

11. Individuals who died while satisfying a WFNJ sanction;

12. Children who are subject to the family cap provisions of the WFNJ program and its predecessors;

13. Recipients of the AIDS Community Care Alternative Program (AACAP);

14. An individual who had received WFNJ/GA at any time within six months prior to his or her death;

15. Individuals determined eligible for Assisted Living services on the basis of the receipt of SSI payments or eligibility for Medicaid Only;

16. Residents of long term care facilities, who entered the facility as Medicaid patients but elected to receive the services of a hospice agency while in the facility as long as the individual remains financially eligible for Medicaid while receiving hospice care. This does not apply to individuals receiving hospice care in the community;

17. Recipients of the New Jersey Care-Special Medicaid Program for Aged, Blind and Disabled; or

18. Recipients of SSI (or its predecessor programs) or Medicaid Only who were admitted or committed to any tax supported institution within this State, other than a penal or correctional institution, with such admission or commitment being the only reason for suspension or termination of public assistance, and whose death occurs while confined to such institution.

(b) Claims for the funeral or burial expenses incurred by a family in receipt of extended Medicaid (see N.J.A.C. 10:90-5.9(c)) for any child who is born or legally adopted by the family during the extension period are not authorized for payment.

Amended by R.1998 d.42, effective January 20, 1998.  
See: 29 N.J.R. 3971(b), 30 N.J.R. 389(a).

Added (a)14.

Amended by R.2003 d.226, effective June 16, 2003.  
See: 34 N.J.R. 2713(a), 35 N.J.R. 2670(a).

In (a), inserted "for WFNJ/TANF, WFNJ/GA, SSI, or Medicaid Only" preceding "can be otherwise determined" in 2, substituted "Adult Foster Care" for "Alternative Family Care (ACF)" in 10, and added 15 through 18; added (b).

### 10:90-8.3 Funeral and burial contracts

(a) The right and responsibility to arrange and contract for funeral and burial services rests with the next of kin of the decedent. In the absence of any next of kin, arrangements may be made by any interested party such as a friend, member of the clergy, or nursing home or hospital administrator. This subchapter shall not control or impair a contract between a funeral director or next of kin or other party except to the extent that the contract shall not result in a claim against the county or municipal agency or against any assets legally owed to the agency.

1. In the complete absence and only in the complete absence of any next of kin and when no other person is

available to make the arrangements, the county or municipal agency may do so. The availability of funds is not to be a factor in determining whether or not the agency will make the arrangements. The county or municipal agency will select funeral directors for such contracting in consultation with the county association of funeral directors.

i. A contract negotiated by a county or municipal agency shall be in accord with all provisions of this subchapter, including the cost, even though the cost may not be met from public funds.

ii. A contract negotiated by a county or municipal agency may be concluded orally but shall be confirmed by letter from the county or municipal agency to the funeral director.

(b) Regardless of whether or not it is one of the contracting parties, the county or municipal agency shall not authorize any cremation. Nor shall it authorize any postmortem examination or any other procedure which is not a part of regular funeral and burial services.

Amended by R.1998 d.42, effective January 20, 1998.  
See: 29 N.J.R. 3971(b), 30 N.J.R. 389(a).

### 10:90-8.4 Definitions and conditions

(a) When either of the contracting parties contemplates that a county or municipal agency will be asked to pay any part of the cost of a funeral and burial or cremation, either or both parties shall notify and consult with the county or municipal agency before the services take place. The probable allowance or disallowance of the claim shall be discussed at that time, but the agency is under no obligation to make a commitment of payment. The requirement of prior notice may be waived by the county or municipal agency upon a showing of good cause (as determined by the agency) which is not prejudicial to the validity of the claim.

1. If, however, the religious traditions of the decedent mandate that burial must occur within a timeframe which will not permit prior notice due to closure of the county or municipal agency on weekends or holidays, either or both of the contracting parties shall be permitted to notify the appropriate agency of the anticipated petition for payment on the first business day following the day of burial.

