

## SSI Burial Policies & Irrevocable Burial Trusts

SSI recipient can have:

**An irrevocable burial contract for any amount.**

AND\*

A specifically designated burial account worth \$1500;

OR

Cash surrender value of a life insurance policy worth \$1500;

OR

A specifically designated burial account and a cash surrender value of a life insurance policy not worth more than \$1500 together.

Burial spaces for individual and immediate family members are fully excludable if completely paid for and not on a payment plan.

\*Unless the irrevocable burial contract contains non-burial space items (see list). If so, then the additional \$1500 allowed in the burial account or CSV is reduced by the amount of non-burial space items held under the irrevocable burial contract. [POMS SI 01130.410]

See <https://secure.ssa.gov/poms.nsf/lnx/0501130420NY> re: irrevocable burial contracts in New York.

### Exempt resources include...

A. Burial funds: [20 CFR 416.1231]

- i. burial account: \$1,500 (\$3,000 for couple) plus any interest which accrues; it must be set aside in specifically designated account and cannot be used for any other purpose); or,
- ii. irrevocable burial contract for any amount; or,
- iii. a burial account is an alternative to a life insurance policy; an individual cannot have both .

NOTE: Life insurance and burial funds are alternative burial options; if both are chosen, the total value cannot exceed \$1500.

B. Burial spaces for individual and immediate family members are fully excludable, including gravesite, mausoleum, and other repositories for remains of the deceased. [20 CFR § 416.1231]

<https://secure.ssa.gov/poms.nsf/lnx/0501130420>

<https://secure.ssa.gov/poms.nsf/lnx/0501130420NY>

NOTE: When designating a countable life insurance policy as a burial fund, the individual typically designates the policy itself rather than the CSV. This is the case because the CSV of a policy is payable only during the lifetime of the individual and thus cannot be used to bury the individual. However, since the CSV is the current resource value of the policy, it is the CSV which is applied toward the burial fund limit when determining countable resources. When designating life insurance as a burial fund, the individual can also designate any dividend accumulations on the life insurance policy ([SI 01130.300B.7.a](#)) as a burial fund. Dividend accumulations are a separate resource (i.e., **not** considered as an increase in the value of the CSV) and must be designated as burial funds separate from the life insurance policy itself.

### Additional Information

<http://www.wnyc.com/health/afile/113/34/>

<http://volsprobono.org/sites/default/files/pdf/vols-burial-guide.pdf>

[http://www.health.ny.gov/health\\_care/medicaid/publications/docs/adm/11adm-4.pdf](http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/11adm-4.pdf)

### **What is an irrevocable burial trust –**

Prior to a discussion of how irrevocable funeral trusts (I.F. Trusts) can be used to help qualify for Medicaid, it is helpful to understand exactly what defines an irrevocable funeral trust. A trust is a legal agreement in which an individual (called the Trustmaker) sets aside a certain amount of money for a specific purpose or person, in this case the purpose is their funeral costs. In doing so, the money set aside is no longer considered to belong to the Trustmaker provided the trust is irrevocable. This means the trust cannot be reversed or dissolved for any reason.

There is considerable confusion about irrevocable funeral trusts because there are identical products with difference names and there are similarly named products with a similar purpose which are critically different with regards to Medicaid eligibility. IFTs, Irrevocable burial trusts and IF Trusts are identical products. Pre-paid funeral plans, pre-need funeral plans, life insurance for funeral expenses and final expense insurance are the names of similar products which may or may not be legally different.

<http://www.payingforseniorcare.com/medicaid-waivers/irrevocable-funeral-trusts.html>

### **How to set up an irrevocable burial trust –**

Contact the New York State Funeral Directors Association to find an accredited funeral home near you.

<https://www.nysfda.org/index.php/find-a-funeral-home>

Phone: 518-452-8230

Once you find a funeral home, meet with a funeral director and tell them you are a SSI/Medicaid recipient and you want to set up an **IRREVOCABLE BURIAL TRUST**.

During a prearrangement conference, you should select which funeral services and merchandise you want 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 if the funds are placed in an **irrevocable** prepaid funeral trust account.

There are a wide range of funeral related services that can be paid for by an irrevocable funeral trust including: Caskets; Hearse transportation; Car and limousine services; Funeral direction services; Embalming; Dressing and cosmetology; Funeral home services; Burial plot; Cemetery services and fees; Headstone; Obituary Notices; Flowers; Death certificates; and a Memorial following the burial.

