

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

PROPOSED

Irrevocable Funeral Arrangements and Burial Trusts

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to irrevocable funeral arrangements and burial trusts.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 31, 2007.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary of Proposal

Statutory Authority

House Bill #137, *An Act to Amend Title 5 of the Delaware Code Relating to Preneed Funeral Contracts*
5 **Del.C.** Ch. 34, *Preneed Funeral Contracts*

Background

Since January 30, 1992, Delaware law has allowed the establishment of irrevocable trust accounts for prepaid funerals. The irrevocable trust may represent all funds or any portion of payments made under the burial agreement, contract or plan.

Summary of Proposal

House Bill #137 with House Amendment 1 adds a new section that amends §3404(a) of Title 5 by increasing from \$10,000 to \$15,000 the amount of funds that may be placed in an irrevocable trust for a preneed funeral contract. The effective date is January 1, 2008. As such, DSSM 20340.5, *Irrevocable Funeral Arrangements* and DSSM 20400.12.2, *Burial Trusts* are revised to incorporate this mandatory provision.

DMMA PROPOSED REGULATION #07-52

REVISION:

20340.5 Irrevocable Funeral Arrangements

Effective January 30, 1992, Delaware law allows the establishment of irrevocable trust accounts for prepaid funerals. The irrevocable trust may represent all funds or any portion of payments made under the burial agreement, contract or plan. The principal sum (excluding accrued interest) may not exceed \$5,000. Effective ~~March 22, 1996~~ January 1, 2008 the principal sum may not exceed ~~\$10,000~~ \$15,000. Irrevocable trusts established under ~~Section 304~~ Title 5, Chapter 34 of the **Delaware Code** must contain the following mandatory provisions.

20340.5.1 Irrevocable

The trust must include a provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary.

20340.5.2 Alternative Disposition

The trust must include a provision for the alternative disposition of trust funds upon discontinuation of business or inability to provide goods or services in accordance with the terms of the trust.

20340.5.3 Inadequate Funds

The trust must include a provision which sets forth that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary.

20340.5.4 Excess Funds

The trust must include a provision which sets forth that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary.

20340.5.5 Contributions to Trust

The trust must include a provision which sets forth that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed ~~\$10,000.00~~ \$15,000.00.

20340.5.6 Maximum Amount

The trust must include a provision which shall state "In no event shall the principal amount of the trust exceed ~~\$10,000.00~~ \$15,000.00 plus interest".

Once an irrevocable trust is executed in conjunction with a burial contract, the funds are not available to the buyer. Any written request for a refund of money is no longer an option. The irrevocable trust arrangement will offset the \$1500 burial allowance. This is effective for irrevocable trust arrangements executed on or after January 30, 1992.

(Break in Continuity of Sections)

20400.12 When Application Of The Trust Provisions Would Cause Undue Hardship

20400.12.1 Undue Hardship

20400.12.2 Burial Trusts

20400.12.1 Undue Hardship

Undue hardship exists when application of the trust provisions would deprive the individual of medical care such that his/her life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the individual of food, clothing, shelter or other necessities of life AND there are no State facilities available to take care of this individual in the absence of Medicaid eligibility.

20400.12.2 Burial Trusts

A burial trust is a trust established by an individual for the purpose of paying, at some point in the future, for the various expenses associated with the individual's funeral and burial. Irrevocable prepaid burial trusts that do not

exceed ~~\$10,000~~ \$15,000.00 are exempted under the undue hardship policy.
11 DE Reg. 720 (12/01/07) (Prop.)