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FUNERAL-RELATED INDUSTRIES

Complaints and State Laws Vary, and FTC Could Better Manage the Funeral Rule





G A O

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United States General Accounting Office
Washington, D.C. 20548

General Government Division

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September 23, 1999

The Honorable Charles Grassley, Chairman
The Honorable John B. Breaux, Ranking Minority Member
Special Committee on Aging
United States Senate

The Honorable Susan M. Collins, Chairman
The Honorable Carl Levin, Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate

This report responds to your request that we examine various issues involving consumers' dealings with funeral-related or death care industries, which include businesses that provide funeral and cemetery goods or services. You expressed concern about consumers who may be faced with unneeded or inflated expenses or unfair or deceptive sales practices at a time when they are highly vulnerable—after the death of a loved one. You further stated that recent media accounts have focused on the need for consumers to approach death care transactions with considerable caution, especially because these purchases can be some of the most costly and emotionally difficult financial transactions a consumer can make.

As agreed with your offices, our objectives were to (1) describe the availability of information on the nature and extent of consumer complaints about death care industries, (2) describe and assess the Federal Trade Commission's (FTC) efforts to ensure compliance with its Funeral Rule, and (3) provide information on selected state governments' roles in protecting consumers in their death care transactions. The selected states were California, Florida, Maryland, New York, and Texas (see our scope and methodology section for a discussion of our selection criteria). We focused on transactions concerning funeral homes; cemeteries; and preplanned and prepaid funeral arrangements, commonly known as preneed arrangements.

Results in Brief

Comprehensive information on consumer complaints that would indicate the overall nature and extent of problems that consumers experienced with various aspects of death care industries was not available for a variety of reasons. One reason is that consumers can complain to a variety

of organizations about death care issues and can lodge the same complaint to more than one organization. Another reason is that no single organization or combination of organizations collects and compiles all complaints into one database. Also, each organization can have its own way of compiling and maintaining complaint information, which would confound efforts to compile and analyze aggregate complaint data. Although the organizations we contacted were able to provide some data, the number of complaints about death care was generally low compared to complaints about other categories of consumer issues. Among the reasons these organizations gave for the relatively low number of complaints was the personal or emotional component of the death care situation.

FTC's Funeral Rule requires that funeral providers give consumers accurate, itemized price information and various other disclosures about funeral goods and services. Over the last 5 years, FTC has taken steps, including distributing compliance guides and working with the funeral home industry, to promote compliance with the Funeral Rule. FTC took these steps because it was concerned about what it perceived as a relatively low level of compliance (about one-third) among funeral homes in the late 1980s.

FTC maintains that compliance among providers covered by the Rule has increased "substantially" over the years. However, FTC does not have a systematic or structured process for measuring funeral homes' compliance so that overall conclusions can be drawn about their actual compliance with the Rule. FTC's efforts to measure compliance have been limited to narrowly scoped test-shopping sweeps in selected areas—that is, they are not representative of the universe of funeral providers and do not cover all elements of the Rule. We analyzed the available records of funeral homes FTC test-shopped in fiscal years 1997 and 1998. Our analysis indicated that among the limited sample of homes visited, compliance indeed was high for the Funeral Rule's core requirement—giving consumers itemized price lists early in their meetings with funeral home staff—and somewhat lower for other elements of the Rule we reviewed. However, from the records we reviewed, it appears that FTC did not always take enforcement action against funeral homes that potentially violated the Rule and did not always document the reason. For example, according to its records, in fiscal years 1997 and 1998, FTC did not take action in over half the instances in which funeral homes had one or more potential Funeral Rule violations. According to FTC, one of the primary reasons it may not have taken action was because it exercised prosecutorial discretion. When records indicated that FTC took action on a potential Rule violation, we were not always able to determine why. In addition, FTC's letters to the funeral homes in

violation did not always provide the reason FTC took action, a practice that is suggested in FTC guidance on responding to a violation. We are making recommendations concerning these issues near the end of this report.

The five selected states differed in their approaches to protecting consumers who deal with funeral homes and cemeteries and make preneed arrangements. Differences were most notable concerning the (1) regulatory structure of the five states and (2) requirements that these states placed on death care providers. However, the five states also had similarities in their approaches to protecting consumers who engage in death care transactions. For example, the five states all had licensing and minimum education requirements that funeral providers were required to meet. Each of the states also had laws and regulations that required funeral providers to disclose price and other information to consumers similar to the requirements of FTC's Funeral Rule.

Background

Each year, American consumers arrange more than 2 million funerals at a total cost of billions of dollars. During 1997, according to Conning & Company, an insurance industry publications and research firm,¹ almost 27,000 funeral service providers, such as funeral homes and crematories, had sales revenue of about \$10 billion. The National Funeral Directors Association (NFDA) reported that in 1997, the average adult funeral cost about \$5,500, including casket and vault. Table 1 shows NFDA data on the average cost for the most commonly selected funeral items as of January 1997.

¹Preneed Insurance: A Business to Die For? 1998, Conning & Company (Hartford: 1998).

Table 1: Average Cost of Most Commonly Selected Funeral Items, as of January 1997

| Most commonly selected items | Average cost^a |
|---|---------------------------------|
| Nondeclinable professional service charges | \$1,079 |
| Embalming | 370 |
| Other preparation (e.g., cosmetology, hair) | 133 |
| Visitation/viewing | 305 |
| Funeral at funeral home | 326 |
| Transfer of remains to funeral home | 134 |
| Hearse (local) | 161 |
| Service car/van | 81 |
| Acknowledgment cards | 19 |
| Subtotal | \$2,607 |
| Casket, 18-gauge steel, sealer, velvet interior | 2,176 |
| Subtotal with casket | \$4,783 |
| Vault, asphalt-coated concrete, sealer | 761 |
| Total with casket and vault | \$5,544^b |

Note: Figures do not add due to rounding.

^aAccording to NFDA, the data on average cost of most commonly selected items are based on figures from its members' general price lists as of January 1997. NFDA's data were collected from 564 questionnaire responses out of a total random sample of 1,500 NFDA members.

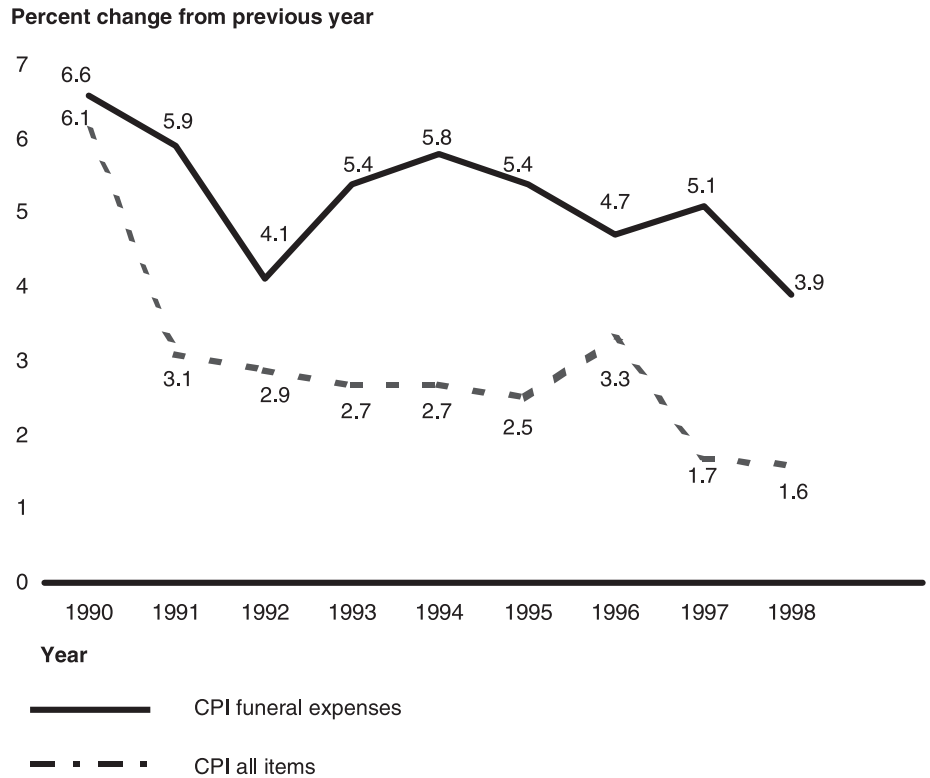
^bThe prices listed by NFDA do not include cemetery charges, such as grave space, opening/closing grave, crypts/mausoleum, monument, or marker because these items are usually not purchased through the funeral home. NFDA included the cost of a vault for reference even though, according to NFDA, some funeral homes offer vaults and others do not.

Source: National Funeral Directors Association.

NFDA also maintains some data on the cost of final disposition, such as burial and cremation. For example, in 1997, according to NFDA, the cost of an individual grave space ranged from about \$150 to over \$1,900, and the cost of opening and closing the grave ranged from \$125 to \$750 for nonovertime work. In addition, according to NFDA, the cost of cremation ranged from \$75 to \$395; a bronze urn to hold cremated remains cost from \$230 to \$1,800; and in-ground placement of an urn ranged from \$450 to \$1,250. Although the variety of choices and the range of costs make it difficult to precisely estimate the cost of a typical funeral and burial, AARP² estimated the cost in 1998 to be about \$8,000 and as much as \$10,000 in some markets. Furthermore, AARP reported that the cost of funeral and burial arrangements is increasing. In fact, according to data collected by the Bureau of Labor Statistics (BLS), funeral expenses have grown faster than the rate of inflation. Figure 1 shows the extent to which funeral expenses have exceeded the rate of inflation, as indicated by the consumer price index (CPI), since 1990.

²AARP was formerly known as the American Association of Retired Persons.

Figure 1: Percent Change in CPI From Previous Year for Funeral Expenses Compared With CPI for All Items From 1990 Through 1998



Source: Historical CPI for all Urban Consumers (U. S. city average) by commodity and service group and detailed expenditure categories, CPI Detailed Report, March 1999, BLS, Department of Labor.

FTC has a major role in protecting consumers during death care transactions. The FTC Act declares unfair or deceptive acts or practices to be unlawful when they affect commerce.³ Under its authority to promulgate rules, FTC has issued a trade rule entitled Funeral Industry Practices—more commonly called the Funeral Rule.⁴ The Funeral Rule was designed to (1) ensure that consumers receive the information necessary to make informed purchasing decisions and (2) lower existing barriers to price competition in the market for funeral goods and services.

The Funeral Rule, which became fully effective in April 1984, declares it an unfair or deceptive act or practice for funeral providers to (1) fail to

³15 U.S.C. 45.

⁴FTC's authority to issue rules is set forth at 15 U.S.C. 57a(a) and 15 U.S.C. 46(g). The Funeral Rule is set forth at 16 C.F.R. Part 453.

furnish accurate price information to funeral consumers, (2) require consumers to purchase items they do not want to buy, and (3) embalm deceased human remains for a fee without authorization. The Rule further declares it a deceptive practice for funeral providers to make certain misrepresentations, such as that embalming is required by law when it is not, that caskets must be used for cremation, or that funeral goods and services have certain preservation and protection capabilities. To prevent those practices, providers of funeral goods and services are to, among other things, (1) give detailed printed information about prices, including certain legal disclosures, to consumers who inquire about funeral arrangements; (2) allow consumers to select only those goods and services they desire (rather than offering goods and services only in predetermined packages); and (3) seek express approval before embalming the deceased for a fee. Since the Funeral Rule's inception, it was amended once in 1994. In April 1999, FTC announced that it was beginning to review the Funeral Rule to determine if it should be further amended, maintained as is, or repealed.⁵ Appendix I contains a copy of the Funeral Rule that was in effect as of July 1999.

State and local governments also have a role in regulating and overseeing funeral homes and cemeteries. Commercial cemeteries are regulated primarily at the state or local level.⁶ According to a 1998 book on making funeral arrangements,⁷ funeral homes and cemeteries are regulated by state boards as well as other agencies, including offices of attorneys general and departments of health and insurance. In addition, the book points out that licensing and minimum education requirements for funeral directors and embalmers differ from state to state. State laws also are the primary source of regulation over preneed funeral contracts. According to a 1996 law journal article, although every state, with the exception of Alabama and the District of Columbia, has enacted some sort of regulatory action to oversee preneed contracts, the laws vary from state to state.⁸ Examples of areas of differences in state statutes include the funding options available to consumers, limitations on where proceeds from preneed funeral contracts may be invested, and the percentage of preneed sales proceeds required to be placed in trust.

⁵FTC is currently soliciting the views and suggestions of interested parties, and FTC staff hope to have the entire rule review process completed within 2 years.

⁶Religious, municipal, and fraternal cemeteries are usually exempt from the various state regulations that govern commercial cemeteries.

⁷Lisa Carlson, *Caring for the Dead: Your Final Act of Love* (Hinesburg, VT: Upper Access Inc., 1998).

⁸Judith A. Frank, "Preneed Funeral Plans: The Case for Uniformity," *The Elder Law Journal*, Spring (1996).

One of the major changes in the nature of death care industries is the increase in preneed contracts. Conning & Company estimated that the preneed funeral market, including preneed trust deposits and preneed insurance contracts, amounted to over \$21 billion in 1996. Another change, according to FTC, is that cemeteries and casket retailers are now competing with traditional funeral providers, such as funeral homes, in the sales of caskets and other funeral goods and services. At the same time, an NFDA official said that there has been a movement away from independent family-owned funeral homes and a movement toward corporate or publicly owned homes. And according to reports in the media, there is a growing incidence of funeral homes and cemeteries being owned by the same few organizations.

Scope and Methodology

To meet our objectives, we did our work primarily at FTC in Washington, D.C., and Dallas, TX; and at state funeral and cemetery regulatory offices in five states—California, Florida, Maryland, New York, and Texas. As agreed with your offices, we focused our efforts on five states because of time and staffing constraints. We selected California, Florida, New York, and Texas because these states had the highest number of deaths of all 50 states in 1998. We selected Maryland because it recently had established a state regulatory agency with oversight responsibility for all but certain religious nonprofit cemeteries and because of Maryland's close proximity to our headquarters. In addition, we interviewed selected national representatives of industry trade and regulatory associations and consumer advocacy groups that deal with death care issues (see app. II for the organizations of the representatives and officials we spoke with). From each of these organizations we collected and reviewed available documents on such matters as issues affecting death care industries and consumers, sales and revenues of death care providers and average costs of death care goods and services, and federal and state regulatory issues. We also did a literature and Internet search for information on issues affecting death care industries and consumers and reviewed pertinent books, magazines, trade publications, and periodicals regarding consumer concerns with related death care industries. We did our work between July 1998 and July 1999, in accordance with generally accepted government auditing standards. Appendix II discusses our objectives, scope, and methodology in more detail.

We requested comments on a draft of this report from FTC's Chairman. FTC's comments are discussed near the end of this letter and are reprinted as appendix VI. We also contacted responsible officials from the regulatory bodies in the five states to verify the information on regulation,

oversight, and consumer information in this report. We made technical changes as appropriate.

Comprehensive Information on Death Care Complaints Was Not Available

Comprehensive information on consumer complaints that would indicate the overall nature and extent of problems that consumers experienced with various aspects of death care industries was not available for a number of reasons. One reason is that consumers can complain to a variety of organizations about death care issues and can complain to more than one organization about the same incident. Another reason is that no single organization or combination of organizations collects and compiles all complaints into one database. Also, each organization can have its own way of compiling and maintaining complaint information, which would confound efforts to compile and analyze aggregate complaint data. Although the organizations we contacted were able to provide some data, the number of complaints about death care was generally low compared to complaints about other categories of consumer issues. Among the reasons these organizations gave for the relatively low number of complaints was the personal or emotional component of the death care situation.

