

# STATE OF CONNECTICUT



## PERFORMANCE AUDIT

### Oversight of Pre-Need Funeral Service Contracts

## AUDITORS OF PUBLIC ACCOUNTS

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## *Acronyms*

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Acronyms	Definition
APA	Auditors of Public Accounts
CFDA	Connecticut Funeral Directors Association
CID	Connecticut Insurance Department
DCP	Connecticut Department of Consumer Protection
DOB	Connecticut Department of Banking
DPH	Connecticut Department of Public Health
DSS	Connecticut Department of Social Services
FSB	Funeral Service Business
FTC	Federal Trade Commission
LTC	Long-Term Care
OAG	Connecticut State Office of the Attorney General
SCI	Service Corporation International



**Performance Audit Highlights**

*Oversight of Pre-Need Funeral Service Contracts*

**Audit Objectives and Overview**

We estimate that at least \$218.3 million is currently being held for more than 37,000 CT beneficiaries of pre-need funeral service contracts. The purpose of this audit was to: assess adherence to applicable pre-need funeral service contract laws and regulations; and examine the adequacy of state statutes, policies, and procedures intended to safeguard consumer payments made for pre-paid funeral service contracts.

We reviewed relevant statutes, interviewed industry representatives and staff at multiple state agencies, observed DPH inspections of pre-need funeral service contracts, analyzed complaint data, surveyed other states, and checked the U.S. Social Security Administration Death Master File for deceased beneficiaries when contracted pre-need funeral service contracts were never delivered.

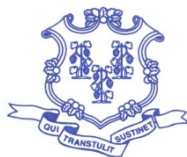
**Findings**

1. No standardized printed information is given to consumers to assist in making informed decisions when purchasing a pre-need funeral service contract, and funeral directors selling these contracts are not required to complete continuing education in this area.
2. We found that 1 funeral home never delivered contracted pre-need funeral services to 5% of deceased beneficiaries (7 of 136).
3. Pre-need funeral service contracts involving life insurance policies have weaker consumer protections in place than funds received for deposit into escrow accounts.
4. Funeral service businesses are not prohibited from commingling pre-need funeral service contract funds with their operating funds or personal bank accounts, as long as the funds are deposited into an escrow account within 15 days.
5. While funeral service businesses are required to notify DPH of their sale or closure within 10 days, 35 of 43 (81%) did not formally notify DPH of their sale or closure.

**Recommendations**

1. The General Assembly should require funeral service businesses to distribute a fact sheet to consumers prior to the purchase of a pre-need funeral service contract, and require them to take a pre-need course in addition to the continuing education requirements for embalmers and funeral directors.
2. Pre-need funeral service contracts can be strengthened by including an option to list an alternate contact should the purchaser become unreachable. Funeral service businesses should be required to escheat unused funds.
3. Similar consumer protections should apply to pre-need funeral service contracts funded by escrow accounts and life insurance policies.
4. Funeral service businesses should be prohibited from depositing and commingling funds received under a pre-need funeral service contract for personal use, business operating expenses, or any other purpose.
5. The Department of Public Health should develop a protocol for itself and funeral service businesses to adhere to when sale or closure occurs, including a closing inspection, and the future location of pre-need funeral service contracts and related records.

# STATE OF CONNECTICUT



## AUDITORS OF PUBLIC ACCOUNTS

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May 2, 2019

### AUDIT OBJECTIVES AND OVERVIEW

We have audited certain state government operations associated with oversight of pre-need funeral service contracts in fulfillment of our duties under Section 2-90 of the Connecticut General Statutes. No one state agency has complete oversight of pre-need funeral service contracts, and the information is obtained from multiple state agencies with responsibility for various aspects of pre-need funerals, including the Departments of Public Health, Consumer Protection, Social Services, Banking, Insurance, and the Offices of the State Treasurer and Attorney General. The scope of our audit included, but was not necessarily limited to, the fiscal year ended June 30, 2018.

We estimate that funeral service businesses in Connecticut received a minimum of \$218,307,389 for at least 37,050 beneficiaries of current pre-need funeral service contracts. These amounts do not include information from all funeral service businesses and pre-need funeral service contracts funded by life insurance policies. Many of the beneficiaries reside in nursing homes. DPH inspectors also informed us that many of the plans are purchased within 2-3 years of death.

The objectives of our performance audit were to:

1. Assess adherence to federal and state laws and regulations applicable to pre-need funeral service contracts.
2. Examine the adequacy of state statutes, regulations, policies, and procedures intended to safeguard consumer payments made for pre-paid funeral service contracts.
3. Determine sufficiency of laws, regulations, agency policies, and procedures to ensure that products and services described in pre-need funeral service contracts are delivered as specified.

## **Methodology**

We used multiple sources and methods to conduct research for this audit, including an assessment of the existence and adequacy of statutes, regulations, and written policies and procedures pertaining to aspects of pre-need funeral service contracts, such as:

- a) pre-need contract requirements and consumer notice of required information;
- b) fiduciary responsibilities of funeral service businesses and escrow agents regarding consumer payments;
- c) cancellation or transfer of pre-need funeral service contracts;
- d) sale or closure of funeral service businesses;
- e) notification of beneficiary death and awareness of existence of pre-need funeral service contracts;
- f) handling of situations in which there are unclaimed funds or insufficient funds; and
- g) the Department of Social Services' (DSS) ability to recoup Medicaid funds expended on funeral services for individuals with pre-need funeral service contracts.

We conducted in-person and telephone interviews with staff from the Connecticut Departments of Public Health, Consumer Protection, Social Services, Banking, and Insurance; the Offices of the State Treasurer and Attorney General; and the Probate Court Administrator. We also interviewed an escrow agent, a pre-need investment advisor/plan administrator, financial institution employees, and a seller of pre-need life insurance. We also met with representatives of the Connecticut Funeral Directors Association and the Funeral Consumers Alliance of Connecticut. We attended several Board of Examiners of Embalmers and Funeral Directors meetings, and observed the inspection of pre-need funeral service contracts by a Department of Public Health inspector at 2 funeral homes and spoke with funeral home personnel on-site. We summarized complaint and investigation information pertaining to pre-need funeral service contracts from the Departments of Public Health, Consumer Protection, Insurance, and the Office of the Attorney General. We also studied Department of Banking records of escrow agent licensure examinations, in-depth escrow agent reviews, and an extensive review of one large investment advisor/plan administrator (Cooperative Funeral Fund, Inc.) for pre-need funds. Cooperative Funeral Fund and Access Financial Services comprise approximately 90% of pre-need funds held in escrow accounts.

Additionally, the Department of Administrative Services provided information on the recovery of excess pre-need funeral service funds from Medicaid recipients that are due to the state. The Department of Social Services provided information on Medicaid long-term care recipients with pre-need funeral service contracts. Also, the Department of Public Health provided records related to funeral service business-related licensure, certification, inspection, and closure information. We also analyzed and checked for matches from lists of pre-need funeral service contracts held by various funeral service businesses against the U.S. Social Security Administration Death Master File.

We reviewed other states' websites, statutes, and regulations. We also requested information from 43 states we identified as possible contacts regarding pre-need funeral service contracts. We

developed an electronic survey to collect other states' information that contained 19 questions about their pre-need funeral service contract laws and regulations, including:

- whether the state required funeral service businesses to report information on the number and amount of pre-need contracts those businesses had, the level of reporting detail, and if the state aggregated the data to maintain a central registry;
- whether consumer safeguards were in place related to the terms of deposit and purchaser notification requirements once an individual entered into a pre-need funeral service contract;
- whether a funeral service business was required to provide proof before funds were released by the escrow agent, financial institution, or life insurance policy;
- whether there were state inspections and records maintenance requirements related to pre-need funeral service contracts if a funeral home is sold or closed; and
- whether there were criteria for money that escheated to the state's unclaimed property funds.

Of the 15 states that responded to our survey, 9 provided complete responses. The information, while not comprehensive, was useful in determining how Connecticut compared to other states.

Through this methodology, we obtained an understanding of internal controls that we deemed significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We tested certain of those controls to obtain evidence regarding the effectiveness of their design and operation. We conducted our audit in accordance with the standards applicable to performance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. These standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Background is presented for informational purposes. The information is from multiple sources described in this section and was not subjected to the procedures applied in our audit. For the areas audited, we identified the following:

1. No standardized information is given to consumers to assist in making informed decisions when purchasing a pre-need funeral service contract. Funeral directors selling these contracts are not required to complete professional education in this area;
2. One funeral home did not deliver contracted pre-need funeral services to 7 of 136 (5%) deceased beneficiaries, and the funds remain in their account with no mechanism to escheat them to the Treasurer's Unclaimed Property Division;
3. Pre-need funeral service contracts involving life insurance policies have weaker consumer protections in place than those directly purchased by consumers whose funds are deposited into escrow accounts;

4. Funeral service businesses may commingle pre-need funeral service contract funds with operating funds or personal bank accounts, as long as they deposit the funds into an escrow account within 15 days; and
5. Thirty-five of 43 (81%) funeral service businesses did not formally notify the Department of Public Health of their sale or closure during a 6-year period, as statutorily required. It is unclear what has happened to remaining pre-need funeral service contracts held by the businesses that were sold or closed.

## **BACKGROUND**

### **Definition of Pre-Need Funeral Service Contracts**

Section 42-200(a) of the Connecticut General Statutes defines a pre-need funeral service contract as “a contract which requires the payment of money, the delivery of securities or the assignment of a death benefit payable under an individual or group life insurance policy in exchange for the final disposition of a dead human body, including funeral, burial or other services, or furnishing of personal property or funeral merchandise in connection with any such disposition, wherein the use or delivery of such services, property or merchandise is not required immediately...”

A pre-need funeral service contract is a written agreement between a purchaser and a funeral service business (funeral home or crematory). By law, only funeral directors or embalmers employed by a funeral service business can sell this type of contract in Connecticut. The purchaser, who may not be the contract beneficiary, prepays for funeral products and services, possibly long before the funeral. As part of the contract terms, the funeral service business agrees to furnish funeral goods and services upon death of the beneficiary. The funeral service business may guarantee prices for funeral goods and services when entering into the contract. The purchaser may cancel the contract and receive a refund if the contract is revocable. The purchaser of an irrevocable contract cannot receive a refund, but can transfer the contract to another funeral service business.

Individuals purchase pre-need funeral service contracts to choose their own funeral arrangements and relieve their family of decisions and funeral expenses during their grief. They also enter into these contracts to protect and spend down financial assets to qualify for the Medicaid or Supplemental Security Income programs. The Department of Social Services excludes funds committed in these contracts, meeting specific criteria, from its eligibility determinations for these programs.

### **Profile of Connecticut Funeral Service Businesses**

A Department of Public Health (DPH) certificate of inspection is required to operate a funeral service business (e.g., a funeral home or crematory) in Connecticut. DPH issues certificates of inspection following submission of the inspection certificate application, new application fee



(\$375), or annual renewal fee (\$190). The funeral service business must receive a satisfactory on-site inspection of all facilities, forms in use, and pre-need funeral service contracts by a DPH health program associate.

As of May 1, 2018, there were 299 certificates of inspection held by 173 funeral service business owners. Approximately two-thirds of the owners (109 or 63%) have 1 certificate of inspection. Most of these funeral service businesses are family owned and operated, were established many years ago, and were passed down from generation to generation. Two corporations, Carriage Services and Service Corporation International (SCI), own 11 and 25 funeral homes, respectively. Carriage and SCI operate their funeral service businesses under the business names of the previous owners.

It is common for there to be multiple certificates of inspection at the same location. For example, 1 funeral service business owner has 3 certificates of inspection for a single location that include the names of 2 different funeral homes and a trade service (transportation of remains). This accounts for why there are a total of 246 funeral service business locations for the 299 certificates of inspection in Connecticut.

### **Key Public Acts Adopted in Connecticut**

Since the 1985 enabling legislation regulating the sale of pre-need funeral service contracts in Connecticut, the General Assembly passed several public acts that strengthen protections for purchasers and beneficiaries of these contracts:

**Public Act 85-376** – Created Connecticut’s pre-need funeral service contract statute. The act defined the contracts, restricted their sales to funeral directors and embalmers, and required funeral homes to deposit pre-need funeral money into escrow accounts. The act also provided a means for consumers to cancel a contract, and makes any violation of its provisions an unfair trade practice enforceable by the Department of Consumer Protection.

**Public Act 86-290** – Amended the law to allow irrevocable funeral contracts (i.e., purchasers cannot get refunds if they decide to cancel their contracts). The act also excluded the value of these contracts as an asset for the purposes of determining eligibility for certain public assistance programs.

**Public Act 91-357** – Limited the types of accounts in which escrow agents can invest pre-need funeral funds to one of the following: 1) deposit accounts insured by the Federal Deposit Insurance Corporation; 2) accounts insured against loss of principal by an agency or instrumentality of the United States government; 3) bonds in which savings banks in this state may, by law, invest; 4) bonds of the United States or any agency thereof or of this state or any municipality of this state; or 5) any other comparable deposit account, insurance contract, or security.

**Public Act 06-87** – Required written pre-need funeral service contracts to include certain provisions that describe the parties, identify the goods and services to be provided, state the amount paid or to be paid, and designate an escrow agent who will hold the prepaid funeral service funds.

It required a funeral home to: 1) keep copies of the contracts, and 2) inform contract purchasers whenever the home changes majority ownership or closes. The act set a deadline for the escrow agent to notify the purchaser when a deposit has been received from the funeral service business.

**Public Act 12-36** – Allowed for payment of funeral service contracts by assigning the death benefit under a life insurance policy to the funeral service business. These types of payment arrangements did not previously fall within the law’s definition of a funeral service contract.

**Public Act 17-77** – Effective July 1, 2018, funeral service businesses must maintain an electronic list of all pre-need funeral service contracts with specific information about the purchaser and beneficiary. The list must be available upon request to the Attorney General, and the commissioners of the departments of Consumer Protection, Public Health, and Social Services.

