

**TITLE 16. CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing is scheduled.

Subject Matter of Proposed Regulations: Preneed funeral arrangements: Unclaimed property.

Section(s) Affected: Amend sections 1267, 1274, 1275, 1277.5, and add section 1267.1 in Article 8 of Division 12 of Title 16 of the California Code of Regulations (CCR)

Specific purpose of each adoption, amendment, or repeal:

1. Background and Statement of the Problem:

The Cemetery and Funeral Bureau (Bureau) licenses, regulates, and investigates complaints against 14 different license categories in California, totaling approximately 13,100 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, hydrolysis facilities, cemetery managers, and private, nonreligious cemeteries. It is the Bureau's duty to enforce and administer the Cemetery and Funeral Act (Chapter 12 (commencing with section 7600) of Division 3 of the Business and Professions Code (BPC)) (Act). (Bus. & Prof. Code, § 7602, subdivision (a)(2).) The Bureau is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (Bus. & Prof. Code, § 7606.)

Title 16, CCR, section 1277 defines "preneed arrangement," "preneed agreement," or "preneed" as "written instruction regarding goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need."

Consumers pay funeral establishments in advance of need for these arrangements pursuant to a trust agreement executed by the funeral establishment, the trustor, and a trustee. The trust agreement requires all monies received to be deposited into a preneed funeral trust within 30 days of receipt by a funeral establishment.

As of July 2022, the Bureau is responsible for oversight of 1,101 licensed funeral establishments throughout California. Of these, 713 report having preneed trust funds totaling approximately \$682 million dollars in consumer funds. Although not all licensed funeral establishments report holding preneeds, all have the authority to hold them, and can start writing preneed contracts and accepting consumer monies at any time. The funeral establishment holds these preneed funds until a consumer's death occurs, and

the goods and services are delivered unless the trustor cancels the contract. The trustee is required to deliver the corpus (contributions received from the trustor) and any income accrued in the trust upon the signature of a majority of the trustees pursuant to BPC section 7737(b). Additionally, funeral establishments may hold unclaimed preneed funds for trustors or beneficiaries whose accounts have not been serviced or canceled. Presently, funeral establishments are not required to take any action on these unclaimed accounts.

In 2021, Assembly Bill (AB) 293 (Kalra, Chapter 514, Statutes of 2021) was enacted, which recast provisions of the Act to require funeral establishments to escheat unclaimed accounts to the state in accordance with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. Beginning January 1, 2023, it requires funeral establishments to make reasonable efforts to contact the beneficiary or trustor of unclaimed preneed funeral trust accounts so these monies can be returned. If the beneficiary or trustor cannot be found, it requires a funeral establishment to report and pay or deliver all abandoned preneed trust accounts, including the corpus of the trust, together with any income accrued in the trust (interest, dividends, and capital gains) at the time of payment or delivery, less a revocation fee, to the State Controller. It also defines requirements for funeral establishments intending to cease operations both for those transferring their preneed funeral agreements to another funeral establishment and those who are not transferring agreements.

Specifically, AB 293 adds section 1518.5 to the Code of Civil Procedure to require that funds maintained in a preneed funeral trust or similar account or plan become payable and distributable under any of the following circumstances:

- (1) The beneficiary of the trust attained, or would have attained if living, 105 years of age.
- (2) Forty-five years have passed since execution of the preneed funeral agreement.
- (3) The holder received notification of the death or presumed death of the beneficiary and has not provided the contracted funeral merchandise or services.
- (4) The preneed funeral trust is a preneed installment trust and the amount due to the funeral establishment from the trustor has not been paid during the three preceding years and neither the trustor nor the beneficiary has communicated with either the funeral establishment or the trustee about the preneed installment trust during that three-year period.

If the trustor or beneficiary has not corresponded with a funeral establishment concerning the property or expressed an interest for more than three years after the funds became payable and distributable, the funds, less a revocation fee pursuant to BPC section 7735, escheat to the State Controller.

