

Regulatory Analysis Form		This space for use by IRRC 2001 MAR 23 AM 9:42 REVIEW COMMISSION	
(1) Agency Department of Public Welfare Office of Income Maintenance Bureau of Policy		IRRC Number: 2395	
(2) I.D. Number (Governor's Office Use) 14-481			
(3) Short Title Payment for Burial			
(4) PA Code Cite 55 Pa.Code Chapter 285		(5) Agency Contacts & Telephone Numbers Primary Contact: Edward J. Zogby 787-4081 Secondary Contact: Karole Aldridge 772-7829	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The purpose of this proposed regulation is to codify the Notice of Rule Change (NORC) published at 30 Pa.B. 2957 (June 10, 2000). This rule change increased the payment to funeral directors for burial services to \$750 for all eligible individuals. Prior to this rule change, payments were \$350 for an individual 10 years of age or older, \$250 for an individual under 10 years of age and \$85 for a stillborn child. This rule change also increased the maximum level of contributions made by an agency or individual from \$180 to \$750. Additionally, the proposed regulation eliminates the separation of payments for goods and services for interment and removes the requirement for a wooden outer case to provide a choice in determining the type of outer case.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. §§ 201(2) and 403(b) of the Public Welfare Code, P.L. 31, No. 21 (62 P.S. §§ 201(2) and 403(b)).			

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

There is no statutory or court mandate for this change.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The maximum allowance for burial in 55 Pa.Code Chapter 285 (relating to payment for burial), which was effective August 1977, does not reflect the prevailing costs to provide these basic burial services. The rates are increased to reflect the rising costs of burial and to reflect the Department's commitment to ensure that appropriate payment is made to funeral directors on behalf of deceased individuals.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

In general, there are no public health, safety, environmental or general welfare risks associated with nonregulation. However, nonregulation may have a negative affect on the general willingness of funeral directors to provide timely, efficient and effective burial services. If funeral directors refuse to provide burial services due to the low payment by the Department, there would be a resultant burden on the deceased individual's family members or the community to pay the expenses.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The proposed regulation will benefit individuals acting on behalf of a deceased individual by allowing more flexibility and choice in the planning for burial goods and services.

The proposed regulation will benefit funeral directors by providing for increased payments that will more adequately cover the actual costs of burial goods and services. The proposed regulation will reduce the uncompensated costs for burial goods and services that are incurred by funeral directors. There are approximately 194 funeral directors enrolled as providers who accept payment from the Department. Of this number, approximately 216 payments were distributed to funeral directors from the Department in the past two years.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected by this proposed regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Funeral directors who are enrolled providers must comply with this regulation. There are approximately 194 funeral directors enrolled as providers who accept payment from the Department. Of this number, approximately 216 payments were distributed to funeral directors from the Department in the past two years.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

As a result of receiving both oral and written inquiries and comments from funeral directors, the Department recognized the need for an increase in the payment for burial services. The maximum payment for burial services is inadequate since costs for transportation and preparation of the body, memorial services and gratuities for clergy and cemetery procedures have increased considerably in the last 25 years.

The Pennsylvania Funeral Directors' Association and several funeral directors were involved in the development of the proposed regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed regulation reduces the uncompensated costs for services that are incurred by funeral directors.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed regulation does not involve local government compliance or cost.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department estimates the annual cost for the program to be \$1.116 million in total State funds.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.
 (Dollar Amounts In Thousands)

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community						
Local Government						
State Government	\$1,116	\$1,116	\$1,116	\$1,116	\$1,116	\$1,116
Total Costs	\$1,116	\$1,116	\$1,116	\$1,116	\$1,116	\$1,116
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the estimates listed above were derived.

These cost estimates are based on paid claims information. The estimate consists of two components. The major cost item is the increase in utilization that is expected to result because at the unusually low fees paid for these services previously, many services were never billed to the Department. The smaller cost factor is to update current reimbursements to the new maximum fee of \$750 for burial services (from \$350).

