



**Bureau of Insurance**

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# A Report to the Joint Standing Committee on Insurance and Financial Services of the 125<sup>th</sup> Maine Legislature

Stakeholder Meetings Held in June and August 2012  
concerning LD 1717:

An Act to Establish a Preneed Life Insurance Producer License  
and Preneed Life Insurance Product for Prearranged Funeral  
Plans

October 2012

## **PROCEDURAL HISTORY**

The Joint Standing Committee considered LD 1717, “An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans,” during the Second Regular Session of the 125<sup>th</sup> Legislature.<sup>1</sup> The bill would have established a limited license for funeral practitioners to offer and sell preneed insurance tied to the amount of the preneed funeral services contracts. The existing mechanisms of guaranteed service and credit for service mortuary trusts would remain available, and offering preneed insurance would not be a requirement for funeral practitioners, but it would be a new method for consumers to choose for making preneed arrangements in Maine.

The Bureau of Insurance (the Bureau) presented testimony to the Committee neither for nor against the bill that explained some technical concerns the Bureau would have should the bill pass. The Committee voted unanimously that the bill ought not to pass, but did send a letter to the Superintendent of Insurance requesting that the Bureau “facilitate further discussions of the proposal through meetings and other communication with stakeholders before the start of the 126<sup>th</sup> Legislature. We ask that you invite the participation of the various parties who testified on LD 1717 as well as committee members and staff. Please submit the findings of the interested parties, along with any recommendations and suggested legislation, to the committee by October 1, 2012.”<sup>2</sup>

The Superintendent convened a group of stakeholders, which held two meetings at the offices of the Bureau of Insurance, on May 9 and August 22, 2012.

The participants in the meetings represented a broad range of stakeholders including insurers, funeral practitioners, and insurance agents (producers) in particular. The stakeholders did not all reach consensus on certain fundamental issues, but some areas of flexibility and possible compromise were recognized.

## **PRENEED FUNDING IN MAINE**

Funeral expenses represent a significant concern for many individuals. The cost of traditional funeral services can easily fall within a range approaching, and at times exceeding, \$10,000.<sup>3</sup>

There are various methods under which individuals can arrange in advance for funeral services. “Preneed” arrangements can enhance peace of mind and relieve concerns over whether the individual’s loved ones will be left with a financial burden. In addition, certain preneed mechanisms can remove assets from calculations used for Medicaid (in Maine, “MaineCare”) eligibility.

The two primary preneed mechanisms are mortuary trusts and life insurance. In Maine, these approaches may be generally broken down into the following categories:

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<sup>1</sup> Attachment P: LD 1717

<sup>2</sup> Attachment A: Committee letter to the Superintendent

<sup>3</sup> Attachment D: GAO Report, page 7

### Guaranteed Service Mortuary Trust Agreement

Under a guaranteed services mortuary trust, the consumer enters into an agreement with the funeral practitioner to provide agreed upon funeral services in the future, at the time of the individual's death.<sup>4</sup> The consumer pays the contracted price. The funds must be placed in trust in accordance with the restrictions contained in Maine law relating to Funeral Directors, in particular 32 M.R.S. §1401. These provisions are intended to assure that the funds will be safe and available when needed.

Such an arrangement can provide certainty that the services planned for have been paid for. Also, the amount paid into the trust can provide advantages to the consumer in the calculations for MaineCare eligibility. However, since the services are contracted for at the current time, to be provided at some indefinite point in the future, it can be difficult for the funeral practitioner to make such a commitment without assuming significant risk that the cost of providing such services will have increased by the time they are to be provided. Also, the consumer must of course pay the full amount into the trust amount from current assets, which may be difficult or impossible for some consumers.

### Credit for Service Mortuary Trust Agreement

Under a credit for service arrangement the purchaser pays an amount into a mortuary trust, as with the guaranteed service arrangement described above. However, with the credit for service trust, the funeral practitioner does not agree to provide specific services in the future for the price paid now; rather, the agreement is that the amount in the trust will be applied towards whatever services are provided in the future, at the price in effect at that time.