Consumers Can Complain to a Number of Organizations

Consumers can complain to a number of organizations about death care issues—from FTC at the federal level, to funeral licensing boards at the state level, to local consumer groups. Thus, it is difficult to determine the universe of organizations accepting complaints. In addition, consumers can lodge the same complaint to more than one of these organizations. For example, although consumers can lodge a complaint with FTC, intervening in individual disputes is not something FTC does. Instead, FTC refers consumers to other organizations for complaint resolution. Thus, FTC officials said that a single complaint could be contained in the files of multiple organizations. At the state level, consumers may complain to a variety of organizations. For example, in Texas, a consumer may complain to the state's office of the Attorney General and also to regulators responsible for any particular aspect of the death care industry, such as the Texas Department of Banking, which is responsible for regulating cemeteries and preneed funeral arrangements; or the Texas Funeral Service Commission, which is responsible for regulating funeral providers.

Consumers also can register complaints with nongovernmental organizations, both those that handle consumer complaints in general and those that specialize in death care matters. One of the best-known general consumer complaint organizations is the Better Business Bureau (BBB), which accepts complaints and can intervene on behalf of consumers through its local bureaus. One specialized organization that accepts complaints only about death care is the Funeral Service Consumer

Assistance Program (FSCAP), which provides consumer information, problem-solving resources, and recommendations for action concerning funeral services. According to FSCAP, it attempts to work with consumers to resolve their concerns, but if it cannot, FSCAP officials refer them to the appropriate state or local government agency. Another specialized organization, the Cemetery Consumer Service Council (CCSC), assists consumers in matters involving private cemeteries and memorial parks. According to CCSC, consumer complaints it receives at its national office are forwarded to the appropriate state CCSC representative for investigation and action.⁹ CCSC reports that its state representatives resolve many complaints by telephone and then notify the consumer. At the local level, organizations such as the Syracuse Memorial Society will respond to complaints about death care industries.

No Single Organization or Combination of Organizations Collects and Compiles All Complaints

Regardless of how many organizations accept complaints, no single organization or combination of organizations collects and compiles all complaints. Even if data from all of the organizations that accept complaints could be collected and compiled, because of differences in the way complaints are recorded, there is no assurance that the aggregate number of complaints would be accurate—that is, not overstated or understated—or that the nature of complaints would be recorded. This is because the various organizations and agencies that accept complaints have their own approaches for compiling and maintaining complaint information, often in dissimilar formats that do not lend themselves to systematic compilation or analysis.

For example, in the selected states we visited, we found that most of the states (California, Maryland, New York, and Texas) used a manual process, rather than an automated one, for recording and filing death care complaints. This manual process made it difficult to retrieve aggregate data. For example, before 1998, in Maryland, complaints for cemeteries were filed with complaints about other licensed businesses, such as beauty shops. For the one state, Florida, that used an automated system for complaints, detailed information about the nature of complaints was not recorded.

In addition, not all organizations that accept complaints record information on the nature of complaints, only whether a complaint was lodged. For example, BBB headquarters, which compiles all BBB data on consumer complaints, does not have information in its database on the

⁹When no state CCSC exists, the national office is to work with the state cemetery board or similar state government agency to assist the consumer.

nature of those complaints, only information on the number of complaints by industry category. The reason for this, according to a BBB official, is that local bureaus of the BBB give headquarters statistics only on the aggregate number of complaints. Only the bureaus have details on the nature of those complaints. For that information, one would have to contact each local BBB office, which may or may not have the information available for a given year.

Available Data Indicate a Range of Concerns, but Most Organizations Stated There Were Few Complaints

Although we were unable to identify the overall nature and extent of consumers' problems with various aspects of death care industries, available complaint data indicated a range of consumers' concerns. These concerns ranged from cemeteries' failure to mow or trim grass to funeral homes' efforts to dissuade customers from using caskets sold by parties other than themselves. Although the range of complaints was broad, we did not find large numbers of complaints at FTC, nongovernmental organizations, and selected state agencies. Generally across all of the types of organizations we contacted, most officials and representatives said that they received few complaints about death care. Reasons provided for the low number of complaints included the personal or emotional component of the death care situation and the fact that consumers may have been satisfied with the goods and services received.

For example, for fiscal year 1998, FTC's internal consumer complaint database, the Consumer Information System (CIS), contained 46,091 consumer complaints, 152 of which were on the subject of death care (0.33 percent). FTC staff assessed these complaints and determined that 58 involved potential violations of the Funeral Rule; the remaining 94 concerned other issues, such as rude service, contractual disputes, and cemetery and preneed complaints. Our analysis of CIS data for specific complaints consumers made to FTC in fiscal year 1998 includes the following as examples of the broad range of complaints received:

- A California consumer used the Internet to complain that a preneed trust for the entire cost of a funeral was purchased in 1977, yet additional fees of \$1,026 were added when the trust was executed in 1998.
- A Michigan consumer complained by mail that a funeral home's fees were combined rather than being displayed as separate line items as required by FTC's Funeral Rule.
- A New Jersey woman complained by telephone that she was a victim of deceptive practices. The complainant reported that her mother was embalmed without permission and that the funeral home claimed that communicable disease laws prevented the use of a rental casket; her inquiry to the state mortuary board revealed that there were no such laws.

- A California consumer complained by telephone that a funeral home was going to charge an additional \$470 for the use of a casket not purchased directly from the home.
- An Iowa consumer complained by mail that the casket delivered by a funeral home was not the model specified in the preneed agreement and that this funeral home regularly attempted to get customers to pay more for caskets.

The BBB received 453 complaints about death care goods and services for calendar year 1997, the most recent year for which BBB headquarters had data. Table 2 shows the area of death care goods and services about which consumers complained and the number of complaints BBB received.

Table 2: Number of Complaints to BBB regarding Death Care-Related Goods and Services for Fiscal Year 1997

| Area of death care | Number of complaints |
|--------------------------|----------------------|
| Funeral-related services | 255 |
| Funeral directors | 169 |
| Monuments/memorials | 22 |
| Cremation services | 4 |
| Cemeteries | 3 |
| Total | 453 |

Note: Because we did not contact local BBBs and BBB headquarters has data in its database only on the number of death care complaints, we could not provide information on the nature of these complaints.

Source: BBB data.

When comparing 1997 BBB inquiry and complaint data for death care to such data for other types of businesses, there were about one-third fewer total complaints for death care than there were for barber and beauty shops (654). The data indicate that BBB received far fewer complaints about death care than about automotive repair (15,551).¹⁰ Data were not available that would permit adjustment of these comparisons to a per-transaction basis. That is, although there were far fewer consumer transactions concerning death care industries than concerning barber and beauty shops or automotive repair shops, we cannot make a proportional assessment of the complaints.

In the selected states, consumer complaint data from each state were not available for us to review. For example, the California Public Interest Research Group stated that the California Department of Consumer Affairs received 603 complaints about cemeteries and 384 complaints about

¹⁰According to BBB data, complaints about automotive repairs comprised complaints about repairs to the following: body and paint; brakes, shocks, and mufflers; electrical service; rebuilt and exchanged engines; mechanicals (except transmissions); radiators and air conditioning; tires and retreads; transmissions; wheel alignments; and windshields or glass.

funeral homes for fiscal year 1995/1996. However, officials from both organizations said the complaint data were not available to confirm those numbers. In general, if they collected complaints, state-level organizations were either (1) only able to provide statistics about them and not detailed information on the nature or extent of complaints or (2) did not want to furnish such information because of confidentiality concerns. In our discussions with state agency officials and our review of available documents provided, officials generally stated that they received few complaints about death care.

Reasons Consumers May Not Complain

Clearly consumers may not complain about the goods and services they receive from death care providers because they are satisfied. However, there are also factors that might inhibit complaints. Officials from organizations at all levels told us that consumers often did not report problems because of the emotional component of death care or because they did not want to dwell on negative occurrences about the death of a loved one. One FTC official said that although he was not aware of any study to support it, anecdotally, consumers tended not to complain because of embarrassment or ignorance. In addition, a representative of a consumer group in Texas said that consumers are sometimes reluctant to complain because they know they have overpaid for death care services and do not want to reveal their mistakes to others. A BBB representative said that consumers might believe that death care is a personal matter rather than a consumer matter. Therefore, consumers may not think to complain the same way they would about a defective washing machine or automobile. Similarly, AARP officials said that AARP members are generally not inclined to report personal problems they have experienced with death care and that for this reason complaints are not considered to be a good measure of customer satisfaction. Further, users of preneed arrangements may leave no one in a position to complain.

Also, consumers may not be aware of the FTC Funeral Rule and states' laws relating to death care industries. Without knowing about the Funeral Rule and the laws, consumers may not know they have the right to complain. FTC officials said that they believe that consumers are not comparison-shopping when they enter into funeral transactions and that the lack of comparison-shopping could be related to the lack of consumer information about FTC and its Funeral Rule. Thus, if consumers do not get price lists from funeral homes or cemeteries when they are supposed to, they probably do not know that they are entitled to such lists.

Finally, in a 1978 report on funeral industry practices, FTC stated that consumer complaints generally do not provide a complete gauge of

consumer problems.¹¹ The report also stated that even at the time the Funeral Rule was proposed and under consideration, the number of consumer complaints filed against funeral directors was modest. Despite the low number of complaints, FTC was able to promulgate the Funeral Rule because, among other things, it believed that

“the emotional trauma of bereavement, the lack of information, and time pressures place the consumer at an enormous disadvantage in making funeral arrangements. These conditions mean that the funeral consumer lacks much of the information and freedom of choice available in most other consumer transactions.”

FTC’s Efforts to Promote Compliance Include Distributing Guidelines, Test-Shopping, and Working With Funeral Home Industry

Over the last 5 years, FTC has taken steps, including distributing compliance guides and working with the funeral home industry, to promote compliance with the Funeral Rule. FTC took these steps because it was concerned about what it perceived as a relatively low level of compliance. For the late 1980s, FTC reported that only about one-third (36 percent) of funeral providers complied with two key requirements of the Funeral Rule—giving consumers a general price list (GPL) and an itemized final statement of goods and services selected. FTC based this compliance rate on a study it did in 1987 during a review of the Funeral Rule. To conduct its study, FTC questioned selected consumers who had arranged funerals in the past 18 months about their experiences with the funeral homes and what was done by the homes to comply with the Rule.

During the early years after the Funeral Rule became effective, FTC’s enforcement of the Rule was complaint-based. FTC filed 41 civil penalty cases from 1984 through 1994 that were based on investigations of complaints received about individual funeral providers.¹² Because of the perceived low compliance rate based on the 1987 study results it reported and the small number of funeral providers FTC was able to investigate in 10 years, FTC adopted a new approach to try to ensure funeral provider compliance.

According to FTC, it mailed more than 18,000 compliance guides to “virtually every member” of the funeral home industry throughout the nation in June 1994. Beginning in October 1994, FTC initiated a test-shopping Rule enforcement approach, called “sweeps,” targeting funeral homes in a particular region, state, or city. Under this approach, FTC sent FTC staff, state investigators (such as those from offices of state attorneys

¹¹Funeral Industry Practices, FTC, Final Staff Report (Washington, D.C.: 1978).

¹² FTC filed eight additional cases from 1995 through 1996 as a result of investigations performed earlier.

general), or other volunteers (such as members of AARP) posing as consumers to test-shop a funeral home--by simulating a funeral transaction--and determine whether the funeral home was complying with the Rule. An FTC official said that FTC did not investigate individual complaints about a funeral home unless a complaint was made about a home in an area that FTC had already targeted for test-shopping.

According to FTC, the sweeps methodology was initially designed to quickly raise the overall compliance level with the Funeral Rule's core requirement: giving consumers an itemized GPL early in their meetings with funeral home staff. FTC officials said they believed the sweeps methodology was a more effective law enforcement tool than conducting traditional investigations because FTC could leverage its resources to make a bigger impact by test-shopping more funeral homes. Thus, according to FTC officials, there was a greater likelihood that noncompliance with the Rule would be detected.

In September 1995, NFDA proposed sponsoring a nonlitigation alternative to civil penalty actions for Rule violations when test-shopping revealed that funeral homes failed to provide the GPL and other price lists required by the Rule (i.e., for caskets and outer burial containers). This proposal, which was approved in modified form and implemented by FTC in 1996, was called the Funeral Rule Offenders Program (FROP). Among other things, violators of the Funeral Rule could have been offered the FROP option. Those who chose to enroll in FROP would agree to make voluntary payments to the U.S. Treasury equal to 0.8 percent of average annual gross sales and participate in training organized by NFDA that was designed to teach them how to comply with the Rule. According to FTC, the sweeps and FROP were expected to deter funeral homes from violating the Rule because (1) Rule violations were more likely to be detected and (2) violations required payments that were substantial enough to be treated as more than the mere cost of doing business as well as 5 years of compliance training and monitoring.

Although sweeps focused solely on whether a funeral home provided a GPL, by fiscal year 1997, the sweeps methodology had evolved so that additional violations were considered when FTC was making the decision about whether to offer FROP to a funeral home. In addition by fiscal year 1997, the official in each FTC region coordinating the test-shopping was to review the GPL to ensure that it contained the disclosures and other requirements. From October 1994 to September 1998, FTC test-shopped 958 funeral homes, or 4.3 percent of the 22,300 funeral homes in the United

States (see app. III for information on the number of sweeps and funeral homes shopped by state and city).

In addition, FTC has taken steps to educate consumers and funeral industry providers about the Funeral Rule. These steps include the publication and distribution of Funeral Rule consumer brochures and speaking engagements before consumer and industry groups.

Despite Its Efforts, FTC Cannot Measure Industrywide Compliance With Funeral Rule

FTC maintains that compliance among providers covered by the Rule has increased “substantially” over the years. However, FTC does not have a systematic or structured process for measuring funeral homes’ compliance so that overall conclusions can be drawn about the effectiveness of its enforcement efforts. FTC’s efforts to measure compliance have been limited to narrowly scoped test-shopping sweeps in selected areas. These sweeps were not representative of the universe of funeral providers and have not covered all elements of the Funeral Rule. We analyzed the available records of funeral homes FTC test-shopped in fiscal years 1997 and 1998. Our analysis indicated that among the limited sample of homes visited, compliance indeed was high for the Funeral Rule’s core requirement—giving consumers itemized price lists early in their meetings with funeral home staff—and somewhat lower for other elements of the Rule we reviewed. However, it appears that FTC did not always take action on funeral homes that potentially violated the Rule. According to FTC, one of the primary reasons it may not have taken action was because it exercised prosecutorial discretion.

FTC Reported Substantial Increase in Funeral Rule Compliance but Has Not Developed a Systematic Way for Determining Compliance

FTC has reported a substantial increase in Funeral Rule compliance among funeral providers from 1987, when FTC conducted its study, to 1998, the most recent year for which FTC provided compliance data. According to FTC, since the inception of FROP, funeral home test-shopping has demonstrated that compliance among funeral homes has substantially increased. FTC press releases and documents that FTC provided during our review indicate that test-shopping has demonstrated that compliance with the Funeral Rule was as high as 90 percent during fiscal years 1997 and 1998. However, although FTC has reported a substantial improvement in Funeral Rule compliance, FTC’s approach for measuring changes in the levels of compliance is somewhat problematic. This is because (1) FTC’s current approach is not comparable to the approach used to derive its baseline level of compliance, (2) compliance is not measured in a systematic way using a statistically valid sample of the universe of funeral providers, and (3) FTC’s reported compliance figures deal solely with what FTC considered the core requirement and does not measure compliance with other elements of the Rule.

