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## **Pre-Paid Funeral and Burial Plans**

One important way to plan, in advance, for life's end is to pre-arrange and fund a funeral plan, also called a "Pre-Need Agreement." The funeral service, the charges of the funeral home, its staff, facilities and equipment, the arrangements for the preparation of the remains, the casket, vault or grave liner, transportation, and other incidental expenses such as permits, death certificates and obituaries are determined in advance and pre-paid. If privately funded or paid from an individual life insurance policy, a funeral plan arranged informally through a funeral home or funeral director is not subject to regulation. However, each state has promulgated rules governing formal funeral arrangements which regulate how plans are to be sold and funded, what the contracts must provide and what recourse purchasers have in the event of fraud or default. New York State residents benefit from the most comprehensive laws. The monies are deposited into an investment backed by the US government, usually FDIC insured certificates of deposit, and 100% of the principal and interest must accrue to the benefit of the trust.

There are a number of advantages to pre-planning and pre-funding. First, it allows individuals the opportunity to make a personal and specific selection of the products and services that meet their needs. For some, it is comforting to know that money has been set aside and will reduce the burden on family members at a difficult time and when they are most vulnerable to manipulation. It ensures that the family will not raid savings, sell assets, take loans or arrange other financing to pay for a funeral and burial. It may ensure that, if products and services currently purchased are not available in the future, equivalent substitutes will be provided at no additional cost.

Under New York law, pre-arrangements may be canceled at any time prior to death and the entire balance, including interest, must be refunded unless the plan is intentionally *irrevocable*, which it customarily is for a Medicaid or SSI recipient. Even an irrevocable preplan may be transferred to a different funeral home at any time. Preneed arrangements may be "guaranteed," meaning that the price of the goods and services is guaranteed not to exceed the balance in the trust account at the time the funeral is provided, or "non-guaranteed." Either way, within 10 days of the arrangement, the funeral director must deposit the funds to the funeral trust program.

For Medicaid applicants, funeral pre-planning is an important step. To the extent that funds are available, that might otherwise disqualify the applicant from eligibility, funeral planning can be undertaken and the funds contributed are "exempt." If only one member of a married couple is applying for benefits, the funeral pre-arrangements for both are considered "exempt."

Unfortunately, there may also be problems with prepaid funeral arrangements. If a purchaser moves to another state and wishes for the final arrangements to be made there, there may be no transfer

options or different rules governing the funding option. Unless the plan properly itemizes the goods and services, the provider could later substitute less expensive items or omit goods and services that were originally anticipated. If the goods and services purchased are not available in the future, the family may be required to pay more than the budgeted amount. If the provider goes out of business, or fails to secure the funds for the future payment, there may be no recourse.