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
MA-Outpatient	\$1,116	\$1,116	\$1,116	\$1,116	\$1,116	\$1,116

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
MA-Outpatient	\$668,586	\$705,750	\$666,832	\$738,286

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects for an individual acting on behalf of a deceased individual or for funeral directors. Eligibility for this allowance continues to be limited to individuals who were eligible and authorized for or received cash assistance at the time of death. Payment is reduced by benefits such as Social Security death benefits, VA death benefits or other death benefits which may be payable on behalf of the deceased individual. Payment may also be reduced by contributions of money, goods or services provided by private agencies or individuals that exceed \$750. Reimbursement rates to funeral directors are being increased to reflect the Department's commitment to provide basic needs and services to eligible individuals. The increased rates more adequately cover the actual costs of providing burial goods and services.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

This proposed regulation codifies existing policy in the NORC published at 30 Pa.B. 2957 (June 10, 2000) by increasing the payment for burial services to \$750 and increasing the maximum level of contributions in money, goods or services made by an agency or individual.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Department considered the prevailing costs for burial services and the rates of other states and determined the rate of \$750 to be most appropriate.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No provisions in this proposed regulation are more stringent than Federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

By increasing the amount of the Department's payment rate for burial services, Pennsylvania will be more competitive in keeping enrolled funeral directors as providers. Since 1977 there have been approximately 900 enrolled providers, but in the past two years only 216 have provided burial services at the Department's payment rate. The number of funeral directors providing services is declining. Neighboring states are offering higher payments; subsequently, many enrolled providers are no longer providing burial services at the Department's payment rate.

This regulation improves Pennsylvania's competitive advantage with other states by increasing the burial service reimbursement rate to funeral directors to be more compatible with rates of other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. This proposed regulation will not affect existing or proposed regulations of this Department or another State agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are scheduled. However, the Department will meet with funeral directors, the Pennsylvania Funeral Director's Association and other affected individuals, if warranted by the public comments received on the proposed regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

There are no changes to existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no special provisions that have been developed to meet the particular needs of affected groups or persons.

The proposed regulation applies to a deceased individual who was eligible and authorized for or was receiving cash assistance at the time of death.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amendments to §§ 285.3(d) regarding the maximum payment amount for all eligible individuals and 285.3(e) regarding resources that do not reduce payment are effective retroactive to July 3, 2000, to coincide with the effective date of the Notice of Rule Change.

The proposed amendments to §§ 285.3(c)(1)(ii) regarding standard outer case and 285.3(d) regarding separation of payment for goods and services and for interment are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

(31) Provide the schedule for continual review of the regulation.

The Department will review compliance with the regulation through its Quality Control and Corrective Action review process, which is monitored by the Federal Department of Health and Human Services.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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2004 MAR 20 AM 9:42

REVIEW COMMISSION

#2395

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.
Attorney General

[Signature]
By: _____
(Deputy Attorney General)

MAR 09 2004
Date of Approval

π Check if applicable
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

DEPARTMENT OF PUBLIC WELFARE
(Agency)

LEGAL COUNSEL: *[Signature]*

DOCUMENT/FISCAL NOTE NO. 14-481
(DPW-OIM-04-03-01)

DATE OF ADOPTION: _____

BY: *[Signature]*

TITLE: **SECRETARY OF PUBLIC WELFARE**
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to
form and legality. Executive or
Independent Agencies.

BY: *[Signature]*

2/11/04
Date of Approval

[Signature]
(Deputy General Counsel)
~~(Chief Counsel, Independent Agency)~~
(Strike inapplicable title)

π Check if applicable. No Attorney
General approval or objection
within 30 days after submission.

**NOTICE OF PROPOSED RULEMAKING
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF INCOME MAINTENANCE
[55 Pa.Code Chapter 285]
Payment for Burial**

STATUTORY AUTHORITY

Notice is hereby given that the Department of Public Welfare (Department), under the Authority of §§ 201(2) and 403(b) of the Public Welfare Code (Code), Act of June 13, 1967, P. L. 31, No. 21 (62 P.S. §§ 201(2) and 403(b)), proposes to amend the regulation set forth in Annex A to this notice.

PURPOSE

The purpose of this proposed regulation is to codify the Notice of Rule Change (NORC) published at 30 Pa.B. 2957 (June 10, 2000). This rule change increased the payment to funeral directors for burial services to \$750 for all eligible individuals. Prior to this rule change, payments were \$350 for an individual 10 years of age or older, \$250 for an individual under 10 years of age and \$85 for a stillborn child. This rule change also increased the maximum level of contributions made by an agency or individual from \$180 to \$750.

