

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

BULLETIN NO.: 10-06E

FROM: Joseph Patrissi, Deputy Commissioner
Economic Services Division

DATE: July 1, 2010

SUBJECT: General Assistance Burial Rules

CHANGES ADOPTED EFFECTIVE 7/1/2010

INSTRUCTIONS

Maintain Manual - See instructions below.
 Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance Bulletin: _____
 Information or Instructions - Retain Until _____

MANUAL REFERENCE(S):

2671	2673	2675	2677
2672	2674	2676	P-2690

This bulletin changes General Assistance rules on burials at public expense to implement the legislative directives in Act 156, "An Act Making Appropriations for the Support of Government," (June 3, 2010). The bulletin is filed in accordance with the emergency rulemaking process authorized in section E.321.4 of that act.

This bulletin changes the Department for Children and Families' practice of paying for burials authorized under 33 VSA §2301 by implementing a maximum payment by the department of \$1,100 designed to cover the full cost of a basic burial or cremation. The department may approve eligibility for financial assistance with burial expenses when available resources of the deceased and surviving spouse are less than this maximum payment. The funeral director and the party making the funeral arrangements must both sign an invoice attesting to an itemized accounting of burial expenses. Family, friends, or other individuals may pay for additional services not paid for by the department.

This bulletin specifies the amount of the maximum payment by reference to General Assistance burial procedures.

Specific Changes to Rule Sections

Table of Contents	Replaces Allowable Expenses, Burial with Maximum Payment for Burial Expenses at 2674.
2671	Modifies definition of “burial” and adds definition of “funeral.” Replaces reference to obsolete district manager position with the general term “the department.”
2672	Replaces reference to obsolete district manager position with the general term “the department.”
2673	Replaces eligibility requirement B specifying that the deceased lacks sufficient resources to pay all of the total allowable burial expenses with the requirement that the available resources of the deceased and the surviving spouse are less than the department’s maximum payment for burial expenses. Removes requirement C. Replaces reference to obsolete section on “Provision for Payment” with reference to section 2676, <u>Payment for Burial</u> .
2674	Changes subsection name from <u>Allowable Expenses, Burial</u> to <u>Maximum Payment for Burial Expenses</u> . Modifies subsection 2674 to make it consistent with Vermont law that the department will not pay any burial expenses if the available resources of the deceased and the surviving spouse equal or exceed the department’s maximum payment for burial. Adds provision that other individuals may contribute toward burial and funeral expenses. Removes references to professional services and interment and other related services and to the maximum amount that funeral directors may charge for professional services specified in procedures at P-2690.
2674.1	Removes subsection 2674.1, <u>Professional Services, Burial</u> .
2674.2	Removes subsection 2674.2, <u>Other Expenses, Burial</u> .
2675	Adds clarification that “total resources” means the assets of the deceased and surviving spouse. Replaces “total allowable expenses” with “maximum payment for burial expenses” as the resource limit for eligibility. Removes “contributions” from the list of types of liquid or available resources.
2676	Removes references to obsolete <u>Professional Services Allowable Total Maximum</u> and <u>Professional Services Payment Maximum</u> in procedures. Removes references to payments for specific items. Adds provision that friends or relatives may contribute toward burial expenses not paid by the department, the deceased, or the surviving spouse.
2677	Modifies the requirement for an itemized accounting by specifying that the appropriate billing form must be signed by the funeral director and the party making the funeral arrangements. Removes provision requiring additional invoices for “other related expenses.”

Specific Changes to Procedures

Table of Contents	Replaces “Allowable Burial Expenses” at P-2690 with “Maximum Payment for Burial Expenses.”
P-2690	Renames subsection P-2690 “Allowable Burial Expenses” as “Maximum Payment for Burial Expenses.” Adds \$1,100 limit on General Assistance payment for burial expenses for an eligible individual. Removes obsolete limits on Professional Services and Other Expenses.

Comment Period

On June 21, 2010 at 10:00 a.m., the Department held a public hearing on this rule in Waterbury, Vermont. The following individuals representing the Vermont Funeral Directors Association attended the hearing and provided oral and written comments: Lucien Hayes, President; Chris Book, Past President; J. Malcolm Potter, President-Elect; Gregory Camp, Executive Director; James Johnston, Lobbyist. The Department received comments in writing from additional funeral directors and one comment from a private individual before the comment period closed on June 23, 2010.

