

INTRODUCTION



The Funeral Prearrangement Conference

Millions of people in New York State and across the nation are choosing to pay their funeral/burial expenses well in advance. As part of a significant trend, more are doing so each day. Why? They recognize that taking care of this important need is not only smart financial planning, but provides great emotional relief just knowing that their final expenses are covered.

There are a number of advantages to preplanning and prefunding funeral expenses:

- It allows individuals the opportunity to make personal and specific selections for the funeral service that most closely meets their needs;
- It is comforting to know that money has been set aside for their final expenses, which will in turn reduce the burden on family members at a difficult time;
- Loved ones are not left guessing which type of funeral service would have been preferred; and
- Medicaid/SSI recipients are allowed to set aside money to fully fund the service of their choice before their funds are exhausted down to necessary eligibility levels.

What you should expect from a prearrangement conference:

The law requires the funeral director to provide the consumer with the following:

1. A **GENERAL PRICE LIST** with the current prices for any merchandise, services and facilities offered by the funeral home.
2. A **PRENEED ITEMIZATION STATEMENT** that lists the items of merchandise, services and facilities that have been chosen, and the price of each.
3. A **PRENEED AGREEMENT** that outlines all the terms, as well as consumer's rights as the purchaser. It must also state how the principal and interest will be applied to the cost of the funeral services and merchandise at the time they are provided.



Samples of the GENERAL PRICE LIST, PRENEED ITEMIZATION STATEMENT, and PRENEED AGREEMENT are provided on pages 16 through 27 of this booklet.

Different Types of Preneed Agreements

New York State mandates that preneed agreements with New York funeral firms **MUST BE REVOCABLE**, except for Medicaid/SSI applicants or recipients and their family members. This means that all preneed agreements (except when prepared for Medicaid spend-down) may be canceled at any time prior to death and the entire balance, including all accrued interest, may be refunded upon request.

New York State mandates that preneed burial trusts for applicants or recipients of Medicaid/SSI **MUST BE IRREVOCABLE**. This means that the prearrangement **MAY NOT** be canceled prior to death. It may, however, be transferred to a different funeral home at any time.

Effective January 1, 2011, New York State law also mandates that all contracts for prefunded funerals for family members executed by applicants for or recipients of Medicaid also be IRREVOCABLE. An applicant/recipient of Medicaid/SSI may, under New York State law, set aside funds for funeral trust accounts for immediate family members. Immediate family members include:

- The applicant/recipient's spouse;
- Minor and adult children;
- Stepchildren;
- Brothers;
- Sisters;
- Parents; and
- Spouses of these individuals.

Please note that when the original purchaser (applicant/recipient) passes away, the beneficiary (family member) becomes the new purchaser and taxpayer. At that time, the Social Security number associated with the account will be changed from the original purchaser's to the beneficiary's. Aside from being revocable or irrevocable, there are three types of preneed agreements. The following is a description of each:

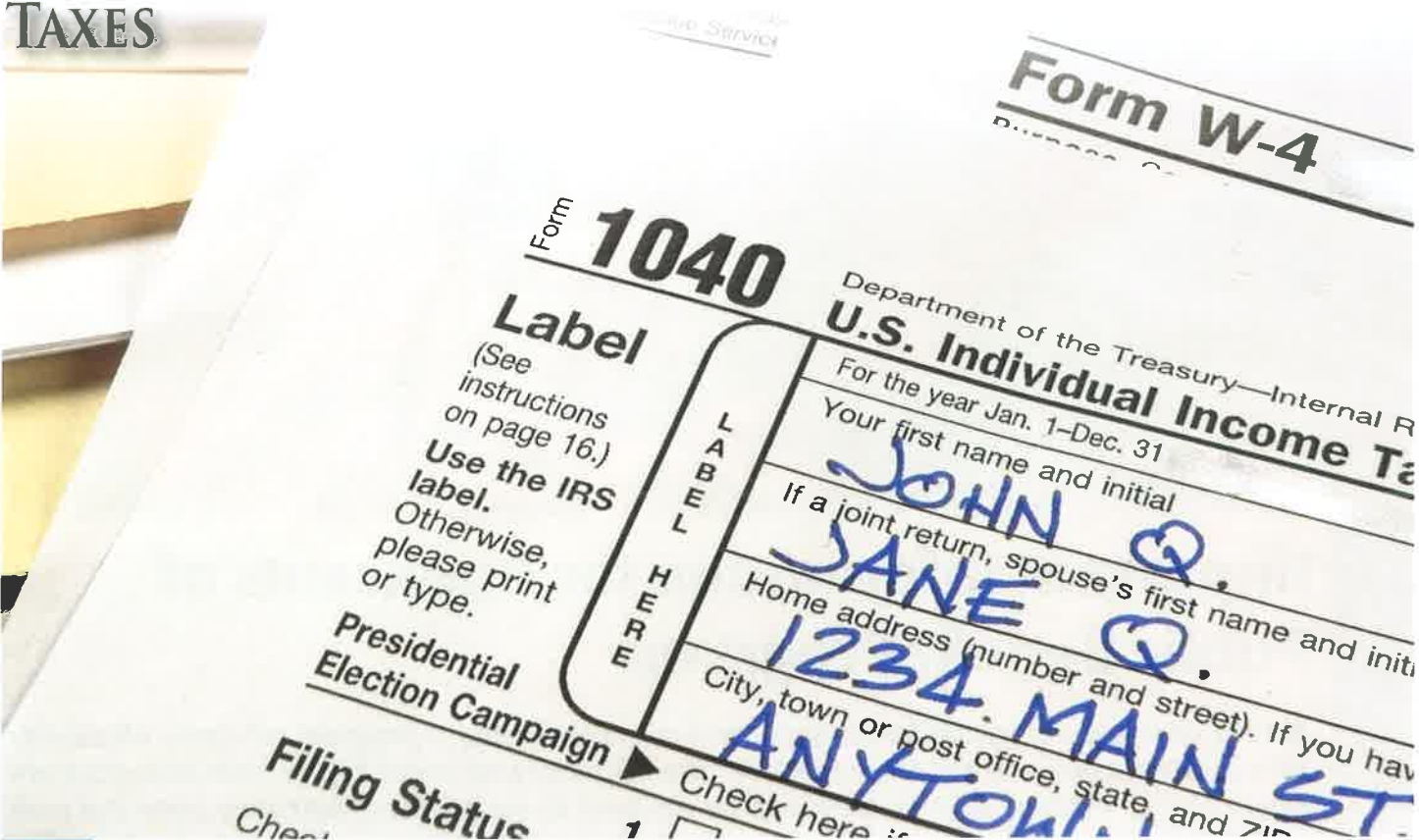
NON-GUARANTEED – indicates that the funeral home does not guarantee that the principal plus interest earned on the trust will be sufficient to pay the total and final cost of the prearranged products and services. In other words, a balance may be due at the end. The funeral home will provide the funeral services and merchandise selected at the cost of those items at the time of the funeral. If the total cost of the funeral exceeds the amount in the trust account, the additional expense will be due.

FULL GUARANTEE – guarantees that the price of the funeral services and merchandise will not exceed the balance of deposits and interest earned in the trust account at the time that the funeral is provided. The funeral home agrees that the principal deposited plus any interest earned on the paid in full account will be sufficient to pay for all final expenses to be provided by both the funeral home AND third party vendors providing cash advance items.

GUARANTEED EXCLUDING CASH ADVANCES – guarantees that the price of the funeral home charges only will not exceed the principal deposited plus any interest earned on the paid in full account at the time that the funeral is provided. Outside vendor costs such as cemetery expenses and death certificates are not guaranteed. Please note, interest earned on this type of account should be split proportionately between the funeral home charges and the cash advance charges.

How Preplanning Works . . .

