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House of Representatives  
COMMONWEALTH OF PENNSYLVANIA  
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October 16, 2009

Mr. Arthur Coccodrilli  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17101

Re: Regulation #16A-4815 (IRRC #2627)  
State Board of Funeral Directors  
Pre-need Funeral Arrangements

Chairman Coccodrilli:

I am writing to comment on the final-form submission by the State Board of Funeral Directors (the "Board") regarding Pre-Need Funeral Arrangements (16A-4815). The final-form submission is to be voted on by the Commission on October 22, 2009.

My experience tells me that Pennsylvanians are greatly benefiting from the availability of pre-need funeral arrangements. Financially and emotionally this option provides a great service to many vulnerable people. The Board's proposed regulations are a threat to this desirable alternative.

Having reviewed the comments from the disability community, funeral directors, the House Professional Licensure Committee and the Commission, I respectfully request that the Commission disapprove these regulations for the following reasons:

First, as noted in the Commissions comments on the proposed regulations, Section 16(a) of the Funeral Director Law (63 P.S. §479.16) empowers the Board to formulate rules and regulations that are necessary or proper to safeguard the interests of the public and the standards of profession. The regulation, both as proposed and in final-form does not establish the necessity for the regulation, and fails to identify the interest of

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the public that is to be safeguarded. Absent this, the Board is not empowered to formulate regulations.

Second, the final-form regulations create "illusory" contracts. In an illusory contract, one of the parties to the agreement reserves the right to free themselves from their obligations under the contract. Section 13.228(a) of the regulations requires that every pre-need contract (entered into after the effective date) permit the consumer to transfer the funds to another funeral director. In short, Section 13.228(a) requires all contracts to be illusory, freeing the consumer from any obligation to the contracting funeral director and thereby eliminating the funeral director's incentive to offer pre-arranged funerals to consumers. This would be a bad result.

Third, the regulations fail to protect the interests of the many vulnerable Pennsylvanians who receive SSI and Medical Assistance. The disability community, The House Professional Licensure Committee and the Commission all expressed their concerns to the Board as to whether under these regulations a pre-need contract would still be considered irrevocable, and thereby not considered an asset for purposes of eligibility determination. While the Board may have attempted to address this issue in final-form submission, it is clear from the continuing strong opposition from the disability community that these regulations fail to address their concerns.

It appears that the proposed regulations address a non-existent problem by creating illusory contracts that are likely to have a negative impact on the disability community as well as seniors in the Commonwealth. I therefore, respectfully request that the Commission disapprove the final-form submission of 16A-4815 Pre-need Funeral Arrangement.

Sincerely,



Tony J. Payton, Jr.  
State Representative  
PA House of Representatives  
179<sup>th</sup> Legislative District

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COMMONWEALTH OF PENNSYLVANIA  
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