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## Paying for Burial – Tip for Qualifying for Medicaid or SSI despite “Excess Resources”

### 1. In General

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- Both Medicaid and SSI allow applicants to take savings that exceed the resource limits and pre-pay for funerals or create burial accounts – for themselves and for some family members. This can qualify an individual for these programs in the same month that they set this money aside, rather than in the following month, as is true for other ways of spending excess resources down.
- This strategy is especially important because of penalties on transfers of assets that apply to SSI and to Medicaid when used for nursing home care.
- WARNING: This fact sheet is only about SSI and Medicaid for people age 65+ blind or disabled. The rules are different for people under age 65 who are not blind or disabled.

### 2. What Pre-Paid Funeral Agreements may an APPLICANT have?

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- The applicant or recipient (“A/R”) may have a pre-paid funeral agreement that is IRREVOCABLE. Once they pay the cost to the funeral home, they cannot change their mind and cancel the agreement or ask for their money back. Pre-Paid Funeral Agreements may not be used by an A/R's spouse who is not herself an A/R.
- The agreement may contain both “burial space” items and “non-burial space items.”
  - o BURIAL SPACE ITEMS include:
    - The casket, urn, mausoleum, vault, headstone or plaque, and headstone engraving,
    - The burial plot and cost of opening and closing of the gravesite, and
    - Perpetual care contract for the gravesite
    - While the Medicaid Reference Guide does not specify it, the cost of cremation should be permissible as an alternative to burial.
    - NOTE: Certain burial space items purchased and paid for in full prior to entering into an irrevocable pre-need funeral agreement may remain outside the agreement, such as a cemetery plot, casket, urn, vault, mausoleum, crypt, or headstone. MRG p. 300.<sup>i</sup>
  - o NON-BURIAL SPACE ITEMS include:
    - Embalming, funeral transportation (hearse, limousine, out of town shipping), burial clothes, use of funeral home facilities for services or wake, clergy services, death notices, and flowers
- There is NO LIMIT on the cost of both the burial space and non-burial space items listed above. However:
  - o Since the agreement is irrevocable, one should not pay more than one normally wants for a funeral. This is very personal decision.
  - o If the cost of the NON-BURIAL SPACE ITEMS in the agreement is more than \$1500, then you may still have life insurance policies with a combined FACE VALUE under \$1500, *but not also a BURIAL FUND* or life insurance with a cash value over \$1500. (see more below).

## 2. Burial Funds and Life Insurance

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- The A/R may have a \$1500 burial fund in addition to the pre-paid funeral agreement above, unless the pre-paid funeral agreement includes \$1500 or more worth of non-burial space items.
- Type of Burial Fund – the \$1500 may be in the form of:
  - o Life Insurance – A life insurance policy that has a *cash value* (called a “whole life” policy) may be used in place of a burial fund. If the cash value of the policy is less than \$1500 at the time of the application, then the applicant could also have a separate burial fund in an amount that brings the total burial amount up to \$1500 (life insurance cash value + burial fund = \$1500)
    - To learn the cash value, call the life insurance company and ask for a statement.
    - “When the cash value exceeds \$1,500, the A/R **must** provide a written statement that the entire cash value is intended for burial expenses. . . *which avoids the prohibition against commingling*. However, the excess is still applied to the appropriate resource exemption level. If the A/R does not provide a statement, the \$1,500 is not exempt.” MRG, p. 303.2
      - EXAMPLE: Cash value of life insurance is \$3500. This is permissible if the A/R provides a written statement that the entire \$3500 is intended for burial expenses. Because the cash value is \$2000 over the \$1500 burial limit, the A/R must keep their regular savings/checking accounts at \$2000 below the usual limit (\$4200 in 2007) so in 2007 the balance must be kept under \$2200.
      - If the cash value is still too high, a loan can be taken on the policy. Proceeds of a bona fide loan are not counted as a resource or income. MRG p. 321.
    - If the FACE VALUE of the policy is under \$1500, the A/R may keep this policy even if the pre-paid funeral agreement *does* include non-burial space items worth more than \$1500. MRG. p. 301.
  - o A bank account designated as a burial fund, if there is no life insurance, or if life insurance has a cash value of less than \$1500 – the burial account can bring the combined up to \$1500.
- Any interest earned after the initial application for SSI or Medicaid does not count. As long as the cash value of life insurance or burial funds was under \$1500 at the time of application, it does not matter that these values grow later on.

## 3. What Burial Expenses can be Paid for Family Members?

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- BURIAL FUND – A spouse of an A/R may have a burial fund of up to \$1500 (which may be composed of life insurance, the same as for the A/R. See above).
- BURIAL SPACE ITEMS – The A/R may pre-pay for BURIAL SPACE items for members of his/her “immediate family.”
  - o *Immediate family* includes the A/R’s parents, spouse, children (minors or adults, and including adopted children and stepchildren), and brothers and sisters (including step-siblings and adopted siblings). The spouse of each of each of these relatives is also included, as long as they are still married to the A/R’s relative. For example, Susan can pre-pay for funeral costs for her brother’s wife or her daughter’s husband.
  - o The allowed Burial Space Items are the same as for applicants/recipients:
    - The casket, urn, mausoleum, vault, headstone or plaque, and headstone engraving,
    - The burial plot and payment for the opening and closing of the gravesite, and

- Contract for care and maintenance of the gravesite, sometimes called perpetual care.
- While the Medicaid Reference Guide does not specify it, the cost of cremation should be permissible as an alternative to burial.
- Don't include these expenses in the A/R's own pre-paid irrevocable funeral agreement – they should be in a separate agreement or purchase.
- There is no cost limit on the above expenses.

### **3. When is one Eligible for Medicaid if S/he Creates a Funeral Agreement or Burial Fund?**

- If creating the funeral agreement or burial fund brings the excess resources down to the allowed limits, the A/R is eligible for Medicaid in that same month. This is an exception to the usual rule that allows eligibility only if the resources were within the allowed limits on the first day of the month.
- Example: Betty is single and has \$15,000 on September 1<sup>st</sup> and needs Medicaid. During September she puts \$1500 in a burial fund (she has no life insurance) and pre-pays \$9,300 in a funeral agreement. She is eligible for Medicaid as of September 1<sup>st</sup> because her remaining countable savings are \$4200. See 06 OMM/ADM-5 p. 12 (July 20, 2006), available at [http://onlinerresources.wnyc.net/pb/docs/06adm-5deficit\\_reduction.pdf](http://onlinerresources.wnyc.net/pb/docs/06adm-5deficit_reduction.pdf).

**Contact the Evelyn Frank Legal Resources Program with any questions.**

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For more information on Medicaid and other public health benefits, visit

<http://nyhealthaccess.org>.

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<sup>i</sup> References are to the NYS Dept. of Health Medicaid Reference Guide (MRG)  
[http://www.health.state.ny.us/health\\_care/medicaid/reference/mrg/resources.pdf](http://www.health.state.ny.us/health_care/medicaid/reference/mrg/resources.pdf)