

CHAPTER 224

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 96-053

BY SENATORS Tebedo and R. Powers;
also REPRESENTATIVES Epps and Prinzler.

AN ACT

CONCERNING THE PAYMENT OF A DEATH REIMBURSEMENT BY COUNTY DEPARTMENTS OF SOCIAL SERVICES FOR EXPENSES ASSOCIATED WITH THE DEATH OF PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE RECIPIENTS, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 26-2-129, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-2-129. Funeral - burial - cremation expenses - death reimbursement.

(1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT, SUBJECT TO AVAILABLE APPROPRIATIONS, THE PURPOSES OF THIS SECTION ARE THE FOLLOWING:

(a) TO PROVIDE APPROPRIATE AND EQUITABLE REIMBURSEMENT OF FUNERAL, CREMATION, OR BURIAL EXPENSES OR ANY COMBINATION THEREOF ASSOCIATED WITH THE FINAL DISPOSITION OF ANY DECEASED PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE RECIPIENT;

(b) TO CONSIDER THE RELIGIOUS AND CULTURAL PREFERENCES OF THE DECEDENT AND THE DECEDENT'S FAMILY;

(c) TO ASSURE THAT FINAL DISPOSITION OF A DECEDENT IS PROVIDED WITH DIGNITY;

(d) TO ENSURE THAT REIMBURSEMENT OF A PROVIDER OF FUNERAL, CREMATION, OR BURIAL SERVICES IS APPROPRIATELY DISBURSED BY THE COUNTY DEPARTMENT;

(e) TO PROVIDE THAT PUBLIC FUNDS ARE MADE AVAILABLE FOR REIMBURSEMENT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PURSUANT TO THIS SECTION ONLY AFTER IT HAS BEEN DETERMINED THAT THERE ARE INSUFFICIENT RESOURCES FROM THE ESTATE OF THE DECEDENT OR THE DECEDENT'S LEGALLY RESPONSIBLE FAMILY MEMBERS TO COVER THE FUNERAL, CREMATION, OR BURIAL EXPENSES;

(f) TO ALLOW FAMILY MEMBERS AND FRIENDS OF A DECEDENT TO CONTRIBUTE TOWARDS THE CHARGES OF FUNERAL, CREMATION, OR BURIAL EXPENSES TO THE EXTENT SUCH CONTRIBUTIONS DO NOT EXCEED THE SPECIFIED MAXIMUM COMBINED CHARGES FOR SUCH EXPENSES.

(2) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONTRIBUTIONS" MEANS ANY MONETARY PAYMENT OR DONATION MADE DIRECTLY TO THE SERVICE PROVIDER OR PROVIDERS BY A NONRESPONSIBLE PERSON TO DEFRAY THE EXPENSES OF A DECEASED PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE RECIPIENT'S FUNERAL, CREMATION, OR BURIAL OR ANY COMBINATION THEREOF.

(b) "DEATH REIMBURSEMENT" MEANS THE PAYMENT MADE BY THE COUNTY DEPARTMENT TO THE PROVIDER OF FUNERAL, CREMATION, OR BURIAL SERVICES WHEN ADEQUATE RESOURCES ARE NOT AVAILABLE FROM LEGALLY RESPONSIBLE PERSONS OR FROM THE PERSONAL RESOURCES OR INCOME OF THE DECEDENT OR FROM CONTRIBUTIONS TO COVER THE CHARGES FOR FUNERAL, CREMATION, OR BURIAL EXPENSES OF A DECEASED PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE RECIPIENT.

(c) "DECEDENT" MEANS A DECEASED RECIPIENT OF OR APPLICANT FOR PUBLIC ASSISTANCE OR MEDICAL ASSISTANCE WHO WAS RECEIVING OR WAS ELIGIBLE TO RECEIVE BENEFITS AT THE TIME OF DEATH.

(d) "FINAL RESTING PLACE" MEANS A SPACE, EITHER BELOW OR ABOVE THE SURFACE OF THE GROUND, FOR THE INTERMENT OR ENTOMBMENT OF THE REMAINS OF HUMAN BODIES.

