

A New Day for Travel Protection

by Paul White, LFD & Wendy Russell Wiener, Esq.

TRAVEL PROTECTION SERVICES have been offered by funeral homes for many years. Early programs were offered by third parties, like APASI and MASA—providers that remain prevalent in the market. But now other players have entered the space, and many deathcare industry members have established their own companies or programs.

Until recently, an uncertainty surrounded travel protection sales because various state regulators suggested that travel protection services may be insurance policies or pre-need contracts. There is, indeed, some logic to those analyses, but last year, regulators in two deathcare-prominent states clarified that travel protection contracts are neither pre-need nor insurance contracts.

What Is Travel Protection?

Travel protection agreements offer peace of mind to pre-need contract purchasers that

travel or simply may find themselves away from home when death occurs. The “typical” contract returns either human remains to the funeral home that sold the pre-need contract and travel protection contract or returns cremated remains to the person designated to receive them. Some travel protection agreements cover only when the purchaser is traveling within the contiguous United States; others cover world-wide travel. The price to the purchaser ranges, typically, from \$495 to \$995, in our experience.

Why Regulate Travel Protection? Pre-need

Because travel protection agreements contemplate certain funeral services, the pre-death sale of such agreements suggests to some funeral regulators that the travel protection agreement itself is a pre-need contract. To return the human remains to the selling funeral home, the decedent must be removed from the place of death, transported, refrigerated, and sometimes embalmed. To return cremated remains, the decedent must be removed from the place of death, transported, perhaps refrigerated and then cremated. Clearly, funeral services are provided for a travel protection agreement to be fulfilled.

But the key to effectively countering arguments from deathcare regulators wishing to call travel protection contracts pre-need contracts is that the party that provides the needed funeral services is not the party that sells the travel protection agreement. Rather, the travel protection agreement seller plans with licensed funeral service providers when the services are required.

The definition of “pre-need contract” in most states is something like “a contract sold by a funeral establishment for the funeral establishment to provide goods and services in the future.” The distinction as to who provides the actual services is key.

Insurance

Likewise, because travel protection agreements “kick in” when an uncertain event becomes a certainty, such as when the death of the purchaser of the agreement occurs, insurance regulators have long endeavored to call travel protection an insurance policy—though largely unsuccessfully.

The reasons the efforts have failed are far too esoteric to fully discuss here. In other words, they involve rather complicated legal arguments; but, put simply, travel protection agreements do not have all the elements that make a product an insurance agreement.

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Importantly, the purpose of the travel protection contracts is not to indemnify a party for a loss. Rather, many argued effectively over the years that travel protection agreements were, instead, service contracts. There are several examples of service contracts, like the contracts purchased from pest control companies that provide services in the event of a termite infestation and other similar agreements. The primary object of a travel protection agreement is assistance by way of the provision of certain services.

Ultimately, travel protection agreement sellers and deathcare industry members were successful at showing both types of regulators that the purpose of the contracts is to keep the purchaser “tied” to the pre-need contract they purchased in order to receive the benefit of the pre-need contract.

The 2023 Legislation

The successful arguments carried the day in the legislatures of both Arizona and Florida in 2023. Arizona revised its definition of “funeral goods and services” to specifically exclude “services provided pursuant to a transportation protection agreement.” The legislation added a definition of travel protection agreement:

an agreement that primarily provides or arranges for services that are related to preparing human remains or cremated remains for the purpose of transportation and such subsequent transportation.

Finally, the law was amended to add a new section, which reads,

A transportation protection agreement is not insurance under this chapter or under Title 20, Chapter 29.

Florida, similarly, revised its definition of “pre-need contract” to exclude “a transportation protection agreement and any payments received on a transportation agreement.” The law, like Arizona’s, defined a transportation protection agreement as:

an agreement that exclusively provides or arranges for services related to the preparation for the purpose of transportation and subsequent transportation of human remains or cremated remains.

Finally, the new law goes on to say,

The Florida Insurance Code, as defined in s. 624.01, does not apply to any transportation protection agreement sold by any licensee under ...chapter [497, Florida Statutes].

So, What Now?

Florida and Arizona are two of the most important states in relation to deathcare. The heavy deathcare-consuming populations of both states force the deathcare regulators to enact laws and rules that protect consumers. Other states watch what the legislatures in Florida and Arizona do and often conform their laws to match or at least agree.

The legislatures of Florida and Arizona were convinced, and rightly so in our opinion, that travel protection agreements are not pre-need contracts, and they are not insurance contracts. They should not be regulated by either. The amendments cleared the path for those funeral establishments that sell third party travel protection programs and for deathcare industry members to establish their own programs—free from worry that they need additional deathcare or insurance licensure.

While not exhaustive advice, at a minimum, any deathcare industry member, funeral home or cemetery that desires to set up its own travel protection company should establish a separate corporate entity to sell the travel protection agreements. The travel protection company should have a Travel Protection Agreement form that legally binds it and the purchaser. Other ancillary legal documents may be necessary for the sales force, etc. Always seek legal assistance from an attorney who understands the deathcare industry to assist with getting your travel protection company up and running lawfully.

Finally ...

It appears that the best days of travel protection are ahead. The product can be incredibly beneficial for those who purchase it and very lucrative for those who sell it, particularly for those who own and operate their own travel protection companies. **M**



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