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VIA HAND DELIVERY

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Timothy Schott
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RE: Written Comments Following Stakeholder Meetings on LD 1717, An Act to Establish a Preneed Life Insurance Producer License and Preneed Life Insurance Product for Prearranged Funeral Plans

Dear Superintendent Cioppa and Deputy Superintendent Schott,

We submit these comments on behalf of Service Corporation International ("SCI") and at the Bureau's request. The Bureau hosted several stakeholder meetings in response to a February 15th letter from Senator Whittemore and Representative Richardson, the Senate and House chairs of the Joint Standing Committee on Insurance and Financial Services, to discuss the issues and solutions surrounding preneed life insurance in Maine. The Committee requested that the Bureau both "facilitate further discussions of the proposal through meetings and other communication with stakeholders" and "submit the findings of the interested parties, along with any recommendations and suggested legislation, to the committee [sic] by October 1, 2012." Thus, the Committee charged the Bureau not only with holding stakeholder meetings, but also making recommendations regarding the implementation of preneed life insurance products for prearranged funeral plans. As events have developed, the recommendations charge becomes quite important. While we appreciate the efforts made by the Bureau to facilitate these discussions, it is unfortunate that the Maine Funeral Directors Association (hereinafter "MFDA") chose only to "play defense" rather than explore and evaluate the many alternatives (48 state statutes, multiple model laws, etc.) presented during the process. We submit that intoning the "48 states got it wrong" mantra did not advance the process.

Following the third, and final, stakeholder meeting this summer, the Bureau requested stakeholders submit written comments by September 17th. SCI appreciates the opportunity to provide these written remarks.

Executive Summary

In order to comply with the Committee's charge, the Bureau must develop and recommend a solution for the implementation of preneed life insurance product for prearranged funeral plans. It is the only way to assist the committee and advance the ball. The Bureau is also

compelled to recommend a solution because it has approved an insurance product (preneed insurance) that cannot be sold in Maine due to funeral board rules. This roadblock must be eliminated so that this product, which is available in 48 other states, can also be offered to consumers in Maine.

There is no legitimate basis to preclude funeral practitioners from selling preneed insurance and receiving commissions. Model laws (i.e. the NAIC, Massachusetts regulations, etc.), and state statutes recognize that disclosure and licensing are the two cornerstones needed for the sale of preneed products. The MFDA suggests there is a "conflict" because the funeral practitioner/home is the "beneficiary" of the policy. This is a fundamental misunderstanding of preneed insurance. The beneficiary is the individual executing the insurance contract, not the funeral home. Preneed insurance provides financial protection to the person purchasing the coverage against the costs of a future event. Commissions are received in many instances (credit life and health, for instance) where the insurance pays for any subsequent exposure to the consumer who buys the policy.

The Bureau asked two prescient questions the MFDA could not answer. The first – "why is it okay to sell a casket with a substantial markup but it is not acceptable to take a commission of 8% to 12% on a preneed policy?" Officers of the MFDA conceded to Bureau staff that they "had not thought of it that way" and had no answer. The second question – "why is Maine so different than 48 other states?" was answered only with "everyone else got it wrong." This answer is trite and condescending.

SCI could support several of the model statutes suggested during discussion, including the NAIC model. SCI is also open to requiring full, not limited, licensure to sell the product, capping commissions on the product at a reasonable amount and/or requiring consumer disclosure of commissions.

We discuss these various points in greater depth below.

Bureau Responsibility to Make Recommendations

The Bureau must propose a solution to the statutory treatment of the preneed life insurance product. In its letter of February 15, 2012, the Joint Standing Committee on Insurance and Financial Services mandated the Bureau hold stakeholder meetings and "submit...any recommendations and suggested legislation...." The Committee asked for recommendations from the Bureau so as to receive unbiased input. In order to comply with the Committee's request, the Bureau must provide the Committee with potential solutions and legislation to implement those solutions. Indeed, such recommended solutions and legislation are essential in order to provide the committee with the meaningful assistance it requested. A report to the effect that proponents provided models, other state laws and detailed information supporting their position, while the opponents obstinately said "no" without providing any substantive arguments or evidence and without reviewing existing laws and models (the NAIC Model has been

available since the hearings) leaves the Committee exactly where it was before it issued its request.[1]

The Bureau Questions

At the first meeting, Bureau staff asked an important question: "why is it okay to sell caskets and make a commission/profit, but not okay to sell an insurance policy?" The MFDA responded by saying "that's a good question – we hadn't thought of it that way before." It is even more apparent that the MFDA has given little logical thought to this issue when one considers that the average markup for a casket, and merchandise in other industries, is more than the average insurance commission of 8-12%.[2/3] The MFDA was unable to provide an answer to Bureau staff to justify its position and one must question why the MFDA maintains a position for which it is unable to provide answers.

