press release, Clayton Smart—an owner—and

⁸ The case involves St. Louis-based National Prearranged Services, Inc, and affiliated entities including Texas-based companies Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company. In a separate civil action, the National Organization of Life and Health Insurance Guaranty Associations is the plaintiff on behalf of the following state life and health insurance guaranty associations: Arizona, California, Colorado, the District of Columbia, Georgia, Idaho, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, and Wyoming. Other plaintiffs include the state guaranty associations of Missouri, Texas, Illinois, Kansas, Oklahoma, Kentucky, and Arkansas.

others were indicted for violations in Tennessee that took place from 2004 to 2006, and that involved a number of illegal schemes, including money laundering by transferring stolen pre-need funds into accounts in the names of various corporations, entities, or investments owned or controlled by the defendants. According to the press release, the indictment also alleges that the transfers were under the guise of investing the funds for the benefit of the funeral home trusts and the beneficiaries of the prepaid funeral contracts, but in reality, the unauthorized transfers were for the defendants' benefit, as well as other individuals or relatives. The press release further states that as a result of these transfers, \$20 million of the fund were lost. According to a 2010 Office of the Tennessee Attorney General annual report, Clayton Smart agreed to plead guilty to a charge of theft, as part of a global settlement with all the prosecuting jurisdictions. According to a Michigan Office of the Attorney General press release, Clayton Smart also pled guilty to counts of racketeering, embezzlement, and failing to properly trust or escrow funeral or cemetery or prepaid contract funds. The press release states that Clayton Smart embezzled up to \$70 million in cemetery trust funds in Michigan. According to an official from the Tennessee Attorney General's office, the cases for two of the defendants are still pending.

Illinois Funeral Directors Association. In 2006, an audit by the Illinois Office of the Comptroller determined that the Illinois Funeral Directors Association's pre-need trust fund was in trouble and underfunded by nearly \$40 million. According to the audit, the association, acting as a trustee for pre-need plans, collected unauthorized excess fees of approximately \$9.6 million. At the time, the media reported that the trust fund was responsible for being able to pay for the contracted pre-need funerals of a reported 40,000 state residents at the time of need. State regulators told us that they are currently investigating why the trust fund was in trouble, and trying to figure out who was involved and what, if any, charges should be filed. As of June 2011, state regulators told us that no charges have been filed by the state. In 2009, class action lawsuits were filed by funeral directors who invested pre-need funds into the association's trust, alleging the fiscal mismanagement of the trust fund.⁹ The funeral directors alleged that they lost more than \$140 million, and that some funeral homes could go bankrupt because they have been

⁹ According to media reports, the plaintiffs alleged that the trust operated as a Ponzi scheme where money from new purchasers of pre-need contracts was used to pay for the funerals of previous purchasers.

forced to pay the difference between what funerals actually cost and the inadequate amounts available from the trust fund.

The California Master Trust. In April 2011, the California Attorney General filed a complaint with the Superior Court of the State of California, County of Los Angeles against the California Master Trust, the California Funeral Directors Association, the Funeral Directors Service Corporation, and other defendants seeking a permanent injunction and restitution to consumers. According to a press release issued by the California Office of the Attorney General, the suit, which seeks to halt illegal activity and seeks restitution of about \$14 million with interest, was filed on behalf of the Cemetery and Funeral Bureau of the Department of Consumer Affairs, which regulates the funeral industry in California. The suit was based on a June 2010 audit by the Cemetery and Funeral Bureau that alleges that millions of dollars of consumers' money paid to the trust was misspent or mismanaged, that defendants paid at least \$4.6 million in illegal kickbacks to funeral homes, and that the defendants paid themselves excessive administrative fees.¹⁰ According to the press release, the California Master Trust, which as of April 2011 controlled about \$63.5 million, was created in 1985 by the funeral directors to pool the prepaid funeral payments of individual purchasers throughout California. The suit also seeks to wrest control of the trust away from the Funeral Directors Service Corp., a subsidiary of the California Funeral Directors Association, and place it under a new trustee, and seeks a full accounting of the trust's financial transactions as well as the defendants' financial transactions with the trust since 2000. Before this complaint was filed, the Funeral Directors Service Corporation, which served as the administrator of the California Master Trust, had filed a complaint in November 2010 with the Superior Court of the State of California, County of Sacramento, which contends, among other things, that the findings of the 2010 audit are incorrect. These cases are still pending in court.

One theme among these examples is that pre-need sellers were charged with or sued within the context of violating existing laws covering a variety of illegal activities that did not always focus on the state's laws or regulations governing pre-need plans. For example, the National Prearranged Services indictment cited charges for wire, bank, mail, and

¹⁰ State of California, Department of Consumer Affairs, Cemetery and Funeral Bureau, *California Master Trust, Trustees, Comerica Bank & Funeral Directors Service Corp. Review for Compliance*, FD-07-03 (Sacramento: Revised June 2010).

insurance fraud; money laundering; and multiple conspiracy charges involving the sale of prepaid funeral services. The Clayton Smart indictment cited charges of failing to appropriately deposit funds collected, transferring funds to be used for unauthorized purposes, failing to submit accurate records, and money laundering. Many of the charges in these cases could apply to financial transactions associated with any business or industry. Nonetheless, officials from two states, Tennessee and Illinois, involved in the incidents described above told us that their states have made changes to existing laws as a result of the incidents that occurred in their respective states.

- In 2007 and 2008, the state of Tennessee conducted a major review and revision of its pre-need laws in reaction to the problems that occurred in the state. The officials said that in rewriting their laws, they wanted to be proactive and address any other future issues that potentially could arise. However, the officials told us that "morality cannot be legislated" as determined criminals will find a way carry out their actions. According to state regulators, Tennessee implemented a number of changes to strengthen its state death care laws, such as requiring state or commissioner approval, as applicable, for a change in trustee, cemetery sales, and pre-need contracts and for rollovers from trust funds to insurance. In addition, a pre-need cemetery consumer protection account was established in 2007, and a pre-need funeral consumer protection account was originally established in 2008.
- In 2010, legislation passed in the state of Illinois amended its pre-need laws as the result of concerns regarding the Illinois Funeral Directors Association's management of pre-need trust funds. Amendments enacted through the new legislation added a number of consumer protections. These included establishing a consumer protection fund for pre-need funeral plans, requiring an annual notice to all consumers regarding the status of their funds with an explanation of any fees charged by the trustee, clear identification of the trustee or insurance provider as well as the primary regulator of the trustee or insurance provider, and an explanation of the purchaser's right to a refund. In addition, all pre-need sales are

**Appendix II: Pre-Need Plans, Consumer
Education and Protection, and Allegations of
Fraud and Mismanagement**

required to be entrusted with an independent trustee that is a corporate fiduciary.¹¹

¹¹ According to Illinois state regulators, prior to the new legislation funeral homes could act as their own trustee if the fund was smaller than \$500,000.

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Model Guidelines for State Laws and Regulations

These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICCFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns.

Insurance-Funded Prearrangements



Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association

BACKGROUND

The use of life insurance and annuity policies, as an alternative to other funding vehicles for prearrangements, has developed into a specialty market whereby these policies contain features which permit the death benefit of the life insurance policy to increase during the lifetime of the insured. These increases, whether indexed or discretionary, are designed to keep pace with the rising cost of providing pre-selected cemetery and funeral merchandise and services at some unknown time in the future.

These specialty policies contain all the standard features of life insurance and annuity products, but in addition, contain elements which are generally not readily available through the life insurance market. These are:

- a. an increasing death benefit;
- b. guaranteed issue;
- c. issuance to the elderly;
- d. issuance to those with impaired health.

Under a typical insurance-funded prearrangement, the consumer first prearranges for cemetery or funeral merchandise and services. It is this transaction which leads to the purchase of life insurance to fund the prearrangement. Generally, the initial face amount of the life insurance policy is based upon the current retail cost of the prearrangement. In many prearrangements, providers are willing to guarantee the price of some, or all, of the merchandise and services selected because of the feature in the life insurance policies whereby the death benefit increases over time.

To secure these guarantees, if any, and to facilitate payment of the prearrangement at time of death, the policy owner normally executes a contingent revocable assignment of the death benefit of the life insurance policy to the selected provider. It is important to note that the assignment is contingent upon actual fulfillment of the prearrangement by the provider. If no merchandise and services are provided, the precondition of the assignment does not occur, and death benefits are paid to the named beneficiary of the life insurance policy (normally a family member). During the lifetime of the insured, the policy remains transferable and the insured retains the right to change both the prearrangements and the freedom to choose a different provider.

Unlike prearrangements which are funded through prepaid contract trust funds, payment of premiums is NOT made to the provider. Instead, the consumer makes all payments directly to the life insurance company. Since no monies are exchanged for cemetery or funeral merchandise and services until after the consumer dies, there can be no "sale" of merchandise or services on a preneed basis subject to the state preneed laws.

The use of life insurance to pre-fund a prearrangement benefits the consumer in several ways. Single premium products always provide a death benefit greater in amount than the premium paid, thus for the same amount as would be placed into other funding, a greater initial amount of benefit is purchased. For those who cannot afford to pay a single premium, multiple payment plans provide two distinct advantages: a.) For those who can pass limited underwriting, full first day coverage is available. Since full benefits are available upon death (even when the total premium has not been paid), the provider is able to guarantee the prearrangement immediately. b.) For those who cannot pass the health questions, limited benefits are available during the first two years, but beginning the third year of coverage, full death benefits are available. Thus, the provider may guarantee the prearrangement at that time. In both scenarios, guaranteed prearrangements are available, whereas most other types of funding cannot provide guarantees until all payments are made. When payment schedules may extend over five to ten years, this is a considerable benefit to many consumers.

Finally, the nature of the life insurance market includes the payment of commissions. These commissions provide a source of income to sellers which permit them to pay current preneed expenses without tapping into other resources.

The National Association of Insurance Commissioners ("NAIC") has addressed the use of life insurance products in the funding of prearrangements, and adopted a model law which is designed to provide consumers with specified information when life insurance is selected as the funding source. In developing this model, the NAIC considered factors relevant to elderly consumers, in addition to standard disclosures to individuals purchasing life insurance products in this market.

PRINCIPLES

1. The NAIC model should be adopted substantially as follows, with the following information being disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit, for a prearrangement which is funded by a life insurance policy:
 - a. The fact that a life insurance policy is involved or being used to fund a prearrangement;
 - b. The nature of the relationship among the soliciting agent or agents, the provider of the merchandise or services, the administrator, and any other person;
 - c. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
 - d. The impact of the prearrangement

- on any changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
 - on any penalties to be incurred by the policy holder as a result of failure to make premium payments;
 - on any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;
- e. A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the cemetery or funeral merchandise and services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;
 - f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;
 - g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee;
2. Since dual regulation of prearrangements funded through life insurance does occur, it is important that laws concerning the prearrangement process do not overlap into the regulation of the life insurance product itself.
 3. Reporting of transactions funded with life insurance should be designed specifically for life insurance and not based upon the same criteria as prepaid contract trust funds. The impact of graded death benefits, increases in death benefit which are not related to "interest," lapses, and surrenders have no relevance to prepaid contract trust fund reporting requirements. Since life insurance company transactions are regulated and audited separately, there should be no additional requirements imposed by the regulatory authority that oversees prepaid contract trust funds.
 4. Medicaid and Supplemental Security Income benefits eligibility may have an impact upon individuals who fund their prearrangement with life insurance. The use of the irrevocable assignment of ownership, either to the provider or into a life insurance trust, should be available in order to protect the eligibility rights of this class of consumers.
 5. In the event that a life insurance company participates in an insurance guarantee association, there should be no requirement for a separate contribution to a consumer guarantee fund for prepaid contracts.

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National Funeral Directors Association

NATIONAL FUNERAL DIRECTORS ASSOCIATION

MODEL CONSUMER PROTECTION GUIDELINES FOR STATE PRENEED FUNERAL STATUTES

APPROVED ON OCTOBER 7, 2000

FIRST AMENDED ON MARCH 19, 2001

SECOND AMENDED ON OCTOBER 18, 2003

THIRD AMENDED ON OCTOBER 6, 2007

The National Funeral Directors Association, the largest organization of funeral service professionals in the United States, has adopted the Model Consumer Protection Guidelines for State Preneed Funeral Statutes (the “Guidelines”). The Guidelines are designed to insure that consumers who purchase preneed funeral goods and services make informed decisions, receive protection against the loss of prepaid funds, deal with ethical and licensed preneed sellers and agents, and retain the right to cancel preneed funeral contracts or transfer preneed funding to different funeral providers.

The Guidelines address the following seven areas of preneed regulation:

- Preneed Consumer Contract Disclosures
- Preneed Trusting Requirements

- Licensing of Preneed Sellers and Agents
- Solicitation of Preneed Consumers
- Revocation/Portability of Preneed Contract and Funding
- Preneed Consumer Guaranty Fund
- Enforcement of Preneed Laws

These Guidelines further NFDA's recognized policy that all preneed trust funds and preneed insurance policies are held as a sacred obligation for the benefit and protection of the consumer. No access to, or use of, those funds or policies for any purpose other than that for which they were established should be allowed.

NFDA and its member state funeral associations will work with state legislatures and regulatory authorities to amend existing preneed statutes and/or adopt new preneed statutes to provide the consumer protection provisions set forth in the Guidelines.

I. PRENEED CONSUMER CONTRACT DISCLOSURES

State preneed statutes or regulations should require that preneed contracts entered into between consumers and sellers of funeral goods or services adhere to the following requirements:

A. General Requirements in Preneed Contracts.

1. The contract shall be in writing, in clear and understandable language, and printed in at least eight-point type.
2. The contract shall identify the seller's name, address, telephone number, and funeral home/preneed license number.
3. The contract shall identify the purchaser's name, address, telephone number and social security number. If the purchaser is not the beneficiary

of the contract, the contract shall also contain that information for the beneficiary.

4. If the seller is not the funeral provider, the contract shall identify the funeral provider that will provide the services, including the name, address, telephone number and license number.
5. If the seller is not the funeral provider, the contract shall include a disclosure regarding the relationship between the seller and the funeral provider.
6. The contract shall list all of the funeral goods and services purchased, or in lieu thereof, require the attachment of the Statement of Funeral Goods and Services Selected.
7. The contract shall be signed by both the purchaser and seller and identify the date and place of execution of the contract.
8. If the seller is not the funeral provider, the contract must also be signed by the funeral provider in order to be valid.
9. The seller shall be required to give a copy of the contract to the purchaser upon execution.

B. Investment Disclosures in the Preneed Contract.

1. The contract shall disclose whether it will be funded by insurance, an annuity, trust funds, or some other method.
2. If the preneed funds are used to purchase an insurance policy, a copy of the insurance application shall be attached to the preneed contract.

3. If the preneed funds are used to purchase an insurance policy, the contract shall disclose that, except for the initial “free look” period, the insurance policy is not refundable, but may be surrendered for less than face value.
4. If the preneed funds are used to purchase an insurance policy, the contract shall disclose that a commission or other renumeration will be paid to the seller or seller’s agent on the purchase of the insurance policy.
5. If the contract is funded by a trust, the contract shall disclose the name, address and phone number of trustee/financial institution receiving the trust deposit.
6. If the contract is funded by a trust, the contract shall disclose when the preneed trust funds will be deposited with the trustee/financial institution.
7. If the contract is funded by a trust, the contract shall disclose the percentage or amount of funds that will be deposited and those that will be retained by the seller.
8. If the contract is funded by a trust, the contract shall disclose whether and how much of the interest or other accrual on the trust account will remain in trust or will be paid to the seller.
9. If the contract is funded by a trust, the contract shall disclose who will be responsible for taxes generated by earnings on the trust account.
10. If the contract is funded by a trust, the contract shall disclose if trustee fees or other administrative charges will be deducted from the trust funds.

C. Price and Payment Disclosures in the Preneed Contract.

1. The contract shall disclose whether the price of the funeral contract is guaranteed by the preneed seller. If the price is guaranteed, the disclosure should inform the purchaser which goods and services are covered by the price guarantee and which are not.
2. The contract shall disclose that if the price of the contract is guaranteed, all funds in the trust account or the insurance policy at the time of death shall be paid to the seller.
3. The contract shall disclose that even if the price of the funeral goods and services are guaranteed, there may be additional expenses (such as the cost of shipping) that would not be covered by the contract.
4. If the price is not guaranteed, the preneed contract shall disclose that the actual cost of the funeral goods and services shall be determined at the time of death.
5. If the price is not guaranteed, the contract shall disclose that the estate of the decedent and/or the responsible party will be legally obligated to pay any shortfall in the trust account and that the estate would be entitled to receive any excess funds in the trust account, after payment of the at-need prices.
6. The contract shall disclose how the purchase price is to be paid and, if the price is paid in installments, a disclosure to the consumer regarding what constitutes default under the installment contract and the consequences of the default.

D. Contract Cancellation Disclosures in the Preneed Contract.

1. The contract shall disclose when and how a purchaser can exercise the initial right of cancellation after executing the contract. The disclosure shall inform the consumer of the right to a full refund within the specified cancellation period.
2. If the contract is revocable, the contract shall disclose the right of the consumer to revoke the preneed contract and how the consumer may exercise that right.
3. If the contract is revocable, the contract shall disclose under what circumstances revocation fees will be imposed and how much those revocation fees will be.
4. If the contract is irrevocable, the contract shall disclose that the purchaser does not have a right to revoke the contract and receive a refund of the purchase price paid.
5. In order to make a contract irrevocable, the contract shall require the signature of the purchaser next to a contract disclosure that specifically acknowledges that the purchaser understands and agrees that the contract will be irrevocable.
6. The contract shall disclose what transfer fees (if any) will be imposed if the consumer transfers the funding for an irrevocable preneed contract to a new funeral provider.
7. The contract shall disclose that if the seller is unable to perform the preneed contract due to the seller's actions or financial condition, the

consumer shall be entitled to a full refund of the purchase price paid by the consumer and the accrued interest in the preneed trust account.

8. The contract shall disclose that the funeral provider may substitute goods and services of equal quality, value and workmanship if those specified in the contract are unavailable.

II. PRENEED TRUSTING REQUIREMENTS

A. 100 Percent Trusting.

If preneed funds are to be placed into trust, state laws and regulations should require that, subject to the specific exemptions set forth below, 100 percent of the preneed funds paid by the purchaser to the seller shall be deposited and remain in trust. Further, all interest, income and accruals earned by the trust fund shall remain in trust, except for the specific exemptions set forth below. Until such time as the preneed contract is revoked or performed, the principal and all earnings thereon shall remain in trust with the following exceptions:

1. From the prepaid funds received by the seller, the seller may deduct and pay any applicable sales tax that is due and owing to state and local governments.
2. From the prepaid funds received by the seller, the seller may deduct and pay to the applicable state agency fees due and owing for any license, permit, or preneed consumer guaranty fund obligation.
3. If the preneed trust is obligated to pay taxes on earnings generated by the trust fund, the trustee shall be authorized to deduct and pay all applicable income and other taxes.