The credit for service mortuary trust avoids obligating the funeral practitioner to provide services now at a price which may or may not fairly reflect their value when delivered at an unknown time in the future. However, it can create the opposite concern for the consumer, who cannot know whether the trust amount will be sufficient and therefore cannot be assured that "everything is taken care of." It has the advantage over the guaranteed service arrangement of allowing the purchaser to pay all at once or through further amounts in installments over time. The credit for service approach shares the same advantage as the guaranteed service mortuary trust regarding MaineCare eligibility.

### Existing Life Insurance Policy

The purchaser may fund a credit for service mortuary trust in Maine with the proceeds of an existing life insurance policy. The obvious advantage of this is that the purchaser is not required to pay cash "up front."

If there is not already a life insurance policy in existence, the consumer may purchase coverage from a licensed life insurance producer. This coverage is not specifically tied to the preneed agreement, however, and will be subject to any applicable underwriting considerations, as with any life insurance policy.

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<sup>4</sup> Throughout this report, the term "funeral practitioner" is used to signify licensees for the practice of funeral service, as regulated by the Maine State Board of Funeral Service under 32 M.R.S. Chapter 21.

## **PRENEED INSURANCE**

In 48 states, there is a permitted form of life insurance called “preneed,” which is specifically tied to the amount of the preneed funeral services contract between the purchaser and the funeral establishment. Preneed insurance may typically be sold directly by the funeral practitioner. The funeral professional would do so for a commission, and under a license issued by the state’s insurance regulatory authority. The license is specifically limited to preneed insurance in 14 states, and is a full life insurance producer license in 34 states.<sup>5</sup> Preneed insurance is not currently allowed to be sold in this manner in Maine or New York.

The essential characteristics of preneed insurance in this context are that it is a life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. It provides a relatively small death benefit, such as \$10,000 or less, for the purposes of paying for a funeral. The premiums may be paid in monthly payments if desired and would typically be paid over a limited period of 3, 5, 7, or 10 years. After the premium period, the policy would be paid up for life. However, the death benefit would be available for the funeral immediately, even if only one payment has been made. As with any other life insurance, preneed insurance benefits are protected against the risk of insolvency of the insurer by the applicable state Life and Health Guaranty Association.<sup>6</sup> A commission would be paid to the originator of the preneed policy, as with any other type of insurance.<sup>7</sup>

In addition, preneed policies may provide for an increasing death benefit to help offset the effects of inflation, and may be more readily issued to the elderly and those in infirm health, than may typically be the case with many other life insurance policies.<sup>8</sup>

## **SUMMARY OF THE DISCUSSIONS, FINDINGS, AND POSITIONS OF THE INTERESTED PARTIES**

The major areas of discussion in the stakeholder meetings consisted of:

- the nature of the preneed insurance product;
- whether there is a need for this product;
- changes to Maine law that would be required regarding preneed insurance; and
- if preneed insurance were to be made available in Maine:
  - the proper role of the funeral practitioner in the sale of preneed insurance;
  - commissions and conflict of interest; and
  - limited licensing versus full licensing.

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<sup>5</sup> Attachment C: June 1, 2012 letter and chart from Homesteaders Life Insurance Company

<sup>6</sup> In Maine, this is the Maine Life and Health Insurance Guaranty Association. See generally, 24-A M.R.S. Ch. 62. The existence of the Guaranty Association may not be used in connection with the solicitation of the insurance, however. 24-A M.R.S. §4620

<sup>7</sup> This summary of features is based in particular on Attachment I: Assurant comments.

<sup>8</sup> Attachment E: ICCFA Guidelines

## **THE NATURE OF AND NEED FOR THE PRODUCT, AND WHETHER IT IS ALREADY AVAILABLE**

Some of the statements made during the discussions in the stakeholder meetings suggested that preneed insurance is in fact already available in Maine. Indeed, life insurance may be purchased through licensed producers for the purpose of securing a death benefit that will defray funeral expenses. Policies that are of modest size and purchased for this purpose are sometimes referred to as “final expense” policies; however, as defined for purposes of this report, such policies are not “preneed” policies tied specifically to the funeral practitioner’s preneed agreement with the purchaser.

