

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 283, 285 AND 1251]

Payment for Burial and Cremation and Funeral Directors' Services

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the amendments set forth in Annex A under the authority of sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) (code). Notice of proposed rulemaking was published at 37 Pa.B. 6534 (December 15, 2007).

Purpose of Rulemaking

The purpose of this final-form rulemaking is to add a new Chapter 283 (relating to payment for burial and cremation) to replace the existing burial regulations in Chapter 285 (relating to payment for burial). Further, this final-form rulemaking codifies policies that have been in effect since a notice of rule change (NORC) was published at 30 Pa.B. 2957 (June 10, 2000). This final-form rulemaking increases the maximum payment to funeral directors for burial or cremation services to a standard \$750 for all eligible individuals. This final-form rulemaking also increases the maximum level of contributions that may be made by another agency or individual towards burial expenses without reducing the Department payment. This amount is increased from \$180 to \$750. Additionally, this final-form rulemaking eliminates several restrictive requirements for burial, thus allowing families and funeral directors more flexibility and choice in planning and selecting burial goods and services.

Finally, this final-form rulemaking amends cross-references in Chapter 1251 (relating to funeral directors' services) that reference Chapter 285 to conform to the addition of Chapter 283.

Affected Individuals and Organizations

This final-form rulemaking affects individuals acting on behalf of deceased individuals who were eligible and authorized for or receiving cash assistance at the time of death. This final-form rulemaking affords individuals responsible for making funeral arrangements more flexibility and choice in planning and selecting burial and cremation goods and services.

Funeral directors who are enrolled with the Department are the beneficiaries of increased payments that more adequately cover the actual cost of burial and cremation goods and services. In addition, other individuals in the funeral industry may receive increased compensation for services rendered if these services are a part of the agreement between the funeral director and the individual handling the funeral arrangements.

Accomplishments and Benefits

This final-form rulemaking benefits individuals acting on behalf of a deceased individual by allowing more flexibility and choice in planning and selecting burial and cremation goods and services.

This final-form rulemaking also benefits funeral directors and may benefit other members of the funeral industry by providing increased payments that more

adequately cover the actual costs of burial and cremation goods and services. Increased payments reduce uncompensated costs that are incurred by funeral directors and may reduce costs incurred by other service providers.

Fiscal Impact

When the maximum payment for burial and cremation was raised from \$350 to \$750 in Fiscal Year (FY) 2000-2001, the Department incurred an average annual increase in expenditures of \$360,000 from FY 2000-2001 through FY 2006-2007. Of this overall increase, \$140,400 is due to the increased payment amount and \$219,600 is due to an increase in the number of claims paid. The estimated increase in annual expenditures for FY 2007-2008 is \$433,000.

This final-form rulemaking reduces the uncompensated costs for services that are incurred by funeral directors and may reduce uncompensated costs for other individuals in the funeral industry.

Paperwork Requirements

This final-form rulemaking does not increase paperwork requirements.

Public Comment

Written comments, suggestions and objections were solicited within a 30-day comment period after the publication date of the proposed rulemaking. The Department received two public comments—one from Community Legal Services of Philadelphia (CLS) and the other from the Pennsylvania Funeral Directors Association (PFDA). The PFDA stated that it "supports this regulation in its entirety." The Department also received comments from the Independent Regulatory Review Commission (IRRC).

The Department has carefully reviewed and considered each suggestion and comment and thanks the organizations that commented on this rulemaking.

Discussion of Comments and Major Changes

Following is a summary of the comments received during the public comment period following publication of the proposed rulemaking and the Department's response to the comments. A summary of changes from proposed rulemaking is also included.

§ 283.6 (relating to submission of form for payment)

Section 283.6 refers to a "form approved by the Department" that an individual must complete and return to the Department to request payment for burial or cremation. IRRC noted that this section does not describe the content of the form or how an individual can get it and asked that this information be included in final-form rulemaking.

Response

The Department agrees and has incorporated a statement regarding the availability of the form in § 283.6(a) and a description of the form in § 283.6(b).