Comments and Responses

To expedite this process the comments are not summarized and are presented, for the most part, as received from the commenters.

Comments

In reference to the second paragraph at 2671, will the State sign a cremation order when the decedent or the decedent’s family has not expressly requested an alternative arrangement? Who will sign the cremation authorization and where will the cremated remains be disposed of?

Will the Dept. of Economic Services be authorizing cremation of deceased and confirming that the provider can not be held liable for any liability from performing a cremation? Also will the Dept. take custody of the cremated remains and confirm that the provider has no responsibility for the remains custody or the final disposition of the cremated remains?

I feel that these items really need to be addressed before the rule takes effect July 1, 2010. The Department, I feel is rushing this rule through without looking at all the ramifications. Our funeral home does a couple of services a year where there are no family members or relatives. In the past we have been able to bury them in a local cemetery. I think the Department needs to look closely at the responsibility it will be taking on when cremating someone as well as the final disposition of the cremated remains.

Responses

When the disposition defaults to cremation, the Department will not sign the cremation certificate. Vermont law requires that the person in charge of a body receive a certificate from the chief, regional or assistant medical examiner before releasing the body for cremation. 18 V.S.A. §5201.

The provision for defaulting to cremation is not new. The Department adopted rules effective July 1, 2002 clarifying that the two alternatives for burials at public expense are cremation and interment and establishing cremation as the preferred arrangement when the decedent or the decedent’s family has

not expressly requested the alternative arrangement. The Department will not take custody of the cremated remains. Funeral directors will continue to handle cremated remains as they have been doing for the past eight years under this provision.

Comments (2674, P-2690)

The \$1,100 maximum payment for burial will not cover the cost of burial. A cemetery plot may cost \$800 or more. Oversized caskets are an additional expense.

The Department should be aware that out-of-pocket expenses are higher than \$1,100.

In the event a family qualifies for assistance, objects to cremation, but has limited or no assets available, will the state consider covering the cost of cash disbursements for a casket, vault, burial plot, and burial fee?

Can we legally require family, friends, etc., to contribute directly to suppliers, leaving the \$1,100 for funeral directors' services and merchandise costs?

How many providers of other kinds of services are asked to provide services below their own costs? There will be a four month period starting July 1 when the state will pay only \$1,100. Will the state please provide a letter of explanation to consumers, like the one you did several years ago, explaining that the funeral director is bound by these rules and Vermont law? The providers of these services (Funeral Directors) should be given a letter from the Dept. that clearly states the guidelines and restrictions so that all parties involved will understand the limitations of the financial assistance available.

If the Department decides against cremation, who will be responsible for the additional charges associated with earth burial?

Will the Department write guidelines to require cremation when there are no outside resources?

Responses

The \$1,100 payment level is based on the following calculation:

Average Expenditures (FY07-FY10)	\$626,444
Less cost savings to be achieved	-\$150,000
Divided by the average # of burials granted	435
Allowable cost per burial (rounded up)	\$1,100

The Department cannot legally require family and friends of the deceased to contribute directly to suppliers. Funeral directors may negotiate methods of payment with them.

The rule limits the Department's payment to \$1,100.

The Department agrees to draft a document that funeral directors may give to consumers explaining the General Assistance (GA) burial assistance rules. The consumers will then decide what type of disposal is affordable for them. The Department will not write guidelines to require cremation when there are no outside resources.

The rule at 2671 specifies that unless the decedent or the decedent's family has expressly requested an alternative arrangement, the decedent's body will be cremated. There is no provision in the rules for the Department to decide against cremation.

Comment

Does the Department consider the \$255 Social Security payment a lump sum death benefit?

Response

The term “lump sum death benefits” is not a new provision in the rule at 2675. It is a general term meant to be inclusive of various types of death benefits. The Social Security death benefit is a specific death benefit issued by the Social Security Administration as a one-time payment to survivors of individuals in receipt of social security payments at the time of death. The \$255 disregard applies to total resources of all applicants for GA burial payment, not only those on whose behalf the Social Security Administration issues a \$255 death benefit.

Comments

There is a contradiction between 2675 and 2676. Is the \$255 a disregard or is it considered a resource?