(b) Rules concerning the submission of petition for payment are the following:

1. The funeral director or other claimant shall, within 30 calendar days following burial or cremation, submit to the county or municipal agency a petition on Form WFNJ-11, or a substantially similar document acceptable to the agency, which certifies to services rendered, to payments contracted, received and expected; and to compliance with all applicable rules and regulations. Petitions submitted beyond the 30 calendar day period may be considered upon a showing of good cause (as determined

by the agency) which is not prejudicial to the validity of the claim.

2. A claim filed with a county or municipal agency for funeral, burial or cremation is not a demand for payment owing under a contract but is merely a petition for an allowance to be granted or denied consistent with these regulations. It has the effect of a demand, however, when the agency was the contracting party.

(c) The combined resources of a decedent means the aggregate net total of all of the following:

1. Cash on hand or in the hands of others as property of the decedent including personal needs accounts in long term care facilities (but excluding cash in the custody, possession or control of the county or municipal agency);

2. Other resources, such as securities, real estate, antique furniture and automobiles;

3. Life insurance or death or funeral benefits from public or private sources which have been received, or which are receivable by the estate of the decedent, by the decedent's spouse, children, father, mother, or any other beneficiary because of the death of the decedent;

4. Payments of the same nature as in (c)3 above which have been received by or which are receivable by any other person excepting such amounts as are lawfully claimed and proven by such person as a claimant for equitable refund of premiums paid;

5. Sums which have been paid or are promised to be paid on account of the death of the decedent by any other person or organization excepting such sums as have been paid or will be paid to the agency; and

6. Funds owed the decedent at the time of death.

#### 10:90-8.5 Authorization of payment

(a) Funeral services and cemetery costs must be separated and are paid separately. The allowance for adult funeral services, exclusive of cemetery costs, is the total amount charged or \$1,970, whichever is less. Purchase of an urn when an individual is cremated is a permissible expense and is charged toward the funeral allowance. When ground burial is made of the remains, the cemetery allowance also applies. The cemetery allowance for an adult is the sum of all cemetery charges or \$460.00, whichever is less. Crematory charges as well as burial of the urn are permissible expenses and are to be charged toward the cemetery allowance. For a stillborn to six day old child, the funeral allowance is up to \$985.00 and the burial allowance is up to \$230.00. For a one week to two year old child, the funeral allowance is up to \$1,477 and the burial allowance is up to \$345.00. For a child over two years old, the funeral allowance is up to \$1,970 and the burial allowance is up to \$460.00. The maximum total of allowances for a decedent is the sum of the funeral allowance and the cemetery allowance, as applicable. Payments may be authorized for transportation costs for otherwise eligible Medicaid or WFNJ recipients who would normally qualify for burial/funeral expenses but have chosen to donate their bodies for medical education and research.

1. The county or municipal agency may, in any case in which it determines that any of the resources in N.J.A.C. 10:90-8.4(c) should be waived or omitted to avoid hardship or inequity, present a recommendation to the DFD for disposition.

(b) The payment to be made is the maximum total of allowances as reduced by the combined resources of the decedent. Contributions from next of kin and interested parties above and beyond those listed at N.J.A.C. 10:90-8.4(c) up to \$1,570 shall be excluded. Amounts in excess of \$1,570 shall be counted in determining the amount to be paid by the agency. Any contributions made by relatives towards the cost of the funeral and/or burial of infants and children ranging in age from stillborn up to two years of age shall be commensurate with the reduced amount of agency payment participation.

1. The county or municipal agency shall be responsible for pursuing reimbursement from the holder of any and all resources of the decedent as described at N.J.A.C. 10:90-8.4(c).

(c) Payments shall be made first from any funds received by or designated for the county or municipal agency pursuant to these regulations from or on behalf of the decedent and secondly, if necessary, from assistance funds.