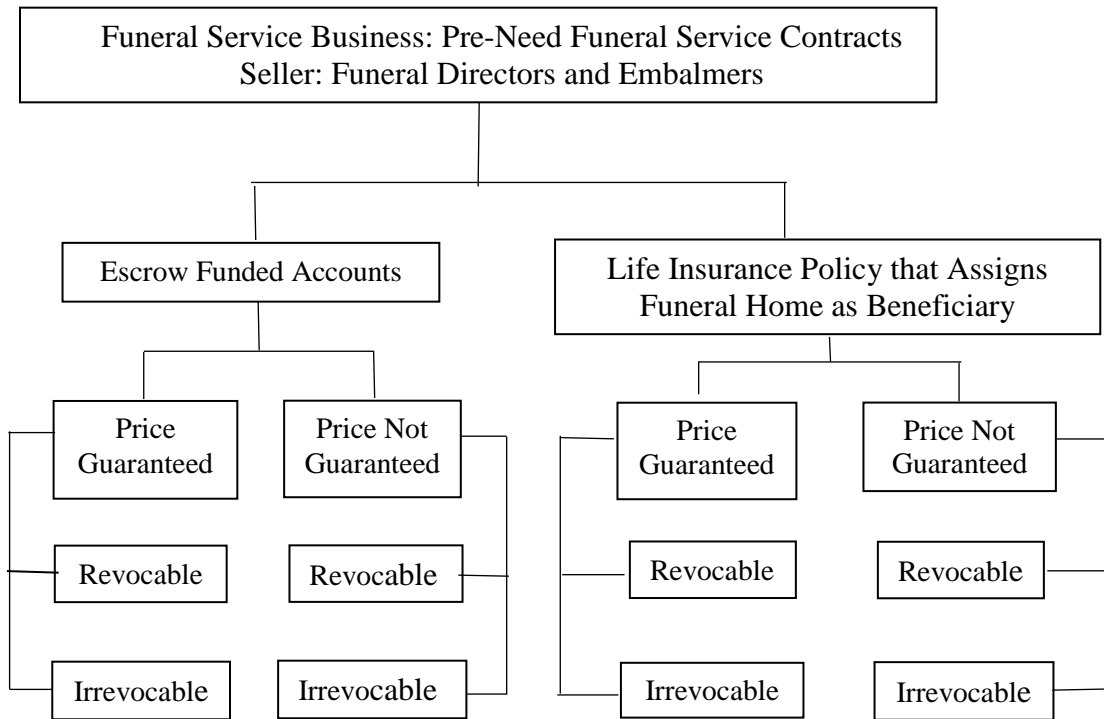
**Public Act 18-168** – Effective October 1, 2018, funeral service businesses will receive a “funeral home license” instead of an “inspection certificate.” This act decreased the required frequency of Department of Public Health inspections of funeral service businesses from annually to at least once every 3 years.

## **Terminology**

Purchasing a pre-need funeral service contract may seem complicated, because the purchaser needs to understand many terms before choosing between the 2 types of contracts. This includes determining which of the various options under each best meet their or the beneficiary’s needs. Connecticut law has evolved over the years to require that pre-need funeral service contracts contain additional and specific information to enhance consumer protections.

Exhibit 1 shows the two ways in which pre-need funeral service contracts may be funded – through escrow accounts (i.e., with financial institutions), or life insurance companies (policies that assign the funeral service business as the beneficiary). Once purchasers select the type of contract to buy, they must also choose whether to: 1) guarantee or not guarantee the cost of the funeral services and merchandise for burial or cremation (if this option is offered by the funeral service business); and 2) select a revocable or irrevocable contract.

**Exhibit 1. Pre-Need Funeral Service Contracts – Types and Options Available to Consumers**



**Pre-need funeral service contract funding: escrow accounts versus life insurance policies.**

Pre-need funeral service contracts in Connecticut may be funded through escrow accounts or life insurance policies. A funeral service business may offer one or both funding types. There are differences between these 2 funding mechanisms, including the value of the contract proceeds available for burial or cremation and the amount refunded if a purchaser cancels a revocable contract.

*Escrow funded accounts.* In 1985, when Connecticut first authorized the sale of pre-need funeral service contracts, the legislature only allowed funds from the sale of these contracts to be deposited into escrow accounts. Individuals could make installment payments on this type of contract or pay the entire amount at the time of purchase.

Section 42-202(a) of the General Statutes requires funeral service businesses to deposit any money or securities into an escrow account within 15 days of receipt, and sets various related requirements. Payments must be placed into an approved interest-bearing bank account or formal trust account to pay for the future costs of the selected funeral goods and services. These requirements include, among other things, that: (1) the funeral service business appoint an escrow agent to administer the account; (2) account assets be invested only in specified ways; (3) money in the account be removed only as specified by law; and (4) parties to the contract receive annual statements. In addition, the escrow agent must notify the purchaser, in writing, within 10 days of its receipt of the deposit from the funeral service business and amount deposited. The purchaser

does not earn interest on the money until the funeral home deposits the check or money order with the escrow agent.

Depositing funds into escrow accounts allows interest to accrue with the potential to accumulate over time commensurate with increases in funeral costs. This is especially important for contracts in which the price for the funeral has been guaranteed, because interest gains can provide a hedge against inflation for the funeral service business that may not provide goods or services for several years.

Although the escrow agent and financial institutions earn administrative fees for managing each escrow account, the funeral service business is not paid until it provides the contracted services. The law allows for 2 exceptions: 1) if the purchaser cancels a revocable pre-need funeral service, the funeral service business may retain actual and reasonably incurred costs for managing the contract; or 2) if the purchaser defaults on the contract terms, or transfers the contract to another funeral service business, the funeral service business may retain up to 5% of the contract proceeds for administrative expenses.

*Pre-need funeral service contracts purchased with a life insurance policy that assigns the funeral service business as beneficiary.* In 2012, the legislature expanded the way pre-need funeral service contracts could be funded to include life insurance policies if the funeral service business is assigned as the policy beneficiary. In a life insurance-funded pre-need funeral service contract, payments are used to purchase an insurance policy to pay for the future cost of funeral goods and services. Funeral directors and embalmers, who are licensed by the Connecticut Insurance Department to sell these contracts and other types of life insurance policies, receive commissions as part of the sale.

Pre-need funeral service contracts that use life insurance policies to pre-pay funeral services and goods are exempt from multiple consumer protection provisions that govern contracts funded through escrow accounts. These include: 1) the lack of statutory timeframes that require the transfer of funds from the funeral service business to the life insurance company; and 2) the provision of annual statements to the purchaser.

In Connecticut, pre-need funeral service contracts use whole life insurance policies to fund funeral benefits. These policies are guaranteed to remain in force for the insured's lifetime, provided required premiums are paid, until the maturity date. As long as the contract terms are met, the insurer will pay the death benefit to the policy's beneficiaries when the insured dies.

It is important to note that, if the premium is high and the insured person lives for a long time, payments can total more than the price of the funeral goods and services. Conversely, if the insured person dies before the policy is fully paid, the available money may not be enough to cover the full cost of a funeral, because some policies limit the benefit if the person dies within the first few years of signing the contract. Finally, if the consumer stops paying the life insurance premium for any reason, the entire benefit is forfeited.

**Guaranteed versus not-guaranteed funeral service contract.** Another important choice for consumers to understand when purchasing pre-need funeral service contracts is whether or not the cost of funeral goods and services will be guaranteed against price inflation.

If a contract provides a guaranty, the funeral service business promises that it will provide the services and comparable merchandise at the time of need at a cost not exceeding the original amount listed in the contract, plus any interest earned. This is regardless of the services and merchandise pricing at the time of the funeral.

According to interviews held with members of the Connecticut Funeral Directors Association, not all funeral service businesses will guarantee prices when contracts are signed. Those that do usually require that the consumer select all funeral goods and services before entering into the contract.

If there is no price guarantee, the money placed in an escrow account or life insurance policy may not fully cover the funeral expenses at time of death. In that case, the person responsible for burial or cremation will need to pay the difference between the two prices, or adjust the goods and services.

*Non-guaranteed cash advance items.* Cash advance items may include, but are not limited to, pallbearers, transportation, clergy honoraria, flowers, musicians or singers, obituary notices in newspapers, gratuities, and death certificates. Cash advance refers to any third-party item or service paid for by the funeral provider on behalf of the contract buyer. Connecticut law does not permit funeral service businesses to profit from these items. The funeral service business will never guarantee the price of these items, but may estimate the cost when the contract is signed so an individual has a better idea of the full cost. The actual cost of these items may vary, depending on the cost at the time of the funeral.

**Revocable vs. irrevocable pre-need funeral service contracts.** Another important distinction for consumers to understand is the difference between a revocable and an irrevocable pre-need funeral service contract. Revocable means the purchasers can cancel the contract and get most of their money back from the funeral service business. If they are enrolled in Medicaid or receive other federal or state financial assistance, they must return any amount owed to the state for services provided. Irrevocable means the contract cannot be canceled, although purchasers may choose to transfer it to another funeral service business.

*Revocable contracts.* There is no limit on what may be spent on a revocable pre-need funeral service contract. However, if a person is applying for Medicaid, funds in a revocable contract can only be used for burial space items: a casket or cremation urn; outer burial container or vault; cemetery expenses (i.e., gravesite opening and closing charges); and cemetery monument. Medicaid exclusion rules treat actual burial plots separately, and there is no limit on how much can be spent on a burial plot.

*Irrevocable contracts.* Although an irrevocable pre-need funeral service contract does not allow the purchaser to cancel the contract and receive reimbursement, the purchaser can transfer

the contract to another funeral service business, including one in another state. The original funeral service business may retain up to 5% as an administrative fee.

Individuals usually purchase irrevocable contracts with the intent of shielding the beneficiary's assets from being considered when determining Medicaid eligibility for long-term care. Connecticut law limits the amount a purchaser can place into an irrevocable contract to \$8,000. The primary reason for this is that most purchasers use an irrevocable contract to spend down financial assets to exclude them from Medicaid eligibility determination and other financial assistance programs. If there are funds remaining in an irrevocable account after burial, they are forfeited to the state for reimbursement of the costs of providing financial or medical assistance.

### **Federal and State Requirements**

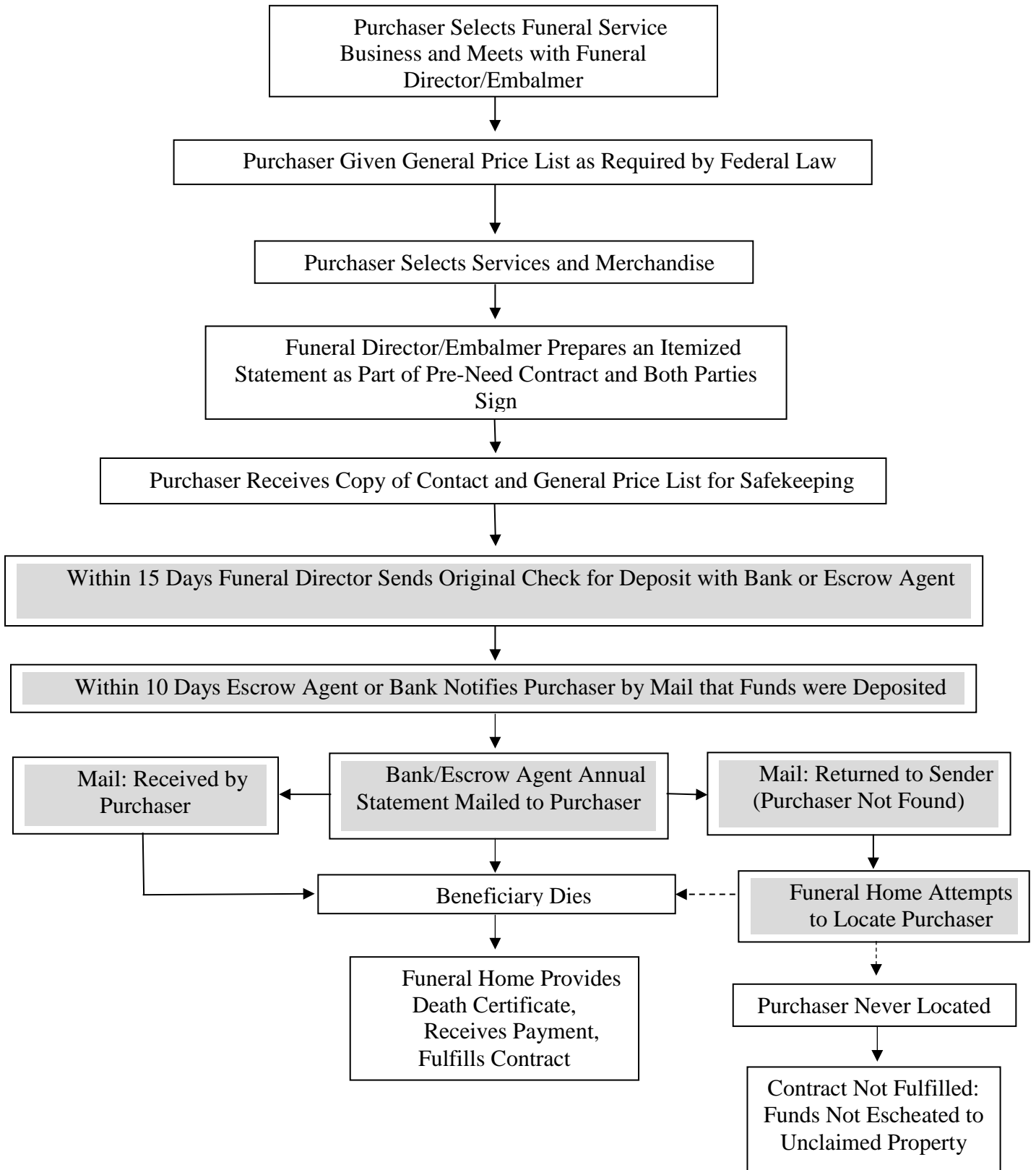
Both federal and state statutes regulate funeral service businesses to promote transparency and protect against unfair trade practices. Federal laws, specifically the Federal Trade Commission "Funeral Rule," are broad and not specific to pre-need funeral service contracts. However, a key requirement is that the funeral service business must provide the purchaser with a printed copy of its "General Price List" of its service and merchandise costs prior to purchasing funeral services. The Funeral Rule is described more fully in the State Auditors' Findings and Recommendations section of this report.

Connecticut has specific statutory requirements addressing pre-need funeral service contracts, disclosures, consumer notification, and language for contracts funded through an escrow account. Exhibit 2 shows the required process when an individual purchases a pre-need funeral service contract. The steps shaded in gray do not apply to pre-need funeral service contract funds used to purchase a life insurance policy.