(e) "LEGALLY RESPONSIBLE PERSON" MEANS A PERSON WHO:

(I) IS THE DECEDENT'S SPOUSE OR THE DECEDENT'S PARENT IF THE DECEDENT IS AN UNEMANCIPATED MINOR WHO IS UNDER THE AGE OF EIGHTEEN; AND

(II) BEARS LEGAL RESPONSIBILITY FOR THE CHARGES ASSOCIATED WITH THE DECEDENT'S FUNERAL, CREMATION, OR BURIAL EXPENSES.

(f) "MAXIMUM COMBINED CHARGES" MEANS THE TOTAL OF ALL CHARGES FROM ALL PROVIDERS BUT IN AN AMOUNT NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

(g) "MORTUARY SCIENCE PRACTITIONER" HAS THE SAME MEANING AS SUCH TERM IS DEFINED IN SECTION 12-54-103 (3), C.R.S.

(h) "NONRESPONSIBLE PERSON" MEANS ONE OF THE FOLLOWING WHO MAKES A CONTRIBUTION TO THE CHARGES FOR A FUNERAL, CREMATION, OR BURIAL OR ANY COMBINATION THEREOF:

(I) A RELATIVE OF THE DECEDENT WHO IS NOT A LEGALLY RESPONSIBLE PERSON;
OR

(II) ANY OTHER PERSON OR PARTY.

~~(1) (3) On the death of a recipient of public assistance or medical assistance,~~
SUBJECT TO AVAILABLE APPROPRIATIONS, A DEATH REIMBURSEMENT COVERING reasonable funeral expenses ~~and~~ OR reasonable cremation or burial expenses OR ANY COMBINATION THEREOF shall be paid by the county department FOR A DECEDENT if the estate of the deceased is insufficient to pay such reasonable expenses and if the persons legally responsible for the support of the deceased are unable to pay such reasonable expenses. THE COUNTY DEPARTMENT SHALL BE REIMBURSED EIGHTY PERCENT OF THE AMOUNT OF THE DEATH REIMBURSEMENT PAID FOR RECIPIENTS OF AID TO THE NEEDY DISABLED AND AID TO FAMILIES WITH DEPENDENT CHILDREN AND SHALL BE REIMBURSED ONE HUNDRED PERCENT OF THE AMOUNT OF THE DEATH REIMBURSEMENT FOR RECIPIENTS OF OLD AGE PENSIONS. IF THE STATE DEPARTMENT DETERMINES THAT THE LEVEL OF APPROPRIATION IS INSUFFICIENT TO MEET THE DEMAND FOR DEATH REIMBURSEMENTS, THE STATE DEPARTMENT SHALL REDUCE THE AMOUNT OF THE DEATH REIMBURSEMENT LEVEL TO MEET THE AMOUNT APPROPRIATED BY THE GENERAL ASSEMBLY FOR DEATH REIMBURSEMENTS. IN THE EVENT THAT SUCH A REDUCTION IS MADE, THE COUNTY DEPARTMENT SHALL HAVE NO ADDITIONAL RESPONSIBILITY BEYOND THE REIMBURSEMENT LEVEL AS DEFINED IN THE STATE DEPARTMENT'S RULES.

~~(2) (4) Payments made pursuant to this section shall only be authorized when~~ THE TOTAL AMOUNT OF A DEATH REIMBURSEMENT PAID BY THE COUNTY DEPARTMENT OR STATE DEPARTMENT PURSUANT TO THIS SECTION SHALL NOT EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS AND the combined charge of a funeral ~~and~~ OR cremation or burial is equal to or less than one OR ANY COMBINATION THEREOF SHALL NOT EXCEED TWO thousand five hundred dollars. Contributions from ~~any other sources~~ NONRESPONSIBLE PERSONS may be made without jeopardizing payment under this section as long as the combined charge to the decedent's estate and family and the state and county for such services does not exceed one thousand five hundred dollars AND SHALL BE COUNTED AS AN OFFSET TO THE MAXIMUM COMBINED CHARGES OF THE PROVIDERS. IF THE COMBINED CHARGES FROM THE PROVIDERS EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS, NO DEATH REIMBURSEMENT SHALL BE PAID BY THE STATE OR COUNTY DEPARTMENT. PROVIDERS MAY SEEK CONTRIBUTIONS FROM NONRESPONSIBLE PERSONS ONLY TO THE EXTENT THAT MONEYS ARE AVAILABLE FROM SUCH PARTIES.