4. In accordance with state law and the preneed contract, the trustee of the preneed trust may deduct from the trust fund and pay trustee's fees and other expenses of the trust administration.
5. Upon revocation or transfer of the preneed funeral contract by the purchaser, the trustee may deduct and pay any applicable cancellation or termination fee permitted by state law and the preneed contract.

B. Confirmation of Deposit.

State laws must require the preneed contract to disclose to the purchaser that he or she will be notified when the preneed funds are deposited into trust or when they are applied to the purchase of the insurance policy that will fund the preneed contract. The required disclosure should also inform the consumer to contact the appropriate government agency if confirmation is not received by a specified time. Additionally, the preneed law must mandate that any trustee receiving preneed deposits or insurance companies selling preneed insurance issue those notices confirming the deposit or the insurance policy purchase to the consumer by a specified time after receiving the funds.

C. Prohibition Against Constructive Delivery and Surety Bonds.

State laws and regulations shall not allow a seller to avoid the requirement of trusting preneed funds by constructive delivery of funeral goods to the purchaser, either by storing the funeral goods in a warehouse or other location in the state. In addition, state laws and regulations shall also not allow a seller to avoid the requirement of trusting preneed funds by the posting of any type of surety bond or other security.

III. LICENSING OF PRENEED SELLERS AND AGENTS

A. Requirements for Preneed Sellers.

A seller of preneed funeral goods and/or services, which is not already licensed as a funeral provider in the state, must comply with all of the following requirements in order to receive a license to enter into preneed funeral contracts:

1. The seller shall be a resident of the state or qualified to do business in the state.
2. The seller must file an application for a preneed license with the appropriate state licensing agency. The application must contain at least the following information:
 - (a) The seller's name, business address and telephone number.
 - (b) The names, addresses and telephone numbers of the seller's officers, directors, managers, or any other individuals holding a 10 percent ownership interest in the seller.
 - (c) The names and addresses of all employees or agents of the seller who will sell preneed funeral goods or services on behalf of the seller.
 - (d) The names and addresses of the funeral homes which are under contract to the seller to provide the funeral services and/or funeral goods sold by the preneed seller.
 - (e) The name and address of the trustee or financial institution to which the preneed trust funds will be deposited.

3. When submitting the application for a preneed license, the seller shall file a copy of the signed trust agreement that the seller has with the trustee or financial institution where the preneed trust funds will be deposited.

B. Requirements of Preneed Agents.

Any individual who arranges or sells funeral **services** on a preneed basis must be a licensed funeral director. A preneed sales agent, who is not a licensed funeral director, may offer or sell funeral **goods** on a preneed basis upon meeting all of the following requirements¹

1. A preneed sales agent must be at least 18 years of age and have received a high school diploma or its equivalent.
2. Any individual with a felony conviction shall be ineligible to receive a preneed sales agent license.
3. A preneed sales agent must file an application with the appropriate state licensing agency. The application must contain at least the following information:
 - (a) Name, address, telephone number and social security number of the applicant.
 - (b) The names and addresses of all preneed sellers the preneed sales agent will represent.
4. With the application for a preneed sales agent's license, the applicant must provide a copy of the written agreement by which the preneed seller certifies that the agent will represent the seller, identifies what preneed

¹ If state law permits an individual to arrange or sell preneed funeral services without having a funeral director's license, the licensing requirements set forth in this Section II(B) would apply to those individuals arranging or selling preneed funeral services.

goods and services the agent will sell, and certifies that the agent has been trained by the preneed seller.

5. The applicant must successfully pass an examination administered by the state licensing agency on preneed laws and regulations.

IV. SOLICITATION OF PRENEED CONSUMERS

State preneed funeral statutes shall include the following solicitation requirements and prohibitions to insure ethical treatment of preneed consumers and to protect the public from undue invasion of privacy.

A. Requirements for Preneed Solicitation.

All sellers of preneed funeral goods and services, their employees, agents, or anyone soliciting on their behalf, shall comply with the following requirements when engaged in the solicitation of preneed funeral consumers:

1. Within 30 seconds of initiating a solicitation by telephone, or upon entering the residence of a solicitation prospect, the solicitor must identify himself or herself, the preneed seller on whose behalf the solicitation is being made, and a general description of the preneed goods and services to be offered for sale.
2. When making a preneed sale solicitation, the solicitor must present to the consumer a copy of the General Price List of the preneed seller and any preneed consumer disclosure information that the state requires to be distributed to consumers.

3. Preneed sellers who solicit consumers by telephone are required to maintain a “do-not-call” list and to place on the list the household telephone number of any consumer who requests to be put on the list.

B. Preneed Solicitation Prohibitions.

All sellers of preneed funeral goods and services, their employees, agents or anyone soliciting on their behalf, are prohibited from undertaking any of the following practices when engaging in the solicitation of preneed funeral consumers:

1. The making of any untrue statements of material fact or omission of any material facts when engaged in preneed solicitation.
2. The use of any advertisements or offers of preneed funeral goods or services which are false, misleading, deceptive, unfair, coercive or intimidating.
3. The solicitation of potential preneed consumers by telephone any time between the hours of 9:00 p.m. and 8:00 a.m.
4. The use of the term “trust” or “trust-funded” in any preneed advertisement or solicitation in any misleading way.
5. The direct or indirect solicitation of persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in-person without having been expressly requested to do so by that person or their representative.

V. REVOCATION OF PRENEED FUNERAL CONTRACTS

Preneed purchasers should be given the following rights to cancel, revoke, and/or transfer preneed funeral contracts or funding for preneed funeral contracts:

A. Initial Cancellation of Preneed Funeral Contracts.

Every preneed consumer who enters into a preneed funeral contract, regardless of whether it is irrevocable or revocable, shall be permitted to cancel the preneed contract within seven (7) days of its execution. Upon cancellation by the consumer, the preneed seller, or the insurance company if the preneed contract is funded by an insurance policy, shall return 100% of the funds that the preneed consumer paid pursuant to the preneed funeral contract.

B. Revocation of Revocable Preneed Contracts.

If the preneed contract is revocable, then the preneed purchaser or, in the event the preneed purchaser has died, the person authorized to direct the disposition of the deceased preneed purchaser, shall have the right to revoke the contract with the original preneed seller. The original preneed seller shall be permitted to retain a reasonable revocation fee, the payment of which would be established by state law.

Upon revocation by the preneed purchaser or his or her personal representative, the trust funds or the insurance policy established to fund the preneed funeral contract shall be returned to the preneed purchaser, after deducting any applicable taxes, trust expenses and fees, and revocation fee as specified by state law. The revocation fee may be in the form of an insurance commission already collected by the preneed seller, a specified portion of the preneed contract purchase price that the seller was originally permitted to retain as an administrative fee, or a fee deducted from the trust funds prior to the refund to the purchaser.

C. Transfer of Irrevocable Preneed Funeral Contract Funding.

If the preneed contract is irrevocable, then the preneed purchaser or, in the event the preneed purchaser has died, the person authorized to direct the disposition of the deceased preneed purchaser, shall have the right to transfer the trust funds or the insurance policy that will

be used to pay for the preneed funeral contract to another funeral provider. The original preneed seller shall be permitted to retain a reasonable transfer fee, the payment of which would be established by state law. The transfer fee may be in the form of an insurance commission already collected by the preneed seller, a specified portion of the preneed contract purchase price that the seller was originally permitted to retain as an administrative fee, or a fee deducted from the trust funds prior to the transfer of the funds to the new funeral provider.

D. Notice of Change in Ownership of Funeral Provider.

Within thirty (30) days of a change in the ownership of the funeral home, the new ownership of the funeral home shall send a notice to the last known address of each purchaser of existing preneed contracts informed them of the change in ownership and the assumption by the new ownership of the funeral home's obligation to perform the preneed contract.

VI. PRENEED GUARANTY FUNDS

State preneed laws and regulations should provide for the funding and administration of a preneed consumer guaranty fund ("Guaranty Fund"), the purpose of which would be to provide restitution to a purchaser of a preneed funeral contract in the event of a default by the seller. The laws and regulations would provide for the following:

A. Funding.

For each preneed contract entered into with a consumer, whether funded by insurance or trust funds, the seller shall pay a designated fee, which may be collected from the purchaser. The fee shall be remitted by the seller to the State Agency with oversight of the Guaranty Fund.

B. Administrator.

A State Agency shall be designated to collect the fees from preneed sellers, deposit the fees in the Guaranty Fund, administer the Guaranty Fund and make determinations as to what claims against the Guaranty Fund will be allowed and in what amounts.

C. Purpose of Guaranty Fund.

The purpose of the Guaranty Fund is to make restitution to any purchaser of a preneed funeral contracts when the seller (or other provider) defaults on its obligations under the preneed contract. The restitution procedure is initiated by the filing of a written complaint by the purchaser with the State Agency. The State Agency investigates the claim and will order restitution or dismissal of the complaint. Restitution may include the principal payment made by the purchaser plus a set amount of interest.

D. Subrogation.

If the State Agency makes any restitution payments to a purchaser from the Guaranty Fund, the State Agency is subrogated to the purchaser's right against the seller under the preneed contract. Any amounts recovered by the State Agency shall be deposited into the Guaranty Fund.

E. Integrity of Guaranty Fund.

All payments deposited into the Guaranty Fund and all interest thereon may only be used for restitution. The Guaranty Fund is to be established as a separate fund and may not be deposited in the state's general fund or commingled with any other state fund.

F. Advertising Restrictions.

Preneed sellers are prohibited from advertising in any manner the existence of the Guaranty Fund for the purpose of inducing a consumer to purchase a preneed contract.

G. Cap.

The State Agency shall annually review the status of the Guaranty Fund. If the review determines that the Guaranty Fund, together with all accumulated interest earned thereon, is sufficient to cover the amount of potential claims against the Guaranty Fund, then payments to the Guaranty Fund may be suspended or adjusted accordingly at the discretion of the State Agency.

VII. ENFORCEMENT OF PRENEED LAWS

A. Record Keeping.

All preneed sellers must maintain a separate record for each preneed sale. The record shall contain at least the following information:

1. The name and address of each purchaser, and if different, the name and address of each preneed contract beneficiary.
2. The amount of preneed funds paid, including any periodic payments, made by the purchaser and the date of each payment.
3. An identification of the preneed contract as revocable and irrevocable and a listing of the goods and services purchased through the contract.
4. The value and balance of each preneed funeral trust fund or the value of each insurance policy, as of the most recent transaction, including all annual reports received from trustees and insurance companies.
5. The location of all preneed funds, including name, address and account numbers of any bank accounts or trust funds, the location of any passbook or certificate of deposit, the name of any insurance company receiving preneed funds, and the policy number for any preneed insurance.

All records must be maintained and available for audit by the state agency for up to three years after the date of performance of the preneed contract.

B. Annual Reports.

All preneed sellers must send an annual report to the responsible state agency listing all preneed contracts it holds indicating the name of the contract beneficiary, the date of the preneed contract, the name and address of the trustee or insurance company holding the preneed funding, and the amount of the preneed funds or insurance policy, as of the end of the year.

C. Audits.

The state agency receiving the annual reports must have the authority to conduct regular audits of preneed sellers. The state agency conducting the audit is authorized to investigate the books, records and accounts of any preneed seller with respect to trust funds, preneed funeral contracts, and preneed insurance policies.

D. Sanctions.

Violations of preneed laws involving theft, embezzlement or any intentional misappropriations of preneed funds are to be felonies.

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Code of Massachusetts Regulations [Currentness](#)

Title 239: Board of Registration in Embalming and Funeral Directing
Chapter 4.00: Pre-Need Funeral Contracts and Arrangements

REGULATORY AUTHORITY

239 CMR 4.00: M.G.L. c. 112. § 85.

CMR T. 239, Ch. 4.00, Refs & Annos, MA ADC T. 239, Ch. 4.00, Refs & Annos

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Title 239: Board of Registration in Embalming and Funeral Directing

Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))**→→ 4.01: Definitions**

For purposes of 239 CMR 4.00 *et seq.*, the following terms shall have the following meanings unless the context in which they are used clearly indicates otherwise:

Beneficiary--means the individual for whom funeral goods and services are to be provided under the terms of a pre-need funeral contract.

Board - means the Board of Registration in Embalming and Funeral Directing.

Buyer - means the person entering into a pre-need funeral contract with a licensed funeral establishment.

Cost-protected Pre-need Funeral Contract - means a pre-need funeral contract in which:

(a) a licensed funeral establishment agrees to provide a specifically-identified set of funeral goods and/or services for a named beneficiary upon his or her death;

(b) the beneficiary has established a funeral trust account, or purchased a pre-need insurance policy, which is to be used to pay for those funeral goods and services;

(c) the beneficiary has fully funded the funeral trust account, or fully paid for the pre-need insurance policy, within a specified period of time after the pre-need funeral contract is made; and

(d) the licensed funeral establishment has agreed to accept the funds available in the beneficiary's funeral trust account or pre-need insurance policy at the time of the beneficiary's death as payment in full for all funeral goods and services provided by the funeral establishment, and, to the extent specifically provided in the contract, for non-funeral establishment charges or "cash-advance item" charges as well, so that there will be no additional cost to the beneficiary or his or her estate for those goods, services and charges at the time of the beneficiary's death.

Funeral Goods and/or Services - means those goods and services which are customarily provided in the business of embalming and funeral directing, as commonly practiced, including but not limited to usage of facilities and those goods and services identified in [239 CMR 3.01](#).

Funeral Trust Account - an account established in any federal or state-chartered banking institution having trust powers, or any trust company, located in the Commonwealth of Massachusetts, in which funds are deposited or invested pursuant to the terms of a pre-need funeral contract for the purpose of paying for funeral goods and/or services at a future time.

Itemized Statement of Funeral Goods and Services or Itemized Statement--means a written itemized statement showing to the extent then known the price of funeral goods and/or services selected by a person, the price of each supplemental item of goods and/or services to be provided, the estimated amount for each item for which the funeral establishment will advance monies as an accommodation to the person or persons making the funeral arrangements, and all other information required by [M.G.L. c. 112, § 84B, 239 CMR 3.14](#), and 15 CFR 453.2.

Licensed Funeral Establishment - means a fixed place or establishment owned or maintained by a person, partnership, corporation, association or other organization which has been duly registered by the Board pursuant to [M.G.L. c. 112, § 84](#) and which is located, constructed, equipped and operated for the purpose of providing sanitary handling, preparation, disposition and care of dead human bodies.

Non-funeral Establishment Charges or “Cash Advance Item” Charges--means the costs of goods or services which are provided for a beneficiary in connection with his or her funeral by a supplier or vendor other than a funeral establishment licensed in Massachusetts, but which are partially or fully paid for by a Massachusetts licensed funeral establishment with funds in a funeral trust account or pre-need insurance policy or annuity on behalf of, and as an accommodation to, that beneficiary.

Pre-need Funeral Contract--means any written agreement between a buyer and a licensed funeral establishment in which:

- (a) the licensed funeral establishment agrees, prior to the death of a named person, to furnish funeral goods and/or services for that named person upon his or her death, and
- (b) the buyer, pursuant to that agreement, transfers or tenders funds to the licensed funeral establishment for the purpose of paying all or part of the cost of those funeral goods and/or services at the time they are actually provided.

Pre-need Insurance Policy or Annuity - means any policy, certificate, agreement or contract of insurance issued by an insurance company, the proceeds of which are to be utilized to pay for funeral goods and/or services furnished to a named person.

Trustee - means a federal or state-chartered banking institution within the Commonwealth of Massachusetts having trust powers, or a trust company, within the Commonwealth of Massachusetts, to which funds have been transferred in trust for the purpose of paying for funeral goods and/or services for a named beneficiary, and which is charged with the fiduciary duty of managing and administering those funds for the benefit for that named beneficiary.

Mass. Regs. Code tit. 239, § 4.01, 239 MA ADC 4.01

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 →→ **4.02: Creation and Content of Pre-need Funeral Contracts**

(1) **Parties to Pre-need Funeral Contracts.** All pre-need funeral contracts shall be between a buyer and a licensed funeral establishment.

(2) **Who May Prepare Pre-need Funeral Contracts.** No person shall prepare, negotiate or execute a pre-need funeral contract with a buyer or potential buyer; or receive, control or manage any funds tendered as payment for the funeral goods and/or services identified in such a pre-need funeral contract; unless he or she is duly registered with the Board as a registered licensed funeral director or registered certified funeral director.

(3) **Location of Offices in Which Pre-need Funeral Contracts May Be Prepared.** All pre-need centers or offices which engage in the preparation, negotiation or execution of pre-need funeral contracts or arrangements shall be located within a duly licensed funeral establishment.

(4) **Provision of Buyer's Guide Required.** A copy of a Buyer's Guide to Pre-need Funeral Contracts, approved by the Board, shall be furnished to every person or identifiable group of persons who enter into negotiations or discussions with a registered licensed funeral director or registered certified funeral director regarding a pre-need funeral contract prior to the signing of any such contract by the parties. A Buyer's Guide to Pre-need Funeral Contracts shall, at a minimum, inform the consumer that:

(a) A consumer can pre-plan his or her funeral arrangements without paying for such arrangements in advance;

(b) The cost of the funeral goods and services purchased through a pre-need funeral contract may be higher or lower at the time of the beneficiary's death than the amounts set forth in the contract, and the beneficiary's rights and obligations with respect to such changes in price are determined by the contract;

(c) There are various methods of financing pre-need funeral contracts, including but not limited to trusts, pre-need insurance policies, funeral insurance, traditional life insurance policies, annuities, and separately-created Medicaid-compliant burial accounts;

(d) Each such financing method has certain briefly-described tax, Medicare and Medicaid eligibility, and cancellation consequences;

(e) The consumer has a legal right to cancel such a pre-need funeral contract within ten days of its execution without penalty;

(f) Cancellation or revocation of a pre-need funeral contract after the expiration of the ten-day "cooling-off" period may have adverse consequences in terms of eligibility for Medicaid or other government benefits programs; and

(g) The funeral establishment will report any changes in the pre-need funeral contract, or withdrawals of funds which were originally received in connection with that contract, to the applicable governmental authority responsible for the administration of Medicaid or other governmental benefits programs to the extent that such reporting is required by law.

(5) Required Form and Contents of Pre-need Funeral Contracts.

