

239 CMR: BOARD OF REGISTRATION IN EMBALMING  
AND FUNERAL DIRECTING

239 CMR 4.00: PRE-NEED FUNERAL CONTRACTS AND ARRANGEMENTS

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4.01: Definitions

For purposes of 239 CMR 4.00 *et seq.*, the following terms shall have the following meanings unless the context in which they are used clearly indicates otherwise:

Beneficiary – means the individual for whom funeral goods and services are to be provided under the terms of a pre-need funeral contract.

Board - means the Board of Registration in Embalming and Funeral Directing.

Buyer - means the person entering into a pre-need funeral contract with a licensed funeral establishment.

Cost-protected Pre-need Funeral Contract - means a pre-need funeral contract in which:

- (a) a licensed funeral establishment agrees to provide a specifically-identified set of funeral goods and/or services for a named beneficiary upon his or her death;
- (b) the beneficiary has established a funeral trust account, or purchased a pre-need insurance policy, which is to be used to pay for those funeral goods and services;
- (c) the beneficiary has fully funded the funeral trust account, or fully paid for the pre-need insurance policy, within a specified period of time after the pre-need funeral contract is made; and
- (d) the licensed funeral establishment has agreed to accept the funds available in the beneficiary's funeral trust account or pre-need insurance policy at the time of the beneficiary's death as payment in full for all funeral goods and services provided by the funeral establishment, and, to the extent specifically provided in the contract, for non-funeral establishment charges or "cash-advance item" charges as well, so that there will be no additional cost to the beneficiary or his or her estate for those goods, services and charges at the time of the beneficiary's death.

Funeral Goods and/or Services - means those goods and services which are customarily provided in the business of embalming and funeral directing, as commonly practiced, including but not limited to usage of facilities and those goods and services identified in 239 CMR 3.01.

Funeral Trust Account - an account established in any federal or state-chartered banking institution having trust powers, or any trust company, located in the Commonwealth of Massachusetts, in which funds are deposited or invested pursuant to the terms of a pre-need funeral contract for the purpose of paying for funeral goods and/or services at a future time.

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Itemized Statement of Funeral Goods and Services or Itemized Statement – means a written itemized statement showing to the extent then known the price of funeral goods and/or services selected by a person, the price of each supplemental item of goods and/or services to be provided, the estimated amount for each item for which the funeral establishment will advance monies as an accommodation to the person or persons making the funeral arrangements, and all other information required by M.G.L. c. 112, § 84B, 239 CMR 3.14, and 15 CFR 453.2.

Licensed Funeral Establishment - means a fixed place or establishment owned or maintained by a person, partnership, corporation, association or other organization which has been duly registered by the Board pursuant to M.G.L. c. 112, § 84 and which is located, constructed, equipped and operated for the purpose of providing sanitary handling, preparation, disposition and care of dead human bodies.

Non-funeral Establishment Charges or “Cash Advance Item” Charges – means the costs of goods or services which are provided for a beneficiary in connection with his or her funeral by a supplier or vendor other than a funeral establishment licensed in Massachusetts, but which are partially or fully paid for by a Massachusetts licensed funeral establishment with funds in a funeral trust account or pre-need insurance policy or annuity on behalf of, and as an accommodation to, that beneficiary.

Pre-need Funeral Contract – means any written agreement between a buyer and a licensed funeral establishment in which:

- (a) the licensed funeral establishment agrees, prior to the death of a named person, to furnish funeral goods and/or services for that named person upon his or her death, and
- (b) the buyer, pursuant to that agreement, transfers or tenders funds to the licensed funeral establishment for the purpose of paying all or part of the cost of those funeral goods and/or services at the time they are actually provided.

Pre-need Insurance Policy or Annuity - means any policy, certificate, agreement or contract of insurance issued by an insurance company, the proceeds of which are to be utilized to pay for funeral goods and/or services furnished to a named person.

Trustee - means a federal or state-chartered banking institution within the Commonwealth of Massachusetts having trust powers, or a trust company, within the Commonwealth of Massachusetts, to which funds have been transferred in trust for the purpose of paying for funeral goods and/or services for a named beneficiary, and which is charged with the fiduciary duty of managing and administering those funds for the benefit for that named beneficiary.

4.02: Creation and Content of Pre-need Funeral Contracts

(1) Parties to Pre-need Funeral Contracts. All pre-need funeral contracts shall be between a buyer and a licensed funeral establishment.

(2) Who May Prepare Pre-need Funeral Contracts. No person shall prepare, negotiate or execute a pre-need funeral contract with a buyer or potential buyer; or receive, control or manage any funds tendered as payment for the funeral goods and/or services identified in such a pre-need funeral contract; unless he or she is duly registered with the Board as a registered licensed funeral director or registered certified funeral director.

(3) Location of Offices in Which Pre-need Funeral Contracts May Be Prepared. All pre-need centers or offices which engage in the preparation, negotiation or execution of pre-need funeral contracts or arrangements shall be located within a duly licensed funeral establishment.