(5) A LEGALLY RESPONSIBLE PERSON SHALL BE REQUIRED TO PARTICIPATE FINANCIALLY TOWARDS THE CHARGES FOR FINAL DISPOSITION THROUGH A CONTRIBUTION TO THE MAXIMUM DEATH REIMBURSEMENT IF HIS OR HER RESOURCES ARE ABOVE THE FEDERAL SUPPLEMENTAL SECURITY INCOME RESOURCE LIMITS. A LEGALLY RESPONSIBLE PERSON SHALL NOT BE REQUIRED TO PARTICIPATE IF HE OR SHE HAS FEWER RESOURCES THAN THE SUPPLEMENTAL SECURITY INCOME RESOURCE LIMITS OR IF PARTICIPATION WOULD RESULT IN FEWER RESOURCES THAN THE SUPPLEMENTAL SECURITY INCOME RESOURCE LIMITS. ANY FINANCIAL PARTICIPATION FROM A LEGALLY RESPONSIBLE PERSON SHALL BE DEDUCTED FROM THE MAXIMUM DEATH REIMBURSEMENT IN THE SAME MANNER AS THE PERSONAL RESOURCES OF THE DECEDENT AND SHALL NOT INCLUDE THE SURVIVOR'S HOME OR OTHER EXCLUDED

RESOURCES AS PROVIDED FOR IN THE STATE DEPARTMENT'S RULES. ANY FINANCIAL PARTICIPATION BY A LEGALLY RESPONSIBLE PERSON IN EXCESS OF THE LEGALLY REQUIRED AMOUNT SHALL BE USED TO REDUCE THE AMOUNT OF THE MAXIMUM DEATH REIMBURSEMENT. SOCIAL SECURITY LUMP SUM DEATH BENEFITS PAYABLE TO A LEGALLY RESPONSIBLE PERSON SHALL NOT BE AN AUTOMATIC DEDUCTION FROM THE MAXIMUM DEATH REIMBURSEMENT. FOR PURPOSES OF THIS SECTION, "RESOURCES" MEANS:

(a) THOSE ASSETS OR INCOME THAT ARE ACCESSIBLE AND AVAILABLE TO THE LEGALLY RESPONSIBLE PERSON;

(b) DISBURSEMENT OF FUNDS FROM ANY INSURANCE POLICY OF THE DECEDENT TO A LEGALLY RESPONSIBLE PERSON OR NONRESPONSIBLE PERSON WHO IS NAMED AS A BENEFICIARY OR A JOINT BENEFICIARY OF THE DECEDENT'S POLICY. NOTHING IN THIS PARAGRAPH (b) SHALL GRANT AUTHORITY TO THE COUNTY DEPARTMENT TO ATTACH A LIEN AGAINST SUCH FUNDS OR OTHERWISE OBTAIN OR ACCESS THESE FUNDS FOR PAYMENT OF THE FINAL DISPOSITION OF THE DECEDENT.

(6) IN CALCULATING THE AMOUNT OF THE DEATH REIMBURSEMENT, ANY PERSONAL RESOURCES OR INCOME OF THE DECEDENT SHALL BE COUNTED AS A DEDUCTION FROM THE MAXIMUM ALLOWABLE DEATH REIMBURSEMENT. FOR PURPOSES OF THIS SECTION, PERSONAL RESOURCES OR INCOME OF THE DECEDENT INCLUDES THE FOLLOWING:

(a) ANY PRENEED CONTRACT FOR MERCHANDISE OR SERVICES TO BE PROVIDED OR PERFORMED IN CONNECTION WITH THE DECEDENT'S FINAL DISPOSITION;

(b) ANY OTHER RESOURCES OR INCOME ACCESSIBLE AND AVAILABLE IN THE NAME OF THE DECEDENT, INCLUDING JOINTLY OWNED RESOURCES OR INCOME BUT ONLY TO THE EXTENT OF THE DECEDENT'S SHARE OF SUCH JOINTLY OWNED RESOURCES OR INCOME;

(c) ANY DEATH BENEFIT IN WHICH REIMBURSEMENT IS DIRECTLY PAID TO A PROVIDER OF FUNERAL, CREMATION, OR BURIAL SERVICES IN CONNECTION WITH THE DECEDENT'S FINAL DISPOSITION.