The Social Security Administration ruled that the Department cannot require the surviving spouse to hand over the \$255 death benefit. It is a benefit to the spouse and not meant to pay for the funeral. At 2675 it is stated that a \$255.00 disregard will be deducted. I am assuming that the Department feels that every surviving spouse is entitled to this lump sum death benefit. This is not true and who will make that determination?

Responses

We recognize that there is some confusion about the \$255 Social Security death benefit. While the rule at 2675 specifies that \$255 of total resources are disregarded, the rule at 2676 specifies that if the surviving spouse chooses to contribute the \$255 disregarded resources toward burial expenses, the Department will deduct them from its maximum payment. The act of donating the disregarded amount by the spouse negates the disregard. The legislature authorized the Department to make changes specified in Act 156 in this emergency rule, which will expire in 120 days. The Department will file another rule through the regular rulemaking process to implement the GA burial rules beyond the 120 days. In that rule the Department will propose deleting the provision that the \$255, if donated by the spouse, must be applied against those expenses for which the Department would be responsible.

Comments

At 2675 it is stated that the Department will explore the existence of all resources. We have a hard enough time now getting eligibility cleared through the Department, how long are we to wait for this to be accomplished? Also what will be the availability on weekends or holidays for someone to give us the eligibility?

The Department should be made to issue payment within 30 days.

Responses

The language at 2675 requiring the Department to explore the existence and availability of all resources is not a new provision. It has long been a requirement for determining eligibility, consistent with 33 V.S.A. § 2301

On July 1, 2010 the Department intends to implement a centralized process that we expect will increase efficiency in processing GA burial payment applications.

Comment

The rule at 2677 specifies that an invoice must be submitted with an itemized accounting. How can we do this when the charges are open-ended? Funeral homes charge different amounts for their services. How will the Department handle these different charges?

If the “new” assistance has an \$ 1,100 cap with no recovery of cash disbursements, why is it necessary to have an itemized invoice for minimum services? It would seem that the state would only be interested in making sure the deceased was cared for and not the breakdown of any charges.

The \$1,100 is such a small amount there is nothing to itemize.

Response

Act 156 requires that in order to receive payment funeral directors must provide the Department and the party making the funeral arrangements with an itemized invoice for the specific services that are provided at public expense.

The Department asks that funeral directors submit their actual costs for services and items billed to the Department. The Department will pay no more than the maximum \$1,100.

Comments

(1) At 2671 the term “funeral” is defined as well as the term “burial.” Will funeral homes be required to provide funerals? If not, why is “funeral” defined in the rule?

(2) Please change the definition of burial or cremation to “final disposition.”

Response

Funeral homes will not be required to provide funerals. The Department added the definition of funeral to the rules because the legislature added that definition to the law at 33 V.S.A. §2301(e). The distinction between burials and funerals clarifies that the costs paid by the Department are burial costs and not funeral costs. Under the broadened provisions on contributions, however, funeral directors may accept contributions and provide funeral ceremonies if contributions are made by friends and family other than the surviving spouse.

The rule at 2671 has been revised with the term “final disposition” consistent with the language in Act 156.

Comment

Roberta Garrand, Administrative Executive was supposed to send a draft of the billing statement to me on Friday. Is it available now?

Response

The Department is making every effort to provide materials necessary for implementation in a timely manner.

Comments

Most of the senators we dealt with thought there would just be a voucher.
It seems the Department isn't on the same page as the Senate.

Response

The Department will issue a check to the funeral director upon receipt of the required itemized bill for burial of an eligible individual.

Comment

How can the Department require that a lump sum death benefit be included in available resources when the person making the arrangements may not have access to it?

Response

If the lump sum payment is an unrestricted payment to the estate, the funeral director may file a claim in the probate court.

Comment

The Provider should not have to pay any state fees for providing such low cost services to families needed [sic.] this assistance (medical examiners fee, permits...)

Response

The fees and permits required by state law and by the regulations governing the funeral industry are beyond the scope of this rule. The Vermont Funeral Directors Association may wish to investigate whether they may be exempt from those fees for state-paid burials.

Comment

We request a list of other providers of services to the department and the types of discounts or restrictions placed on these providers as to what they charge and what they may provide (fuel, rentals.....)