(a) All pre-need funeral contracts shall be in writing and shall be prepared and executed on one of the Pre-need Funeral Contract forms prescribed by the Board.

(b) Each pre-need funeral contract shall be complete and shall contain all information specified on the form used, including but not limited to:

1. The signature of the buyer, and

2. The signature of the registered licensed funeral director or registered certified funeral director who is acting as the authorized representative of the contracting funeral establishment.

(c) Each pre-need funeral contract shall:

1. State conspicuously on the first page of the contract, in a manner reasonably calculated to attract the attention of a reasonable person, whether or not the buyer has selected specific funeral goods and/or services; and

2. Be accompanied by an itemized statement of funeral goods and services which meets the requirements of the Federal Trade Commission Funeral Rule (15 CFR Part 453), [M.G.L. c. 112, § 84B](#) and [239 CMR 3.14](#), which shall be attached to that pre-need funeral contract and incorporated by reference into that contract.

a. If the buyer has selected specific funeral goods and/or services, the itemized statement of funeral goods and services shall specify the prices for each identified funeral good or service selected by the buyer to the extent known at the time the pre-need funeral contract is prepared.

b. If the buyer has not selected any specific funeral goods and/or services, the itemized statement of fu-

neral goods and services shall have the words “No Goods or Services Selected” clearly and conspicuously marked thereon.

(d) Each pre-need funeral contract shall indicate, in the spaces designated for such information on the Board-prescribed pre-need funeral contract form:

1. The percentage of the total cost of the funeral which is attributable to the goods and services which are being provided directly by the licensed funeral establishment itself, which shall be calculated by dividing the total cost of the goods and services being provided by the funeral establishment itself, as set forth in the itemized statement of funeral goods and services required by 239 CMR 4.02(5)(c), by the total cost of the funeral as set forth in that itemized statement; and
2. The percentage of the total cost of the funeral which is attributable to goods and services provided by suppliers or vendors other than the licensed funeral establishment (the non-funeral establishment charges or “cash advance item” charges), which shall be calculated by dividing the total cost of the goods and services being provided by suppliers or vendors other than the licensed funeral establishment (the non-funeral establishment charges or “cash advance item” charges), as set forth in the “cash advance items” section of the itemized statement of funeral goods and services required by 239 CMR 4.02(5)(c), by the total cost of the funeral as set forth in that itemized statement.

The percentages so calculated shall be rounded off to the nearest whole number (*e.g.*, 75.28% = 75%, 75.67% = 76%) and the sum of such percentages shall in all cases equal 100%.

(e) Each pre-need funeral contract shall recite:

1. The amount of money which the buyer paid or transferred to the funeral establishment in connection with that contract at the time the contract was made;
2. The amount(s) of any future payment(s) which are to be made by the buyer in order to fully fund that contract and the date(s) on which such payments are due;
3. Whether the money paid or transferred to the funeral establishment in connection with that contract was placed in a funeral trust account or used to pay for a pre-need insurance policy; and
4. The identity of the banking institution which serves as trustee of the funeral trust account established pursuant to [239 CMR 4.09](#), or the insurance company which issued the pre-need insurance policy pursuant to [239 CMR 4.10](#), whichever applies.

(f) Each pre-need funeral contract shall recite clearly and conspicuously on its face whether it is revocable or irrevocable, and that an attempt to revoke or cancel an irrevocable pre-need funeral contract after the expiration of the ten-day “cooling-off” period described in [239 CMR 4.07\(1\)](#) may have adverse consequences in terms of eligibility for Medicaid or other government benefit programs.

(g) If the buyer has not paid or transferred any funds to the funeral establishment in connection with a proposed pre-need funeral contract, any document which sets forth the terms and provisions of a proposed pre-need funeral contract shall be treated as a non-binding pre-need funeral contract estimate pursuant to 239 CMR 4.02(6).

(h) A proposed or attempted pre-need funeral contract shall be deemed null and void and unenforceable by either party if:

1. The parties fail to prepare and execute the pre-need funeral contract on one of the Pre-need Funeral Contract forms prescribed by the Board;
2. The parties fail to fully and properly complete any portion of the prescribed Pre-need Funeral Contract Form used; or
3. The parties fail to comply with any other applicable provision of 239 CMR 4.02(5) with respect to the preparation or execution of the proposed or attempted pre-need funeral contract.

In such event, any and all monies paid or transferred to the funeral establishment by the buyer in connection with the proposed pre-need funeral contract shall be returned to the buyer immediately, without penalty or deduction of any kind.

(i) Notwithstanding the provisions of 239 CMR 4.02(5)(h), a proposed or attempted pre-need funeral contract which has not been signed by one or both parties shall be treated as a non-binding pre-need funeral estimate pursuant to 239 CMR 4.02(6).

(j) The licensed funeral establishment shall furnish a complete, fully-executed copy of the pre-need funeral contract to the buyer at the time the pre-need contract is made. In the event that the beneficiary of the pre-need contract is someone other than the buyer, the funeral establishment shall furnish an additional fully-executed copy of the pre-need funeral contract to the beneficiary not later than five business days after the pre-need contract is made.

(6) Non-binding Pre-need Funeral Estimates. A licensed funeral establishment may issue a non-binding estimate or proposal for a pre-need funeral contract to a buyer or potential buyer, as long as:

- (a) The estimate or proposal is prepared and issued on the Pre-need Funeral Contract Form prescribed by the Board;
- (b) The estimate or proposal specifies the funeral goods or services which the issuing funeral establishment proposes to provide; and
- (c) The estimate or proposal contains, or is accompanied by, an itemized statement of funeral goods and services which meets the requirements of 239 CMR 4.02(5) and which specifies the prices for each identified funeral good or service which the funeral establishment proposes to provide to the extent known at the time the estimate

is prepared.

Any such estimate or proposal expires and becomes null and void after a specified period of time, not to exceed 30 days from the date of its issuance, unless the buyer or potential buyer, prior to that expiration date, enters into a pre-need funeral contract which meets the requirements of 239 CMR 4.02(5) and tenders full or partial payment of the specified price for the identified funeral goods and services to the funeral establishment which issued the estimate.

(7) **Sale of Monuments or Interment Space Prohibited.** Registered licensed funeral directors and registered certified funeral directors who prepare, negotiate and/or execute pre-need funeral contracts shall arrange only for funeral goods and/or services, and shall not sell interment space or monuments in such contracts. Nothing in 239 CMR 4.02 shall be construed to prohibit a licensed funeral establishment from contracting with a vendor or supplier which is not a licensed funeral establishment for the purchase of a monument or interment space on behalf of the beneficiary pursuant to the terms of a pre-need funeral contract which specifically identifies that monument or interment space as one of the cash-advance items selected by the buyer.

Mass. Regs. Code tit. 239, § 4.02, 239 MA ADC 4.02

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→→ 4.03: Notice of Changes Affecting Pre-need Contracts Required

(1) A licensed funeral establishment shall send written notice of any proposed cessation of the funeral establishment's operation to the buyer (and beneficiary, if different) of each pre-need funeral contract, via certified mail, return receipt requested, at least ten days prior to the effective date of that proposed cessation of operations. Such notice shall inform the buyer (and beneficiary, if different) of their right to:

- (a) Transfer that pre-need funeral contract and all funds connected with that contract to another licensed funeral establishment of their choice, or
- (b) Cancel that pre-need funeral contract, if it is revocable, and receive a refund of all funds connected with that contract pursuant to [239 CMR 4.07\(3\)](#).

(2) A licensed funeral establishment shall send written notice of any transfer of ownership of that funeral establishment, or sale of any portion of its assets, to the buyer (and beneficiary, if different) of every pre-need funeral contract to which it is a party, via certified mail, return receipt requested, not later than ten days after the effective date of said transfer or sale. Such notice shall request that the buyer inform the funeral establishment, in writing, whether the buyer wishes to:

- (a) Transfer that pre-need funeral contract, and assign all funds connected with that contract, to the new owner(s) of that funeral establishment;
- (b) Transfer that pre-need funeral contract, and assign all funds connected with that contract, to another licensed funeral establishment of their choice, or
- (c) Cancel that pre-need funeral contract, if it is revocable, and receive a refund of all funds connected with that contract pursuant to [239 CMR 4.07\(3\)](#).

In the event that the buyer does not respond to this notice within 30 days after the date on which the notice was sent, there shall be a rebuttable presumption that the pre-need funeral contract and all funds connected with that contract have been transferred to the new owner(s) of the transferee funeral establishment.

(3) In the event that a licensed funeral establishment enters into an assignment for the benefit of creditors or other debt reorganization plan, or institutes bankruptcy or receivership proceedings under state or federal law, the

funeral establishment shall send to the buyer (and beneficiary, if different) of each pre-need funeral contract to which it is a party, via certified mail, return receipt requested, a written explanation of how their rights and obligations under the pre-need funeral contract will be affected by that event.

Mass. Regs. Code tit. 239, § 4.03, 239 MA ADC 4.03

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→→ **4.04: Amendment of Pre-need Funeral Contracts**

(1) Except as provided in 239 CMR 4.04(2), a pre-need funeral contract may be amended by the licensed funeral establishment, the buyer, or the buyer's legal representative, at any time prior to the death of the beneficiary of that contract. The party proposing the change shall give written notice of the proposed change to the other party at least ten days prior to the effective date of the proposed change. All such amendments shall be in writing, and no such amendment shall be effective unless signed by both parties to the contract.

(2) A pre-need funeral contract shall not be amended or modified, except by order of a court of competent jurisdiction, if:

(a) The amendment or modification would convert a pre-need funeral contract which was irrevocable at the time it was originally made into a revocable contract, and such an amendment or modification would adversely affect the eligibility of the contract beneficiary for Medicaid or any other government benefits program; or

(b) The amendment or modification would modify or eliminate any cost-protection provision which was included in a cost-protected pre-need funeral contract at the time it was originally made.

Mass. Regs. Code tit. 239, § 4.04, 239 MA ADC 4.04

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If any funeral good or service which was selected by the buyer and identified in a pre-need funeral contract at the time that contract was created is unavailable at the time of the death of the beneficiary of that contract, the licensed funeral establishment which is responsible for performing that pre-need funeral contract shall provide the beneficiary of the contract with a good or service selected by the buyer, or if the buyer is unavailable, the beneficiary's next-of-kin, whose fair market value is equal to or greater than the value of the good or service which is now unavailable. Where the pre-need funeral contract was a cost-protected pre-need funeral contract, as defined in [239 CMR 4.01](#), the substituted good or service shall be provided to the contract beneficiary at no additional cost.

Mass. Regs. Code tit. 239, § 4.05, 239 MA ADC 4.05

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(1) Upon receipt of written authorization to do so from the buyer of a pre-need funeral contract, or the buyer's legal representative, a licensed funeral establishment shall transfer or assign that pre-need funeral contract to another licensed funeral establishment designated by that buyer or legal representative, provided that the funeral establishment to whom the contract is to be transferred or assigned has indicated in writing that it will agree to honor that contract. The terms of the contract shall not be modified at the time of the transfer, but may be amended by means of a written agreement between the buyer and the transferee funeral establishment after the transfer of the contract and all funds connected with that contract has been completed. All such amendments shall be subject to the limitations on amendments of pre-need funeral contracts, as set forth in [239 CMR 4.04](#).

(2) In the event of any transfer or assignment of a pre-need funeral contract pursuant to 239 CMR 4.06(1):

(a) if any funds received by the transferor funeral establishment from the buyer in connection with that pre-need funeral contract are being held in a funeral trust account pursuant to [239 CMR 4.09](#), all such funds shall be transferred to the transferee funeral establishment within ten business days, as provided in [239 CMR 4.09\(5\)](#). The transferee funeral establishment shall furnish written confirmation to the buyer, and the beneficiary (if different), that these funds have been received by the transferee funeral establishment and deposited in a funeral trust account which meets the requirements of [239 CMR 4.09](#) not later than 30 days after the transfer or assignment of the pre-need funeral contract occurs. The transferee funeral establishment shall notify the buyer, in writing, of the identity and location of the banking institution in which the funds were deposited and which will serve as the trustee of the new funeral trust account.

(b) If any funds received by the transferor funeral establishment from the buyer in connection with that pre-need funeral contract were used to purchase a pre-need insurance policy pursuant to [239 CMR 4.10](#), the transferor funeral establishment shall send a copy of the buyer's written authorization for transfer of that pre-need funeral contract to the insurance company which issued the pre-need insurance policy and request that the insurance company take all necessary and appropriate steps to modify the insurance policy so that the transferee funeral establishment may receive payment for any funeral goods and services it provides to the beneficiary of that policy. The transferor funeral establishment shall furnish written confirmation to the buyer, and the beneficiary (if different), that the request for transfer of the pre-need funeral contract and appropriate modification of the insurance policy have been sent to the insurance company which issued the pre-need insurance policy not later than 30 days after the transfer or assignment of the pre-need funeral contract occurs.

Mass. Regs. Code tit. 239, § 4.06, 239 MA ADC 4.06

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→→ **4.07: Cancellation of Pre-need Funeral Contracts**

(1) Any buyer of a pre-need funeral contract may cancel that contract and receive a full refund of all monies connected with that contract, without penalty, at any time within ten days after signing said contract. After the expiration of this ten-day "cooling off period" a pre-need funeral contract may be canceled in accordance with 239 CMR 4.07(3).

(2) Where an application by the buyer or contract beneficiary of a pre-need funeral contract for government benefits is pending, the buyer may waive his/her right to cancel said contract within this ten-day "cooling off" period, but only by signing a written waiver of that right. Said waiver shall not affect the buyer's right to transfer that pre-need funeral contract pursuant to [239 CMR 4.06](#).

(3) If a pre-need funeral contract was revocable at the time it was originally created, the buyer who signed that pre-need funeral contract, or his/her legal representative, may cancel that pre-need funeral contract at any time after the expiration of the ten-day "cooling off" period specified in 239 CMR 4.07(1) by sending written notice of such cancellation, via certified mail, return receipt requested, to the licensed funeral establishment.

(a) If a funeral trust account has been established to fund that pre-need funeral contract, the funeral establishment shall forward a copy of said notice of cancellation to the named trustee of said funeral trust account, and take all steps necessary to ensure that all funds contained in that funeral trust account are refunded to the buyer, without penalty, within ten days after the notice of cancellation is received by the trustee of the funeral trust account.

(b) If a pre-need insurance policy was purchased to fund that pre-need funeral contract, the licensed funeral establishment shall forward a copy of the notice of cancellation of that pre-need funeral contract to the insurance company which issued the pre-need insurance policy.

(4) If a pre-need funeral contract was irrevocable at the time it was originally created, such a contract shall not be cancelled by either party except by order of a court of competent jurisdiction. Such a contract may, however, be transferred to another licensed funeral establishment in accordance with [239 CMR 4.06](#).

(5) No licensed funeral establishment, or agent or employee thereof, shall impose any surcharge, fee or other penalty (monetary or otherwise) upon any person who seeks to exercise his or her rights to cancel a pre-need funeral contract under 239 CMR 4.07.

Mass. Regs. Code tit. 239, § 4.07, 239 MA ADC 4.07

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→→ 4.08: Restrictions on Use or Disposition of Funds Received in Connection with Pre-need Funeral Contracts

(1) **Prohibition Against Personal or Business Uses.** No licensed funeral establishment, nor any agent or employee thereof, shall use or pledge any funds which are received in connection with any pre-need funeral contract for any personal use, payment of the operating expenses of any funeral establishment, issuance of a loan to any person, as collateral for any loan, or for any purpose other than those expressly authorized by that pre-need funeral contract and 239 CMR 4.00.

(2) **Funeral Trust Account or Pre-need Insurance Policy Required.** All funds received from a buyer by a licensed funeral establishment, or by any employee or agent thereof, in connection with any pre-need funeral contract shall be:

(a) Deposited in a funeral trust account which meets the requirements of [239 CMR 4.09](#) not later than five business days after the expiration of the “cooling-off” period described in [239 CMR 4.07\(1\)](#); or

(b) Paid to an insurance company for the purchase of a pre-need insurance policy or annuity pursuant to [239 CMR 4.10](#) not later than five business days after the expiration of the “cooling-off” period described in [239 CMR 4.07\(1\)](#).

Each time a licensed funeral establishment receives any funds in connection with any pre-need funeral contract to which it is a party, that funeral establishment shall furnish the buyer, and the beneficiary (if different), with written confirmation that such funds have been deposited in a funeral trust account or used to purchase a pre-need insurance policy, as required by this section, not later than 30 days after such funds are received. Such written confirmation shall bear the signature of a duly-authorized representative of the banking institution in which the funeral trust account has been established, or a duly-authorized representative of the insurance company which issued the pre-need insurance policy, whichever applies.

(3) **Reimbursement for Newly Imposed Taxes or Governmental Fees Permitted.** Notwithstanding the provisions of 239 CMR 4.08(1), a licensed funeral establishment may require a customer to reimburse said funeral establishment for any local, state or federal taxes or fees imposed after the execution of the pre-need funeral contract, including but not limited to any value-added or sales taxes, for which the funeral establishment is held responsible by the taxing authority or governmental entity. In cases where the pre-need funeral contract is funded in full or in part, said reimbursement shall be considered an additional sum to be paid by the customer, and the funeral establishment shall not be required to deduct it from any income which accrues on the amount initially placed with the funeral establishment for investment in a pre-need funeral trust account or pre-need insurance policy or annuity.

(4) Access to Pre-need Contract Funds. Neither a licensed funeral establishment, nor any agent or employee thereof, shall have access to any of the funds received by that funeral establishment in connection with any pre-need funeral contract for any purpose other than:

(a) Obtaining payment for the actual costs of funeral goods and/or services provided to the beneficiary, or for cash advance non-funeral establishment charges connected with the funeral of that beneficiary, upon presentation of the documentation required by 239 CMR 4.08(5);

(b) Transferring those funds to another funeral trust account, or to a pre-need insurance policy or annuity, upon written authorization to do so from the buyer, the beneficiary of the pre-need funeral contract (if different from the buyer), or the duly authorized legal representative of the buyer or beneficiary;

(c) Transferring those funds to another licensed funeral establishment in connection with a transfer of the underlying pre-need funeral contract, pursuant to and in accordance with the requirements of [239 CMR 4.06](#); or

(d) Refunding those funds to the buyer or the beneficiary upon receipt of a written notice of cancellation of the pre-need funeral contract from the buyer, the beneficiary of the pre-need contract (if different from the buyer) or the duly authorized legal representative of the buyer or beneficiary, to the extent permitted by [239 CMR 4.07](#).

