

Regulatory Analysis Form

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(1) Agency
 Department of Public Welfare
 Office of Income Maintenance
 Bureau of Policy

(2) I.D. Number (Governor's Office Use)

14-510

IRRC Number: 2655

(3) Short Title

Payment for Burial and Cremation

(4) PA Code Cite

55 Pa. Code Chapters 283, 285 and 1251

(5) Agency Contacts & Telephone Numbers

Primary Contact: Edward Zogby, Director
 Bureau of Policy
 717-787-4081

Secondary Contact: Mindy Marciano, Director
 Division of Welfare Reform Initiatives
 717-772-7829

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

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

(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 mandate for this change.

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

This final-form rulemaking is needed because the maximum allowance for burial services in Chapter 285 is inadequate and does not reflect the prevailing costs to provide burial and cremation services. The costs for transportation and preparation of the body, memorial services, gratuities to clergy and cemetery procedures have increased considerably since current regulations were adopted in August 1977. This final-form rulemaking is necessary to update the regulations to provide for a payment that more adequately covers the actual costs of burial and cremation goods and services.

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

In general, there would be no public health, safety, environmental or general welfare risks associated with nonregulation. Nonregulation may reduce the general cooperation by funeral service providers to provide timely, efficient and effective burial and cremation services at the Department's current payment level, resulting in a burden on the deceased person's remaining family members or the community.

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

This final-form rulemaking will benefit 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 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 funeral service providers. There are approximately 271 funeral directors enrolled as providers who receive payment from the Department. The Department made approximately 1,417 payments to funeral directors 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.

(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 with the Department are required to comply with the proposed rulemaking. There are approximately 271 funeral directors enrolled as providers who receive payment from the Department. The Department made approximately 1,417 payments to funeral directors in the past 2 years.

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 be affected as these will need to comply if their services are provided as a part of the agreement between the funeral director and the individual handling the funeral arrangements.

(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.

A 30-day comment period followed publication of the proposed rulemaking at 37 Pa.B. 6534 on December 15, 2007. The Department received two comments during the comment period. One from the Pennsylvania Funeral Directors Association which supports this rulemaking in its entirety and one from Community Legal Services of Philadelphia.

Sandra S. L. Whermy
8-6-08

Regulatory Analysis Form

(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.

Not applicable.

(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.

Not applicable.

(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 increase in burial payments since FY 2000-2001 resulted in increased State fund costs of \$2.898 million since implementation through Fiscal Year 2007-2008. The estimated cost of \$0.445 million in State funds is anticipated in Fiscal Year 2008-2009.

Linda D'Arby 8-6-08

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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.

	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	\$445	\$453	\$459	\$465	\$471	\$477
Total Costs	\$445	\$453	\$459	\$465	\$471	\$477
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

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

These cost estimates are based on paid claims information which indicates a 76 percent increase in claims in Fiscal Year 2000-2001, the first fiscal year of implementation. This increase was anticipated due to the unusually low fees previously paid for these services, which resulted in many services never being billed to the Department. The estimated costs reflect both the increase in utilization as well as the update to the new maximum fee of \$750 for burial services (from the previous fee of \$350).

	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
MA-Outpatient	\$445	\$453	\$459	\$465	\$471	\$477

Regulatory Analysis Form

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

(Dollar Amounts in Thousands)

Program	FY 2004-2005	FY 2005-2006	FY 2006-2007	FY 2007-2008
MA-Outpatient	\$842,991	\$945,950	\$671,472	\$593,992

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

Reimbursement rates to funeral directors are being increased to reflect the Department's commitment to provide basic needs and services to indigent citizens.

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

No nonregulatory alternatives were considered since this final-form rulemaking will codify existing policy published in a NORC at 30 Pa.B. 2957 (June 10, 2000).

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

There are no viable alternative regulatory schemes applicable to the provision of burial and cremation goods and services.

(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.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other 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 Pennsylvania. Maryland contributes up to \$650 towards the cost of a funeral that does not exceed \$1500. 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 \$2770 and allows outside contributions of up to \$1570. West Virginia provides a maximum payment of \$1250 and allows outside contributions of up to \$1200.

This final-form rulemaking will not put Pennsylvania at a competitive disadvantage with other states.

Regulatory Analysis Form

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

This final-form rulemaking will add 55 Pa.Code Chapter 283 (relating to payment for burial and cremation) to replace Chapter 285 (relating to payment for burial). This final-form rulemaking will also amend citations in Chapter 1251 (relating to funeral directors' services) that reference Chapter 285 to conform to the addition of Chapter 283.

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

The Department will continue to meet with affected individuals and organizations to discuss the application and effectiveness of this regulation.

(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 to this final-form rulemaking.

(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?

This regulation is effective upon final publication in the Pennsylvania Bulletin with the exception of § 283.21. The amendment to § 283.21 is effective retroactive to July 3, 2000, to coincide with the effective date of the NORC.