Our review of available documents and our discussions with FTC officials showed that FTC could not substantiate whether compliance has increased since the inception of the Rule. The methodology of FTC's 1987 study, which FTC used to report a compliance rate of 36 percent,¹³ differs from that of the post-1994 test-shopping, which it used to report a compliance rate of 90 percent for fiscal year 1997. The two methodologies are not comparable, and the elements of the Funeral Rule tested were not the same. The methodology of the 1987 study involved interviewers querying consumers who had arranged a funeral during the 18 months preceding the inquiry about whether they were shown a GPL and provided an itemized final statement of goods and services. It seems likely that at least some respondents who may have been grieving and in emotional distress would not remember whether or not they had been shown a GPL or provided an itemized statement of goods and services selected.¹⁴ The Funeral Rule requires that consumers be given a GPL rather than shown one. The more recent sweeps methodology assesses whether consumers were given a GPL. Thus, the behavior being measured by FTC's baseline study and the more recent sweeps methodology is different. Further, the more recent sweeps methodology does not assess whether consumers received an itemized statement of goods and services.

Because of the differences in methodologies and measures used to reach the reported compliance rates, any increase reported by FTC cannot be substantiated. In fact, the sweeps methodology, while retaining a strong focus on whether a GPL is given, has evolved in such a manner that it would be difficult to confirm a pattern of change and compliance resulting from sweeps from year to year.

Also, FTC's selection of test-shopping sites cannot be considered representative of funeral providers nationwide. According to FTC, the goal of Funeral Rule sweeps is to increase funeral homes' compliance with the Funeral Rule and to deter noncompliance. We could not assess whether these goals were being met, nor could FTC, given the test-shopping samples and the scope of the sweeps. To undertake its sweeps, FTC did not select a representative sample of funeral homes to test-shop. For

¹³When FTC makes comparisons between current compliance rates and past rates, it cites the 36 percent as the baseline, which combines results related to a consumer being shown the GPL as well as receiving an itemized statement of goods and services. In relation to the GPL alone, the 1987 study shows that 67.9 percent of respondents said that they were shown a GPL. Of those, 23.2 percent said they received it at or near the beginning of the discussion with funeral home personnel—the point at which the Funeral Rule requires the GPL be provided.

¹⁴According to FTC, this statement allows consumers to evaluate their selections and make any desired changes. It is to be provided to the consumer at the end of the arrangement discussion.

example, FTC did not test-shop funeral homes in New England in either fiscal year 1997 or fiscal year 1998, the period for which we reviewed FTC data. In addition, in fiscal year 1998, although FTC test-shopped funeral homes in the West, Midwest, and Southwest, Florida was the only state in which homes were test-shopped on the East Coast. According to FTC, the factors it considers in selecting sites for conducting sweeps include whether resources are available in FTC regional offices and whether resources are available at the respective offices of state attorneys general or AARP for partnering with FTC to carry out sweeps.

Although the Funeral Rule applies to all providers of funeral goods and services, including certain cemeteries, FTC has test-shopped only funeral homes. According to FTC officials, they have not identified the number of cemeteries that are covered by the Funeral Rule or performed any sweeps at cemeteries to date.¹⁵ Therefore, FTC has neither identified the universe of providers of funeral goods and services that are to comply with the Rule nor tested such providers' compliance. Without knowing which providers are subject to the Funeral Rule, FTC cannot select a representative sample to determine an accurate compliance rate.

FTC's reported compliance figures for recent years refer only to compliance with what FTC considers to be the core Funeral Rule requirement—giving consumers itemized price lists early in their meetings with funeral home staff. Although sweeps in fiscal years 1997 and 1998 collected data concerning other elements, such as misrepresentations and disclosures, FTC has confined its reporting of compliance to the core requirement.

Our Analysis Indicated That Compliance Was High Among Test-Shopped Homes for GPLs, but FTC Did Not Always Act on Potential Rule Violations

Our analysis of FTC records on 22 funeral home sweeps covering a total of 596 funeral homes for fiscal years 1997 and 1998 indicated that compliance with certain elements of the Funeral Rule ranged from 79 to 99 percent, depending on the element tested. However, it appears that FTC did not always take action on funeral homes that potentially violated the Rule. Available records did not always enable us to determine the reasons FTC did or did not take action when potential Funeral Rule violations occurred. However, FTC officials told us that the agency may not have taken action for a number of reasons, including prosecutorial discretion, lack of staff resources, and the evolving nature of the sweeps program.

¹⁵According to FTC, some proportion of all cemeteries provides funeral goods and services but may still be outside FTC's jurisdiction as nonprofit organizations.

Our analysis of FTC records for funeral home sweeps for fiscal years 1997 and 1998 showed that for the items we examined, compliance was high at the funeral homes shopped. For example, most of the homes FTC test-shopped provided a GPL at the appropriate time during the discussion of the funeral transaction, and very few homes engaged in verbal misrepresentations of the goods and services consumers were required to purchase. Table 3 shows the results of our review of FTC’s records regarding the provision of the GPL at the required time for fiscal years 1997 and 1998.

Table 3: Results of FTC Funeral Home Sweeps for FY 1997 and FY 1998—Provision of GPL

| Results | Fiscal year 1997 | | Fiscal year 1998 | |
|------------------------------------|------------------|---------|------------------|---------|
| | Number | Percent | Number | Percent |
| Total available files ^a | 256 | 100% | 304 | 100% |
| GPL provided on time | 221 | 86 | 277 | 91 |
| GPL provided late or not at all | 35 | 14 | 27 | 9 |

^aDuring FY 1997 and 1998, FTC test-shopped 292 and 304 funeral homes, respectively. FTC did not have files available for 36 of the homes shopped for FY 1997. In addition, although FTC had files for 256 and 304 of the homes that were shopped for FY 1997 and FY 1998, respectively, 33 of the FY 1997 files and 58 of the FY 1998 files did not contain the GPLs that shoppers were to have obtained. According to FTC officials, these GPLs were not available because two regions did not keep them.

Source: GAO analysis of FTC records.

FTC records also are to document whether the funeral home made misrepresentations about whether embalming was required or certain items must be purchased, depending on the type of funeral. Our analysis of FTC’s records showed that most funeral homes did not make misrepresentations to the test-shopper. Table 4 shows the results of our review of FTC’s records concerning representations about embalming and items consumers were required to buy for fiscal years 1997 and 1998.

Table 4: Results of FTC Funeral Home Sweeps for FY 1997 and FY 1998—Provision of Proper Representations

| Results | Fiscal year 1997 | | Fiscal year 1998 | |
|--------------------------------|------------------|---------|------------------|---------|
| | Number | Percent | Number | Percent |
| No misrepresentations occurred | 252 | 98% | 300 | 99% |
| Misrepresentations occurred | 4 | 2 | 4 | 1 |

Source: GAO analysis of FTC records.

We also examined FTC records to test whether funeral homes provided identifying information and disclosures on the GPL as required by the Funeral Rule. We reviewed the GPLs that FTC made available to us to determine whether funeral homes included (1) the requisite identifying information, such as the address and telephone number of the funeral home and the effective date of the GPL; and (2) selected disclosures required by the Rule. We selected three of the six disclosures that the Funeral Rule requires a funeral home to put on its GPL and other price

lists to focus on. These disclosures were a consumer’s right to purchase only goods and services desired; proper representation about whether embalming is required by the state or municipality; and, if the funeral home offers cremation, a consumer’s right to an alternative container to a casket for cremation. Our analysis showed that most funeral homes included identifying information and the selected disclosures. Table 5 shows the extent to which the identifying information and the three selected disclosures were on the GPLs from sweeps conducted from fiscal years 1997 and 1998.

Table 5: Results of FTC Funeral Home Sweeps for FY 1997 and FY 1998—Identifying Information on GPL and Selected Disclosures

| Results | Fiscal year 1997 | | Fiscal Year 1998 | |
|---|------------------|---------|------------------|---------|
| | Number | Percent | Number | Percent |
| Total GPLs examined | 223 | 100% | 246 | 100% |
| Identifying information on GPL | 199 | 89 | 235 | 96 |
| Identifying information not on GPL | 24 | 11 | 11 | 4 |
| Selected disclosure statements on GPL | 181 | 81 | 195 | 79 |
| Selected disclosure statements not on GPL | 42 | 19 | 51 | 21 |

Note: We tested for three of six disclosures that are required to be on the GPL—a consumer’s right to purchase only goods and services desired; proper representation about whether embalming is required by the state or municipality; and, if the funeral home offers cremation, a consumer’s right to an alternative container to a casket for cremation.

Source: GAO analysis of FTC records.

It Appears That FTC Did Not Always Act on Potential Violations Identified During Funeral Home Sweeps or Document Reasons

We also analyzed the extent to which FTC took action on funeral homes for which potential violations were identified during sweeps for fiscal years 1997 and 1998. We found that FTC did not always (1) take action when potential violations occurred or (2) document the reasons for its actions.

Once FTC staff have noted that a Funeral Rule violation has occurred, they can determine the appropriate response or action according to the severity of the violation. One possible enforcement action is a letter that notifies the funeral home that it is not in compliance with the Rule, including a warning that future noncompliance could result in a monetary penalty; another is a written offer for the funeral home to enter FROP as an alternative to a law enforcement proceeding; and a third is a full law enforcement proceeding based on the determination that the funeral home has committed gross violations. Our analysis showed that in some cases FTC did not use any of these options when test-shopping disclosed potential violations. Specifically, according to its records, in fiscal years 1997 and 1998, FTC did not take action in more than half the instances in which funeral homes had one or more potential Funeral Rule violations.

Table 6 shows the extent to which FTC did or did not take enforcement action on such homes as noted during our review of FTC records on sweeps carried out in fiscal years 1997 and 1998.

Table 6: Results of FTC Funeral Home Sweeps for FY 1997 and FY 1998—Extent of FTC Enforcement Actions Against Funeral Homes That Had One or More Potential Violations

| Homes with potential violations | Fiscal year 1997 | | Fiscal year 1998 | |
|---------------------------------|------------------|------------|------------------|------------|
| | Number | Percent | Number | Percent |
| FTC took action | 38 | 43% | 26 | 33% |
| FTC took no action | 50 | 57 | 54 | 68 |
| Total | 88 | 100 | 80 | 100 |

Note 1: Potential violations comprise the following categories: GPL provided late or not at all; verbal misrepresentations; missing identifying information; and missing disclosure statements (i.e., a consumer's right to purchase only goods and services desired, proper representation about whether embalming was required by the state or municipality, and a consumer's right to an alternative container to a casket for cremation). More than one violation may have occurred at a single funeral home.

Note 2: For fiscal year 1997, individual categories of potential violations for which FTC took no action ranged from 17 to 75 percent. For fiscal year 1998, the range was 33 to 82 percent. We are not identifying the percentages for individual categories in order to protect information FTC deemed to be confidential law enforcement information.

Note 3: Percentages do not total 100 due to rounding.

Source: GAO analysis of FTC records.

Because other factors could influence FTC's decision to pursue a case, an indication in its records of a potential violation does not necessarily mean that FTC would be expected to take an enforcement action. However, available records did not always allow us to identify the specific reasons FTC did not act on potential violations of the Funeral Rule. When records indicated that FTC took action on a potential Rule violation, we were not always able to determine why. In addition, FTC's letters to the funeral homes in violation did not always provide the reason FTC took action, a practice that is suggested in FTC guidance on responding to a violation.

FTC headquarters officials told us that they were uncertain as to the exact reasons why regional staff did not act on individual potential violations. However, FTC's Funeral Rule Coordinator and the Assistant Director for Marketing Practices told us that there are numerous reasons FTC would not take action against a funeral home, even though the documentation on the home may indicate that a violation occurred. For instance, the Funeral Rule Coordinator said that the FTC official reviewing the test-shopping record may have asked further questions of the test-shopper and determined that the Rule had not really been violated. She and the Assistant Director stated that they were uncertain why that information was not documented.

FTC officials also told us that another reason an action may not have been taken is that FTC staff have discretion as to whether they should pursue a potential violation on the basis of the likelihood that FTC staff can make a solid case. In comments on a draft of this report, FTC's Chairman also stated that FTC can exercise prosecutorial discretion when deciding to take action on any individual case. During our review, FTC officials pointed out that FTC policy is to pursue full enforcement actions only if there is sufficient evidence to file the matter in federal court. These officials also told us that they did not believe that some types of violations, particularly those for missing identifying information, warranted any type of action because, in isolation, they were not considered substantive. Nonetheless, the officials acknowledged that such violations as those involving missing disclosures would probably warrant a compliance letter, and they could not explain why such a letter had not been sent in certain cases. They acknowledged that a more consistent procedure for use of compliance letters was needed.

FTC headquarters officials also told us that FTC staff may not have taken action or documented the reasons because the sweeps program is still evolving. They said that during the early sweeps, such as those conducted during 1995, FTC sweeps focused on the key requirement of the Rule—having a GPL and giving it at the right time. By fiscal year 1996, FTC staff also started to examine whether two other lists—the outer burial container list and the casket price list—were provided to test-shoppers. And by fiscal year 1997, test-shoppers were instructed to also gather information on misrepresentations about embalming and required purchases during the funeral consultation. Also in that year, FTC regional offices were instructed to review GPLs to ensure that the required disclosures were included. However, given the sweeps methodology, FTC cannot determine whether funeral homes were complying with certain elements of the Funeral Rule, such as accuracy of prices and the provision of a statement of goods and services selected.

In fact, FTC's guidance for conducting sweeps instructs FTC regional staff to consult with the Funeral Rule Coordinator in the Division of Marketing Practices at FTC headquarters in making determinations about such things as a GPL being in compliance with the Rule or the timing of the presentation of the GPL. According to the guidance, FTC's Funeral Rule Coordinator is to maintain records regarding these determinations so that they may be instructive in subsequent sweeps and cases. The guidance also points out that advising the Funeral Rule Coordinator about actions, such as sending a compliance letter, "will allow the development of a consistent response to these violations."

FTC headquarters officials acknowledged that they had not done an analysis of the documentation on sweeps as we had. They said that when regions are doing sweeps, staff from the Division of Marketing Practices hold conference calls with regional staff to discuss issues that arise during the sweeps. FTC also provided documentation that indicated such communication between headquarters and regions occurred. However, FTC headquarters officials said that headquarters staff viewed Funeral Rule sweeps as primarily a regional program and assumed that regional offices would be consistent in their implementation of the program based on the training provided. FTC was unable to provide evidence of historical, systematic documentation of sweeps decisionmaking and results. The lack of such documentation could indicate weak internal controls over the Funeral Rule program. Among other things, such controls are to help ensure that the objectives of the program are achieved.

