

**Sixty-sixth Legislative Assembly of North Dakota  
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1318  
(Representatives Lefor, Blum, Holman, Johnston)  
(Senators Hogan, Klein, Poolman)

AN ACT to amend and reenact sections 43-10.1-03.1 and 50-24.1-02.3 of the North Dakota Century Code, relating to Medicaid assets exempt for funeral expenses.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 43-10.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage.**

Whenever

1. If payments are made to a person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area ~~wherein~~ which the service or property was sold are specifically included, regardless of whether ~~or not~~ the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section.
  - a. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the ~~person~~ individual for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the ~~person~~ individual for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment.
  - b. A purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount ~~of the~~ pay for a funeral and recognized as an allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered, ~~plus the portion of the three thousand dollar asset limitation the purchaser designates for funeral expenses.~~ A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with ~~whom~~ which the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to

another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

2. A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the ~~person~~individual for whose benefit payment is made, and any other pertinent information.
3. Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

**SECTION 2. AMENDMENT.** Section 50-24.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination.**

1. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any pre-need funeral service contracts, prepayments, or deposits to a fund which ~~total six thousand dollars or less~~are placed in an irrevocable itemized funeral contract designated by the applicant or recipient as ~~set-aside~~ to pay for the applicant's or recipient's funeral.
2. An applicant or recipient designates a prepayment or deposit for that applicant's or recipient's burial by providing funds that ~~are to~~must be used for the funeral or burial expenses of the applicant or recipient. If an applicant's or recipient's burial is funded by an insurance policy, the amount considered set-aside for burial is the lesser of the cost basis or the face value of the insurance policy. ~~In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral pre-need contracts, prepayments, or deposits.~~ Interest or earnings retained in a funeral fund also may not be considered as an available resource.
3. A pre-need funeral service contract, prepayment, or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. Any amount in a pre-need funeral service contract, prepayment, or deposit designated under this section which is not used for funeral or burial expenses must be returned to the estate of the medical assistance recipient and is subject to recovery by the department from the medical assistance recipient's estate. ~~No~~A claim for payment of funeral expenses may not be made against the estate of a deceased medical assistance recipient except to the extent ~~that~~the funds are maintained in accordance with this ~~section total less than six thousand dollars~~chapter.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1318.

House Vote:    Yeas 90            Nays 0            Absent 4

Senate Vote:    Yeas 45            Nays 0            Absent 1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2019,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State