#### Additional Information

There is no limit to the amount of money that you can deposit into an irrevocable burial trust at a funeral home. However, all of the money has to be deposited at one time; you cannot make additional deposits later. In addition, the burial plot must be included in the irrevocable burial trust. It cannot be purchased separately or included later.

## **SI NY01130.420 Pre-Paid Burial Contracts - (RTN 430 - 05/2011)**

### **A. New Jersey**

New Jersey has established three funeral prepayment options: irrevocable prepaid funeral trusts; irrevocable assignment of an existing policy; and purchase of a funeral insurance policy. There is no dollar limit on the amount of money used to fund these prepayment options. Examine and evaluate the contract provided. Use the following to determine whether the prepayment option is an excludable resource.

#### **1. Irrevocable Prepaid Burial Contracts (Effective January 18,1992)**

Here the individual irrevocably contracts with the funeral director or cemetery and prepays for the goods and services. In New Jersey, the funeral director or cemetery must hold any moneys paid for future funeral services as trust funds in a separate FDIC insured bank account. A prepaid funeral trust must contain, in a conspicuous manner, the following statement:

- New Jersey law requires this agreement to be irrevocable for applicants or recipients of public assistance programs (such as the Medicaid, Supplemental Security Income (SSI), Work First New Jersey and Work First New Jersey General Public Assistance programs, or any successor program thereof) and for the State of New Jersey to be named as beneficiary of any irrevocable funeral trust or irrevocably assigned newly issued funeral insurance policy purchased or created for the provision and payment of funeral and burial goods and services. Any moneys remaining after the provision of funeral goods and services shall be paid over to the State as required by law.

If the intended funeral recipient is either in receipt of SSI or an applicant for SSI within six months of the date the agreement is signed and the agreement provides that the trust is irrevocable during the individual's lifetime, it is not a countable resource. If, however, the intended funeral recipient does not become an applicant for or a recipient of SSI within six months of signing the agreement it reverts to a revocable trust. In the latter situation, develop the value of the resource per SI 01130.420B.

**NOTE:** The face value of the burial funds portion of the contract, if any, offsets the \$1,500 burial funds exclusion available to an individual. The face value of the burial space portion of the contract, if any, does not offset the \$1,500 burial funds exclusion (SI 01130.420B.2).

#### **2. Irrevocable Assignment of an Existing Insurance Policy (Effective February 27, 2000)**

Here the owner of an existing insurance policy or policies irrevocably assigns the ownership and/or beneficial interest to another party for the intended purpose of funding funeral expenses. The cash value of the policy or policies cannot exceed (either alone or in conjunction with a trust fund) the current retail value of the proposed funeral. The New Jersey State Funeral Directors Association offers a program called Sure Trust, which allows the owner to irrevocably assign insurance policies for this purpose. However, individual insurance companies may make create similar policies.

When the ownership of an existing life insurance policy is irrevocably assigned to a funeral provider to fund a burial contract, it is not a resource (SI 01130.425C.2).

**NOTE:** The face value of the burial funds portion of the contract, if any, offsets the \$1,500 burial funds exclusion available to an individual. The face value of the burial space portion of the contract, if any, does not offset the \$1,500 burial funds exclusion (POMS SI 01130.420B.2).

### **3. Newly Issued Funeral Insurance Policy (Effective February 27, 2000)**

Here the individual purchases a funeral insurance policy intended specifically for the payment of funeral expenses. The purchaser must either irrevocably assign ownership and beneficial interest of the policy to meet the intended purpose, or, if the policy has one, use a "settlement of proceeds" provision allowing for the payment of the funeral bill prior to the settlement of any beneficiary interest.

A newly issued funeral insurance policy intended specifically for payment of funeral expenses where ownership and beneficiary interest can be irrevocably assigned, would be considered burial insurance by SSA (SI 01130.300A.4.). Thus, it would not be considered a resource.

**NOTE:** The face value of the burial insurance offsets the \$1,500 burial funds exclusion available to an individual by the policy's face value. The face value of the burial space portion of the contract, if any, does not offset the \$1,500 burial funds exclusion (SI 01130.425C.2.b.)

