

## UNDERSTANDING THE POST MORTEM OPTIONS

### BURIAL VS. CREMATION

Decisions of the elderly are affected by financial concerns. This includes the decision of choosing between having a traditional funeral and burial and being cremated.

Considerations regarding the choice between burial and cremation are largely cultural and personal. Cremation services are no different from regular burial services. Services with cremation can be the same as with burial. No one wants to leave the burden of decision-making on their children in their time of grief ... prearranging your funeral brings you and your family peace of mind.

For those of the elderly who are concerned about the cost of nursing home/long term care and who consider the possibility of applying for Medical Assistance, the following is a review of the pertinent rules regarding exemption of prepaid funeral and related costs in the financial related factors for eligibility:

House Bill 634 clarifies that the health care agent has precedence over the person named executor in a Will “to make body, funeral and burial arrangements” subject to financial limitations incurring reasonable costs related to exercising these powers about the disposition of remains.

The reasons for funeral services and cremation are to support the living through the pain and loneliness of loss. Cremation and burial offer the same services, music, prayers and recitations.

## BURIAL

The death benefit amount of a life insurance policy can be assigned to a funeral home to fund funeral arrangements that are made in advance. At time of death, the proceeds of the assigned life insurance policy will be paid directly to the funeral home and will be applied toward the balance of the funeral costs. This type of advance funeral planning does not secure the funeral contract price at the time of the advanced funeral arrangement. At time of death, all price increases that may have occurred from the date of the advanced funeral arrangement will be added to the total cost of the funeral. If there is an excess of proceeds, that amount will be given back to the designated family member or to the estate of the deceased.

One advantage of selecting this type of advance funeral funding is in the case of the required asset reduction when applying for Medicaid. When life insurance policies are assigned to a funeral home, the funeral home becomes trustee of the policies. Thus the policies will no longer be considered an asset of the individual applying for Medicaid.

### Advance Funeral Insurance Policy

Insurance policies purchased for funding advance funeral arrangements are most commonly either a single premium insurance policy, where the total amount of the advance funeral contract is paid at signing, or a premium insurance policy, which has a specified amount and payment period selected by the purchaser.

The advantage of having either a single or monthly premium insurance policy is that both are inflation-proof. This means that even if the cost of the contracted funeral amount increases in the future, the insurance company will pay all guaranteed price increases, not the purchaser.

Like all other life insurance products, the individual applying for insurance will have to

be approved by the particular insurance company before the advance funeral plan is finalized.

### Medicaid & Advance Funeral Planning

With health care costs rising at an alarming rate, Medicaid is becoming a more widely used program for those who need help in paying medical bills. Medicaid is a government health program for low-income residents who cannot afford the cost of health care. To be eligible, a person must meet several requirements, including certain income and asset limits.

To meet the income and asset limits, a person has to reduce his or her assets to the amount of \$2,000.00. Funding an advance funeral plan is an approved method of reducing assets to help meet requirements for Medicaid.

Cash and the cash value of life insurance policies are two of the primary ways to fund an advance funeral plan. When either payment method is used, an irrevocable funeral contract is issued. An irrevocable funeral contract states that all funds used to fund the advanced funeral plan will be used only for the funeral expenses of the purchaser. Since the funeral contract is irrevocable, this makes the contracting funeral home the trustee of those funds. Therefore, Medicaid will no longer consider those funds assets of the purchaser.

### Advance Funeral Planning Without Funding

If you choose not to fund your advance funeral plan, you can simply have all of your funeral arrangements held on file at the funeral home at no cost. At time of death, the designated family member(s) will be responsible for the full cost of the funeral.

"Preneed"\* funerals may not cover every item of service you and your family expect, and there's often no guarantee the money you pay today will keep up with inflation to pay the cost of the service you've picked out.

\*The term "preneed," as used by the industry, means a funeral purchased before death. Funeral directors often use this term interchangeably with "prearranging," but prearrangement can be and is frequently done without prepaying.