(d) The Statewide Inheritance Tax Waiver Affidavit (Form L-10) shall be used by agency directors to release funds from accounts of deceased recipients with balances of less than \$2,000 for use in defraying funeral/burial cost. The county surrogate shall appoint the county/municipal welfare director as the administrator of the intestate decedent's estate upon presentation of a death certificate. The banks must release the bank account(s) to the agency director when presented with a Short Certificate and the L-10 form in accordance with the provisions of N.J.S.A. 54:35-19.

Amended by R.1998 d.42, effective January 20, 1998.

See: 29 N.J.R. 3971(b), 30 N.J.R. 389(a).

Amended by R.2003 d.226, effective June 16, 2003.

See: 34 N.J.R. 2713(a), 35 N.J.R. 2670(a).

In (a), rewrote the introductory paragraph; in (b), added the last sentence in the introductory paragraph and added 1; added (d).

#### 10:90-8.6 Time of payment

(a) The amount to be allowed on any claim shall, in the absence of known irregularity, be paid as promptly as possible after such amount is determined and, in any event, within 30 calendar days thereafter. The county or municipal agency shall provide notice of its determination to all parties to the funeral contract and to any others who have both a need for the information and the right to receive it. When the county agency is contacted for payment of funeral or burial services before payment is authorized, the agency shall review the case in order to determine if any adjustments need to be made to the decedent's case. Only after appropriate case action has been taken shall payment for the burial/funeral be made.

1. In the event that a determination cannot be made within 10 calendar days after receipt of a petition for payment solely because information about a determination of eligibility for payment of death benefits by one or more other agencies is not available, the county or municipal agency shall make a tentative determination based on the assumption of favorable action by the other agencies. The county or municipal agency will remit the difference within 30 calendar days following the tentative determination. Upon receipt of information about the determination(s) of the other agencies, the county or municipal agency shall make a final determination and remit any balance due to the petitioner within 30 calendar days of the final determination.

Amended by R.1998 d.42, effective January 20, 1998.

See: 29 N.J.R. 3971(b), 30 N.J.R. 389(a).

Amended by R.2003 d.226, effective June 16, 2003.

See: 34 N.J.R. 2713(a), 35 N.J.R. 2670(a).

In (a), added the third and fourth sentences in the introductory paragraph.

#### 10:90-8.7 Irregularities

(a) In the event of a dispute or disagreement about a claim which cannot be readily resolved between the agency and the claimant, the county or municipal agency shall submit the matter to the DFD for review and advice.

(b) In the event that the county or municipal agency becomes aware of the filing of any claim for payment with another person or agency which is in duplication of or is inconsistent with any claim received by the county or municipal agency, the agency shall:

1. Advise the other person or agency of the circumstances and take all appropriate steps to assert and secure the county or municipality's rights;
2. In the absence of a prompt local resolution of the matter, report it to the DFD for review and advice; and
3. Determine whether any violation of a criminal nature may have occurred and, if so, report the matter in writing to the County Prosecutor.

(c) In the event that the county or municipal agency later learns of the existence of resources which should have been available but were not known or made available, the county or municipal agency shall immediately take all appropriate steps to secure its rights to refund or recovery.

Amended by R.1998 d.42, effective January 20, 1998.

See: 29 N.J.R. 3971(b), 30 N.J.R. 389(a).

#### 10:90-8.8 Requirements pertaining to SSI or Medicaid Only recipients

(a) In any instance in which the agency has either a lien or claim on the assets of a decedent by reason of previous assistance granted or payment of burial, the agency shall notify all known holders of the decedent's assets or funds of its interest. It shall request that such funds be remitted to

the agency (up to the amount of the agency's interest), taking such steps as may be necessary to acquire the funds. If, after reimbursement to the agency in full, a surplus remains or will remain, either in agency accounts or the accounts of others, the agency shall determine whether any or all of the surplus funds are the proceeds of assigned life insurance for which there had been a named beneficiary. If so, the agency shall remit to the beneficiary any such funds in its possession. The agency shall notify the Chief, Bureau of Medical Care Surveillance in the Division of Medical Assistance and Health Services, as above, of any other surpluses including those arising from assigned life insurance for which the beneficiary was the estate of the decedent. Benefits from term life insurance are exempt from repayment of prior assistance.