§ 283.21 (relating to Department payment)

CLS expressed concern that the Department's maximum payment for burial or cremation, or both, of \$750 and the exemption of up to \$750 in third-party contributions is inadequate to provide a decent funeral for indigent Pennsylvanians. CLS noted that the average cost of a funeral, as of July 2004, is \$6,500 and requested that the Department increase its payment for burial or crema-

tion to \$3,000 and also disregard \$3,000 in third-party contributions when determining the Department's payment.

Referencing CLS' comments and concern that the Department's payment is too low, IRRC asked that the Department review its payment rate and provide an explanation of it in the final-form rulemaking. IRRC also asked that the Department include specific information on payment rates for burial or cremation in neighboring states.

Response

As requested by IRRC, the Department researched the payment rates for burial and cremation of neighboring states. The Department's payment rate is comparable to or higher than the payment rates of neighboring states, with the exception of New Jersey and West Virginia. Ohio does not pay for funeral expenses. Delaware pays a maximum of \$100 towards funeral expenses. Maryland and New York have policies similar to the Commonwealth's. Maryland contributes up to \$650 towards the cost of a funeral that does not exceed \$1,500. In New York, the base rate is \$800 and counties may provide an additional supplement. The maximum payment amount ranges from \$800 to \$2,300, dependent on the supplement from the county agencies. New Jersey provides a maximum payment for funeral expenses of \$2,770 and allows outside contributions of up to \$1,570. West Virginia provides a maximum payment of \$1,250 and allows outside contributions of up to \$1,200.

The Department recognizes that its maximum payment for burial or cremation is less than the National average cost of a traditional funeral; however, the Department estimates that the increase proposed by CLS would raise annual expenditures from \$433,000 to \$3.112 million. Due to budgetary constraints, an increase is not practicable.

§§ 283.22 and 283.24 (relating to resources that do not reduce Department payment; and resources reducing Department payment)

First, IRRC asked if there is a monetary amount attached to the term "small contributions" in § 283.22(1) and, if so, to include this amount in the final-form rulemaking.

In addition, IRRC commented on the clarity of §§ 283.22 and 283.24. Specifically, IRRC inquired about the meaning of the language "up to a total of \$750," how the Department's payment will be reduced, how resources are calculated, and whether there should be cross references between §§ 283.22 and 283.24. IRRC also commented on the clarity of the citation phrase in § 283.24(b). IRRC also suggested that the Department describe both the formula for determining the Department's payment and the process used to reduce the Department's payment.

Response

There is not a maximum monetary amount assigned to small contributions. The Department agrees that the phrase, "small contributions," is ambiguous and subjective. As a result, the Department deleted the reference to small contributions in § 283.22 and amended this section to provide that the value of articles of clothing, transportation for the funeral party, newspaper obituaries, flowers and religious services is not considered in determining the Department's payment.

In addition, the Department agrees that certain provisions of §§ 283.22 and 283.24 may be unclear, particularly in regard to how resources are counted and the

process used to determine payment. In response to IRRC's request that the Department describe the formula used to determine payment, the Department revised § 283.21 to clearly specify that the Department will not pay for funeral expenses if the total value of resources from an agency or individual exceed \$1,500. In addition, the Department provided the formula the Department uses to determine payment when the total value of resources does not exceed \$1,500.

As a result of IRRC's statements that it is unclear how certain provisions of § 283.22 relate to § 283.24, the Department deleted § 283.24 and revised § 283.22 (relating to resources) to include a comprehensive description of resources—those that do not reduce Department payment and those that do reduce Department payment.

Regulatory Review Act

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on July 28, 2009, the Department submitted a copy of this final-form rulemaking to IRRC and to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare (Committees). In compliance with the Regulatory Review Act, the Department also provided the Committees and IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulations, the Department reviewed and considered comments received from the Committees, IRCC and the public.

In accordance with section 5.1(j.1) and (j.2) of the Regulatory Review Act, these final-form regulations were deemed approved by the Committees on August 16, 2009. IRCC met on September 17, 2009, and approved these final-form regulations.