Some common problems with preneed funerals are:

—“The casket dad picked out was no longer available and we'd have to buy another, and more expensive, one”

—The funeral home says my prepaid money can't be transferred to another funeral home”

— Client now wants to be cremated, but the plan can't be changed”

There is confusion of laws among the states governing preneed funeral contracts. Many state laws don't offer much protection for your prepaid funeral money.

Types of prepaid funerals

There are two main types of preneed funerals: insurance-funded plans and trust-funded plans. In a trust-funded funeral, the customer pays in to the trust either in installments or in a lump-sum.

While insurance is usually portable, you may get less back than you paid in if you change your mind and cash out. Insurance plans can have all sorts of restrictions, too. Many will not pay the full benefit — or anything at all — during the first few years you pay premiums.

Trust-funded plans can be revocable or irrevocable. An irrevocable trust is one that can't be cashed out. Medicaid allows people to set aside certain amounts of money in irrevocable trusts for funeral expenses. This way, that money won't be taken away if you go into long-term care paid for by Medicaid. Revocable trusts, on the other hand, may be cashed out or changed at will, but are not exempt assets under Medicaid.

If you're concerned that you may have to go on Medicaid you may want to consider establishing a private irrevocable trust. Designate a trusted family member or friend as the beneficiary, rather than to a funeral home. Not advisable to buy an irrevocable funeral plan "just in case" you should ever go on Medicaid — wait until you have to. If you never need Medicaid, you will limit your options unnecessarily.

As for making sure money is available for your funeral, one of the best vehicles we know of is called a Totten Trust, or pay-on-death account. You choose the beneficiary (we don't recommend naming the funeral director) and deposit any amount of money you wish.

When you die, the money is immediately released to the beneficiary rather than being tied up in probate. Totten trusts remain in your name, they are portable, and the interest accrues in your account.

#### Personal Property: Burial Contracts

Irrevocable burial contracts are not countable. Revocable contracts are countable. Note carefully, if an applicant does not have an irrevocable burial contract, \$1,500 in otherwise countable resources may be earmarked for burial purposes and thus avoid classification as available resources.

## Adult Medicaid Manual MA-2230 FINANCIAL RESOURCES

### XIII. BURIAL EXCLUSION

Burial exclusion is only used when the a/r has excess countable resources. It is a method to exclude up to a \$1,500 value of otherwise countable liquid assets for burial expenses for each financially responsible person. This section contains rules and procedures for burial exclusion.

#### A. Burial Exclusion Rules

1. Always ask the a/r if he or a financially responsible person have resources which are intended to be used for burial purposes.
2. Use the \$1,500 burial exclusion to reduce countable resources when the a/r or financially responsible person has excess liquid assets in:
  - a. A revocable burial contract for his burial expenses,
  - b. Cash value of life insurance on his own life,
  - c. Cash/bank accounts/certificates of deposit, or
  - d. Stocks and bonds.
  - e. Revocable burial annuities.
3. Do not use the burial exclusion if the a/r or financially responsible spouse/parent have irrevocable burial arrangements valued at \$1,500 or more. Irrevocable contracts are not a countable resource but they “use up” the burial exclusion for an individual.

4. If excluding \$1,500 (for each financially responsible person) of countable assets listed above is sufficient to reduce countable resources to the limit for the budget unit:

- a. Inform the a/r that liquid assets (except life insurance) designated as a burial asset cannot be excluded if commingled (held in the same account) with non-burial assets. Request proof that the assets have been separated. See MA-2303, Verification Requirements for Applications, and MA-2304, Processing the Application, for time frames and requirements.
- b. When burial assets are not commingled, exclude \$1,500 of the value of liquid assets for the a/r and each financially responsible spouse/parent's burial expenses.
- c. Begin the burial exclusion with any month assistance is requested, including the retroactive period.

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5. Burial exclusion applies to all financially responsible individuals, including:

- a. An MAABD/MQB/MWD applicant/recipient of any age.
- b. A legal spouse of the MAABD/MQB/MWD applicant/recipient, including the community spouse of the institutionalized a/r.
- c. Parents of the MAABD applicant/recipient, if the a/r has never been married and is under age 18.