Assurant, an insurer, noted in its written comments that “preneed policies are assigned to pay for a specific set of goods and services. The preneed policy is purchased after a consumer preplans their funeral and then that policy is assigned to a funeral home. In turn, the funeral home guarantees that a \$6,000 funeral today will be \$6,000 in the future. The family of the policyholder will not pay more than that amount, regardless of when the policyholder dies.”<sup>9</sup>

Assurant also asserted that to claim that “other insurance products already exist in the market that are nearly identical to preneed insurance ... is fundamentally incorrect. Preneed insurance is not a stand-alone insurance product. It is linked to a funeral services contract.”<sup>10</sup>

Under current Maine law, funeral practitioners are prohibited from being licensed to sell insurance.<sup>11</sup> These restrictions prevent the sale of preneed insurance that is directly linked to the preneed agreement between the funeral practitioner and the consumer.

As noted, the product is available in all states except Maine and New York. The American Council of Life Insurers (ACLI) commented that its member companies involved with this product “wish to serve Maine consumers by making the same products available in Maine as they do throughout the United States. When legitimate companies in business for years face constraints on doing business in Maine, as they do in this particular instance, Maine’s reputation as a place to do business is not enhanced.”<sup>12</sup>

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<sup>9</sup> Attachment I: Assurant comments

<sup>10</sup> Assurant also requested that this report dispel a concern about the safety of the preneed product. See Attachment I. As noted there, some concerns were raised in the Committee’s deliberations and in the stakeholders’ meetings about preneed insurance being unsound, leading to some consumers having been left without coverage they had purchased. It appears that such concerns arose out of some past incidents relating to the sale of death benefits by certain fraternal benefit societies that became financially unsound. Fraternal benefit societies are not regulated the same as insurers, however, and their benefits are assessable to the society’s members in the event of a shortfall, and are not protected by the guaranty association. Preneed insurance as discussed in this report, and as contemplated by LD 1717, is fully regulated life insurance, with the same consumer protections, guaranty fund coverage, and Bureau oversight as any other form of life insurance.

<sup>11</sup> 24-A M.R.S. §2176. See also Attachment N for SCI’s discussion of additional limitations found in the laws directly regulating Funeral Directors.

<sup>12</sup> Attachment H: ACLI comments

## **INVOLVEMENT OF FUNERAL PRACTITIONERS IN THE SALE OF INSURANCE**

The Maine Funeral Directors Association<sup>13</sup> expressed its concern throughout the discussions that the professional role of funeral practitioners is unique and should not be combined with the sale of insurance. There were distinctly differing views among the stakeholders on this point, with others, including some funeral practitioners, seeing the practitioner's role in providing the insurance option to consumers as complementary to, rather than at odds with, the practitioner's function.

Bureau representatives pointed out their role as facilitators of the discussions, rather than arbiters of policy decisions concerning the funeral profession. As such, this question is legitimately a matter within the purview of the Legislature and the funeral profession's regulatory body.<sup>14</sup> The insurance product question in itself is not particularly controversial; in other words, the product is regulated as with any other form of insurance and if the Legislature sees fit to authorize funeral practitioner involvement with the offering of preneed insurance, the Bureau of Insurance is equipped to regulate the product and activity within the insurance regulatory scheme.<sup>15</sup>

## **COMMISSIONS AND CONFLICT OF INTEREST**

The participants speaking on behalf of the Maine Funeral Directors Association maintained the Association's opposition to the concept of funeral practitioners receiving commissions for the sale of preneed insurance. They expressed their opinion that receiving a commission for an insurance product that then pays for the service they are also selling presented an insurmountable conflict of interest.

Others questioned whether there was any difference between the sale of other products for a markup, such as caskets, and the sale of insurance for a commission. The Association representatives asserted that there is Federal Trade Commission (FTC) regulation of the products and services sold by funeral practitioners. Others, however, noted that this oversight concerns disclosure of retail pricing, not the direct regulation thereof.<sup>16</sup>

Some participants pointed out that the payment of commissions for the sale of insurance products is a standard practice in every state. Indeed, commissions are the industry standard generally. Some participants asserted that therefore there is no conflict; other positions were that even if there is a conflict of interest due to the nature of commissions, it is a matter that can be addressed through adequate disclosures.

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<sup>13</sup> The Maine Funeral Directors Association is a membership organization.