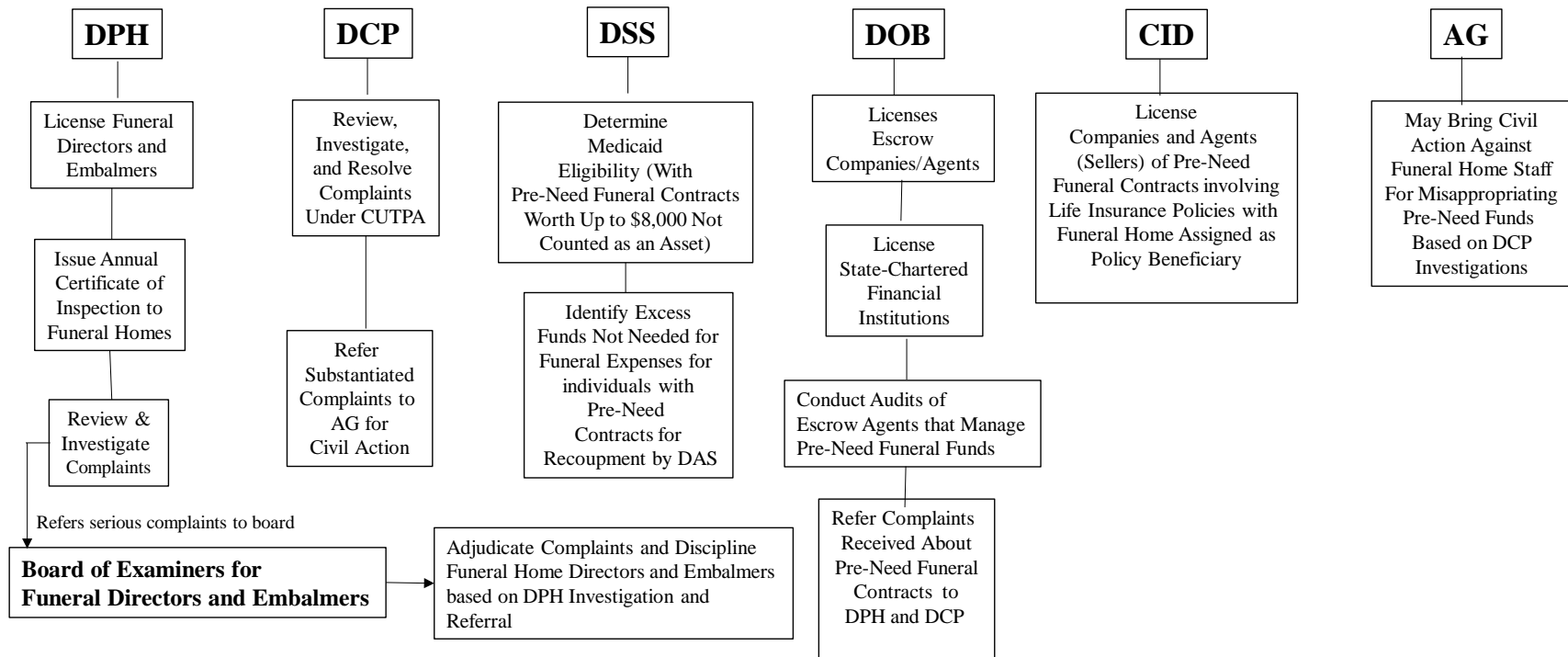
### **Connecticut State Agency Regulation and Oversight**

Several state agencies are responsible for regulating some aspects of funeral service businesses, including ensuring the integrity of the pre-need funeral service contract marketplace. The departments of Public Health (DPH) and Consumer Protection (DCP) are most involved in this area. Exhibit 3 shows the state entities involved and identifies their major responsibilities.

**Exhibit 2. Process to Purchase a Pre-Need Funeral Service Contract**



**Exhibit 3. State Agencies Responsible for Regulating Sellers of Pre-Need Funeral Service Contracts**





**Department of Public Health.** The Department of Public Health oversees the initial licensing and renewal of funeral director and embalmer licenses. In addition, DPH assigns 1 full-time inspector to conduct annual inspections of funeral service businesses (modified by Public Act 18-168 to every three years, effective October 1, 2018), which includes an examination of records related to pre-need funeral service contracts. Funeral service businesses are statutorily required to maintain pre-need funeral service contracts, along with a list of all contracts containing specific information on purchasers and beneficiaries. Beginning July 1, 2018, the list must be in an electronic format, and available on request to several state agencies and the Office of the Attorney General.

DPH also investigates complaints filed against funeral service businesses, including those related to pre-need funeral service contracts filed by purchasers and beneficiaries. After DPH conducts an investigation, it brings serious complaints before the Board of Examiners of Embalmers and Funeral Directors, a five-member board appointed by the Governor. DPH supports the board as it adjudicates complaints filed against funeral service businesses. The board decides matters concerning suspension and revocation of licensure, and imposes sanctions where appropriate. We discuss complaints more fully in a later section of this report.

**Department of Consumer Protection.** The statutes regulating the sale of pre-need funeral service contracts, Chapter 743c of the General Statutes, falls under the jurisdiction of the Department of Consumer Protection. DCP oversees the enforcement of the Connecticut Unfair Trade Practices Act (CUTPA), which prohibits unfair competition and unfair and deceptive acts and practices in trade and commerce. Under CUTPA, DCP investigates alleged violations such as misappropriation of pre-need funeral service contract funds by funeral service business personnel. The department handles complaints on a case-by-case basis and may issue cease and desist orders, order restitution, and enter into consent agreements. We describe complaints received by DCP in a later section of this report.

**The Office of the Attorney General.** The Office of the Attorney General may directly receive consumer complaints related to pre-need funeral service contract violations under CUTPA, but the office would typically refer the complaint to DCP for investigation. The Office of the Attorney General may also represent DCP in litigation by seeking temporary restraining orders or temporary or permanent injunctive relief.

**Department of Social Services.** The Department of Social Services (DSS) administers the Medicaid program and therefore processes Medicaid applications, pays expenditures for Medicaid clients, and conducts resource recovery from individuals who are no longer eligible for the program or have died. Applicants for Medicaid long-term care must disclose if they have a pre-need funeral contract and the contract amount. After a DSS recipient dies, DSS may recover excess funds available under the contract if the funeral service costs were less than the contracted amount.

**Department of Banking.** Since the late 1990s, the Department of Banking (DOB) has licensed escrow agents, who serve as neutral middlemen for an escrow agreement. An escrow agreement is a contract in which two parties agree that a third party should hold an asset until their transaction is completed. DOB licenses two escrow agents that maintain pre-need funeral service contract funds: Access Financial Group (a registered broker dealer) and Forethought Life Insurance

Company (a licensed insurance company). There is a third escrow agent that specializes solely in accounts for children with special needs. DOB examines escrow agents annually to maintain their licensure.

**Connecticut Insurance Department.** The Connecticut Insurance Department (CID) licenses insurance producers, including some who place insurance policies that may be used (in lieu of escrowed funds) to fund the pre-need contract. Both the insurance company and the policy seller must be licensed. Individuals selling these types of policies must be a funeral service director or embalmer. CID also receives, investigates, and resolves complaints filed against life insurance companies and their agents.

### **Complaint Handling**

The regulation of funeral service businesses encompasses both public health and business practices, with responsibility for handling pre-need funeral service contract complaints divided primarily between the Departments of Public Health and Consumer Protection. The Office of the Attorney General and the Connecticut Insurance Department also process a few complaints. Multiple agencies may handle different aspects of a single complaint. For example, DCP may investigate any unfair trade practices leading to pre-need funeral contract violations, and the DPH Board of Examiners of Embalmers and Funeral Directors may reprimand and fine licensed embalmers/funeral directors. DCP may also enter into consent agreements and request that the Office of the Attorney General seek judicial enforcement of the orders. The Connecticut Insurance Department handles complaints pertaining to insurance policies that are used to fund pre-need funeral service contracts.

### **Complaints handled by the Department of Consumer Protection**

The Department of Consumer Protection processed 47 complaints or investigations about funeral service businesses from 2012 through 2017, with an average of 8 complaints received annually (a high of 19 received in 2017, low of 2 received in 2016). There were 27 complaints (57%) specifically related to pre-need funeral service contracts, including 14 that were originated by the DCP-Investigations Division, rather than a member of the public. The complaint process serves as a mechanism for the department to initiate investigations. Exhibit 4 shows the types of pre-need complaints processed by DCP.

<b>Type of Complaint Alleged</b>	<b># of Complainants</b>	<b>% of Complainants</b>
Improper interest calculation for funds in escrow account	11	41%
Billing dispute	7	26%
Pre-need funds missing	6	22%
Funeral home denied pre-need transfer request	3	11%
<b>Total</b>	<b>27</b>	<b>100%</b>

Improper interest calculation for funds in escrow accounts included a funeral home illegally retaining interest from funds held in escrow from the pre-need funeral service contract’s inception to the beneficiary’s death 11 years later. DCP investigations pertaining to missing pre-need funds occurred at funeral homes that had already or subsequently closed. Examples of billing disputes included accusations that a funeral home improperly upgraded certain items in a pre-need contract without the authorization of a family member and charging more for a cremation than the pre-paid amount. Complaints related to funeral homes denying pre-need transfer requests ranged from failure of a funeral home to release pre-need funds to the newly chosen funeral home and the refusal to release cremation ashes until the pre-need balance was paid in full.

**Examples of complaint cases.** To date, DCP closed 16 of the 27 pre-need-related complaints (59%). Exhibit 5 shows the outcomes for the 16 pre-need closed cases. In cases in which pre-need funds were missing, legal action occurred in 2 instances. For one of the funeral homes that denied a pre-need funeral contract transfer request, DPH pursued disciplinary action, and the funeral home voluntarily surrendered its license.

**Exhibit 5. Outcomes of Pre-Need Funeral Service Contract Complaints Investigated by DCP: 2012-2017.**

Outcome:	Complaint Type			
	Improper interest calculation for funds in escrow account	Pre-need funds missing	Billing dispute	Funeral home denied pre-need transfer request
Full or Partial Restitution		1	1	
Legal Action or Assurance of Voluntary Compliance, and Complete Restitution	1	2		
No Action Warranted		1	2	1
Successful Mediation/Resolution		1	2	
Unsuccessful Mediation/Resolution			2	1
Warning Letter or Disciplinary Action Taken				1
<b>Total</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>3</b>

In 1 case, an October 2017 Assurance of Voluntary Compliance required the complainant to submit proof to DCP that it had closed its funeral home, provide a full list of all active (i.e., not yet performed) pre-need funeral service contracts still held, send certified letters within 30 days to all pre-need beneficiaries stating that the funeral home closed and provide information on how to transfer their contracts, and pay restitution for missing pre-need funds. As of February 23, 2018, the funeral home had not fulfilled these requirements. The funeral home’s reason for not making the agreed-upon payments to pre-need funeral service contract holders was that its owner was unemployed. We inquired about this case on May 17, 2018, and DCP reported that the funeral home satisfied every condition except the restitution payment, in which the funeral home made just 4 of the 12 agreed-upon payments. The case will remain open until the funeral home has completed all of the requirements of the Assurance of Voluntary Compliance.

Another funeral home was associated with 4 of the 6 cases in which pre-need funds were missing (1 case still open). In this instance, the funeral home closed without sending the required

notification to purchasers of pre-need funeral service contracts. DCP also discovered that pre-need funds were missing, and the funeral director was arrested for writing bad checks on another matter. The funeral home subsequently funded some of the pre-need contracts; however, DCP could not find pre-need records for 1 individual.

A case of improper interest calculation arose from a DCP investigation of a complaint regarding an heir requesting a refund of approximately \$4,700 from the funeral home. This amount was for the difference between the interest growth on the pre-need funds in the escrow account (approximately \$15,400) and the actual charge for the funeral (approximately \$10,700). During the course of the investigation, DCP found that the funeral home illegally kept the earned interest while the money was in the escrow account instead of crediting the interest to the consumer's account. Since this funeral home was owned by a national chain, DCP expanded the investigation by opening new complaints to include all of the chain's 11 funeral service businesses to determine whether this practice was widespread. The funeral home paid the original complainant the interest owed, and the other cases remain under investigation.

In November 2015, DCP opened a complaint related to an individual who purchased an irrevocable pre-need funeral service contract from a funeral home in January 1997. The funeral home had been bought recently by a large chain that sent a letter requesting that the contract purchaser sign a new pre-need funeral service contract. The new contract would have changed the funding from an escrow account to a life insurance policy, which is more lucrative for funeral directors due to its commission structure. The reformulated contract also added a new \$1,500 miscellaneous fee. The purchaser ultimately transferred the pre-need funeral service contract to another funeral home. Because this investigation raised concerns that the reformation of contracts was more widespread, DCP planned to conduct a more extensive review of the funeral home's pre-need records in 3 months to determine whether this occurrence happened with other contract purchasers. However, DCP did not follow up due to a lack of staff resources. At the time the case closed in February 2018, the accounts examiner recommended reopening the audit when more DCP staff become available.

These cases illustrate how the issues investigated in a single pre-need funeral contract complaint may have occurred for many other purchasers who were not aware of a possible issue and did not file a complaint. These examples stress the importance of having strong consumer protections in place. They also highlight how the department purportedly lacks staffing resources to proceed with these wider investigations.

### **Complaints handled by the Department of Public Health**

Section 19a-14(10)(11) of the General Statutes requires the Department of Public Health to investigate complaints against licensed individuals, including embalmers and funeral directors. Complaints may come directly from a consumer, as the result of a DPH inspection of a funeral service business, or from another state agency, such as the Department of Consumer Protection. The DPH Practitioner Investigations Unit investigates complaints and the Board of Examiners of Embalmers and Funeral Directors holds hearings and makes decisions concerning suspension or revocation of licensure, adjudication of complaints filed against practitioners, and imposition of sanctions when appropriate.

The DPH website posts quarterly regulatory action reports that include disciplinary action taken against licensed embalmers, funeral directors, and funeral service businesses. The action may include civil penalties, probation, supervision, required quarterly reports, and the voluntary surrender of a license. According to DPH, voluntary license surrenders may have been the result of investigations into pre-need funeral service contracts. However, the nature or reason for the voluntary surrender is not generally captured in the regulatory action reports or other DPH complaint data.

During 2013-2017, there were 7 regulatory action reports in which we could identify a relationship to a pre-need funeral service contract complaint or investigation. In 1 complaint, the funeral service business was not appropriately storing the pre-need funeral service contracts at the funeral service business, resulting in civil penalties of \$500 and one-year probation for both the licensed embalmer and the funeral service business.

Another pre-need funeral contract complaint was initially filed with DCP and resulted in the voluntary surrender of the embalmer license and funeral service business certificate. The funeral service business denied the complainant's request to transfer a pre-need funeral service contract to another funeral service business. DCP found that the original funeral service business did not place the pre-need funds in an escrow account as statutorily required. The complainant subsequently went to the funeral service business and was handed her original check, which the funeral service business never sent to the life insurance company to fund her pre-need funeral service contract. In coordination with DPH, the embalmer and the funeral director subsequently surrendered their licenses, and the two funeral business locations surrendered their certificates of inspection. DCP also forwarded this CUTPA violation to the Office of the Attorney General, where it is anticipated that the Attorney General will take additional actions.

### **Complaints handled by the Connecticut Insurance Department**

The Connecticut Insurance Department (CID) has no role over funeral service contracts defined in Chapter 743c of the General Statutes, except for license of companies and agents selling pre-need funeral service contract policies. CID does not have access to the amount of premiums written by the individual companies operating in Connecticut. However, the department provided us information on the number of pre-need funeral contract complaints, the reason for the complaint, and complaint resolutions during 2012-2017.

When there are complaints, the department can act as an intermediary for the complainant and the life insurance company. Exhibit 6 provides information for the 6 complaints processed by the department against the 5 life insurance companies handling the bulk of such policies. CID received very few complaints pertaining to pre-need funeral service contracts, and none for American Memorial, Homesteaders, and Assurant life insurance companies in the past 5 years. CID found only 1 of the 6 processed complaints to be justified. In the case against National Guardian Life, the agent replaced a policy to fund a pre-need with a new policy, which is often not in the best interest of the policyholder due to higher age-related premiums.