6. If the burial exclusion (\$1,500 of liquid assets per budget unit member) does not reduce resources below the limit, resources must be reduced within the 45/90 day standard for applications.
7. Follow the steps in B. - F. below to use the burial exclusion. Always deduct the value of burial assets until the burial exclusion is depleted (you reach zero dollars) or all assets have been deducted. Deduct assets in the following order:
  - a. Irrevocable Burial Arrangements
  - b. Face Value of Life Insurance if \$10,000 or less.
  - c. Revocable Burial Arrangements
  - d. Cash Value of Life Insurance if Face Value Exceeds \$10,000
  - e. Dividend Accumulations or Cash/Funds in a Bank Account

#### B. Irrevocable Burial Arrangements

Follow these steps for each individual to determine if there is an irrevocable arrangement as specified in 1, 2, or 3. Deduct any irrevocable burial arrangement from the person's \$1,500 burial exclusion.

##### 1. Irrevocable trust/contract

A trust, contract, insurance policy or annuity with a funeral home, bank, insurance company, etc. that lists the a/r or financially responsible spouse/parent as the beneficiary.

- a. Irrevocable means neither the depositor/purchaser nor the funeral home/bank can withdraw the funds or change the contract.

NOTE: Even though a court, including a magistrate, can revoke an irrevocable contract, the contract remains irrevocable and is excluded until it is revoked.

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(XIII. B. 1.)

- b. View a copy of the contract to verify that it is irrevocable, the name of the beneficiary and the face value received in exchange for funds.
- c. Do not require that the contract include a listing of goods and services to be provided unless the information is needed for evaluation for transfer of assets (MA-2240, Transfers of Assets) if it appears assets may have been transferred without equal compensation.

## 2. Irrevocable designation of beneficiary

This is an irrevocable designation of an insurance policy making it payable to a funeral home or to the estate of the deceased for purposes of funeral expenses. This action must prevent the person from accessing the cash value. Irrevocable designation of beneficiary to the funeral home is preferable to designation of the estate as beneficiary or absolute assignment.

- a. The designation may be made when the policy is taken out, or
- b. The beneficiary may be irrevocably changed by a rider filed with the insurance company.
- c. Verify with the insurance company that:

- (1) The designation has been filed with the company,
  - (2) The designation is irrevocable, and
  - (3) The client cannot access the cash value of the policy.
- d. The services purchased do not have to be selected in advance.

### 3. Absolute assignment

Absolute assignment is a change in ownership. Absolute assignment of a deferred or single premium annuity or other insurance policy to a funeral home can be made in exchange for burial services.

### 4. Availability

An irrevocable burial asset is not available and is not a countable resource. Exclude the entire value from countable resources, not just \$1,500.

- a. If the total value of irrevocable burial assets equals or exceeds \$1,500, the burial exclusion is used up. No additional assets can be excluded under burial exclusion.

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- b. If there is any amount of exclusion left after deducting all irrevocable burial arrangements from \$1,500, continue to the next excludable item, XIII.C.

### C. Face Value of Life Insurance

After deducting irrevocable burial arrangements, if the total face value of all life insurance policies owned by the a/r or a financially responsible person does not exceed \$10,000:

1. Deduct the face value of all whole life policies which insure the life of that individual from the amount left in the individual's \$1,500 burial exclusion.
2. Face value is not a countable resource, but it must be applied to the burial exclusion.
3. If the total face value equals or exceeds the amount left in the \$1,500 burial exclusion, the burial exclusion is used up.
4. If there is any amount of exclusion left, continue to the next excludable item, XIII.D.

NOTE: Term life and burial association policies are not deducted from burial exclusion and are not countable resources. Count any dividends paid by a term life policy as income.

### D. Revocable Burial Arrangements

After deducting irrevocable burial arrangements and face value of non-countable life insurance, deduct the value of a revocable burial contract with a funeral home or other revocable trust or annuity established for burial expenses from the amount left in the \$1,500 burial exclusion.