Response

The funeral directors have requested a meeting where, unlike a public hearing on an emergency rule or proposed rule where the Department receives comments to which it responds formally in writing, the Department will engage in a dialogue with the funeral directors around their issues with GA burial payments. In that future meeting, the Department agrees to address reimbursement procedures in general as well as the specific procedures and rules pertaining to GA burials.

Comments

Is there a way that the association can be better informed every step of the way when the Department is making changes that affect us?

I didn't understand that it would happen so soon.

If I hadn't happened upon these changes, I would not have known about them.

Responses

When the Department proposes changes to a rule, the customary process is to make contact with those affected by the rule at several steps in the process. If funeral directors would like to provide contact information, the Department will provide notice when it posts any notice of rulemaking on the Agency of Human Services website.

The Legislature authorized the Department to implement the provisions in Act 156 pertaining to GA burials effective July 1, 2010 through the emergency rulemaking process.

This emergency rule will expire in 120 days. The Department will file another rule through the regular rulemaking process to implement the GA burial rules beyond the 120 days

Comment (2671)

My mother was afraid of fire.

While she spent most of her life quietly managing her fear of fire, she was very clear that she was not to be cremated. Thankfully she had enough money (and a great deal of care given to her by my sister) to be able to pay for a full earth burial. What happens to the poor people (and families) for whom the bell tolls and for whom they do not have enough money to do an earth burial.

I am not emailing you as a person of interest with regards to Long Term Care Medicaid; I am not emailing you as a representative of a great many Long Term Care clients; I am emailing you as the son of a person who was deathly afraid of fire.

Please do not go in this direction; reconsider some other options for offering individuals and families to do a payment plan to the state...

OR

Possible payment plan that is guaranteed by the state and makes the families responsible for the deceased burial...

ANYTHING other than conceivably cornering GA burial clients into getting a cremation!

Thank you for attention in this matter.

Sincerely,
Michael Valente

Response

This rule does not require cremation. It sets a limit on what the state will pay. It also broadens the rules on contributions so that friends and relatives other than the surviving spouse may pay more to the funeral director than the amounts allowed previously under Department rules.

Emergency Rulemaking Process

The department filed this emergency rule with the chairman of the Interagency Committee on Administrative Rules (ICAR) on June 15, 2010.

The department published notice of emergency rulemaking, public hearing, comment period and availability of the rule on the web on June 17, 2010 in three newspapers of record.

The department notified funeral directors on June 17, 2010 of the availability of the rule for review on the Agency of Human Services web site.

A public hearing was held on June 21, 2010 in the Department for Children and Families Commissioner's Conference Room, State Office Complex, Waterbury, Vermont.

Written comments could be submitted no later than 4:30 p.m. on June 23, 2010 to Stella Bukanc, Policy Analyst, Economic Services Division, DCF, 103 South Main Street, Waterbury, VT 05671-1201, stella.bukanc@ahs.state.vt.us.

The department expects to file this emergency rule with the Legislative Committee on Administrative Rules (LCAR) and the Secretary of State's Office on July 1, 2010.

The department posted the emergency rule on the Agency of Human Services website at <http://humanservices.vermont.gov/on-line-rules> and notified advocates, funeral directors, and members of the public of the proposed rule.

Manual Maintenance

General Assistance Rules

<u>Remove</u>		<u>Insert</u>	
TOC 2600 P.2	(02-10)	TOC 2600 P.2	(10-06E)
2671	(02-10)	2671	(10-06E)
2672	(02-10)	2672	(10-06E)
2673	(02-10)	2673	(10-06E)
2674	(89-40F)	2674	(10-06E)
2674 P. 2, P.3	(02-10)	Nothing	
2675	(84-65)	2675	(10-06E)
2676	(89-40F)	2676	(10-06E)
2677	(02-10)	2677	(10-06E)

General Assistance Procedures

<u>Remove</u>		<u>Insert</u>	
TOC (2600)	(97-43)	TOC (2600)	(10-06E)
P-2690	(08-26)	P-2690	(10-06E)
P-2690 P.2	(08-26)	Nothing	

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Burial Arrangements

2671 Burial Arrangements (07/01/2010, 010-06E)

For purposes of rules 2670 through 2677, “burial” means the final disposition of human remains including interring or cremating a decedent and the ceremonies directly related to that cremation or interment at the gravesite. “Funeral” means the ceremonies prior to burial by interment, cremation, or other method.

