

TO BE RESCINDED

5160:1-3-05.6 **Medicaid: preneed funeral contracts.**

(A) This rule describes the treatment of preneed funeral contracts for purposes of determining eligibility for medical assistance.

(B) Definitions.

(1) "Liquid assets" means cash or property immediately convertible to cash.

(2) "Preneed funeral contract" means 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.

(C) Irrevocable preneed funeral contracts.

(1) Irrevocable preneed funeral contracts are not a resource.

(2) Increases in the value of irrevocable preneed funeral contracts which result from accrual on interest or from appreciation in the value of the preneed burial agreement are excluded from countable resources.

(D) Revocable or salable preneed funeral contracts.

(1) If a preneed funeral contract is revocable or salable it is a countable resource.

(2) The value of a revocable or salable funeral contract is:

(a) The amount payable to the buyer upon revocation; or

(b) The current market value.

(3) Revocable preneed funeral contracts and burial vault contracts payable on demand are considered liquid assets. Their value, when combined with all other countable resources, cannot exceed the resource limit.

(E) Purchase of burial space. Any portion of the contract that clearly represents the purchase of a burial space is excludable as a countable resource if it meets the requirements of rule 5160:1-3-05.7 of the Administrative Code.

(F) Life insurance funded preneed funeral contracts

- (1) A life insurance funded preneed funeral contract involves an individual owning/purchasing a life insurance policy on his or her own life and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a third party, generally a funeral provider. The purpose of the assignment is to fund a preneed funeral contract.
- (2) For medical assistance purposes, the ownership of a life insurance policy may be irrevocably changed to a financial institution or a provider of funeral services for the specific use as an irrevocable preneed funeral contract for the individual and/or spouse.
 - (a) To determine if the transfer of ownership of a life insurance policy to an irrevocably transferred policy has been completed, the administrative agency must review and maintain in the case record all of the following items:
 - (i) The life insurance policy.
 - (ii) Preneed funeral contract. The preneed funeral contract must have a fair market value equal to the face value of the policy that has been irrevocably transferred or assigned.
 - (iii) For medical assistance purposes, for a preneed funeral contract that is funded by a life insurance policy, the funeral provider can stipulate in the preneed funeral contract that goods and services will be provided commensurate with the amount of insurance proceeds that are available at the time the services are required.
 - (iv) Completed legal document changing irrevocable ownership of the policy to the financial institution or funeral provider. Verification that the change of ownership has been completed must be obtained from the insurer.
 - (v) A provision in the contract that the funeral provider has the irrevocable right to the proceeds of the life insurance policy upon the death of the insured.
 - (vi) At the time of death, the cash surrender value (CSV) of the policy may exceed the cost of the preneed funeral contract or expenses.

The preneed funeral contract must include a provision that any funds in excess of the costs will be paid to the deceased individual's estate. Probate court must decide how these funds are dispersed. If the administrative agency is contacted by the funeral director regarding these funds, the administrative agency must direct them to the appropriate probate court.

- (b) The transfer of ownership must be verified by the insurer that the insurer has, in fact, changed ownership of the policy.
 - (i) For the purpose of determining eligibility for medical assistance, the CSV of the policy will not be considered a countable resource effective on the date of the change of ownership. The date of the change of ownership will be considered the later of the dates that the irrevocable change of ownership paperwork and the preneed funeral contract were signed by the owner of the policy and the funeral provider if both were not signed on the same date.
 - (ii) Verification must be provided to the administrative agency verifying the change of ownership has been acknowledged and completed by the insurer before paragraph (F)(2)(b)(i) of this rule can be implemented.
 - (c) A change of beneficiary, whether irrevocable or not, of a life insurance policy does not satisfy the requirement of an irrevocable change of ownership.
- (3) Dividend accumulations of a life insurance policy as part of the value of the policy or the preneed funeral contract are not excluded. Dividend accumulations are separate resources and must be designated separately in order to qualify for the burial funds exclusion.

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Certification

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