~~(7) (a) Ownership by a public assistance or medical assistance recipient of burial space in a cemetery for his recipient's burial, A FINAL RESTING PLACE, or his THE purchase thereof during the time he THE RECIPIENT is receiving that assistance, shall not disqualify him THE RECIPIENT from receiving that assistance, nor shall such ownership be deemed cause for any reduction in the amount of his THE RECIPIENT'S assistance.~~

(b) ANY PORTION OF THE PURCHASE PRICE OF A FINAL RESTING PLACE OWNED BY THE DECEDENT IN EXCESS OF TWO THOUSAND DOLLARS SHALL BE COUNTED AS A PERSONAL RESOURCE OF THE DECEDENT IN CALCULATING THE AMOUNT OF A DEATH REIMBURSEMENT PURSUANT TO THIS SECTION.

(c) A FINAL RESTING PLACE PREVIOUSLY ACQUIRED BY SOMEONE OTHER THAN THE DECEDENT AND DONATED FOR FINAL DISPOSITION OF THAT DECEDENT SHALL NOT BE COUNTED AS A PERSONAL RESOURCE OF THE DECEDENT OR A LEGALLY RESPONSIBLE

PERSON IN CALCULATING THE AMOUNT OF A DEATH REIMBURSEMENT PURSUANT TO THIS SECTION.

~~(4) A recipient of public assistance or medical assistance may be the owner of an irrevocable or a revocable, prepaid contract for funeral expenses, and such ownership shall not disqualify him from receiving that assistance, nor shall such ownership be deemed cause for any reduction in the amount of his assistance; but the exemption for a revocable contract shall apply only to the first one thousand five hundred dollars in value of said revocable contract together with any interest accruing on the first one thousand five hundred dollars which increases the value of said revocable contract.~~

(8) A STATEMENT OF AGREEMENT BETWEEN THE PROVIDERS THAT SHALL BE ON A FORM PRESCRIBED BY THE STATE DEPARTMENT THAT SETS FORTH THE CHARGES AND THE AMOUNTS OF ANY PAYMENTS OR CONTRIBUTIONS SHALL BE COMPLETED PRIOR TO ANY DISBURSEMENT OF FUNDS BY THE COUNTY. THE AGREEMENT SHALL ASSURE THAT THE CHARGES OF ALL PROVIDERS HAVE BEEN EQUITABLY ADDRESSED AND SHALL ASCERTAIN THAT THE MAXIMUM COMBINED CHARGES DO NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS AND THAT THE COMBINED CONTRIBUTIONS FROM ALL SOURCES DO NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS. ALL PAYMENTS FROM A DECEDENT'S ESTATE, PAYMENTS FROM LEGALLY RESPONSIBLE PERSONS, AND CONTRIBUTIONS FROM NONRESPONSIBLE PERSONS SHALL BE PAID DIRECTLY TO THE PROVIDER OF SERVICES. AFTER THE PROVISION OF ALL SERVICES, THE PROVIDERS SHALL BILL THE COUNTY DEPARTMENT DIRECTLY FOR REIMBURSEMENT FOR APPROPRIATE COSTS THAT HAVE NOT BEEN COVERED BY THE RESOURCES FROM OR CONTRIBUTIONS MADE BY THE DECEDENT'S ESTATE, LEGALLY RESPONSIBLE PERSONS, OR NONRESPONSIBLE PERSONS. THE COUNTY DEPARTMENT SHALL REIMBURSE THE APPROPRIATE PROVIDERS DIRECTLY, BASED UPON THE STATEMENT OF AGREEMENT.