1. When more than one agency is involved either by reason of a claim or by liquidation of resources, the agencies shall distribute the available funds by mutual consent of the directors, in each instance applying resource funds to burial costs before taking reimbursement of assistance costs.

New Rule, R.1998 d.42, effective January 20, 1998.

See: 29 N.J.R. 3971(b), 30 N.J.R. 389(a).

Amended by R.2003 d.226, effective June 16, 2003.

See: 34 N.J.R. 2713(a), 35 N.J.R. 2670(a).

In (a), added the last sentence in the introductory paragraph.

## SUBCHAPTER 9. NOTICES AND HEARINGS IN WFNJ

### 10:90-9.1 Notice to applicant/recipient

(a) The county or municipal agency shall provide adequate notice to an applicant for or recipient of WFNJ benefits of any action to be taken that affects the applicant's or recipient's benefits.

1. An adequate notice is a written or computer generated notice that includes the following:
  - i. The action the county or municipal agency intends to take;
  - ii. The reasons for the intended action;
  - iii. The specific regulations supporting the intended action;
  - iv. An explanation of the individual's right to request a fair hearing;
  - v. An explanation of the circumstances under which assistance is continued if a hearing is requested;
  - vi. An explanation of the requirement to repay assistance received during the period pending the hearing, if the action is upheld;

vii. If the English version of the notice is not available in Spanish, the notice shall contain a sentence in Spanish cautioning the individual that the notice relates to a change in his or her grant and if he or she does not understand the notice, he or she should contact the county or municipal agency; and

viii. The name, address and phone number of the legal services office, where available.

(b) An adverse action is an action to deny an application for assistance, or to terminate, suspend or reduce assistance (including service payments or Medicaid entitlement) or to change the manner or form of payment to a protective, vendor or two-party payment. When the county or municipal agency intends to take an adverse action, it shall give both timely and adequate notice to the recipient.

1. A timely notice is a notice that is mailed to the recipient at least 10 calendar days before the effective date of the action.

(c) When a county or municipal agency decision results in an adverse action to a recipient, there will be no change in the amount of benefits until 10 calendar days after the mailing date of the notice, unless assistance had been granted based on immediate need.

(d) Timely notice may be dispensed with but adequate notice shall be sent not later than the effective date of the action when:

1. The county or municipal agency has information confirming the death of a recipient or of the payee when there is no relative to serve as the new payee;

2. The county or municipal agency receives a clear written statement signed by a recipient that he or she no longer wishes to receive assistance, or that provides information which requires termination or reduction of assistance. In such instances, the recipient must indicate, in writing, that he or she understands that supplying such information will result in a reduction or loss of assistance;

3. The payee has been admitted or committed to an institution, and payments to that individual are no longer permitted under State law;

4. The recipient has been placed in a long term care or intermediate care facility, or is hospitalized;

5. The recipient's whereabouts are unknown and the county or municipal agency mail directed to him or her has been returned by the postal service indicating no known forwarding address. The recipient's benefit must, however, be made available to him or her if his or her whereabouts become known during the payment period of issuance covered by the returned check, unless (d)5i below applies.

i. The recipient moves out-of-State, with apparent intent to remain permanently absent from New Jersey;

6. A recipient has been accepted for assistance in another state and that fact has been established by the county or municipal agency previously providing assistance;

7. An eligible child is removed from the home as a result of a judicial determination, an intervention by the Division of Youth and Family Services or is voluntarily placed in foster care by his or her legal guardian;

8. An additional payment or special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period, including such payments as directed by a final hearing decision;

9. A recipient has incurred a WFNJ sanction and the sanction is progressing to the next level within the sanction (whether first, second or third offense or subsequent sanctions) based on continued refusal to comply;

10. Assistance is reinstated in the corrected amount following suspension;

11. An application for assistance is being denied and no assistance payment has been issued, or assistance had been granted based on immediate need;