



April 22, 2020

Via Electronic Submission

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th Street SW, 5th Floor
Washington, DC 20024

Re: Funeral Rule Regulatory Review, 16 CFR part 453, Project No P034410

We, the undersigned Attorneys General of the District of Columbia, Arizona, California, Colorado, Connecticut, Delaware, Hawaii,¹ Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin, submit this comment in response to the Federal Trade Commission's ("FTC") request for comment as part of its regulatory review of the Funeral Industry Practices Rule ("Funeral Rule"). As the primary enforcers of our respective states' consumer protection laws, and as a primary resource for consumers defrauded by businesses, we offer a unique perspective on the current marketplace for consumers doing business with funeral homes.

This letter focuses on some of the specific questions posed by the FTC, as well as additional areas where consumers need more robust protections. We believe that enhanced protections are particularly important in this context as consumers making funeral arrangements are uniquely vulnerable. They are coping with the death of a loved one, a considerable financial expense, an unfamiliar set of choices, are often elderly, and are attempting to make time-sensitive funeral arrangements while dealing with a host of other issues surrounding a person's death. As our states' residents continue to face the immense challenge and staggering loss of life from the coronavirus crisis, it is ever more important to provide greater protections to consumers making funeral arrangements.

¹ In addition to the Attorney General's Office, Hawaii is represented on this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii.

I. District of Columbia Funeral Price Survey

These comments are informed in part by our observations of the disparity in prices charged by funeral homes, and consequently the need for better disclosures in order to assist families in making informed financial decisions concerning this expensive purchase.

In the last 30 years it has become not only more expensive to live, but also to die in the United States. According to the U.S. Bureau of Labor Statistics, funeral expenses have risen almost twice as fast as consumer prices for all items.

The average cost of a funeral in 2019 was between \$7,000 and \$10,000. For most families this is a substantial expense. Yet consumers often do not realize that the costs of a funeral can vary tremendously among funeral homes, even those in close proximity. In 2017, the Office of the Attorney General for the District of Columbia (“DC OAG”) conducted a survey of the prices in the General Price Lists (“GPL”), Casket Price Lists (“CPL”) and Outer-Burial Price Lists (“OBCPL”) of all funeral homes in the District. Some examples of the range of prices are instructive:

- The basic services fee ranged from \$965 to \$9,200.
- Embalming charges ranged from \$375 to \$995.
- The range for the most expensive caskets was \$5,795 to \$125,000.
- The range for the most expensive outer burial containers was \$1,280 to \$20,500.
- The cost of viewing/visitation ranged from \$225 *per hour* to \$150 *per day*.
- The charges for direct cremation ranged from \$700-\$6,800.

These substantial price differences underscore the importance of price transparency, particularly as people arranging for funeral services are grieving and may not have the emotional strength or physical ability to travel to multiple homes to engage in difficult conversations about a funeral for their loved one.

II. Specific Questions Posed in Federal Register Notice

1. *Should all funeral providers be required to post their itemized GPLs, CPLs, or OBCPLs online? Why or why not?*

Yes. Funeral providers should be required to post all of their itemized price lists on any websites that they use to advertise their services, especially the GPL, which already includes information about the price-range for caskets.

As noted above, within a city one funeral home may charge ten times more for a single item or service than other homes. If funeral providers posted their prices online, consumers would have the ability to make these important decisions in the privacy of their homes. This would allow consumers to more easily consult with other decision-makers who may not be able to travel to different funeral homes to obtain price information, including those who are out of town. The

option to shop online would be particularly beneficial in rural areas where consumers may be unaware that other accessible options are available. Finally, shoppers may feel shame about seeking a less expensive funeral, even though they may not have the financial resources to pay for a more costly one. Online prices would ease this burden on families and enable families to make wiser financial decisions without the fear that it will appear that their only concern in arranging a funeral is the price.

Giving consumers the option to review itemized price lists online also removes the sales pressure they may feel during an in-person meeting with a funeral director. This allows consumers to make choices independent of undue influence and to choose only the services they need and can afford. In addition, requiring all funeral homes to post price lists online simplifies the research process. The current system can be frustrating for consumers when a price list is easily accessible on one website but difficult to access or not available on others.