(5) Documentation Required for Payment for Services Rendered. Before obtaining or receiving payment for funeral goods and/or services rendered to the beneficiary of any pre-need funeral contract pursuant to 239 CMR 4.08(4)(a), the licensed funeral establishment shall present both of the following to the named trustee of the funeral trust account, or the duly authorized representative of the insurer which issued the pre-need insurance policy or annuity, which was used to fund that pre-need funeral contract:

(a) A certified copy of the death certificate for the beneficiary; and

(b) A written statement, signed by a registered licensed funeral director, certifying that the pre-need funeral contract has been performed in full.

(6) Allocation and Disposition of Pre-need Funeral Contract Funds. At the time of the contract beneficiary's death, the funds available in any funeral trust account established in connection with that pre-need funeral contract pursuant to [239 CMR 4.09](#), and/or in any pre-need insurance policies purchased in connection with that pre-need funeral contract pursuant to [239 CMR 4.10](#), shall be apportioned between the cost of the goods and services provided directly by the licensed funeral establishment and the cost of the goods and services provided by vendors other than the licensed funeral establishment (the non-funeral establishment charges or "cash advance item" charges) in accordance with the percentages calculated pursuant to [239 CMR 4.02\(5\)\(d\)](#).

(a) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to this section exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may retain the resulting surplus funds.

(b) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall bear the resulting loss and shall not bill the estate of the contract beneficiary, or any other person, for the deficiency.

(c) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may retain the resulting surplus funds.

(d) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall bear the resulting loss and shall not bill the estate of the contract beneficiary, or any other person, for the deficiency.

(e) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall refund the resulting surplus to the estate of the contract beneficiary. In such event, the amount refunded may be subject to claims of the Commonwealth or the United States.

(f) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may bill the estate of the contract beneficiary for the deficiency.

(g) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall refund the resulting surplus to the estate of the contract beneficiary. In such event, the amount refunded may be subject to claims of the Commonwealth or the United States.

(h) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may bill the estate of the contract beneficiary for the deficiency.

(7) Final Statement of Allocation of Funds to be Furnished to Beneficiary's Estate in Certain Cases. If a pre-need funeral contract is not a cost-protected contract with respect to all of the funeral goods and services identified in

that contract, the licensed funeral establishment shall prepare, and furnish to the estate of the contract beneficiary at the time of the contract beneficiary's death, an addendum to the written itemized statement of funeral goods and services required by 15 CFR Part 453 and [M.G.L. c. 112, § 84B](#) which shows:

- (a) The total amount of funds in the pre-need funeral trust account(s) and/or pre-need insurance policies for that beneficiary which were available at the time of the contract beneficiary's death;
- (b) The amount of funds available in the pre-need funeral trust account(s) and/or pre-need insurance policies which was applied to the costs of the goods and services which were provided directly by the licensed funeral establishment itself; and
- (c) The amount of funds available in the pre-need funeral trust account(s) and/or pre-need insurance policies which was applied to the costs of the goods and services provided by vendors other than the licensed funeral establishment (the non-funeral establishment charges or "cash advance item" charges).

Failure to provide such information accurately and completely in writing to the estate of the contract beneficiary shall constitute a violation of 239 CMR 4.00.

Mass. Regs. Code tit. 239, § 4.08, 239 MA ADC 4.08

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Title 239: Board of Registration in Embalming and Funeral Directing

Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))**→→ 4.09: Funeral Trust Accounts**

(1) All funeral trust accounts shall be established and administered in compliance with the requirements of 239 CMR 4.09.

(2) **Creation of Funeral Trust Accounts.** Where a pre-need funeral contract will be funded through a funeral trust account, the licensed funeral establishment shall deposit all funds received in connection with that pre-need funeral contract in a funeral trust account within five business days after the expiration of the “cooling-off” period described in [239 CMR 4.07\(1\)](#). Every such funeral trust account shall:

(a) Designate a federal or state-chartered banking institution or trust company within the Commonwealth of Massachusetts as the trustee of said funeral trust account;

(b) Designate the person for whom the funeral goods and/or services are to be provided as the beneficiary of said funeral trust account;

(c) Indicate that the funds are to be used solely for the purpose of paying for funeral goods and/or services and non-funeral establishment charges (“cash advance item” charges) as indicated in the itemized statement required by [239 CMR 4.02\(5\)](#); and

(d) Provide that the entire account balance shall be payable to the licensed funeral establishment which provides the specified funeral goods and/or services to the beneficiary at time of death in accordance with 239 CMR 4.00.

(3) **Investment Requirements.** The funds placed in a funeral trust account may be invested in any form of investment which may lawfully be established or maintained by the trust department of the banking institution or trust company which is serving as the trustee of that funeral trust account. All funds deposited in that funeral trust account shall be invested and managed in accordance with M.G.L. c. 203C.

(4) **Common or Commingled Trust Accounts.** Funds received in connection with more than one pre-need funeral contract may be deposited in a single common or commingled funeral trust account under the terms of a single trust instrument, provided that:

(a) The common or commingled funeral trust account is established and administered in accordance with all applicable requirements of 239 CMR 4.09; and

(b) Separate records, which meet the requirements of [239 CMR 4.12\(1\)\(e\)](#), are maintained for each customer whose funds are deposited in the common or commingled funeral trust account.

(5) Obligations to Locate Trust Beneficiary.

(a) If a licensed funeral establishment which is a party to a pre-need funeral contract does not provide the funeral goods and/or services for the beneficiary of that contract upon his/her death, then, upon receipt of a certified copy of the death certificate of such beneficiary, the trustee of any funeral trust account established to fund said pre-need funeral contract shall pay the assets of said funeral trust account to the estate or legal representative of the named beneficiary in accordance with the applicable requirements of 239 CMR 4.09.

(b) If a licensed funeral establishment has not received notice of the death of the named beneficiary of a pre-need funeral contract for whom a funeral trust account has been established under 239 CMR 4.09 within 110 years of the beneficiary's date of birth, said funeral establishment shall take all reasonable steps to contact that beneficiary or his/her legal representative to inform them of the existence of said funeral trust account. A written notice of the existence of said funeral trust account, sent via certified mail, return receipt requested, to the last known address of the trust beneficiary and his/her legal representative shall be sufficient to satisfy the requirements of 239 CMR 4.09(5)(b).

(c) If, after a reasonable search, a licensed funeral establishment is unable to locate the beneficiary of said funeral trust account, the funeral establishment shall notify the trustee of the account, and the trustee shall turn over all funds in the funeral trust account to the Treasurer of the Commonwealth, in accordance with the laws of the Commonwealth. Any such transfer of funds to the Treasurer of the Commonwealth shall constitute a complete release of all obligations of such licensed funeral establishment pursuant to the pre-need funeral contract.

Mass. Regs. Code tit. 239, § 4.09, 239 MA ADC 4.09

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Title 239: Board of Registration in Embalming and Funeral Directing

Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))**→→ 4.10: Pre-need Insurance Policies and Annuities**

(1) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall comply with all applicable state and federal laws and regulations pertaining to the conduct of the business of insurance, including but not limited to all licensing requirements of the Massachusetts Division of Insurance.

(2) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall, prior to accepting any funds as payment for the issuance of any such insurance policy or annuity, make all of the disclosures required by the Massachusetts Division of Insurance to the prospective purchaser of said insurance policy or annuity. In addition to the disclosures required by the Massachusetts Division of Insurance, the agent or employee of the funeral establishment shall also disclose:

(a) That the amount to be refunded to the buyer if the insurance policy is cancelled prior to the death of the beneficiary will be determined by the cash surrender value provisions of the insurance policy; and

(b) That the funeral establishment, or its agent or employee, will be paid a commission on the sale of the insurance policy.

(3) No licensed funeral establishment, nor any agent or employee thereof, shall require any buyer to purchase any insurance policy or annuity as a condition for entering into any pre-need funeral contract.

(4) Any person who purchases a pre-need insurance policy or annuity from any agent or employee of any licensed funeral establishment who is duly licensed as an insurance agent by the Massachusetts Division of Insurance, may cancel said policy or annuity without penalty any time within ten days after said policy or annuity contract is delivered to him or her by surrendering the policy or annuity contract to either the insurance company which issued said policy or annuity or the agent from whom it was purchased. Upon surrender of such policy or annuity, the purchaser shall be entitled to a full refund of all payments made in connection with said policy or annuity. No licensed funeral establishment, nor any agent or employee thereof, shall impose any penalty or surcharge (monetary or otherwise) on any person exercising said right of cancellation.

(5) The requirements of 239 CMR 4.10 shall apply to any and all forms of insurance which are sold or utilized for the purpose of providing funding for a pre-need funeral contract, regardless of how named.

Mass. Regs. Code tit. 239, § 4.10, 239 MA ADC 4.10

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Title 239: Board of Registration in Embalming and Funeral Directing

Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))**→→ 4.11: Marketing Of Pre-need Funeral Products**

(1) No agent or employee of any licensed funeral establishment shall visit or call upon any patient in a hospital, convalescent or nursing home, rest home, charitable home for the aged, infirmary maintained in a town, intermediate care facility for the mentally retarded, or other health care facility, for the purpose of soliciting or inducing such patient to enter into any pre-need funeral contract, or for the purpose of soliciting or inducing such patient to establish a funeral trust account or purchase a pre-need insurance policy or annuity, unless said agent or employee has been authorized to do so by the patient or his/her legal representative prior to the visit.

(2) A licensed funeral establishment, or any agent or employee thereof, may utilize telephonic communications for the purpose of soliciting or inducing any person to enter into a pre-need funeral contract, establish a funeral trust account, or purchase any pre-need insurance policy or annuity, provided that:

(a) The prospective customer is informed at the beginning of the telephonic communication that the telephonic communication is being made for the purpose of inducing him or her to enter into a pre-need funeral contract, establish a funeral trust account, or purchase a pre-need insurance policy or annuity; and

(b) The telephonic communication is terminated immediately upon any request to do so from the prospective customer.

(3) No agent or employee of any licensed funeral establishment shall solicit or attempt to induce any person to enter into a pre-need funeral contract, establish any funeral trust account, or purchase any pre-need insurance policy or annuity by any method or means which is false, deceptive, misleading, coercive, intimidating or threatening.

(4) No licensed funeral establishment, nor any agent or employee thereof, shall knowingly induce or attempt to induce any person to cancel or revoke any pre-existing pre-need funeral contract, funeral trust account, or pre-need insurance policy or annuity.

(5) Advertising of Pre-need Funeral Products.

(a) Advertising of pre-need funeral contracts, funeral trust accounts and/or pre-need insurance policies or annuities by any licensed funeral establishment, or agent or employee thereof, shall not be false, deceptive

or misleading.

(b) All advertising of pre-need funeral contracts, funeral trust accounts and/or pre-need insurance policies or annuities shall disclose all of the following information:

1. The type of product (*e.g.*, funeral trust account, pre-need insurance policy, annuity, *etc.*) which is to be, or may be, used to fund the pre-need funeral contract; and
2. The nature of the relationship between the agent who solicits the purchase of the product, the funeral establishment which is to provide the funeral goods and/or services, the buyer, and the individual or institution which will receive and/or hold any funds paid by the buyer in connection with the purchase of the product.

(c) All advertising of pre-need funeral contracts, funeral trust accounts, and/or pre-need insurance policies or annuities by a licensed funeral establishment, or any agent or employee thereof, shall comply with all other applicable state and federal laws and regulations pertaining to such advertising.

Mass. Regs. Code tit. 239, § 4.11, 239 MA ADC 4.11

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Title 239: Board of Registration in Embalming and Funeral Directing

Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))

→→ 4.12: Recordkeeping Requirements

(1) Each licensed funeral establishment shall maintain a separate, legible written record for each pre-need funeral contract to which that funeral establishment is a party. Said records shall be maintained at all times on the premises of that funeral establishment, or on the premises of another specifically-identified licensed funeral establishment within the Commonwealth which is owned and operated by the same proprietor, corporation, partnership, association, limited liability company, limited liability partnership or other business entity. At a minimum, such records shall contain all of the following information:

- (a) A fully-executed copy of the pre-need funeral contract;
- (b) A fully-executed copy of each amendment or modification of the terms of that pre-need funeral contract;
- (c) In the case of any pre-need funeral contract which was transferred to another funeral establishment after its original execution, the name and address of the funeral establishment to which that pre-need funeral contract was transferred and written documentation that the buyer and/or beneficiary has authorized that transfer;
- (d) In the case of any pre-need funeral contract which has been performed (*i.e.*, the funeral goods and services specified in that contract have been provided to the beneficiary of that contract), a copy of the death certificate for the beneficiary of that pre-need funeral contract and written documentation that the funeral goods and services specified in that contract were provided;
- (e) Where the funding source for the funeral goods and services to be provided pursuant to that pre-need funeral contract is a funeral trust account:
 - 1. The name, address, date of birth and social security number of the named trust beneficiary;
 - 2. Copies of bank statements and deposit slips from the bank or financial institution which is holding the funds deposited in the funeral trust account which show the date on which the funeral trust was originally established, the amount of money originally deposited in the funeral trust account at the time the funeral trust account was originally established, and the date and amount of each subsequent deposit in the funeral trust account, if any;

3. The name and address of the bank or financial institution which is holding the funds deposited in the funeral trust account;
 4. The balance in the funeral trust account, on a monthly basis;
 5. A description of the form and manner in which the trust funds are invested;
 6. A copy of the individual trust agreement, or, in the case of a common or commingled funeral trust account established pursuant to [239 CMR 4.09\(4\)](#), a copy of the Master Trust Agreement for the common account; and
 7. Written documentation sufficient to demonstrate compliance with all applicable requirements of 239 CMR 4.00 with respect to all changes in the terms or provisions of the funeral trust account; and
 - (f) Where the funding source for the funeral goods and services to be provided pursuant to that pre-need funeral contract is a pre-need insurance policy or annuity:
 1. the name and address of the insurance company which issued the policy or annuity;
 2. the amount of money originally paid to that insurance company for the issuance of that policy or annuity; and
 3. the face value of that insurance policy or annuity.
- (2) In the case of any common or commingled funeral trust account established pursuant to [239 CMR 4.09\(4\)](#), a separate written record which complies with the requirements of 239 CMR 4.12(1) shall be maintained for each separate trust beneficiary.
- (3) Any and all records established and maintained pursuant to 239 CMR 4.12 shall be available upon request, at any time during regular business hours, to any duly authorized representative of the Board for inspection and copying.
- (4) Any and all records required by 239 CMR 4.12 shall be made available by the licensed funeral establishment during regular business hours, to the buyer of the pre-need funeral contract to whom those records pertain, the beneficiary of the pre-need funeral contract to whom those records pertain, or the legal representative of either, for inspection within ten days after receipt of any written request from any such person to examine such records. Upon the written request of the buyer, the contract beneficiary, or the legal representative of either, the licensed funeral establishment shall furnish copies of all such records to the requesting party. The licensed funeral establishment may charge a reasonable fee, not to exceed the actual costs of reproduction, for such copies.
- (5) Every licensed funeral establishment shall file with the Board, on or before June 30 of each calendar year, a written report setting forth the following information:

- (a) The number of pre-need funeral contracts entered into during the preceding calendar year;
- (b) The total number of pre-need funeral contracts to which the funeral establishment is a party;
- (c) The funding method used to finance each pre-need funeral contract to which the licensed funeral establishment is a party;
- (d) The number of pre-need funeral contracts to which the licensed funeral establishment was a party and which were performed during the preceding calendar year;
- (e) The number of pre-need funeral contracts to which the licensed funeral establishment was a party which were transferred during the preceding calendar year;
- (f) The number of pre-need funeral contracts to which the licensed funeral establishment was a party which were cancelled during the preceding calendar year;
- (g) The names and addresses of all banks, trust companies, and insurance companies holding any funds received in connection with any such pre-need funeral contracts during the preceding calendar year; and
- (h) The location within the Commonwealth of Massachusetts where its records pertaining to pre-need funeral contracts are maintained.

Said report shall be made in such form and manner as the Board may direct.

- (6) Upon request by any authorized representative of the Board in connection with any official inquiry, a licensed funeral establishment shall furnish complete written information regarding the total amount of assets being held in connection with pre-need funeral contracts by each institution or company identified pursuant to 239 CMR 4.12(5) which is holding any such funds.

Mass. Regs. Code tit. 239, § 4.12, 239 MA ADC 4.12

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Title 239: Board of Registration in Embalming and Funeral Directing

Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))**→→ 4.13: Penalties**

Violation of any provision of 239 CMR 4.00 shall be considered a violation of [M.G.L. c. 112, § 84A\(j\)](#), and may also be considered “gross misconduct in the practice of the profession” within the meaning of [M.G.L. c. 112, § 61](#), and shall constitute grounds for disciplinary action by the Board.

Mass. Regs. Code tit. 239, § 4.13, 239 MA ADC 4.13

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Title 239: Board of Registration in Embalming and Funeral Directing
Chapter 4.00: Pre-Need Funeral Contracts and Arrangements ([Refs & Annos](#))
→→ **4.14: Effective Date**

(1) The provisions of 239 CMR 4.00 shall apply in full to all pre-need funeral contracts which are established on or after January 1, 2004.

(2) With respect to any and all pre-need funeral contracts established prior to January 1, 2004:

(a) Such pre-need funeral contracts shall be in compliance with the record-keeping requirements of [239 CMR 4.12](#) no later than June 30, 2004; and

(b) All other requirements of 239 CMR 4.00 shall apply to the administration and performance of such pre-need funeral contracts as of January 1, 2004.

Mass. Regs. Code tit. 239, § 4.14, 239 MA ADC 4.14

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September 17, 2012

SENT VIA EMAIL

Timothy N. Schott, Esq.
Deputy Superintendent
Maine Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Re: Preneed Life Insurance Stakeholder Meetings Relating to LD 1717 - An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans

Dear Deputy Superintendent Schott:

On behalf of the American Council of Life Insurers (“ACLI”), I would like to express the ACLI’s sincere appreciation to you and your staff for hosting several stakeholder meetings as requested by the Chairs of the Insurance & Financial Services Committee relating to seeking solutions to the issues surrounding the availability and sale of preneed life insurance in Maine.

The ACLI is a national trade association for more than 300 legal reserve life insurers operating in the United States. ACLI members represent more than 90% of the assets and premiums of the U.S. life insurance and annuity industry. Member companies also offer other workplace and individual retirement plans as well as long-term care and disability income insurance, and reinsurance.

