

State Law Closes Medicaid Funeral Loophole

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When someone passes away, there are many questions left unanswered, none more important than who will arrange the funeral and be held responsible for the ever increasing expenses.

Since 1997, however, more and more individuals have been prepaying for their own funerals - removing a huge burden from their loved ones after they are deceased. This trend was precipitated by the creation of Chapter 660 of the state Social Services Law, allowing for Medicaid to be used in pre-need funeral arrangements. This statute was later expanded in 2001 to allow for individuals to pre-plan and prepay for the funerals and burials of their family members as well.

A newly enacted state law will change the way these pre-planned funerals are executed for family members, however.

Under the current system, individuals who pre-plan their own or a family member's funeral can do so either by paying on their own or through making Medicaid payments. If individuals pay for the funeral themselves, they are eligible to revoke that money at any time, along with the interest it accrues.

Paying through Medicaid, on the other hand, prevents individuals from revoking the prepayments. The newly enacted law attempts to redress a loophole in the Medicaid system.

Increasingly, individuals are creating prepaid funeral accounts for their family members in an attempt to become eligible for Medicaid benefits by reducing their own assets. The New York State Funeral Directors Association noticed in recent years that many times, these accounts, which were revocable since they were created outside of Medicaid, were immediately closed upon the passing of the loved one. This gives the individual Medicaid benefits when they may not have been eligible otherwise.

While the NYSFDA doesn't particularly care about a loophole that allows more people to receive Medicaid benefits, it did care that its members' time was repeatedly being wasted setting up pre-need accounts that were never going to be used for a funeral.

As of June 8, all that has changed.

"New York state just passed a law that makes all of these family accounts created [prior to receiving] Medicaid benefits irrevocable," said John Vigilante, owner of the Branch Funeral Home in Smithtown. "New York is the only state that has it right when it comes to pre-planned funerals - it's the only state that is particularly friendly to the customer. The new provision just prevents the state from being taken advantage of."

Dix Hills-based elder law attorney David Okrent agreed the law was a welcome addition since it clarified many of the stipulations laid out in the 2001 law that expanded pre-planning to family members, but knocked it for not making one specific clarification.

"The new law allows for an irrevocable trust to be set up for a Medicaid or Medicaid-eligible individual's family members, but it does not define who those family members are," Okrent said. "Does 'family member' extend to just spouses, children and parents, or does it cover grandparents, siblings, aunts, uncles and cousins? It may be some time before it's totally sorted out."

Regardless of which family members the new law covers, both men involved with the end-of-life decision-making process agreed that pre-planning a funeral should be explored by everyone, whether they are Medicaid-eligible or not.

"Having a funeral prearranged and paid for is certainly recommended," Okrent said. "It saves the surviving loved ones burdens at a very difficult time."

Of the 200 funerals per year that Vigilante's company handles, roughly 30 percent have used pre-planning of some sort.

"The great thing about prepaying for funerals is that you lock in at today's prices even if you live another 25 years or so," Vigilante said. "You're guaranteed the price you paid because your account earns interest - around 4 percent right now - and is FDIC insured. It's also transferable to any other funeral parlor, so last-minute decision changes are also acceptable. It's a something that should be looked into."