AB 293 also amends BPC section 7737 and adds BPC section 7737.1 to provide specific instructions pertaining to procedures, timeframes, and required elements to include in notices that funeral establishments must issue when intending to cease engaging in business operations for both those transferring their preneed agreements to a successor funeral establishment and those not transferring agreements. BPC section 7737.2 has also been added to require the notices to be on forms created by the Bureau and to be posted on its website by January 1, 2023. Additionally, BPC section 7737.2 states the Bureau shall adopt and post regulations on its website regarding the type of proof of notice funeral establishments ceasing operations, and licensed successor establishments, must provide or retain.

There are no existing regulations or forms for use by funeral establishments to notify trustors, trustees, the Bureau, or successor funeral establishments that a funeral establishment is ceasing business operations, that preneed funeral monies are being transferred to a successor funeral establishment, or that preneed funeral monies will escheat to the state under certain conditions. AB 293 mandates necessitate modified reporting and recordkeeping regulations for funeral establishments, which the Bureau is required to promulgate. This proposal would modify existing regulations and establish new regulations.

The Bureau has drafted proposed text to provide: (1) requirements for additional preneed funeral trust recordkeeping for licensed funeral establishments, and refine existing language; and (2) reporting requirements to the Bureau for funeral establishments intending to cease operations. The Bureau has also created the forms it must post on its website for establishments to use to notify affected parties of transfer, cancellation, or escheatment of preneed agreements held by an establishment intending to cease operations.

The Bureau therefore proposes to:

- Amend section 1267 to correct spelling and punctuation errors and to renumber subdivisions as necessary to accommodate the additional requirements in this section relating to the enactment of AB 293. The amendments include additional recordkeeping requirements for all funeral establishments holding preneed funds, those accepting the transfer of another funeral establishment's preneed arrangements, and funeral establishment recordkeeping requirements for escheated accounts.
- Adopt section 1267.1 to require funeral establishments intending to cease business operations to use the form designated by the Bureau pursuant to section 1274, and to describe the additional information funeral establishments must include in notifications to the Bureau.
- Amend section 1274 to add requirements for funeral establishments intending to cease operations by reason of dissolution, closure, sale, or revocation in instances when a funeral establishment is not transferring its preneed funeral

arrangements to a successor establishment, as well as when it is transferring arrangements. When the funeral establishment is not transferring its preneed arrangements and is escheating or cancelling the arrangements the funeral establishment shall use bureau form 12-PACE (New 1/23), Notice of Cancellation of Preneed Funeral Contract or Agreement. When transferring its preneed arrangements, the funeral establishment shall use bureau form 12-PASFD (New 1/23), Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment. The regulation also defines the type of proof of notice the funeral establishment ceasing operations is required to provide.

- Amend section 1275 to correct the punctuation in subdivision (d) by adding a comma after the word “address”, in subdivision (f)(2) by adding a comma after the word “rule”, and in subdivision (h) to correct the spelling of the word “pre-need” to preneed.
- Amend section 1277.5 to make a grammatical correction by inserting the word “be.”

2. Anticipated benefits from this regulatory action:

AB 293 protects consumers and their surviving loved ones by providing mechanisms to locate and claim unused preneed trust funds. Specifically, AB 293 clarifies the party responsible for reporting abandoned trust accounts, outlines dormancy triggers regarding the death or presumed death of the beneficiary, and establishes requirements for communication with owners of preneed funeral trust accounts.

Laws regulating preneed funeral trust accounts only ensure the funds for merchandise and services are available at the time of death. Funeral establishments are not required to have consistent contact with the owners of record or adequately address handling of abandoned trust accounts. AB 293 closes this loophole by bringing unclaimed preneed funeral trust accounts under unclaimed property law. AB 293 enhances consumer protection by establishing added requirements for dormant preneed funeral trust accounts.

Factual Basis/Rationale

The Bureau proposes the following amendments and additions:

Amend Section 1267, Keeping of Preneed Books, Accounts, Contracts, and Records

Title and Introductory paragraph

The Bureau proposes to amend “pre need to “preneed” in four instances in the title and the introductory paragraph of the regulation.

The amendment is necessary to correct the spelling of “pre-need,” as “preneed” is the predominant spelling of the term.

Subdivision (b)

The Bureau proposes to add “all disbursements made, and” to subdivision (b).