The three insurance companies that were active on the stakeholder group: Assurant; Homesteaders Life Company; and NGL Insurance Group are members of the ACLI. They very much wish to be able to sell their preneed insurance products in Maine, just as they are able to do so in 48 other states. The life insurance industry has a solid economic base in Maine. It employs directly approximately 5,000 Maine citizens and supports another 7,000 non-insurance jobs in Maine. Life insurance companies invest approximately \$15 billion in Maine’s economy with about \$13 billion of this investment in stocks and bonds that help finance business development, job creation, and services in the State. Life insurers provide \$800 million in mortgage loans on

farm, residential, and commercial properties, and own \$77 million in real estate in Maine. In 2010, life insurers held \$38 million of Maine-related Build America Bonds, or 43% of these bonds issued. ACLI member companies firmly believe there is a need for their life insurance and related products to be available in Maine and accordingly, allowing additional products where there is a need, to be sold in Maine, would assist in further developing the contribution the insurance industry provides to Maine's economic base.

I was able to attend the stakeholder meetings. The discussions were very illuminating. I will not repeat the comments being filed by Assurant, Homesteaders, NGL, or other participants such as Service Corporation International. These companies and their representatives surely will be covering in detail issues discussed during the stakeholder process including: the Bureau's charge as a follow up to the Legislature's consideration of LD 1717; the preneed product; how it is marketed and sold; commissions; Funeral Board rules; lack of conflict of interest; model laws; the laws of other states; and, proposed legislation.

The purpose of these comments is to assure Maine's Bureau of Insurance ("Bureau") that the ACLI strongly supports the efforts of our member companies to be allowed to provide preneed life insurance in Maine. This is a product marketed, sold and regulated in 48 other states. There has been no showing that the product would result in Maine consumers being coerced or otherwise taken advantage of during a difficult time - the death of a loved one. Indeed, preneed life insurance is a widely used product that allows consumers to plan and pay for their own funeral without burdening their families during a most difficult time for any family. I am fully confident that the Bureau can assure through assistance in crafting legislation to amend present Maine law that restricts the sale of preneed insurance as well as via the promulgation of rules, that the necessary regulatory oversight will be in place to protect Maine consumers, just as they are with other insurance products.

The Bureau should keep in mind that preneed insurance is available in 48 other states. Our three member companies directly involved with the stakeholder group operate in these other states and each has been in business for over 100 years. They are not companies that have appeared on the scene to take advantage of consumers with some type of fly-by-night investment scheme. Rather, they wish to serve Maine consumers by making the same products available in Maine as they do throughout the United States. When legitimate companies in business for years face constraints on doing business in Maine, as they do in this particular instance, Maine's reputation as a place to do business is not enhanced.

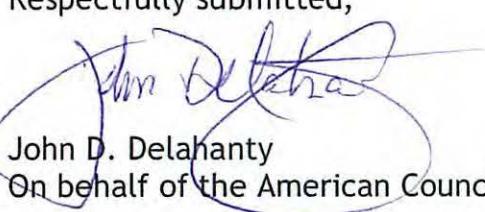
The Bureau conducted an excellent stakeholder process. All key parties were involved and had ample opportunity to discuss the issues. We look forward to the

Timothy N. Schott, Esq.
September 17, 2012
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Bureau's report which hopefully will lead to a path forward that will allow the sale of preneed insurance in Maine, and therefore provide additional options for Maine consumers to preplan their funerals.

On behalf of the American Council of Life Insurers, I'd like to thank you and the Bureau staff for the process you developed to allow discussion on this issue. We look forward to your report and working with you as the issue moves forward.

Respectfully submitted,


John D. Delahanty
On behalf of the American Council of Life Insurers

JDD/sng

cc: Anne L. Head, Commissioner, Department of Professional & Financial Regulation
Eric A. Cioppa, Superintendent, Bureau of Insurance
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September 17, 2012

Timothy Schott
Deputy Superintendent
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

Dear Deputy Superintendent Schott:

We appreciate you and your staff taking the time to convene a discussion of stakeholders regarding the sale of preneed insurance in Maine. We believe the dialogue was valuable in unearthing and identifying some of the misunderstandings about this product. Our company sells preneed insurance and pays a commission for that sale, without incident, in forty-eight other states. We are hopeful that in the near future we will be authorized to do so in Maine.

Preneed Insurance

At the outset, we would strongly urge the Bureau to provide a description of preneed insurance in its report to the Joint Standing Committee on Insurance and Financial Services, especially in light of several comments about preneed insurance made at the public hearing earlier this year and at the stakeholder meetings. While we understand that the Bureau does not view its role as making a specific recommendation about whether this product should be sold in Maine, we believe it is entirely within the scope of the Committee's request to explain specifically what preneed insurance is and how it is sold. Given that preneed insurance is licensed with the State Bureau of Insurance in the vast majority of other states and that payment of a commission commensurate with the sale of the policy is permitted, the Bureau has the ability to draw broadly upon those examples regarding this matter.

At a minimum, we would recommend that the Bureau report include the following points in its description:

- Preneed insurance is any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured.
- Typically, the policy provides coverage of \$10,000 or less and pays for a funeral.
- The premiums are paid over a limited period of 3, 5, 7, or 10 years.
- After the end of the premium-paying period, the policy is paid up for life.
- Preneed insurance can be paid for in monthly payments and covers the full value of the funeral immediately, even if only one payment has been made.
- Preneed insurance is financially backed by the state Guaranty Association.
- A commission is paid to the originator of the preneed policy, as is done with any other type of insurance.

ACA

We would ask that the Bureau delineate for the Committee the difference between preneed insurance and the fraternal benefit programs that were referenced by the Maine Funeral Directors Association (MFDA), both at the public hearing on LD 1717 and at the meetings that you convened. Making this distinction is essential for the Insurance and Financial Services Committee to have an accurate portrayal of the preneed insurance product.

At our August meeting, a representative from MFDA claimed to have “several examples” of consumers who purchased preneed insurance and were subsequently left without coverage because the organization they bought the product from became insolvent. We have yet to be presented with that information. Moreover, we are unaware of any such incident taking place in any of the forty eight states where preneed insurance is sold.

We suspect that these “examples” are, in fact, consumers of ACA, a fraternal life and health benefit society based in New Hampshire. ACA sold “funeral coverage” to members and their families in Maine. In September 2008, a New Hampshire Superior Court placed ACA into rehabilitation because of solvency issues. As a result, a number of Maine consumers lost money.

As Bureau staff noted during the discussion, the product that ACA was selling was not preneed insurance. ACA is not an insurance company and their product is not protected by state insurance guaranty funds. By contrast, the preneed product sold by Assurant, Forethought, Homesteaders and NGL is an insurance product. It is filed with the state Bureau of Insurance and covered by state guaranty funds, thereby guaranteeing that policyholders will receive 100% of the face amount of those policies. (All four of the companies referenced above currently are rated A- (Excellent) or better by A. M. Best rating agency).

The fact that ACA collected money from consumers under the guise that the company was selling preneed insurance demonstrates consumer demand for a true insurance product. More significantly from a consumer protection perspective, ACA’s insolvency underscores the need that products in this realm should be sold by a licensed insurance carrier and protected by state guaranty funds.

Standard Whole Life Policy

We would request that the Bureau also delineate for the Committee the difference between a preneed insurance policy, which is filed as a whole life policy, and a standard whole life policy. Making this distinction is essential for the Committee to understand how preneed insurance works and the inherent benefits the policy provides.

A typical whole life insurance policy requires payment for life. It provides the beneficiary a specific dollar amount. Even if the policy is assigned to a funeral home for the purposes of paying for the cost of a funeral, the funeral home cannot guarantee the prices of funeral goods and services with that policy. Consequently, if the cost of the consumer’s prearranged funeral goods and services increases between the date when the whole life policy was purchased and the date of the funeral, the consumer must pay the increase in the cost.

By contrast, preneed policies are assigned to pay for a specific set of goods and services. The preneed policy is purchased after a consumer preplans their funeral and then that policy is assigned to a funeral home. In turn, the funeral home guarantees that a \$6,000 funeral today will be \$6,000 in the future. The family of the policyholder will not pay more than that amount, regardless of when the policyholder dies.

At the Committee hearing and at the June stakeholder meeting, a representative of the Maine Insurance Agents Association claimed that other insurance products already exist in the market that are nearly identical to preneed insurance. This is fundamentally incorrect. Preneed insurance is not a stand-alone insurance product. It is linked to a funeral services contract. (We would note that the Maine Insurance Agents Association has stated it does not oppose legislation permitting the payment of a commission for the sale of preneed insurance provided that fully licensed life insurance agents are selling the product).

Commissions

We would urge the Bureau to affirm for the Committee that the payment of a commission in connection with the sale of an insurance product is a standard practice in every state. Similarly, the payment of a commission for a preneed funeral contract or prearrangement that is funded by a preneed insurance policy is a standard practice in forty-eight states. Notably, the National Funeral Directors Association (NFDA) has promulgated a “Model Consumer Protection Guidelines for State Preneed Funeral Statutes” that inherently recognizes the practice.

Representatives from the MFDA indicated that the payment of a commission creates a “conflict” because the person receiving the commission has a vested interest in the customer purchasing the policy. We would note that representatives of the MFDA also acknowledged that they charge a commission for the sale of goods related to a funeral such as caskets and urns. We see no difference between the sale of those goods and the sale of an insurance policy.

The Bureau should directly address and dispel the claim that the payment of a commission creates a conflict, since such a claim impugns the fundamental nature of most insurance transactions. The payment of a commission to the originator of a preneed insurance policy is substantially similar to the arrangement made for other types of insurance. Forty eight other states have concluded that no conflict exists when a commission is paid on a preneed policy. To the extent that any states have concluded such a conflict exists, many have promulgated rules mandating the disclosure of any commission in order to resolve that conflict. A majority of States have rules that mirror the model rules developed by the NFDA. (MFDA’s website indicates that it has a representative on the NFDA’s policy board.)

Finally, the Bureau of Insurance is authorized to investigate and prosecute abusive sales tactics, unfair trade practices, improper payment of commissions and any other illegal or unethical activity related to insurance market in Maine. The oversight of preneed insurance by the Bureau would be no different.

Proposed Legislation

The three preneed insurance providers that participated in the Bureau’s LD 1717 stakeholder discussions – Assurant, Homesteaders Life Company and National Guardian Life Insurance Company - have submitted proposed legislation that is responsive to a number of concerns raised by members of the stakeholder group. While we believe that these concerns are less a reflection of the merits of preneed insurance and more a reflection of the discord that exists between independent funeral homes in Maine and those owned by Service Corporation International, we have offered this proposal in the interest of finding common ground. As was noted by Gerry Krauss of Homesteaders Life, preneed insurance providers work effectively with all funeral home owners in forty-eight other states.

The proposal makes no changes to the licensure of life insurance agents. The proposal maintains the prohibition against solicitation of prearranged funerals and funeral business while allowing a funeral director to discuss a preneed insurance option for a consumer who has approached the funeral home to preplan a funeral, just as is done currently with a trust. The proposal also adopts the Model Consumer Protection Guidelines set forth by the NFDA that require disclosure to the consumer of the payment of a commission and the identity of the individuals or entities to whom it is paid.

On behalf of Assurant, I would like to thank the Bureau for its efforts in generating a thoughtful discussion of this issue. We look forward to further progress.

Sincerely,

Newell A. Augur
On behalf of Assurant, Inc.

Proposed Pre Need Insurance Legislation

Sec 1. 32 MRSA §1401, is amended to read:

§1401. Prearranged funerals or burial plans

1. Plan requirements. Except as provided in subsection 1-A and 1-B, any prearranged funeral or burial plan contracted or undertaken within this State must comply with the following.

Sec 2. 32 MRSA §1401 1-B, is enacted to read:

1-B. Plan funded with proceeds of preneed insurance policy. A prearranged funeral or burial plan agreement may be funded with proceeds of a preneed insurance policy in accordance with this subsection.

A. During a person's lifetime, a person or that person's legal representative may enter into an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death by the assignment of proceeds of a preneed insurance policy to the funeral establishment upon that person's death.

B. An agreement under paragraph A must be in writing and a copy must be furnished to the person or the person's legal representative by the funeral establishment when the agreement is executed. The agreement must identify the parties to the agreement and must be signed by an authorized representative of the funeral establishment. The agreement may be guaranteed or non-guaranteed. The agreement may be revocable or irrevocable; however, if the agreement is irrevocable, there must be a provision to allow for the transfer of the life insurance proceeds to a successor funeral establishment. The agreement must clearly state terms providing for disposition of excess funds after funeral goods and services have been provided.

C. The receipt of a commission for the sale preneed insurance shall not constitute a violation of 32 MRSA §1455-B (5).

This subsection may not be construed to alter the terms of a preneed insurance policy or supersede any law governing the regulation of life insurance policies.

Sec. 3. 32 MRSA §1401, sub-§2, is amended to read:

2. Rulemaking. The board shall adopt rules regarding prearranged funeral agreements, including, but not limited to:

A. The form, format and content of trust agreements;

B. Standards regarding when service contracts are required in conjunction with trust agreements and the form, format and content of the service contracts;

C. The establishment of reasonable fees that may be charged only pursuant to subsection 1, paragraph D; and

D. Inspection of trust agreements, account information and any related documentation; or

E. The form, format, and content of preneed insurance funded prearranged funeral agreements.

Rules adopted pursuant to this section are routine technical rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Sec. 4. 32 MRSA §1402, is amended to read

§1402. Solicitation of prearranged funerals and funeral business prohibited

No funeral home, funeral establishment or person holding a license under this chapter shall as, or through, an agent or principal solicit a prearranged funeral service or plan for any person or persons. "Prearranged funeral service or plan" shall mean any funeral service or plan which is arranged, planned or determined prior to the demise of a person or persons for whom the funeral service is to be performed. Funeral homes, funeral establishments and licensees under this chapter may enter into contracts or agreements for prearranged funeral services or plans provided that they do not in any manner either as, or through, principals or agents solicit such contract or agreement. Nothing in this section shall prohibit the sale of preneed insurance as defined in 24-A MRSA §711 and as set forth in 32 MRSA §1401, 1-B to a consumer who has contacted a funeral home to prearrange a funeral.

No funeral home, funeral establishment or person licensed under this chapter shall pay or cause to be paid, directly or indirectly, any money or other thing of value to a person not responsible for payment for the funeral as a commission or gratuity for the securing of business for such funeral home, establishment or licensee.

Any person who violates this section is guilty of a Class E crime.

Sec. 5. 24-A MRSA §711, is enacted to read

§711. "Preneed Insurance" defined

"Preneed insurance" means any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. Goods and services may include, but are not limited to embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. The status of the policy or

contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

Sec. 6. 24-A MRSA §2176, is amended to read:

§2176. Funeral and burial service contracts prohibited

An insurer may not contract or agree with any funeral director, funeral establishment, mortuary establishment, cemetery, cemetery corporation or association, crematorium, mausoleum or columbarium or any representative of any of these directors or establishments to the effect that the director or establishment shall conduct the funeral, burial, or cremation or other disposal of the remains of any individual insured by the insurer. ~~An insurer may not retain, utilize or employ any director or establishment as a producer or agency of the insurer and a director or establishment may not act as or purport to be an insurance producer or engage in insurance producer activities.~~ Nothing in this section prevents compliance with Title 39-A, section 216, or the use of an insurance policy, including, subject to the provisions of section 2420, the assignment of rights under life insurance contracts, to provide security for the payment for a funeral, burial or cremation ~~or, subject to chapter 27, the naming of a funeral home or funeral director as beneficiary under a life insurance policy to provide payment for a funeral, burial or cremation.~~ Nothing in this section prohibits the use of an insurance policy as an investment by a mortuary trustee pursuant to Title 32, section 1401.

Sec. 7. 24-A MRSA §2176-A, is enacted to read:

§2176-A. Disclosures Required for the Sale of Preneed Insurance

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit; for a preneed funeral contract or prearrangement that is funded or to be funded by a preneed insurance policy:

1. The fact that a preneed insurance policy is involved or being used to fund a prearrangement;
2. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;
3. The relationship of the preneed insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
4. The impact on the prearrangement;

- a. Of any changes in the preneed insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
- b. Of any penalties to be incurred by the policyholder as a result of failure to make premium payments;
- c. Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the preneed insurance policy;
5. A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;
6. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the preneed insurance policy and the amount actually needed to fund the prearrangement;
7. Any penalties or restrictions, including but no limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and
8. If so, the fact that a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom it is paid.

Summary

This bill makes the following changes:

1. Defines preneed insurance (copied from Code Me. R. 02-031 Ch. 340, Art. IX)
2. Permits the sale of preneed insurance.
3. Requires the State Board of Funeral Services to amend the rules governing prearranged funerals so as to comply with the law.
4. Permits a funeral director to sell preneed insurance with a consumer who has approached a funeral home to preplan a funeral.
5. Adopts disclosures with regard to the sale of preneed insurance that are consistent with NAIC's life insurance disclosure model.
6. Authorizes the payment of commissions in connection with the sale of preneed insurance.

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September 14, 2012

Sent only via e-mail to: timothy.n.schott@maine.gov

Timothy Schott, Deputy Superintendent
Maine Bureau of Insurance
Department of Professional and Financial Regulation
34 State House Station
Augusta, ME 04333-0034

Dear Tim and other members of the Bureau discussion group

Thank you for allowing us the opportunity to participate in the continuing dialogue on LD 1717, an Act To Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans. We thought the meetings were very well conducted and offered all interested parties an opportunity for frank discussion and ample debate. We were glad to have taken part in the process to-date.

Understanding that the Maine Bureau of Insurance will now be making recommendations to the Joint Standing Committee on Insurance and Financial Services, we want to make our recommendations to you for hopeful inclusion in your final considerations and the report to the committee:

Regarding commissions: We feel you must give those funeral providers that do want to receive commissions as insurance producers a chance to do so and not continue to permit this choice to be negated by those funeral providers who do not want to receive commissions. By providing such a choice, nothing would force any funeral provider to receive commissions, but the choice should be there.

We see commissions for funeral director agents working well in the industry and see no need for them to not be available in Maine.

Regarding a limited license: As I noted in our earlier submission, limited licensing for preneed agents is a widely accepted practice. Of the forty-eight states where preneed insurance is sold and a commission is available, there are fourteen states that permit a limited license. The other thirty-four states require full licensure.

Homesteaders Life does business in all forty eight of those states and either arrangement works effectively. In our experience though, if commissions are made available to funeral provider insurance agents, limited licensing is the next logical progression in the maturation of this market.

Funeral providers will be limited agents serving a particular purpose for which the regular insurance exams and requirements become unnecessarily burdensome and an ill-fit. Limited line licensing allows for a more targeted examination, different continuing education requirements and a simplified renewal process.

Every day throughout this country folks are walking into funeral homes to plan their funeral and most want to also fund it. In Maine they are not offered an insurance funding option simply because the law now restricts commissions for funeral directors. We feel that is unfortunate for all concerned.