Selected States Varied in Their Approaches to Protecting Consumers Who Arrange Death Care

The five selected states differed in their approaches to protecting consumers who deal with funeral homes and cemeteries and make preneed arrangements. Differences were most notable concerning the (1) regulatory structure of the five states and (2) requirements that these states placed on death care providers. However, the five states also had similarities in their approaches to protecting consumers who engage in death care transactions. For example, the five states all had licensing and minimum education requirements that funeral providers were required to meet. Each of the states also had laws and regulations that required funeral providers to disclose price and other information to consumers similar to the requirements of FTC's Funeral Rule. Appendix IV contains additional information on the selected states' laws and regulations and the oversight of funeral homes and cemeteries.

Funeral Homes

The selected states had various approaches for regulating funeral homes. For example, in three of the states (Florida, Maryland, and Texas) regulatory agencies with responsibilities for funeral homes were governed by a board or a commission made up of industry practitioners and consumer representatives. In the other two states (California and New York), the industry was regulated by a government agency but not by a board or a commission.¹⁶ Another difference among the states was their approach to inspections of funeral homes. Two of the states (Florida and Maryland) required that all funeral homes within the state be inspected on an annual basis. In Maryland, for example, inspections included reviews of required price lists, a completed funeral services contract, a preneed contract form, and funeral home facilities. Texas law required biennial

¹⁶New York's Bureau of Funeral Directing, which regulates funeral homes, has an advisory board.

inspections of funeral homes.¹⁷ California and New York did not have an annual inspection requirement and took a more complaint-driven approach to conducting inspections.

The five states also had some key differences among their requirements for funeral providers that affected consumers. For example, two of the states (California and Texas) required that funeral directors make available to consumers a state-produced brochure answering commonly asked questions concerning death care, including information on where to send complaints. Maryland and New York have produced consumer brochures but had no requirement that funeral homes make them available to consumers. Florida did not produce a brochure.

Similarities also existed among the five states' regulatory approaches. For example, the five states all had licensing requirements for funeral directors and embalmers and minimum education requirements that these funeral providers were required to meet. In addition to FTC's Funeral Rule, each of the states had state requirements similar to those of the Rule. For example, each state (1) required that funeral directors provide an itemized price list to consumers; and (2) prohibited funeral directors from making misrepresentations, including falsely representing that embalming is required by law.

Cemeteries

The five states also differed in their approaches to regulation and oversight of those cemeteries within their jurisdictions, such as nonreligious, for-profit cemeteries (see app. IV for details on cemeteries covered by the selected states). For example, in Maryland the office with regulatory responsibility for cemeteries was administered by a single individual with the authority to perform the numerous functions of the office. In New York, cemeteries were regulated by a board consisting of the Secretary of State, the Attorney General, and the Commissioner of Health. The selected states also differed in terms of the requirements and restrictions placed on cemeteries, including restrictions on what goods and services cemeteries could sell. In addition, New York was unique among the five states in that it required that cemeteries under its jurisdiction be operated on a not-for-profit basis.

In each of the selected states, the state regulatory agencies responsible for cemeteries had jurisdiction over only a fraction of the total number of cemeteries in the state because certain types of cemeteries, such as religious and municipal cemeteries, were exempt from state regulation.

¹⁷As of September 1, 1999, Texas law requires that inspections be conducted annually.

Oversight of cemeteries is conducted primarily at the state or local level. FTC's Funeral Rule applies only to certain cemeteries that sell both funeral goods and services.

Preneed Arrangements

The selected states also differed in their treatment of preplanned, prepaid funeral transactions, which are commonly called preneed arrangements and are regulated by state law. Although each of the five states had promulgated some sort of regulation of preneed contracts, the laws varied widely. Differences in the states' statutes included the percentage of preneed sales proceeds that each state required to be placed in trust and limitations on where proceeds from preneed contracts may be invested. In addition, two of the five states (Florida and Texas) required sellers of preneed contracts to pay a fee to a state consumer protection fund for every preneed contract they sold. The purpose of such a fund is to compensate consumers for situations in which sellers of preneed contracts are later unable to perform the terms of the contract. Appendix V contains additional information on preneed arrangements in general and in the selected states.

Conclusions

Our review found that although some data on problems that consumers experienced with various aspects of death care were available, comprehensive information on consumer complaints that would indicate the overall nature and extent of such problems was not. The organizations we contacted generally stated that the number of complaints about death care was low compared to other consumer issues. Among the reasons these organizations gave for the relatively low number of complaints included the personal or emotional nature of the death care situation.

State and federal governments have laws and regulations to protect consumers in arranging death care transactions. For the five states we focused on, we found differences in their regulatory structures for death care providers and in their requirements for those providers; we also found similarities, including licensing and minimum education requirements for funeral providers. In addition, all five states had laws and regulations that required funeral providers to disclose price and other information to consumers, similar to the requirements of FTC's Funeral Rule.

At the federal level, FTC's Funeral Rule was designed to protect consumers when arranging death care transactions. FTC has taken steps, including distributing compliance guides to funeral homes and working with the funeral home industry, intended to ensure compliance with the Funeral Rule. However, FTC cannot, with any reasonable assurance, report that there is high nationwide compliance with the Rule or a

substantial increase in compliance compared to a decade ago, because FTC does not have a systematic or structured process for measuring funeral homes' compliance so that overall conclusions can be drawn about their actual compliance with the Rule and the effectiveness of FTC's enforcement strategies. FTC's efforts to measure compliance have been limited to narrowly scoped test-shopping sweeps in selected areas—that is, they are not representative of the universe of funeral providers and do not cover all elements of the Rule. We did not do an analysis on the resources needed for FTC to establish a nationwide compliance rate. However, a more strategic selection of sites and a more systematic approach to conducting sweeps and analyzing results could provide more convincing evidence of the overall level of compliance with the Funeral Rule.

Although our work indicated that indeed compliance was high among funeral homes that FTC test-shopped in fiscal years 1997 and 1998 for the three elements of the Funeral Rule we reviewed, it appears that FTC did not always take enforcement action against funeral homes that potentially violated the Rule and did not always document the reasons. When records indicated that FTC took action on a potential Rule violation, we were not always able to determine why. In addition, FTC's letters to the funeral homes in violation did not always provide the reason FTC took action, a practice that is suggested in FTC guidance on responding to a violation.

Just as any agency's management is responsible for ensuring its agency's compliance with laws and regulations, it also is responsible for establishing effective internal controls. In the case of the Funeral Rule, FTC promulgated the Rule and is responsible for establishing effective internal controls for ensuring consistency in its (1) determinations of whether violations of the Rule's requirements occurred and (2) documentation on the specific reasons FTC did or did not act on such violations. Although FTC had guidance on how determinations regarding violations were to be made, the guidance was not followed consistently, as evidenced by the lack of documentation explaining whether and why FTC took action for some potential violations and not others.

Recommendations to the FTC Chairman

To help assess the overall effectiveness of FTC's Funeral Rule enforcement strategy, we recommend that the Chairman of FTC (1) review possible approaches to determine the most cost-effective means for FTC to conduct sweeps that would result in both a more convincing sample of funeral providers and a broader analysis of the various requirements of the Funeral Rule and (2) develop and implement a plan for carrying out such an approach in a systematic manner.

To ensure that FTC can consistently (1) determine whether violations of the Rule's requirements occurred and (2) document the specific reasons FTC did or did not act on such violations, we recommend that the Chairman of FTC train FTC staff on the specific standards needed for a consistent and acceptable level of documentation.

Agency Comments and Our Evaluation

We received written comments on a draft of this report from the FTC Commissioners in a letter dated August 25, 1999 (see app. VI). These comments are contained in a letter signed by the Chairman of FTC, by the direction of the Commission, and in a dissenting statement by one of FTC's Commissioners. According to the Chairman's letter, the Commission voted 3 to 1 to issue this response. The dissenting statement reflected the views of the one commissioner who voted against submitting the response.

FTC did not specifically comment on our recommendations. However, the letter signed by the Chairman discussed three points under separate headings: (1) "Test Methodology" for measuring funeral providers' compliance with FTC's Funeral Rule, (2) enforcement practices, and (3) other comments. Under the first heading of test methodology, the Chairman's letter stated that the report "incorrectly suggests that the FTC cannot document a nationwide increase in compliance with the core requirement of the Funeral Rule and that [FTC has] tested compliance in 'narrowly scoped test-shopping sweeps.'" As we have stated in the report, we believe that because of the differences among the methodologies and the elements FTC used in the 1980s and in the 1990s to measure compliance with the Funeral Rule, the assessed methodologies do not yield results that are comparable. Therefore, any increase in compliance reported by FTC cannot be substantiated. Also, although FTC has test-shopped 958 funeral homes in its 32 sweeps of 22 states and the District of Columbia over a 4-year period,¹⁸ FTC selected these sites and the homes to be shopped on the basis of the availability of resources from FTC regional offices and offices of partnering organizations, not as an appropriate sample from which to assess compliance. Indeed, FTC has not identified the universe of providers of funeral goods and services that are to comply with the Rule. Thus, we do not believe that FTC is positioned to draw overall conclusions about actual compliance with the Rule. As we recommended, FTC would benefit from an approach that used a more convincing sample of funeral providers for conducting sweeps and a broader analysis of Funeral Rule requirements.

¹⁸The letter signed by the Chairman cites table III.1 in Appendix III and points out that "the Commission has conducted 32 sweeps in 24 states." In fact, table III.I and FTC's source document lists 22 states and the District of Columbia.

Under the second heading of enforcement practices, the Chairman's letter stated that the report correctly notes that FTC has "not pursued every potential violation of each provision of the Rule." The Chairman's letter continues to state that "merely focusing on quantity of prosecutions does not present an accurate picture of the impact of the Commission's activities." We do not find fault with the statement in the Chairman's letter that "the decision to take action in any individual case is the result of the exercise of prosecutorial discretion, which is no different from the sort of decisionmaking and resource allocation in which all law enforcement agencies must engage." However, in FTC's case, it did not take action on more than half of all funeral homes identified in sweeps for fiscal years 1997 and 1998 as having potential Funeral Rule violations. As the one dissenting Commissioner pointed out in his statement, the proportion of all the potential violations for which FTC did not act is worthy of review to "confirm that they are not likely to cause substantial consumer injury." Because available records did not always allow us to identify the specific reasons FTC did or did not act on potential violations of the Funeral Rule, we could not determine the impact of such inaction on consumers.

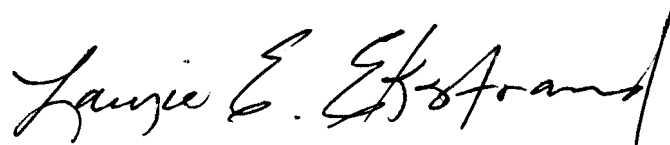
Finally under the third heading of other comments, the Chairman's letter stated that "we believe that GAO fairly points out that some improvements are needed in the Funeral Rule program's record keeping." According to the Chairman's letter, FTC officials have said that a review of FTC staff's procedures has begun. We applaud FTC's efforts to review its procedures and believe that FTC's acknowledgement of needed improvements to the program's recordkeeping is an appropriate first step in establishing effective internal controls over the Funeral Rule program. By taking this step and training staff as we recommended, FTC should be better positioned to ensure consistency in its (1) determinations of whether violations of the Rule's requirements occurred and (2) documentation of the specific reasons it did or did not act on such violations. Furthermore, we believe that these efforts may better position FTC to more effectively manage the Funeral Rule program and systematically analyze the extent to which certain Rule violations have the potential for substantial consumer injury.

In his dissenting statement, the one Commissioner who voted against submitting the response agreed with many of the points made by his colleagues, including that the decision to not take action on individual cases appears to have resulted from the exercise of prosecutorial discretion. However, he stated he did not believe the response appropriately addressed the concerns raised in our draft report. Among other things, he said that (1) FTC should take great care to avoid stating or

implying that it is in a position to conclude that a statistically valid nationwide projection of compliance can be made, and (2) a careful analysis of the concerns raised in the draft would have better served the public interest to confirm his suspicions that FTC does not have any substantial enforcement problems.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Honorable Robert Pitofsky, Chairman of the Federal Trade Commission; Judd Gregg, Chairman, and Ernest F. Hollings, Ranking Minority Member, of the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Senate Appropriations Committee; John Ashcroft, Chairman, and Richard H. Bryan, Ranking Minority Member, Subcommittee on Consumer Affairs, Foreign Commerce and Tourism, Senate Committee on Science, Commerce, and Transportation; Harold Rogers, Chairman, and Jose E. Serrano, Ranking Minority Member, of the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the House Appropriations Committee; and W.J. Tauzin, Chairman, and Edward J. Markey, Ranking Minority Member, Subcommittee on Telecommunications, Trade and Consumer Protection, House Committee on Commerce. We will also make copies available to other interested parties upon request.

Please contact me or John F. Mortin on (202) 512-8676 if you or your staff have questions. Major contributors to this report are acknowledged in appendix VII.



Laurie E. Ekstrand
Associate Director
Federal Management
and Workforce Issues

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Abbreviations

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| BBB | Better Business Bureau |
| BLS | Bureau of Labor Statistics |
| CCSC | Cemetery Consumer Service Council |
| CFP | Cemetery and Funeral Programs |
| CIS | Consumer Information System |
| CPI | Consumer Price Index |
| DCI | data collection instrument |
| DLLR | Department of Labor, Licensing, and Regulation |
| FAMSA | Funeral and Memorial Society of America |
| FDIC | Federal Deposit Insurance Corporation |
| FROP | Funeral Rule Offenders Program |
| FSCAP | Funeral Service Consumer Assistance Program |
| FTC | Federal Trade Commission |
| GPL | general price list |
| NFDA | National Funeral Directors Association |

FTC's Funeral Rule

Source: COMPLYING WITH THE FUNERAL RULE: A Business Guide Produced by the Federal Trade Commission, August 1995; pp. 45-50.

Part 453 — Funeral Industry Practices Revised Rule

Section:

- 453.1 Definitions.
- 453.2 Price disclosures.
- 453.3 Misrepresentations.
- 453.4 Required purchase of funeral goods or funeral services.
- 453.5 Services provided without prior approval.
- 453.6 Retention of documents.
- 453.7 Comprehension of disclosures.
- 453.8 Declaration of intent.
- 453.9 State exemptions.

Authority: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

§ 453.1 Definitions

(a) **Alternative container** An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) **Cash advance item** A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) **Casket** A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) **Commission** "Commission" refers to the Federal Trade Commission.

(e) **Cremation** "Cremation" is a heating process which incinerates human remains.