In addition to submitting the final-form rulemaking, the Department has provided IRCC and the Committees with a copy of the Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Findings

The Department finds that:

(1) The public notice of intention to adopt the administrative regulations by this order has been given under sections 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations in 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of the regulations in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department acting under the authority of the code orders:

(a) The regulations of the Department, 55 Pa. Code, are amended by amending §§ 1251.1, 1251.21, 1251.23, 1251.42, 1251.51, 1251.71 and 1251.81; by deleting §§ 285.1, 285.3 and 285.4; and by adding §§ 283.1, 283.3—283.7, 283.11, 283.21—283.23 and 283.31 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon final publication in the *Pennsylvania Bulletin* with the exception of § 283.21. The addition of § 283.21 is effective retroactive to July 3, 2000, to coincide with the effective date of the NORC.

ESTELLE B. RICHMAN,
Secretary

(*Editor's Note:* The proposal to add § 283.24, included in the proposed rulemaking at 37 Pa.B. 6534, has been withdrawn by the Department.)

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 5812 (October 3, 2009).)

Fiscal Note: 14-FIN-510. (1) General Fund; (2) Implementing Year 2008-09 is \$445,000; (3) 1st Succeeding Year 2009-10 is \$453,000; 2nd Succeeding Year 2010-11 is \$459,000; 3rd Succeeding Year 2011-12 is \$465,000; 4th Succeeding Year 2012-13 is \$471,000; 5th Succeeding Year 2013-14 is \$477,000; (4) 2007-08 Program—\$593,992; 2006-07 Program—\$671,472; 2005-06 Program—\$945,950; (7) Medical Assistance-Outpatient; (8) recommends adoption. Funds have been included in the budget to cover this increase.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart I. OTHER INCOME MAINTENANCE PROGRAMS

CHAPTER 283. PAYMENT FOR BURIAL AND CREMATION

GENERAL PROVISIONS

Sec.
283.1. Policy.

REQUIREMENTS

283.3. Requirements for payment.
283.4. Assistance status of deceased.
283.5. Source of request for payment.
283.6. Submission of form for payment.
283.7. Date of request for payment.

STANDARDS

283.11. Standards for providing burial or cremation, or both.

PAYMENT

283.21. Department payment.
283.22. Resources.
283.23. Resources from which the Department will seek to collect.

VIOLATIONS

283.31. Funeral director violations.

GENERAL PROVISIONS

§ 283.1. Policy.

(a) The Department will pay for expenses related to burial or cremation, or both.

(b) The Department will pay a funeral director, or anyone acting for him, if the funeral director is the following:

(1) A funeral director as defined in section 2(1) of the Funeral Director Law (63 P. S. § 479.2(1)).

(2) Enrolled with the Department.

REQUIREMENTS

§ 283.3. Requirements for payment.

The requirements of §§ 283.4—283.7 shall be met for the Department to pay expenses related to burial or cremation, or both. These requirements apply regardless of where death occurs.

§ 283.4. Assistance status of deceased.

The deceased individual shall have been a recipient of Cash Assistance—Temporary Assistance for Needy Families (TANF), General Assistance (GA), State Blind Pension (SBP), Supplemental Security Income (SSI) or State Supplementary Payment (SSP)—at the time of death. This includes:

(1) An individual who was determined eligible for cash assistance, including SBP, regardless of whether the individual had received a cash assistance benefit.

(i) Eligibility for payment begins with the date on which eligibility for cash assistance begins.

(ii) Eligibility for payment extends through the period covered by the last cash assistance benefit for which the individual was eligible.

(2) A former assistance recipient whose assistance had been discontinued due to hospitalization and who died while hospitalized within 3 months from the date of his admission.

(3) A child born dead to an assistance recipient.

(4) A child of an assistance recipient who died so soon after birth that assistance could not be authorized.

(5) A member of a recipient's family who formerly received assistance with the family, returned to the residence, was planning to apply for assistance and died before assistance could be authorized.

§ 283.5. Source of request for payment.

(a) The Department will accept a request for payment for burial or cremation, or both, if the request is made by one of the following:

(1) A relative.

(2) A friend.