(4) Provision of Buyer’s Guide Required. A copy of a Buyer's Guide to Pre-need Funeral Contracts, approved by the Board, shall be furnished to every person or identifiable group of persons who enter into negotiations or discussions with a registered licensed funeral director or registered certified funeral director regarding a pre-need funeral contract prior to the signing of any such contract by the parties. A Buyer's Guide to Pre-need Funeral Contracts shall, at a minimum, inform the consumer that:

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- (a) A consumer can pre-plan his or her funeral arrangements without paying for such arrangements in advance;
  - (b) The cost of the funeral goods and services purchased through a pre-need funeral contract may be higher or lower at the time of the beneficiary's death than the amounts set forth in the contract, and the beneficiary's rights and obligations with respect to such changes in price are determined by the contract;
  - (c) There are various methods of financing pre-need funeral contracts, including but not limited to trusts, pre-need insurance policies, funeral insurance, traditional life insurance policies, annuities, and separately-created Medicaid-compliant burial accounts;
  - (d) Each such financing method has certain briefly-described tax, Medicare and Medicaid eligibility, and cancellation consequences;
  - (e) The consumer has a legal right to cancel such a pre-need funeral contract within ten days of its execution without penalty;
  - (f) Cancellation or revocation of a pre-need funeral contract after the expiration of the ten-day "cooling-off" period may have adverse consequences in terms of eligibility for Medicaid or other government benefits programs; and
  - (g) The funeral establishment will report any changes in the pre-need funeral contract, or withdrawals of funds which were originally received in connection with that contract, to the applicable governmental authority responsible for the administration of Medicaid or other governmental benefits programs to the extent that such reporting is required by law.
- (5) Required Form and Contents of Pre-need Funeral Contracts.
- (a) All pre-need funeral contracts shall be in writing and shall be prepared and executed on one of the Pre-need Funeral Contract forms prescribed by the Board.
  - (b) Each pre-need funeral contract shall be complete and shall contain all information specified on the form used, including but not limited to:
    - 1. The signature of the buyer, and
    - 2. The signature of the registered licensed funeral director or registered certified funeral director who is acting as the authorized representative of the contracting funeral establishment.
  - (c) Each pre-need funeral contract shall:
    - 1. State conspicuously on the first page of the contract, in a manner reasonably calculated to attract the attention of a reasonable person, whether or not the buyer has selected specific funeral goods and/or services; and
    - 2. Be accompanied by an itemized statement of funeral goods and services which meets the requirements of the Federal Trade Commission Funeral Rule (15 CFR Part 453), M.G.L. c. 112, § 84B and 239 CMR 3.14, which shall be attached to that pre-need funeral contract and incorporated by reference into that contract.
      - a. If the buyer has selected specific funeral goods and/or services, the itemized statement of funeral goods and services shall specify the prices for each identified funeral good or service selected by the buyer to the extent known at the time the pre-need funeral contract is prepared.
      - b. If the buyer has not selected any specific funeral goods and/or services, the itemized statement of funeral goods and services shall have the words "No Goods or Services Selected" clearly and conspicuously marked thereon.
  - (d) Each pre-need funeral contract shall indicate, in the spaces designated for such information on the Board-prescribed pre-need funeral contract form:
    - 1. The percentage of the total cost of the funeral which is attributable to the goods and services which are being provided directly by the licensed funeral establishment itself, which shall be calculated by dividing the total cost of the goods and services being provided by the funeral establishment itself, as set forth in the itemized statement of funeral goods and services required by 239 CMR 4.02(5)(c), by the total cost of the funeral as set forth in that itemized statement; and

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2. The percentage of the total cost of the funeral which is attributable to goods and services provided by suppliers or vendors other than the licensed funeral establishment (the non-funeral establishment charges or “cash advance item” charges), which shall be calculated by dividing the total cost of the goods and services being provided by suppliers or vendors other than the licensed funeral establishment (the non-funeral establishment charges or “cash advance item” charges), as set forth in the “cash advance items” section of the itemized statement of funeral goods and services required by 239 CMR 4.02(5)(c), by the total cost of the funeral as set forth in that itemized statement.

The percentages so calculated shall be rounded off to the nearest whole number (*e.g.*, 75.28% = 75%, 75.67% = 76%) and the sum of such percentages shall in all cases equal 100%.

(e) Each pre-need funeral contract shall recite:

1. The amount of money which the buyer paid or transferred to the funeral establishment in connection with that contract at the time the contract was made;
2. The amount(s) of any future payment(s) which are to be made by the buyer in order to fully fund that contract and the date(s) on which such payments are due;
3. Whether the money paid or transferred to the funeral establishment in connection with that contract was placed in a funeral trust account or used to pay for a pre-need insurance policy; and
4. The identity of the banking institution which serves as trustee of the funeral trust account established pursuant to 239 CMR 4.09, or the insurance company which issued the pre-need insurance policy pursuant to 239 CMR 4.10, whichever applies.

(f) Each pre-need funeral contract shall recite clearly and conspicuously on its face whether it is revocable or irrevocable, and that an attempt to revoke or cancel an irrevocable pre-need funeral contract after the expiration of the ten-day “cooling-off” period described in 239 CMR 4.07(1) may have adverse consequences in terms of eligibility for Medicaid or other government benefit programs.

(g) If the buyer has not paid or transferred any funds to the funeral establishment in connection with a proposed pre-need funeral contract, any document which sets forth the terms and provisions of a proposed pre-need funeral contract shall be treated as a non-binding pre-need funeral contract estimate pursuant to 239 CMR 4.02(6).

