



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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MEDICAID COMMUNICATION NO. 18-08

DATE: September 17, 2018

TO: NJ FamilyCare Eligibility Determining Agencies

SUBJECT: Clarification of Policy on Funeral and Burial Expenses

In accordance with regulations at N.J.A.C. 10:71-4.4(b)9 and 10:70-5.2(h)9, NJ FamilyCare Aged, Blind, Disabled Programs allow for the exclusion of funds, up to \$1,500 for each beneficiary (spouse or other immediate family member) set aside for burial, cremation or other funeral arrangement expenses. These funds may be excluded from countable resources if the funds are designated specifically for burial and are not commingled with other non-burial assets. It is necessary that these funds are designated during the eligibility determination so that the eligibility determining agency may monitor the funds for compliance purposes in an ongoing manner. The funds may include revocable burial contracts, revocable burial trusts, other burial arrangements, cash, financial accounts or other financial instruments that clearly designate such funds for burial expenses. Furthermore, any interest or appreciation earned on the designated funds is not counted as income and resources, unless the beneficiary uses the designated funds for purposes unrelated to burial expenses. Should the beneficiary access these designated funds for purposes other than burial expenses, the funds will no longer be excluded and eligibility will be redetermined accordingly.

A burial space or agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or any other member of his or her immediate family is an excluded resource, regardless of value (must be reasonable). The burial space exclusion is in addition to the burial funds exclusion. An agreement which represents the purchase of a burial space is a contract with a burial provider for a burial space held for the eligible individual or a member of his/her immediate family. "Immediate family" also includes the spouse of the above relatives.

The value of burial spaces does not count toward the \$1,500 limit and generally consists of the following:

- Grave site(s) or burial plot
- Funeral home facilities and professional services of director and staff
- Transportation for remains
- A casket or coffin
- A vault, tomb, crypt, mausoleum or niche
- Urn or similar merchandise used for the remains of a deceased person

- Costs associated with opening and closing of the grave, vault, tomb or mausoleum
- Crematory/preparation of body
- Cemetery fees
- Monument/headstone/marker/plaque

New Jersey prepaid funeral law defines allowable (reasonable) burial expenses as:

- personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, ... funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items....[and]
- services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith... Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.A. 45:27-1 et seq.

Burial contract: A prepaid (or preneed) burial contract is an agreement whereby the buyer pays in advance for a burial that the seller agrees to furnish upon the death of the buyer or other designated individual. If a burial contract cannot be revoked and cannot be sold without significant hardship, it is not a resource. However:

- Any portion of the contract that represents burial funds reduces the \$1,500 maximum otherwise available for the burial funds exclusion; but
- Any portion that represents the purchase of burial spaces has no effect on the burial funds exclusion.

If the beneficiary has an irrevocable contract for burial goods and services, the following information must be present in the contract: 1.) the State of New Jersey must be named as the beneficiary; and 2.) any funds remaining after the provision of burial/funeral goods and services shall be paid to the State. An applicant or beneficiary's purchase of an irrevocable burial contract, or action to change a revocable burial contract to an irrevocable contract, is not a transfer of resources for less than fair market value. In accordance with N.J.S.A. 2A:102-19 and N.J.A.C. 10:70-5.2(h)10, all funds held in an irrevocable burial contract are fully excluded from the determination of resource eligibility for NJ FamilyCare Aged, Blind, Disabled Programs. However, the funds identified in an irrevocable contract will reduce the amount of any other allowable funds available to be set aside for burial expenses subject to the \$1,500 limitation. New Jersey Prepaid Funeral Trust Fund ("Choices"): Operated by the New Jersey State Funeral Directors Association, Inc., the New Jersey Prepaid Funeral Trust Fund, commonly called Choices, was established in 1981 for the deposit of consumers' prepaid funeral funds. In 2016, there were 48,038 consumer accounts in Choices. Funeral directors can deposit prepayments into Choices accounts that earn interest. Other prepaid funeral trusts and products are also available. Prepaid funeral trusts must be irrevocable or are counted toward the \$1,500 limit.

Insurance Policies:

A. Assigned Life Insurance - All life insurance policies with a face value greater than \$1,500 must have their cash surrender value (CSV) counted as a resource for eligibility under the NJ FamilyCare Aged, Blind, Disabled Programs. In the event that a beneficiary (or spouse) owns a life insurance policy with a face value greater than \$1,500, then the CSV of the life insurance policy may be counted against the \$1,500 burial exclusion per individual and designated for such use, and the amount above would be counted as a resource. If more than one life insurance policy exists for an individual then the combined face value totals of all policies owned must be below \$1,500 to be excluded. (Note: Burial insurance and most kinds of term insurance have no CSV and are not considered countable resources.) A life insurance policy with a CSV in excess of \$1,500, and with a face value not in excess of reasonable funeral expenses, that is irrevocably designated for reasonable funeral expenses would be excluded as a resource. When designating a countable life insurance policy as a burial fund, the individual designates the policy itself rather than the CSV because the CSV of a policy is payable only during the lifetime of the individual and thus cannot be used to bury the individual. However, since the CSV is the current resource value of the policy, it is the CSV which is applied toward the burial fund limit when determining countable resources.

B. Purchase of Burial Insurance - N.J.S.A. 17B:17-5.1(a) defines funeral insurance policies as insurance policies or annuity contracts that are intended to provide, and explicitly marketed for the purpose of providing funds to the provider at the time of the insured's death in connection with a prepaid funeral agreement. Upon death, the insurance proceeds are paid directly to the funeral home. Irrevocable policies do not have a CSV.

During the eligibility determination, the eligibility determining agency worker must verify the purchase/payment of burial goods and services by reviewing: the certificate of ownership; the itemized contract for future delivery; or the certificate or contract of sale from either a manufacturer or the funeral home. Funeral expenses must be reasonable. Verification of reasonable amounts may be requested by the eligibility determining agency and should be provided according to the timeframe set forth by the agency.

Items involved in a funeral or burial that are for the living and which are generally not part of the burial expenses should not be part of a preneed arrangement, such as:

- Flowers and/or car to transport flowers
- Transportation of living family members
- Travel expenses (either for individuals to attend the funeral or for an individual to accompany the remains)
- Food, including repasts (meal following funeral)
- Gratuities
- Cost of clothing, jewelry, shoes, etc. for living
- Other goods or services for the living

Asset Recovery: According to New Jersey law (N.J.S.A. 2A:102-20), any funds remaining in an irrevocable funeral trust or in an irrevocably assigned or newly issued life insurance policy after the final bill has been paid, shall be paid over to the State of New Jersey.

Eligibility Determining Agency: This clarifying Medicaid Communication on Funeral and Burial Expenses is effective upon publication, will be applied prospectively to any pending and future ABD applications, and does not affect prior approved prepaid funeral trusts or arrangements or any resulting eligibility determinations.

For estate recovery questions, please call 609-588-2900 or send correspondence to:

DMAHS
Office of Legal and Regulatory Affairs
Attn: Estates
PO Box 712 - Mail Code #6
Trenton, NJ 08625

If you have any questions regarding this Medicaid Communication, please refer them to the Division's Office of Eligibility field staff for your agency at 609-588-2556.

MD:jm

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