Currently, section 1267(b) requires all payments received to be included in an account. The amendment is necessary to ensure that in addition to all payments received, all transactions, including disbursements, from each individual trustor or beneficiary ledger account are documented in the account. This amendment makes subdivision (b) consistent with subdivision (e), which requires the establishment’s cash disbursements journal to show each withdrawal and be totaled monthly.

Consistent, timely, and correct recording of both receipts or additions, as well as disbursements or subtractions, in every trustor’s account is necessary to ensure the funeral establishment is maintaining accurate financial records for every preneed account it is responsible for.

Subdivision (c)

The Bureau proposes to adopt a new subdivision (c) to provide “For a licensed, successor funeral establishment that has accepted the transfer of preneed contracts and arrangements from another funeral establishment pursuant to Section 7737(c)(1) of the Code, a copy of the written notice to all beneficiaries, trustors, legal representatives of the beneficiaries or trustors, or trustees (“consumers”) associated with the preneed funeral agreements required by subdivision (c) of Section 7737.1(a)(4)(B) of the Code and proof the notice was provided as defined in Section 1267.1.”

BPC section 7737.1 provides a funeral establishment that intends to cease engaging in business operations by reason of dissolution, closure, sale, or revocation and that intends to transfer its preneed funeral agreements to a licensed successor funeral establishment, pursuant to section 7737(c), must provide written notice, as described in section 7737.1(a)(2). (Bus. & Prof. Code, § 7737.1, subd. (a)(1).) This amendment is necessary to require funeral establishments who have accepted a transfer of preneed agreements to establish and maintain a copy of this notice and proof it was sent so the Bureau can verify that proper notice of the transfer was given in accordance with BPC section 7737.1(a)(2) and section 1267.1. Maintaining a copy of the notice provides proof the beneficiaries, trustor, legal representative of the beneficiaries or trustors, or trustees “consumers” have been notified that their preneed agreements have been transferred to a successor funeral establishment.

Subdivision (d)

The Bureau renumbers former subdivision (c) as subdivision (d) based on the addition of a new subdivision (c).

The Bureau deletes “shall” because the word is redundant based on the use of the word “shall” earlier in the sentence.

The Bureau corrects the misspelling of the word “totalled” by striking one of the “/s.” While both spellings are technically correct, the use of one “l” is more common in American English.

Subdivision (e)

The Bureau renumbers former subdivision (d) as subdivision (e) based on the addition of a new subdivision (c).

The Bureau adds an “s” to “disbursement” to correctly make it plural and consistent with subdivision (b).

The Bureau strikes the word “will” and replaces it with “shall” to indicate the information is required and to maintain consistency with other sections of the regulation.

The Bureau adds “and be totaled monthly” to require the cash disbursements journal to be totaled monthly and to maintain consistency with subdivision (d) which requires the cash receipts journal to be totaled monthly. In addition, monthly totaling of the cash disbursements journal ensures timely posting to the general ledger as required under renumbered section 1267(g), which helps the funeral establishment maintain accurate and up-to-date records of its preneed accounts.

The Bureau strikes “for an investment in compliance with 1263 and each disbursement to the funeral establishment for a serviced account or to the individual trustor on a canceled account, and all withdrawals for documented expenses” because this portion of the subdivision is redundant. Changing the subdivision to state “A cash disbursements journal which shall show each withdrawal and be totaled monthly” simplifies the language and communicates that each and every withdrawal from the trust must be recorded in the cash disbursements journal.

Consistent, timely, and comprehensive recording of all transactions is necessary to ensure the funeral establishment is maintaining accurate financial records for every preneed account it is responsible for.

Subdivisions (f), (g), and (h)

The Bureau renumbers these subdivisions from (f), (g), and (h), to (g), (h), and (i) based on the addition of a new subdivision (c).

Additionally, in new subdivision (g), the Bureau amends the spelling of “trustors” to “trustors, as this is the correct spelling of the term.

Subdivision (j)(1)

The Bureau strikes “Division 3, Chapter 12, Article 5.5” because this information is not needed to retrieve the cited Business and Professions Code. This deletion will improve readability.

Subdivision (j)

The Bureau has re-numbered the former subdivision (i) as subdivision (j) based on the addition of a new subdivision (c).

