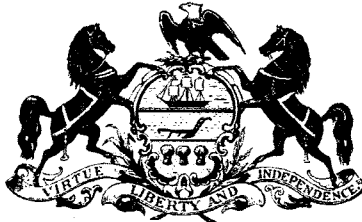


THOMAS P. MURT, MEMBER
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

VETERANS AFFAIRS & EMERGENCY
PREPAREDNESS
CHILDREN AND YOUTH
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October 19, 2009

Kim Kaufman, Executive Director,
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: #16A-4815 Final-Form Regulations - Preneed Funeral Arrangements

Dear Mr. Kaufman,

I am writing to express my concerns regarding regulations #16A-4815 regarding pre-need funeral arrangements. The final form of these regulations is scheduled to be voted on by the Independent Regulatory Review Commission Thursday, October 22nd.

As co-chair of the bi-partisan Caucus for People with Intellectual Disabilities, I am concerned by the potential negative impact these regulations will have on people with intellectual disabilities whose families want the assurance of a dignified end of life and at the same time must live within the strict asset and resource limits mandated by SSI and Medical Assistance (MA).

I am aware that numerous providers and associations who support people with disabilities raised this same concern and others in 2007 when these regulations were originally proposed, as did the House Professional Licensure Committee and the Commission itself. I see that the State Board of Funeral Directors attempts to respond in the preamble of this final rulemaking, yet the final regulations themselves remain vague and unclear, particularly in sections regarding the transfer of preneed funeral contracts.

In your October 24, 2007 comments on the proposed regulations, the IRRC states:

In its comments, the House Committee expressed concerns with the impact of this regulation on the calculation of resources in determining eligibility for benefits from Social Security or Medical Assistance (MA) programs. The Board claims that customers will be able to set aside the preneed funds and avoid having them calculated as a resource because the account, money or trust remains "irrevocable." Subsection (b) directs the transfer of the preneed funds from one funeral entity to another at the direction of the customer. However, nothing in this section states that the funds are "irrevocable" or that none of the funds may be returned to the customer. In fact, the words "revocable," "irrevocable" or "irrevocability" do not appear in the proposed regulation or the Preamble. In the final-

form regulation, the Board should clarify whether preneed funds would be irrevocable, and how the funds would be protected from classification as an asset for the purposes of Social Security or MA programs.

The Board should also respond to the questions raised by the House Committee as to whether the preneed funds can be irrevocable yet still transferable. There is also a concern with the Law. Section 13(c) of the Law includes the following sentence: "... If any such licensed funeral entity shall accept any money for such contracts, he shall, forthwith, either deposit the same in an escrow account in, or transfer the same in trust to, a banking institution in this Commonwealth, conditioned upon its withdrawal or disbursement only for the purposes for which such money was accepted...."

It is unclear how the proposed regulation is consistent with the Law since none of its provisions guarantee that the money will be used for the purposes for which it was accepted. These purposes are set forth in the original preneed contract. The final-form regulation should ensure that the purposes in the original contract are fulfilled.

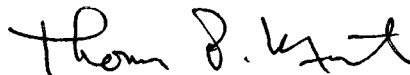
In the absence of guidance on transferring funds, the impact on consumers and providers of mental retardation and autism services is not clear. For example, if a funeral entity transfers a contract to another funeral entity, and tells that second entity the preneed funds are irrevocable, there are no assurances that the second entity will ensure that the funds remain irrevocable.

I cannot see how the State Board has adequately responded to the concerns raised by the IRRC and the House Committee in the proposed rulemaking, so I am unsure how the requirements of the Regulatory Review Act are fulfilled by the submission of these regulations.

I have read the Regulatory Analysis Form submitted to the IRRC. I am also unclear as to what problem this regulation is proposing to address.

I do not believe the State Board of Funeral Directors has any interest in eroding the benefits that individuals with mental retardation and autism receive. However, the proposed regulations appear to have a potentially negative impact on individuals receiving services in the community disabilities system. For this reason, I urge the Commission to disapprove #16A-4815.

Sincerely,



Thomas P. Murt
State Representative
152nd Legislative District