(3) The representative of a fraternal society of which the deceased was a member.

(4) The representative of a charitable or religious organization.

(5) A funeral director acting on behalf of an individual described in paragraphs (1)—(4).

(b) If the request for payment comes from another source, the request must be accompanied by a certificate issued by the Anatomical Board, Department of Health, declaring the body unfit for anatomical purposes.

§ 283.6. Submission of form for payment.

(a) The individual requesting payment or the funeral director on behalf of the individual requesting payment shall submit the request on a form approved by the Department in accordance with § 283.7 (relating to date of request for payment). This form is available from the Department or a funeral director enrolled as a provider with the Department.

(b) The form shall be completed by the individual requesting payment and the funeral director. The form must include the following information:

(1) Name and Social Security number of the deceased.

(2) Name and signature of the representative requesting payment on behalf of the deceased.

(3) Resources available towards payment.

(4) Name and address of the funeral home.

(5) Name and signature of the funeral director providing goods and services for burial or cremation, or both.

§ 283.7. Date of request for payment.

The form to request payment shall be submitted to the Department within 30 days of the date of death with the following exceptions:

(1) When there are unusual circumstances and the individual requesting payment or the funeral director submits valid reasons for the delay. In this case, the individual requesting payment or the funeral director shall submit the form to the Department within 30 days from the date of the request for payment.

(2) When the funeral director is waiting for notification regarding a resource that may reduce the Department payment according to § 283.22 (relating to resources). Under these circumstances, the individual requesting payment or the funeral director shall submit the form to the Department within 15 days from the date the funeral director receives payment from the resource or a notification regarding payment from the resource, whichever is sooner.

STANDARDS

§ 283.11. Standards for providing burial or cremation, or both.

The funeral director shall provide services for burial or cremation, or both, in accordance with the following:

(1) Commonly accepted funeral industry practices established under the Funeral Director Law (63 P. S. §§ 479.1—479.20).

(2) Requirements for professional and vocational standards for funeral directors under 49 Pa. Code Chapter 13 (relating to state board of funeral directors).

(3) Federal standards required by the Federal Trade Commission as specified in 16 CFR Part 453 (relating to funeral industry practices).

(4) A written agreement between the funeral director and the individual handling the funeral arrangements for the deceased. The agreement will include provisions for funeral directors to provide payment for other services, including payment for interment, if services for interment are requested.

PAYMENT

§ 283.21. Department payment.

(a) The Department's payment for burial or cremation, or both, will not exceed \$750.

(b) The Department's payment is determined by adding the total value of resources under § 283.22(b) (relating to resources) contributed by an agency or individual. If the total value of resources is:

(1) Equal to or greater than \$1,500, the Department will not pay for burial or cremation, or both.

(2) Less than or equal to \$750, the Department's payment is \$750.

(3) Greater than \$750, but less than \$1,500, this amount is subtracted from \$1,500. The remainder is the Department's payment.

§ 283.22. Resources.

(a) The value of articles of clothing, transportation for the funeral party, newspaper obituaries, flowers and religious services is not considered in determining the Department's payment.

(b) The total value of the following resources is used to determine the Department's payment in accordance with § 283.21 (relating to Department payment):

(1) A burial reserve and burial space as set forth in § 177.2 (relating to definitions).

(2) Contributions of money or goods such as a casket, urn, burial plot, crypt or vault.

(3) Cash on hand in the estate of the deceased.

(4) Other personal property in the estate of the deceased that can be readily converted into cash and is not required to meet basic needs of the survivors.

(5) Life insurance death benefits paid to an individual or organization when that individual or organization paid insurance premiums and had an agreement with the insured that the benefits are used for the deceased's burial, cremation, or both.

(6) Burial or cremation benefits, or both, from a lodge or fraternal organization.

(7) A lump-sum death benefit from the Social Security Administration (SSA) as defined in 20 CFR 401.25 (relating to terms defined) payable to a surviving spouse or to a funeral director.

(i) The individual who assumed responsibility for payment of the funeral expenses may authorize that the lump-sum payment be paid to the funeral director.