### **B. NEW YORK (Effective January 1, 1997)**

1. New York permits the creation of correctly worded irrevocable prepaid burial contracts effective with agreements signed 1/1/97. There is no limit to the amount of money placed in these contracts. These irrevocable contracts are not a resource for SSI or Medicaid purposes. The agreement must be in writing and signed by the individual. It must include an itemized list of the services and merchandise described therein, the obligations of each party, and full disclosure that the funds are to be used solely for funding funeral and burial expenses. The full disclosure must contain the following language:
  - o New York Law requires this agreement to be irrevocable for applicants for receipt of Supplemental Security Income benefits under section two hundred nine of the Social Services Law or of 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, 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.

Since existing agreements signed prior to 1/1/97 are revocable, an individual with a contract prior to that date would have to complete a revised agreement with the funeral provider in accordance with the language above.

2. New York does not permit irrevocable assignment of a life insurance policy's cash surrender value to a burial contract. However, contracts violating this policy may or may not be determined to be invalid. Therefore, any such contract must include the full disclosure language, as quoted above in SI NY01130.420B.1., which bars the insured's estate from claiming any residual funds after the funeral.

**NOTE:** The face value of the burial funds portion of the contract, if any, offsets the \$1,500 burial funds exclusion available to an individual. The face value of the burial space portion of the contract, if any, does not offset the \$1,500 burial funds exclusion (SI 01130.420B.2.)

### **C. Transfer of a Resource for Less Than Fair Market Value**

An individual's purchase of an irrevocable burial contract or action to change a revocable contract to an irrevocable burial contract is not a transfer of resources for less than fair market value.

## Tips for Qualifying for Medicaid in New York State by Using “Excess Resources” for Pre-Paid Funeral Arrangements

REVISED JUNE 15, 2015

This fact sheet posted at <http://www.wnyc.com/health/entry/36/>

NOTE: This memorandum updates a 2006 fact sheet by Selfhelp Community Services, Inc. The applicable New York law was amended in 2011. References for state directives and laws are at the end of this fact sheet.<sup>1</sup> This fact sheet is intended for people in New York State only who are age 65+, blind or disabled. Most Medicaid applicants under age 65 who do not have Medicare have no asset test under the Affordable Care Act.

### 1. In General – Why Pre-Pay for a Funeral?

- You are not eligible for Medicaid if your financial resources exceed the resource limits. Medicaid allows \$14,850 (Single person in 2015). Medicaid allows applicants to use excess resources to pre-pay for funerals or create burial accounts – for themselves and for some family members. This obviates the need to spend down the excess assets on the cost of medical care. It also eliminates the need to transfer excess assets which would trigger a “transfer penalty,” which disqualifies the individual from receiving Medicaid for nursing home care for a certain “penalty period,” the length of which depends on the amount transferred and where in New York State the individual resides.

### 2. What is a Pre-Paid Funeral Agreement and What Expenses May it Pay?

1. A pre-need funeral agreement is created by paying a funeral director, funeral firm, undertaker, or cemetery for specified merchandise and services upon the death of the applicant or recipient (“A/R”), or upon the death of certain immediate family members. NYS Dept. of Health 11 OHIP/ADM-4, at 2 (full cite at end).<sup>1</sup>
2. **IMMEDIATE FAMILY** - The funeral agreement may be for “*Immediate family*,” which includes the A/R’s parents, adoptive parents, spouse, children (minors or adults, and including adopted children and stepchildren), and brothers and sisters (including step-siblings and adopted siblings). The spouse of each of each of these relatives is also included in the definition of “*immediate family*,” provided they are still married to the A/R’s relative. For example, Susan, the A/R, may pre-pay for funeral costs for her brother’s wife or her daughter’s husband.

### 3. REQUIREMENTS:

- The A/R may have **no more than one** pre-paid funeral agreement. However, certain burial space items purchased and paid for in full **prior to** entering into an irrevocable pre-need funeral agreement may remain outside the agreement, such as a cemetery plot, urn, vault, mausoleum, crypt, or headstone. 11 OHIP/ADM-4 p. 4. Such items will not be considered available resources.
- The agreement for the applicant or immediate family must be **IRREVOCABLE** and include a specified **disclosure statement** that acknowledges that the once the payment is made to the funeral home, the A/R or legally responsible relative may not change her mind and cancel the

agreement or ask for her money back. It is permissible to change the choice of funeral home, funeral director, undertaker or cemetery. General Business Law §453, MRG p. 368.<sup>1</sup>

4. **EXPENSES THAT MAY BE PAID.** The following expenses may be included for both the applicant and the immediate family members listed above. Before 2011, only those listed as "Burial Space" items could be included in agreements for family members, as opposed to the applicant. There is no longer any distinction between which expenses may be included. However, there is still a distinction as to how these expenses are categorized, explained later.

