

IRA M. LEFF
AND ASSOCIATES

ATTORNEYS AT LAW

1722 PINETREE CIRCLE, N.E.
ATLANTA, GEORGIA 30329

WWW.IRALEFF.COM

IRA M. LEFF

IRALEFF@IRALEFF.COM

TELEPHONE: (404) 633-1801
FACSIMILE: (404) 633-1830

October 12, 2009

ELDER LAW MINUTE

Until 2007, pre-paying funerals, in order to ensure that there will be sufficient assets set aside for that purpose, was not a complicated process. Since that date, this area has become increasingly technical and highly regulated.

Many funeral homes which write pre-need contracts fund the purchase by selling the buyer a single-premium life insurance policy. In so doing, an issue arises as to whether the insurance policy should be treated as life insurance or as a burial contract. If there is no itemized *contract* from the funeral home which accompanies the sale of the insurance, then the policy is treated as life insurance. A life insurance policy with a face value of \$10,000 or less generally will be exempt from the resource test. MEDICAID MANUAL § 2323. But what happens if the Medicaid Applicant/Recipient (A/R) already has \$10,000 of excluded life insurance, or what if the funeral is projected to cost more than \$10,000?

If the insurance policy is paired with an itemized contract then it is treated as a burial contract. The face value of the insurance policy should equal the purchase price of the burial contract. This is a requirement which trips up most funeral directors. For example, a funeral home proposes a \$7,500 service package and requests a check in that amount payable to the insurance company. When the insurance policy is issued, it will exceed \$7,500 by some small amount otherwise the policy would not qualify as life insurance because the issuer would not be taking any mortality risk. In order to meet the Medicaid regulations, the funeral director needs to discount his services so that the amount due for the funeral equals the face value of the life insurance.

In order for burial space items (plot, crypt, casket, urn, niche, etc.) to be excluded regardless of their cost, the amount due for these items must have been paid in full. In the insurance context that means the insurance policy must be irrevocably assigned to the funeral home. MEDICAID MANUAL § 2311-1.

Most funeral directors are not aware of these new rules. I always advise my clients to allow me to review the funeral arrangements before they sign off on the contract. I find it much easier to obtain cooperation from the funeral homes before they have a signed contract and check. Please let me know your experiences in this area.

Information contained in this newsletter is general in nature and not intended as legal advice. Legal advice should be obtained before action is taken based upon this information. Receiving this Elder Law Minute newsletter does not create an attorney-client relationship. If you wish to unsubscribe, please let us know. Copyright 2009 by Ira M. Leff and Associates. All rights reserved.