(h) A proposed or attempted pre-need funeral contract shall be deemed null and void and unenforceable by either party if:

1. The parties fail to prepare and execute the pre-need funeral contract on one of the Pre-need Funeral Contract forms prescribed by the Board;
2. The parties fail to fully and properly complete any portion of the prescribed Pre-need Funeral Contract Form used; or
3. The parties fail to comply with any other applicable provision of 239 CMR 4.02(5) with respect to the preparation or execution of the proposed or attempted pre-need funeral contract.

In such event, any and all monies paid or transferred to the funeral establishment by the buyer in connection with the proposed pre-need funeral contract shall be returned to the buyer immediately, without penalty or deduction of any kind.

(i) Notwithstanding the provisions of 239 CMR 4.02(5)(h), a proposed or attempted pre-need funeral contract which has not been signed by one or both parties shall be treated as a non-binding pre-need funeral estimate pursuant to 239 CMR 4.02(6).

(j) The licensed funeral establishment shall furnish a complete, fully-executed copy of the pre-need funeral contract to the buyer at the time the pre-need contract is made. In the event that the beneficiary of the pre-need contract is someone other than the buyer, the funeral establishment shall furnish an additional fully-executed copy of the pre-need funeral contract to the beneficiary not later than five business days after the pre-need contract is made.

(6) Non-binding Pre-need Funeral Estimates. A licensed funeral establishment may issue a non-binding estimate or proposal for a pre-need funeral contract to a buyer or potential buyer, as long as:

- (a) The estimate or proposal is prepared and issued on the Pre-need Funeral Contract Form prescribed by the Board;
- (b) The estimate or proposal specifies the funeral goods or services which the issuing funeral establishment proposes to provide; and

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(c) The estimate or proposal contains, or is accompanied by, an itemized statement of funeral goods and services which meets the requirements of 239 CMR 4.02(5) and which specifies the prices for each identified funeral good or service which the funeral establishment proposes to provide to the extent known at the time the estimate is prepared.

Any such estimate or proposal expires and becomes null and void after a specified period of time, not to exceed 30 days from the date of its issuance, unless the buyer or potential buyer, prior to that expiration date, enters into a pre-need funeral contract which meets the requirements of 239 CMR 4.02(5) and tenders full or partial payment of the specified price for the identified funeral goods and services to the funeral establishment which issued the estimate.

(7) Sale of Monuments or Interment Space Prohibited. Registered licensed funeral directors and registered certified funeral directors who prepare, negotiate and/or execute pre-need funeral contracts shall arrange only for funeral goods and/or services, and shall not sell interment space or monuments in such contracts. Nothing in 239 CMR 4.02 shall be construed to prohibit a licensed funeral establishment from contracting with a vendor or supplier which is not a licensed funeral establishment for the purchase of a monument or interment space on behalf of the beneficiary pursuant to the terms of a pre-need funeral contract which specifically identifies that monument or interment space as one of the cash-advance items selected by the buyer.

4.03: Notice of Changes Affecting Pre-need Contracts Required

(1) A licensed funeral establishment shall send written notice of any proposed cessation of the funeral establishment's operation to the buyer (and beneficiary, if different) of each pre-need funeral contract, via certified mail, return receipt requested, at least ten days prior to the effective date of that proposed cessation of operations. Such notice shall inform the buyer (and beneficiary, if different) of their right to:

- (a) Transfer that pre-need funeral contract and all funds connected with that contract to another licensed funeral establishment of their choice, or
- (b) Cancel that pre-need funeral contract, if it is revocable, and receive a refund of all funds connected with that contract pursuant to 239 CMR 4.07(3).

(2) A licensed funeral establishment shall send written notice of any transfer of ownership of that funeral establishment, or sale of any portion of its assets, to the buyer (and beneficiary, if different) of every pre-need funeral contract to which it is a party, via certified mail, return receipt requested, not later than ten days after the effective date of said transfer or sale. Such notice shall request that the buyer inform the funeral establishment, in writing, whether the buyer wishes to:

- (a) Transfer that pre-need funeral contract, and assign all funds connected with that contract, to the new owner(s) of that funeral establishment;
- (b) Transfer that pre-need funeral contract, and assign all funds connected with that contract, to another licensed funeral establishment of their choice, or
- (c) Cancel that pre-need funeral contract, if it is revocable, and receive a refund of all funds connected with that contract pursuant to 239 CMR 4.07(3).

In the event that the buyer does not respond to this notice within 30 days after the date on which the notice was sent, there shall be a rebuttable presumption that the pre-need funeral contract and all funds connected with that contract have been transferred to the new owner(s) of the transferee funeral establishment.

(3) In the event that a licensed funeral establishment enters into an assignment for the benefit of creditors or other debt reorganization plan, or institutes bankruptcy or receivership proceedings under state or federal law, the funeral establishment shall send to the buyer (and beneficiary, if different) of each pre-need funeral contract to which it is a party, via certified mail, return receipt requested, a written explanation of how their rights and obligations under the pre-need funeral contract will be affected by that event.