Additionally, the proposed regulation eliminates the separation of payments for goods and services and for interment and removes the requirement for a wooden outer case to provide a choice in determining the type of outer case.

NEED FOR REGULATION

The maximum allowance for burial services in 55 Pa.Code Chapter 285 (relating to payment for burial) is inadequate and does not reflect the prevailing costs to provide basic burial services. The costs for transportation and preparation of the body, memorial services, gratuities to clergy and cemetery procedures have increased considerably in the last 25 years. Regulations governing maximum payment amounts for burial were adopted at 7 Pa.B. 2180 (August 5, 1977). The proposed regulation is necessary to update the regulations to provide a more adequate payment for basic burial services.

The proposed regulation to eliminate the separation of payment amounts and the requirement for a wooden outer case is necessary to allow an individual arranging the burial services and the funeral director more flexibility and choice in planning for goods and burial services.

REQUIREMENTS

Following is a summary of specific proposed regulatory amendments:

1. Section 285.3(c)(1)(ii). The Department proposes to eliminate the restriction to provide a wooden outer case. The Pennsylvania Funeral Director's Association indicates that a wooden outer case is not necessary and may be

more expensive than an outer case of other materials such as metal. Removing this restriction allows an individual arranging the burial services and the funeral director more flexibility and choice in planning for burial goods and services.

2. Section 285.3(d). The Department proposes to increase the maximum payment to funeral directors to \$750 for burial goods and services and interment for a deceased individual of any age who was receiving or was eligible for and authorized to receive cash assistance at the time of death. Under current regulations, the maximum payment to funeral directors is \$350 for an individual 10 years of age or older, \$250 for an individual under 10 years of age and \$85 for a stillborn child. The Department also proposes to eliminate the separation of payment amounts for goods and services and for interment. The proposed regulation allows greater flexibility and choice in planning for burial goods and services.

3. Section 285.3(e)(1)(i). The Department proposes to increase the maximum level of contributions made by an agency or individual from \$180 to \$750. The Department also proposes to delete the requirements for interment charges, cave-proof containers and transportation since the payment for burial goods and services is now an unrestricted payment of \$750.

4. Section 285.3(e)(1)(ii). The Department proposes that contributions in excess of \$750 will reduce the Department's payment by the difference between \$750 and the value of the contribution. The proposed change is necessary for consistency in the allowable amounts for contributions as proposed in § 285.3(e)(1)(i) (relating to requirements).

AFFECTED INDIVIDUALS AND ORGANIZATIONS

The proposed regulation affects an individual acting on behalf of a deceased individual of any age who was eligible and authorized for or was receiving cash assistance at the time of death. The proposed regulation allows an individual arranging the burial more flexibility and choice in planning for burial goods and services.

Funeral directors who are enrolled providers are the beneficiaries of increased burial payments. The proposed regulation allows increased payments to funeral directors that will more adequately cover the actual cost of burial goods and services.

ACCOMPLISHMENTS AND BENEFITS

The proposed regulation will benefit individuals acting on behalf of a deceased individual by allowing more flexibility and choice in the planning for burial goods and services.

The proposed regulation will benefit funeral directors by providing for increased payments that will more adequately cover the actual costs of burial goods and services. The proposed regulation will reduce the uncompensated costs for burial goods and services that are incurred by funeral directors.

FISCAL IMPACT

Public Sector

Commonwealth: The Department estimates an increase in annual expenditures of \$1.116 million. This amount represents the increase in payments to funeral directors for burial goods and services rendered at the new maximum rate of \$750.

Political Subdivisions: There will be no costs or savings for political subdivisions.

Private Sector

The proposed regulation will reduce the uncompensated costs for services that are incurred by funeral directors.

General Public:

There will be no costs or savings for the general public.

PAPERWORK REQUIREMENTS

This proposed regulation does not increase paperwork requirements.

EFFECTIVE DATE

The amendments to §§ 285.3(d) regarding the maximum payment amount for all eligible individuals and 285.3(e) regarding resources that do not reduce payment are effective retroactive to July 3, 2000, to coincide with the effective date of the Notice of Rule Change.

