



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #396

### **Irrevocable Burial Trusts (DHFS -- Health Care Financing -- Payments, Services, and Eligibility)**

[LFB 2003-05 Budget Summary: Page 227, #25]

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#### **CURRENT LAW**

Individuals who are 65 years of age or older, blind, or disabled may qualify for medical assistance (MA) if they meet certain income and asset criteria. State regulations require that the prepayment of certain funeral expenses be placed in an irrevocable burial trust. An irrevocable burial trust with a value up to \$2,500, or \$3,000 beginning July 1, 2003, is excluded when determining whether an applicant is at or below the asset limit for MA eligibility. Other items that are excluded from the asset calculation include: (a) an individual's home; (b) one vehicle up to \$4,500; (c) household furnishings; (d) clothing; and (e) other personal items.

Other burial assets are also excluded from the asset calculation, including: (a) burial spaces; (b) reasonable improvements on a burial space; (c) irrevocable burial insurance policies; and (d) burial funds for the person and his or her spouse, up to a maximum of \$1,500, less the sum of any excludable life insurance.

When an MA recipient's resources to support funeral expenses are insufficient to meet the actual costs of such services, counties may be required to cover the difference. For instance, if cemetery costs are less than \$3,500, a county is required to pay costs up to \$1,000, and if funeral and burial expenses are less than \$3,500, a county must pay costs up to \$1,500. However, if either the cemetery or funeral and burial costs exceed \$3,500, then the county is not responsible for covering these costs.

The state reimburses counties and tribes for the cost of indigent cemetery, funeral, and burial costs. In calendar year 2002, approximately \$4,858,700 GPR was provided to counties and \$16,700 GPR was provided to tribes as reimbursement for these expenses. These amounts do not include reimbursement for costs for W-2 participants.

Funeral and burial expenses may include all costs associated with the preparation of the body, burial clothing, a casket, and labor hours for related funeral services and transportation. Cemetery expenses may include cremation, permits, a burial plot, body storage, use of a lowering device, the opening and closing of the grave, and ongoing care.

## **GOVERNOR**

Reduce MA benefits funding by \$764,600 (-\$318,000 GPR and -\$446,600 FED) in 2004-05 to reflect the projected savings that would result by reducing, from \$3,000 to \$1,500, the maximum amount of an irrevocable burial trust that is excluded from an individual's assets for the purpose of determining the individual's eligibility for MA. Specify that this provision would take effect January 1, 2004, and would first apply to burial trust agreements entered into on that date.

The administration has requested that the Joint Committee on Finance amend the bill to retain the irrevocable burial trust limit at \$2,500 until January 1, 2004, so that the limit would not increase to \$3,000 on July 1, 2003, as under current law.

## **DISCUSSION POINTS**

1. Lowering the maximum amount of an irrevocable burial trust that is excluded from the MA asset calculation may produce savings to the state by delaying MA-eligibility for certain individuals. By reducing the amount of a burial trust that is excluded from the asset calculation, individuals would be required to contribute more towards their cost of care.

2. The cost savings included in the bill assume that a certain proportion of MA applicants who would have used an irrevocable burial trust in order to qualify for MA will qualify for MA benefits at a later date. Historically, approximately 16% of all MA-eligible individuals indicate having a burial trust at the time of application. In 2002-03, the average monthly enrollment in MA among the elderly, blind, and disabled populations was 145,235. The average monthly number of MA participants is projected to increase by 2,234 in 2003-04 and by another 3,194 in 2004-05; therefore, an estimated 357 individuals in 2003-04 and 511 individuals in 2004-05 would be expected to use a burial trust in order to qualify for MA.

Since MA benefits for these populations are funded on an approximate 42% GPR/58% FED basis, reducing the irrevocable burial trust limit would generate minimal GPR savings to the MA program. Based on current estimates, the cost savings under this bill would be \$178,700 (-\$74,300 GPR and -\$104,400 FED) in 2003-04 and \$511,100 (-\$212,800 GPR and -\$298,300 FED) in 2004-05.

3. The administration's requested change to the bill would limit the effect of the decrease in the irrevocable burial trust limit by preventing the limit from increasing to \$3,000 on July 1, 2003, and then reducing the limit to \$1,500 on January 1, 2004. The funding amounts

presented in the alternatives assume that the irrevocable burial trust limit would remain at \$2,500 on July 1, 2003, as requested by the administration.