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4.04: Amendment of Pre-need Funeral Contracts

- (1) Except as provided in 239 CMR 4.04(2), a pre-need funeral contract may be amended by the licensed funeral establishment, the buyer, or the buyer's legal representative, at any time prior to the death of the beneficiary of that contract. The party proposing the change shall give written notice of the proposed change to the other party at least ten days prior to the effective date of the proposed change. All such amendments shall be in writing, and no such amendment shall be effective unless signed by both parties to the contract.
- (2) A pre-need funeral contract shall not be amended or modified, except by order of a court of competent jurisdiction, if:
  - (a) The amendment or modification would convert a pre-need funeral contract which was irrevocable at the time it was originally made into a revocable contract, and such an amendment or modification would adversely affect the eligibility of the contract beneficiary for Medicaid or any other government benefits program; or
  - (b) The amendment or modification would modify or eliminate any cost-protection provision which was included in a cost-protected pre-need funeral contract at the time it was originally made.

4.05: Substitution of Goods or Services

If any funeral good or service which was selected by the buyer and identified in a pre-need funeral contract at the time that contract was created is unavailable at the time of the death of the beneficiary of that contract, the licensed funeral establishment which is responsible for performing that pre-need funeral contract shall provide the beneficiary of the contract with a good or service selected by the buyer, or if the buyer is unavailable, the beneficiary's next-of-kin, whose fair market value is equal to or greater than the value of the good or service which is now unavailable. Where the pre-need funeral contract was a cost-protected pre-need funeral contract, as defined in 239 CMR 4.01, the substituted good or service shall be provided to the contract beneficiary at no additional cost.

4.06: Transfer of Pre-need Funeral Contracts

- (1) Upon receipt of written authorization to do so from the buyer of a pre-need funeral contract, or the buyer's legal representative, a licensed funeral establishment shall transfer or assign that pre-need funeral contract to another licensed funeral establishment designated by that buyer or legal representative, provided that the funeral establishment to whom the contract is to be transferred or assigned has indicated in writing that it will agree to honor that contract. The terms of the contract shall not be modified at the time of the transfer, but may be amended by means of a written agreement between the buyer and the transferee funeral establishment after the transfer of the contract and all funds connected with that contract has been completed. All such amendments shall be subject to the limitations on amendments of pre-need funeral contracts, as set forth in 239 CMR 4.04.
- (2) In the event of any transfer or assignment of a pre-need funeral contract pursuant to 239 CMR 4.06(1):
  - (a) if any funds received by the transferor funeral establishment from the buyer in connection with that pre-need funeral contract are being held in a funeral trust account pursuant to 239 CMR 4.09, all such funds shall be transferred to the transferee funeral establishment within ten business days, as provided in 239 CMR 4.09(5). The transferee funeral establishment shall furnish written confirmation to the buyer, and the beneficiary (if different), that these funds have been received by the transferee funeral establishment and deposited in a funeral trust account which meets the requirements of 239 CMR 4.09 not later than 30 days after the transfer or assignment of the pre-need funeral contract occurs. The transferee funeral establishment shall notify the buyer, in writing, of the identity and location of the banking institution in which the funds were deposited and which will serve as the trustee of the new funeral trust account.

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(b) If any funds received by the transferor funeral establishment from the buyer in connection with that pre-need funeral contract were used to purchase a pre-need insurance policy pursuant to 239 CMR 4.10, the transferor funeral establishment shall send a copy of the buyer's written authorization for transfer of that pre-need funeral contract to the insurance company which issued the pre-need insurance policy and request that the insurance company take all necessary and appropriate steps to modify the insurance policy so that the transferee funeral establishment may receive payment for any funeral goods and services it provides to the beneficiary of that policy. The transferor funeral establishment shall furnish written confirmation to the buyer, and the beneficiary (if different), that the request for transfer of the pre-need funeral contract and appropriate modification of the insurance policy have been sent to the insurance company which issued the pre-need insurance policy not later than 30 days after the transfer or assignment of the pre-need funeral contract occurs.

4.07: Cancellation of Pre-need Funeral Contracts

(1) Any buyer of a pre-need funeral contract may cancel that contract and receive a full refund of all monies connected with that contract, without penalty, at any time within ten days after signing said contract. After the expiration of this ten-day "cooling off period" a pre-need funeral contract may be canceled in accordance with 239 CMR 4.07(3).

(2) Where an application by the buyer or contract beneficiary of a pre-need funeral contract for government benefits is pending, the buyer may waive his/her right to cancel said contract within this ten-day "cooling off" period, but only by signing a written waiver of that right. Said waiver shall not affect the buyer's right to transfer that pre-need funeral contract pursuant to 239 CMR 4.06.

(3) If a pre-need funeral contract was revocable at the time it was originally created, the buyer who signed that pre-need funeral contract, or his/her legal representative, may cancel that pre-need funeral contract at any time after the expiration of the ten-day "cooling off" period specified in 239 CMR 4.07(1) by sending written notice of such cancellation, via certified mail, return receipt requested, to the licensed funeral establishment.

(a) If a funeral trust account has been established to fund that pre-need funeral contract, the funeral establishment shall forward a copy of said notice of cancellation to the named trustee of said funeral trust account, and take all steps necessary to ensure that all funds contained in that funeral trust account are refunded to the buyer, without penalty, within ten days after the notice of cancellation is received by the trustee of the funeral trust account.

(b) If a pre-need insurance policy was purchased to fund that pre-need funeral contract, the licensed funeral establishment shall forward a copy of the notice of cancellation of that pre-need funeral contract to the insurance company which issued the pre-need insurance policy.