- Purchaser selects the funeral home of their choice.
- Purchaser meets with a funeral director.
- Purchaser selects desired services and merchandise while reviewing the funeral home's *General Price List*.
- Funeral director prepares an *Itemization Statement* and *Preneed Agreement*.
- Both the funeral director and purchaser sign the documents.
- Purchaser submits a check made payable either to the funeral home or the funeral trust program. If cash is remitted, the purchaser should obtain a cash receipt at the time of the transaction.
- Purchaser receives copies of all signed documents and a *General Price List* for retention.
- Within ten days, the funeral director forwards the funds to a funeral trust program (i.e., *PrePlan* or deposits the money directly into a government-backed, interest-bearing account within a New York State financial institution).
- Within 30 days, the purchaser should receive a deposit acknowledgment in the mail indicating where the money has been placed.
- Funds are paid directly to the funeral home once the funeral services have been provided.
- If the account is **REVOCABLE** and there is an overage after the final funeral charges have been paid, the overage will be paid to the living purchaser or the decedent's estate.
- If the account is **IRREVOCABLE** and there is an overage after the final funeral charges have been paid, the overage will be paid to the county where the beneficiary resided and was receiving assistance.
- If the total funeral charges were never paid-in-full or if the purchaser requested partial refunds from the preneed account during the life of the trust, an outstanding balance *may* be due and any guarantee would technically become null and void.



Taxation of Preneed Funeral Trusts

The Internal Revenue Service (ruling 87-127) has determined that purchasers of preneed funeral trusts are responsible for any income tax (if the purchaser is required to file) resulting from interest earned on the trust account, because the funds, although set aside as payment for funeral expenses, always remain the property of the purchaser.



The Summary Statement

The purchaser will receive a tax information statement each year, postmarked by January 31st.

With the exception of irrevocable trusts, a purchaser always maintains the right to withdraw the funds at any time prior to the performance of the funeral. Although withdrawals are not permitted from irrevocable trusts, the funds may be transferred to a different funeral firm at any time.

The purchaser will receive a tax information statement each year, postmarked by January 31st, (i.e., Grantor Trust Statement). The tax statement provides:

- The gross interest income earned on your funeral trust. To comply with IRS tax filing requirements, this amount must be reported on your income tax return. Please consult with your tax advisor/preparer should you have any questions pertaining to this requirement.
- The amount of the fiduciary fee paid for management of the trust, as disclosed in your preneed agreement.
- The amount of the professional investment advisory fee paid for services, as disclosed in your preneed agreement.



Important Information for Applicants of Public Benefit Programs

A 1982 amendment to the Social Security Act implemented a program whereby Medicaid/SSI eligible persons can set aside funds for their funeral and burial before their resources are exhausted by medical bills or their income declines to such a level that they need the cash assistance provided by the Supplemental Security Income (SSI) program. This program was implemented through specific resource exclusions for prepaid funeral contracts.



It was the judgment of Congress that persons should not have to choose between lifesaving welfare assistance and giving up their plan for the disposition of their bodily remains . . .

• MEDICAID/SSI: ADVANTAGES FOR ELIGIBLE INDIVIDUALS

All citizens – regardless of income – are entitled to and deserving of both a proper funeral service and a burial with dignity and respect. In fact, federal and state laws support this guiding principle in a number of important ways.

First, any person applying for Medicaid/SSI can set aside funds for the sole purpose of paying their funeral/burial expenses as part of the spend-down process to Medicaid/SSI eligibility. The funeral/burial funds you set aside will not be counted as part of your financial resources. As of January 1, 2011, New York State law also mandates that all contracts for prefunded funerals for family members executed by applicants for or recipients of Medicaid also be IRREVOCABLE.

Second, New York State law requires that 100% of these funeral/burial funds be placed in an irrevocable trust account making certain that they will be available when they are needed and used for no other purpose than what they are intended. A trust which is titled “irrevocable” means that any refund, withdrawal or other disposition of the deposits on account plus accrued interest, for any purpose, will and must legally be refused by the funeral director and/or funeral trust or financial institution. Please note: If the account is irrevocable and there is an overage after the final funeral charges have been paid, the overage will be paid to the county where the beneficiary resided and was receiving assistance.

Finally, you have the right to use any funeral home you choose. You may also change your funeral home selection, at any time, for any reason.

NOTE: A Medicaid/SSI eligible individual must first notify his or her caseworker that funds will be set aside to pay their funeral/burial expenses.

► Medicaid, Medicare, and SSI . . . Which is Which?

There is often confusion about what each of these programs provide, specifically Medicaid, Medicare, and SSI. Below are brief descriptions of each:

• MEDICARE

Medicare is authorized under the *Social Security Act* and is part of a national health insurance program for individuals age 65 or older, younger people with disabilities and individuals with permanent kidney failure. Medicare is administered by the Health Care Financing Administration under the US Department of Health and Human Services.