<sup>14</sup> The Funeral Directors Board is the state regulatory authority. The Board chairman attended the stakeholder meetings and reported that the Board did not take an official position on LD 1717.

<sup>15</sup> One commenter has asserted: "In order to comply with the Committee's charge, the Bureau must develop and recommend a solution for the implementation of preneed life insurance product for prearranged funeral plans." See Attachment L: SCI comments, for this quote and similar commentary on the issue.

Whether to permit preneed insurance is within the Legislature's policy making role. Further, the Bureau does not regulate the funeral industry. The Superintendent was charged with facilitating discussions among stakeholders, and presenting any recommendations, all of which this report is intended to address. The fundamental question of whether to enact such legislation remains within the purview of the Legislature.

<sup>16</sup> Attachment M: FTC Funeral Industry Rules

Assurant pointed out in its written comments that the payment of a commission for a preneed funeral contract or prearrangement that is funded by a preneed insurance policy is a standard practice in forty-eight states, and that the National Funeral Directors Association (NFDA) has promulgated a “Model Consumer Protection Guidelines for State Preneed Funeral Statutes” that inherently recognizes the practice.<sup>17</sup>

Homesteaders Life Insurance Company, another insurer participant in the stakeholder process, asserted that no funeral practitioner should be forced to participate in the marketing of preneed insurance, but that the choice to do so is desirable for both practitioners in general and consumers:

We feel you must give those funeral providers that do want to receive commissions as insurance producers a chance to do so and not continue to permit this choice to be negated by those funeral providers who do not want to receive commissions. By providing such a choice, nothing would force any funeral provider to receive commissions, but the choice should be there.

We see commissions for funeral director agents working well in the industry and see no need for them to not be available in Maine.<sup>18</sup>

The issue of disclosure received significant attention in the discussions as to how to address the commission question. While the representatives of the Maine Funeral Directors Association did not indicate that disclosure would resolve their fundamental concerns, all parties agreed that disclosure is a positive consumer protection tool. If the Legislature chooses to enact legislation that will facilitate the sale of preneed insurance, this report suggests that a disclosure requirement be included as an element.<sup>19</sup>

## **LIMITED VERSUS FULL LICENSING**

LD 1717 contemplated a limited license specifically tailored for funeral practitioners to engage in the sale of preneed insurance in an amount that corresponds directly to the pricing of the preneed funeral arrangement. The Maine Insurance Agents Association expressed its objection in the discussions to the concept of creating such a limited license. Its premise was that limited licenses should not be added to the Insurance Code, and that anyone selling insurance should be qualified to explore all potentially relevant products, which could lead to more appropriate recommendations to particular consumers. The representative for the Association expressed concern that preneed products may not be as simple and straightforward as some may believe.

By way of background, the distinction between limited and full licensing is that full licensing refers to insurance licenses that allow insurance agents (technically licensed as “producers”) to sell various lines of insurance. Producers become qualified by exam in order to be licensed to sell Life, Health, Property, and

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<sup>17</sup> Attachment I: Assurant comments; Attachment F: National Funeral Directors Association suggested Guidelines

<sup>18</sup> Attachment K: Homesteaders Life Insurance Company written comments

<sup>19</sup> Two approaches for accomplishing such disclosures are found in Attachment J: Proposed legislation presented by Assurant, and Attachment O: NAIC Model Disclosure Regulation, Section 6.

Casualty lines of insurance. Such authorities are available individually or in combination, and are the necessary licensing authorities for insurance professionals.<sup>20</sup>

There are also occasions when individuals in other fields market insurance. Classic examples would include credit insurance, title insurance, and travel insurance. Limited licenses are available to enable such transactions without requiring these individuals to become fully licensed. The difference primarily amounts to the nature of the qualifications (for some limited licenses there is a limited exam and for some there is no qualifying exam).<sup>21</sup> In addition, limited licensees are not typically required to comply with continuing education requirements.

The possibility of limited licensing for funeral practitioners implicates a slightly different principle than other, existing limited license categories as described above. Those allow a person who is not otherwise an insurance professional to be involved with a narrow category through a less burdensome qualification process than that required for full licensing. Any such individual, however, could also legally choose to become fully licensed, provided that they do comply with such requirements.