**Exhibit 6. Pre-Need Funeral Service Contract Related Complaints Received by Connecticut Insurance Department: 2012-2017.**

<b>Insurance Company (# of Complaints)</b>	<b>Reason for Complaint</b>	<b>Complaint Justified by CID?</b>
Forethought Life (4)	Misrepresentation of index annuity by agent	Unjustified
	Misrepresentation of group whole life coverage against agent and company	Unjustified
	Death claim procedure and delays on group whole life	Complaint withdrawn
	Policy service delay on fixed annuity year-end statement	Unjustified
National Guardian Life (2)	Policy replacement of whole life policy by agent	Justified (2016)
	Company's refusal to surrender whole life policy in irrevocable trust	Unjustified
American Memorial Life (AMLIC) (0)		
Homesteaders Life (0)		
Assurant Insurance (0)		

**Complaints handled by the Office of the Attorney General**

The Office of the Attorney General has handled few complaints pertaining to pre-need funeral service contracts. There is currently 1 active complaint. The case was brought to the Office of the Attorney General by the Department of Consumer Protection, and while they could not comment on the nature of the complaint, they are close to a resolution.

## STATE AUDITORS' FINDINGS AND RECOMMENDATIONS

The findings and associated recommendations are presented below. The table identifies each state agency or office we asked to respond to particular recommendations. An asterisk indicates that we requested a response from the state agency or agencies with statutory authority. To gain multiple perspectives on areas familiar to more than one state agency, requests for comments were sometimes sent to additional agencies, indicated by a plus sign (+).

Rec. No.	Finding No.	State Agency/Office					
		Public Health	Consumer Protection	Social Services	Banking	Insurance	Treasurer
1	1		*				
2	2	*					
3	3		*				
4	4		*				
5	5, 6		*				+
6	7		*				
7	8		*			+	
8	9	*	*				
9	10	+	*		+		
10	11			*			
11	12	*					
12	13	*					
13	14	*			+	+	
14	15	*					
15	16	*					
16	17	*					
17	18	*					
18	19	*					
19	20	*					
20	21	*					
21	22	*	*				
22	23	*	*				
23	24		*				
24	25	*					
25	26			*			

The findings and recommendations cover a wide range of topics associated with pre-need funeral service contracts. We begin with ways consumer protections could be strengthened through funeral service businesses providing better information prior to purchase, and ensuring that only knowledgeable professionals sell contracts. We also discuss pre-need funeral service contract enhancements, including potential escheatment requirements, alternate contacts, and consumer protection parity for escrow accounts and life insurance. We next focus on ways to better safeguard the handling of pre-need funeral service contract funds and recovery of excess funds from former Medicaid recipients. We also review notification and recordkeeping requirements when a funeral service business holding pre-need funeral service contracts is sold or closes. We conclude with potential improvements to Connecticut's new electronic pre-need funeral service contract record requirements, including the establishment of a central registry.

## **Informing Consumers of Their Rights Prior to the Purchase of Pre-Need Funeral Service Contracts**

Potential purchasers of pre-need funeral service contracts may become aware of this option through a variety of means, including:

- information posted on state government websites and brochures;
- Connecticut Funeral Directors Association (CFDA) website and brochures;
- funeral service business websites and printed material;
- investment advisor and plan administrators for pre-need funeral service contract funds; and
- state agencies assisting in the spend-down process prior to qualifying for Medicaid assistance for long-term care (Department of Social Services, Department of Developmental Services).

To assist in the decision-making process, agency websites have pre-need funeral service contract brochures and fact sheets for consumers. Connecticut has this information on the Department of Consumer Protection (DCP) and Office of the Attorney General (OAG) websites. The CFDA has similar information on its website.

**Finding 1:** Connecticut does not require funeral service businesses to give consumers information to help them make informed decisions prior to purchasing a pre-need funeral service contract.

Consumers of pre-need funeral service contracts are left to find information on their own. However, not all consumers know where to seek out such information, particularly if they do not have access to online information. Given all the decisions consumers need to make to purchase a pre-need contract, requiring funeral service businesses to provide a fact sheet or brochure with standardized information and review that information with the consumer will help consumers make more informed decisions.

Other states require that consumers receive printed information prior to the purchase of a pre-need funeral service contract. In Massachusetts, for example, Section 239 CMR 4.02(4) of the Code of Massachusetts Regulations, requires funeral homes to provide a buyer's guide to each consumer who negotiates or discusses a pre-need funeral service contract with a registered licensed funeral director. This guide must be given to the consumer prior to signing the pre-need funeral service contract.

A Connecticut pre-need funeral service contract fact sheet for consumers could be developed based on the existing DCP brochure, and the seller can distribute it to each consumer prior to the purchase of a pre-need funeral service contract. DCP should improve its current fact sheet by including an explanation of the difference between pre-need funeral service contracts funded by escrow accounts versus insurance policies, and their advantages and disadvantages. Also, DCP has not updated its current fact sheet since March 2013. The current fact sheet contains outdated information on the maximum amount that can be placed in an irrevocable pre-paid funeral service contract. It should be \$8,000, instead of the previous maximum of \$5,400.



*Recommendation:* The Department of Consumer Protection should improve and update its Fact Sheet for Consumers on Funeral Service Contracts. The state should require funeral service businesses to give consumers a fact sheet prior to the purchase of pre-need funeral service contracts. **(See Recommendation 1.)**

*DCP Response:* “The Department will continue to produce a Fact Sheet for Consumers on Funeral Service Contracts and will review and update said document. Currently, Connecticut General Statutes do not require that funeral service businesses disseminate information pertaining to pre-need funeral service contracts. If the statute is amended to add such a provision, the amended language should also include a requirement that consumers attest to receiving the information.”

### **Providing Information about Prices**

In addition to state statutes and regulations, the funeral industry must also abide by federal regulations. The Trade Regulation Rule of Funeral Industry Practices, 16 C.F.R. Part 453 of the Federal Trade Commission, commonly referred to as the Funeral Rule, was adopted in 1982 and became fully effective in 1984. All funeral providers in the United States are required to follow the Funeral Rule and comply with its preventive requirements to avoid unfair or deceptive acts or practices. For purchase of either an at-need (i.e., at time of death) or pre-need (in advance of death) funeral service contract, the Funeral Rule requires that information about prices be given to consumers, including:

- disclosing prices over the telephone and providing printed, itemized price lists for all merchandise and services offered;
- all required disclosures provided in a clear and conspicuous manner;
- funeral director to provide descriptions and prices of caskets prior to showing customer the caskets;
- not providing embalming services without permission, and disclosing that embalming is not required for direct cremations or by law, except in certain special cases;
- funeral provider retention of copies of price lists for at least one year after date last distributed to customers; and
- funeral provider may not refuse, or charge a fee, to handle a casket the customer bought elsewhere.

### **Continuing Education Requirement for Funeral Directors Selling Pre-Need Funeral Service Contracts**

**Finding 2:** While Section 20-219a of the Connecticut General Statutes mandates 6 hours of continuing education for funeral embalmers and directors annually, there is no specific requirement for completion of a class on the legal requirements governing sale of pre-need funeral service contracts.

Connecticut law limits the sale of pre-need funeral service contracts to licensed funeral directors and embalmers employed by funeral service businesses. In addition to requirements regarding the handling of pre-need funeral service contract funds, there are continuing education requirements for embalmers and funeral directors. This is important because the Connecticut laws pertaining to pre-need funeral service contracts are complex and often misunderstood, even by those who sell these contracts. Sellers of pre-need funeral contracts must maintain a thorough knowledge of related Connecticut pre-need contract law and stay informed about legislative changes in this area.

Although Connecticut statute requires funeral directors and embalmers to complete a minimum of 6 hours of continuing education annually as a condition of license renewal, there is no mandate that any of the continuing education focus specifically on pre-need contracts. Thus, any licensed funeral director or embalmer can sell pre-need funeral contracts without knowing the requirements of the law. The sale of life insurance pre-need funeral service contracts require funeral directors be licensed by the Connecticut Insurance Department as part of broader life insurance seller requirement.

The Department of Public Health allows continuing education activities to count towards the 6-hour per year minimum statutory requirement for funeral directors and embalmers to be eligible for license renewal. Continuing education must be related to a licensee's practice, and 2 of the 6 hours must be in the area of federal and state laws regarding the provision of funeral services, including regulations promulgated by the Federal Trade Commission. The other 4 hours of required continuing education activities are at the discretion of the licensee, and may include continuing education activities related to pre-need services. The department lists the approved entities that offer courses to fulfill the continuing education requirements.

We interviewed a variety of individuals who regulate pre-need funeral service contracts. They indicated that funeral directors are often not following the rules concerning pre-need funeral contractual and notification requirements because they simply are not familiar with all the laws surrounding these contracts. The regulators believe that some complaints originate because certain funeral directors lack a basic level of understanding of the legal, contractual, and depository requirements they must follow when they sell a pre-need funeral service contract. This weakens the consumer protections currently in place in Connecticut.

Consumers who purchase pre-need funeral service contracts should be able to rely on funeral directors or embalmers to explain the rules of each type of contract, the options available, and answer any of their questions. Only knowledgeable funeral directors who meet a continuing education standard should sell pre-need funeral service contracts. Requiring funeral directors to complete a continuing education course will strengthen consumer protections by educating them on new and existing laws and allowing them to inform consumers about their rights under the law. Current providers of funeral director and embalmer continuing education can include classes on Connecticut's pre-need funeral service contract laws.

*Recommendation:* The General Assembly should amend Section 20-219a of the General Statutes to require a mandatory continuing education requirement for sale of pre-need funeral service contracts specific to Connecticut law. The requirement should

be incorporated into the existing minimum 6-hour annual continuing education initial licensing standard and every five years thereafter. (See **Recommendation 2.**)

*DPH Response:* “DPH agrees with this recommended statutory change. Section 20-217 of the Connecticut General Statutes (CGS) requires that an applicant for embalmer licensure to successfully complete the Connecticut state laws/regulations examination. This examination tests the applicant’s knowledge of the Connecticut General Statutes and the Connecticut Public Health Code, as well as Federal Guidelines as they pertain to the funeral industry, and includes a section on contracts. The Department does not oppose the concept of including a requirement for continuing education on pre-need service contract laws. This would require legislative action”

### **Strengthening Pre-Need Funeral Service Contracts**

The funeral industry has not reached a consensus on using a standard contract in Connecticut; however, Section 42-200(b) of the General Statutes requires that pre-need funeral service contracts be in writing and contain the following information:

1. name, address, telephone number, and Social Security number of purchaser and beneficiary;
2. name, address, telephone number, and license number of funeral director and funeral service business providing goods and services;
3. list of selected good or services;
4. amount of funds paid or to be paid, method of payment, description of how such funds will be invested, and how such funds are limited to those authorized;
5. description of any price guarantees, or if no guarantees, a specific statement that the contract contains no guarantees;
6. name and address of the escrow agent;
7. written representation in clear and conspicuous type, that purchasers should receive a note from escrow agent acknowledging receipt of an initial deposit no later than 25 days after receipt of deposit by funeral director;
8. description of any fees to be paid from the escrow account to the escrow agent or any third party provider;
9. description of ability of the purchaser or beneficiary to cancel a revocable funeral service contract and the effect of cancelling;
10. for irrevocable contracts, a description of ability of beneficiary to transfer such contract to another funeral service business; and
11. signature of purchaser and funeral service business director.

Note that some of these requirements, such as #4, #6, #7 and #8, do not apply to pre-need funeral service contracts funded by life insurance policies.

## **Required Disclosures on Contracts**

**Finding 3:** Certain relevant statutory mandates are omitted from the required pre-need funeral service contract information that would provide consumers with additional financial protections.

There are statutory requirements for the handling and reporting of pre-need funds held in escrow accounts; however, they are not currently required to be included in the pre-need funeral service contract. For example, Section 42-202(a) of the General Statutes requires funeral service businesses to deposit any pre-need funeral service contract money or securities into an escrow account within 15 days of receipt. It is important for purchasers to know the requirements for the handling of their money or securities.

Section 42-202(d) of the General Statutes requires that each party to a funeral service contract receive an annual statement of the amount of interest, dividends, and other income earned and credited to the escrow account. It is an additional consumer protection for purchasers to be aware that such statements are to be received each year and to be apprised of the worth of the contract.

*Recommendation:* The General Assembly should add 2 pre-need funeral service contract requirements to Section 42-200 of the General Statutes: 1) Any money or securities received for payment of pre-need funeral service contracts shall be deposited into an escrow account within 15 days of receipt; and 2) The funeral service business shall provide the purchaser an annual statement of the interest earned and current value of the pre-need funeral service contract funds held in the escrow account. **(See Recommendation 3.)**

*DCP Response:* “The Department agrees with this recommended statutory change.”

**Finding 4:** Connecticut does not require purchasers of pre-need funeral service contracts to certify that they understand certain pre-need funeral service contract requirements, leading to potential misunderstandings of contract terms.

Pre-need funeral service contracts can be lengthy and difficult for purchasers to read due to font size and legal/statutory references. To overcome these challenges, some states require that the purchaser initial certain statements on the contract.

Section 42-200(b)(6) of the General Statutes requires pre-need funeral service contracts to contain the name and address of the escrow agent designated to hold the prepaid funeral service funds. To emphasize its importance, Connecticut could require purchasers to initial this information.

Section 42-200(b)(7) of the General Statutes requires all pre-need funeral service contracts to clearly state that the purchaser will receive acknowledgement from the escrow agent of receipt of the initial pre-need deposit within 25 days after paying the funeral director. Requiring purchasers to initial this information could help to protect consumers against potential misappropriation of funds.

The contract could also require the purchaser to initial the proposed added contract requirements of: 1) any money or securities received for payment of pre-need funeral service contracts shall be deposited into an escrow account within 15 days of receipt; and 2) The funeral service business shall provide the purchaser with an annual statement of the interest earned and current value of the pre-need funeral service contract funds held in the escrow account.

*Recommendation:* The General Assembly should require purchasers to certify their understanding of pre-need funeral service contracts by requiring them to initial the following: 1) name of escrow agent designated to hold the prepaid funeral services funds; 2) statement that purchaser will receive acknowledgement from the escrow agent of receipt of the initial pre-need deposit within 25 days after paying the funeral director; 3) statement that any money or securities received for payment of pre-need funeral service contracts shall be deposited into an escrow account within 15 days of receipt; and 4) statement that the funeral service business shall provide the purchaser with an annual statement of the interest earned and current value of the pre-need funeral service contract funds held in the escrow account. **(See Recommendation 4.)**

*DCP Response:* “The Department agrees with this recommended statutory change.”