Second, during the course of stakeholder meetings, Bureau staff asked the MFDA, "What is it in your minds that makes Maine unique such that it makes sense to do this in 48 other states but not here?" The MFDA provided no response to this question other than to say that "48 states are wrong." Not only is this not an answer, it further emphasizes the complete absence of support for the MFDA's stance. No legitimate reason was advanced. In fact, the American Council of Life Insurers noted that because 48 other states allow it, Maine is perceived as "an outlier," We agree with that comment.

Bureau Approved Preneed Products Cannot be Sold because of Funeral Board Rules

The Bureau is compelled to recommend a solution in order to resolve a conflict between the insurance laws and the Maine State Board of Funeral Service rules; the latter prohibit the sale of preneed products licensed by the Bureau. Insurers sought and secured licenses to write preneed products. Insurers submitted rate and form filings to the Bureau. The Bureau approves each preneed insurance product. One cannot sell preneed insurance without a producer's license

[1] It has been suggested that this is not really the Bureau's issue – respectfully we could not disagree more. The Legislature charged the Bureau with the responsibility of conducting these meetings and reporting and making recommendations. The issues relate to an insurance product, preneed insurance. One of the Bureau's products (the self-same preneed insurance) is frustrated in application by funeral board rules. The Bureau licenses producers. 24-A M.R.S. § 2176 is directly on point. The primary goal of the legislation is to allow funeral practitioners to become licensed as independent agents who can sell a product. In fact, this whole effort is intimately related to insurance. Massachusetts, for example, directs its insurance regulator to establish disclosures for the sale of preneed insurance. (See infra, p. 6) Finally, the Bureau carries no bias or baggage unlike other agencies, and the Committee needs an unbiased perspective.

[2] The MFDA attempted to argue, incorrectly, that casket prices are regulated by the FTC. In fact, the FTC requires only the disclosure of casket retail prices (see Exhibit 1). In no way does the FTC regulate the wholesale or markup prices, nor does it require disclosure of this information. The FTC only requires disclosure of the final retail price of a casket. (16 CFR 453, which is incorporated in the Maine State Board of Funeral Service Rules. 331 CMR Chapter 10(7))

[3] The policy is sold up front. It has a known price, unlike a casket which, if funded through a credit for services arrangement, is unknown. The commission is included in the policy cost and can, of course, be disclosed.

(24-A M.R.S. § 1420-B). Funeral practitioners are precluded from selling the product by 24-A M.R.S. § 2176, an antiquated statute dating from the 1960s.[4] Moreover, the funeral practice statute does not permit funeral practitioners to be paid commissions, which are usual and customary in the insurance business. (32 M.R.S. § 1455-B(5)) Current Funeral Service Board Rules also prohibit the use of a preneed insurance product to fund funeral costs. Chapter 16 of the Rules allows only three options for Mortuary Trust Agreements. In each instance, only a licensed funeral practitioner can offer these options.

We attach hereto for ease of reference Exhibit 2 a document titled "Need for LD 1717 – to Permit Funeral Practitioners to Sell Preneed Insurance – What are Impediments in Current Law and Regulation?" that provides relevant excerpts from the pertinent statutes and regulations, which we summarize here. First, the Guaranteed Service option (which guarantees the cost but must be paid in full to lock in the funeral price):[5]

> The contract price must be paid in full by the payor at time of execution, with the possible exception of cash advance items....If the cost of the funeral goods and services selected at the time of death exceeds the account balance of the trust, the funeral home must provide the funeral goods and services selected....

Second, the Credit for Service option (which provides a credit toward the cost of a funeral of monies paid, but provides no price guarantee):

> A credit for service mortuary trust agreement does not obligate a funeral home to provide funeral goods and services for a predetermined price. Rather, the account balance of the trust upon the death of the beneficiary is applied to the cost at the time of death of the funeral goods and services selected.