The department shall make the decision on eligibility and level of payment; and shall be responsible for making the burial arrangements in situations where no relative, friend, or interested person is available. Unless the decedent or the decedent’s family has expressly requested an alternative arrangement, the decedent’s body shall be cremated. It is not the policy of the department to make bodies available for the advancement of anatomical science in those instances when no family or friends are known. Autopsies are performed only under regulations of the State pathologist, who pays related expenses.

Application for Burial

2672 Application for Burial (07/01/2010, 010-06E)

:
: The department will cooperate with the funeral director, other agencies and persons to obtain
: information to determine in a specific instance whether or not the department will be responsible for
all or part of the payment of burial expenses.

Burial Eligibility

2673 Burial Eligibility (07/01/2010, 010-06E)

Eligibility for department financial participation in burial expenses shall be approved when all of the following requirements are met:

- A. Department for Children and Families is responsible under the provision of 33 VSA § 2301 and
- B. Available resources of the deceased and the surviving spouse (2675) are less than the maximum payment for burial expenses.

Payment of burial expenses shall not be issued until a full accounting of burial expenses and resources has been completed and the department has determined that the burial fulfills the provisions at 2676, Payment for Burial, and payments made will not exceed the maximums prescribed in procedures section P-2690.

Maximum Payment for Burial Expenses

2674 Maximum Payment for Burial Expenses (07/01/2010, 010-06E)

The department will pay no more than the maximum specified in Procedures at P-2690 for burial expenses for an eligible individual. If available resources of the deceased and the surviving spouse (2675) equal or exceed the maximum payment, the department will not pay any burial expenses. This provision does not preclude the funeral director from accepting contributions from other individuals toward burial and funeral expenses.

Any change in the dollar amount specified in Procedures P-2690 for the Maximum Payment for Burial Expenses that represents an increase relative to the dollar amount that immediately precedes the change shall be carried out via a procedures change. Any change in the dollar amount specified in Procedures P-2690 for the Maximum Payment for Burial Expenses that represents a decrease relative to the dollar amount that immediately precedes the change shall be accomplished only by following the Administrative Procedures Act process for regulatory changes.

Resources, Burial

2675 Resources, Burial (07/01/2010, 010-06E)

Payment will be denied if the available resources of the deceased and surviving spouse equal or exceed the maximum payment for burial expenses. "Available resources" are "total resources" less a \$255 disregard.

The department representative will explore the existence and availability of all resources. Since many death benefits are negotiable by a surviving spouse or other individual, it is essential that a clear understanding exists that such benefits shall be deducted from the allowable expenses in accordance with the provisions for payment.

Liquid or available resources include, but are not limited to, the following: stocks, bonds, cash on hand or in a bank or other financial institution, lump sum death benefits, proceeds of life insurance policies, and employee death benefits. Such resources are available to pay burial expenses and must be treated in accordance with the section on provisions for payment. Available resources shall not include contributions that family other than the deceased's spouse or friends provide to the funeral director.

When the deceased individually owns real or personal property (other than the above), the value of which exceeds the total cost of burial, the request for burial payment shall be denied if there was no surviving spouse or dependent children residing with the deceased at the time of his or her death. If the value of such real or personal property does not exceed the total cost of burial, it shall be disregarded.

Payment for Burial

2676 Payment for Burial (07/01/2010, 010-06E)

Contributions from friends or relatives may be used to pay burial expenses not paid by the department, the deceased, or the surviving spouse.

Available resources of the deceased and contributions by the surviving spouse, including the \$255 in disregarded resources if used as a contribution to burial expenses, shall be applied against those expenses for which the department would be responsible for the purpose of reducing the maximum payment for burial expenses.

Towns and funeral directors requesting reimbursement for burial expenses under Vermont law must do so on the appropriate departmental billing form. Reimbursement to a town is made on an "as paid" basis up to a maximum of \$250.00 for total burial expenses.

Payment Process, Burial

2677 Payment Process, Burial (07/01/2010, 010-06E)

Payment shall be authorized only when an itemized accounting of specific burial expenses that are to be provided at public expense is received at State Office on the appropriate billing form that includes the signatures of the funeral director and the party making the funeral arrangements.

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P-2690

P-2690 Maximum Payment for Burial Expenses (2673)

GA will pay no more than \$1,100 for burial expenses for an eligible individual.