**Inability to Locate Purchasers of Pre-Need Funeral Service Contracts**

**Finding 5:** We found that 1 funeral home never delivered contracted pre-need funeral services to 5% of deceased beneficiaries (7 of 136).

We reviewed 255 pre-need funeral service contract records from 1 funeral home. We checked social security numbers of the 255 records against the U.S. Social Security Administration Death Master File, which is current through June 1, 2017. Exhibit 7 shows that we identified 6 records in which individuals had died and the funeral service business never delivered the contracted funeral services. The amounts shown remain in the account with no mechanism to escheat them to the Treasurer’s Unclaimed Property Division.

<b>Exhibit 7. Results of Match with Death Master File for Funeral Service Business A</b>			
<b>Beneficiary</b>	<b>Amount in Pre-Need Escrow Account</b>	<b>Date Died</b>	<b>Number of Years Since Death as of December 2017</b>
A	\$1,371	November 2004	13 yrs, 1 month
F	\$377	May 2005	12 yrs, 7 months
B	\$914	September 2006	11 yrs, 3 months
C	\$1,098	January 2007	10 yrs, 11 months
E	\$35	March 2012	5 yrs, 9 months
D	\$2,502	January 2015	2 yrs, 11 months
<b>Total</b>	<b>\$6,297</b>		

Using the same methodology, we reviewed an additional 136 pre-need funeral service contract records from another funeral home (Funeral Service Business B). Exhibit 8 shows that Funeral Service Business B never delivered the contracted funeral services to 7 of the 136 (5%) deceased individuals. Thus, the individuals responsible for handling their funeral arrangements did not realize a pre-need funeral service contract existed and funds were available for funeral expenses. Instead, the funds remained with the financial institution.

<b>Exhibit 8. Results of Match with Death Master File for Funeral Service Business B</b>			
<b>Beneficiary</b>	<b>Amount in Pre-Need Escrow Account</b>	<b>Date Died</b>	<b>Number of Years Since Death as of December 2017</b>
D	\$2,063	April 2008	9 yrs, 8 months
B	\$1,216	February 2009	8 yrs, 10 months
A	\$1,463	June 2009	8 yrs, 6 months
F	\$1,603	August 2011	6 yrs, 4 months
E	\$1,544	July 2012	5 yrs, 5 months
C	\$1,561	January 2014	3 yrs, 11 months
G	\$1,631	June 2016	1 yr, 6 months
<b>Total</b>	<b>\$11,081</b>		

While it is impossible to estimate the total number of pre-need funeral contract beneficiaries that never received payments for contracted funeral services, we believe that matching the 37,000+ Connecticut pre-need funeral service contracts to the Death Master File would yield many more of these cases. However, life insurance companies offering pre-need funeral service contracts would also need to be subjected to the same requirements as those for escrow funds so the entire population would be identified and unclaimed burial or cremation funds could be escheated to the Treasurer’s Unclaimed Property Division.

**Finding 6:** There is no escheatment requirement in Connecticut for dormant pre-need funeral service contract funds caused by funeral service businesses that did not provide contracted funeral services to deceased beneficiaries or lost contact with the purchaser.

**Connecticut Unclaimed Property Requirements.** All states, including Connecticut, have unclaimed property laws. The purpose of these laws is to protect consumers by ensuring money belonging to them is returned, rather than remaining permanently with financial institutions, insurance companies, business associations, or other entities. For property to be considered unclaimed or abandoned, there must be no activity generated on the account or no contact with the property owner for three years or longer (depending on the type of account).

State laws require financial institutions and other companies to turn forgotten funds over to a state office (usually the state treasurer’s office), who must make a reasonable effort to find the property owners or their heirs. In most cases, the funds are maintained in perpetuity. Examples of unclaimed property include:

- contents of safe deposit boxes;

- deposits held by utility companies;
- dormant savings and checking accounts;
- matured certificate of deposit accounts;
- proceeds from life insurance policies;
- insurance refunds;
- shares of stock; and
- uncashed travelers checks, money orders, dividend checks, and payroll checks.

**Escheatment of dormant pre-need funeral service contract funds.** Unlike Connecticut, some states, including Arkansas, Illinois, Maine, Massachusetts, Michigan, New York, North Carolina, Texas, Vermont, and Washington require that pre-need funeral contract accounts be escheated to the state's Unclaimed Property Fund under certain circumstances. Typically, states use criteria similar to the following for escheatment:

- at least three consecutive years have elapsed since the existence and location of the purchaser or beneficiary of the pre-need funeral service contract was known to the funeral home; or
- the beneficiary's birthday is greater than 95 years old, death has occurred, and no claim has been made by the pre-need funeral contract purchaser for three years following the death of the beneficiary.

In addition, some states allow funeral service businesses to keep a percentage of the unclaimed amount escheated to cover administrative fees related to handling the account over the years.

Federal law does not mandate federally chartered financial institutions to adhere to Connecticut's unclaimed property laws regarding the escheating of dormant accounts. Connecticut statutes do not require pre-need funeral service contract payments deposited into state chartered banks or used to purchase life insurance policies to escheat if the account is dormant for a specific period. The lack of escheatment requirements means that pre-need funeral service contract funds remain with the escrow agent, management company, financial institution, or life insurance company, and continue to earn administrative fees from the interest generated on the accounts. Thus, not requiring these funds for undelivered pre-paid services to be escheated only benefits the escrow agents, financial institutions or life insurance companies. In addition, the money may never be returned to the owner, legal heir, or the state of Connecticut if the person received funding under state assistance programs, such as Medicaid.

Based on the obstacles created by the federal preemption, the funeral service business, as part of its contractual agreement, would need to direct the escrow agent, financial institution, or life insurance company to escheat any dormant funds. However, it is important to note that any statute requiring that contract language include this escheatment mandate would only apply to contracts signed after the effective date of the law. Any contracts signed prior to that date would not be escheated any dormant funds. Given that we found at least 37,000 existing pre-need funeral service contracts in Connecticut, and our examination of 1 funeral service business revealed that 5% of deceased beneficiary contract funds were dormant, there is still an issue with unclaimed funds remaining with escrow agents, financial institutions, and life insurance companies.

We interviewed Office of the State Treasurer employees who informed us that the Treasurer intended to assemble a group of stakeholders to study the Revised Uniform Unclaimed Property Act and potentially recommend updates to the 1981 provisions of the act under which Connecticut is currently operating. One area that this stakeholder group could discuss is escheatment of pre-need funeral service contracts.

Beyond the recommendation presented here, a later recommendation (see recommendation 24), creates a central registry for all pre-need funeral service contracts located in the Department of Public Health. Enactment of this recommendation may alleviate the need to escheat many unused funds from pre-need funeral service contracts because those responsible for funeral arrangements of the deceased could check the registry prior to burial or cremation for an existing pre-need funeral service contract.

*Recommendation:* The General Assembly should amend Chapter 743c, Funeral Service Contracts, of the General Statutes to require that the contracts used by funeral service businesses, escrow agents, financial institutions, or life insurance companies holding the pre-need funeral service contract funds, include the following provisions for escheatment of dormant funds to the Office of the State Treasurer:

- a. at least 3 consecutive years have elapsed since the existence and location of the purchaser or the beneficiary of the pre-need funeral service contract was known to the funeral service business, and the owner or person entitled to the funds has not communicated in writing with the funeral home, escrow agent, financial institution, or life insurance company concerning the funds; or
- b. if the funeral service to be provided under the pre-need funeral service contract has not been performed within 3 years following the death of the owner or beneficiary and the purchaser or beneficiary cannot be located.

Upon the instruction of the funeral service business, the entity holding the pre-need funeral service contract accounts or policies should escheat those funds to the Office of the State Treasurer.

Any such transfer of funds to the Office of the State Treasurer shall constitute a complete release of all obligations of the funeral service business pursuant to the pre-need funeral service contract. **(See Recommendation 5.)**

*DCP Response:* “The Department agrees with these recommended statutory changes, however, to be consistent, recommends replacing “owner” with “purchaser” in the proposed language above.”

*OST Response:* “We agree with the Recommendation.”



## **Alternate Contact Listed on Contracts**

**Finding 7:** Connecticut does not require pre-need funeral service contracts to list an alternate contact should the funeral service business be unable to reach the purchaser.

Section 42-202(d) of the Connecticut General Statutes requires that each party to a pre-need funeral service contract receive an annual statement detailing the account balance. If the mailed statement is undeliverable (returned to sender), then the escrow agent or financial institution must notify the funeral home. It is then up to the funeral service business to locate the purchaser. If the business is unsuccessful in finding an updated address, it must file the returned statement with the pre-need funeral service contract. Pre-need funeral service contracts funded through life insurance policies do not have a similar annual statement requirement.

Funeral service businesses report instances in which the pre-need escrow agent has contacted them because of an undeliverable annual statement. Embalmers and funeral directors may attempt to locate the purchaser, who is often the beneficiary. If they cannot locate the purchaser, they place the returned statement in the pre-need file. The purchaser may not have received the annual statement because they moved, are living in a nursing home or other care facility, or died without the knowledge of the funeral service business.

To address the loss of contact with the purchaser, some states have offered the option of noting an alternate contact on the pre-need contract to be used only when the purchaser cannot be reached. If there is a situation in which required correspondence is undeliverable, the funeral service business can attempt to contact the purchaser through the alternate contact. For example, Section d(e)(iii) of the General Business Law of New York requires pre-need funeral service contracts to specify the name and address of a person not living at the same address as the purchaser of the agreement for the purpose of sending required notifications should the purchaser be unreachable. The purchaser has the option of declining in writing to specify this alternate contact to whom notifications may be sent should mail to the purchaser become undeliverable.

*Recommendation:* Pre-need funeral service contracts should include an option to list the name, address, and telephone number of an alternate contact in the event the purchaser cannot be reached to receive required correspondence. **(See Recommendation 6.)**

*DCP Response:* “The Department agrees with this recommended statutory change.”

## **Consumer Protection Parity for Escrow Accounts and Life Insurance**

**Finding 8:** Pre-need funeral service contracts involving life insurance policies have less consumer protections in place than funds received for pre-need funeral service contracts deposited into an escrow account.

The General Statutes governing funeral service contracts contain more restrictions for pre-need funeral service contracts that use an escrow agent or financial institution as opposed to funds used to purchase a life insurance policy. For example, the statutes exempt pre-need funeral service contracts funded through life insurance policies from all of the deposit and notification requirements that apply to those funded under an escrow account. Also, there is no provision in statute for the policyholder to receive an annual statement from the life insurance company, as is required for escrow agents holding pre-need funeral service contract funds.

While some of the statutory provisions should not apply to contracts funded through a life insurance policy, certain consumer protection provisions should apply to both funding methods. For example, contract language for funds to be deposited in an escrow account must include:

- a written representation, in clear and conspicuous type, that the purchaser should receive a notice from the escrow agent acknowledging receipt of the initial deposit not later than 25 days after receipt of such deposit by a licensed funeral director; and
- a description of any fees to be paid from the escrow account to the escrow agent or any third-party provider.
- In addition, other statutory provisions that pre-need funeral service contracts funded through life insurance policies do not have to comply with include:
  - a 15-day depository timeframe (No timeframe for funeral home to remit check received from purchaser to insurance company);
  - a 10-day notification by company of receipt of funds (No timeframe for life insurance company to send copy of signed policy to purchaser for review and safe-keeping);
  - an annual statement to purchaser of account status; and
  - an assurance that, if the particular merchandise provided for in the contract is not available at the time of death, the funeral service must provide similar merchandise in cost and quality.

*Recommendation:* The following requirements should apply to pre-need funeral service contract funds that are used to purchase a life insurance policy:

- deposit, initial notification of receipt of deposit, and annual statement requirements should apply equally to life insurance companies as they do for pre-need funeral service contracts funded with escrow accounts;
- an assurance that, if the particular merchandise provided for in the contract is not available at the time of death, the funeral service must provide similar merchandise;
- a description of any commissions to be paid by the life insurance company to the seller of the policy; and
- a description of the surrender penalty if the policy is cancelled.

**(See Recommendation 7.)**

*DCP Response:* “The Department agrees with most of these recommended statutory changes but recommends prohibiting funeral service providers from receiving commissions for policies sold, rather than requiring disclosure of commissions.”

*CID* “CID’s overall response is that we support some of the recommended requirements, but also believe that a number are already provided for in the standard life insurance contract sold in this State. Also, the applicability of the requirement could depend somewhat on whether the funeral services provider is the owner of the policy or if the consumer is the owner with the funeral provider listed as the beneficiary. In any event, to the extent that the proposed requirements are to apply to the funeral service provider’s contract, CID is supportive. As noted, some of the proposed requirements (annual statement, disclosure of surrender penalties) are already disclosed during the policy application or in the policy documents of any standard life insurance policy.”

### Handling of Pre-Need Funeral Service Contract Funds

**Finding 9:** One funeral service business’ bank statement listing its pre-need escrow accounts had 4 additional handwritten entries on the statement.

Section 42-202(a) of the General Statutes requires funeral service businesses to deposit any money or securities received for payment of pre-need funeral service contracts into an escrow account within 15 days of receipt from the purchaser. We reviewed one funeral service business’ printout from the bank holding its pre-need funds and found 4 additional entries handwritten onto the statement by the funeral director. The alleged date of deposit for the 4 handwritten pre-need funeral service contract entries in question are: 3-30-2017, 3-31-2017, 7-24-2017, and 9-27-2017. Because the 4 entries showed the date of deposit to have theoretically occurred as long as 9 months prior to the 12-29-2017 posting date on the bank statement (much longer than the required 15 days to deposit such funds), there is the potential risk that funds were misappropriated. This finding suggests a possible weakness in internal controls over assurance that the statutory 15-day deposit timeframe is met when inspecting pre-need funeral service contracts and associated records.

*Recommendation:* The Departments of Public Health and/or Consumer Protection should investigate why the 4 handwritten pre-need funeral service contract entries found for a particular funeral service business were not included in the bank statement of the business’ pre-need funds. DPH and DCP management should improve internal controls over reviews of pre-need records to reduce the risk of fraud. (See Recommendation 8.)

*DCP Response:* “While the Department of Consumer Protection agrees that internal controls could be improved, the Department would need more information from the State Auditors to address the specific issue referenced above.”

*DPH Response:* “The Department of Public Health agrees that controls could be improved related to funeral service business banking account and money management oversight. The Department of Public Health’s primary role in regulating funeral home businesses is to ensure that a building where dead human bodies will be prepared or embalmed for burial contains adequate sanitary conditions and appropriate materials and supplies to safely conduct such a business, and appropriately trained and credentialed embalmers and funeral directors. The Department also makes sure that funeral service businesses maintain appropriate forms and authorizations to release cremated remains, transfer possessions, price lists for clients, and bill appropriately. DPH focuses on public health and safety issues in regards to funeral service businesses; detailed review of financial practices and detection of fraud is not a role DPH has been resourced to provide.”

