

EES POLICY NO. 02-10-02	<b>RE:</b> Prepaid Funeral Agreements
<b>POLICY MEMO</b>	<b>KEESM:</b> <a href="#">5430</a> (1) and (2) Ruth Arensdor
<b>FROM:</b> Dennis Priest	
<b>DATE:</b> June 18, 2004 Revised	<b>Other:</b>
<b>Program(s):</b> Medical	<b>Where Posted on Web:</b> <a href="http://content.dcf.ks.gov/ees/KEESM/Policy_Memo/policy_memo_list.html">http://content.dcf.ks.gov/ees/KEESM/Policy_Memo/policy_memo_list.html</a>

The purpose of this memo is to provide policy and procedural instructions for treatment of pre-arranged burial and funeral agreements. Although several state and federal laws provide the basis for current policy in this area, this memo addresses properly assigned and designated plans as well as treatment of excess funds held in a burial plan upon the death of a Medicaid recipient. Two laws passed by the 2004 Kansas Legislature as well as the original excess funeral funds legislation implemented in 2002 have necessitated these changes. All policies and procedures outlined in this memo are effective July 1, 2004.

#### I. Excess Funeral Funds

Excess Funeral Funds result when the value of a prepaid funeral agreement exceeds the actual amount used for the funeral/burial. State law permits a family member of the decedent to alter any prearranged funeral or burial agreement at the time of need. Even when an irrevocable plan exists, the final arrangements may be changed by a family member. Because of this flexibility within the law, it is quite common for funeral arrangements to be altered. If less expensive arrangements result, excess funds become available. Such funds must be turned over to the Estate Recovery Unit (ERU) within DCF if the individual was a medical assistance recipient or the spouse of a former recipient and proper notification procedures were followed. This is true for plans funded through a financial institution, life insurance or burial insurance policy.

- A. **Background:** The Estate Recovery program was established to recover the cost of medical expenses from the estates of certain medical assistance recipients. The process generally requires the agency to file a probate action against an individual's estate to recover any monies. To establish the amount of potential recovery, staff in the Estate Recovery Unit (ERU) will total all paid medical assistance claims for the appropriate time frame. This is the amount of the Estate Recovery Claim. Information on the potential estate is collected from KAECSES, the eligibility worker and a questionnaire completed by a knowledgeable family member of the decedent detailing current resources. Both the potential size of the estate and the amount of paid medical assistance claims are evaluated to determine if it is cost effective to begin probate action. The agency has six months for the date of death to make that determination.

**NOTE:** Senate Bill 272, passed by the 2004 Kansas Legislature, established an expanded definition of the estate for Estate Recovery purposes. This information will be addressed in a separate policy communication.

State law requires certain resources owned by the beneficiary at the time of death to be remitted directly to ERU. Examples of these resources include personal needs accounts at nursing facilities and state hospitals; bank, savings and loan, and credit union accounts; and excess funds held in a

prearranged burial agreement. Funds remaining in these accounts are available to DCF upon notification from ERU. If there is no valid medical assistance claim or estate recovery is not applicable to the individual, any funds remitted to ERU are refunded to the family.

**B. Notification Requirements:** As noted above, financial institutions and insurance companies are required to turn over funds remaining in a prepaid burial arrangement after the funeral obligations are satisfied to DCF if proper notification has been issued informing of the possible existence of a medical assistance claim. House Bill 2781 passed by 2004 Kansas Legislature, further defines reporting requirements to specifically indicate the financial institution, life insurance company or other entity actually holding the funds for the prearranged burial plan must also be notified. To meet this requirement the following procedure has been established:

1. An informational notice shall be sent to all MS/SI applicants stating the reporting requirements regarding the individual's status as a medical assistance recipient as well as the requirements regarding estate recovery. The V304, Funeral Agreement Information, may be used for this purpose.
2. Upon approval of medical assistance, a notice shall be issued to the funeral home holding the prearranged funeral package. The notice will serve as notification of the potential estate recovery claim. Because the report of Medicaid recipient status directly impacts the administration of the Medicaid program, this limited information may be released to the funeral home. However, no additional, specific information may be shared with the funeral home, other than the fact the individual is a medical assistance recipient. The I012, Funeral Agreement Referral, may be used for this purpose.
3. The funeral home shall notify the bank, savings and loan, credit union, insurance company or other entity holding the prepaid funds of the potential existence of a medical assistance claim.