~~(5)-(a)~~ (9) (a) Notwithstanding any other provision of law to the contrary, the disposition of a deceased public assistance or medical assistance recipient shall be in accordance with subparagraphs (I) or (II) of this paragraph (a), as follows:

(I) A public assistance or medical assistance recipient may express, in writing and in accordance with a procedure established by the state department, ~~of human services~~ a preference to be buried or cremated OR BOTH. Such expression shall be honored by the county department within the limits of costs and reimbursements specified in this section.

(II) The disposition of a public assistance or medical assistance recipient who has not expressed a preference ~~to be buried or cremated~~ shall be determined respectively by such recipient's spouse, adult children, parents, or siblings. Upon the death of a recipient, the county department shall use reasonable effort to contact such an authorized person to determine the disposition of the deceased recipient. If such effort does not result in contact with an authorized relative within twenty-four hours, the county shall immediately have the deceased recipient's body refrigerated or embalmed. If such effort does not result in contact with and decision by an authorized relative within seven days of the recipient's death, the county department shall determine whether to bury or cremate the deceased recipient on the basis of which option is less costly.

(b) The disposition of any public assistance or medical assistance recipient in accordance with this subsection ~~(5)~~ (9) shall be in a timely and dignified manner.

(c) A mortuary science practitioner or any operator of any cemetery who has contracted for cremation services pursuant to this subsection ~~(5)~~ (9) may dispose of the remains of any public assistance or medical assistance recipient cremated pursuant to this section that are not claimed within one hundred twenty days from the date of cremation. ~~In addition, any mortuary science practitioner or any operator of any cemetery that has retained and stored the remains of a deceased public assistance or medical assistance recipient cremated on or before July 1, 1990, may dispose of any such remains if such remains are not claimed on or before July 1, 1991.~~ For the purposes of this paragraph (c), "mortuary science practitioner" has the same meaning as such term is defined in section 12-54-103 (3), C.R.S., and disposal of remains shall include, but need not be limited to, placing such remains in a cemetery, scattering grounds, or columbarium.

~~(6)~~ (10) The state department of human services shall:

(a) Adopt rules and regulations necessary for the implementation of this section;
AND

(b) ~~Apportion funds among providers of services made available pursuant to this section; and~~

(c) Annually review reimbursement levels to determine whether such levels are adequate to purchase funeral, and cremation, or burial services for deceased public assistance OR MEDICAL ASSISTANCE recipients.

~~(7)~~ (11) Notwithstanding any other provision of law to the contrary, any person who, in good faith, disposes of a deceased recipient or the remains of a deceased recipient in accordance with this section shall be immune from any civil or criminal liability.

SECTION 2. Appropriations in the long bill to be adjusted. (1) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1996, shall be adjusted as follows:

(a) The cash funds appropriation made to the department of human services, self-sufficiency, assistance payments, for the old age pension fund, is decreased by thirty thousand eight hundred eighty-two dollars (\$30,882).

(b) The appropriation made to the department of human services, self-sufficiency, assistance payments, for aid to families with dependent children, is increased by six thousand six hundred thirty-seven dollars (\$6,637), of which sum five thousand three hundred nine dollars (\$5,309) shall be from the general fund, and one thousand three hundred twenty-eight dollars (\$1,328) shall be from cash funds exempt.

(c) The appropriation made to the department of human services, self-sufficiency, assistance payments, for burials, is decreased by nine thousand five hundred eighty-one dollars (\$9,581), of which sum seven thousand six hundred sixty-four dollars (\$7,664) shall be from the general fund, and one thousand nine hundred

seventeen dollars (\$1,917) shall be from cash funds exempt.

SECTION 3. Effective date. This act shall take effect January 1, 1997; except that, if a referendum petition is filed against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to section 1 (3) of article V of the state constitution, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by

Approved: May 31, 1996

Editor's note: This act was passed without a safety clause. Section 3 of the act establishes an effective date of January 1, 1997. It will take effect on that date unless a referendum petition is filed pursuant to section 1 (3) of the state constitution. In that event, the act will take effect on the date of the official proclamation of the governor or January 1, 1997, whichever is later, if it is approved by the voters at the 1996 election.