The proposed amendments to §§ 285.3(c)(1)(ii) regarding standard outer case and 285.3(d) regarding separation of payments for goods and services and for interment are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

SUNSET DATE

There is no sunset date. The Department will review compliance with the regulation through its Quality Control and Corrective Action review process, which is monitored by the Federal Department of Health and Human Services.

PUBLIC COMMENT

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed regulation to the Department of Public Welfare, Office of Income Maintenance, Edward J. Zogby, Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, Pennsylvania 17120, (717) 787-4081 within 30 calendar days after the date of publication of this notice in the *Pennsylvania Bulletin*. Comments received within 30 calendar days will be reviewed and considered in the preparation of the final-form regulation. Comments received after the 30-day comment period will be considered for subsequent revisions of the regulation.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

REGULATORY REVIEW ACT

Under § 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on ~~MAR 20 2014~~ the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations or objections to any portion of the proposed regulation, it may notify the Department and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

ANNEX A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart I. OTHER INCOME MAINTENANCE PROGRAMS

CHAPTER 285. PAYMENT FOR BURIAL

GENERAL PROVISIONS

* * * * *

§ 285.3. Requirements.

* * * * *

(c) *Standards for burial.* The standards for burial are as follows:

(1) Payment of goods and services, and interment. The minimum requirements for goods and services, unless the remains are cremated, are as follows:

* * * * *

(ii) Standard [wooden] outer case, unless a cave-proof container is contributed, or unless an outer case is contrary to custom or cemetery regulations.

* * * * *

(d) *Department payment schedule.* The Department's total payment for burial[, if there are no resources to reduce the payment, are as follows:] is \$750 for goods and services and for interment charges. The Department will make a total payment not to exceed \$750 for a deceased individual of any age who was receiving or was eligible and authorized to receive cash assistance at the time of death.

<i>[Client</i>	<i>Description</i>	<i>Amount</i>
		<i>(in dollars)</i>
Adult or	Good and services	280
child 10	Interment, actual charges	<u>70</u>
years of age	but not over	350 maximum
Child under	Goods and services	180
10 years of	Interment, actual charges	<u>70</u>
age	but not over	250 maximum
Child born	Goods and services	50
dead	Interment, actual charges	<u>35</u>
	but not over	85 maximum]

(e) *Resources that do not reduce Department payment.* If a person or agency makes small contributions, such as articles of clothing, the use of cars to carry the funeral party, newspaper advertising, flowers, religious services, and the like, they are not considered in determining the amount of the Department payment.

(1) *Resources for special burial costs.* Resources for special burial costs are as follows:

(i) The Department burial payments are based on a minimum standard for burial. To recognize certain circumstances that the minimum standard does not include, the following resources do not reduce the Department payment: contributions in money, goods or services by an agency or person, including legally responsible relatives, [for clauses (A), (B) and (C),] up to a total of [~~\$180~~] \$750. [for any or all of the following:

(A) The amount by which the actual charges for interment exceed \$70, or \$35 for a child born dead, in the cemetery chosen by the person requesting burial payment.

(B) The charge for a cave-proof container to meet the minimum standards of a cemetery that requires that type of container.

(C) The charge for transporting the remains for the number of miles over 15. This charge shall be no more than the prevailing local rate for hearse hire, or charge for rail transportation, whichever is used.]

(ii) If agencies or persons, or both, make total contributions of [over \$180 for subparagraph (i)(A), (B) and (C)] more than \$750, the difference between [~~\$180~~] \$750 and the value of the actual contributions reduces the Department payment.

* * * * *

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
REGULATORY REVIEW ACT**

**IRRC
14th Floor
HARRISTOWN II**

3

I.D. NUMBER: 14-481
SUBJECT: Payment for Burial
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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REGULATORY REVIEW ACT

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/23	A. Kucker	HOUSE COMMITTEE ON HEALTH & WELFARE
3/23	J. Chan	
3/23/04	Michael White	
3/23/04	Kewon Kreiser	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
3/23/04	Elisa Pagan	INDEPENDENT REGULATORY REVIEW COMMISSION (Deliver last) This sheet is left here also.
		ATTORNEY GENERAL (for Final Omitted only)
3/24	C. Lu	LEGISLATIVE REFERENCE BUREAU (for Proposed only)