*Auditors’ Concluding Comments:* As part of its inspection of funeral service businesses, DPH determines whether payments for pre-need funeral service contracts adhere to the statutory requirement of deposit into an escrow account within 15 days of receipt from the purchaser. Therefore, we believe it is appropriate for DPH to investigate the 4 handwritten entries found for a particular funeral service business that appear to violate this statutory requirement.

**Finding 10:** Current statutes do not prohibit funeral service businesses from commingling pre-need funeral service contract funds with operating funds or personal bank accounts, as long as funds are deposited into an escrow account within 15 days.

Not expressly prohibiting funeral service businesses from commingling pre-need funeral service contract funds with their own business or personal bank accounts allows them to use the money to pay for their business, operating, or personal expenses. This may increase the risk that the 15-day deposit requirement may be missed and necessary funds would not be available for a contract beneficiary. Common business sense should prohibit the commingling of funds into a single account.

Funeral service businesses that do not wish to establish a separate bank account to deposit these funds have the option of allowing the purchaser to make the check payable directly to the escrow agent, financial institution, or life insurance company. This is already done by some funeral service businesses in Connecticut.

Some states, like Massachusetts and New Jersey, specifically prohibit the commingling of funds. Massachusetts laws specifically prohibit a funeral service business from depositing and commingling funds for personal use or payment of operating expenses, or the issuance of a loan to any person or for any other purpose. We examined New Jersey statutes, which also prohibit the commingling of funds. Although New Jersey allows the purchaser of a pre-need funeral service contract to make the check payable to a funeral service business, and allows 30 days for deposit into an escrow account or an insurance company, it requires funeral service businesses to establish a separate non-interest bearing account if the business intends to temporarily deposit the funds. In

addition, the law forbids the commingling of any funds received for a pre-need funeral service contract in a funeral home’s business or personal account.

*Recommendation:* Funeral service businesses should be prohibited from depositing and commingling funds received under a pre-need funeral service contract for personal use, business operating expenses, or any other purpose. (See **Recommendation 9.**)

*DPH Response:* “DPH agrees with this recommended statutory change. DPH focuses on the public health and safety practices of funeral service businesses. Monitoring accounting practices and financial oversight go beyond DPH’s role.”

*DCP Response:* “The Department agrees with this recommended statutory change.”

**Role of DSS in Recovering Fund Balances in Pre-Need Funeral Service Contract Accounts for Deceased Medicaid Long-Term Care Recipients**

The Department of Social Services is responsible for verifying eligibility for financial and medical assistance programs for low-income individuals and families. As part of its eligibility determination, it requests that applicants provide information as to whether they have a pre-need funeral service contract and the contract amount, to ensure that these assets, meeting certain criteria, are excluded when determining eligibility for programs.

**Medicaid long-term care applicants with pre-need funeral service contracts.** We concentrated on individuals who received Medicaid long-term care in a facility, such as a nursing home, or in the community, because these DSS recipients would be most likely to spend down assets and purchase a pre-need funeral service contract. We requested information from DSS on the number of Medicaid long-term care (LTC) recipients and the number who had a pre-need funeral service contract in 2016. Exhibit 9 shows that slightly more than half (52%) of total Medicaid LTC recipients had a pre-need funeral service contract, with a total worth of almost 50 million dollars. The average value of a contract was \$4,545, even though Medicaid recipients can have an irrevocable contract value of up to \$8,000 and still be eligible for Medicaid LTC.

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**Exhibit 9. Medicaid Long-Term Care Recipients:  
Total and Number with Pre-Need Funeral Service Contracts for 2016**

Total Number of Medicaid LTC Recipients	19,583
Number with Pre-Need Funeral Service Contracts	10,144
Total Cash Value of Pre-need Funeral Contracts	\$46,099,659

**Investigations and Recoveries Division.** DSS seeks to recover any potential assets following the death of a Medicaid recipient who had a pre-need funeral service contract. The Resource and Investigations Division conducts a “closed case review,” which involves a review of a decedent’s eligibility records to determine if the deceased client had a pre-need funeral service contract, the amount of the contract, and whether there were excess funds available after burial or cremation.

We asked DSS for information to determine how much the department recovered, because the amount paid for the funeral was less than the contract amount. Although funeral homes are required to return excess funds, DSS also conducts a review to increase monetary recoveries. After identifying the recovery amounts, the Department of Social Services refers cases to the Department of Administrative Service (DAS) for collection. DAS provided us with the amount recovered from excess burial contract funds for fiscal years 2013 thru 2017 (Exhibit 10).

<b>Exhibit 10. Recoveries by DAS on behalf of DSS Clients with Pre-Need Funeral Contracts</b>		
<b>Fiscal Year</b>	<b>Amount Recovered</b>	<b>Number of Clients</b>
FY 13	\$18,663	29
FY 14	\$18,208	22
FY 15	\$30,684	40
FT 16	\$33,795	34
FY 17	\$40,187	39
<b>Total</b>	<b>\$141,537</b>	<b>164</b>

**Finding 11:** Funeral service businesses are unclear about the process for returning excess pre-need funds to the state following the burial or cremation of Medicaid recipients.

If the cost of a funeral burial is less than the pre-need funeral service contract, the funeral service business must remit any excess funds to the state if the deceased was a Medicaid recipient. At its December 14, 2017 Board of Examiners of Embalmers and Funeral Directors meeting, the chairman requested that, due to conflicting information in the field, DPH invite a representative from the Department of Social Services to its next meeting to explain the process funeral service businesses should follow if there are excess funds from a pre-need funeral service contract. While that did not occur, the request demonstrates the need for a better understanding of the process. It is conceivable that once the process is better understood, DSS will increase its recoveries.

*Recommendation:* The Department of Social Services should educate each funeral service business about the process to return excess funds of deceased Medicaid recipients with pre-need funeral service contracts. **(See Recommendation 10.)**

*DSS Response:* “The Department disagrees that “a funeral service business must remit any excess funds to the state if the deceased was a recipient of the Medicaid program.” Excess funds remaining in a pre-need funeral service contract after all funeral services have been paid for are distributed in accordance with the terms the contract. If the contract includes a provision naming the State of Connecticut a residual beneficiary if the decedent received Medicaid services from the State, those sums should be paid to the State. If the contract does not speak to how excess funds should be disbursed after the decedent’s death, the funds would become part of the decedent’s probate estate and distributed to creditors in accordance with state law. To the extent that the State has a claim against the decedent’s estate for public assistance paid during the decedent’s lifetime, the Department of Administrative Services (DAS) would handle this recovery in probate court.

While the Department disagrees with the underlying analysis in Finding #11, it agrees that Connecticut funeral home directors appear to be confused about how these excess funds should be handled. Therefore, the Department agrees to work with DAS to issue guidance to the funeral directors.”

*Auditors’  
Concluding  
Comments:*

As noted in the DSS response, there is confusion about how excess funds should be handled. DSS has committed to working with DAS to provide guidance. We believe that DSS, as the administrator of Medicaid, should guide funeral home directors and help facilitate clearly-worded direction clarifying how funds should be returned to the state. We see the collection issue as an ancillary issue and not the cause of the problem.

**Sale and Closure of Funeral Service Businesses**

The change of ownership, including closure or sale of at least 50% ownership of a funeral service business, impacts the purchasers and beneficiaries of pre-need funeral service contracts, because they contracted with a particular funeral service business to provide future services. If family members did not know that a pre-need funeral service contract existed until the death of the beneficiary, they would not know what to do if the business no longer existed and the contract was never transferred to another funeral service business.

The Department of Public Health (DPH) maintains lists of certificates of inspection for all active and inactive funeral service businesses. There is a 90-day grace period before a certificate lapses. Inspection certificates automatically become void if a funeral service business does not submit its renewal application by September 30. Certificates become inactive if a funeral service business fails to annually renew by July 1 or notifies DPH at an earlier date that it is closing. The DPH Licensing Unit staff also reported that DPH inspectors sometimes learn about funeral home or crematory closures.

Exhibit 11 shows the frequency of funeral service business closings or sales within the past six years, resulting in 43 inactive (expired) certificates of inspection.

**Exhibit 11. Closure or Sales of Funeral Service Businesses (FSB): 2012-2017.**

Number of FSB That:	Year					
	2012	2013	2014	2015	2016	2017
Continue to operate at the same location under the same name but a new certificate	3	2	1	4	5	4
Continue to operate at the same location under a different name and new certificate	0	2	1	0	0	2
Closed (no longer operated as FSB)	1	2	4	0	4	4
Have certificates that were not renewed, but continue to operate FSB under another existing certificate at the same location	0	2	2	0	0	0
<b>Total FSB certificates that expired</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>4</b>	<b>9</b>	<b>10</b>

## Notification of Sale or Closure of Funeral Service Business

**Finding 12:** While funeral service businesses are required to notify DPH of their sale or closure within 10 days, 35 of 43 (81%) did not formally notify DPH of their sale or closure.

Section 20-222c of the General Statutes requires funeral service businesses to notify DPH of their closure or sale (of at least 50% ownership) within 10 days following the sale or closure. We asked the DPH Practitioner Licensing & Investigations Section for evidence this notification was occurring. DPH provided us with a log that contained a list of funeral service businesses that closed or were sold from 2012-2017. The log contained just 8 of the 43 (19%) funeral service businesses that were sold or closed from 2012-2017.

When the DPH Practitioner Licensing & Investigations Section becomes aware of a pending or recent closure, sale or transfer of more than half of a funeral service business, the section sends a letter to the owner listing the notification requirements identified in Section 20-222c of the General Statutes. The funeral service business owner must:

- Notify each purchaser of a prepaid funeral contract of the business' sale or closure;
- Mail a letter to each person for whom the funeral service business is storing cremated remains notifying them of the transfer, discontinuance or termination; and
- Provide the Department of Public Health with a notice of the transfer, discontinuance, or termination and a list of all unclaimed cremated remains held by the funeral service business at that time, not later than ten days after any such transfer.

Since DPH only notified a few businesses about these requirements, it is not unexpected that DPH would have incomplete lists of unclaimed cremated remains held by the funeral service business at time of sale or closure. Funeral service businesses may be unaware of these requirements. DPH does not have a step-by-step protocol, such as a procedures manual, to follow up on the sale or closure of a funeral service business. In order to track each of the steps and requirements for a funeral service business closing or being sold, the protocol might include the following information and required steps. DPH should:

1. record the date the funeral service business notified DPH of its impending sale or closure;
2. notify the business by mail of the three requirements in Section 20-222c of the General Statutes, and record the date the letter was mailed;
3. record the date DPH received correspondence from the business that it notified pre-need purchasers of its sale or closure;
4. require the business to identify the name and address of the funeral service business receiving the remaining active pre-need funeral service contracts that purchasers did not transfer;
5. record the date the agency received notice from the business that it sent a letter to each person for whom the funeral service business is storing cremated remains about its sale or closure;
6. record the date DPH received the list of all unclaimed cremated remains held by the funeral service business at the time of its sale or closure; and



7. record the new location or disposal of the ashes.

To ensure that businesses are aware of these required steps, DPH should create a protocol to be shared with all funeral service businesses.

*Recommendation:* The Department of Public Health should develop a protocol for itself and funeral service businesses to adhere to when a funeral service business is closing or being sold. DPH should provide a copy of the protocol to all funeral service businesses at the time of inspection. **(See Recommendation 11.)**

*DPH Response:* “The Department agrees with this recommendation. DPH will develop a protocol within a year of this report being published to assist funeral service businesses with adhering to the requirements in CGS Section 20-222c.”

**Finding 13:** Some states require funeral service businesses to notify a state regulatory entity prior to their sale or closure, but Connecticut does not. This could lead to an inability of funeral service businesses to follow required steps.

Unlike Connecticut, some states require prior notification of the sale or closure of a funeral service business. This allows a state agency to ensure that the funeral service business conducted the required notifications and other actions. For example, Section 3.04(3)(e) of the Code of Massachusetts Regulations requires licensed funeral service businesses to submit a closure or change of ownership form to the Board of Registration in Embalming and Funeral Directing at least 30 days prior to the closure or sale. The form includes information about pre-need accounts and cremated remains held by the funeral service business.

In North Carolina, Section 90-210.68(c) of the General Statutes, requires its state funeral service businesses licensed to sell pre-need funeral contracts to notify the Board of Funeral Service at least 15 days prior to the effective date of transfer, assignment, or termination.

Requiring funeral service businesses to notify DPH before they close or are sold would allow DPH to follow up to ensure the business properly notified active pre-need contract purchasers of their sale or closure. This would allow purchasers to determine the new location of their pre-need funeral service contract, and account for unclaimed cremated remains.

*Recommendation:* Section 20-222c of the General Statutes should be amended to require funeral service businesses to notify the Department of Public Health in writing of their plan at least 15 days prior to the effective date of sale or closure. **(See Recommendation 12.)**

*DPH Response:* “The DPH agrees with this recommended statutory change.”

**Finding 14:** Funeral service businesses are not required to notify escrow agents, financial institutions, and life insurance companies holding the pre-need funeral service contract funds of their sale or closure. This would be a safeguard to prevent potential misappropriation of funds by the previous owner.

As we have described, Connecticut statutes contain various requirements pertaining to the notification of DPH, purchasers of pre-need funeral service contracts, and next-of-kin for whom the funeral service business is storing cremated remains. There currently is no requirement for funeral service businesses to notify the escrow agent or life insurance company holding pre-need funeral service contract funds of their sale or closure. As the fiduciary agents for these funds, prompt notification is important in preventing potential misappropriation of funds by the previous owner.

*Recommendation:* Funeral service businesses should be required to notify escrow agents, financial institutions, or life insurance companies holding pre-need funds of their sale or closure at least 15 days prior to the date of the sale or closure. The Department of Public Health should require proof that the business took this action. This should be part of Department of Public Health protocol related to the closure or sale of funeral service businesses. **(See Recommendation 13.)**

*DPH Response:* “DPH agrees with this recommended statutory change.”

*CID Response:* “CID agrees that notifications of the type listed in the Recommendation would be desirable and would avoid the misdirection of death benefit proceeds at point after the business has closed. The requirement would presumably be “built in” to the terms of the pre-need contract, since it should apply equally whether the contract is funded with escrowed funds or a life policy, and since only the pre-need funeral provider will know when a sale or closure is being contemplated.”

**Finding 15:** Each funeral service business is required to notify purchasers of pre-need funeral service contracts, and each person who has cremated remains stored at the funeral service business, of its closure or sale. However, the statute does not specify the timeframe in which notification regarding cremated remains must occur; thus, timely notification cannot be ensured.

Section 42-200(e) of the General Statutes requires the funeral service business to notify each person who bought a pre-need funeral service contract within 10 days of the funeral service business closure or sale. Section 20-222c(2) requires that a letter be mailed to each person for whom the funeral service business is storing the cremated remains of a relative or friend, notifying them that the funeral service business has closed or been sold. However, unlike the 10-day notification period for purchasers of pre-need funeral service contracts, there are no timeframes specified for notification of stored cremated remains.