4. The Committee may also wish to consider lowering the burial trust limit, but by a lesser amount than the decrease included in the Governor's proposal. A change from \$2,500 currently to \$2,000, effective January 1, 2004, would generate MA benefits savings. This option would generate savings of approximately \$89,400 (-\$37,200 GPR and -\$52,200 FED) in 2003-04 and \$255,500 (-\$106,400 GPR and -\$149,100 FED) in 2004-05.

5. Those opposed to the reduction in the irrevocable burial trust limit argue that savings will not be realized for the following reasons: (a) individuals are allowed to invest an unlimited amount in irrevocable burial insurance policies, which are also excluded from the MA asset calculation under federal law; (b) spousal impoverishment and divestment laws provide individuals with additional opportunities to reduce their countable assets in order to become eligible for MA; and (c) county-funded burial expenses for indigent persons may increase as investments in burial trusts decrease.

6. MA applicants are allowed to reduce their countable assets through investments in various instruments, all of which are excluded from the asset calculation. For instance, individuals may invest and exempt an unlimited amount in irrevocable burial insurance. Therefore, individuals could invest in burial insurance rather than in burial trusts without delaying their MA-eligibility. Since the delay in eligibility is the basis for the savings in this proposal, it is possible that changing the irrevocable burial trust limit will not have an effect on MA benefits costs.

7. In addition, divestment and spousal impoverishment laws allow MA applicants to transfer assets to a community spouse or to certain other beneficiaries such that total countable assets can be reduced in a number of ways. For instance, individuals are currently allowed to invest, and exempt from the asset calculation, an unlimited amount in annuities for the benefit of a community spouse. Reducing the irrevocable burial trust alone may not delay eligibility for MA.

8. If individuals do not transfer their investments to other excludable assets, then reducing the burial trust limit could actually increase state costs over the long run. Since counties currently fund cemetery expenses of up to \$1,000 and funeral and burial expenses of up to \$1,500 for indigent persons, and the state reimburses counties for these costs, the state would be responsible for any costs above and beyond what the MA applicant invested in a burial trust. It is difficult to estimate how long it will take for these cost increases to occur because the average length of time that an individual receives MA benefits varies greatly.

9. In order to limit county-funded cemetery, funeral, and burial expenses, the irrevocable burial trust limit could be increased to \$3,500. Under current law, counties are only responsible for these expenses if they do not exceed \$3,500 each. If MA applicants were allowed to invest up to this amount without delaying MA eligibility, then counties may incur fewer cemetery, funeral, and burial costs for this population.

10. Furthermore, the current limit of \$2,500 is well below the average cost of funeral expenses. According to the National Funeral Director's Association, the average cost of an adult funeral was \$5,180 in 2001. If MA applicants are allowed to invest more to support these end-of-life expenses, the state share of these individuals' costs of care would be lower. Therefore, a higher burial trust limit may benefit the state, as well.

11. Given the uncertainty of the savings and the potential long-term costs that could result from this proposal, the Committee could delete the provision and allow the irrevocable burial trust limit to increase to \$3,000 on July 1, 2003. This action would require adding \$111,000 (\$46,200 GPR and \$64,800 FED) in 2003-04 and \$333,300 (\$138,600 GPR and \$194,700 FED) in 2004-05.

**ALTERNATIVES**

1. Modify the Governor's recommendations to reflect current estimates of the number of new elderly, disabled, and blind MA applicants in 2003-04 and 2004-05. Maintain the current limit of \$2,500 until January 1, 2004.

<u>Alternative 1</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$30,900	\$43,900	\$74,800

2. Establish the irrevocable burial trust limit at \$2,000, effective January 1, 2004. Maintain the current limit of \$2,500 until that date.

<u>Alternative 2</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$174,400	\$245,300	\$419,700

3. Establish the irrevocable burial trust limit at \$3,000, effective January 1, 2004. Maintain the current limit of \$2,500 until that date.

<u>Alternative 3</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$461,600	\$647,900	\$1,109,500

4. Establish the irrevocable burial trust limit at \$3,500, effective January 1, 2004.

<u>Alternative 4</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$605,100	\$849,300	\$1,454,400

5. Delete the provision. Consequently, on July 1, 2003, the irrevocable burial trust limit would increase to \$3,000.

<u>Alternative 5</u>	<u>GPR</u>	<u>FED</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Base)	\$318,000	\$446,600	\$764,600

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