Funeral practitioners, however, are currently prohibited from becoming licensed insurance producers even if they are willing to take the full exam.<sup>22</sup> Therefore, the establishment of a limited preneed license as contemplated by LD 1717 would allow funeral practitioners to be involved with insurance sales activity in the first place, rather than to create a more streamlined insurance license process for such individuals.

The representative for the Maine Insurance Agents Association indicated that while the Association would not be inclined to actively support legislation implementing the sale of preneed insurance through funeral practitioners, it would not oppose it if full life insurance producer licensing were required rather than limited licensing.

Homesteaders Life noted that “limited licensing for preneed agents is a widely accepted practice. Of the [forty-eight] states where preneed insurance is sold and a commission is available, there are fourteen states that permit a limited license. The other thirty-four states require full licensure.” They asserted that they do business “in all forty eight of those states and either arrangement works effectively.”<sup>23</sup>

The proponents generally indicated that they considered either full or limited licensing acceptable. Therefore, should the Legislature authorize the sale of preneed insurance through funeral practitioners, it is anticipated that, among the participants in the stakeholder process, either full or limited licensing would meet with objections from the Maine Funeral Directors Association due to their underlying fundamental concerns, but the primary objection from the Maine Insurance Agents Association would be addressed through requiring full licensure.

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<sup>20</sup> 24-A M.R.S. §1420-F

<sup>21</sup> *Ibid.*

<sup>22</sup> 24-A M.R.S. §2176, and corresponding provisions in Funeral Director statutes and regulations

<sup>23</sup> Attachment K: Homesteaders Life Insurance Company comments



## **POSSIBLE APPROACHES PRESENTED, AND THE RECOMMENDATIONS OF THE INTERESTED PARTIES**

The Committee's charge included submitting any recommendations and suggested legislation. The following possibilities arose from the stakeholder discussions. It should also be noted that any legislative approach other than maintaining the status quo will also require corresponding amendments to the regulations currently in place relating to funeral practitioners.

### **Maintain the status quo**

This can fairly be stated to be the recommendation of the Maine Funeral Directors Association.

### **Establish a limited license for the sale of preneed products through funeral practitioners**

LD 1717 as originally proposed would create a limited license for this purpose. It would create the license category and some related training and qualification requirements. It did not, as drafted, address the disclosure issues that received generally favorable discussion in the stakeholder meetings.

As more fully discussed above, limited licenses exist in 14 states. Establishment of a limited license in Maine, however, would likely be opposed by some of the stakeholders, notably the Maine Funeral Directors Association and the Maine Insurance Agents Association.

### **Allow full insurance licensing for funeral practitioners**

Repeal of the restrictions against funeral practitioners becoming licensed as insurance producers, as found in the Insurance Code and corresponding sections of the laws and regulations directly concerning funeral practitioners, would allow for the sale of the preneed product. Although this would require less involved legislation, it also would fail to establish further safeguards for consumer protection, notably disclosure requirements.

Full licensing is the standard in 34 states. Establishment of full licensing, with disclosure and related consumer protections, would appear to satisfy the insurers and other proponents of allowing the preneed insurance option to be made available to Maine consumers. It is anticipated that it would not resolve the concerns raised by the Maine Funeral Directors Association, but that the Maine Insurance Agents Association would not oppose such an approach.

### **Allow the participation of producers in the preneed process without commissions payable to funeral practitioners.**

Late in the discussion process, during the second meeting of the stakeholder group, a participant orally raised the prospect of an alternative approach. The proposal was to allow licensed life insurance producers to sell preneed coverage that is directly linked to the funeral practitioner's preneed contract. Such an approach would require changes to the way preneed funeral contracts may currently be presented to consumers, but would allow for the insurance product to be made available to Maine consumers while potentially allaying concerns about funeral practitioners receiving commissions. The representatives for the Maine Funeral Directors Association indicated the possibility of bringing this alternative to the attention of the Association's Board.