Online posting of price lists should not pose a significant burden on the homes, many of which do not frequently change prices and regularly update websites already to post information about recent or upcoming funerals. As many homes now even provide live webcasts of funeral services, this should not pose a technological challenge.²

2. *If a funeral provider makes funeral arrangements without an in-person meeting (such as through a phone call, website, email or text), should the funeral provider be required to provide an electronic copy of its itemized GPL, CPL, or OBCPL prior to the consumer making any selections? Why or why not?*

Yes. The funeral provider should be required to provide electronic copies of its itemized GPL, CPL, or OBCPL prior to the consumer making any selections. As noted above, homes should post all prices on their website and provide electronic copies of their lists upon request. A funeral is a significant financial expense, and consumers should have the ability and time to independently calculate whether total charges are within their budget. For example, consumers should be able to review prices and consider whether to pay for cash advance services themselves (such as florist or clergy) or through the home. A consumer may be overwhelmed by the choices that planning a funeral presents and would benefit from being able to carefully consider options spelled out in electronic copies of price lists.

As with website posts this is not a significant burden on a home, but simply requires homes to send an email with an attachment. Indeed, if this requirement were implemented, it would likely decrease the amount of time that a Funeral Director needs to spend with a prospective client, as the client will be able to have a better idea of the options and costs in choosing a funeral based on the price lists.

² In evaluating the appropriate approach to encourage transparency in pricing in the funeral home industry, we suggest that the Bureau of Consumer Protection consult with the Bureau of Competition to address any competition issues.

3. *Price List Format: Should funeral providers be required to provide their itemized price list information and disclosures in a standardized format? Why or why not? If so, how should a standardized format be developed and updated as the marketplace changes?*

Yes. Funeral providers should be required to utilize a standardized format. The purpose of the Funeral Rule is to protect consumers through transparency and clarity. Unfortunately, this is stymied by the existing unstandardized system that makes it difficult for consumers to make meaningful comparisons of service costs between funeral homes.

In the survey of GPLs conducted by the DC OAG, one of the most inconsistently disclosed prices was for viewing or visitation, which some funeral homes did not even charge for separately. These charges can add thousands of dollars to the cost of a funeral. In DC OAG's survey, some of the viewing or visitation charges were based upon a minimum flat fee. Other homes charged by the hour or for a minimum number of hours. Still others charged by the day. Some had complicated formulas based upon the day of the week or the time of day. These nuanced differences, disclosed in small print on a long form, make both comparison shopping, and an assessment of total fees, very difficult.

Another notable inconsistency uncovered in the DC OAG survey was the way that funeral homes disclosed the fee for death certificates. Some homes made no mention of the fee. Others explicitly stated that the fee for death certificates was included in the basic services fee. Others listed it as a separate stand-alone fee. Although these fees are small compared to the overall expense of a funeral, it can be upsetting for a consumer to be asked to pay additional amounts that she was not aware of after spending thousands of dollars on a funeral.

Finally, many funeral homes also advertise and charge for services as part of a package. For example, most funeral homes include a basic charge for embalming, but some also list embalming-related itemized services. Without a standardized form, it is difficult for consumers to discern whether certain services are included in a package, leading them to assume a service is covered when in fact it is subject to a separate fee.

Having a standardized format will also inhibit funeral homes from imposing illegal charges (such as separate charges for providing a death certificate and for filing the death certificate.) A standardized form with a disclosure that the form lists all customary and usual charges will help to constrain funeral homes from charging unlawful fees.

Funeral homes would also benefit from the certainty a standardized format provides. A standard form could lay out the specific disclosures, making it easier for funeral homes to assess whether their lists satisfies regulatory requirements. Standardization would therefore streamline both compliance and enforcement.

A standardized format should be developed through consultation with funeral homes, consumers, consumer advocates, and government agency representatives. Plain language experts should also

be consulted to increase the readability of the form. The funeral homes included in this consultation should include those offering novel services. From eco-friendly green burials to novel options like alkaline hydrolysis, the funeral industry is rapidly evolving, making it important for standardized forms to reflect these changes. Many consumers are familiar with the price of a traditional funeral, but few are aware of alternative services and the associated costs. Periodic revisions will be necessary to keep consumers abreast of all options and it will be critical for funeral homes offering these unconventional services to be included in any deliberations.³

4. *Reduced Basic Services Fee for Direct Cremation and Immediate Burial:*

- a. *Should the Rule permit a funeral provider to charge a reduced basic services fee for a family choosing to have a loved one cremated but also wishing to have a limited viewing or visitation prior to or after the cremation?*

Yes. As noted above, fees for viewing or visitation were inconsistently disclosed in DC OAG's survey. Standardizing how these fees are disclosed and explicitly making limited viewing or visitation an option for families would help increase consumer choice, provide transparency, and allow for cost-savings.