1. Revocable means the funds are available and can be withdrawn.

2. A revocable trust or annuity which is not limited to payment of burial expenses within the body of the agreement cannot be excluded under burial exclusion policy.
3. Deduct the value of the revocable burial arrangement from the amount left in the \$1,500 burial exclusion.

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4. A revocable burial trust may appreciate in value or accumulate interest.
  - a. Verify the value at application. Once the application is approved, at redeterminations, ignore any subsequent increase in value due to interest/accumulation of a revocable burial trust which has been excluded through burial exclusion.
  - b. If the case is later terminated and a/r reapplies, count the full value of the revocable trust in the verification month.
5. If the value of the revocable burial arrangement exceeds the amount left in the \$1,500 burial exclusion at application:
  - a. Burial exclusion is used up; AND
  - b. Excess amount of the revocable arrangement counts in resources.
6. In the record, document the amount of the revocable arrangement which was counted in resources at point of Medicaid approval and count this amount in resources at review unless the revocable arrangement is changed to irrevocable.

7. If there is any amount of exclusion left, continue to the next excludable item, XIII.E.

#### E. Cash Value of Life Insurance

When total face value of all whole life policies owned by the a/r or a financially responsible individual exceeds \$10,000:

1. After deducting irrevocable burial arrangements, face value of non-countable insurance and revocable burial arrangements, deduct the cash value of whole life policies designated for burial on the life of the individual from the amount remaining in that individual's \$1,500 burial exclusion.

EXAMPLE: Mr. and Mrs. Blue applied for Medicaid. Mr. Blue has a whole life policy on himself. The face value is \$50,000 with a cash value of \$3,500. No assets have yet been applied to the burial exclusion. Only \$1,500 can be applied to Mr. Blue's burial exclusion and none to Mrs. Blue as she is not the insured.

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2. Accept the verbal statement of the policy owner or his representative that the policy is designated for burial.
3. If there is any amount of exclusion left, continue to the next item, XIII.F.
4. If burial exclusion is used up:

- a. At application, cash value which exceeds the \$1,500 burial exclusion limit of a designated policy is a countable resource;
- b. At redetermination, the original amount of cash value which exceeded the \$1,500 burial exclusion (counted at application and not excluded as part of the \$1,500 burial exclusion) continues to count in resources. However, increases in cash value are ignored as long as the policy(s) is designated for burial.

EXAMPLE: Single a/r has one life insurance policy with face value of \$13,000. The cash value at application was \$3,000. The a/r stated it is intended and needed for burial expenses. He has no other resources.

\$3000	Cash value of life insurance
- 1500	Burial exclusion (no other burial assets)
\$1500	Excess counts in resources

At review the cash value has increased to \$3,500. The a/r continues to state that it is needed for burial and has acquired no other assets to be applied to the burial exclusion. Continue to count only \$1,500 of cash value as a countable resource. Increases in cash value after Medicaid eligibility begins are ignored; continue to count the original \$1,500 excess cash value at review.

- c. Once an application has been dispositioned and there is a policy designated for burial expenses, any action which reduces or depletes the cash value of life insurance (except to pay the premium), revokes the burial designation. Burial exclusion can no longer be applied to the policy. Stop excluding the cash value when:

- (1) A loan has been taken against the cash value subsequent to designation; or
- (2) The policy has been used as collateral subsequent to the exclusion.

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(XIII. E. 4. c.)

- (3) A policy is “designated” and action is taken during the application processing period to reduce the value. Do not consider the policy as having been designated for any period of time for which eligibility is being determined.

d. Always count the cash value of policies owned by the a/r and financially responsible spouse/parents which are on the life of someone outside of the budget if the owner’s total whole life face value exceeds \$10,000. Examples:

- (1) Mr. Brown owns whole life with a face value of \$10,000 on himself, whole life with a face value of \$1,500 on his grandson, and a \$1,000 term life on himself. The total face value of all whole life policies owned by Mr. Brown is over \$10,000; so cash value is countable.