**COVERED ITEMS INCLUDE:**

- **Burial Space Items:**
  - Casket, urn, mausoleum, vault, headstone, burial containers and headstone engraving
  - Burial plot/ gravesite
  - Cost of opening and closing of the gravesite
  - Cremation and urn
  - Perpetual care contract for the gravesite
- **Non-Burial Space Items:**
  - Embalming/ cosmetology and burial clothes
  - Funeral transportation (hearse, limousine, out of town shipping),
  - Use of funeral home facilities for services, visitation, or wake,
  - Clergy services, death notices, and flowers

**MAY NOT INCLUDE:**

- Food, lodging or transportation expenses for family, friends or guests. 11 OHIP/ADM-4 p. 6. The cost of these items will be considered an uncompensated transfer for purposes of determining eligibility for nursing home Medicaid if included in a pre-needs agreement.

5. **Is there a limit on the cost of the agreement or how it is paid?** What if there is money left over after I die?

- There is no limit on the cost but it must be for fair market value - otherwise it could be considered a transfer of assets. NYS DOH Medicaid Reference Guide [MRG] p. 365<sup>1</sup>
- Since the agreement is irrevocable, one should not pay more than one normally wants for a funeral.
- Any money left over after the funeral and burial expenses have been paid will go to the city or county Department of Social Services. N.Y. Social Services Law § 141(6)
- Payment of the agreement may be made with the money of the A/R or of a legally responsible relative. MRG. p. 365. The spouse is a legally responsible relative, as is the parent of a child under age 21. N.Y. Social Services Law § 366 (2)(b)(1). Since the spouse's assets are deemed available to the applicant, this is a way to "spend down" those assets.
- If the cost of the NON-BURIAL SPACE ITEMS in the agreement is less than \$1500, then you may still have life insurance policies with a combined FACE VALUE under \$1500, *but may not also have a BURIAL FUND* or life insurance with a cash value over \$1500. MRG, p. 366 (see more below).

### 3. May you have a Burial Fund or Life Insurance in addition to a Funeral Agreement?

1. The A/R and/or his or her **spouse** may have a \$1500 “burial fund” in addition to the pre-paid funeral agreement above, **unless** the pre-paid funeral agreement includes \$1500 or more worth of “non-burial space” items, as defined on page 2 above. 11 OHIP/ADM-4 pg. 5. If there is less than \$1500 in non-burial space items in the pre-paid agreement, the A/R and his spouse may set up separate burial fund.
2. Type of Burial Fund – the \$1500 may be in the form of a bank account or life insurance or a combination.
3. A bank account is an account separate from one’s regular bank account(s) designated as a burial fund. The maximum balance of the account at the time of application combined with the cash value of any life insurance policy(ies) must be no more than \$1500.
  - A burial account may not be treated like most savings accounts. Once money is deposited, no withdrawals may be made. Otherwise the account will no longer be exempt and will be counted against the Medicaid resource limit.
  - Medicaid does not count accumulated interest earned on a burial account. 11 OHIP/ADM-4 p. 9.
4. Life Insurance – A life insurance policy that has both a “face value” and a “cash value” is generally a so-called “whole life” policy. The face value is the amount to be paid on death. The cash value is the amount that the policy owner would get if s/he cashed in the policy and forfeited any payment on death. The cash value is usually the total amount of premiums paid in plus interest. To learn the cash value, call the life insurance company and ask for a statement. There is no other way to calculate the cash value.
  - **If the FACE VALUE of the policy is under \$1500**, the A/R may keep this policy even if the pre-paid funeral agreement *does* include non-burial space items worth more than \$1500. MRG p. 366. If the FACE VALUE exceeds \$1500, then look at the cash value.
  - **If the CASH VALUE of the policy is less than \$1500** at the time of the application, then the applicant may also have a separate burial fund in an amount that brings the total combined burial amount up to \$1500 (life insurance cash value + burial fund = \$1500) MRG, p. 365.1
  - **If the CASH VALUE exceeds \$1,500 at the time of application, the A/R may keep the policy, but:**
    - the amount that exceeds \$1,500 will count toward the resource limit, AND
    - The A/R must provide a written statement that the entire cash value is intended for burial expenses. This avoids the prohibition against commingling the burial account with regular savings. Without this statement, the \$1,500 is not exempt. MRG, p. 370
    - **EXAMPLE:** Cash value of life insurance is \$3500. This is permissible if the A/R provides a written statement that the entire \$3500 is intended for burial expenses. Because the cash value is \$2000 over the \$1500 burial limit, the A/R must keep his or her regular savings/checking accounts \$2000 below the usual limit. In 2015, the Medicaid limit is \$14,850 for a single person, so the balance in this example must be kept under \$12,850.
    - If the cash value is still too high, a **loan may be taken** on the policy. MRG p. 324. Proceeds of a bona fide loan are not counted as income. MRG p. 221. The money received would count as a resource if saved into the month after the loan is issued.
    - Planning tip: These rule are complicated. Whether or not you may have a burial fund depends on the cash value of your life insurance policy, if any, whether your pre-paid funeral agreement has “non-burial space” items valued over \$1500, and the amount of your total countable resources.