(f) **Crematory** A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) **Direct cremation** A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) **Funeral goods** "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) **Funeral provider** A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) **Funeral services** "Funeral services" are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) **Immediate burial** An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) **Memorial service** A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) **Funeral ceremony** A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) **Outer burial container** An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) **Person** A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) **Services of funeral director and staff** The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price Disclosures

(a) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

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| <p>(b) Preventive Requirements</p> <p>To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:</p> <p>(1) Telephone Price Disclosure</p> <p>Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.</p> <p>(2) Casket Price List</p> <p>(i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. <i>Provided, however,</i> that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.</p> <p>(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."</p> <p>(3) Outer Burial Container Price List</p> <p>(i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon</p> | <p>beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. <i>Provided, however,</i> that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.</p> <p>(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."</p> <p>(4) General Price List</p> <p>(i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:</p> <p>(1) the prices of funeral goods or funeral services;</p> <p>(2) the overall type of funeral service or disposition; or</p> <p>(3) specific funeral goods or funeral services offered by the funeral provider.</p> <p>(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. <i>Provided, however,</i> that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to</p> | <p>embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.</p> <p>(C) The list required by paragraph (b)(4)(i)(A) of this section must contain at least the following information:</p> <p>(1) The name, address, and telephone number of the funeral provider's place of business;</p> <p>(2) A caption describing the list as a "general price list"; and</p> <p>(3) The effective date for the price list;</p> <p>(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:</p> <p>(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;</p> <p>(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;</p> <p>(C) The price range for the direct cremations offered by the funeral provider, together with:</p> <p>(1) a separate price for a direct cremation where the purchaser provides the container;</p> <p>(2) separate prices for each direct cremation offered including an alternative container; and</p> |
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| <p>(3) a description of the services and container (where applicable), included in each price;</p> <p>(D) The price range for the immediate burials offered by the funeral provider, together with:</p> <p>(1) a separate price for an immediate burial where the purchaser provides the casket;</p> <p>(2) separate prices for each immediate burial offered including a casket or alternative container; and</p> <p>(3) a description of the services and container (where applicable) included in that price;</p> <p>(E) Transfer of remains to funeral home;</p> <p>(F) Embalming;</p> <p>(G) Other preparation of the body;</p> <p>(H) Use of facilities and staff for viewing;</p> <p>(I) Use of facilities and staff for funeral ceremony;</p> <p>(J) Use of facilities and staff for memorial service;</p> <p>(K) Use of equipment and staff for graveside service;</p> <p>(L) Hearse; and</p> <p>(M) Limousine.</p> <p>(iii) Include on the price list, in any order, the following information:</p> <p>(A) Either of the following:</p> <p>(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or</p> <p>(2) The prices of individual caskets, disclosed in the manner</p> | <p>specified by paragraph (b)(2)(i) of this section; and</p> <p>(B) Either of the following:</p> <p>(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or</p> <p>(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and</p> <p>(C) Either of the following:</p> <p>(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or</p> <p>(2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase</p> | <p>"and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.</p> <p>(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.</p> <p><u>(5) Statement of Funeral Goods and Services Selected</u></p> <p>(i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:</p> <p>(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;</p> <p>(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and</p> <p>(C) The total cost of the goods and services selected.</p> <p>(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.</p> <p><u>(6) Other Pricing Methods</u></p> <p>Funeral providers may give persons</p> |
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any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations

(a) Embalming Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) Preventive requirements

To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) direct cremation;

B) immediate burial; or

(C) a closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right

to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for Cremation Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) Preventive Requirements

To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer Burial Container Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws

or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventive Requirement

To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General Provisions on Legal and Cemetery Requirements

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive Requirements

To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral

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providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on Preservative and Protective Value Claims

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;
- (2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash Advance Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

- (i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;
- (ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive Requirements

To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with

the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required Purchase of Funeral Goods or Funeral Services.

(a) Casket for Cremation Provisions

(1) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) Preventive Requirement

To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other Required Purchases of Funeral Goods or Funeral Services

(1) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

- (i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

- (ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) services of funeral director and staff, permitted by

§ 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) Preventive Requirements

(i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

- (ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services Provided Without Prior Approval

(a) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) Preventive Requirement

To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of Documents

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b)(2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of Disclosures

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§ 453.8 Declaration of Intent

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State Exemptions

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

By direction of the Commission.

Donald S. Clark
Secretary

Objectives, Scope, and Methodology

Our objectives were to (1) describe the availability of information on the nature and extent of consumer complaints about the death care industry, (2) describe and assess the Federal Trade Commission's (FTC) efforts to ensure compliance with its Funeral Rule, and (3) provide information on selected state governments' roles in protecting consumers in their transactions with the death care industry. We did our work primarily at FTC in Washington, D.C., and Dallas, TX; and at state funeral and cemetery regulatory offices in five states—California, Florida, Maryland, New York, and Texas. We selected California, Florida, New York, and Texas because these states had the highest number of deaths of all 50 states in 1998. We selected Maryland because it had recently established a state regulatory agency with oversight responsibility for all but certain religious nonprofit cemeteries and because of Maryland's close proximity to our headquarters office. As agreed with your staff, we focused our efforts on these five states because of time and staffing constraints. Once we selected the states, we concentrated our efforts at the agencies that we identified as those most likely to have responsibility for consumer-related death care matters in their respective states.

In addition, we interviewed representatives of selected national, state, and local industry trade and regulatory associations and consumer advocacy groups that deal with death care issues. Although we recognize that there are numerous organizations that are involved in one or many components of death care, we judgmentally selected the organizations to contact because of time constraints, staff availability, and travel costs. Although regulatory bodies may exist in each of the selected states for monuments, crematories, and other funeral industries, we focused our efforts on regulatory bodies for funeral homes, cemeteries, and preneed arrangements. In consideration of these factors, in addition to the state agencies responsible for death care oversight and regulation, we met with representatives of various industry and consumer groups. At the national level, we contacted the following organizations: AARP; the Better Business Bureau (BBB); the Cremation Association of North America; the Funeral and Memorial Society of America (FAMSA); the International Cemetery and Funeral Association; the National Alliance of Life Insurance Companies; the National Association of Attorneys General; the National Association of Insurance Commissioners; the National Funeral Directors Association (NFDA); the North American Cemetery Regulators Association; the Insurance and Research Publications Division of Conning & Company; and the editor of Preneed Perspective.

At the state level, we contacted the following organizations by state:

- California—State Offices: Office of the Attorney General, California Department of Justice; Cemetery and Funeral Programs, California Department of Consumer Affairs; and California Department of Insurance.
Consumer Groups and Industry Representatives: California Public Interest Research Group; Forest Lawn Memorial Parks and Mortuary; Association Resource Center, a management company for the California Funeral Directors Association.
- Florida—State Offices: Bureau of Life and Health Insurer Solvency and Market Conduct Review, Division of Insurer Services, Florida Department of Insurance; Bureau of Funeral and Cemetery Services, Division of Finance, Office of the Comptroller; Board of Funeral Directors and Embalmers, Division of Professions, Florida Department of Business and Professional Regulation; Office of the Attorney General.
Consumer Groups and Industry Representatives: Florida Funeral and Memorial Society; Florida Funeral Directors Association.
- Maryland—State Offices: State Board of Morticians, Department of Health & Mental Hygiene; Office of Cemetery Oversight, Division of Occupational and Professional Licensing, Department of Labor, Licensing, and Regulation; Office of the Attorney General; Life and Health Section, Maryland Insurance Administration.
Consumer Groups and Industry Representatives: Memorial Society of Maryland; Maryland State Funeral Directors Association; Loudon Park Funeral Home and Cemetery.
- New York—State Offices: Division of Cemeteries, State of New York Department of State; Bureau of Funeral Directing, State of New York Department of Health; Office of the Attorney General.
Consumer Groups and Industry Representatives: Memorial Society of Hudson-Mohawk Region, the Rochester Memorial Society, and the Syracuse Memorial Society; L. F. Sloane Consulting Group (a cemetery representative); New York Funeral Directors Association.
- Texas—State Offices: Texas Funeral Service Commission; Special Audits Division, Texas Department of Banking; Texas Department of Insurance; Office of the Attorney General.
Consumer Groups and Industry Representatives: Austin Memorial and Burial Information Society; Texas Funeral Directors Association;

Greenwood Funeral Homes and Cemetery.

At each of the nongovernmental organizations we contacted, we spoke with officials regarding death care issues and collected and reviewed available documents and studies on such things as industry sales and revenues, consumer issues associated with the sales of death care goods and services, and consumer-related federal and state regulatory issues. We also did a literature and Internet search for information on issues affecting death care industries and consumers and reviewed pertinent books, magazines, trade publications, and periodicals regarding consumer concerns with those industries.

To describe the availability of information on the nature and extent of consumer complaints about the death care industry, we met with FTC officials; representatives of the aforementioned national trade, regulatory, and consumer advocacy organizations; and state regulatory officials in the five states. At FTC, we reviewed data from FTC's Consumer Information System (CIS), which became fully operational in the fall of 1997 and is FTC's database of consumer complaints, inquiries, and requests for information. The CIS database contained a total of about 200 categories within which consumer complaints were included. The categories in CIS covered a wide range of topics, such as (1) creditor debt collection; (2) home repair; (3) investments; (4) health; and (5) leases for various products and services, such as automobiles and furniture. We identified one of those categories—funeral services—as the one that could most likely provide us information on consumers' complaints about death care issues. FTC provided data from CIS showing 834 records for fiscal year 1998. We then sorted the records into individual categories and analyzed the data to determine the extent and nature of complaints received by FTC. In addition, at the other organizations we contacted, we discussed with officials the extent to which they may have collected and maintained readily available data on consumers' problems concerning death care issues and the types and extent of complaints they received. We also discussed with them the various reasons why such information was not readily available.

To describe and assess FTC's efforts to ensure compliance with its Funeral Rule, we met with FTC officials to discuss regulatory practices, enforcement, and oversight of death care industries. We also obtained and reviewed pertinent laws, regulations, and FTC documents pertaining to the history of FTC's efforts to promulgate the Rule and enforce compliance. In addition, we reviewed FTC's manual for initiating, implementing, and concluding Funeral Rule test-shopping, sometimes called Funeral Rule

sweeps; and we analyzed FTC records on funeral provider compliance with the Funeral Rule for fiscal years 1997 and 1998. Specifically, for these fiscal years, we requested the universe of records (596) that documented the results of FTC's Funeral Rule test-shopping efforts at funeral homes in various locations across the country. FTC could not provide 36 files because the regional office performing the sweep did not retain those records when a test-shopper did not find a problem.

For each of the 560 available files, we used a standardized data collection instrument (DCI) that was designed to capture such information as whether the shopper received a general price list (GPL) or whether specific misrepresentations were made about matters like embalming. We also used the DCI to compile data from the available GPLs provided by funeral homes during the test-shopping. FTC could provide price lists for only 469 test-shops. FTC officials could not fully explain why the GPLs were missing from the records but stated several possible reasons. According to FTC officials, in one regional office, an FTC official used the GPLs from previous test-shopping experiences to train future test-shoppers. Also, an FTC official speculated that perhaps other price lists were missing because the GPL was not received from the test-shopper, or FTC lost the GPL from the records. We reviewed the available GPLs to determine whether identifying information and disclosures contained on them was required by the Funeral Rule. The identifying information we looked for was the name, address, and telephone number of the funeral home; the caption "General Price List"; and the effective date of the GPL. We also reviewed the GPL for three required disclosure statements:

- "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead.¹ If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."
- "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want

¹If customers cannot decline the basic services fee, the funeral provider must include this sentence. The provider may add the phrase "and overhead" after the word "services" in this sentence if the fee includes the recovery of overhead costs.

embalming, you usually have the right to choose an arrangement that does not require you to pay for it such as direct cremation or immediate burial.”²

- “If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers).”³

The Funeral Rule also requires that the GPL contain other disclosures, such as a casket price list statement; and requires itemization of prices for certain goods and services, such as immediate burial. We did not review individual GPLs for compliance with these other items because of time and staffing constraints.

In addition, we used the DCI to record what action FTC took, if any, in regard to potential Funeral Rule violations. We then analyzed these data to determine the number and type of potential Funeral Rule violations that may have occurred and whether FTC acted on them. We considered FTC to have taken action if it had sent a letter (1) to the funeral home advising the home of noncompliance and warning that additional action could occur if the home did not comply in the future, (2) offering the funeral provider the opportunity to enter NFDA’s Funeral Rule Offender’s Program (FROP) rather than be subject to civil penalty actions, or (3) notifying the funeral home that it was beginning full law enforcement proceedings on the basis of gross violations of the Funeral Rule. We did not assess the effectiveness of FROP, a program sponsored by FTC and NFDA.⁴ We reviewed the letters FTC sent to the funeral homes in question, when available, to determine the reason FTC took action on potential violations.

To provide information on selected state governments’ roles in protecting consumers in their transactions with the death care industry, we spoke with officials from the previously mentioned state agencies that have responsibility for regulation and oversight of death care in those states. At

² The phrase “except in certain special cases” need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

³ We took into account the fact that if the funeral home does not arrange direct cremations, this statement does not need to be included on the GPL.

⁴ FROP, which FTC approved and implemented in 1996, was designed to penalize Funeral Rule offenders and educate them about the Rule. Participants enter the program for 5 years, and not enough time has lapsed to determine if FROP has been successful in stemming Funeral Rule violations among its participants.

these organizations, we collected pertinent laws, regulations, and documents covering three areas—funerals, cemeteries, and preneed funeral arrangements—and analyzed these laws, regulations, and documents with a focus on consumer protection issues in each jurisdiction. We also administered a DCI to discuss regulatory and consumer protection issues with appropriate state officials and to ensure that we obtained consistent information from each of the organizations. The DCI covered such topics as preneed funeral and burial arrangements, including trusts and insurance; at-need funeral and cemetery arrangements; and consumer affairs and consumer awareness in the state regarding both preneed and at-need death care arrangements. We contacted responsible officials from the regulatory bodies in the five states to verify information on the states.

We did our work between July 1998 and July 1999, in accordance with generally accepted government auditing standards.

FTC Funeral Home Sweeps

The following table contains information on the 32 sweeps FTC carried out since it began test-shopping funeral homes to ensure their compliance with the Funeral Rule and the number of funeral homes shopped by state and city.

Table III.1: Number and Location of Funeral Homes FTC Test-Shopped by Date of Sweep

| Date | State | City | Number of funeral homes test-shopped |
|---------------------|-------|--|--------------------------------------|
| October 1994 | FL | Tampa | 26 |
| December 1994 | DE | Statewide | 22 |
| January 1995 | TN | Nashville | 23 |
| February 1995 | MS | Jackson, Yazoo City, Vicksburg | 18 |
| March 1996 | OH | Columbus | 32 |
| May 1996 | CO | Denver | 26 |
| June 1996 | MA | Statewide ^a | 40 |
| June 1996 | OK | OK City | 26 |
| July 1996 | D.C. | Washington | 30 |
| September 1996 | IL | Chicago area | 119 |
| January 1997 | NJ | Statewide | 35 |
| June 1997 | AR | Little Rock | 21 |
| July 1997 | CA | San Jose ^b | 11 |
| July 1997 | WA | Spokane | 4 |
| July-September 1997 | CO | Pueblo, Colorado Springs | 22 |
| August 1997 | PA | Philadelphia area | 55 |
| August 1997 | GA | Atlanta | 19 |
| August 1997 | CA | Southern CA | 13 |
| August 1997 | WA | Seattle | 17 |
| September 1997 | TX | Fort Worth | 23 |
| September 1997 | IA | Statewide | 62 |
| September 1997 | CA | East Bay | 10 |
| December 1997 | CA | Sacramento | 22 |
| January 1998 | OK | Tulsa | 27 |
| May 1998 | CA | Marin County | 8 |
| June 1998 | CA | Santa Rosa | 5 |
| August 1998 | MI | Detroit, Lansing, Grand Rapids | 42 |
| August 1998 | FL | Pinellas, Hillsboro, Leon counties | 80 |
| August 1998 | UT | Salt Lake City | 32 |
| September 1998 | MN | Minneapolis-St. Paul, Rochester, Duluth, Saint Cloud | 55 |
| September 1998 | NV | Las Vegas, Reno, Carson City | 22 |
| September 1998 | LA | Baton Rouge | 11 |
| Total | | | 958 |

^aThis sweep included six cities.

^bThis sweep included the South Bay area of CA.