Only the cash value of the \$10,000 whole life policy on Mr. Brown is deducted from his burial exclusion. Neither the \$1,500 whole life on his grandson nor the \$1,000 term life is used to reduce the burial exclusion for Mr. Brown.

(2) Mrs. Green owns whole life policies with face value of \$5,000 each on herself, her spouse, and her granddaughter. Total face value owned by Mrs. Green exceeds \$10,000, so the cash value counts in resources. Current cash value of each policy is \$650. No other burial resources are reported. Couple's checking account has \$100 and savings is \$1,200. Total countable resources, including cash value, are \$3,250. This exceeds the resource limit.

\$650 cash value on Mrs. Green's policy and \$650 cash value on policy on Mr. Green can be excluded by applying the \$1,500 burial exclusion for each spouse to each spouse's policy. ( $\$1,500 - \$650 = \$850$  remaining for burial exclusion for each spouse.)

Total resources are reduced to \$1,950 (\$100 checking, \$1,200 savings + \$650 cash value from the policy on the granddaughter).

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(XIII.E. 4.)

e. A revocable change of beneficiary to a funeral home designates the policy for burial expenses, but it does not make cash value unavailable to the a/r. After the \$1,500 burial exclusion is used up, remaining cash value counts. Count the excess cash value amount at the point it is designated, but ignore increases.

EXAMPLE: Mr. Jones has a whole life policy with face value of \$15,000 and no other burial assets. The current cash value on the policy is \$2,500. Mr. Jones has changed the beneficiary of the policy

to be the local funeral home. The change is revocable. \$1,500 of the cash value of the designated policy can be excluded through burial exclusion, but the remaining \$1,000 cash value counts in resources.

#### 5. Increases in Value

Ignore increases in value of a policy(s) designated for burial unless:

- a. A loan or withdrawal of cash value occurs; or
- b. At redetermination, the a/r has not designated the policy for burial; or
- c. Client's statement of cash value was used to approve application (this is follow up after approval);

#### 6. Verify Outstanding Loans/Withdrawals from Cash Value.

- a. An applicant may designate remaining cash value for burial even if there is an existing loan on the policy or it is collateral on an outstanding loan.
- b. If a new loan/cash withdrawal occurs after designation for burial, designated status is lost. That policy cannot be re-designated for burial. Any cash value remaining on that policy counts in resources at that time and in the future. Once the loan is paid off the policy can be re-designated.

#### F. Dividend Accumulations or Cash/Funds Held in a Bank Account

1. These countable liquid assets may be used to:

- a. Purchase burial assets to reduce resources in any amount within the 45/90 day processing time; BUT

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- b. May only be excluded under burial exclusion when \$1,500 burial exclusion will reduce resources and establish eligibility (amount of excess resources is equal to or less than the amount of burial exclusion left after deducting all other burial assets).
2. If exclusion of amount remaining in burial exclusion is enough to reduce resources:
    - a. Inform a/r of amount of funds or dividend accumulations which can be designated for burial.
    - b. Obtain a/r's verbal statement as to whether he intends to use the funds for burial expenses. This is a verbal designation.
    - c. Inform the a/r that cash funds intended for burial expenses must not be commingled with other funds. Proof that the funds have been separated within time limits is required to establish eligibility.
    - d. For an applicant, pend up to 45th or 90th day for documented proof that the funds are not commingled. The applicant's statement is not sufficient. Refer to MA-2304, Processing the Application.
    - e. For a recipient, proof must be provided prior to the effective date of termination.

(1) Send a DMA-5097 informing the recipient of the amount of excess resources and that:

(a) A signed or verbal statement that the funds will be designated and separated for burial expenses must be received within the 12 calendar days of the date on the DMA-5097, and

(b) Proof that action has been taken to separate the funds must be provided within 30 calendar days of the date of the DMA-5097.

(2) If the signed statement is not received within 12 calendar days or if proof of separating is not received within 30 days, send a timely notice and terminate the case.

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(3) Proof must show, at a minimum that the necessary paper work was submitted to the insurance company or funeral home, or funds held in a bank are designated and separated.