For ongoing recipients with prepaid burial agreements, it is highly recommended that notification be issued to the funeral home at the next annual review, if prior notice has not already been given.

**C. Estate Recovery Responsibilities:** All recovery activity continues to be the responsibility of ERU. Because of this, inquiries regarding this process shall be directed to ERU. Funeral homes, life insurance companies, banks or other individuals inquiring on the existence of a claim, may contact ERU for additional information or documentation.

## II. Prepaid Burial Agreements

The existing agreement used by many funeral homes throughout the state to record a prepaid plan continues to be acceptable. This form, the PrePaid Funeral Agreement, provides a basic template that allows the client and funeral home to enter into a prearranged agreement for funeral and/or burial services. When fully completed and signed, the agreement is considered valid. However, if the total value invested in the fund exceeds \$1500, all items and services in the agreement must be clearly delineated as per KEESM [5430](#)(1) and (2). A separate form is used by the funeral home to document the distribution of the funds. The format of this form varies by funeral home. Additional information may also be needed depending on other resources owned by the individual, such as life insurance, which may impact the amount which can be considered exempt in a revocable funeral arrangement.

**A. Plan Limits:** House Bill 2718 amends K.S.A. 16-303 and increases the total amount which may be designated for services in an irrevocable burial agreement from \$3500 to \$5000. It is important to stress this limitation is specifically for the service portion of the agreement and any miscellaneous

expenses. Additional amounts may be added to the irrevocable plan if specifically designated for any of the burial space items listed in KEESM [5430](#) (2).

Persons who own irrevocable plans where the amount invested in the service portion of plan is less than \$5000 may add additional amounts to the fund to increase the total amount deposited to \$5000. Because interest accrued and reinvested in the plan is exempt, these additions to the value of the plan are not considered when establishing the value of the plan countable toward the \$5,000 limit.

**B. Prepaid Funeral Agreements Funded by Insurance or Annuity:** Prearranged plans exceeding \$1500 in value funded through the anticipated proceeds from a life insurance or annuity are considered exempt if one of the following conditions:

1. Ownership of the policy has been turned over to the funeral home. This policy is not intended to require or encourage ownership of the policy be given to the funeral home. Transfer of ownership is an acceptable option to accomplish the assignment, however.
2. The policy has been irrevocably assigned to the funeral home under an agreement which specifically states any excess policy proceeds will be paid to DCF. The form, Irrevocable Assignment of Benefits of Life Insurance/Annuity, may be used for this purpose. Alternate forms or documents executing an irrevocable assignment must be reviewed.

Irrevocably assigned policies which provide for excess funds to be paid out to a beneficiary other than DCF or the funeral home are not considered fully assigned and therefore, not exempt under the burial plan provisions. A company which refuses to modify a standard assignment document to meet these requirements shall be referred to Central Office.

**C. Verification Requirements:** Hard copy verification of all prepaid burial agreements is required. This includes signed copies of the actual agreement(s) as well as a copy of the itemization of specific goods and services. Copies of any documents related to an insurance assignment must also be provided.

It is also critical to note all funeral and burial agreements on KAECSES. Although the resource may be exempt, it is important to document the information for other DCF staff reviewing the case as well as for reporting purposes. This information is especially critical for ERU staff, who rely on KAECSES information when establishing a claim. However, because the KAECSES OTAP screen does not provide for documentation of the funeral home, funding source or other specific information about the burial plan, ERU staff may contact eligibility staff directly for this information if necessary.

Maintaining updated information on all prepaid burial agreements is equally important. Staff are expected to note any changes reported to an existing burial agreement and obtain documentation of such changes, especially when processing an annual redetermination. Although Medicaid policy encourages applicants/recipients to take advantage of the prepaid burial plan exemptions, it is critical that plans determined to be exempt at initial processing continue to be monitored.

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[Prepaid Funeral Agreement](#)

[Irrevocable Assignment of Benefits of Life Insurance/Annuity Policy](#)

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