Third, the Life Insurance option, which funds a funeral through life insurance proceeds:

> [a] life insurance mortuary trust agreement funds the provision of funeral goods and services from the proceeds of an existing life insurance policy payable upon the death of the person insured.

<u>However, the Life Insurance option is severely restricted because "Guaranteed service life insurance mortuary trust agreements are not permitted."</u> C. 16, § (2)(3). This means that the Life Insurance model must be linked to a "credit for services" agreement where the price of a funeral is the price at the time of need and cannot be locked in at the time of purchasing the insurance. Respectfully, it is <u>at best</u> counterintuitive to argue that a generalized life insurance product, which must already be in existence, can <u>perhaps</u> fund a Credit for Services Agreement

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[4] "An insurer may not retain, utilize or employ any director or establishment as a producer or agency of the insurer and a director or establishment may not act as or purport to be an insurance producer or engage in insurance producer activities." (24-A M.R.S. Section 2176).

[5] This is the option which is most expensive and least available to Maine consumers – it requires an upfront cash outlay of thousands, if not in excess of ten thousand dollars.

(so long as the price increases in the services involved do not exceed the value of the life insurance coverage), but that preneed insurance which has been vetted and approved by the Bureau, and which is designed specifically to pay for funeral services, and which can be written to cover all exposure up front, is prohibited from being sold by funeral practitioners. It also makes no sense to say the life insurance policy must already be "in existence." Why can't a consumer enter into an agreement to obtain funeral services at a fixed price and then secure a policy to cover the exposure? Who benefits from a regulatory scheme that prohibits this result? Certainly not the consumers, who inevitably are confronted with an open ended, ultimately undefined exposure. Not insurers, who only want to sell the product through licensed individuals. It is completely unreasonable to say only funeral practitioners can offer the credit for service option, but can't sell preneed products to fully cover the cost of the funeral services involved. In other words, "now you see it now you don't" makes no sense.

There is No Conflict of Interest

The MFDA argues that funeral practitioners would have a conflict of interest in selling preneed insurance because the funeral practitioners are the beneficiaries. This is wrong. The insured, not the funeral practitioner, is the beneficiary of a preneed life insurance policy. By way of example, the Massachusetts funeral regulations reference a beneficiary purchasing a preneed policy to pay for funeral goods and services (Mass Regs, Title 239, c. 4.00, § 4.01). Receipt of proceeds by the funeral practitioner to pay for funeral services is not a conflict of interest. In fact, such arrangements are common place. One example is credit life or disability insurance which protects an individual's ability to pay off personal debts owed to the bank in the event of illness or death. The bank arranges the policy and receives any proceeds. The public policy to allow these arrangements in order to protect individuals from the economic impact of a loss is well established and benefits the consumer. In the case of preneed insurance, the public policy benefit to allow for insurance paid over time that fully covers the guaranteed cost of a funeral far outweighs any ephemeral conflict of interest concern (not recognized in other state laws or model acts) asserted by those who oppose the issue of preneed insurance in the first place.

Model Laws

There are several model laws which have been provided by proponents to the Bureau and MFDA which authorize funeral practitioners to sell preneed insurance. The NAIC Model (NAIC 580 – 1 20XX WL 83 8342904 (attached as Exhibit 3), captioned "Life Insurance Disclosure Model Regulation" specifically suggests that the appropriate approach is to require disclosure:

> H. [T]he fact that a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom it is paid". NAIC 580 – 1(6)(H).

The National Funeral Directors Association developed "Model Consumer Protection Guidelines for State Preneed Funeral Statutes", as amended most recently in October 2007. (Attached as Exhibit 4) The guidelines "deal with ethical and licensed preneed sellers and agents." (Exhibit 4, Page 1) The model promotes disclosure of any commission, but does not

exclude funeral practitioners from selling the policies:

> (I)(B)(4) If the preneed funds are used to purchase an insurance policy, the contract shall disclose that a commission or other remuneration will be paid to the seller or seller's agent on the purchase of the insurance policy.

It is interesting that the national association of funeral directors does not suggest there is a conflict of interest.