5. *Mandatory Disclosures:*

- a. *The current embalming disclosure begins with a caveat: "Except in certain special cases, embalming is not required by law. Should the Rule be changed to prohibit the inclusion of the "certain special cases" caveat in locations where the state of local law does not require embalming? Why or why not?"*

Yes. If a funeral home is imposing a requirement for embalming when local law does not require it, the funeral home should be required to disclose this charge. Consumers grieving their loved ones may be understandably uneasy discussing the need for embalming. In places where embalming is not required, a simple statement to that effect will help consumers make more informed choices. In addition, clearly disclosing that a home is requiring embalming when local law does not, will enable consumers to choose a different home if they do not want their loved one embalmed or to pay for such services.

III. General Regulatory Review Questions

1. *What potentially unfair or deceptive practices, not covered by the Rule, related to funeral goods and services, are occurring in the marketplace?*
 - a. *Misuse of Pre-Needs Funds*

The Funeral Rule should be amended to address funeral homes' receipt and misuse of funds in advance of a funeral (also known as pre-needs funds). DC OAG recently sued a funeral home

³ Consistent with the Commission's existing rules and guidance, a standardized price list should allow for additional disclosures required by state law.

alleging violations of the District’s consumer protection law for, among other things, misusing pre-need funds that consumers had deposited with the home. DC OAG found that the home had misappropriated approximately \$129,000 from 30 consumers who had deposited funds with the home. Some of these consumers were low-income disabled consumers who had been making \$100 monthly deposits with the home for years in an effort to ensure their proper burial. DC OAG found that the home commingled these pre-needs funds with its general funds, which were then used by the owner for her personal expenses.

Although this type of misuse of funds already violates a number of laws, more can be done to deter this conduct. We recommend requiring homes that accept pre-need funds to: (1) maintain such funds in separate escrow accounts;⁴ and (2) send consumers a bank statement on an annual basis documenting the location and amount of funds in the account. Further, the requirement to maintain pre-needs funds in separate accounts and send consumers annual bank statements should be prominently disclosed on the pre-needs Statements of Goods and Services. Such disclosures would ensure both that consumers are aware of these requirements and that the home is required to safeguard the consumer’s funds.

b. Meaningful Disclosure of Cash Advance Item Costs

A cash advance item is any item or service obtained by the funeral provider from a third party and paid for in advance by the funeral provider. Cash advance items include, among other things, crematory services, clergy, flowers, and death certificates. The current Funeral Rule seeks to prevent unfair padding of these charges by funeral homes in two ways. First, funeral homes are required to provide a written statement of actual charges for cash advance items before the final bill is paid. Second, funeral homes are required to disclose when they impose a service charge on their provision of a cash advance item.

These constraints do not appear to be working. In D.C. for instance, many funeral homes seek payment for all services, including cash advance items, *prior* to the funeral. In other words, the home would not even have the relevant bills at the time that they seek payment, making it impossible to provide a statement of the actual charges. Second, we have seen that funeral homes charge in excess of their actual costs without disclosing that they are doing so. For instance, the cost of a death certificate in the District of Columbia is \$18 for a certified copy. Yet the DC OAG survey revealed that funeral homes in the District have charged up to \$100 for this item without disclosing to consumers that they were imposing a service charge.