Section 20-230d of the General Statutes specifies the permissible ways to dispose of unclaimed cremated remains following storage for 6 months and the required notification of the designated custodian by the funeral director. Permissible disposal options include burial in a cemetery or

memorial garden, scattering, or storage at the funeral home. The funeral director is required to notify the registrar of vital records in the municipality where the death occurred of the means by which the cremated remains were disposed. However, we were told by DPH and funeral directors that many funeral service businesses elect to store cremated remains at their businesses beyond the 6-month period. One recently-purchased funeral home reported to us that it had more than 60 cremated remains left at the business by the previous owner. It is not uncommon for funeral service businesses to hold these unclaimed remains for many years. One funeral home that closed in 2013 had stored cremated remains from a death in 1999. Another funeral home that sold in 2009 had stored cremated remains for over 30 individuals, including two who died in 1953 and one who died in 1958. Persons familiar with the industry told us that cremated remains may be stored at funeral service businesses because no family member or friend came forward to claim the cremated remains, the funeral service business could not reach the contact on file, or family members could not agree on who should take the cremated remains.

*Recommendation:* Funeral service businesses closing or changing ownership should notify the next-of-kin or other designee for whom cremated remains are being stored within 10 days of their closure or sale. **(See Recommendation 14.)**

*DPH Response:* “DPH agrees with this recommended statutory change. CGS Section 20-222c requires a funeral service business to notify those for whom cremated remains are being stored of a transfer of ownership. CGS Section 20-230d explains how a funeral director may dispose of unclaimed remains. The 10 day timeframe would require a legislative change.”

### **DPH Inspection Requirements for Funeral Service Businesses**

**Finding 16:** Funeral service businesses are required to be inspected prior to opening and annually thereafter (modified by Public Act 18-168 to every three years, effective October 1, 2018); however, the inspection process is weak in certain areas.

Before a funeral service business can open, and annually thereafter (modified by Public Act 18-168 to every three years, effective October 1, 2018), DPH must perform an inspection. We accompanied the DPH inspector on two funeral home renewal inspections and observed his inspection of pre-need funeral service contracts. The inspector requested blank copies of pre-need funeral service contracts (revocable and irrevocable) and a burial space contract. The inspector also asked the funeral service business to provide at least 3 of the most recently purchased pre-need funeral service contracts (or within the past three months), and at least 3 recently purchased at-need contracts. For the review of pre-need contracts, the inspector examined the:

- date the contract was written and the date the funeral home deposited the funds into the escrow account, which must be done within 15 days;
- terms printed on the contract, including the requirement that the funeral home declare whether it guarantees its prices;
- statement of goods and services, which should be attached to the contract;

- cash advance items, to be sure they are on the right side of the contract
  - these are items such as flowers and obituaries, for which prices cannot be guaranteed; and
- number of missing triplicate copies of the contract (1 copy goes to the escrow agent, 1 to the purchaser, 1 is kept at the funeral home) – there is an assumption that the purchaser’s copy is missing.
  - signifies a good faith effort was made to send one copy of the executed contract to the purchaser (however, there is no proof that this occurred, just that one copy of the contract is missing from the paper files).

In the two inspections we observed, the DPH inspector would occasionally advise funeral service businesses of areas in which they could strengthen adherence to statutory requirements.

**Potential improvements to the inspection of pre-need funeral service contracts.** There are several ways the inspection of pre-need records could be strengthened. For example, in the two funeral homes we visited with the DPH inspector, he limited the inspection to recently written active pre-need funeral contracts. However, these pre-needs were too new to have been included on the escrow agent or financial institution’s listing of pre-need funds, and therefore, the inspector could not confirm that the funds were placed in escrow. The inspection of pre-need records could be even more thorough if the inspectors reviewed records from a variety of time periods.

By focusing the inspection on active pre-needs (i.e., the funds have not yet been accessed) and excluding any recently completed pre-needs, there is no opportunity to determine whether contracts were properly executed according to state and federal statutory requirements. The review should be expanded to include both active and completed pre-need funeral service contracts.

In the 2 inspections we observed, the funeral director selected the records for DPH to review. When a funeral director selects the records for review, there is a risk that records are not randomly chosen and do not adequately represent the pre-needs written by the funeral service business. This risk can be greatly reduced by either having the DPH inspector select the records, or require the funeral director to provide the pre-need records that the inspector has randomly pre-selected from the escrow listing.

*Recommendation:* The Department of Public Health should strengthen its inspection of pre-need funeral service contracts by having the inspector randomly select active records from various time periods and review a sample of completed pre-need records. (See **Recommendation 15.**)

*DPH Response:* “DPH agrees with this recommendation. The Department will clarify the pre-need contract portion of its funeral home inspection protocol to describe the random selection of pre-need contracts and the time periods for those contracts.”

**Finding 17:** There are no requirements for DPH to inspect closing funeral service businesses, creating a lost opportunity to address any deficiencies in adhering to the closure requirements.

While Connecticut has an inspection requirement prior to opening a funeral service business, and annually thereafter (modified by Public Act 18-168 to every three years, effective October 1, 2018), there is no statutory requirement for an inspection of closing funeral service businesses. A lack of inspection prior to closing denies the state regulatory agency of the opportunity to ensure that the funeral service business has taken all required steps prior to closing. Once the business has closed, there may be little opportunity to correct any requirements that the funeral service business did not follow.

In our survey of other states, both Washington state and North Carolina reported they require an on-site inspection of funeral service business records prior to closure. An inspection prior to closure would provide an opportunity for DPH to obtain evidence that the business adhered to relevant statutory requirements. DPH could verify that the electronic list of pre-need funeral service contracts is up-to-date and includes those sold since the prior electronic list was compiled. Also, a closing inspection would allow DPH to confirm that the list of unclaimed cremated remains held by the funeral service business is accurate and complete.

*Recommendation:* The Department of Public Health should conduct an inspection of a funeral service business prior to its closure to ensure statutory requirements have been met. (See **Recommendation 16.**)

*DPH Response:* “DPH agrees in part with this recommendation. Most funeral service business locations continue to operate under new ownership. Since opening under new ownership requires an inspection, it seems unnecessary and redundant to inspect the same funeral service business upon closure and then immediately upon reopening. This recommendation would make sense when a funeral service business closes and the location will no longer operate as a funeral service business.”

*Auditors’ Concluding Comments:* We disagree that most funeral service business locations continue to operate under new ownership. As shown in Exhibit 11, there were a total of 8 funeral service businesses in 2016 and 2017 that closed and no longer operated as a funeral service business (42% of the 15 expired certificates).

### **Record Retention Requirements for Closed Funeral Service Businesses**

**Finding 18:** No state agency maintains information on the new location of active pre-need funeral service contracts following closure of a funeral service business. This is a potential problem should a purchaser or relative subsequently attempt to find a pre-need funeral service contract purchased from a defunct funeral service business.

At least one state agency should be aware of the location of pre-need funeral service contracts in the event that relatives come forward looking for the contracts purchased prior to the funeral

service business closure. This should occur in addition to funeral service businesses attempting to notify pre-need purchasers of the closure of a funeral service business. It is unclear who is responsible for the pre-need funeral service contracts if the funeral service business is unable to contact the purchaser. We were told by DPH and funeral directors that a closing funeral service business may informally ask another funeral service business to hold any pre-need funeral service contracts in which the closed business could not reach the purchaser, or received no transfer instructions from the purchaser. The Department of Public Health is responsible for issuing certificates of inspection to funeral service businesses and would be in the best position to know when those businesses close.

*Recommendation:* The Department of Public Health should maintain information on the location of the active pre-need funeral service contracts of closed funeral service businesses. (**See Recommendation 17.**)

*DPH Response:* “DPH does not agree with this recommendation. CGS Section 20-222c requires a funeral service business to notify each person who has purchased a prepaid funeral service contract of the transfer, discontinuance, or termination of the funeral home service business. CGS Section 42-200(e) reiterates this requirement. Generally the contracts are transferred to the new funeral service business at that location. However, the beneficiary has the ability to transfer the contract to another funeral home. In the event that a closing funeral home is unable to contact the purchaser of a pre-need funeral service contract, an existing mechanism such as the Connecticut State Treasury Unclaimed Property List may be a more appropriate mechanism to maintain this information and distribute it to the rightful owner.”

*Auditors’ Concluding Comments:* Neither of the statutes referenced by DPH address instances in which the closing funeral service business is unable to contact the purchaser. We believe DPH should be included in the process to have an effective system in place. The Office of the State Treasurer would not be an appropriate entity to maintain such contracts.

**Finding 19:** Funeral service businesses are statutorily required to maintain pre-need funeral service records for 6 years after completion of the contracted services, yet there are no directives to funeral service businesses as to where they should maintain the records of completed contracted services when a funeral service business closes, leading to the potential loss of records.

Section 20-222(g) of the General Statutes requires funeral service businesses to secure the following pre-need (and at-need) funeral service records for no less than 6 years after the completion of the contracted services:

- pre-need funeral service contracts or at-need contracts;
- death certificates, burial permits, authorizations for cremation;
- documentation of receipt of cremated remains and written agreements used in making arrangements such as final bill and other written evidence of agreement; and
- copies of price lists.

There is no statutory or regulatory requirement for what should occur when a funeral service business closes, leading to increased risk of the loss of records.

*Recommendation:* The Department of Public Health should maintain a log indicating where pre-need funeral service contracts of closed funeral service businesses are being retained for no less than 6 years after burial. **(See Recommendation 18.)**

*DPH Response:* “DPH does not agree with this recommendation. Generally all records are transferred to the new owner at the location. Additionally, the closure of a funeral service business does not remove the requirement the person, firm, partnership or corporation engaged in the funeral service to maintain those records for six years. Similarly, other licensed professions are required to maintain records (medical, dental, etc) for the time period required by statute or regulation, but the Department does not get involved in that maintenance.”

*Auditors’ Concluding Comments:* We believe it is appropriate that DPH be involved in the maintenance of such information to ensure the records are not lost.

**Finding 20:** DPH maintained just 2 of 43 (5%) statutorily-required lists of unclaimed remains held by funeral service businesses following their sale or closure between the 2012 and 2017 calendar years.

Section 20-222c of the General Statutes requires funeral service businesses to give DPH a list of unclaimed remains held by the funeral service business within 10 days after its sale or closure.

DPH informed us that most funeral homes have unclaimed remains, and there is no standard protocol for the collection and maintenance of such lists. The DPH Practitioner Licensing & Investigations Section provided us with all lists it had from calendar year 2008 to the present. DPH had documents from 7 closed or sold funeral service businesses. There was information on cremated remains for 5 funeral service businesses that were closed or sold during calendar years 2008 and 2010. The most recent information contained in the files was from 2 funeral service businesses that closed or changed ownership in 2013. Given there were 43 closures or sales between the 2012 and 2017 calendar years, DPH only had documentation for 5% of such occurrences. The absence of required lists of unclaimed remains from 95% of the closed or sold funeral service businesses is a violation of the statutory requirement.

*Recommendation:* The Department of Public Health should develop a protocol for collection and maintenance of lists of unclaimed remains provided by funeral service businesses closing or being sold. **(See Recommendation 19.)**

*DPH Response:* “DPH agrees with this recommendation. This relates to recommendation #11 and will be integrated into the policies and procedures that will be developed

to assist a funeral service business with adhering to the requirements outlined in statute.”

**Finding 21:** There is no requirement for closing funeral service businesses to report to a state agency the new location of transferred remains that continued to be unclaimed following final notification of next-of-kin or alternate contact. Therefore, no state agency is aware of the location of unclaimed remains should a family member come forward subsequent to the closure.

We were told by DPH and funeral directors that owners of closing funeral service businesses often contact other funeral service businesses to request that business hold their unclaimed remains. However, we do not know whether this occurs in all instances. There is no requirement to notify a state agency of the new location of the cremated remains. Should a family member contact DPH months or years after the closure, DPH currently would have no record of the location of the unclaimed remains.

*Recommendation:* Section 20-222c of the General Statutes should be amended to require identification of the future location of unclaimed remains following the sale or closure of a funeral service business. (See **Recommendation 20.**)

*DPH Response:* “DPH agrees with this recommendation. Unclaimed remains generally are transferred to the new owner/funeral service business at the same location. The Department is not opposed to clarifying this statute. This change will require legislative action.”

### **Communication of Complaint Investigations by the Departments of Consumer Protection and Public Health**

**Finding 22:** The Departments of Consumer Protection and Public Health sometimes investigate different aspects of the same pre-need funeral service contract-related complaint. There is no formal protocol to refer to, notify, or update the other agency on complaints or investigations that might impact it.

As described in the Background section of this audit, there are occasions in which the Departments of Consumer Protection and Public Health are both investigating different aspects of the same complaint. For example, there was a complaint regarding missing pre-need funds that resulted in an Assurance of Voluntary Compliance by DCP. The complaint previously included investigations by both DCP and DPH. DPH, through its Board of Examiners of Embalmers and Funeral Directors, took multiple actions over a period of time, including suspending the inspection certificate of the funeral service business for one year, placing the funeral service business on probation for one year, and fining it \$5,500.

DCP’s monitoring of compliance with the Assurance of Voluntary Compliance uncovered a funeral service business owner who failed to: submit proof to DCP that the funeral service business had closed; provide a full list of all active (i.e., not yet performed) pre-need funeral service contracts still held by the closing business; send certified letters within 30 days to all pre-need



beneficiaries stating that the funeral service business closed and provide information on how to transfer their contracts; and pay restitution for missing pre-need funds. These violations could also impact the licenses and certificates associated with this funeral service business. Actions associated with funeral service business licenses and certificates can only be taken by DPH and the Board of Examiners of Embalmers and Funeral Directors.

This case demonstrates that there are pre-need investigations or complaints that cross both DPH and DCP jurisdictions. According to DCP and DPH, there is regular informal communication between the two agencies; however, there is no formal process in place to share the complaints between DCP and DPH.

Additionally, during the course of DPH funeral service business inspections of pre-need funeral service contracts, the DPH inspector may uncover a possible business practice irregularity that would require further investigation that DCP could more appropriately perform, such as deposit of pre-need funeral service contract funds occurring beyond the 15-day timeframe.

*Recommendation:* The Departments of Consumer Protection and Public Health should develop a formal mechanism to refer, notify, and update the other agency on complaints or investigations that might impact the other agency. (See **Recommendation 21.**)

*DPH Response:* “DPH agrees with this recommendation. The Departments already communicate regularly on issues related to funeral service businesses and other professions where there is shared regulatory authority.”

*DCP Response:* “While this is current practice, the Department has no objection to formalizing the process.”

### **Electronic Information about Pre-need Funeral Service Contracts Held by the Funeral Service Business**

As of July 1, 2018, funeral service businesses are statutorily required to maintain electronic pre-need funeral service contract records. These electronic records will be an important resource for multiple state agencies responsible for various aspects of the oversight of pre-need funeral service contracts.