(ii) The Department, at the request of the funeral director, may authorize that the lump-sum payment be paid to the funeral director if one of the following occurs:

(A) The individual who assumed responsibility for payment of the funeral expenses does not authorize the payment to the funeral director.

(B) The SSA determines that the individual who arranged burial, cremation, or both, did not assume responsibility.

(iii) The Department will not pay costs for burial or cremation, or both, until the funeral director provides definite information about payment of the lump-sum death benefit.

(8) The lump-sum death benefit from railroad retirement payable to a surviving spouse or a funeral director.

(9) Benefits available from county commissioners on behalf of deceased widows of deceased veterans.

(10) Benefits available for burial in a National cemetery.

(11) Workers compensation benefits designated for burial or cremation, or both, if death results from an accident or injuries sustained in connection with the employment of the deceased.

(12) Awards resulting from accidental death not connected with the employment of the deceased. Pending awards do not reduce the Department payment. When an award is pending, the Department will pay for burial or cremation, or both, and seek recovery when the award is made.

(13) Department of Veterans Affairs death benefits.

(14) Death benefits from United Mine Workers of America welfare and retirement or health and retirement funds.

§ 283.23. Resources from which the Department will seek to collect.

Under the following circumstances, the Department payment is not reduced by the value of the resources described in § 283.22(b) (relating to resources), but instead the Department will seek recovery if resources:

(1) Are reported to the funeral director after the deadline date as set forth in § 283.7 (relating to date of request for payment), and the funeral director does not collect from these resources.

(2) Become available only after the Department pays for burial or cremation, or both.

VIOLATIONS

§ 283.31. Funeral director violations.

If the Department learns that a funeral director has or appears to have violated a regulation, the Department will determine whether further action is needed in accordance with Chapters 1101 and 1251 (relating to general provisions; and funeral directors' services).

CHAPTER 285. (Reserved).

§ 285.1. (Reserved).

§ 285.3. (Reserved).

§ 285.4. (Reserved).

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1251. FUNERAL DIRECTORS' SERVICES

GENERAL PROVISIONS

§ 1251.1. Policy.

The Department provides payment for funeral directors' services rendered to eligible deceased recipients by funeral directors who are enrolled as providers under the program. Payment shall be subject to this chapter and Chapters 283 and 1101 (relating to payment for burial and cremation; and general provisions).

SCOPE OF BENEFITS

§ 1251.21. Scope of benefits for the categorically needy.

Categorically needy recipients who were receiving a money payment at the time of their death as set forth in § 283.4 (relating to assistance status of deceased) are eligible for funeral directors' services listed in Chapter 1150 (relating to MA Program payment policies) and the MA Program fee schedule hereto subject to the conditions

and limitations of this chapter and Chapter 283 (relating to payment for burial and cremation).

§ 1251.23. Scope of benefits for State Blind Pension recipients.

State Blind Pension recipients are eligible for funeral directors' services subject to the conditions and limitations of this chapter and Chapter 283 (relating to payment for burial and cremation).

PROVIDER PARTICIPATION

§ 1251.42. Ongoing responsibilities of providers.

In addition to the applicable responsibilities of providers established in § 1101.51 (relating to ongoing responsibilities of providers), funeral directors shall, as a condition of participation comply fully with Chapter 283 (relating to payment for burial and cremation).

PAYMENT FOR FUNERAL DIRECTORS' SERVICES

§ 1251.51. General payment policy.

Payment shall be made for funeral directors' services subject to the conditions and limitations established in Chapter 283 (relating to payment for burial and cremation).

UTILIZATION CONTROL

§ 1251.71. Scope of claims review procedures.

Claims submitted for payment under the MA Program are subject to the utilization control procedures established in Chapters 283 and 1101 (relating to payment for burial and cremation; and general provisions).

ADMINISTRATIVE SANCTIONS

§ 1251.81. Provider misutilization.

Providers determined to have billed for services inconsistent with MA Program regulations or to have otherwise violated the standards set forth in the provider agreement, are subject to the sanctions described in Chapter 1101 (relating to general provisions) and § 283.31 (relating to funeral director violations).

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