We recommend the following steps to address the current deficiencies in the Funeral Rule. First, we suggest that the Rule be amended to require funeral homes to provide receipts for cash advance services within one week after the funeral takes place. In addition, funeral homes should

⁴ An escrow account, or separate bank account for pre-needs funds is already required by many state laws. See, District of Columbia: 17 D.C.M.R. § 3117.3(a); Hawaii Revised Statutes Sect. 441-22.2; Maine: 32 Me. Rev. Stat. Section 1401; Minnesota Statute 149A.97; Oregon: ORS 97.941; West Virginia Code 47-14-1 *et seq.*

be required to include a disclosure in their Statements of Goods and Services that they are required to provide receipts for cash advance services within one week of the funeral. These changes will ensure that consumers will actually receive and have the opportunity to review the cost for cash advance items prior to paying for the funeral. However, if a consumer has already paid for the funeral, and the receipts indicate that the costs were less than those detailed in the Statements of Goods and Services, the home should be required to provide a refund within one week of its provision of the receipts.

c. Preventing Fraud and Abuse in the Assignment of Insurance Proceeds

With expenses rising and the average funeral costing thousands of dollars, bereaved families continue to face financial hardship when faced with a bill for funeral services. Often the decedent did not budget for these expenses in life and the family does not have the savings to cover the costs. Faced with the choice between going into debt or failing to provide their loved one with a proper burial, some turn to life insurance assignments. If a family does not have the money but does have a life insurance policy that names a family member as the beneficiary, funeral homes will accept payment for the funeral using the anticipated proceeds. The funeral home itself, or an advance funding company, will advance funds in exchange for the assignment of the policy. This financing system is ripe for abuse. Consumers with generous policies may not receive the funds that are left after deducting the expense of the funeral. Some funeral homes may engage in price gouging by inflating their costs to recover more from a policy. Finally, in the worst cases, a home may commit outright theft by keeping the insurance funds in excess of their costs. In the above-referenced litigation brought by DC OAG, the funeral home misappropriated over \$132,000 in insurance proceeds from its customers. Greater oversight is needed to ensure vulnerable consumers are protected from exploitation.

One recommendation to combat potential price inflation, where the funeral home increases the cost of the funeral in order to maximize its appropriation of the insurance proceeds, is to require funeral homes to disclose the average cost of a funeral in its GPL. Consumers may feel less pressure to expend all of their insurance proceeds on a funeral if they have information about average expenditures. For instance, one otherwise cash-strapped consumer in the DC OAG litigation agreed to designate over \$140,000 to the cost of a funeral. Although consumers should certainly be at liberty to spend as much as they can afford on such an important occasion, they should also be given information to put their spending in perspective.

We appreciate the opportunity to submit this comment. Please contact our offices if you have any questions or need additional information.



KARL A. RACINE
Attorney General for the District of Columbia



MARK BRNOVICH
Arizona Attorney General



WILLIAM TONG
Connecticut Attorney General



CLARE CONNORS
Hawaii Attorney General



TOM MILLER
Iowa Attorney General



BRIAN E. FROSH
Maryland Attorney General



KEITH ELLISON
Minnesota Attorney General



PHIL J. WEISER
Colorado Attorney General



KATHLEEN JENNINGS
Delaware Attorney General



STEPHEN H. LEVINS
Executive Director, State of Hawaii
Office of Consumer Protection



AARON M. FREY
Maine Attorney General



DANA NESSEL
Michigan Attorney General



AARON D. FORD
Nevada Attorney General



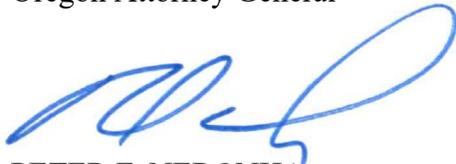
GURBIR S. GREWAL
New Jersey Attorney General



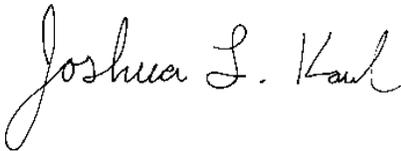
LETITIA JAMES
New York Attorney General



ELLEN F. ROSENBLUM
Oregon Attorney General



PETER F. NERONHA
Rhode Island Attorney General



JOSHUA L. KAUL
Wisconsin Attorney General



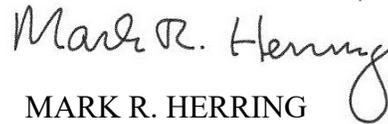
HECTOR BALDERAS
New Mexico Attorney General



JOSH STEIN
North Carolina Attorney General



JOSH SHAPIRO
Pennsylvania Attorney General



MARK R. HERRING
Virginia Attorney General



XAVIER BECERRA
California Attorney General