Information on Funeral Homes and Cemeteries in Selected States

This appendix contains information about the regulation and oversight of funeral homes and cemeteries in the five selected states—California, Florida, Maryland, New York, and Texas. It also discusses state-required information that is to be provided to consumers about funeral homes and cemeteries.

Appendix V discusses preneed funeral arrangements and provides information on the regulation of preneed arrangements in the selected states.

Funeral Homes

California

The Cemetery and Funeral Programs (CFP) of the California Department of Consumer Affairs regulates both the funeral and cemetery industries in California.

Table IV.1 provides information on the regulation and oversight of California funeral homes and shows state requirements regarding consumer information.

Table IV.1: California Funeral Homes—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|--|-----|----|---|
| Law or regulation | | | |
| Licensing requirement for funeral directors, embalmers, and funeral establishments | X | | All three licenses must be renewed on an annual basis. |
| Requirement that funeral directors complete continuing education credits | X | | Licensees are required to complete 14 hours of continuing education every 2 years. |
| Requirement that state regulatory office be notified of change of funeral home ownership | X | | |
| Requirement prohibiting the combined ownership of funeral homes and cemeteries | | X | |
| Requirement that low-cost caskets be included as part of funeral home displays | | X | All caskets must be either physically displayed in the casket selection room or displayed photographically. |
| Oversight | | | |
| Required annual inspections of all funeral homes | | X | A CFP official stated that the office does not inspect all of the state's funeral homes on an annual basis, but it conducts unannounced inspections of about 200 of the state's approximately 800 funeral homes. He further said that although complaints often generate inspections, CFP maintains an ongoing random inspection program. |

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Information on Funeral Homes and Cemeteries in Selected States**

| Category | Yes | No | Comments |
|---|------------|-----------|--|
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about funeral goods and services | X | | California law requires that CFP produce and make available to funeral establishments a consumer guide for funeral and cemetery purchases. Funeral establishments are required to prominently display and make available this guide. |
| Requirement that all funeral contracts contain state regulatory office's contact information | X | | California law requires that CFP's name, address, and telephone number be on such contracts. |

Source: CFP, California Department of Consumer Affairs.

Florida

The Board of Funeral Directors and Embalmers of the Department of Business and Professional Regulation has jurisdiction over the funeral industry in Florida. The Board is made up of seven members appointed by the governor; five of whom are licensed funeral directors, and two of whom are consumer representatives who must have no affiliation with the funeral industry.

Table IV.2 provides information on the regulation and oversight of Florida funeral homes and shows state requirements regarding consumer information.

Table IV.2: Florida Funeral Homes—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|--|------------|-----------|--|
| Law or regulation | | | |
| Licensing requirement for funeral directors, embalmers, and funeral establishments | X | | All three licenses must be renewed every 2 years. |
| Requirement that funeral directors complete continuing education credits | X | | Licenses are required to complete 12 hours of continuing education every 2 years. Licensees also must have completed a single Board-approved course on communicable diseases and HIV/AIDS. |
| Requirement that state regulatory office be notified of change of funeral home ownership | X | | |
| Requirement prohibiting the combined ownership of funeral homes and cemeteries | | X | |
| Requirement that low-cost caskets be included as part of funeral home displays | X | | The least expensive casket offered for sale must be displayed in the same manner as the other caskets. |

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| Category | Yes | No | Comments |
|---|------------|-----------|---|
| Oversight | | | |
| Required annual inspections of all funeral homes | X | | Annual inspections of funeral homes are required, and additional inspections can be conducted in response to complaints. State inspectors have responsibility for 800 to 1,000 funeral homes in addition to inspections for cosmetology salons, barbers, and veterinarians. |
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about funeral goods and services | | X | |
| Requirement that all funeral contracts contain state regulatory office's contact information | | X | |

Source: Board of Funeral Directors and Embalmers, Division of Professions, Florida Department of Business and Professional Regulation.

Maryland

The State Board of Morticians, Department of Health & Mental Hygiene regulates the funeral industry in Maryland. The Board of Morticians consists of 12 members; 8 of whom are licensed morticians or funeral directors, and 4 are consumer representatives. An Executive Director oversees the day-to-day work of the Board.

Table IV.3 provides information on the regulation and oversight of Maryland funeral homes and shows state requirements regarding consumer information.

Table IV.3: Maryland Funeral Homes—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|--|------------|-----------|---|
| Law or regulation | | | |
| Licensing requirement for funeral directors, embalmers, and funeral establishments | X | | All three of these licenses must be renewed every 2 years. |
| Requirement that funeral directors complete continuing education credits | X | | Licensees are required to complete the equivalent of 12 hours of Board-approved continuing education courses during the 2-year term of the license. |
| Requirement that state regulatory office be notified of change of funeral home ownership | X | | |
| Requirement prohibiting the combined ownership of funeral homes and cemeteries | | X | A Board of Morticians official stated that the owner would be required to have separate licenses for the funeral home and the cemetery. |
| Requirement that low-cost caskets be included as part of funeral home displays | | X | |
| Oversight | | | |
| Required annual inspections of all funeral homes | X | | Inspections also are made on the basis of written complaints received by the Department. |

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| Category | Yes | No | Comments |
|---|------------|-----------|--|
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about funeral goods and services | X | | A Board of Morticians official stated that the Board has produced a brochure, in collaboration with the Maryland Office of Cemetery Oversight, which will be made available to funeral homes for distribution. However, another official added that funeral homes are not required by law to hand out these brochures. |
| Requirement that all funeral contracts contain state regulatory office's contact information | | X | |

Source: State Board of Morticians, Department of Health & Mental Hygiene.

New York

The Bureau of Funeral Directing of the State of New York's Department of Health has jurisdiction over funeral homes in New York State. A Director administers the Bureau. The Bureau also has a funeral directing advisory board, which consists of six licensed funeral directors, three consumer representatives, and one cemetery representative.

Table IV.4 provides information on the regulation and oversight of New York funeral homes and shows state requirements regarding consumer information.

Table IV.4: New York Funeral Homes—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|---|------------|-----------|---|
| Law or regulation | | | |
| Licensing requirement for funeral directors, embalmers, and funeral establishments ^a | X | | All three licenses must be renewed every 2 years. |
| Requirement that funeral directors complete continuing education credits | | X | A Bureau of Funeral Directing official stated that a continuing education bill passed the state legislature and is currently awaiting the governor's signature. If enacted, this bill would require 12 hours of continuing education every 2 years. |
| Requirement that state regulatory office be notified of change of funeral home ownership | X | | |
| Requirement prohibiting the combined ownership of funeral homes and cemeteries | X | | |
| Requirement that low-cost caskets be included as part of funeral home displays | X | | |
| Oversight | | | |
| Required annual inspections of all funeral homes | | X | Bureau officials stated that about 300 of the state's approximately 2,000 funeral homes are inspected each year. These officials further stated that inspections and investigations are largely complaint driven. |

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| Category | Yes | No | Comments |
|---|------------|-----------|--|
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about funeral goods and services | | X | The Bureau has produced separate consumer brochures for preneed and at-need funeral arrangements; however, there is no requirement that funeral directors make these brochures available to consumers. |
| Requirement that all funeral contracts contain state regulatory office's contact information | X | | A Bureau of Funeral Directing official stated that the Bureau's contact information is required to be included on the itemized statement that funeral directors give to consumers. |

^aAn official from the Bureau of Funeral Directing said that New York licenses funeral firms, not funeral establishments.

Source: Bureau of Funeral Directing, New York Department of Health.

Texas

The Texas Funeral Service Commission regulates funeral homes in Texas.¹ The Commission is made up of nine commissioners, including four licensed embalmers or funeral directors and five consumer representatives.² An Executive Director administers the daily business of the Commission.

Table IV.5 provides information on the regulation and oversight of Texas funeral homes and shows state requirements regarding consumer information.

Table IV.5: Texas Funeral Homes—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|--|------------|-----------|---|
| Law or regulation | | | |
| Licensing requirement for funeral directors, embalmers, and funeral establishments | X | | A Texas Funeral Service Commission official stated that funeral directors and embalmers licenses must be renewed every 2 years and funeral establishment licenses must be renewed annually. |
| Requirement that funeral directors complete continuing education credits | X | | Licensees renewing in 1999 are required to complete 14 hours of continuing education. Licensees renewing in 2000 are required to complete 16 hours of continuing education. |
| Requirement that state regulatory office be notified of change of funeral home ownership | X | | |
| Requirement prohibiting the combined ownership of funeral homes and cemeteries | | X | |

¹Amendments to the law governing the Texas Funeral Service Commission took effect on September 1, 1999. Information about regulation, oversight, and consumer information concerning Texas funeral homes was current through July 1999, the end of our data collection period.

²Under the amended law, the Commission is made up of six Commissioners, including two persons who are each licensed as both a funeral director and embalmer and four consumer representatives.

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| Category | Yes | No | Comments |
|---|------------|-----------|--|
| Requirement that low-cost caskets be included as part of funeral home displays | X | | |
| Oversight | | | |
| Required annual inspections of all funeral homes | | X | Although Texas law requires that funeral establishments be inspected every 2 years, a Commission official stated that all Texas funeral establishments are inspected on an annual basis. ^a |
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about funeral goods and services | X | | Texas law requires that the Commission produce and make available to funeral establishments a consumer brochure for funeral purchases. Funeral establishments are required to provide each prospective customer with a copy of the brochure when funeral services are discussed. |
| Requirement that all funeral contracts contain state regulatory office's contact information | X | | |

^aUnder the amended law, funeral establishments must be inspected annually.
Source: Texas Funeral Service Commission.

Cemeteries

California

CFP also regulates the cemetery industry in California. CFP has jurisdiction over private cemeteries but does not regulate others, such as religious and municipal cemeteries and fraternal burial parks. As mentioned earlier, CFP has jurisdiction over both the funeral and cemetery industries in California.

Table IV.6 provides selected information on the regulation and oversight of cemeteries in California and shows state requirements regarding consumer information.

Table IV.6: California Cemeteries—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|---|------------|-----------|--|
| Law or regulation | | | |
| Jurisdiction over all cemeteries within state | | X | Religious and public cemeteries, and certain private and fraternal burial parks less than 10 acres in size and established before September 19, 1939, are exempted from state regulation. CFP officials stated that about 200 of the approximately 2,000 cemeteries, representing about 40% of the burials in the state, are under CFP's jurisdiction. |

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Information on Funeral Homes and Cemeteries in Selected States**

| Category | Yes | No | Comments |
|--|------------|-----------|---|
| Licensing requirements | X | | Separate cemetery brokers and salespersons licenses must be obtained from CFP and must be renewed on an annual basis. A certificate of authority also must be obtained for a cemetery before interments can be made there. |
| Restrictions on what cemeteries can sell | | X | |
| Perpetual or endowment care requirements ^a | X | | California law does not permit a cemetery authority to represent an endowment care fund as "perpetual or permanent." CFP-regulated cemeteries must create an endowment care fund and must fulfil a minimum deposit requirement of \$2.25 per square foot for each grave sold. |
| Oversight | | | |
| Required annual inspections of all cemeteries | | X | CFP conducts investigations of regulated cemeteries on the basis of complaints. |
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about cemetery goods and services | X | | California law requires that CFP produce and make available to cemetery authorities a consumer guide for funeral and cemetery purchases. Cemetery authorities are required to prominently display and make available this guide. |
| Requirement that all cemetery contracts contain state regulatory information | X | | California law requires that CFP's name, address, and telephone number be on such contracts |

^aThe selected states have additional care requirements for items, including crypts and mausoleums as well as other cemetery goods. However, for purposes of comparison, GAO is limiting its coverage to states' perpetual or endowment care deposit requirements for gravesites sold. According to a cemetery industry representative, perpetual care suggests a cemetery will provide a certain level of maintenance regardless of available funding; under endowment care, a cemetery will provide a certain level of maintenance according to the level of funding.

Source: CFP, California Department of Consumer Affairs.

Florida

The Board of Funeral and Cemetery Services, Department of Banking and Finance, Office of the Comptroller, regulates the cemetery industry in Florida. The Board consists of seven members appointed by the governor, including two funeral directors who are not associated with a cemetery company, two licensed cemetery operators, and three consumers who are not associated with the funeral or cemetery industry. The Board does not have jurisdiction over certain religious, county and municipal, and community and nonprofit association cemeteries.

Table IV.7 provides selected information on the regulation, oversight, and information available to consumers concerning cemeteries under Florida's jurisdiction.

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Table IV.7: Florida Cemeteries—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|--|------------|-----------|---|
| Law or regulation | | | |
| Jurisdiction over all cemeteries within state | | X | An official with the Office of the Comptroller stated that approximately 170 of the 3,000 cemeteries in the state are under the jurisdiction of the Office. Some of the cemeteries that fall outside of the Office's jurisdiction include religious cemeteries of less than 5 acres; religious cemeteries owned and operated before June 23, 1976; county and municipal cemeteries; and community and nonprofit association cemeteries, which provide only single-level ground burial and do not sell burial spaces or merchandise. |
| Licensing requirements | X | | A license is required to operate a cemetery, and must be renewed on an annual basis. |
| Restrictions on what cemeteries can sell | | X | |
| Perpetual or endowment care requirements ^a | X | | Cemeteries regulated by the Office of the Comptroller must deposit into a care and maintenance trust fund 10% of payments received for gravesites sold. |
| Oversight | | | |
| Required inspections of all cemeteries | X | | An official with the Office of the Comptroller stated that cemeteries are inspected annually for upkeep and recordkeeping. The Office has the authority to examine the financial affairs of cemetery companies and to conduct investigations on the basis of written complaints. |
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about cemetery goods and services | | X | |
| Requirement that all cemetery contracts contain state regulatory information | | X | An official from the Office of the Comptroller said that preneed cemetery contracts must contain certain disclosures, including state regulatory information; however, these disclosures are not required for at-need contracts. |

^aThe selected states have additional care requirements for items, including crypts and mausoleums as well as other cemetery goods. However, for purposes of comparison, GAO is limiting its coverage to states' perpetual or endowment care deposit requirements for gravesites sold. According to a cemetery industry representative, perpetual care suggests a cemetery will provide a certain level of maintenance regardless of available funding; under endowment care, a cemetery will provide a certain level of maintenance according to the level of funding.

Source: Bureau of Funeral and Cemetery Services, Division of Finance, Office of the Comptroller.

Maryland

The Office of Cemetery Oversight in the Department of Labor, Licensing, and Regulation (DLLR) regulates the cemetery industry in Maryland. The Office was created in 1997 in response to concerns that consumers were

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not adequately protected in their dealings with cemeteries. The Office has responsibilities for all but certain religious, nonprofit cemeteries in the state and is administered by a Director appointed by the Secretary of DLLR.

Table IV.8 provides selected information on the regulation, oversight, and information available to consumers concerning cemeteries under Maryland’s jurisdiction.