Homesteaders wants to go to work in Maine selling preneed insurance and so do our funeral director agents. We need your help in making that happen.

Sincerely

A handwritten signature in black ink that reads "Gerry Kraus". The signature is fluid and cursive, with "Gerry" on the top line and "Kraus" on the bottom line.

Gerry Kraus

Bruce C. Gerrity
bgerrity@preti.com

September 17, 2012

VIA HAND DELIVERY

Eric A. Cioppa
Superintendent
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

Timothy Schott
Deputy Superintendent
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

RE: Written Comments Following Stakeholder Meetings on LD 1717, An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans

Dear Superintendent Cioppa and Deputy Superintendent Schott,

We submit these comments on behalf of Service Corporation International (“SCI”) and at the Bureau’s request. The Bureau hosted several stakeholder meetings in response to a February 15th letter from Senator Whittemore and Representative Richardson, the Senate and House chairs of the Joint Standing Committee on Insurance and Financial Services, to discuss the issues and solutions surrounding preneed life insurance in Maine. The Committee requested that the Bureau both “facilitate further discussions of the proposal through meetings and other communication with stakeholders” and “submit the findings of the interested parties, along with any recommendations and suggested legislation, to the committee [sic] by October 1, 2012.” Thus, the Committee charged the Bureau not only with holding stakeholder meetings, but also making recommendations regarding the implementation of preneed life insurance products for prearranged funeral plans. As events have developed, the recommendations charge becomes quite important. While we appreciate the efforts made by the Bureau to facilitate these discussions, it is unfortunate that the Maine Funeral Directors Association (hereinafter “MFDA”) chose only to “play defense” rather than explore and evaluate the many alternatives (48 state statutes, multiple model laws, etc.) presented during the process. We submit that intoning the “48 states got it wrong” mantra did not advance the process.

Following the third, and final, stakeholder meeting this summer, the Bureau requested stakeholders submit written comments by September 17th. SCI appreciates the opportunity to provide these written remarks.

Executive Summary

In order to comply with the Committee’s charge, the Bureau must develop and recommend a solution for the implementation of preneed life insurance product for prearranged funeral plans. It is the only way to assist the committee and advance the ball. The Bureau is also

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compelled to recommend a solution because it has approved an insurance product (preneed insurance) that cannot be sold in Maine due to funeral board rules. This roadblock must be eliminated so that this product, which is available in 48 other states, can also be offered to consumers in Maine.

There is no legitimate basis to preclude funeral practitioners from selling preneed insurance and receiving commissions. Model laws (i.e. the NAIC, Massachusetts regulations, etc.), and state statutes recognize that disclosure and licensing are the two cornerstones needed for the sale of preneed products. The MFDA suggests there is a "conflict" because the funeral practitioner/home is the "beneficiary" of the policy. This is a fundamental misunderstanding of preneed insurance. The beneficiary is the individual executing the insurance contract, not the funeral home. Preneed insurance provides financial protection to the person purchasing the coverage against the costs of a future event. Commissions are received in many instances (credit life and health, for instance) where the insurance pays for any subsequent exposure to the consumer who buys the policy.

The Bureau asked two prescient questions the MFDA could not answer. The first – "why is it okay to sell a casket with a substantial markup but it is not acceptable to take a commission of 8% to 12% on a preneed policy?" Officers of the MFDA conceded to Bureau staff that they "had not thought of it that way" and had no answer. The second question – "why is Maine so different than 48 other states?" was answered only with "everyone else got it wrong." This answer is trite and condescending.

SCI could support several of the model statutes suggested during discussion, including the NAIC model. SCI is also open to requiring full, not limited, licensure to sell the product, capping commissions on the product at a reasonable amount and/or requiring consumer disclosure of commissions.

We discuss these various points in greater depth below.

Bureau Responsibility to Make Recommendations

The Bureau must propose a solution to the statutory treatment of the preneed life insurance product. In its letter of February 15, 2012, the Joint Standing Committee on Insurance and Financial Services mandated the Bureau hold stakeholder meetings and "submit...any recommendations and suggested legislation...." The Committee asked for recommendations from the Bureau so as to receive unbiased input. In order to comply with the Committee's request, the Bureau must provide the Committee with potential solutions and legislation to implement those solutions. Indeed, such recommended solutions and legislation are essential in order to provide the committee with the meaningful assistance it requested. A report to the effect that proponents provided models, other state laws and detailed information supporting their position, while the opponents obstinately said "no" without providing any substantive arguments or evidence and without reviewing existing laws and models (the NAIC Model has been

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available since the hearings) leaves the Committee exactly where it was before it issued its request.¹

The Bureau Questions

At the first meeting, Bureau staff asked an important question: “why is it okay to sell caskets and make a commission/profit, but not okay to sell an insurance policy?” The MFDA responded by saying “that’s a good question – we hadn’t thought of it that way before.” It is even more apparent that the MFDA has given little logical thought to this issue when one considers that the average markup for a casket, and merchandise in other industries, is more than the average insurance commission of 8-12%.²³ The MFDA was unable to provide an answer to Bureau staff to justify its position and one must question why the MFDA maintains a position for which it is unable to provide answers.

Second, during the course of stakeholder meetings, Bureau staff asked the MFDA, “What is it in your minds that makes Maine unique such that it makes sense to do this in 48 other states but not here?” The MFDA provided no response to this question other than to say that “48 states are wrong.” Not only is this not an answer, it further emphasizes the complete absence of support for the MFDA’s stance. No legitimate reason was advanced. In fact, the American Council of Life Insurers noted that because 48 other states allow it, Maine is perceived as “an outlier.” We agree with that comment.

Bureau Approved Preneed Products Cannot be Sold because of Funeral Board Rules

The Bureau is compelled to recommend a solution in order to resolve a conflict between the insurance laws and the Maine State Board of Funeral Service rules; the latter prohibit the sale of preneed products licensed by the Bureau. Insurers sought and secured licenses to write preneed products. Insurers submitted rate and form filings to the Bureau. The Bureau approves each preneed insurance product. One cannot sell preneed insurance without a producer’s license

¹ It has been suggested that this is not really the Bureau’s issue – respectfully we could not disagree more. The Legislature charged the Bureau with the responsibility of conducting these meetings and reporting and making recommendations. The issues relate to an insurance product, preneed insurance. One of the Bureau’s products (the self-same preneed insurance) is frustrated in application by funeral board rules. The Bureau licenses producers. 24-A M.R.S. § 2176 is directly on point. The primary goal of the legislation is to allow funeral practitioners to become licensed as independent agents who can sell a product. In fact, this whole effort is intimately related to insurance. Massachusetts, for example, directs its insurance regulator to establish disclosures for the sale of preneed insurance. (See *infra*, p. 6) Finally, the Bureau carries no bias or baggage unlike other agencies, and the Committee needs an unbiased perspective.

² The MFDA attempted to argue, incorrectly, that casket prices are regulated by the FTC. In fact, the FTC requires only the disclosure of casket retail prices (see Exhibit 1). In no way does the FTC regulate the wholesale or markup prices, nor does it require disclosure of this information. The FTC only requires disclosure of the final retail price of a casket. (16 CFR 453, which is incorporated in the Maine State Board of Funeral Service Rules. 331 CMR Chapter 10(7))

³ The policy is sold up front. It has a known price, unlike a casket which, if funded through a credit for services arrangement, is unknown. The commission is included in the policy cost and can, of course, be disclosed.

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(24-A M.R.S. § 1420-B). Funeral practitioners are precluded from selling the product by 24-A M.R.S. § 2176, an antiquated statute dating from the 1960s.⁴ Moreover, the funeral practice statute does not permit funeral practitioners to be paid commissions, which are usual and customary in the insurance business. (32 M.R.S. § 1455-B(5)) Current Funeral Service Board Rules also prohibit the use of a preneed insurance product to fund funeral costs. Chapter 16 of the Rules allows only three options for Mortuary Trust Agreements. In each instance, only a licensed funeral practitioner can offer these options.

We attach hereto for ease of reference Exhibit 2 a document titled “Need for LD 1717 – to Permit Funeral Practitioners to Sell Preneed Insurance – What are Impediments in Current Law and Regulation?” that provides relevant excerpts from the pertinent statutes and regulations, which we summarize here. First, the Guaranteed Service option (which guarantees the cost but must be paid in full to lock in the funeral price):⁵

The contract price must be paid in full by the payor at time of execution, with the possible exception of cash advance items....If the cost of the funeral goods and services selected at the time of death exceeds the account balance of the trust, the funeral home must provide the funeral goods and services selected....

Second, the Credit for Service option (which provides a credit toward the cost of a funeral of monies paid, but provides no price guarantee):

A credit for service mortuary trust agreement does not obligate a funeral home to provide funeral goods and services for a predetermined price. Rather, the account balance of the trust upon the death of the beneficiary is applied to the cost at the time of death of the funeral goods and services selected.

Third, the Life Insurance option, which funds a funeral through life insurance proceeds:

[a] life insurance mortuary trust agreement funds the provision of funeral goods and services from the proceeds of an existing life insurance policy payable upon the death of the person insured.

However, the Life Insurance option is severely restricted because “Guaranteed service life insurance mortuary trust agreements are not permitted.” C. 16, § (2)(3). This means that the Life Insurance model must be linked to a “credit for services” agreement where the price of a funeral is the price at the time of need and cannot be locked in at the time of purchasing the insurance. Respectfully, it is at best counterintuitive to argue that a generalized life insurance product, which must already be in existence, can perhaps fund a Credit for Services Agreement

⁴ “An insurer may not retain, utilize or employ any director or establishment as a producer or agency of the insurer and a director or establishment may not act as or purport to be an insurance producer or engage in insurance producer activities.” (24-A M.R.S. Section 2176).

⁵ This is the option which is most expensive and least available to Maine consumers – it requires an upfront cash outlay of thousands, if not in excess of ten thousand dollars.

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(so long as the price increases in the services involved do not exceed the value of the life insurance coverage), but that preneed insurance which has been vetted and approved by the Bureau, and which is designed specifically to pay for funeral services, and which can be written to cover all exposure up front, is prohibited from being sold by funeral practitioners. It also makes no sense to say the life insurance policy must already be "in existence." Why can't a consumer enter into an agreement to obtain funeral services at a fixed price and then secure a policy to cover the exposure? Who benefits from a regulatory scheme that prohibits this result? Certainly not the consumers, who inevitably are confronted with an open ended, ultimately undefined exposure. Not insurers, who only want to sell the product through licensed individuals. It is completely unreasonable to say only funeral practitioners can offer the credit for service option, but can't sell preneed products to fully cover the cost of the funeral services involved. In other words, "now you see it now you don't" makes no sense.

There is No Conflict of Interest

The MFDA argues that funeral practitioners would have a conflict of interest in selling preneed insurance because the funeral practitioners are the beneficiaries. This is wrong. The insured, not the funeral practitioner, is the beneficiary of a preneed life insurance policy. By way of example, the Massachusetts funeral regulations reference a beneficiary purchasing a preneed policy to pay for funeral goods and services (Mass Regs, Title 239, c. 4.00, § 4.01). Receipt of proceeds by the funeral practitioner to pay for funeral services is not a conflict of interest. In fact, such arrangements are common place. One example is credit life or disability insurance which protects an individual's ability to pay off personal debts owed to the bank in the event of illness or death. The bank arranges the policy and receives any proceeds. The public policy to allow these arrangements in order to protect individuals from the economic impact of a loss is well established and benefits the consumer. In the case of preneed insurance, the public policy benefit to allow for insurance paid over time that fully covers the guaranteed cost of a funeral far outweighs any ephemeral conflict of interest concern (not recognized in other state laws or model acts) asserted by those who oppose the issue of preneed insurance in the first place.

Model Laws

There are several model laws which have been provided by proponents to the Bureau and MFDA which authorize funeral practitioners to sell preneed insurance. The NAIC Model (NAIC 580 – 1 20XX WL 83 8342904 (attached as Exhibit 3), captioned "Life Insurance Disclosure Model Regulation" specifically suggests that the appropriate approach is to require disclosure:

- H. [T]he fact that a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom it is paid". NAIC 580 – 1(6)(H).

The National Funeral Directors Association developed "Model Consumer Protection Guidelines for State Preneed Funeral Statutes", as amended most recently in October 2007. (Attached as Exhibit 4) The guidelines "deal with ethical and licensed preneed sellers and agents." (Exhibit 4, Page 1) The model promotes disclosure of any commission, but does not

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exclude funeral practitioners from selling the policies:

(I)(B)(4) If the preneed funds are used to purchase an insurance policy, the contract shall disclose that a commission or other remuneration will be paid to the seller or seller's agent on the purchase of the insurance policy.

It is interesting that the national association of funeral directors does not suggest there is a conflict of interest.

The US Government Accountability Office issued a report in December 2011 "Death Services." Appendix 2 of the report (attached hereto as Exhibit 5) discusses preneed plans and consumer education protection in detail. The GAO recognizes that "according to industry information and state regulators we contacted, the most commonly used options are trust accounts and insurance policies." (Appendix II, p. 48) "With an insurance-funded plan, generally the consumer purchases, either in a lump sum or by installments, an insurance policy that upon the consumer's death is paid out to provide the goods and services as specified in the contract. These preneed insurance policies typically have an increasing death benefit to cover future increases in the prices of funeral goods and services." (Id.) The report goes on to note that recent case studies show that in recent years there have been more insurance funded preneed contracts and trust funded contracts. (Id. at 49) The GAO report specifically references the Massachusetts Consumer Guide which specifically states that when prearranging and prepaying for a funeral, consumers should "know whether the funeral director received a commission if the contract is funded through an insurance policy." (Id. at 54)

The Code of Massachusetts Regulations, Title 239: Board of Registration in Embalming and Funeral Directing, c. 4.00 (Attached hereto as Exhibit 6) recognized that the beneficiary of a preneed insurance policy is the individual establishing the funeral trust account, not the funeral director (section 4.01: Definitions).

Massachusetts Regulation 4.10 states:

(1) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding preneed funeral contracts shall comply with all applicable state and federal laws and regulations pertaining to the conduct of the business of insurance, including but not limited to all licensing requirements of the Massachusetts Division of Insurance. (Emphasis added)

The rule goes on to state, in pertinent part:

(2) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding preneed funeral contracts shall, prior to accepting any funds as payment for the issuance of any such insurance policy or annuity, **make all of the disclosures required by the Massachusetts Division of Insurance to the prospective**

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purchaser of said insurance policy or annuity. (Emphasis added)

In addition to the disclosures required by the Massachusetts Division of Insurance, the agent or employee of the funeral establishment shall also disclose:

- (b) [t]hat the funeral establishment, or its agent or employee, will be paid a commission on the sale of the insurance policy.** (Emphasis added)

Simply put, Massachusetts specifically recognizes the propriety of a funeral home employee selling preneed insurance.

SCI respectfully suggests there is no credible argument against a proposal to allow funeral practitioners to sell preneed insurance. It is good for the consumer, it creates no conflicts of interest, there are numerous model laws and regulations available as guidance and the Bureau has received no credible countervailing information or argument.

Solutions

Several solutions were discussed during the course of our meetings. One could be adopted by itself or in concert with others:

1. As part of any solution, repeal of 24-A M.R.S. § 2176.
2. The NAIC Model: The NAIC model recommends disclosure. SCI has no objection to requiring that the consumer is informed, at the time of sale, that the funeral practitioner will earn a commission on the sale and the amount. Disclosure requirements appropriately address the commission concerns without blindly precluding the sale of the product. We are hopeful the MFDA will support this solution in a manner consistent with their statement made during the stakeholder meetings, wherein they claimed "we support disclosure; everyone should know what anyone makes."
3. Caps on commissions.
4. Amend Maine law to include in the statute the aforecited provisions of Massachusetts Regulation 4.10(1), (2)(b).
5. The Connecticut statute: Connecticut only allows a licensed "embalmer or funeral director" to "arrange, promote or sell any funeral service contract on behalf of a funeral establishment." (42 P.A. Section 42-201) Connecticut also requires insurance licensure prior to "issuing burial contracts or burial certificates." (38a P.A. Section 38a-464)
6. The New Hampshire statute: New Hampshire requires disclosure of multiple aspects of a prearranged funeral contract, including: payment arrangements,

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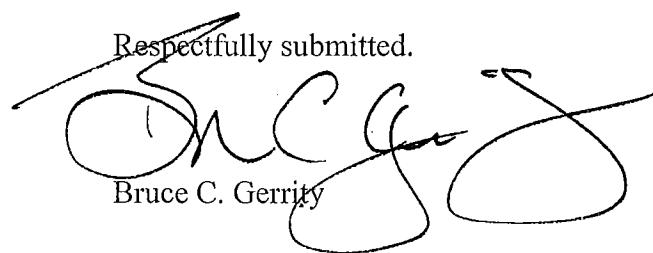
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whether the contract is guaranteed or nonguaranteed, revocability, and price information. (RSA 325:46-a)

Conclusion

SCI attended the Bureau's stakeholder meetings to assist the Bureau in complying with the Committee's requests. SCI, and others, including insurance companies and a national insurance association, provided language, concepts, models and everything short of the kitchen sink. Unfortunately, this effort was not reciprocated. The notion that "nothing is broken," in this instance, only serves to preserve an antiquated system that does not help consumers. The "we don't like it" mantra is equally unavailing. Maine needs to be dragged, even if some practitioners are kicking and screaming, into a 21st Century already occupied by 48 states, the NAIC, the National Funeral Directors Association – in short, everyone and his brother. The Bureau has as part of its charge recommending ways to do this, and in that posture SCI is prepared to assist in solving this unnecessary conundrum.

Respectfully submitted,



Bruce C. Gerrity

BCG/rgy

cc: Anne Head, Commissioner
Thomas Record, Esq. (electronically)
Arthur Hosford, Esq. (electronically)
Caressa Hughes
Robert Barnes
Colleen McCarthy Reid



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*** This section is current through the May 31, 2012 ***
*** issue of the Federal Register ***

TITLE 16 -- COMMERCIAL PRACTICES
CHAPTER I -- FEDERAL TRADE COMMISSION
SUBCHAPTER D -- TRADE REGULATION RULES
PART 453 -- FUNERAL INDUSTRY PRACTICES

[Go to the CFR Archive Directory](#)

16 CFR 453.1

§ 453.1 Definitions.

(a) Alternative container. An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) Cash advance item. A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) Casket. A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) Commission. "Commission" refers to the Federal Trade Commission.

(e) Cremation. "Cremation" is a heating process which incinerates human remains.

(f) Crematory. A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) Direct cremation. A "direct cremation" is a disposition of human remains by cremation, without formal

viewing, visitation, or ceremony with the body present.