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

This final-form rulemaking will be subject to internal review through the Department's Quality Control and Corrective Action review process which is monitored by the Federal Department of Health and Human Services.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

Date of Approval

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: Dale Jenkins

DOCUMENT/FISCAL NOTE NO. 14-510

DATE OF ADOPTION: _____

BY: Estelle B. Rickman

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

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

[Signature]
BY: _____

Andrew C. Clark

JAN 26 2009

Date of Approval

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

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

NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF INCOME MAINTENANCE

[55 Pa.Code Chapter 283]

Payment for Burial and Cremation

[55 Pa.Code Chapter 285]

Payment for Burial

[55 Pa.Code Chapter 1251]

Funeral Directors' Services

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the regulation set forth in Annex A under the authority of the Public Welfare Code, Act of June 13, 1967, P.L. 31 No. 21, 62 P.S. §§ 201(2) and 403(b). Notice of proposed rulemaking was published at 37 Pa.B. 6534 on 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 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 rulemaking increases the maximum payment to funeral directors for burial or cremation services to a standard \$750 for all eligible individuals. This 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 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 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 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 Fiscal Year (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 at § 283.6(a) and a description of the form at § 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 \$6500 and requested that the Department increase its payment for burial or cremation to \$3000 and also disregard \$3000 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 regulation. 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 Pennsylvania. Maryland contributes up to \$650 towards the cost of a funeral that does not exceed \$1500. 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 \$2770 and allows outside contributions of up to \$1570. West Virginia provides a maximum payment of \$1250 and allows outside contributions of up to \$1200.

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.

The Department also amended § 283.21 by adding a subsection specifying that future increases to the Department's payment or to the total value of resources that are used to determine the Department's payment will be amended by the Department publishing a notice in the *Pennsylvania Bulletin*.

§§ 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 regulation.

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 (relating to Department payment) to clearly specify that the Department will not pay for funeral expenses if the total value of resources from an agency or individual exceed \$1500. In addition, the Department provided the formula the Department uses to determine payment when the total value of resources does not exceed \$1500.

As a result of IRRC's statements that it is unclear how certain provisions of § 283.22 relate to § 283.24 (relating to resources reducing Department payment), 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 FEB 12 2009 , the Department submitted a copy of this regulation 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 compliance with the Regulatory Review Act, the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

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

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was [deemed] approved by the Committees on . The IRCC met on and approved the regulation.

In addition to submitting the final-form rulemaking, the Department has provided the 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.

Order

The Department finds:

- (a) The public notice of intention to adopt the administrative regulation by this Order has been given under §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa. Code §§ 7.1 and 7.2.

- (b) That the adoption of the regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting under the authority of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) orders:

- (a) The regulation of the Department is adopted to read as set forth in Annex A of this Order.

- (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 amendment to § 283.21 is effective retroactive to July 3, 2000, to coincide with the effective date of the NORC.

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

§ 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) This form shall be completed by the individual requesting payment and the funeral director. This 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.

This 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 [§283.24 (relating to resources reducing Department payment)] §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 at 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.

[The Department's total payment for burial or cremation, or both, is \$750 for goods and services and interment charges. The Department will make a total payment not to exceed \$750 for a deceased individual who was eligible and authorized for cash assistance at the time of death.]

(a) The Department's payment for burial or cremation, or both must 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 \$1500, 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.

(c) Future increases to the following will be published as a notice in the *Pennsylvania Bulletin* and codified in this section:

(1) The Department's payment for burial or cremation, or both.

(2) The total value of resources that are used to determine the Department's payment.

§ 283.22. Resources [that do not reduce Department payment].

[Resources that are not considered in determining the Department payment include:

(1) Small contributions such as articles of clothing, the use of cars to carry the funeral party, newspaper obituary, flowers and religious services.

(2) Contributions in money, goods or services by an agency or individual, including legally responsible relatives, up to a total of \$750.]

(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 where 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 [§283.24 (relating to resources reducing Department payment)] § 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.

[§ 283.24. Resources reducing Department payment.

(a) When an individual submits a payment form to the Department, the Department will determine the resources available to meet expenses.

(b) Resources may be in the estate of the deceased, payable on behalf of the deceased to the estate or to another individual, or contributed on behalf of the deceased.

(c) The combined value of the following contributions in money, goods or services by an agency or individual, except as specified in § 283.22 (relating to resources that do not reduce Department payment) reduces the Department payment:

(1) The contributions and resources made by an agency or individual.

(2) Burial reserve in the estate of the deceased, and the value of a burial reserve and burial space as set forth in § 177.2 (relating to definitions).

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

(4) Other personal property in the estate of the deceased that may be readily converted into cash, and is not needed to meet a living requirement for the survivors.

(5) Life insurance death benefits payable to legally responsible relatives or individuals or organizations that paid insurance premiums by agreement with the insured that the benefits are used for burial.

(6) Burial benefits 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:

(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 did not assume responsibility.

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

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.]

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).

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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 [285] 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 § [285.3] 283.4 (relating to [requirements] 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 [285] 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 [285] 283 (relating to payment for burial and cremation).

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PROVIDER PARTICIPATION

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§ 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 §§ [285.4(a)—(c)(relating to procedures)] ~~283.1, 283.3, 283.11, 283.21 and 283.22~~ 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 [285] 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 [285] 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 § [285.4(e)] 283.31 (relating to [procedures] funeral director violations).

Commentators on Payment for Burial and Cremation

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TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 14-510
SUBJECT: PAYMENT FOR BURIAL AND CREMATION
AGENCY: DEPARTMENT OF PUBLIC WELFARE

TYPE OF REGULATION

- Proposed Regulation
X 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

RECEIVED
FEB 19 2009

FILING OF REGULATION

Table with columns: DATE, SIGNATURE, DESIGNATION. Rows include House Committee on Health & Human Services, Senate Committee on Public Health & Welfare, Independent Regulatory Review Commission, Attorney General, and Legislative Reference Bureau.