• MEDICAID

Medicaid was established by Congress in 1965 as a government health insurance program for individuals of any age whose income is too low to provide routine health care costs, or whose health care costs are too high to be covered by their income. These costs include the cost of nursing home residence. Medicaid eligibility is determined from detailed documentation provided by an applicant regarding their income and assets. The figures below reflect the amount of resources an applicant may retain and still qualify for Medicaid. Resource levels depend on the number of family members living with the applicant.

2014 MEDICAID RESOURCE LEVELS *

- 1 person household - \$ **14,550**
- 2 person household - \$ **21,450**
- 3 person household - \$ **24,668**
- 4 person household - \$ **27,885**

Excludes irrevocable burial account, house, car, life insurance with face value of \$1500 or less. Currently, a Medicaid recipient residing in a nursing home may also retain \$50 of monthly income as a personal needs allowance for any personal expenses not covered by Medicaid.

• SUPPLEMENTAL SECURITY INCOME (SSI)

SSI is a federally administered program assisting individuals who have reached an age of 65+ or have been legally classified as blind or disabled and meet specific income and resource tests, citizenship/qualified alien status and US residence requirements. Currently, all funds placed into an irrevocable preneed account are excluded as countable resources when an individual applies for SSI benefits.

2014 SSI RESOURCE LEVELS *

- \$ **2,000** for individuals
- \$ **3,000** for couples

Excludes irrevocable burial account, house, car, life insurance with face value of \$1500 or less.

**Both Medicaid/SSI Resource limits are adjusted annually, and are confirmed by the Office of Health Insurance Programs.*

Prepaid Funeral Resource Exclusion

Any individual who is an applicant for Medicaid/SSI, and is in the “spend-down” process, should meet with a funeral director.

- **HOW TO QUALIFY**

During a prearrangement conference, the individual should select which funeral services and merchandise he or she desires as disclosed on a “General Price List.” The funeral director will then note these selections on an itemized statement (commonly known as a “Preneed Itemization Statement”) which will reflect the current retail value of the merchandise and services selected. The next step is funding the arrangements. Funeral prearrangements will qualify as a prepaid funeral resource exclusion, and not counted as an asset, if the funds are placed in an irrevocable prepaid funeral trust account.

- **PAYMENTS TO PURCHASERS**

Purchasers who have entered into irrevocable burial trusts may only use the funds for payment of funeral services and merchandise upon the death of the intended funeral recipient. If the account is irrevocable and there is an overage after the final funeral charges have been paid, the overage will be paid to the county where the beneficiary resided and was receiving assistance.

- **REQUIREMENTS**

All documentation generated by this process must meet stringent federal and state requirements for resource qualification and funeral service disclosures. Social Services personnel require evidence that the funeral arrangements exist and that they are linked irrevocably to the funding vehicle. Additionally, all of the documentation generated by the funeral home must meet Federal Trade Commission standards for price and itemization disclosure, and all of the provisions of Section 453 of the New York State General Business Law.

PORTABILITY

The law allows the consumer to change funeral homes at any time prior to death without affecting the irrevocability of the arrangements themselves. Even if the consumer moves out-of-state, they can request that the funds be transferred to a different funeral home.



Mandatory Contract Disclosures

A major goal of NYS preneed law is to ensure that preneed consumers have a full written explanation of all meaningful aspects of the preneed agreement.

New York State law mandates that every irrevocable preneed agreement must contain the following consumer disclosure, in a minimum of 12 point type:

New York law requires this agreement to be irrevocable for applicants for and recipients of supplemental security benefits under section two hundred nine of the Social Services Law or medical assistance under section three hundred sixty-six of the Social Services law, and for the moneys put into a trust under this agreement to be used only for funeral and burial expenses. Whether the agreement is for your funeral and burial expenses or for those of a family member, if any money is left over after your funeral and burial expenses have been paid, it will go to the county. You may change your choice of funeral home at any time. If this agreement is for the funeral and burial expenses of a family member, after your death such family member may change the choice of funeral home at any time.

All literature promoting prearranged funeral and burial services prepared after January 1, 1997 must contain language disclosing the irrevocable nature of burial trusts established for an applicant or recipient of supplemental security income benefits or medical assistance. Following are some samples of the language that could be used:

New York State law mandates that all contracts for prefunded funerals executed by applicants for or recipients of Medicaid/SSI be irrevocable.