This approach was not developed in great detail and no further written submission has been made to date, however, it may be a concept that the parties may explore further.<sup>24</sup>

### **SUGGESTED LEGISLATION PROPOSED BY SOME OF THE STAKEHOLDERS**

The three preneed insurance providers that participated in the Bureau's LD 1717 stakeholder discussions – Assurant, Homesteaders Life Company, and National Guardian Life Insurance Company - submitted proposed legislation, which was included with Assurant's written comments.<sup>25</sup> Assurant explained that it was intended to be “responsive to a number of concerns raised by members of the stakeholder group. As was noted by Gerry Krauss of Homesteaders Life, preneed insurance providers work effectively with all funeral home owners in forty-eight other states.”

Assurant's further description of the insurers' joint suggested legislation was that it “makes no changes to the licensure of life insurance agents. The proposal maintains the prohibition against solicitation of prearranged funerals and funeral business while allowing a funeral director to discuss a preneed insurance option for a consumer who has approached the funeral home to preplan a funeral, just as is done currently with a trust. The proposal also adopts the Model Consumer Protection Guidelines set forth by the NFDA that require disclosure to the consumer of the payment of a commission and the identity of the individuals or entities to whom it is paid.” This proposal is included as Attachment J to the report.<sup>26</sup>

### **CONCLUSION**

The stakeholder process on this question showed that there are differing opinions on how or whether preneed insurance should be marketed to Maine consumers. Some areas of disagreement appear to require fundamental policy questions to be answered. Others, such as the need for disclosures and (should the overall concept be endorsed) the question of full as opposed to limited licensing, were more amenable to flexibility and differing approaches that addressed some stakeholder concerns.

Thank you for the opportunity to explore and report on these issues. My staff and I will of course be happy to provide further information as the need arises.

Respectfully submitted,

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Eric A. Cioppa, Superintendent of Insurance

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<sup>24</sup> The Maine Funeral Directors Association representatives indicated that the Board was unlikely to consider the matter prior to the deadline for the submission of this report.

<sup>25</sup> Attachment J: Proposed Pre Need Insurance Legislation

<sup>26</sup> This proposal was submitted following the final stakeholders meeting; this report does not address and the Bureau cannot speak to the consideration, if any, which the other stakeholders may give to this proposal.

## LIST OF ATTACHMENTS

- A. [Letter from the Joint Standing Committee on Insurance and Financial Services of the 125<sup>th</sup> Maine Legislature to Superintendent of Insurance dated February 15, 2012](#)
- B. [List of participants in stakeholders meetings](#)
- C. [Letter dated June 1, 2012, and chart from Homesteaders Life Company summarizing state limited versus full licensing requirements for preneed insurance](#)
- D. [General Accounting Office report on Death Services, December 2011 \(provided to stakeholders group by Assurant, and Appendix II of the report also provided by Service Corporation International \(SCI\) as SCI "Exhibit 5"\)](#)
- E. [International Cemetery and Funeral Association \(ICCFA\) Guidelines for Insurance-Funded Prearrangements \(provided to stakeholders group by Assurant\)](#)
- F. [National Funeral Directors Association suggested Model Consumer Protection Guidelines for State Preneed Funeral Statutes \(provided to stakeholders group by Assurant, and by SCI as SCI "Exhibit 4"\)](#)
- G. [Massachusetts Preneed Regulations \(provided to stakeholders group by Assurant, and stakeholders by SCI as SCI "Exhibit 6"\)](#)
- H. [Written comments on behalf of the American Council of Life Insurers \(ACLI\), dated September 17, 2012](#)
- I. [Written comments on behalf of Assurant, Inc., dated September 17, 2012](#)
- J. [Proposed Pre Need Insurance Legislation presented on behalf of Assurant, September 17, 2012](#)
- K. [Written comments of Homesteaders Life Company, dated September 14, 2012](#)
- L. [Written comments on behalf of SCI, dated September 17, 2012](#)
- M. [Federal Trade Commission, Trade Regulation Rules, Funeral Industry Practices \(provided to stakeholders by SCI as SCI "Exhibit 1"\)](#)
- N. [SCI statement of apparent impediments in current law \(provided to stakeholders by SCI as SCI "Exhibit 2"\)](#)
- O. [NAIC Life Insurance Disclosure Model Regulation \(provided to stakeholders by SCI as SCI "Exhibit 3"\)](#)
- P. [LD 1717](#)