(h) Funeral goods. "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) Funeral provider. A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) Funeral services. "Funeral services" are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) Immediate burial. An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) Memorial service. A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) Funeral ceremony. A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) Outer burial container. An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) Person. A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) Services of funeral director and staff. The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

HISTORY: [49 FR 563, Jan. 5, 1984; 59 FR 1611, Jan. 11, 1994]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

NOTES: NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 453 Confirmation of rules, see: 73 FR 13740, Mar. 14, 2008.]

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note



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TITLE 16 -- COMMERCIAL PRACTICES
CHAPTER I -- FEDERAL TRADE COMMISSION
SUBCHAPTER D -- TRADE REGULATION RULES
PART 453 -- FUNERAL INDUSTRY PRACTICES

[Go to the CFR Archive Directory](#)

16 CFR 453.2

§ 453.2 Price disclosures.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) Casket price list. (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place

on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list. (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) General price list. (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) The prices of funeral goods or funeral services;
- (2) The overall type of funeral service or disposition; or
- (3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

- (1) The name, address, and telephone number of the funeral provider's place of business;
- (2) A caption describing the list as a "general price list"; and
- (3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

- (1) A separate price for a direct cremation where the purchaser provides the container;
- (2) Separate prices for each direct cremation offered including an alternative container; and
- (3) A description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

- (1) A separate price for an immediate burial where the purchaser provides the casket;
- (2) Separate prices for each immediate burial offered including a casket or alternative container; and
- (3) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our

basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) Statement of funeral goods and services selected. (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or *1613 reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) Other pricing methods. Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

HISTORY: [47 FR 23399, Sept. 24, 1982; 59 FR 1611, Jan. 11, 1994.]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

NOTES: NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 453 Confirmation of rules, see: 73 FR 13740, Mar. 14, 2008.]

LexisNexis (R) Notes:

CASE NOTES

Need for LD 1717 – To Permit Funeral Practitioners to Sell Preneed Insurance – What are Impediments in Current Law and Regulation?

- **The Insurance Code Prohibits Insurers from contracting with funeral directors to sell an insurance product covering funeral expenses.**

24-A §2176. FUNERAL AND BURIAL SERVICE CONTRACTS PROHIBITED

An insurer may not contract or agree with any funeral director, funeral establishment, mortuary establishment, cemetery, cemetery corporation or association, crematorium, mausoleum or columbarium or any representative of any of these directors or establishments to the effect that the director or establishment shall conduct the funeral, burial, or cremation or other disposal of the remains of any individual insured by the insurer. An insurer may not retain, utilize or employ any director or establishment as a producer or agency of the insurer and a director or establishment may not act as or purport to be an insurance producer or engage in insurance producer activities. Nothing in this section prevents compliance with Title 39-A, section 216, or the use of an insurance policy, including, subject to the provisions of section 2420, the assignment of rights under life insurance contracts, to provide security for the payment for a funeral, burial or cremation or, subject to chapter 27, the naming of a funeral home or funeral director as beneficiary under a life insurance policy to provide payment for a funeral, burial or cremation. Nothing in this section prohibits the use of an insurance policy as an investment by a mortuary trustee pursuant to Title 32, section 1401. [1999, c. 258, §1 (AMD).]

- **Funeral Practitioners need to be licensed as producers under Maine Insurance Code to sell preneed insurance –**

24-A §1420-B. LICENSE REQUIRED

A person may not sell, solicit or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this subchapter. [2001, c. 259, §24 (NEW).]

- **Need to amend Funeral Practice Statute –**
 - **To permit funeral directors to be paid commissions – that are usual and customary in Insurance Business –**

32 MRSA §1455-B, sub-§5, deems as Unprofessional Conduct--

5. Unauthorized commission to secure business. The direct or indirect payment or offer of payment of a commission by the licensee or

the licensee's agents, assistants or employees for the purpose of securing business.

- To expressly permit Preneed Insurance to fully fund planned funeral at a predetermined price – this approach is barred under current rules
- The Bill – Section 11 amends this language as follows—

Sec. 11. 32 MRSA §1455-B, sub-§5, as enacted by PL 2007, c. 402, Pt. J, §7, is amended to read:

5. Unauthorized commission to secure business. The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agents, assistants or employees for the purpose of securing business, except that nothing in this subsection limits or precludes the payment of a commission earned in connection with the sale of limited line preneed life insurance by producers of those products who are licensed to make sales of those products pursuant to Title 24-A, section 1420-Q;

- Current Funeral Service Board Rules prohibit use of a preneed Insurance Product to fund funeral costs – as Insurance model must be linked to a “Credit for Services” Agreement – where price of funeral is price at time of need and can't be locked in at front end
 - Chapter 16 of Rules only permits three options

Exclusive Forms For Maine Mortuary Trust Agreements

A practitioner of funeral service, funeral director or funeral home may not enter into a mortuary trust agreement for performance in this State that does not substantially conform to one of the following forms that is attached to and made a part of this chapter:

- **Guaranteed Service model must be paid in full to lock in price**
 - Maine Mortuary Trust Agreement – Guaranteed Service

What it is – A guaranteed service mortuary trust agreement obligates a funeral home to provide the funeral goods and services selected, with the possible exception of cash advance items, upon the death of the beneficiary, whenever that may be. The contract price must be paid in full by the payor at time of execution, with the possible exception of cash advance items.

The funeral home must provide the funeral goods and services selected, with the possible exception of cash advance items, upon the death of the beneficiary regardless of the account balance of the trust at the time of the beneficiary's death. If the cost of the funeral goods and services selected at time of death exceeds the account balance of the trust, the funeral home must provide the funeral goods and services selected, with the possible exception of cash advance items, regardless of cost and without recourse to the family or estate of the beneficiary or any other payment source. If the cost of the funeral goods and services selected at time of death is less than the account balance of the trust, the funeral home may retain the difference in recognition of the risk of inflationary costs.

- Credit for service has several limitations – per below – note underlining -

1. Maine Mortuary Trust Agreement – Credit For Service

What it is – A credit for service mortuary trust agreement does not obligate a funeral home to provide funeral goods and services for a predetermined price. Rather, the account balance of the trust upon the death of the beneficiary is applied to the cost at time of death of the funeral goods and services selected. The cost at time of death may be higher or lower than the cost of such funeral goods and services at the time the agreement is executed. If the account balance of the trust upon the death of the beneficiary exceeds the cost of the funeral goods and services selected, the payor is entitled to a refund of the excess. If the account balance of the trust upon the death of the beneficiary is insufficient to pay for the funeral goods and services selected, adjustments must be negotiated between the payor and the funeral home. In no event is the funeral home obligated to provide funeral goods or services for which the funeral home will not be compensated.

Payment toward the cost of a credit for service mortuary trust agreement may be made in any amount at any time. A credit for service mortuary trust agreement may be guaranteed by a third party. Funeral goods and services may be selected at time of execution or at any later time.

The payor and the funeral home, upon mutual agreement, may replace a credit for service mortuary trust agreement with a guaranteed price mortuary trust agreement at any time prior to the death of the beneficiary.

A credit for service mortuary trust agreement may contain a conditional guarantee to provide the funeral goods and services selected. Conditions may include, but are not limited to:

- A. Agreement by the funeral home to provide the funeral goods and services selected once the price set forth in the agreement has been paid in full; and
- B. Reservation by the funeral home of the right to seek payment from the family or estate of the beneficiary, a guarantor or other payment source for funeral goods and services provided by the funeral home pursuant to the agreement for which the funeral home has not been paid.
- **Insurance model is assignment of existing insurance policy to be applied to funeral costs at time of need – whatever prices are that that time – Requires linkage of Insurance Trust Agreement to a Credit for Service agreement – So Price of Funeral cannot be fixed at front end.**
- **Section of Chapter 16 states**
 - Maine Mortuary Trust Agreement – Life Insurance

What it is – A life insurance mortuary trust agreement funds the provision of funeral goods and services from the proceeds of an existing life insurance policy payable upon the death of the person insured. Life insurance mortuary trust agreements may only be credit for service. Guaranteed service life insurance mortuary trust agreements are not permitted. Funeral goods and services may be selected at time of execution or at any later time.
- The Board Required Form for an “Existing Life Insurance” Mortuary Trust Agreement states at Sections 6, 7 and 8 state as follows – with emphasis added:

6. Credit for Service Mortuary Trust

The mortuary trust created by this agreement is a credit for service mortuary trust. This means that the insurance policy proceeds will be applied to the cost of the funeral goods and services selected. If the policy proceeds exceed the cost of the funeral goods and services selected, the funeral home has the fiduciary duty to promptly remit the difference to the settlor in accordance with paragraph 10. If the policy proceeds are insufficient to pay for the funeral goods and services selected, adjustments must be negotiated between the settlor and the funeral home in accordance with paragraph 11. The funeral home is not guaranteeing to provide the funeral goods and services selected from the policy proceeds.

7. Funeral Goods and Services Selected *(check one)*

Funeral Goods and services may be selected at the present time or at any later time. Check one of the two options below.

- Upon the death of the beneficiary, the funeral home shall, to the extent that trust funds are available—
- Provide the funeral goods and services selected by the settlor on a Statement of Funeral Goods and Services Selected that complies with the Federal Trade Commission Funeral Rule, 16 CFR Part 453. The Statement of Funeral Goods and Services Selected must include the manufacturer, model number and a detailed description of any funeral merchandise selected by the settlor; and
 - Pay the cash advance items identified on the Statement of Funeral Goods and Services Selected.

A copy of the Statement of Funeral Goods and Services Selected is attached to this agreement.

- The settlor has decided not to select any funeral goods and services at this time. The settlor may make this selection at any time up to the death of the beneficiary. After the death of the beneficiary, selection of funeral goods and services may be made by the authorized person as determined pursuant to 22 MRSA §2843-A.

8. Price of Funeral Goods and Services Selected

The price of the funeral goods and services selected and the designated cash advance items will be the prices in effect at the time of the death of the person insured, which may be higher or lower than the prices presently in effect.

Westlaw

NAIC 580-1

Page 1

(Cite as: NAIC 580-1, 20XX WL 8342904 ()

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (N.A.I.C.)
 MODEL LAWS, REGULATIONS AND GUIDELINES
 N.A.I.C. MODEL LAWS, REGULATIONS AND GUIDELINES
 VOLUME IV
 LIFE INSURANCE
 LIFE INSURANCE DISCLOSURE MODEL REGULATION (INCLUDES "BUYERS GUIDE")
 NAIC 580-1

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APPENDIX A LIFE INSURANCE BUYER'S GUIDE

Section 1. Authority

This rule is adopted and promulgated by the commissioner of insurance pursuant to [insert state equivalent to Section 4A(1) of the Unfair Trade Practices Act] of the Insurance Code.

Drafting Note: Insert title of chief insurance regulatory official wherever the term "commissioner" appears.

Section 2. Purpose

A. The purpose of this regulation is to require insurers to deliver to purchasers of life insurance information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

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(Cite as: NAIC 580-1, 20XX WL 8342904 (0))

B. This regulation does not prohibit the use of additional material that is not a violation of this regulation or any other [state] statute or regulation.

Section 3. Scope

A. Except for the exemptions specified in Section 3B, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. Section 5B shall apply only to an existing nonexempt policy held by a policyowner residing in this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

B. This regulation shall not apply to:

(1) Individual and group annuity contracts;

(2) Credit life insurance;

(3) Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy);

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 *et seq.* as amended; or

(5) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 4. Definitions

For the purposes of this regulation, the following definitions shall apply:

A. "Buyer's Guide" means the current Life Insurance Buyer's Guide adopted by the National Association of Insurance Commissioners (NAIC) or language approved by the commissioner.

B. "Current scale of nonguaranteed elements" means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

C. "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

D. "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

E. "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values and endowment benefits.

F. "Policy summary" means a written statement describing the elements of the policy, including, but not limited to:

(1) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;

(2) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary;

(3) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written;

(4) The generic name of the basic policy and each rider;

(Cite as: NAIC 580-1, 20XX WL 8342904 (0)

(5) The following amounts, where applicable, for the first five (5) policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns; including at least one age from sixty (60) through sixty-five (65) and policy maturity:

- (a) The annual premium for the basic policy;
 - (b) The annual premium for each optional rider;
 - (c) The amount payable upon death at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, that is provided by the basic policy and each optional rider; with benefits provided under the basic policy and each rider shown separately;
 - (d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and
 - (e) Any endowment amounts payable under the policy that are not included under cash surrender values above;
- (6) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law; and
- (7) The date on which the policy summary is prepared.

G. "Prenneed funeral contract or prearrangement" means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

Section 5. Duties of Insurers

A. Requirements Applicable Generally

(1) The insurer shall provide a Buyer's Guide to all prospective purchasers, prior to accepting the applicant's initial premium or premium deposit. However, if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

(2) The insurer shall provide a policy summary to prospective purchasers where the insurer has identified the policy form as one that will not be marketed with an illustration. The policy summary shall show guarantees only. It shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure. Any amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in Section 4F(5) shall be listed in total, not on a per thousand or per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as a blank space. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in Paragraph (1).

B. Requirements Applicable to Existing Policies.

(1) Upon request by the policyowner, the insurer shall furnish either policy data or an in force illustration as follows:

(a) For policies issued prior to the effective date of [insert state equivalent to Life Insurance Illustrations Model Regulation], the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of [insert state equivalent to Life Insurance Illustrations Model Regulation].

(b) For policies issued after the effective date of the illustration regulation that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has

(Cite as: NAIC 580-1, 20XX WL 8342904 (0)

chosen not to furnish an in force illustration meeting the requirements of the regulation.

(c) If the policy was issued after the effective date of the illustration regulation and declared to be used with an illustration, an in force illustration shall be provided.

(d) Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request. The insurer may charge a reasonable fee, not to exceed \$[insert amount], for the preparation of the statement.

(2) If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies; it shall, no later than when the first payment is made on the new basis, advise each affected policy owner residing in this state of this change and of its implication on affected policies. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

(3) If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor; it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this state.

Section 6. Preneed Funeral Contracts or Prearrangements

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit; for a **preneed** funeral contract or prearrangement that is funded or to be funded by a life insurance policy:

A. The fact that a life insurance policy is involved or being used to fund a prearrangement;

B. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

C. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

D. The impact on the prearrangement:

(1) Of any changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

(2) Of any penalties to be incurred by the policyholder as a result of failure to make premium payments;

(3) Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

E. A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

F. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

G. Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and

Drafting Note: States should consider whether the insurance regulator has the authority to enforce the provisions of Subsections E, F and G.

H. If so, the fact that a sales commission or other form of compensation is being paid and the identity of the

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individuals or entities to whom it is paid.

Section 7. General Rules

A. Each insurer shall maintain, at its home office or principal office, a complete file containing one copy of each document authorized and used by the insurer pursuant to this regulation. The file shall contain one copy of each authorized form for a period of three (3) years following the date of its last authorized use unless otherwise provided by this regulation.

B. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

C. An insurance producer shall not use terms such as "financial planner," "investment advisor," "financial consultant," or "financial counseling" in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

D. Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements (use appropriate special term such as "current dividend" or "current rate" scale.) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements. A presentation or depiction of a policy issued after the effective date of the [insert citation to state equivalent to Life Insurance Illustrations Model Regulation] that includes nonguaranteed elements over a period of years shall be governed by that regulation.

Section 8. Failure to Comply

Failure of an insurer to provide or deliver a Buyer's Guide, an in force illustration, a policy summary or policy data as provided in Section 5 shall constitute an omission that misrepresents the benefits, advantages, conditions or terms of an insurance policy.

Section 9. Separability

If any provisions of this rule be held invalid, the remainder shall not be affected.

Section 10. Effective Date

This rule shall become effective [insert a date at least 6 months following adoption by the regulatory authority].

APPENDIX A LIFE INSURANCE BUYER'S GUIDE

(Cite as: NAIC 580-1, 20XX WL 8342904 (0))

Drafting Note: The language in the Buyer's Guide is limited to that contained in the following pages of this Appendix, or to language approved by the commissioner. Companies may purchase personalized brochures from the NAIC or may request permission to reproduce the Buyer's Guide in their own type style and format.

[The face page of the Buyer's Guide shall read as follows:]

Life Insurance Buyer's Guide

This guide can help you when you shop for life insurance. It discusses how to:

- Find a Policy That Meets Your Needs and Fits Your Budget
- Decide How Much Insurance You Need
- Make Informed Decisions When You Buy a Policy

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy. Reprinted by...

IMPORTANT THINGS TO CONSIDER

1. Review your own insurance needs and circumstances. Choose the kind of policy that has benefits that most closely fit your needs. Ask an agent or company to help you.
2. Be sure that you can handle premium payments. Can you afford the initial premium? If the premium increases later and you still need insurance, can you still afford it?
3. Don't sign an insurance application until you review it carefully to be sure all the answers are complete and accurate.
4. Don't buy life insurance unless you intend to stick with your plan. It may be very costly if you quit during the early years of the policy.
5. Don't drop one policy and buy another without a thorough study of the new policy and the one you have now. Replacing your insurance **may be costly**.
6. Read your policy carefully. Ask your agent or company about anything that is not clear to you.
7. Review your life insurance program with your agent or company every few years to keep up with changes in your income and your needs.

Buying Life Insurance

When you buy life insurance, you want coverage that fits your needs.

First, decide how much you need—and for how long—and what you can afford to pay. Keep in mind the major reason you buy life insurance is to cover the financial effects of unexpected or untimely death. Life insurance can also be one of many ways you plan for the future.

Next, learn what kinds of policies will meet your needs and pick the one that best suits you.

Then, choose the combination of policy premium and benefits that emphasizes protection in case of early death, or benefits in case of long life, or a combination of both.

It makes good sense to ask a life insurance agent or company to help you. An agent can help you review your

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insurance needs and give you information about the available policies. If one kind of policy doesn't seem to fit your needs, ask about others.

This guide provides only basic information. You can get more facts from a life insurance agent or company or from your public library.

What About the Policy You Have Now?

If you are thinking about dropping a life insurance policy, here are some things you should consider:

- If you decide to replace your policy, don't cancel your old policy until you have received the new one. You then have a minimum period to review your new policy and decide if it is what you wanted.
- It may be costly to replace a policy. Much of what you paid in the early years of the policy you have now, paid for the company's cost of selling and issuing the policy. You may pay this type of cost again if you buy a new policy.
- Ask your tax advisor if dropping your policy could affect your income taxes.
- If you are older or your health has changed, premiums for the new policy will often be higher. You will not be able to buy a new policy if you are not insurable.
- You may have valuable rights and benefits in the policy you now have that are not in the new one.
- If the policy you have now no longer meets your needs, you may not have to replace it. You might be able to change your policy or add to it to get the coverage or benefits you now want.
- At least in the beginning, a policy may pay no benefits for some causes of death covered in the policy you have now.