New York State law mandates that funeral/burial trust funds for Medicaid/SSI recipients must be irrevocable.



*Have more questions?
Please do not hesitate
to ask your funeral
director.*

Summary of NYS Irrevocable Trusting Statute

New York Social Services Law, Section 209

New York State Social Services Law Section 209 and Section 366 mandate that all contracts for prefunded funerals established for applicants or recipients of Medicaid/SSI be IRREVOCABLE.

- Applicants and recipients of Medicaid/SSI may establish an irrevocable trust fund (for an unlimited dollar amount) for the exclusive purpose of their or a family member's funeral and burial.
- Only a single irrevocable trust fund may be established for each beneficiary.
- The funds in an irrevocable funeral account are not considered an asset during the spend-down process.
- Individuals will have the opportunity to select the funeral firm, funeral director, and cemetery to be used, and may change their selection at any time. The irrevocable account(s) are completely portable, and may be transferred to another funeral home, even in another state.
- Funds must be placed in an interest-bearing account within ten business days. The accumulated interest shall not be reported as "countable" income.
- Any account overage remaining after the full payment of funeral services and merchandise must be forwarded to the county where the decedent resided and was receiving benefits.
- All preneed agreements for accounts established by or for an applicant or recipient of Medicaid/SSI must contain a mandatory disclosure explaining the nature of the irrevocability of the contract and the issue of portability.



Commonly Asked Questions:

Preneed Accounts for Applicants or Recipients of Medicaid/SSI



- Q:** What happens if I currently have a revocable preneed account, but I am now applying for Medicaid or SSI?
- A:** *When applying for Medicaid/SSI, your caseworker should advise you that the revocable preneed account **must** be converted to irrevocable status to ensure that your program eligibility is not jeopardized.*
- Q:** How does my life insurance policy affect my Medicaid eligibility?
- A:** *The face value of any life insurance policy(ies) over \$1,500 will be counted as an asset in determining your Medicaid eligibility.*
- Q:** Can additional funds be added to my irrevocable preneed account?
- A:** *Yes. However, the total deposits into the account must not exceed the total cost of funeral merchandise and services recorded on the original itemization statement.*
- Q:** Can an overage in an irrevocable preneed trust account be used to fund additional services or merchandise?
- A:** *No. If the current account balance exceeds the actual costs of the services and merchandise originally selected, the overage must be returned to the county.*
- Q:** Can my irrevocable preneed agreement be modified at the time of need?
- A:** *Yes. However, the new items must be of equal or lesser value, and must qualify as funeral merchandise and services. If there is an overage, the funds may not be depleted to cover additional merchandise and services, but must be sent to the county.*

Q: Which county Social Services Department receives the overage in an irrevocable trust account?

A: *If there's an overage after the final funeral charges have been paid, the overage must be sent to the county where the recipient was receiving public assistance at their time of death (in most cases this will be the county where the decedent resided).*

Q: Can an irrevocable preneed funeral account be split into separate accounts in New York State?

A: *No. The full amount of an irrevocable preneed agreement must be placed into a single preneed trust account.*

Q: Which items may not be included on the preneed itemization form for an irrevocable preneed account?

A: *As an applicant or recipient of Medicaid/SSI, you may only prearrange "reasonable and common" funeral merchandise and service expenses that are related to fulfilling the funeral contract. Examples of items **not** permitted by the NYS Bureau of Funeral Directing include: airline tickets, funeral luncheons, charitable donations and cash gifts. If there are any questionable items, you should speak to a social worker to obtain prior approval.*

Q: Who may authorize a transfer of funds to another funeral home?

A: *Before death occurs, only the purchaser and his/her legal representative may authorize a transfer of an irrevocable preneed account to another funeral home.*

Q: How does the law affect pre-existing contracts of Medicaid applicants and recipients?

A: *If you had both a pre-existing agreement and were receiving benefits prior to January 1, 1997, your account may remain revocable, but must still be recertified annually by County Social Services personnel.*

Q: Must a funeral firm's print materials include a disclosure relating to preneed agreements?

A: *Yes. Any promotional material printed must contain language disclosing the irrevocable nature of preneed funeral and burial accounts established by and for individuals receiving or applying for Medicaid or SSI.*