

## TEN TIPS FOR MEDICAID PLANNING

By T. Scott Gilligan

For many elderly Ohioans looking to apply for Medicaid benefits, one of their principal advisors may be the local funeral director. While they may seek guidance on this complex subject from elder law attorneys or Medicaid caseworkers, funeral directors often are the best source of information on available options for preneed funeral spenddowns.

It is important for funeral directors to have a working knowledge of the funeral spenddown provisions of Ohio's Medicaid laws and regulations. By asking the right questions and knowing the available options, funeral directors can not only show families how to use the resources of the Medicaid applicants for the benefit of surviving family members, they can also improve the funeral home's bottom line.

To assist members in dealing with these issues, OFDA published its *Member Guide to Preneed Funeral Funding and Medicaid Regulations* (the "OFDA Medicaid Guide"). This 27 page Medicaid Guide is available for downloading as an OFDA member benefit. Simply go to OFDA's website, click on "Member Resources", click on "Forms", and look under "Medicaid". Then, if you have not already done so, print out the Medicaid Guide and review it. It will pay dividends for your families and your business.

What can we learn from the Medicaid Guide? Below, we highlight the top ten lessons on Medicaid regulations available from the Guide:

**1. The resources of a person looking to apply for Medicaid may be spent down to fund a preneed funeral for the applicant and the applicant's spouse.**

If the person is applying for Medicaid and looking to spenddown funds or assign an insurance policy to fund his or her funeral, ask if they have a pre-funded funeral for the spouse. The spouse is the only family member that the assets of the Medicaid applicant may be used to pre-fund funeral services.

**2. The resources of a person looking to apply for Medicaid benefits may be spent down to pre-fund the purchase of burial space items for immediate family members.**

Again, you should always ask when a Medicaid applicant is spending assets to fund his or her funeral if they need to spenddown other assets or assign an existing life insurance policy. If they do, let them know that they can also pre-fund the purchase of burial space items for immediate family members.

**3. Burial space items include the grave, crypt space, mausoleum space, casket, vault, urn, urn vault, monument or marker, opening and closing services, and perpetual care services.**

These are the only preneed funeral goods and services that can be purchased for immediate family members (other than the spouse) using the resources of a Medicaid applicant. No other funeral goods and services may be pre-funded for immediate family members.

4. **There are more “immediate family members” than you may think. Immediate family members include the following relatives of a Medicaid applicant: parents, minor or adult children (including adopted and step-children), siblings (including adopted and step-siblings), and spouses of all of those immediate family members.**

If a soon-to-be Medicaid applicant indicates that he or she has excess funds to spenddown, inform them of who qualifies as an immediate family member under the Medicaid regulations. It is also important to note that spouses of immediate family members are also included in that definition.

5. **If the Medicaid applicant wishes to spenddown excess funds by way of check, cash or credit card, simply use the funeral home’s regular preneed contract form for the applicant’s funeral and any funeral pre-arranged for the spouse. If burial space items are purchased for immediate family members, the funeral home regular preneed contract can list those items.**

Cash, check or credit card pre-funding is fairly straightforward. Simply set up a trust or purchase an insurance policy for each beneficiary in the amount set aside for them. Since pre-purchases for immediate family members are limited to burial space items, these will probably be smaller trusts or insurance policies than regular preneed contracts.

6. **Whenever an existing insurance policy is assigned to the funeral home and it is anticipated that there will be excess insurance proceeds remaining after the Medicaid applicant’s funeral is paid for, a funeral home needs to use a special preneed contract designed to earmark excess insurance funds for the spouse’s funeral and/or for burial space items for immediate family members.**

OFDA has designed a preneed contract form entitled *“Irrevocable and Non-Guaranteed-Price Preneed Funeral Contract Funded by the Assignment of Insurance for Medicaid Applicants”* (the “Preneed Medicaid Contract Form”). The form is in the Medicaid section of the OFDA website and is also attached as Exhibit C to the Medicaid Guide. It is specifically designed for those situations when a person is assigning an insurance policy to the funeral home as part of a spenddown for Medicaid purposes.

7. **When a Medicaid applicant wishes to assign an existing insurance policy to the funeral home to pre-fund funeral and burial space purchases, the Preneed Medicaid Contract Form is recommended over the Addendum to Preneed Contract Form.**

OFDA originally developed the Addendum to the Preneed Contract Form (Exhibit B to the Medicaid Guide) that funeral homes could use for burial space funding for immediate family members. It is designed to be used in conjunction with the funeral home’s regular preneed contract which would be used for the Medicaid applicant. However, because some Ohio Medicaid offices question whether the Addendum was



being signed at the same time that the Medicaid applicant's preneed contract was, OFDA combined the Addendum into a preneed contract in the form of the Prenneed Medicaid Contract Form. This is the preferred method to fund preneed funeral and burial space purchases when an existing insurance policy is assigned to the funeral home.

**8. It is critical to execute the preneed contracts, including all purchases for the spouse's funeral and burial space items for immediate family members, before the person applies for Medicaid benefits.**

After the Medicaid recipient dies, it is too late to use excess funds for preneed burial space purchases. That is why it is critical that funeral directors ask about all possible funeral spenddowns when the individual first plans his or her funeral before applying for Medicaid benefits.

**9. When there are excess funds remaining that have not been earmarked for preneed burial space purchases, the excess funds may be returned to a surviving spouse instead of being paid to the Ohio Attorney General.**

Normally excess funds remaining after the funeral of a Medicaid recipient which have not been earmarked through a preneed funeral contract for the spouse or immediate family members must be returned to the Ohio Attorney General. However, there is an exception if there is a surviving spouse. Any excess funds remaining after the Medicaid recipient's funeral may be returned to the surviving spouse. The Ohio Attorney General will not make a claim for those funds until the Medicaid spouse dies. In addition, there are several other exceptions such as if the Medicaid recipient had a child under the age of 21 or child who is blind or disabled. Further information regarding these exceptions is available in the Medicaid Guide.

**10. If preneed contracts have not been previously entered into to earmark excess funds and there is no surviving spouse or other applicable exception involving minor children or disabled children, then the excess funds must be returned to the Ohio Attorney General.**

All excess funds should be paid by check to the "Estate of [name of decedent]." The check should be mailed to the Collection Enforcement Section, Office of the Attorney of General, 30 East Broad Street, 13th Floor, Columbus, Ohio 43215. In the cover letter to the Attorney General, print the name of the decedent and his or her Social Security number or Medicaid number in the reference line of the letter.. Be sure to make copies of the check and letter and place them in the funeral home's file. If there are questions, the phone numbers for the Collection Enforcement Section are (614) 779-0105 and (614) 752-2211.

OFDA members with questions regarding Medicaid may contact Scott Gilligan at (513) 871-6332.