(4) If a pre-need funeral contract was irrevocable at the time it was originally created, such a contract shall not be cancelled by either party except by order of a court of competent jurisdiction. Such a contract may, however, be transferred to another licensed funeral establishment in accordance with 239 CMR 4.06.

(5) No licensed funeral establishment, or agent or employee thereof, shall impose any surcharge, fee or other penalty (monetary or otherwise) upon any person who seeks to exercise his or her rights to cancel a pre-need funeral contract under 239 CMR 4.07.

4.08: Restrictions on Use or Disposition of Funds Received in Connection with Pre-need Funeral Contracts

(1) Prohibition Against Personal or Business Uses. No licensed funeral establishment, nor any agent or employee thereof, shall use or pledge any funds which are received in connection with any pre-need funeral contract for any personal use, payment of the operating expenses of any funeral establishment, issuance of a loan to any person, as collateral for any loan, or for any purpose other than those expressly authorized by that pre-need funeral contract and 239 CMR 4.00.

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(2) Funeral Trust Account or Pre-need Insurance Policy Required. All funds received from a buyer by a licensed funeral establishment, or by any employee or agent thereof, in connection with any pre-need funeral contract shall be:

- (a) Deposited in a funeral trust account which meets the requirements of 239 CMR 4.09 not later than five business days after the expiration of the “cooling-off” period described in 239 CMR 4.07(1); or
- (b) Paid to an insurance company for the purchase of a pre-need insurance policy or annuity pursuant to 239 CMR 4.10 not later than five business days after the expiration of the “cooling-off” period described in 239 CMR 4.07(1).

Each time a licensed funeral establishment receives any funds in connection with any pre-need funeral contract to which it is a party, that funeral establishment shall furnish the buyer, and the beneficiary (if different), with written confirmation that such funds have been deposited in a funeral trust account or used to purchase a pre-need insurance policy, as required by this section, not later than 30 days after such funds are received. Such written confirmation shall bear the signature of a duly-authorized representative of the banking institution in which the funeral trust account has been established, or a duly-authorized representative of the insurance company which issued the pre-need insurance policy, whichever applies.

(3) Reimbursement for Newly Imposed Taxes or Governmental Fees Permitted. Notwithstanding the provisions of 239 CMR 4.08(1), a licensed funeral establishment may require a customer to reimburse said funeral establishment for any local, state or federal taxes or fees imposed after the execution of the pre-need funeral contract, including but not limited to any value-added or sales taxes, for which the funeral establishment is held responsible by the taxing authority or governmental entity. In cases where the pre-need funeral contract is funded in full or in part, said reimbursement shall be considered an additional sum to be paid by the customer, and the funeral establishment shall not be required to deduct it from any income which accrues on the amount initially placed with the funeral establishment for investment in a pre-need funeral trust account or pre-need insurance policy or annuity.

(4) Access to Pre-need Contract Funds. Neither a licensed funeral establishment, nor any agent or employee thereof, shall have access to any of the funds received by that funeral establishment in connection with any pre-need funeral contract for any purpose other than:

- (a) Obtaining payment for the actual costs of funeral goods and/or services provided to the beneficiary, or for cash advance non-funeral establishment charges connected with the funeral of that beneficiary, upon presentation of the documentation required by 239 CMR 4.08(5);
- (b) Transferring those funds to another funeral trust account, or to a pre-need insurance policy or annuity, upon written authorization to do so from the buyer, the beneficiary of the pre-need funeral contract (if different from the buyer), or the duly authorized legal representative of the buyer or beneficiary;
- (c) Transferring those funds to another licensed funeral establishment in connection with a transfer of the underlying pre-need funeral contract, pursuant to and in accordance with the requirements of 239 CMR 4.06; or
- (d) Refunding those funds to the buyer or the beneficiary upon receipt of a written notice of cancellation of the pre-need funeral contract from the buyer, the beneficiary of the pre-need contract (if different from the buyer) or the duly authorized legal representative of the buyer or beneficiary, to the extent permitted by 239 CMR 4.07.

(5) Documentation Required for Payment for Services Rendered. Before obtaining or receiving payment for funeral goods and/or services rendered to the beneficiary of any pre-need funeral contract pursuant to 239 CMR 4.08(4)(a), the licensed funeral establishment shall present both of the following to the named trustee of the funeral trust account, or the duly authorized representative of the insurer which issued the pre-need insurance policy or annuity, which was used to fund that pre-need funeral contract:

- (a) A certified copy of the death certificate for the beneficiary; and
- (b) A written statement, signed by a registered licensed funeral director, certifying that the pre-need funeral contract has been performed in full.

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(6) Allocation and Disposition of Pre-need Funeral Contract Funds. At the time of the contract beneficiary's death, the funds available in any funeral trust account established in connection with that pre-need funeral contract pursuant to 239 CMR 4.09, and/or in any pre-need insurance policies purchased in connection with that pre-need funeral contract pursuant to 239 CMR 4.10, shall be apportioned between the cost of the goods and services provided directly by the licensed funeral establishment and the cost of the goods and services provided by vendors other than the licensed funeral establishment (the non-funeral establishment charges or "cash advance item" charges) in accordance with the percentages calculated pursuant to 239 CMR 4.02(5)(d).

(a) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to this section exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may retain the resulting surplus funds.

(b) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall bear the resulting loss and shall not bill the estate of the contract beneficiary, or any other person, for the deficiency.