EXAMPLE: Application on 6/5 for retro May and on-going. Single applicant has one life insurance policy with face value of \$1,000 and a savings account with \$2,500 which a/r states is intended and needed for burial expenses.

\$ 1,500	Burial exclusion
- 1,000	Face value of life insurance
500	Amount left for burial exclusion

\$ 2,500	Liquid assets verbally designated for burial
- 500	Amount which can be excluded through burial exclusion
\$ 2,000	No excess resources

The entire savings account is designated for burial. It is not commingled with other non-burial assets. Therefore, the client may continue to keep the excluded \$500 in the savings account.

3. If the amount remaining in the burial exclusion is not enough to reduce resources to allowable limit, inform a/r of:

- a. The amount of excess resources; AND
- b. Methods to reduce it, including purchase of an irrevocable burial asset.
- c. Refer to MA-2303, Verification Requirements for Applications.
- d. Refer to H. for methods to reduce resources through purchase of burial expenditures.

EXAMPLE: Application taken 6/5 with request for retroactive Medicaid for May and on going. Single applicant owns one policy with face value of \$1,000 and a savings account with \$3,000, which he states is intended and needed for burial expenses.

\$ 1,500	Burial exclusion
- 1,000	Face value of life insurance

\$ 500	Amount left for burial exclusion
\$ 3,000	Liquid assets intended for burial
- 500	Amount left for burial exclusion
\$ 2,500	Countable resources – burial exclusion does not establish eligibility

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(XIII. F.3.d)

Applicant is not eligible through application of burial exclusion. Resources must be reduced. One way to reduce resources is to use the liquid assets to purchase a burial asset that is excluded from date of purchase (this cannot be used to establish eligibility for May).

4. If the applicant dies before the application is made, or before it is disposed, the amount of countable resources excluded for burial expenses is \$1,500, regardless of the actual costs of burial.

G. Burial Exclusion Guide

DEDUCT FROM \$1,500 BURIAL EXCLUSION (in the following sequence)	IF REMAINING VALUE IS MORE THAN \$1,500 (OR AMOUNT REMAINING IN BURIAL EXCLUSION)
Value of Irrevocable Burial Arrangement	Do not count excess as a resource.
Face Value of Insurance	Reduces \$1,500 exclusion

(\$10,000 or less)

Value of Revocable Burial Contract      Count excess, ignore interest earned once designated and excluded at application.

Cash Value of Life Insurance if FV over \$10,000      Count excess at application, ignore increases once designated for burial.

Cash or Funds in a Bank Account, CD, stocks/bonds separately identifiable      Count excess. If result is excess resources, a/r must reduce resources.

#### H. Reduction of Resources Through Burial Expenditures

An a/r with excess resources has the option to reduce resources by using excess liquid assets to obtain a burial asset which does not count in resources. Depending on the type of liquid asset the a/r must reduce, advise the a/r of the following methods to use excess liquid assets for burial costs:

NOTE: The a/r must be expected to receive burial services equivalent to the dollar value of the burial arrangement. Evaluate for transfer of assets if it appears that assets have been transferred without equal compensation.

1. Purchase of an excluded burial asset, such as an irrevocable contract or single premium annuity using cash or other liquid asset; or by adding to the value of an existing irrevocable arrangement.

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2. Changing a revocable contract to an irrevocable contract.
3. Filing a rider on an existing insurance policy, which irrevocably changes the beneficiary to a funeral home or to the estate of the client for purposes of funeral expenses.

4. Absolutely assigning (change of ownership) whole life insurance to a funeral home in exchange for burial services.
5. Also inform the a/r or the representative that resource eligibility cannot begin until the day that resources are reduced to the resource limit for the budget unit.

EXAMPLE: Application on 6/4. Total reserve is \$1,500 face value of life insurance and \$2,500 in savings. Applicant is ineligible until resources are reduced. An irrevocable contract for \$2,500 is purchased on 6/11.

\$ 1500	Burial exclusion
- 2500	Irrevocable burial arrangement 6/11
\$ 0	Remaining in savings account
+ 0	Countable value of \$1,500 face value
0	Resources

Resource total is reduced on 6/11, and if MN, this case is eligible 6/11.