Table IV.8: Maryland Cemeteries—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|--|------------|-----------|--|
| Law or regulation | | | |
| Jurisdiction over all cemeteries within state | | X | Religious, nonprofit cemeteries that do not sell preneed goods and not-for-profit organizations created before 1900 are exempted from the Office’s jurisdiction. An Office of Cemetery Oversight official stated that the Office has jurisdiction over about 60 for-profit cemeteries. In addition, this official estimated that there are approximately 300 nonprofit cemeteries and 800 religious cemeteries in the state. |
| Licensing requirements | X | | Cemetery operators must register with the Office and must renew registrations every 2 years. |
| Restrictions on what cemeteries can sell | | | |
| Perpetual or endowment care requirements ^a | X | X | Maryland requires that, if the cemetery offers perpetual care, 10% of the selling price of each burial lot or 35 cents for each square foot of land burial space be placed in a trust fund for perpetual care. |
| Oversight | | | |
| Required inspections of all cemeteries | | X | Although there is no requirement that all licensed cemeteries in the state be inspected on an annual basis, an Office of Cemetery Oversight official stated that these cemeteries are subject to inspection at any time. |
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about cemetery goods and services | X | | An Office of Cemetery Oversight official stated that the Office has produced a consumer brochure, in collaboration with the State Board of Morticians that will be made available to cemeteries for distribution. However, this official stated that cemeteries are not required by law to hand out these brochures. |
| Requirement that all cemetery contracts contain state regulatory information | X | | |

^aThe selected states have additional care requirements for items, including crypts and mausoleums as well as other cemetery goods. However, for purposes of comparison, GAO is limiting its coverage

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to states' perpetual or endowment care deposit requirements for gravesites sold. According to a cemetery industry representative, perpetual care suggests a cemetery will provide a certain level of maintenance regardless of available funding; under endowment care, a cemetery will provide a certain level of maintenance according to the level of funding.

Source: Maryland Office of Cemetery Oversight, Division of Occupational and Professional Licensing, Department of Labor, Licensing, and Regulation.

New York

The Division of Cemeteries of the New York Department of State regulates the cemetery industry in New York. The Division is administered by a Director who carries out day-to-day operations. The Director is appointed by the State Cemetery Board, which comprises the Secretary of State, the Attorney General, and the Commissioner of Health. New York does not have jurisdiction over religious or municipal cemeteries. However, New York also requires that cemeteries under its jurisdiction be operated on a nonprofit basis. According to Division of Cemetery Officials, this restricts profit-making entities from taking advantage of consumers at a time of vulnerability. New York also prohibits joint ownership of funeral homes and cemeteries. Table IV.9 provides selected information on the regulation, oversight, and information available to consumers concerning cemeteries under New York's jurisdiction.

Table IV.9: New York Cemeteries—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|---|-----|----|--|
| Law or regulation | | | |
| Jurisdiction over all cemeteries within state | | X | The Division of Cemeteries does not have jurisdiction over religious or municipal cemeteries. Division of Cemeteries officials stated that the Division has jurisdiction over 1,885 of the more than 6,000 cemeteries in the state. |
| Licensing requirements | | | |
| Restrictions on what cemeteries can sell | X | | Officials stated that cemeteries are permitted to sell grave liners; but they are prohibited from selling caskets, burial vaults, and monuments. |
| Perpetual or endowment care requirements ^a | X | | Cemeteries must deposit 10% of the sale of a lot into a permanent maintenance fund and must deposit an additional 15% deposit into a current maintenance fund. |
| Oversight | | | |
| Required annual inspections of all cemeteries | | X | Inspections are largely complaint-driven. Cemeteries with assets of \$400,000 or more are subject to an examination by an independent certified public accountant. The Division also conducts field and desk audits on the basis of financial reports resulting from these examinations. |

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| Category | Yes | No | Comments |
|--|------------|-----------|-----------------|
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about cemetery goods and services | | X | |
| Requirement that all cemetery contracts contain state regulatory information | | X | |

^aThe selected states have additional care requirements for items, including crypts and mausoleums as well as other cemetery goods. However, for purposes of comparison, GAO is limiting its coverage to states' perpetual or endowment care deposit requirements for gravesites sold. According to a cemetery industry representative, perpetual care suggests a cemetery will provide a certain level of maintenance regardless of available funding; under endowment care, a cemetery will provide a certain level of maintenance according to the level of funding.

Source: Division of Cemeteries, New York Department of State.

Texas

The Special Audits Division of the Texas Department of Banking regulates the cemetery industry in Texas. The Department does not have jurisdiction over certain religious, public, family, and non-profit cemeteries.

Table IV.10 provides selected information on the regulation, oversight, and information available to consumers concerning cemeteries under Texas jurisdiction.

Table IV.10: Texas Cemeteries—Regulation, Oversight, and Consumer Information

| Category | Yes | No | Comments |
|---|------------|-----------|---|
| Law or regulation | | | |
| Jurisdiction over all cemeteries within state | | X | Religious, family, fraternal, or community cemeteries not larger than 10 acres, unincorporated associations of plot owners not operated for profit, and nonprofit corporations organized by plot owners are not under the jurisdiction of the Department. |
| Licensing requirements | X | | Department of Banking officials stated that perpetual care cemeteries are required to be licensed and that these licenses must be renewed annually. |
| Restrictions on what cemeteries can sell | | X | |
| Perpetual or endowment care requirements ^a | X | | Cemetery corporations must deposit the greater of \$1.50 a square foot of ground area conveyed as perpetual care property or 10% of the total purchase price of that ground area. |
| Oversight and Consumer Information | | | |
| Required annual inspections of all cemeteries | X | | The books and records of cemetery corporations relating to their perpetual care trust funds are required to be examined by the Department on annual basis, or as often as necessary. |

**Appendix IV
Information on Funeral Homes and Cemeteries in Selected States**

| Category | Yes | No | Comments |
|--|------------|-----------|-----------------|
| Consumer Information | | | |
| Requirement that state regulatory office produce a consumer brochure for consumers who inquire about cemetery goods and services | | X | |
| Requirement that all cemetery contracts contain state regulatory information | X | | |

^aThe selected states have additional care requirements for items, including crypts and mausoleums as well as other cemetery goods. However, for purposes of comparison, GAO is limiting its coverage to states' perpetual or endowment care deposit requirements for gravesites sold. According to a cemetery industry representative, perpetual care suggests a cemetery will provide a certain level of maintenance regardless of available funding; under endowment care, a cemetery will provide a certain level of maintenance according to the level of funding.

Source: The Special Audits Division of the Texas Department of Banking.

Information on Preneed Arrangements in the Selected States

This appendix contains information on preplanned, prepaid funeral transactions, which are commonly called preneed arrangements. In addition, the appendix provides information on the regulation of preneed arrangements in the five selected states.

Preneed Arrangements

In purchasing a preneed arrangement, a consumer typically makes an agreement with a preneed seller to pay for funeral goods and services that will be provided at a later time—that is, following the death of the consumer or another designated person. In many cases, the consumer has the option of selecting a guaranteed price contract, which fixes the price of goods and services selected, regardless of price inflation that may occur after the contract is signed.

According to death care industry studies, the most commonly used options for funding preneed arrangements are trust accounts and insurance or annuity policies. Conning & Company, an insurance research and publication firm, describes the trust option as a state-regulated trust account that is established in connection with the preneed contract and managed by a trustee.¹ According to Conning & Company, the rationale behind this funding method is that interest earned on the trust account will accumulate over time so that future increases in funeral prices can be accounted for. The funeral provider receives the funds held in trust after the funeral. According to a 1996 law journal article, under state law, a consumer also typically has the option of creating an irrevocable trust contract, which allows the consumer to maintain his or her eligibility for public assistance.²

According to the article, under the insurance option, the consumer purchases, either in a lump sum or by installments, an insurance policy and names the seller as the beneficiary of the policy.³ Following the consumer's death the benefit is paid out to the seller. According to Conning & Company, these preneed insurance products typically have an increasing death benefit to cover future increases in the prices of funeral goods and services. Conning & Company states that another option for consumers who would face difficulty obtaining life insurance is to purchase annuities. Following the death of the purchaser, the annuity is to

¹Preneed Insurance: A Business to Die For? 1998, Conning & Company (Hartford: 1998).

²Judith A. Frank, "Preneed Funeral Plans: The Case for Uniformity," *The Elder Law Journal*, Spring (1996).

³The designation of who may be the beneficiary depends on the state where the insurance policy is sold. For example, a Maryland Insurance Administration official stated that in Maryland the funeral director could not be named the beneficiary.

be paid out by the insurer to the funeral provider to cover funeral expenses.

Conning & Company states that preneed insurance typically is sold in conjunction with a funeral home, either by a funeral director who holds an insurance license or an independent insurance agent. A spokesman for the preneed insurance industry said that preneed insurance is actuarially based and has less underwriting than other whole life policies. This spokesman described a typical 10-year installment premium plan as one that would pay a death benefit of 35 percent of face value during the first year, 70 percent during the second year, and 100 percent the third year and thereafter. According to death care industry observers, an advantage of preneed insurance policies over trusts is that unlike trust accounts, the purchaser is not taxed for interest income earned. However, an insurance industry spokesman also noted that the rate of return for preneed insurance is typically lower than that of trusts.

Regulation of Preneed Arrangements in the Five Selected States

The following tables provide information on the regulation of preneed arrangements in California, Florida, Maryland, New York, and Texas.

California

The Cemetery and Funeral Programs (CFP) of the California Department of Consumer Affairs has jurisdiction over preneed funeral trusts in California, and the California Department of Insurance has jurisdiction over preneed insurance.

Table V.1 contains information on the regulation of preneed arrangements in California.

Table V.1: California Regulation of Preneed Arrangements

| Category | Yes | No | Comments |
|--|-----|----|---|
| Trusts | | | |
| Trusting requirements | X | | Trusting requirements are 100% for funeral goods and services. |
| Administrative fees permitted | X | | Trustees may withdraw an annual fee for administering a funeral trust from the current trust income. CFP officials stated that the total withdrawal in any year shall not exceed 4% of the trust balance. |
| Both revocable and irrevocable contracts offered | X | | |
| Consumer receives refund if trust is revoked | X | | The consumer would receive 100% plus interest less administration fees and a revocation fee. ^a |

Appendix V
Information on Preneed Arrangements in the Selected States

| Category | Yes | No | Comments |
|--|------------|-----------|--|
| Contracts directly transferable to another state | | X | CFP officials stated that the law does not specifically address this issue, and the terms of the individual contract would determine whether the contract may be transferred to another state. |
| Restrictions on where trust funds may be deposited | X | | CFP officials stated that California law provides various options for depositing funeral trust funds, such as in bonds or securities guaranteed by the U.S. government or agency; bonds or securities guaranteed by the state, or any city or county within the state, or certificates of deposit or other interest-bearing accounts in any bank in the state insured by the Federal Deposit Insurance Corporation (FDIC). CFP officials stated that California law also allows the funds to be deposited in any investment deemed prudent by a prudent person as allowed under the California Uniform Prudent Investor Act. |
| Restrictions on where deposits may be invested | X | | CFP officials stated that California law provides various options for investing funeral trust funds, such as in bonds or securities guaranteed by the U.S. government or agency; bonds or securities guaranteed by the state, or any city or county within the state, or certificates of deposit or other interest-bearing accounts in any bank in the state insured by FDIC. CFP officials stated that California law also allows the funds to be invested in any investment deemed prudent by a prudent person as allowed under the California Uniform Prudent Investor Act. |
| State consumer protection trust fund | | X | |
| Insurance | | | |
| Sale of preneed insurance permitted within state | | X | |

^aThe revocation fee shall not exceed 10 percent of the principal and is chargeable against earned income only.

Source: CFP, California Department of Consumer Affairs.

Florida

The Board of Funeral and Cemetery Services, Department of Banking and Finance, Office of the Comptroller, has regulatory responsibility for preneed funeral trusts, and the Department of Insurance regulates preneed insurance policies.

Appendix V
Information on Preneed Arrangements in the Selected States

Table V.2 contains information on the regulation of preneed arrangements in Florida.

Table V.2: Florida Regulation of Preneed Arrangements

| Category | Yes | No | Comments |
|--|------------|-----------|--|
| Trusts | | | |
| Trusting requirements | X | | Sellers of preneed contracts are permitted to choose between trusting 30% of the purchase price or 110% of the wholesale price of funeral goods. For funeral services, the trusting requirement is 70% of the purchase price. |
| Administrative fees permitted | X | | An official with the Office of the Comptroller stated that administrative fees are permitted to be withdrawn from trust income and there is no limit on these fees. |
| Both revocable and irrevocable contracts offered | X | | |
| Consumer receives refund if trust is revoked | X | | The consumer is entitled to receive a full refund of the purchase price if the contract is revoked within 30 days of purchase. After 30 days, services remain fully refundable, but goods are refundable if they cannot be delivered within 24 hours of need. An official with the Office of the Comptroller stated that any accumulated interest earnings are paid to the seller. |
| Contracts directly transferable to another state | | X | An official with the Office of the Comptroller stated that a transfer could be accomplished only by canceling the contract and entering into a new contract in a different location. |
| Restrictions on where trust funds may be deposited | X | | Trusts must be deposited with either a national or state bank or savings and loan association having trust powers or a trust company in the state. |
| Restrictions on where deposits may be invested | X | | Florida provides the opportunity to invest in numerous types of investments. These include, for example, bonds, notes, and other obligations of the United States; Florida state and county bonds pledging the full faith and credit of the state or county; savings accounts or certificates of deposit insured by FDIC; and investments in real property. |
| State consumer protection trust fund | X | | Use of the fund for an individual case is restricted to 50% of the fund's current balance. Preneed sellers must contribute \$1.00 to the fund for all contracts. |
| Insurance | | | |
| Sale of preneed insurance permitted within state | X | | |

Source: Bureau of Funeral and Cemetery Services, Division of Finance, Office of the Comptroller.

Appendix V
Information on Preneed Arrangements in the Selected States

Maryland

The State Board of Morticians, Department of Health & Mental Hygiene has regulatory responsibility over preneed funeral arrangements in Maryland. In May 1999, Maryland's Governor signed legislation to authorize a preneed contract or preneed burial contract to be funded by life insurance. The Maryland Insurance Administration has jurisdiction over insurance contracts in Maryland.

Table V.3 contains information on the regulation of preneed arrangements in Maryland.

Table V.3: Maryland Regulation of Preneed Arrangements

| Category | Yes | No | Comments |
|--|------------|-----------|--|
| Trusts | | | |
| Trusting requirements | X | | Sellers of preneed contracts are required to place 100% of funds received for both goods and services into trust, with the exception of caskets, for which they are required to trust 80%. |
| Administrative fees permitted | | X | |
| Both revocable and irrevocable contracts offered | X | | |
| Consumer receives refund if trust is revoked | X | | Board of Morticians officials stated that the consumer would receive a refund of the full purchase price plus interest. |
| Contracts directly transferable to another state | X | | Board of Morticians officials stated that irrevocable preneed funeral contracts can be transferred to another state. For revocable contracts, consumers would have to cancel the contract and enter into a new contract in the new location. |
| Restrictions on where trust funds may be deposited | X | | Funds shall be deposited into an interest-bearing escrow or trust account with a federally insured banking or savings and loan institution. |
| Restrictions on where deposits may be invested | X | | A Board of Morticians official stated that there are no further requirements in Maryland law regarding investments. This official stated that all investments must be made with a federally insured bank or savings and loan institution. |
| State consumer protection trust fund | | X | |
| Insurance | | | |
| Sale of preneed insurance permitted within state | X | | |

Source: State Board of Morticians, Department of Health & Mental Hygiene.

**Appendix V
Information on Preneed Arrangements in the Selected States**

New York

The Bureau of Funeral Directing of the State of New York’s Department of Health has jurisdiction over preneed funeral trusts. New York State does not allow the sale of preneed insurance.

Table V.4 contains information on the regulation of preneed arrangements in New York.