(c) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may retain the resulting surplus funds.

(d) If the pre-need funeral contract contained cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall bear the resulting loss and shall not bill the estate of the contract beneficiary, or any other person, for the deficiency.

(e) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall refund the resulting surplus to the estate of the contract beneficiary. In such event, the amount refunded may be subject to claims of the Commonwealth or the United States.

(f) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided directly by the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may bill the estate of the contract beneficiary for the deficiency.

(g) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 exceeds the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment shall refund the resulting surplus to the estate of the contract beneficiary. In such event, the amount refunded may be subject to claims of the Commonwealth or the United States.

(h) If the pre-need funeral contract did not contain cost-protection provisions pertaining to the costs of the goods and services provided by vendors other than the licensed funeral establishment, and the amount of funds to be applied to the costs of those goods and services pursuant to 239 CMR 4.08 is not sufficient to cover the actual cost of those goods and services at the time of the contract beneficiary's death, the licensed funeral establishment may bill the estate of the contract beneficiary for the deficiency.

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4.08: continued

(7) Final Statement of Allocation of Funds to be Furnished to Beneficiary's Estate in Certain Cases. If a pre-need funeral contract is not a cost-protected contract with respect to all of the funeral goods and services identified in that contract, the licensed funeral establishment shall prepare, and furnish to the estate of the contract beneficiary at the time of the contract beneficiary's death, an addendum to the written itemized statement of funeral goods and services required by 15 CFR Part 453 and M.G.L.

c. 112, § 84B which shows:

- (a) The total amount of funds in the pre-need funeral trust account(s) and/or pre-need insurance policies for that beneficiary which were available at the time of the contract beneficiary's death;
- (b) The amount of funds available in the pre-need funeral trust account(s) and/or pre-need insurance policies which was applied to the costs of the goods and services which were provided directly by the licensed funeral establishment itself; and
- (c) The amount of funds available in the pre-need funeral trust account(s) and/or pre-need insurance policies which was applied to the costs of the goods and services provided by vendors other than the licensed funeral establishment (the non-funeral establishment charges or "cash advance item" charges).

Failure to provide such information accurately and completely in writing to the estate of the contract beneficiary shall constitute a violation of 239 CMR 4.00.

4.09: Funeral Trust Accounts

(1) All funeral trust accounts shall be established and administered in compliance with the requirements of 239 CMR 4.09.

(2) Creation of Funeral Trust Accounts. Where a pre-need funeral contract will be funded through a funeral trust account, the licensed funeral establishment shall deposit all funds received in connection with that pre-need funeral contract in a funeral trust account within five business days after the expiration of the "cooling-off" period described in 239 CMR 4.07(1). Every such funeral trust account shall:

- (a) Designate a federal or state-chartered banking institution or trust company within the Commonwealth of Massachusetts as the trustee of said funeral trust account;
- (b) Designate the person for whom the funeral goods and/or services are to be provided as the beneficiary of said funeral trust account;
- (c) Indicate that the funds are to be used solely for the purpose of paying for funeral goods and/or services and non-funeral establishment charges ("cash advance item" charges) as indicated in the itemized statement required by 239 CMR 4.02(5); and
- (d) Provide that the entire account balance shall be payable to the licensed funeral establishment which provides the specified funeral goods and/or services to the beneficiary at time of death in accordance with 239 CMR 4.00.

(3) Investment Requirements. The funds placed in a funeral trust account may be invested in any form of investment which may lawfully be established or maintained by the trust department of the banking institution or trust company which is serving as the trustee of that funeral trust account. All funds deposited in that funeral trust account shall be invested and managed in accordance with M.G.L. c. 203C.

(4) Common or Commingled Trust Accounts. Funds received in connection with more than one pre-need funeral contract may be deposited in a single common or commingled funeral trust account under the terms of a single trust instrument, provided that:

- (a) The common or commingled funeral trust account is established and administered in accordance with all applicable requirements of 239 CMR 4.09; and
- (b) Separate records, which meet the requirements of 239 CMR 4.12(1)(e), are maintained for each customer whose funds are deposited in the common or commingled funeral trust account.

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(5) Obligations to Locate Trust Beneficiary.

(a) If a licensed funeral establishment which is a party to a pre-need funeral contract does not provide the funeral goods and/or services for the beneficiary of that contract upon his/her death, then, upon receipt of a certified copy of the death certificate of such beneficiary, the trustee of any funeral trust account established to fund said pre-need funeral contract shall pay the assets of said funeral trust account to the estate or legal representative of the named beneficiary in accordance with the applicable requirements of 239 CMR 4.09.

(b) If a licensed funeral establishment has not received notice of the death of the named beneficiary of a pre-need funeral contract for whom a funeral trust account has been established under 239 CMR 4.09 within 110 years of the beneficiary's date of birth, said funeral establishment shall take all reasonable steps to contact that beneficiary or his/her legal representative to inform them of the existence of said funeral trust account. A written notice of the existence of said funeral trust account, sent via certified mail, return receipt requested, to the last known address of the trust beneficiary and his/her legal representative shall be sufficient to satisfy the requirements of 239 CMR 4.09(5)(b).