In all cases, if you are thinking of buying a new policy, check with the agent or company that issued you the one you have now. When you bought your old policy, you may have seen an illustration of the benefits of your policy. Before replacing your policy, ask your agent or company for an updated illustration. Check to see how the policy has performed and what you might expect in the future, based on the amounts the company is paying now.

How Much Do You Need?

Here are some questions to ask yourself:

- How much of the family income do I provide? If I were to die early, how would my survivors, especially my children, get by? Does anyone else depend on me financially, such as a parent, grandparent, brother or sister?
- Do I have children for whom I'd like to set aside money to finish their education in the event of my death?
- How will my family pay final expenses and repay debts after my death?
- Do I have family members or organizations to whom I would like to leave money?
- Will there be estate taxes to pay after my death?
- How will inflation affect future needs?

As you figure out what you have to meet these needs, count the life insurance you have now, including any group insurance where you work or veteran's insurance. Don't forget Social Security and pension plan survivor's benefits. Add other assets you have: savings, investments, real estate and personal property. Which assets would your family sell or cash in to pay expenses after your death?

What Is the Right Kind of Life Insurance?

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All policies are not the same. Some give coverage for your lifetime and others cover you for a specific number of years. Some build up cash values and others do not. Some policies combine different kinds of insurance, and others let you change from one kind of insurance to another. Some policies may offer other benefits while you are still living. Your choice should be based on your needs and what you can afford.

There are two basic types of life insurance: **term insurance** and **cash value insurance**. Term insurance generally has lower premiums in the early years, but does not build up cash values that you can use in the future. You may combine cash value life insurance with term insurance for the period of your greatest need for life insurance to replace income.

Term Insurance covers you for a term of one or more years. It pays a death benefit only if you die in that term. Term insurance generally offers the largest insurance protection for your premium dollar. It generally does not build up cash value.

You can renew most term insurance policies for one or more terms even if your health has changed. Each time you renew the policy for a new term, premiums may be higher. Ask what the premiums will be if you continue to renew the policy. Also ask if you will lose the right to renew the policy at some age. For a higher premium, some companies will give you the right to keep the policy in force for a guaranteed period at the same price each year. At the end of that time you may need to pass a physical examination to continue coverage, and premiums may increase.

You may be able to trade many term insurance policies for a cash value policy during a conversion period—even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

Cash Value Life Insurance is a type of insurance where the premiums charged are higher at the beginning than they would be for the same amount of term insurance. The part of the premium that is not used for the cost of insurance is invested by the company and builds up a cash value that may be used in a variety of ways. You may borrow against a policy's cash value by taking a policy loan. If you don't pay back the loan and the interest on it, the amount you owe will be subtracted from the benefits when you die, or from the cash value if you stop paying premiums and take out the remaining cash value. You can also use your cash value to keep insurance protection for a limited time or to buy a reduced amount without having to pay more premiums. You also can use the cash value to increase your income in retirement or to help pay for needs such as a child's tuition without canceling the policy. However, to build up this cash value, you must pay higher premiums in the earlier years of the policy. Cash value life insurance may be one of several types; whole life, universal life and variable life are all types of cash value insurance.

Whole Life Insurance covers you for as long as you live if your premiums are paid. You generally pay the same amount in premiums for as long as you live. When you first take out the policy, premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher since the premium payments are made during a shorter period.

Universal Life Insurance is a kind of flexible policy that lets you vary your premium payments. You can also adjust the face amount of your coverage. Increases may require proof that you qualify for the new death benefit.

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The premiums you pay (less expense charges) go into a policy account that earns interest. Charges are deducted from the account. If your yearly premium payment plus the interest your account earns is less than the charges, your account value will become lower. If it keeps dropping, eventually your coverage will end. To prevent that, you may need to start making premium payments, or increase your premium payments, or lower your death benefits. Even if there is enough in your account to pay the premiums, continuing to pay premiums yourself means that you build up more cash value.

Variable Life Insurance is a kind of insurance where the death benefits and cash values depend on the investment performance of one or more separate accounts, which may be invested in mutual funds or other investments allowed under the policy. Be sure to get the prospectus from the company when buying this kind of policy and STUDY IT CAREFULLY. You will have higher death benefits and cash value if the underlying investments do well. Your benefits and cash value will be lower or may disappear if the investments you chose didn't do as well as you expected. You may pay an extra premium for a guaranteed death benefit.

Life Insurance Illustrations

You may be thinking of buying a policy where cash values, death benefits, dividends or premiums may vary based on events or situations the company does not guarantee (such as interest rates). If so, you may get an illustration from the agent or company that helps explain how the policy works. The illustration will show how the benefits that are not guaranteed will change as interest rates and other factors change. The illustration will show you what the company guarantees. It will also show you what *could* happen in the future. Remember that nobody knows what will happen in the future. You should be ready to adjust your financial plans if the cash value doesn't increase as quickly as shown in the illustration. You will be asked to sign a statement that says you understand that some of the numbers in the illustration are not guaranteed.

Finding a Good Value in Life Insurance

After you have decided which kind of life insurance is best for you, compare similar policies from different companies to find which one is likely to give you the best value for your money. A simple comparison of the premiums is not enough. There are other things to consider. For example:

- Do premiums or benefits vary from year to year?
- How much do the benefits build up in the policy?
- What part of the premiums or benefits is not guaranteed?
- What is the effect of interest on money paid and received at different times on the policy?

Remember that no one company offers the lowest cost at **all** ages for **all** kinds and amounts of insurance. You should also consider other factors:

- How quickly does the cash value grow? Some policies have low cash values in the early years that build quickly later on. Other policies have a more level cash value build-up. A year-by-year display of values and benefits can be very helpful. (The agent or company will give you a policy summary or an illustration that will show benefits and premiums for selected years.)
- Are there special policy features that particularly suit your needs?
- How are nonguaranteed values calculated? For example, interest rates are important in determining policy returns. In some companies increases reflect the average interest earnings on all of that company's policies regardless of when issued. In others, the return for policies issued in a recent year, or a group of years, reflects the interest earnings on that group of policies; in this case, amounts paid are likely to change more rapidly

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when interest rates change.

CREDIT(S)

Legislative History (all references are to the Proceedings of the NAIC).

1976 Proc. I 7, 10-11, 381, 521, 523-527 (adopted).

1976 Proc. II 15, 17, 397, 542, 545-552 (reprinted with technical amendments and Buyer's Guide).

1978 Proc. I 13, 15, 348, 472 (corrected).

1984 Proc. I 6, 31, 375, 496, 497-510 (amended and named changed from Life Insurance Solicitation to Life Insurance Disclosure Model Regulation).

1988 Proc. I 9, 19-20, 599-600, 625-626 (amended).

1988 Proc. II 5, 12, 478, 490, 503-510 (amended, regulation reprinted).

1989 Proc. II 13, 23, 414-415, 419-422, 428-429, 430-442 (amended).

1990 Proc. I 6, 27, 438-439, 450-451, 453-463 (amended).

1991 Proc. I 9, 17, 540, 549-557, 558-559 (amended, regulation reprinted, Appendix E adopted).

1992 Proc. I 86, 94, 860, 868, 869-878 (amended and regulation reprinted).

1993 Proc. I 8, 136, 795-800 (amended).

1996 Proc. 3rd Quarter 9, 40, 907, 918, 931-936 (amended Buyer's Guide).

2000 Proc. 2nd Quarter 21, 22, 67, 99, 101-125 (amended and reprinted).

2000 Proc. 4th Quarter 16, 17, 105, 167-170 (Buyer's Guide amended).

The following have all been superseded by the model regulation above.)a. Deceptive Practices in Life Insurance Model Regulation:1973 Proc. II 18, 21, 471, 532-533, 541-543 (adopted).1974 Proc. I 12, 14, 405, 440, 442-443 (amended).b. Life Insurance Cost Comparison (Interest Adjusted Index) Model Regulation: 1973 Proc. II 18, 21, 471, 532-533, 538-540 (adopted).1974 Proc. I 12, 14, 405, 440, 442 (corrected).

A-to-Z Index Terms

WICF053

FUNERAL INSURANCE
WICL008

LIFE INSURANCE
WICL020

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LIFE INSURANCE - Disclosure requirements
WICP053

PRENEED FUNERAL INSURANCE

NAIC 580-1

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1717

H.P. 1270

House of Representatives, December 28, 2011

**An Act To Establish a Preneed Life Insurance Producer License and
Preneed Life Insurance Product for Prearranged Funeral Plans**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 23, 2011. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink, appearing to read "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative McKANE of Newcastle.

Cosponsored by Representatives: CORNELL du HOUX of Brunswick, DRISCOLL of Westbrook, TUTTLE of Sanford, VOLK of Scarborough, Senators: ALFOND of Cumberland, SULLIVAN of York.

1 Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 24-A MRSA §1420-A, sub-§§8-A and 8-B** are enacted to read:

3 **8-A. Limited line preneed life insurance.** "Limited line preneed life insurance" means a life insurance policy, certificate or annuity that is designated by the purchaser as payment for a prearranged funeral or burial plan as described in Title 32, section 1401.

6 **8-B. Limited line preneed life insurance producer.** "Limited line preneed life insurance producer" means a person who:

8 A. Is licensed by the State Board of Funeral Service for the practice of funeral service under Title 32, chapter 21; and

10 B. Is licensed in accordance with section 1420-Q to sell, solicit and negotiate limited line preneed life insurance coverage to individuals through a master, corporate, group or individual policy.

13 **Sec. 2. 24-A MRSA §1420-F, sub-§1, ¶K,** as enacted by PL 2001, c. 259, §24, is amended to read:

15 K. Automobile mechanical breakdown contracts, which are a limited line; and

16 **Sec. 3. 24-A MRSA §1420-F, sub-§1, ¶L,** as repealed and replaced by PL 2007, c. 51, §3, is amended to read:

18 L. Insurance offered, sold or solicited in connection with and incidental to the rental of rental cars for a period of no more than 60 days, whether at the rental office or by preselection of coverage in master, corporate, group or individual agreements, that is nontransferable, applies only to the rental car that is the subject of the rental agreement and is limited to the following kinds of insurance:

23 (1) Personal accident insurance for renters and other rental car occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

26 (2) Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

29 (3) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

32 (4) Roadside assistance and emergency sickness protection insurance; and

33 (5) Any other coverage designated by the superintendent; and

34 **Sec. 4. 24-A MRSA §1420-F, sub-§1, ¶M** is enacted to read:

35 M. Limited line preneed life insurance, which is a limited line.

36 **Sec. 5. 24-A MRSA §1420-Q** is enacted to read:

1 **§1420-Q. Limited line preneed life insurance producer license**

2 Notwithstanding any provision of law to the contrary contained in this subchapter,
3 this section governs the licensing of limited line preneed life insurance producers.

4 **1. License.** The superintendent shall issue a license to an applicant to act as a
5 limited line preneed life insurance producer on receipt of certification from an insurer
6 authorized to write life insurance policies and fixed annuity contracts in the State that the
7 applicant:

- 8 **A. Is licensed for the practice of funeral service by the State Board of Funeral**
- 9 Service;
- 10 **B. Has agreed to act as an agent for that insurer to sell, solicit or negotiate limited**
- 11 line preneed life insurance;
- 12 **C. Has completed a course of study and instruction pursuant to subsection 2; and**
- 13 **D. Has passed a written examination in accordance with subsection 3.**

14 A license holder under this section may serve as an agent for more than one insurer
15 authorized to write life insurance policies and fixed annuity contracts in the State.

16 **2. Instruction.** An applicant for a license under this section must have successfully
17 completed a course of study and instruction on life insurance policies and fixed annuity
18 contracts that is offered by an insurer authorized to write life insurance policies and fixed
19 annuity contracts in the State that has received approval under subsection 4. The course
20 of study and instruction must be at least 8 hours in duration and include instruction on:

- 21 **A. The life insurance policies and fixed annuity contracts that may be sold by**
- 22 licensees under this section;
- 23 **B. The laws governing prearranged funeral and burial plans, rules adopted by the**
- 24 State Board of Funeral Service relating to prearranged funeral and burial plans and
25 the forms and filing requirements associated with those laws and rules; and
- 26 **C. The requirements pertaining to disclosures and advertising of information relating**
- 27 to prearranged funeral and burial plans, life insurance policies and fixed annuity
28 contracts.

29 **3. Examination.** The superintendent, following consultation with the State Board of
30 Funeral Service, shall develop a uniform written examination for applicants for licensure
31 that fairly tests knowledge of the information contained in the course of study and
32 instruction required under subsection 2.

33 **4. Approval to provide course and to conduct examination.** An insurer
34 authorized to write life insurance policies and fixed annuity contracts in the State may
35 request approval from the superintendent to provide the course of study and instruction
36 pursuant to subsection 2 and administer the examination under subsection 3 by submitting
37 a complete outline and description of the course and the proposed manner of conducting
38 the examination.

1 **5. Investigation.** The superintendent may investigate as the superintendent
2 determines necessary the manner of instruction and the examination administered by an
3 insurer that has been approved pursuant to subsection 4.

4 **6. Revocation of approval.** The superintendent may revoke approval granted to an
5 insurer pursuant to subsection 4 after providing 30 days' notice to that insurer.

6 **7. Limit of authority.** A limited line preneed life insurance producer licensed under
7 this section may not write any coverage or combination of coverages with initial
8 guaranteed death benefits on any life that exceed the total cost of the prearranged funeral
9 or burial plan as described in Title 32, section 1401.

10 **8. Revocation; notification.** A license issued under this section is revoked if the
11 license holder ceases to act as an agent for the insurer that provided certification under
12 subsection 1 for the license holder. Not later than the 15th day after the date on which the
13 license holder ceases to act as an agent for an insurer, the insurer or license holder shall
14 send written notification of the revocation to the superintendent.

15 **9. Information regarding new products.** An insurer who provides certification
16 under subsection 1 for a license holder shall provide education to that license holder
17 regarding new products the license holder may sell, solicit or negotiate to fund
18 prearranged funeral and burial plans.

19 **10. Rules.** The superintendent may adopt rules to implement this section. Rules
20 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
21 chapter 375, subchapter 2-A.

22 **Sec. 6. 24-A MRSA §2176**, as amended by PL 1999, c. 258, §1, is repealed.

23 **Sec. 7. 32 MRSA §1400, sub-§7** is enacted to read:

24 **7. Solicit; solicitation.** "Solicit" means to engage in uninvited telephone or
25 door-to-door contact. "Solicitation" means the action or instance of soliciting.

26 **Sec. 8. 32 MRSA §1401, sub-§1-A, ¶B**, as enacted by PL 2003, c. 109, §3, is
27 amended to read:

28 B. An agreement under paragraph A must be in writing and a copy must be furnished
29 to the person or the person's legal representative by the mortuary trustee when the
30 agreement is executed. The agreement must identify the parties to the agreement and
31 must be signed by a person licensed for the practice of funeral service on behalf of
32 the funeral home or funeral establishment. The agreement may be revocable or
33 irrevocable; however, if the agreement is irrevocable, there must be a provision to
34 allow for the transfer of the trust account by the appointment of successor trustees.
35 The agreement must clearly state terms providing for disposition of excess funds after
36 funeral goods and services have been provided. The agreement must clearly state any
37 fees that may be charged against the trust account. Fees must be reasonable, as
38 defined by the board, and may be charged only:

39 (1) Upon transfer of a trust account by the appointment of a successor trustee;

- (2) Upon revocation of the agreement if the agreement is revocable; and
 - (3) For the actual financial and tax administration of the trust account.

Sec. 9. 32 MRSA §1401, sub-§2, as enacted by PL 1999, c. 258, §2 and affected by §3, is amended to read:

2. Rulemaking. The board shall adopt rules regarding prearranged funeral agreements, including, but not limited to:

- A. The form, format and content of trust agreements;
 - B. Standards regarding when service contracts are required in conjunction with trust agreements and the form, format and content of the service contracts;
 - C. The establishment of reasonable fees that may be charged only pursuant to subsection 1, paragraph D; and
 - D. Inspection of trust agreements, account information and any related documentation; and
 - E. Rules to coordinate with provisions under Title 24-A, section 1420-Q relating to limited line preneed life insurance and limited line preneed life insurance producers.

Rules adopted pursuant to this ~~section~~ subsection are routine technical rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter H-A 2-A.

Sec. 10. 32 MRSA §1402, as amended by PL 1983, c. 413, §55, is further amended to read:

§1402. Solicitation of prearranged funerals and funeral business prohibited

No funeral home, funeral establishment or person holding a license under this chapter shall may not as, or through, an agent or principal solicit a prearranged funeral service or plan for any person or persons. "Prearranged funeral service or plan" shall mean means any funeral service or plan which that is arranged, planned or determined prior to the demise of a person or persons for whom the funeral service is to be performed. Funeral homes, funeral establishments and licensees under this chapter may enter into contracts or agreements for prearranged funeral services or plans provided that as long as they do not in any manner either as, or through, principals or agents solicit such that contract or agreement.

~~No A funeral home, funeral establishment or person licensed under this chapter shall may not pay or cause to be paid, directly or indirectly, any money or other thing of value to a person not responsible for payment for the funeral as a commission or gratuity for the securing of business for such funeral home, establishment or licensee. Nothing in this section limits or precludes the payment of a commission earned in connection with the sale of limited line preneed life insurance by producers of those products who are licensed to make sales of those products pursuant to Title 24-A, section 1420-Q.~~

Any person who violates this section is guilty of a Class E crime.

Sec. 11. 32 MRSA §1455-B, sub-§5, as enacted by PL 2007, c. 402, Pt. J, §7, is amended to read:

5. Unauthorized commission to secure business. The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agents, assistants or employees for the purpose of securing business, except that nothing in this subsection limits or precludes the payment of a commission earned in connection with the sale of limited line preneed life insurance by producers of those products who are licensed to make sales of those products pursuant to Title 24-A, section 1420-Q;

SUMMARY

This bill:

1. Authorizes a limited line preneed life insurance product and a limited line preneed life insurance producer license;
 2. For purposes of the laws governing funeral practices, limits impermissible solicitations to uninvited telephone and door-to-door contacts;
 3. Authorizes the payment of commissions in connection with the sale of limited line preneed life insurance by producers who are duly licensed to make such sales;
 4. Repeals the prohibition on an insurer retaining or employing a funeral establishment or its employees as producers; and
 5. Requires that an authorized representative of a mortuary sign the prearranged funeral or burial plan.