Table V.4: New York Regulation of Preneed Arrangements

| Category | Yes | No | Comments |
|--|------------|-----------|---|
| Trusts | | | |
| Trusting requirements | X | | Trusting requirements are 100% for funeral goods and services. |
| Administrative fees permitted | X | | The administrative fee may not exceed 0.75 of 1% of the trust fund. If a preneed seller charges this fee, this must be disclosed to the consumer in writing. |
| Both revocable and irrevocable contracts offered | X | | |
| Consumer receives refund if trust is revoked | X | | The consumer would receive a refund of the purchase price plus accrued interest. |
| Contracts directly transferable to another state | X | | A Bureau of Funeral Directing official stated that irrevocable contracts are directly transferable. For revocable contracts, consumers would have to cancel the contract and enter into a new contract in a different location. |
| Restrictions on where trust funds may be deposited | X | | Funds must be deposited in an interest-bearing account in a bank or savings and loan association that shall earn interest at a rate not less than the prevailing rate of interest earned by other such deposits in such banks and savings and loan associations; or a trust company in an investment backed by the U.S. government. |
| Restrictions on where deposits may be invested | X | | No further investments may be made with deposited funds. |
| State consumer protection trust fund | | X | |
| Insurance | | | |
| Sale of preneed insurance permitted within state | | X | |

Source: Bureau of Funeral Directing, State of New York Department of Health.

Texas

Preneed funeral trust contracts are regulated by the Special Audits Division of the Texas Department of Banking. Preneed insurance contracts are regulated by both the Texas Department of Insurance and the Texas Department of Banking.

Table V.5 contains information on the regulation of preneed arrangements in Texas.

Appendix V
Information on Preneed Arrangements in the Selected States

Table V.5: Texas Regulation of Preneed Arrangements

| Category | Yes | No | Comments |
|--|-----|----|--|
| Trusts | | | |
| Trusting requirements | X | | For funeral goods and services, the preneed seller has the option of trusting either 90% or 100% of sales proceeds. However, the seller must disclose to the consumer which option has been selected. |
| Administrative fees permitted | X | | The seller may withdraw money from earnings to pay (1) reasonable and necessary trustee's fees or depository fees, (2) the examination fee for one examination by the Texas Department of Banking each calendar year, or (3) the expense of preparation of financial statements. With the Texas Department of Banking's approval, the seller also may withdraw money from earnings on an account to pay for (1) any tax incurred or (2) an assessment. |
| Both revocable and irrevocable contracts offered | X | | |
| Consumer receives refund if trust is revoked | X | | The purchaser is entitled to a refund of the amount paid minus the amount that the seller is permitted to retain for expenses. This amount is not to exceed one-half of all money collected or paid until the seller has received an amount equal to 10% of the total amount the purchaser agreed to pay under the contract. |
| Contracts directly transferable to another state | | X | Department of Banking officials stated that there is no statutory requirement for contracts to be transferable. |
| Restrictions on where trust funds may be deposited | X | | Funds must be deposited in a bank or savings and loan association in the state in a federally insured interest-bearing account, or a trust department in a bank or trust company authorized to do business in the state. |
| Restrictions on where deposits may be invested | X | | Texas law provides the opportunity to invest in numerous types of investments. Some of these include federally insured banks or savings and loan associations, U.S. government bonds, certain state or local bonds, and the common stock of a U.S. corporation with a net worth of at least \$1 million. |
| State consumer protection trust fund | X | | This fund is termed the Guaranty Fund and its stated purpose is to guarantee performance by sellers of trust funded prepaid funeral contracts. The Department of Banking collects \$1 from sellers of trust funded preneed contracts for each contract sold, to be deposited in this fund. |

Appendix V
Information on Preneed Arrangements in the Selected States

| Category | Yes | No | Comments |
|--|-----|----|----------|
| Insurance | | | |
| Sale of preneed insurance permitted within state | X | | |

Source: Special Audits Division, Texas Department of Banking.

Consumers can also make preneed arrangements with cemeteries in the five states. In Florida and New York, cemeteries and funeral homes are included under the same sections of state preneed law;⁴ in Texas, a Department of Banking official stated that with the exception of perpetual care funds, cemetery trusts are not regulated; and in California and Maryland, different laws apply to cemetery and funeral trusts.⁵ For example, although California law restricts the amount of administrative fees that can be withdrawn from current funeral trust income, a CFP official told us that California law does not place any limitation on the total amount of administrative fees that may be withdrawn from preneed cemetery trusts, which in California are called special care funds. Under Maryland law, sellers of preneed funeral contracts are required to place 100 percent of funds received for both goods and services into trust (with the exception of caskets). Sellers of preneed cemetery contracts are required to place 55 percent of funds received for goods and services into trust (with the exception of caskets, for which, as with funeral trusts, they are required to trust 80 percent).

⁴ In New York, however, an exception is made for cemetery sales of lots or graves, which are not covered by the state's preneed law.

⁵ In three states—California, Florida, and Texas—the same state agency that has responsibility for the regulation of preneed funeral contracts also has responsibility for regulation of preneed cemetery contracts. In Maryland, the Office of Cemetery Oversight has jurisdiction over preneed cemetery contracts. In New York, the Division of Cemeteries has such jurisdiction.

Agency Comments



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Chairman

August 25, 1999

Laurie Ekstrand
Associate Director
Federal Management and Workforce Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Ekstrand:

The Federal Trade Commission appreciates the opportunity to review and comment on the draft report entitled Death Care Consumer Protection: Complaints and State Laws Vary, and FTC Could Better Manage the Funeral Rule (GAO/GGD-99-156), submitted by the General Accounting Office on August 3, 1999. The Report discusses various aspects of the death care industry, including the FTC's enforcement of its Funeral Industry Rule, 16 C.F.R. Part 453. At the outset, the Commission notes that the death care industry is a large one that has historically been of concern to the FTC because of the vulnerability of consumers when they are dealing with a recent death. We believe that the Funeral Rule as well as more recent cooperative efforts with other law enforcement agencies and consumer and industry groups have led to considerable improvement in the information consumers receive at this uniquely stressful time in their lives, and their ability to choose and purchase only the goods and services they desire. At the same time, however, we also recognize that there are always opportunities for improvement. Hence, we welcome suggestions for improving industry practices and enforcement within the context of available resources.

Since last July, we have worked cooperatively with GAO by providing information about the FTC's Funeral Rule program. After receiving your draft report, however, we would like to take this opportunity to clarify a few points about our work in this area and to emphasize what we think are the significant accomplishments that have been made toward improving compliance in this industry.

I. Test Methodology

As you know, the primary objective of the Funeral Rule is to provide consumers with adequate information so that they are able to make informed decisions in purchasing funeral

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goods and services, and to make it possible for them to purchase only those goods and services they want. The cornerstone of the Rule is the requirement that all funeral providers give a General Price List ("GPL") to any consumer who inquires about funeral arrangements *before* specific arrangements are discussed. Hence, the primary focus of the Commission's Funeral Rule enforcement program is on this crucial aspect of the Rule.

It is noteworthy that GAO confirms the FTC's observation that among the funeral homes test shopped in recent years in the FTC's enforcement "sweeps," there is a high level of compliance with this core requirement of the Funeral Rule. Results of studies that were performed in the late 1980's indicate that at that time core compliance by funeral homes may have been as low as 23 percent.¹ By contrast, approximately 87 percent of funeral providers test-shopped in 1997 and 1998 sweeps conducted in localities throughout the country were in compliance with the core requirement -- providing a GPL at the start of the arrangements conference. We believe that the high level of core compliance among providers that have been test-shopped is due largely to implementation of the sweeps strategy, carried out jointly by the FTC staff working in cooperation with State Attorneys General and other organizations.

GAO's report, however, incorrectly suggests that the FTC cannot document a nationwide increase in compliance with the core requirement of the Funeral Rule and that we have tested compliance in "narrowly scoped test shopping sweeps." We disagree because we believe GAO's assertion to be based on a narrow methodological construction. As Appendix III, Table III.1 of GAO's report indicates, the Commission has conducted 32 sweeps in 24 states covering both coasts, the south, and the Midwest. Over 950 homes have been test-shopped. We think it is reasonable to infer from the combined experience of these 32 sweeps reaching a large number of homes across the United States that compliance with the core requirements of the Funeral Rule has risen markedly from the level documented in the 1987 survey.

Moreover, initiation of the Funeral Rule Offenders Program ("FROP"), sponsored by the National Funeral Directors Association ("NFDA") has also contributed to the high level of compliance reported by GAO. NFDA's proposal to the FTC to create FROP represented a dramatic change on the part of a key industry representative from a consistently adversarial stance to one that is more cooperative, lending important support to the FTC's objective of bringing as many providers as possible into compliance with the Rule. While FROP has a penalty aspect -- it requires funeral homes that violate the Rule to pay a sizeable voluntary contribution to the United States Treasury -- it also has an educational component that remedies an important cause of non-compliance, by helping funeral homes and their employees to learn precisely what the Rule requires them to do. In sum, FROP is an innovative alternative to traditional law enforcement and, as such, is a model of a successful industry self-regulation program.

¹ See *Federal Trade Commission Bureau of Economics Staff Report – An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services* (February 1989) at p. 20.

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II. Enforcement Practices

GAO's report also appears to raise concerns with the fact that the Commission has not taken action in every instance where test shopping disclosed possible Funeral Rule violations. While the GAO statistics presented in Table 6 of the draft report correctly note that we have not pursued every potential violation of each provision of the Rule, we believe that merely focusing on quantity of prosecutions does not present an accurate picture of the impact of the Commission's activities. Instead, the decision to take action in any individual case is the result of the exercise of prosecutorial discretion, which is no different from the sort of decision making and resource allocation in which all law enforcement agencies must engage. This exercise of prosecutorial discretion is required by Section 5 of the FTC Act, 15 U.S.C. § 45, which requires that the FTC's actions be in the public interest, and by the Small Business Regulatory Enforcement Fairness Act.² Furthermore, in exercising such discretion, the Commission focuses its efforts on enforcing the Rule's core requirement to ensure consumers receive a GPL before specific funeral arrangements are discussed. By focusing on cases that are most likely to involve substantial consumer injury and assessing the specific circumstances of each possible violation, we think the agency is able to set forth a framework for good industry business practices, and responsibly exercise its prosecutorial discretion.

In summary, by leveraging its resources to sweep with simultaneous test shopping large numbers of funeral providers, the FTC has maximized its enforcement presence in the funeral industry. At the same time, the FTC has worked with the funeral industry to develop a remedial rather than a punitive law enforcement program that is more effective in stimulating compliance than traditional lawsuits had been during the early years after the Rule became effective.

III. Other Comments

It is also noteworthy that GAO reports that the number of Funeral Rule complaints received by the FTC, as well as other consumer protection agencies, is quite low. As GAO notes, there are a number of possible explanations for the low complaint level, although no firm conclusions can be drawn.

We believe that GAO fairly points out that some improvements are needed in the Funeral Rule program's record keeping. We have informed GAO staff that a review of FTC staff's procedures has been underway for some time, and staff are revising the agency's FROP handbook, taking into consideration the experience we have obtained during the first years of this program. This sort of evaluation and revision process is typical of FTC's efforts to build on experience to continually improve its law enforcement efforts.

² The relevant portion of Pub. L. No. 104-121, 110 Stat. 857 (1996), is codified at 5 U.S.C. § 601 [note]. See also *Notice and Request for Comment Regarding Compliance Assistance and Civil Penalty Leniency for Small Entities*, 62 Fed. Reg. 16809, 16812-14 (Apr. 8, 1997).

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We further note that as part of its ten year regulatory review program, the Commission is currently reviewing the Funeral Rule. On May 5, 1999, the FTC published a Federal Register notice requesting comments on a number of questions concerning the Rule. (64 Fed. Reg. 24205). More than 150 comments have been received, which will be closely analyzed in determining what, if any, rule changes may be appropriate.

IV. Conclusion

The Commission believes that its FROP program is an integral part of its efforts to respond to the needs of an ever-changing economic and regulatory environment. By partnering with other agencies, both governmental and non-governmental, as well as with industry, we believe that our enforcement efforts have yielded much greater compliance than we ever could have realized through our traditional investigative methods. Moreover, we place great importance on the cooperative environment fostered by our joint law enforcement efforts, and recognize the value of maintaining positive relationships with other law enforcement agencies as well as consumer and industry groups. Our experience has demonstrated that we are able to accomplish a good deal by working with industry groups, and in particular, by cultivating harmonious rather than acrimonious relationships with these groups. In that vein, we continue to welcome suggestions from industry and consumers about ways to improve enforcement and effectiveness.

By direction of the Commission.³



Robert Pitofsky

³ The Commission vote to issue this response was 3-1. Commissioner Swindle issued a separate dissenting statement.

DISSENTING STATEMENT OF COMMISSIONER ORSON SWINDLE
in *Funeral Rule - Marketing Practices*, File No. P984407

The Commission has responded to the draft report entitled Death Care Consumer Protection: Complaints and State Laws Vary, and FTC Could Better Manage the Funeral Rule (GAO/GGD-99-156) ("the Report"), that the General Accounting Office ("GAO") submitted on August 3, 1999. I have voted against submitting the response because I do not believe that it addresses in an appropriate manner the concerns that the Report raises about our enforcement of the Funeral Industry Rule ("Funeral Rule"), 16 C.F.R. Part 453.

The Report concludes that the Commission cannot document a nationwide increase in compliance with the core requirements of the Funeral Rule and that the Commission has tested compliance in "narrowly scoped test shopping sweeps." I agree with my colleagues that it is reasonable to infer from the results of our recent sweeps throughout the United States that the funeral industry has made substantial progress in complying with the core requirement that consumers receive a General Price List before specific funeral arrangements are discussed. However, the Report also correctly concludes that a statistically valid nationwide projection of such compliance cannot be made, and, therefore, the Commission should take great care to avoid stating or implying that it can be.

The Report also states that the Commission often has not taken action against Funeral Rule violations. I agree with my colleagues that the decision not to take action in individual cases appears to have resulted from the careful exercise of prosecutorial discretion: we have targeted cases in which consumer injury was likely to be the greatest. The Funeral Rule cases that raise the greatest risk of consumer injury are usually those involving violations of the core requirement that consumers receive a General Price List before specific funeral arrangements are discussed. Nevertheless, given the proportion of all discovered violations that (according to the Report) the Commission has not challenged, it would have been worthwhile to review the types of violations against which the Commission has been less prone to take action, so as to confirm that they are not likely to cause substantial consumer injury.

The Report further concludes that some improvements are needed in the Funeral Rule program's record keeping. This point is well taken. I join my colleagues in supporting a continuation of the review of FTC's staff record keeping procedures and the efforts to revise the agency's Funeral Rule Offenders Program handbook.

Finally, I do not think that our response to an independent audit is the appropriate vehicle for trumpeting the success of the Commission's Funeral Rule enforcement efforts. Rather, it is the time to consider carefully whether the audit has revealed any serious problems that we may have overlooked in the flurry of our day-to-day efforts to protect consumers. While I suspect that a careful analysis of the concerns raised in the Report would not have revealed any substantial enforcement problems, the public interest would have been better served if the Commission had been willing to conduct such an analysis to confirm that my suspicion is correct.

GAO Contacts and Staff Acknowledgments

GAO Contacts

Laurie E. Ekstrand, (202) 512-8676
John F. Mortin, (202) 512-8676
Jeanne M. Barger, (214) 777-5600

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