(c) If, after a reasonable search, a licensed funeral establishment is unable to locate the beneficiary of said funeral trust account, the funeral establishment shall notify the trustee of the account, and the trustee shall turn over all funds in the funeral trust account to the Treasurer of the Commonwealth, in accordance with the laws of the Commonwealth. Any such transfer of funds to the Treasurer of the Commonwealth shall constitute a complete release of all obligations of such licensed funeral establishment pursuant to the pre-need funeral contract.

4.10: Pre-need Insurance Policies and Annuities

(1) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall comply with all applicable state and federal laws and regulations pertaining to the conduct of the business of insurance, including but not limited to all licensing requirements of the Massachusetts Division of Insurance.

(2) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall, prior to accepting any funds as payment for the issuance of any such insurance policy or annuity, make all of the disclosures required by the Massachusetts Division of Insurance to the prospective purchaser of said insurance policy or annuity. In addition to the disclosures required by the Massachusetts Division of Insurance, the agent or employee of the funeral establishment shall also disclose:

(a) That the amount to be refunded to the buyer if the insurance policy is cancelled prior to the death of the beneficiary will be determined by the cash surrender value provisions of the insurance policy; and

(b) That the funeral establishment, or its agent or employee, will be paid a commission on the sale of the insurance policy.

(3) No licensed funeral establishment, nor any agent or employee thereof, shall require any buyer to purchase any insurance policy or annuity as a condition for entering into any pre-need funeral contract.

(4) Any person who purchases a pre-need insurance policy or annuity from any agent or employee of any licensed funeral establishment who is duly licensed as an insurance agent by the Massachusetts Division of Insurance, may cancel said policy or annuity without penalty any time within ten days after said policy or annuity contract is delivered to him or her by surrendering the policy or annuity contract to either the insurance company which issued said policy or annuity or the agent from whom it was purchased. Upon surrender of such policy or annuity, the purchaser shall be entitled to a full refund of all payments made in connection with said policy or annuity. No licensed funeral establishment, nor any agent or employee thereof, shall impose any penalty or surcharge (monetary or otherwise) on any person exercising said right of cancellation.

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(5) The requirements of 239 CMR 4.10 shall apply to any and all forms of insurance which are sold or utilized for the purpose of providing funding for a pre-need funeral contract, regardless of how named.

4.11: Marketing Of Pre-need Funeral Products

(1) No agent or employee of any licensed funeral establishment shall visit or call upon any patient in a hospital, convalescent or nursing home, rest home, charitable home for the aged, infirmary maintained in a town, intermediate care facility for the mentally retarded, or other health care facility, for the purpose of soliciting or inducing such patient to enter into any pre-need funeral contract, or for the purpose of soliciting or inducing such patient to establish a funeral trust account or purchase a pre-need insurance policy or annuity, unless said agent or employee has been authorized to do so by the patient or his/her legal representative prior to the visit.

(2) A licensed funeral establishment, or any agent or employee thereof, may utilize telephonic communications for the purpose of soliciting or inducing any person to enter into a pre-need funeral contract, establish a funeral trust account, or purchase any pre-need insurance policy or annuity, provided that:

(a) The prospective customer is informed at the beginning of the telephonic communication that the telephonic communication is being made for the purpose of inducing him or her to enter into a pre-need funeral contract, establish a funeral trust account, or purchase a pre-need insurance policy or annuity; and

(b) The telephonic communication is terminated immediately upon any request to do so from the prospective customer.

(3) No agent or employee of any licensed funeral establishment shall solicit or attempt to induce any person to enter into a pre-need funeral contract, establish any funeral trust account, or purchase any pre-need insurance policy or annuity by any method or means which is false, deceptive, misleading, coercive, intimidating or threatening.

(4) No licensed funeral establishment, nor any agent or employee thereof, shall knowingly induce or attempt to induce any person to cancel or revoke any pre-existing pre-need funeral contract, funeral trust account, or pre-need insurance policy or annuity.

(5) Advertising of Pre-need Funeral Products.

(a) Advertising of pre-need funeral contracts, funeral trust accounts and/or pre-need insurance policies or annuities by any licensed funeral establishment, or agent or employee thereof, shall not be false, deceptive or misleading.

(b) All advertising of pre-need funeral contracts, funeral trust accounts and/or pre-need insurance policies or annuities shall disclose all of the following information:

1. The type of product (*e.g.*, funeral trust account, pre-need insurance policy, annuity, *etc.*) which is to be, or may be, used to fund the pre-need funeral contract; and

2. The nature of the relationship between the agent who solicits the purchase of the product, the funeral establishment which is to provide the funeral goods and/or services, the buyer, and the individual or institution which will receive and/or hold any funds paid by the buyer in connection with the purchase of the product.

(c) All advertising of pre-need funeral contracts, funeral trust accounts, and/or pre-need insurance policies or annuities by a licensed funeral establishment, or any agent or employee thereof, shall comply with all other applicable state and federal laws and regulations pertaining to such advertising.

