

# ELDER LAW REVIEW

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## Medical Assistance: Burial Changes

Under Minnesota law, when a deceased person has received Medical Assistance (MA) for payment of “long-term care services” they are subject to estate recovery for those services.<sup>1</sup> The law also clarifies the order in which claims against the estate are collected. This includes the ability to pay “reasonable” funeral expenses prior to payment of the MA claim.<sup>2</sup> Unfortunately, the statute is silent about the definition of reasonable.

On January 25, 2017, the Department of Human Services (DHS) released a bulletin that attempts to give clarification on what “reasonable” means. Bulletin #17-21-02 lists several items that may cause some issues for individuals who receive benefits.

The bulletin divides items into categories of reasonable expenses, reasonable costs, and unreasonable expenses. The area of concern, in our opinion, is under reasonable costs. This is the exact language from the list:

- ❖ Casket (get a quote for the least expensive casket from two funeral homes within the county and set the expense guideline at the less expensive of the two quotes).
- ❖ Cemetery plot (get quote from two cemeteries to determine reasonable cost of plot).
- ❖ Grave marker – lowest cost stone marker.<sup>3</sup>

The bulletin is silent on whose responsibility it is to obtain the quotes and does not appear to take into consideration the difficulties this could pose, in particular for out-state counties.

The bulletin is also unclear if this policy is enforceable on preexisting burial plans, created before the implementation of the policy. Also unclear is if this will impact pre-paid plans or if it will only impact use of the estate to pay for funerals. Regardless, these limitations on privately funded burials are, in our opinion, unacceptable.

We are asking anyone who has concerns about this change in policy to contact their legislator. You can find the names and contact information for your representatives at <http://www.gis.leg.mn/iMaps/districts/>

If you have questions, please give us a call at 1-866-457-3131 and ask for Traci Sherman.

<sup>1</sup> Minn.Stat. § 256B.15 subd 1a(e) (2016)

<sup>2</sup> *Id.* § 524.3-805(a)(2)

<sup>3</sup> DHS Bulletin # 17-21-02, *DHS explains: Changes to MA estate recovery resulting from CMS approval of revised state plan amendment; a new statewide funeral expenses policy.*

Pluto Legal, PLLC offers prospective clients a NO-cost, NO-obligation consultation. This is a great opportunity for you to become informed of the options available to you for your Estate Planning and Medical Assistance Planning needs.

We have many free, educational workshops coming up, so please give us a call, toll free at 1-866-457-3131 or visit our website [www.PlutoLegal.com](http://www.PlutoLegal.com) to see when our attorneys will be presenting a workshop in your area.

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