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BULLETIN NO. 2012-04

TO: Preneed providers holding certificates of authority under the Alabama
Preneed Funeral and Cemetery Act

FROM: Jim L. Ridling
Commissioner of Insurance 

DATE: July 9, 2012

RE: Sale of "return of mortal remains plans"

EFFECTIVE: Immediate

The Commissioner of Insurance, acting through the Department of Insurance, regulates the sale of preneed contracts for funeral and cemetery merchandise and services under the Alabama Preneed Funeral and Cemetery Act, Ala. Code §§ 27-17A-1 *et seq.* (2002).

This Bulletin addresses the offering and sale of "return of mortal remains plans" in conjunction with the sale of preneed contracts for funeral or cemetery merchandise and services.

For purposes of this Bulletin, a "return of mortal remains plan" refers to a contract or agreement by whatever title or name, sold in conjunction with a preneed contract, in which a third party provider other than the preneed contract seller agrees, in exchange for a cost paid by or for the plan beneficiary, to cause transportation of the decedent's remains in the event the decedent dies outside the scope of any radius clause or geographical limitation expressed in a preneed contract for funeral or cemetery merchandise and services. The plan may or may not: be a "membership"-type arrangement; provide that the agreement provider will arrange and pay for services actually provided by others; provide that the agreement provider will directly perform services; or include services like embalming or other body preparation and merchandise such as a shipping container. The Department's intent is that this Bulletin be given broad interpretation so as to reach all pre-paid arrangements sold in conjunction with preneed contracts which provide for transportation of a decedent's remains in instances where that transportation is not already part of, or is excluded by, a preneed contract.

1. A return of mortal remains plan may be offered in conjunction with the sale of a preneed contract. A foreign (non-Alabama) business entity shown as the provider or seller in such an agreement must have registered through the office of the Alabama Secretary of State as and to the extent required by the Alabama Business and Nonprofit Entity Code, Ala. Code §§ 10A-1-1.01 *et seq.* (2010).

2. A preneed provider offering a return of mortal remains plan is expected to have in effect a written agreement with the plan provider which describes the terms, conditions, and restrictions under which the preneed provider offers the plan to prospective buyers. The agreement should include provisions describing the manner in which the cost of the plan is remitted to the plan provider; expressing the amount to be paid to the preneed provider by the plan provider for having sold a plan (or the formula

from which that amount can be determined); identifying any third-party provider relied upon to perform the benefits called for in the plan; and any insurance company providing insurance to be used in paying for or defraying the cost of performance of the plan benefits.

3. A preneed provider's sale of a return of mortal remains plan must be documented separately from the preneed contract. The return of mortal remains plan shall not be listed as merchandise, a service, or otherwise in the preneed contract, and the plan's cost shall not be included as part of the total cost of the preneed contract.

4. The price of the plan shall be collected from the buyer at the time of sale or paid in installments by agreement distinct from the preneed contract. In the event of an installment sale, and if applicable under the agreement between the plan provider and preneed provider, the preneed provider shall disclose that the plan does not become effective until the entire plan price is collected. The plan price shall not be financed as part of the price of the preneed contract.

5. A preneed provider shall account for amounts paid by preneed contract buyers for return of mortal remains plans separately from amounts paid for preneed contracts. No portion of such payments shall be deposited in a preneed merchandise and services trust or otherwise treated as preneed contract payments. Funds collected as payment for a return of mortal remains plan shall be immediately remitted to the plan provider.

6. The provider or seller of the return of mortal remains plan must furnish the following to the preneed provider for use with prospective purchasers of the plan:

(a) A form of brochure or flier describing the benefits to be provided, the terms, conditions, and limitations applicable to the plan, and the price of the plan.

(b) The form by which the purchaser buys, applies for, joins, or enrolls in the plan. Such form shall identify the price of the plan to the buyer and, if applicable, shall describe the terms of any installment payment arrangement.

(c) The form of certificate or other evidence of coverage or entitlement to benefits to be provided to the purchaser.

(d) If not included in the certificate, a description of the benefits to be provided, the terms, conditions, and limitations applicable to the plan, and the manner in which claims for benefits are submitted.

(e) All such forms shall clearly identify the entity which is undertaking to provide or arrange for the provision of any services or merchandise described as benefits in the plan and shall state the entity's mailing and physical addresses, voice and facsimile telephone numbers, and electronic mail address.

7. If the return of mortal remains plan provider relies on the preneed provider to deliver documentation to a buyer, the preneed provider shall promptly deliver that documentation to the buyer.

8. Copies of completed return of mortal remains plan transaction documents as described above shall be maintained by the preneed provider as part of a buyer's preneed contract file. Such documentation shall be made available to the Department as part of a preneed examination or otherwise upon request.