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The State of South Carolina



Opinion No 87-56
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Office of the Attorney General

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June 5, 1987

The Honorable Nikki G. Setzler
Senator, District No. 26
510 Gressette Building
Columbia, South Carolina 29202

Dear Senator Setzler:

You have furnished to this Office a copy of regulations 1602.02.09 and 1602.02.10 of the Medicaid Policy and Procedures Manual of the South Carolina Department of Social Services, concerning burial spaces as potential resources in determining an individual's eligibility for Medicaid. You have asked whether an individual may purchase a casket or vault from a funeral home, such merchandise to be stored at the funeral home until needed, without being in violation of the preneed burial contract laws, considering the specified regulations.

Regulation 1602.02.09 provides in pertinent part:

Public Law 97-248, 1/ effective November 1, 1982, provides for the exclusion from resources of burial spaces which are intended for the use of the individual, his/her spouse, or any other member of his/her immediate family.

....

Burial spaces are defined as conventional gravesites, crypts, mausoleums, urns, or other repositories which are customarily and

1/ This particular provision relative to exclusion from resources of burial plots and certain funds set aside for burial expenses is codified as 42 U.S.C. § 1382b, under Supplemental Security Income.

traditionally used for the remains of deceased persons.

....

A casket which is owned by and is in the possession of the individual (not a part of a revocable preneed burial contract) is considered a burial space and is excludable as such.

A burial vault which is purchased by the individual as a repository for the casketed remains also is excludable as a burial space. If the vault is a service to be furnished as a part of a preneed burial contract, it can only be excluded as part of the burial assets funds exclusion. ...

Regulation 1602.02.10 covers funds set aside for burial and provides:

Public law 97-248, effective November 1, 1982, also allows the exclusion from resources of funds set aside for burial only when counting any portion of those funds toward the \$1,600/\$2,400 resource limit would cause the individual to be ineligible due to excess resources. Funds set aside for burial include: revocable burial contracts; burial trusts; and any identifiable assets which are clearly designated as set aside for the expenses connected with the individual's burial, cremation, or other funeral arrangements.

In determining that an individual may be above the resource limit for Medicaid eligibility, apparently employees of at least one county department of social services may have suggested to applicants that a casket or vault be purchased from a funeral home, to be stored there until needed, to reduce the resources of that individual to an amount below the stated limit. If an individual were to purchase a casket or vault and provide his own storage until those items should be needed, the policy clearly indicates that those items count as burial space and thus do not fall within countable resources. A more serious case would be presented if the individual were to select the merchandise, pay for it, and then have it stored at the funeral home until it would be used at a later date.

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The preneed burial contract law is found at Section 32-7-10 et seq. of the Code of Laws of South Carolina (1976). A preneed burial contract is defined by Section 32-7-10(3) as

a contract, which has for its purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at at time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.

To briefly summarize the law relative to preneed burial contracts, an individual would contract with a funeral home or other entity specified in Section 32-7-60 for the provision of certain services, personal property and/or merchandise to be provided at the time of his death. The entity to provide the goods and services at the time of death deposits the payments made under the contract, deemed to be held in trust, with a financial institution, where the funds remain until the time of death or the contract is cancelled, whichever occurs first.

The casket or vault which would be furnished at an individual's death would have been selected and paid for by the individual. For the funeral home or funeral director to remove the merchandise from inventory and store the merchandise until it is needed would appear to violate Section 32-7-20(a) of the Code, which would require that the payment under the contract or agreement be kept in a trust fund for the benefit of the individual entering into the contract:

All payments of money made to any person upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers or monuments, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed

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of, are held to be trust funds. The person receiving the payments is declared to be a trustee thereof, and shall deposit all payments in a financial institution. ...

Where, as here, a statute is clear and unambiguous on its face, it must be interpreted according to its plain meaning. Hartford Acc. and Indem. Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979). If an individual purchases merchandise such as a casket or vault from a funeral home and removes the merchandise from the funeral home, no problem is presented. If, however, the individual preselects a casket or vault and the funeral home or other entity, upon payment, removes the merchandise from its inventory and stores the merchandise, the preneed burial contract laws would be violated since the merchandise has been removed from inventory and, in essence, the payment under the contract or agreement has been spent rather than placed in a trust fund in a financial institution.

In conclusion, this Office advises that the above-cited regulations of the Department of Social Services relative to determining eligibility for Medicaid benefits do not appear to violate the preneed burial contract laws. However, the suggestion that an individual purchase a casket or vault, to be stored by the funeral home or other entity until the death of the individual, would appear to violate the preneed burial contract laws.

We trust that we have satisfactorily responded to your inquiry. Please advise if clarification or additional assistance should be necessary.

Sincerely,

Patricia D. Petway
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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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