#### 4. When is one Eligible for Medicaid after creating a Funeral Agreement or Burial Fund?

1. The answer to this depends on whether the funeral arrangements are for the A/R and his/her spouse or other members of the immediate family, as defined above on page 1.

#### 2. **Applicant or spouse create the funeral agreement for themselves:**

- As long as the funeral agreement and/or burial fund is established for the applicant or spouse within 10 days of being notified by Medicaid that the applicant has excess resources, the funeral agreement **retroactively** brings the excess resources down to the allowed limits. If the resources were otherwise below the limit during the retroactive period, the A/R is eligible for Medicaid for up to **3 months** before the month in which the application was filed.
- Example: Betty is single and has \$25,850 in resources at the time of her Medicaid application in April 2015. She is \$11,000 over resourced (using the 2015 resource limit of \$14,850). She is notified in June 2015 that she is over-resourced. Within 10 days of receiving this notification she establishes an irrevocable pre-needs agreement for herself in an amount of \$11,000. She is eligible for Medicaid as of January 2015, the third month prior to the month of application. This assumes that her resources during the three month retroactive period were \$25,850 or less. See 11 OHIP/ADM-4 p. 8, MRG p. 368.1.

#### 3. **Applicant creates funeral agreement for “immediate family members” other than spouse:**

- The 3-month retroactive eligibility cannot be established through the purchase of irrevocable pre – need funeral agreements for immediate family members other than the spouse. If creating the pre-need funeral agreements for immediate family members brings the excess resources down to the allowed limits, the A/R is eligible for Medicaid the following month after payment. MRG. 366.1
- Example: Betty is single and has \$25,000 when she applies for Medicaid in January 2015. She is \$10,150 over resourced. She already has a pre-paid funeral agreement for herself and does not wish to add additional funds to it. She is eligible for Medicaid for Feb. 2015 if she establishes a pre-paid irrevocable funeral agreement with her excess resources in Jan. 2015 for her sister, son, and/or other immediate family members listed on page 1 of this fact sheet. If the agreement were for her spouse, it could be retroactive, but not for other family.

**Contact the Evelyn Frank Legal Resources Program with any questions**

(212) 613-7310 / [eflrp@nylag.org](mailto:eflrp@nylag.org)

This fact sheet posted at <http://www.wnyc.com/health/entry/36/>

See more info about Medicaid at <http://nyhealthaccess.org>

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<sup>1</sup> The laws about pre-paid funeral agreements are N.Y. Social Services Law Section 141(6) and General Business Law Sect. 453. The NYS Dept. of Health directive implementing the 2011 change is [11 OHIP/ADM-04 - Treatment of Irrevocable Pre-Need Funeral Agreements](#) (July 11, 2011) available at [http://www.health.ny.gov/health\\_care/medicaid/publications/pub2011adm.htm](http://www.health.ny.gov/health_care/medicaid/publications/pub2011adm.htm). See also the NYS DOH Medicaid Reference Guide [MRG] section on funeral agreements and burial funds, available at [http://www.health.ny.gov/health\\_care/medicaid/reference/mrg/index.htm](http://www.health.ny.gov/health_care/medicaid/reference/mrg/index.htm) - click on [Medicaid Reference Guide \(Full Version\)](#) pp. 365-371.