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4.12: Recordkeeping Requirements

(1) Each licensed funeral establishment shall maintain a separate, legible written record for each pre-need funeral contract to which that funeral establishment is a party. Said records shall be maintained at all times on the premises of that funeral establishment, or on the premises of another specifically-identified licensed funeral establishment within the Commonwealth which is owned and operated by the same proprietor, corporation, partnership, association, limited liability company, limited liability partnership or other business entity. At a minimum, such records shall contain all of the following information:

- (a) A fully-executed copy of the pre-need funeral contract;
- (b) A fully-executed copy of each amendment or modification of the terms of that pre-need funeral contract;
- (c) In the case of any pre-need funeral contract which was transferred to another funeral establishment after its original execution, the name and address of the funeral establishment to which that pre-need funeral contract was transferred and written documentation that the buyer and/or beneficiary has authorized that transfer;
- (d) In the case of any pre-need funeral contract which has been performed (*i.e.*, the funeral goods and services specified in that contract have been provided to the beneficiary of that contract), a copy of the death certificate for the beneficiary of that pre-need funeral contract and written documentation that the funeral goods and services specified in that contract were provided;
- (e) Where the funding source for the funeral goods and services to be provided pursuant to that pre-need funeral contract is a funeral trust account:
  - 1. The name, address, date of birth and social security number of the named trust beneficiary;
  - 2. Copies of bank statements and deposit slips from the bank or financial institution which is holding the funds deposited in the funeral trust account which show the date on which the funeral trust was originally established, the amount of money originally deposited in the funeral trust account at the time the funeral trust account was originally established, and the date and amount of each subsequent deposit in the funeral trust account, if any;
  - 3. The name and address of the bank or financial institution which is holding the funds deposited in the funeral trust account;
  - 4. The balance in the funeral trust account, on a monthly basis;
  - 5. A description of the form and manner in which the trust funds are invested;
  - 6. A copy of the individual trust agreement, or, in the case of a common or commingled funeral trust account established pursuant to 239 CMR 4.09(4), a copy of the Master Trust Agreement for the common account; and
  - 7. Written documentation sufficient to demonstrate compliance with all applicable requirements of 239 CMR 4.00 with respect to all changes in the terms or provisions of the funeral trust account; and
- (f) Where the funding source for the funeral goods and services to be provided pursuant to that pre-need funeral contract is a pre-need insurance policy or annuity:
  - 1. the name and address of the insurance company which issued the policy or annuity;
  - 2. the amount of money originally paid to that insurance company for the issuance of that policy or annuity; and
  - 3. the face value of that insurance policy or annuity.

(2) In the case of any common or commingled funeral trust account established pursuant to 239 CMR 4.09(4), a separate written record which complies with the requirements of 239 CMR 4.12(1) shall be maintained for each separate trust beneficiary.

(3) Any and all records established and maintained pursuant to 239 CMR 4.12 shall be available upon request, at any time during regular business hours, to any duly authorized representative of the Board for inspection and copying.

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(4) Any and all records required by 239 CMR 4.12 shall be made available by the licensed funeral establishment during regular business hours, to the buyer of the pre-need funeral contract to whom those records pertain, the beneficiary of the pre-need funeral contract to whom those records pertain, or the legal representative of either, for inspection within ten days after receipt of any written request from any such person to examine such records. Upon the written request of the buyer, the contract beneficiary, or the legal representative of either, the licensed funeral establishment shall furnish copies of all such records to the requesting party. The licensed funeral establishment may charge a reasonable fee, not to exceed the actual costs of reproduction, for such copies.

(5) Every licensed funeral establishment shall file with the Board, on or before June 30 of each calendar year, a written report setting forth the following information:

- (a) The number of pre-need funeral contracts entered into during the preceding calendar year;
- (b) The total number of pre-need funeral contracts to which the funeral establishment is a party;
- (c) The funding method used to finance each pre-need funeral contract to which the licensed funeral establishment is a party;
- (d) The number of pre-need funeral contracts to which the licensed funeral establishment was a party and which were performed during the preceding calendar year;
- (e) The number of pre-need funeral contracts to which the licensed funeral establishment was a party which were transferred during the preceding calendar year;
- (f) The number of pre-need funeral contracts to which the licensed funeral establishment was a party which were cancelled during the preceding calendar year;
- (g) The names and addresses of all banks, trust companies, and insurance companies holding any funds received in connection with any such pre-need funeral contracts during the preceding calendar year; and
- (h) The location within the Commonwealth of Massachusetts where its records pertaining to pre-need funeral contracts are maintained.

Said report shall be made in such form and manner as the Board may direct.

(6) Upon request by any authorized representative of the Board in connection with any official inquiry, a licensed funeral establishment shall furnish complete written information regarding the total amount of assets being held in connection with pre-need funeral contracts by each institution or company identified pursuant to 239 CMR 4.12(5) which is holding any such funds.

4.13: Penalties

Violation of any provision of 239 CMR 4.00 shall be considered a violation of M.G.L. c. 112, § 84A(j), and may also be considered "gross misconduct in the practice of the profession" within the meaning of M.G.L. c. 112, § 61, and shall constitute grounds for disciplinary action by the Board.

4.14: Effective Date

(1) The provisions of 239 CMR 4.00 shall apply in full to all pre-need funeral contracts which are established on or after January 1, 2004.

- (2) With respect to any and all pre-need funeral contracts established prior to January 1, 2004:
- (a) Such pre-need funeral contracts shall be in compliance with the record-keeping requirements of 239 CMR 4.12 no later than June 30, 2004; and
  - (b) All other requirements of 239 CMR 4.00 shall apply to the administration and performance of such pre-need funeral contracts as of January 1, 2004.

REGULATORY AUTHORITY:

239 CMR 4.00: M.G.L. c. 112, § 85.