If CN, case is not eligible until 7/1.

## CREMATION

### **90-210.125 Authorization to cremate.**

(a) A crematory licensee shall not cremate human remains until it has received a cremation authorization form signed by an authorizing agent. The cremation authorization form shall be prescribed by the Board and shall contain at a minimum the following information:

(1) The identity of the human remains and confirmation that the human remains are in fact the individual so named.

(2) The time and date of death of the decedent.

(3) The name and address of the funeral establishment and/or the funeral director that obtained the cremation authorization.

(4) The name and address of the crematory to be in receipt of the human remains for the purpose of cremation.

(5) The name and address of the authorizing agent, the relationship between the authorizing agent and the decedent, and the date and time of signature of the authorizing agent.

(6) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in G.S. 90-210.124. Or, in the event that there is another living person who does have a superior priority right to that of the authorizing agent, a representation that the authorizing agent has made all reasonable efforts to contact such person, has been unable to do so, and has no reason to believe that such person would object to the cremation of the decedent.

(7) A representation that the authorizing agent has either disclosed the location of all living persons with an equal right to that of the authorizing agent, as set forth in G.S. 90-210.124, or does not know the location of any other living person with an equal right to that of the authorizing agent.

(8) Authorization for the crematory to cremate the human remains, including authorization to process or pulverize the cremated remains.

(9) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous to the person performing the cremation.

(10) The name of the person authorized to receive the cremated remains from the crematory licensee.

(11) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form shall indicate that the cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee.

(12) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in subsection (b) of this section.

(13) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by G.S. 90-210.126. The authorizing agent may specify in writing religious practices that conflict with Article 13 of this Chapter. The crematory licensee and funeral director shall observe those religious practices except where they interfere with cremation in a licensed crematory as specified under G.S. 90-210.123 or the required documentation and record keeping.

(14) A licensed funeral director of the funeral establishment or crematory licensee that received the cremation authorization form shall also sign the cremation authorization form. Such individual shall not be responsible for any of the representations made by the authorizing agent, unless such individual has actual knowledge to the contrary, except for the information requested by subdivisions (a)(1), (2), (3), (4), and (9) of this section, which shall be considered to be representations of the individual. In addition, the funeral director shall warrant to the crematory that the human remains delivered to the crematory licensee are the human remains identified on the cremation authorization form with any other documentation required by this State, any county, or any municipality.

(b) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation, except for the information required by subdivisions (a)(4) and (9) of this section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form shall be personally and individually liable for all damages occasioned thereby and resulting therefrom.

(c) A crematory licensee shall have the legal right to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory licensee that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization, except for such crematory licensee's gross negligence, provided that the crematory licensee performs such functions in compliance with the provisions of this Article. There shall be no liability for a funeral establishment or licensee thereof that causes a crematory licensee to cremate human remains pursuant to such authorization, except for gross negligence, provided that the funeral establishment and licensee thereof and crematory licensee perform their respective functions in compliance with the provisions of this section.

(d) After the authorizing agent has executed a cremation authorization form and prior to the commencement of the cremation, the authorizing agent may revoke the authorization and instruct the crematory licensee to cancel the cremation and to release or deliver the human remains to another crematory licensee or funeral establishment. Such instructions shall be provided to the crematory licensee in writing. A crematory licensee shall honor any instructions given to it by an authorizing agent under this section, provided that it receives such instructions prior to commencement of the cremation of the human remains. (2003-420, s. 2.)

**§ 90-210.126 Preneed cremation arrangements.**

(a) Any person, on a preneed basis, may authorize the person's own cremation and the final disposition of the person's cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis and having the form signed by two witnesses. The person shall retain a copy of this form, and a copy shall be sent to the funeral establishment and/or the crematory licensee. Any person shall have the right to transfer or cancel this authorization at any time prior to the person's death by destroying the executed cremation authorization form and providing written notice to the party or parties that received the cremation authorization form.