**Finding 23:** Connecticut’s new electronic records requirements did not specify a format for pre-need funeral service contracts, leading to confusion among funeral service businesses.

Public Act 17-77 amended Section 42-200 of the General Statutes to require each funeral service business to compile electronic information on pre-need funeral service contracts on and after July 1, 2018. Previously, there were requirements to maintain paper records of pre-need funeral service contracts that included: name and address of escrow agent, amount of funds deposited with escrow agent or the name and address of the insurance company issuing the policy, and name and address of purchaser. In addition to requiring that this information be available in

electronic format, the new law required that the following additional information be kept electronically:

- dates the funeral service business deposited the funds;
- name, address, date of birth and social security number of beneficiary; and
- value of the contract at the time of its inception and a listing of any additional payments.

Since 2006 (Public Act. 06-87), the state required pre-need funeral service contracts to include the date of birth and social security number of the beneficiary. However, there was no requirement for a funeral service business to maintain this information as part of its records. It is valuable for state oversight to include social security number in the list. This allows data matches to be performed between DSS recipients and the U.S. Social Security Administration Death Master File. In our efforts to determine the existence of deceased beneficiaries with active pre-need funeral service contracts, DPH noted that some funeral directors were reluctant to provide social security numbers without a subpoena for them. As of July 1, 2018, DPH has the legal authority to request and obtain this information. For any DPH-licensed funeral director or embalmer refusing to comply with the new law, DPH will share the law, document attempts to obtain compliance from the funeral business, and involve prosecutors and/or the Office of the Attorney General, if necessary.

Beyond requiring electronic lists of pre-need contracts, the new law does not specify a standardized format. We have been told by DPH and funeral directors that some funeral service businesses are confused about which format to use to compile this required information. In addition to providing guidance to the field, a uniform format would lend itself to developing a comprehensive list that could be a resource for consumers and funeral service businesses trying to verify the existence of pre-need funeral service contracts. It would also be useful in DPH and DCP inspections and investigations, DSS recoupment efforts of potential assets following the death of Medicaid or SSI recipients, and the identification of dormant funds that should escheat to the Office of the State Treasurer.

*Recommendation:* The Department of Public Health, in consultation with the Department of Consumer Protection, should specify the format to be used by funeral service businesses to provide the electronic information required by Public Act 17-77. **(See Recommendation 22.)**

*DPH Response:* “DPH agrees with this recommendation. PA 17-77 is related to the Department of Consumer Protection. The Department of Public Health would be happy to collaborate with Consumer Protection if DCP desires assistance in determining the format for the electronic report.”

*DCP Response:* “The Department of Consumer Protection agrees with this recommendation.”

**Finding 24:** The electronic list required by Public Act 17-77 omitted some necessary data, making it less useful for state agencies to access important information.

To determine if the beneficiary of a pre-need funeral service contract is deceased and the funeral service business fulfilled the contract obligations, it would be useful to have the following information for each pre-need funeral service contract: date of death, date funds were transferred to the funeral service business, and type of pre-need funeral service contract (revocable vs. irrevocable). Many of the statements we reviewed from escrow agents and financial institutions only included the credits (i.e., deposits, interest earned), debits (i.e., fees, withdrawals), and current value of the pre-need funeral service contract.

Escrow agents are required to send annual statements to the purchasers of pre-need funeral service contracts. Should the mailed correspondence be undeliverable, the escrow agent or financial institution should notify the funeral service business of the undeliverable correspondence. It is then up to the funeral service business to locate the purchaser. If the funeral service business is unsuccessful in finding an updated address, then the business should file the returned correspondence with the pre-need funeral service contract file.

Access Financial Services, Cooperative Funeral Fund, and several Connecticut banks and funeral directors reported instances of undeliverable mail. Attempts at finding the purchaser's new mailing address may not always be successful. We are not sure how frequently this failure of contact occurs, and there is no required collection of this information.

*Recommendation:* Electronic records requirements in Section 42-200 of the General Statutes should be amended to include: date of death, date funds transferred to funeral service business, type of pre-need funeral service contract (revocable vs. irrevocable), credits, debits, current value of the contract, and number of undeliverable purchaser annual statements. (See **Recommendation 23.**)

*DCP Response:* “Overall, the Department agrees with this recommended statutory change. However, rather than “date funds transferred to funeral service business,” we would recommend requiring the following: the date the funeral service business received funds from consumer, the date the escrow account or insurance policy was open, the death claim amount, and the date the escrow account or insurance policy was closed.”

### **Establishment of a Central Registry**

**Finding 25:** Many states have government entities that collect information on all pre-need funeral service contracts sold in their state, but Connecticut does not. This has led to inefficiencies in responding to inquiries about pre-need funeral service contracts.

Some states require funeral service businesses to file documentation regarding their pre-need funeral service contracts. We identified 14 states that have state agencies or boards that collect information on the pre-need contracts sold by funeral home directors and others licensed to sell these products. Ten of the 14 states (71%) we reviewed require annual submission of such information, 1 requires submission every two years, and the remaining 3 states require submission

on an ongoing basis as the pre-need contracts are sold. Iowa and Washington, D.C. specifically informed us that this information is submitted electronically. South Carolina, Washington, D.C., and North Carolina require the actual pre-need funeral service contract or insurance document.

The pre-need information is reported to a variety of state entities, more often boards (e.g., Board of Funeral Directors, Embalmers, and/or Funeral Service – 6 states, or 43%), but also consumer protection departments (3 states), financial services/state comptroller/securities commissioner (3 states), or insurance department (2 states).

Although the information is collected by a centralized, statewide entity, the actual combining of the individual submissions into a single list or central registry may not have occurred; however, the entity has the ability to respond to inquiries or investigations.

These central registries or repositories of such information may serve multiple purposes:

- a single location where purchasers can confirm their pre-need funds were deposited into an escrow account;
- a resource should a funeral service business be sold or close;
- a single location where family members could inquire of the existence of a pre-need contract and the funeral service business holding the contract;
- ensuring funds appropriately going to unclaimed property; and
- additional resource for the state’s department of social services to ascertain the existence of pre-need funeral service contracts for living and deceased Medicaid long-term care recipients.

Because of its role inspecting funeral service businesses and issuing the certificate required to operate a funeral service business, we believe DPH would be the appropriate agency to house a central registry.

*Recommendation:* The Department of Public Health should develop a central registry containing all pre-need funeral service contracts sold in Connecticut using the electronic list required to be maintained by each funeral service business. **(See Recommendation 24.)**

*DPH Response:* “DPH does not agree with this recommendation. Such a registry would require legislative change and new resources for the Department of Public Health if the legislature determined this was a role for the DPH. The Department of Public Health’s focus on funeral businesses relates to public health and safety. DPH may not be the appropriate agency to manage a central registry for millions of dollars’ worth of pre-need funeral service contracts that exist between private businesses and their clients.”

*Auditors’ Concluding Comments:* DPH already gathers lists of pre-need funeral service contracts prior to its required inspections of funeral service businesses. We believe DPH would be in the best position to combine these electronic lists into a central registry. We would not anticipate that additional resources would be necessary.

**Finding 26:** The Department of Social Services can enhance its “closed case review” as part of its recovery procedures, if it is able to check an electronic central registry of pre-need funeral service contracts.

As noted previously, Public Act 17-77 expands the information that funeral homes must maintain on pre-need funeral service contracts and requires funeral service businesses to keep the information in a readable electronic format beginning July 1, 2018. The act gives DSS the authority to access the electronic list. Since slightly more than half of Medicaid long-term care clients have a pre-need funeral service contract, DSS can possibly recover additional funds by periodically matching clients who have died against the pre-need list. In addition, DSS may become aware of pre-need funeral service contract funds that were never used because the person responsible for arranging the funeral was unaware that a pre-need funeral service contract existed.

*Recommendation:* The Department of Social Services should routinely check an electronic central registry as part of its “closed case review” to determine whether there are any excess funds leftover after burial or cremation from a Medicaid recipient who had a pre-need funeral service contract. **(See Recommendation 25.)**

*DSS Response:* “The Department of Social Services agrees with this recommendation and will determine the feasibility of gaining access to the electronic central registry. If access to the registry is achieved, the Department will begin to routinely check the registry as part of the closed case review process.”

## RECOMMENDATIONS

This is our first audit of oversight of pre-need funeral service contracts and there are no prior audit recommendations to address. Our current audit resulted in 25 recommendations:

1. The Department of Consumer Protection should improve and update its Fact Sheet for Consumers on Funeral Service Contracts. The state should require funeral service businesses to give consumers a fact sheet prior to the purchase of pre-need funeral service contracts.
2. The General Assembly should amend Section 20-219a of the General Statutes to require a mandatory continuing education requirement for sale of pre-need funeral service contracts specific to Connecticut law. The requirement should be incorporated into the existing minimum 6-hour annual continuing education initial licensing standard and every five years thereafter.
3. The General Assembly should add 2 pre-need funeral service contract requirements to Section 42-200 of the General Statutes: 1) Any money or securities received for payment of pre-need funeral service contracts shall be deposited into an escrow account within 15 days of receipt; and 2) The funeral service business shall provide the purchaser an annual statement of the interest earned and current value of the pre-need funeral service contract funds held in the escrow account.
4. The General Assembly should require purchasers to certify their understanding of pre-need funeral service contracts by requiring them to initial the following: 1) name of escrow agent designated to hold the prepaid funeral services funds; 2) statement that purchaser will receive acknowledgement from the escrow agent of receipt of the initial pre-need deposit within 25 days after paying the funeral director; 3) statement that any money or securities received for payment of pre-need funeral service contracts shall be deposited into an escrow account within 15 days of receipt; and 4) statement that the funeral service business shall provide the purchaser with an annual statement of the interest earned and current value of the pre-need funeral service contract funds held in the escrow account
5. The General Assembly should amend Chapter 743c, Funeral Service Contracts, of the General Statutes to require that contracts used by funeral service businesses and escrow agents, financial institutions, or life insurance companies holding the pre-need funeral service contract funds, include the following provisions for escheatment of dormant funds to the Office of the State Treasurer:
  - a. at least 3 consecutive years have elapsed since the existence and location of the purchaser or the beneficiary of the pre-need funeral service contract was known to the funeral service business, and the owner or person entitled to the funds has not communicated in writing with the funeral home, escrow agent, financial institution, or life insurance company concerning the funds; or

- b. if the funeral service to be provided under the pre-need funeral service contract has not been performed within 3 years following the death of the owner or beneficiary and the purchaser or beneficiary cannot be located.

Upon the instruction of the funeral service business, the entity holding the pre-need funeral service contract accounts or policies should escheat those funds to the Office of the State Treasurer.

Any such transfer of funds to the Office of the State Treasurer shall constitute a complete release of all obligations of the funeral service business pursuant to the pre-need funeral service contract.

- 6. Pre-need funeral service contracts should include an option to list the name, address, and telephone number of an alternate contact in the event the purchaser cannot be reached to receive required correspondence.
- 7. The following requirements should apply to pre-need funeral service contract funds that are used to purchase a life insurance policy:
  - i. deposit, initial notification of receipt of deposit, and annual statement requirements should apply equally to life insurance companies as they do for pre-need funeral service contracts funded with escrow accounts;
  - ii. an assurance that, if the particular merchandise provided for in the contract is not available at the time of death, the funeral service must provide similar merchandise;
  - iii. a description of any commissions to be paid by the life insurance company to the seller of the policy; and
  - iv. a description of the surrender penalty if the policy is cancelled.
- 8. The Departments of Public Health and/or Consumer Protection should investigate why the 4 handwritten pre-need funeral service contract entries found for a particular funeral service business were not included in the bank statement of the business' pre-need funds. DPH and DCP management should improve internal controls over reviews of pre-need records to reduce the risk of fraud.
- 9. Funeral service businesses should be prohibited from depositing and commingling funds received under a pre-need funeral service contract for personal use, business operating expenses, or any other purpose.
- 10. The Department of Social Services should educate each funeral service business about the process to return excess funds of deceased Medicaid recipients with pre-need funeral service contracts.

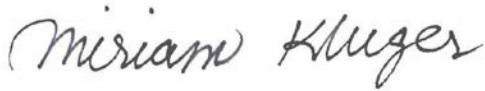
11. The Department of Public Health should develop a protocol for itself and funeral service businesses to adhere to when a funeral service business is closing or being sold. DPH should provide a copy of the protocol to all funeral service businesses at the time of inspection.
12. Section 20-222c of the General Statutes should be amended to require funeral service businesses to notify the Department of Public Health in writing of their plans at least 15 days prior to the effective date of sale or closure.
13. Funeral service businesses should be required to notify escrow agents, financial institutions, or life insurance companies holding pre-need funds of their sale or closure at least 15 days prior to the date of the sale or closure. The Department of Public Health should require proof that the business took this action. This should be part of Department of Public Health protocol related to the closure or sale of funeral service businesses.
14. Funeral service businesses closing or changing ownership should notify the next-of-kin or other designee for whom cremated remains are being stored within 10 days of their closure or sale.
15. The Department of Public Health should strengthen its inspection of pre-need funeral service contracts by having the inspector randomly select active records from various time periods and review a sample of completed pre-need records.
16. The Department of Public Health should conduct an inspection of a funeral service business prior to its closure to ensure statutory requirements have been met.
17. The Department of Public Health should maintain information on the location of the active pre-need funeral service contracts of closed funeral service businesses.
18. The Department of Public Health should maintain a log indicating where pre-need funeral service contracts of closed funeral service businesses are being retained for no less than 6 years after burial.
19. The Department of Public Health should develop a protocol for collection and maintenance of lists of unclaimed remains provided by funeral service businesses closing or being sold.
20. Section 20-222c of the General Statutes should be amended to require identification of the future location of unclaimed remains following the sale or closure of a funeral service business.
21. The Departments of Consumer Protection and Public Health should develop a formal mechanism to refer, notify, and update the other agency on complaints or investigations that might impact the other agency.



22. The Department of Public Health, in consultation with the Department of Consumer Protection, should specify the format to be used by funeral service businesses to provide the electronic information required by Public Act 17-77.
23. Electronic records requirements in Section 42-200 of the General Statutes should be amended to include: date of death, date funds transferred to funeral service business, type of pre-need funeral service contract (revocable vs. irrevocable), credits, debits, current value of the contract, and the number of undeliverable purchaser annual statements.
24. The Department of Public Health should develop a central registry containing all pre-need funeral service contracts sold in Connecticut using the electronic list required to be maintained by each funeral service business.
25. The Department of Social Services should routinely check an electronic central registry as part of its “closed case review” to determine whether there are any excess funds leftover after burial or cremation from a Medicaid recipient who had a pre-need funeral service contract.

**CONCLUSION**

In conclusion, we wish to express our appreciation for the cooperation and courtesies extended to our representatives by the personnel of the Departments of Public Health, Consumer Protection, Social Services, Banking, Insurance, and the Offices of the State Treasurer and Attorney General.



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