



National Funeral Directors Association
*Informs *Educates *Advocates

2011 POLICY

CODIFY THAT IRREVOCABLE FUNERAL TRUSTS ARE NOT ASSETS FOR PURPOSES OF DETERMINING ELIGIBILITY FOR THE SUPPLEMENTAL SECURITY INCOME PROGRAM

NFDA Position

That NFDA initiate federal legislation to codify the current SSA policy that irrevocable funeral trusts are not assets for purposes of determining eligibility for the Supplemental Security Income (SSI) program.

Background

The SSI program is a needs-based program intended to provide a minimum income to those unable to work. The income and assets of those who seek to qualify for SSI payments must be below established thresholds. Under current law and regulations, funds in an irrevocable funeral trust for funeral and burial expenses are not treated as assets for purposes of determining an applicant's eligibility for SSI. Medicaid statutes direct states to use the SSI definition of resources and exclusions from resources for Medicaid eligibility purposes as well. Consequently, applicants seeking Medicaid are able to prefund funeral and burial arrangements with irrevocable funeral trusts without adversely impacting their Medicaid eligibility.

Discussion

Without these exclusions, many Medicaid recipients could die without adequate funds for a dignified funeral and burial. The vast majority of funeral directors are small businesses that cannot subsidize funerals for the low-income residents of their communities. Consequently, state and local governments would be forced to allocate public monies to fund this expense, which is currently covered in many cases by the SSI/Medicaid recipient using personal monies under the funeral trust exclusion. However, two of the exclusions are statutory. The provision that excludes irrevocable funeral trusts with no dollar limitation is regulatory, and subject to unilateral agency revocation. This accidentally occurred when Congress passed SSI anti-fraud legislation. The Social Security Administration (SSA) interpreted this as repeal of the regulatory exclusion. While NFDA was successful in convincing the SSA that its interpretation was incorrect, this situation could occur again.

To correct and clarify this situation, Representatives Pomeroy (D-ND), Wilson (D-OH) and over 25 others in the House and Senators Lincoln (D-AR), Johnson (D-SD), Nelson (D-NE) and Thune (R-SD) and others at the request of NFDA, again introduced bills (**H.R. 1352/S. 427**) in the 111th Congress to amend the Social Security Act to codify the current regulatory exemption and specify that irrevocable funeral and burial trust funds are not assets for purposes of

determining eligibility for the supplemental security income and the Medicaid programs. While we continue to receive good Congressional support for our bills, we have been unable to find an appropriate legislative vehicle to attach it to and have it pass. 2009-10 was no different.

Since our two main House and Senate sponsors were defeated in the 2010 mid-term election, NFDA will seek to find new sponsors and aggressively move to have this bill introduced and finally passed. However, with new leadership in the House, it could be more difficult but not impossible with some key co-sponsors and a proactive advocacy effort.

NFDA Governance History:

2001: Committee Action 1/30/01; Policy Board Action 3/19/01
2002: Committee Action 1/29/02; Policy Board Action 3/18/02
2003: Committee Action 1/23/03; Policy Board Action 3/24/03
2004: Committee Action 1/26/04; Policy Board Action 3/15/04
2005: Committee Action 1/18/05; Policy Board Action 3/7/05
2006: Committee Action 1/17/06; Policy Board Action 3/8/06
2007: Committee Action 1/16/07; Policy Board Action 3/26/07
2008: Committee Action 1/14/08; Policy Board Action 3/10/08
2009: Committee Action 1/29/09; Policy Board Action 3/30/09
2010: Committee Action 1/20/10; Policy Board Action 3/08/10
2011: Committee Action 1/27/11; Policy Board Action 3/09/11

Attest: NFDA Policy Board (original resolution) Date: March 19, 2001 File Code: RES066/Policybd

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