



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
CN 712**

**TRENTON, NEW JERSEY 08625
(609) 588-2600**

ALAN J. GIBBS
Commissioner

SAUL M. KILSTEIN
Director

MEDICAID COMMUNICATION NO. 92-13

DATE: March 31, 1992

TO: County Welfare Agency Directors

SUBJECT: Irrevocable Prepaid Funeral Trusts

REFERENCE: Medicaid Only Manual - N.J.A.C. 10:71-4.4(b)9

Governor Florio recently signed legislation that modifies the way prepaid funeral trusts are treated for the purposes of Medicaid eligibility for the aged, blind, and disabled. The law now provides that prepaid burial trust agreements may be irrevocable, regardless of the value, if the grantor or beneficiary of the trust is:

- an applicant for or beneficiary of SSI or Medicaid (including New Jersey Care or the Medically Needy program), or
- an individual who reasonably anticipates applying for or receiving Medicaid benefits within six months of executing the trust agreement.

Following SSI resource policy, for Medicaid purposes, all funds held in an irrevocable prepaid burial trust account for an individual or his spouse must be fully excluded in the determination of resource eligibility for Medicaid. The irrevocability of the trust agreement must be determined by examination of the trust documents. If the documents provide that the trust funds are irrevocable upon application for or receipt of Medicaid benefits, the county welfare agency must exclude the full value of the trust fund from countable resources.

It is important to note that the \$1,500 limitation on funds set-aside for burial does not apply to irrevocable trust agreements. However, county welfare agencies are reminded that the amount of funds in an irrevocable burial trust reduces the amount of other funds that may be set-aside for burial. Therefore, if an individual has \$4,000 in an irrevocable burial trust arrangement for burial services, any other funds set-aside for burial in a revocable arrangement must be counted toward resource eligibility. It should also be noted that, those funds in a prepaid burial trust intended for items excluded as burial spaces (e.g., coffin, vault, grave opening and closing costs, etc.), would not reduce the allowable burial set aside. For instance, Mr. K places \$5,000 in an irrevocable burial trust. Of the remaining amount, \$4,000 represents the cost of a coffin and a vault and is

excluded because it is designated for the purchase of burial space items. The remaining \$1,000 is intended for burial services and thus would reduce the allowable burial set aside to \$500. Thus, Mr. K could still set aside \$500 outside the irrevocable burial trust.

In most instances, it is expected that the county welfare agency would not routinely need to ascertain how much of the burial trust would be excluded because it is intended for burial space items. This development needs to be pursued only when the applicant or recipient alleges that he or she has funds other than those in the trust set aside for burial.

While the legislation was signed in January 1992, because of the application of the first moment of the month resource rule, there is no special consideration for January resource eligibility. However, in the evaluation of resources for February 1992 and any subsequent month, county welfare agencies must exclude any funds in an irrevocable burial trust arrangement.

The new legislation provides that it is a crime of the fourth degree to knowingly or purposely solicit or induce any person to execute an irrevocable trust with an intent to collect or charge more than the fair market value for funeral goods or services. Likewise it is a crime of the fourth degree to expend the proceeds of the trust on anything other than the fair market value of funeral goods or services.

Please direct any questions regarding this communication to the field service staff assigned to your county.

Sincerely,



Saul M. Kilstein
Director

SMK:RHh

cc: Marion E. Reitz, Director
Division of Economic Assistance

Nicholas Scalera, Director
Division of Youth and Family Services