The US Government Accountability Office issued a report in December 2011 "Death Services." Appendix 2 of the report (attached hereto as Exhibit 5) discusses preneed plans and consumer education protection in detail. The GAO recognizes that "according to industry information and state regulators we contacted, the most commonly used options are trust accounts and insurance policies." (Appendix II, p. 48) "With an insurance–funded plan, generally the consumer purchases, either in a lump sum or by installments, an insurance policy that upon the consumer's death is paid out to provide the goods and services as specified in the contract. These preneed insurance policies typically have an increasing death benefit to cover future increases in the prices of funeral goods and services." (Id.) The report goes on to note that recent case studies show that in recent years there have been more insurance funded preneed contracts and trust funded contracts. (Id. at 49) The GAO report specifically references the Massachusetts Consumer Guide which specifically states that when prearranging and prepaying for a funeral, consumers should "know whether the funeral director received a commission if the contract is funded through an insurance policy." (Id. at 54)

The Code of Massachusetts Regulations, Title 239: Board of Registration in Embalming and Funeral Directing, c. 4.00 (Attached hereto as Exhibit 6) recognized that the beneficiary of a preneed insurance policy is the individual establishing the funeral trust account, not the funeral director (section 4.01: Definitions).

Massachusetts Regulation 4.10 states:

> (1) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall comply with all applicable state and federal laws and regulations pertaining to the conduct of the business of insurance, including but not limited to all licensing requirements of the Massachusetts Division of Insurance. (Emphasis added)

The rule goes on to state, in pertinent part:

> (2) Any agent or employee of any licensed funeral establishment who sells or otherwise provides insurance policies or annuities as a method for funding pre-need funeral contracts shall, prior to accepting any funds as payment for the issuance of any such insurance policy or annuity, **make all of the disclosures required by the Massachusetts Division of Insurance to the prospective**

purchaser of said insurance policy or annuity. (Emphasis added)

In addition to the disclosures required by the Massachusetts Division of Insurance, the agent or employee of the funeral establishment shall also disclose:

(b) [t]hat the funeral establishment, or its agent or employee, will be paid a commission on the sale of the insurance policy. (Emphasis added)

Simply put, Massachusetts specifically recognizes the propriety of a funeral home employee selling preneed insurance.

SCI respectfully suggests there is no credible argument against a proposal to allow funeral practitioners to sell preneed insurance. It is good for the consumer, it creates no conflicts of interest, there are numerous model laws and regulations available as guidance and the Bureau has received no credible countervailing information or argument.

Solutions

Several solutions were discussed during the course of our meetings. One could be adopted by itself or in concert with others:

1. As part of any solution, repeal of 24-A M.R.S. § 2176.

2. The NAIC Model: The NAIC model recommends disclosure. SCI has no objection to requiring that the consumer is informed, at the time of sale, that the funeral practitioner will earn a commission on the sale and the amount. Disclosure requirements appropriately address the commission concerns without blindly precluding the sale of the product. We are hopeful the MFDA will support this solution in a manner consistent with their statement made during the stakeholder meetings, wherein they claimed "we support disclosure; everyone should know what anyone makes."

3. Caps on commissions.

4. Amend Maine law to include in the statute the aforecited provisions of Massachusetts Regulation 4.10(1), (2)(b).

5. The Connecticut statute: Connecticut only allows a licensed "embalmer or funeral director" to "arrange, promote or sell any funeral service contract on behalf of a funeral establishment." (42 P.A. Section 42-201) Connecticut also requires insurance licensure prior to "issuing burial contracts or burial certificates." (38a P.A. Section 38a-464)

6. The New Hampshire statute: New Hampshire requires disclosure of multiple aspects of a prearranged funeral contract, including: payment arrangements,

whether the contract is guaranteed or nonguaranteed, revocability, and price information. (RSA 325:46-a)

Conclusion

SCI attended the Bureau's stakeholder meetings to assist the Bureau in complying with the Committee's requests. SCI, and others, including insurance companies and a national insurance association, provided language, concepts, models and everything short of the kitchen sink. Unfortunately, this effort was not reciprocated. The notion that "nothing is broken," in this instance, only serves to preserve an antiquated system that does not help consumers. The "we don't like it" mantra is equally unavailing. Maine needs to be dragged, even if some practitioners are kicking and screaming, into a 21st Century already occupied by 48 states, the NAIC, the National Funeral Directors Association – in short, everyone and his brother. The Bureau has as part of its charge recommending ways to do this, and in that posture SCI is prepared to assist in solving this unnecessary conundrum.

Respectfully submitted.

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cc: Anne Head, Commissioner
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