(b) Any cremation authorization form executed by an individual as the individual's own authorizing agent on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

// I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem such a change to be appropriate.

// I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements or continuing to honor my

wishes for cremation and purchasing services and merchandise if they deem such a change to be appropriate.

(c) Except as provided in subsection (b) of this section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of the executed form, and any person charged with making arrangements for the disposition of the decedent's human remains who has knowledge of the existence of the executed form, shall use the person's best efforts to ensure that the decedent's human remains are cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form.

(d) If a crematory licensee is in possession of a completed cremation authorization form, executed on a preneed basis, and the crematory licensee is in possession of the designated human remains, then the crematory licensee shall be required to cremate the human remains and dispose of the human remains according to the instructions contained on the cremation authorization form. A crematory licensee that complies with the preneed cremation authorization form under these circumstances may do so without any liability. A funeral establishment or licensee thereof that causes a crematory licensee to act in accordance with the preneed cremation authorization form under these circumstances may do so without any liability.

(e) Any preneed contract sold by, or preneed arrangements made with, a funeral establishment that includes a cremation shall specify the final disposition of the cremated remains, pursuant to G.S. 90-210.130. In the event that no different or inconsistent instructions are provided to the crematory licensee by the authorizing agent at the time of death, the crematory licensee shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of the preneed agreement, the crematory licensee, and any funeral establishment or licensee thereof who caused the crematory licensee to act in compliance with the terms of the

preneed agreement, shall be discharged from any legal obligation concerning such cremated remains.

(f) The provisions of this section shall not apply to any cremation authorization form or preneed contract executed prior to the effective date of this act. Any funeral establishment, however, with the written approval of the authorizing agent or person who executed the preneed contract, may designate that such cremation authorization form or preneed contract shall be subject to this act. (2003-420, s. 2.)

**§ 90-210.129 Cremation procedures.**

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

- (1) Decedent's name;
- (2) Date of death;
- (3) Date of birth;
- (4) Sex;
- (5) Place of death;
- (6) Facility name (if not institution, give street and number);
- (7) County of death;
- (8) City of death; and
- (9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory licensee on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission for Public Health, pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement officers in the execution of their

duties shall be authorized to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(l) The cremated remains with proper identification shall be placed in an initial container or the urn selected or provided by the authorizing agent. The initial container or urn contents shall not be contaminated with any other object, unless specific authorization

has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of an initial container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the initial container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

(o) Unless the provisions of G.S. 130A-114 apply, before cremation the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances, date, and time of the delivery of the fetal remains from the mother. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall obtain documentation of the circumstances, date, and time of delivery of the fetal remains prepared by a hospital, medical facility, law enforcement agency, or other entity. Notwithstanding any other provision of law, health care providers may release to a licensee, in accordance with the federal Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), medical records that document the circumstances, date, and time of delivery of fetal remains. If the crematory licensee cannot identify documents sufficient to meet the requirements of this subsection, the licensee shall report to the local medical examiner pursuant to G.S. 130A-383(a).

(p) If the provisions of Article 4 of Chapter 130A of the General Statutes apply, the crematory licensee shall receive a fetal report of death as prescribed in G.S. 130A-114.

(q) Before the cremation of amputated body parts, the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances of the amputation. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This section does not apply to the disposition of body parts cremated pursuant to Part 3 of Article 16 of Chapter 130A of the General Statutes. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 19; 2003-420, s. 2; 2007-182, s. 1.2; 2007-531, s. 23.)

**§ 90-210.130 Final disposition of cremated remains.**

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory licensee may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory licensee pursuant to G.S. 90-210.127.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may release the cremated remains to another family member upon written notification to the authorizing agent delivered by certified mail or dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with

this section, the crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea, or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory licensee on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory licensee with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent, no person may:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person with the written consent of the family.

(e) Cremated remains shall be released by the crematory licensee to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory licensee and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt, and contain a representation that the handling of the final disposition will be in a proper

manner. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, over a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 20; 2003-420, s. 2; 2007-531, s. 24.)