The Bureau corrects the misspelling of the word “cancelled” by striking one of the “/s.” While both spellings are technically correct, the use of one “l” is more common in American English.

Subdivision (j)(1)

The Bureau proposes to add “monies received.” The Bureau requires this information to be included in a cancelled account to ensure the record includes all payments received from the trustor prior to the cancellation.

The Bureau adds commas after “earned” and “taken” for grammatical correctness and to improve readability.

The Bureau strikes “Division 3, Chapter 12, Article 9,” because this information is not needed to retrieve the cited Business and Professions Code. This deletion will improve readability.

The Bureau proposes to add “which shall include a copy of the individual trustor or beneficiary account record” because the funeral establishment may maintain trustor records in summary form which may not include all transactions for each individual trustor. This would hinder the Bureau’s ability to verify the total amount of preneed trust funds the funeral establishment holds. Verification through the Bureau’s audit processes consists of tabulating and reviewing all of the individual trustor account balances to ensure that all consumers’ funds held by the establishment are being accurately reported to the Bureau. This will assist the Bureau in fulfilling its mandate of consumer protection.

Subdivision (k)

The Bureau has re-numbered the former subdivision (j) as subdivision (k) based on the addition of a new subdivision (c).

The Bureau proposes to add “Records for accounts held by licensed funeral establishments that have escheated preneed accounts in accordance with the Unclaimed Property Law subject to the code of Civil Procedure section 1518.5 (a) through (c), shall include a copy of the following documents:”.

This amendment is necessary to introduce the recordkeeping requirements for accounts that have been escheated to the state in accordance with the Unclaimed Property Law set forth in Code of Civil Procedure section 1518.5.

Subdivision (k)(1)

The Bureau proposes to add as subdivision (k)(1), “Proof of remittance of funds in accordance with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the code of Civil Procedure). For this section “proof” means bank statements and if available, canceled checks.”

The Unclaimed Property Law provides that preneed funeral trust monies escheat to the State Controller if for more than three years after the funds become payable and distributable pursuant to Code of Civil Procedure section 1518.5(b), “as established from the records of the funeral establishment or trustee, the beneficiary or trustor has not corresponded electronically or in writing concerning the property or otherwise indicated an interest, as evidenced by a memorandum or other record on file with the funeral establishment or trustee”.

This subdivision is necessary because the Bureau requires proof of remittance of funds to ensure they have been received by the State Controller. The remittance releases the funeral establishment from its preneed obligations to the trustor and proves the funds are no longer in the funeral establishment’s possession. For this section, “proof” means bank statements and if available, canceled checks.

Subdivision (k)(2)

The Bureau proposes to add as subdivision (k)(2), “Record of the final total escheated for each account. This record shall be in the form of an individual trustor or beneficiary ledger account as specified in Section 1267(b) and must include the date of remittance.”

This subdivision is necessary for the Bureau to verify the individual trustor accounts have been included in the total amount of a given escheatment transaction to the State Controller.

Subdivision (l)

The Bureau has re-numbered the former subdivision (k) as subdivision (l) based on the addition of a new subdivision (c).

The Bureau proposes to strike the second “/” in “cancelled,” add commas after “cancelled,” “serviced,” and “service, delete “or” after “cancelled,” add “, or escheated” after “serviced,” and add “or escheatment” after “cancellation.”

The Bureau corrects the misspelling of the word “cancelled” by striking one of the “/s.” While both spellings are technically correct, the use of one “l” is more common in American English. Adding commas after “cancelled,” “serviced,” and “service” and deletion of the word “or” after “cancelled,” and the addition of “or escheated” after “serviced,” and “or escheatment” after “cancellation” are necessary for grammatical correctness and to improve readability.

Add section 1267.1, Funeral Establishments Intending to Cease Business Operations

Subdivision (a)

The Bureau proposes to add subdivision (a) to provide “A funeral establishment intending to cease engaging in business operations and transfer its preneed funeral agreements to a licensed successor funeral establishment under Sections 7737 and 7737.1 of the Code shall do all of the following.”

The adoption of subdivision (a) is necessary to introduce the instructions for funeral establishments intending to cease engaging in business operations and transfer its preneed funeral agreements to a licensed successor funeral establishment.

Subdivision (a)(1)

The Bureau proposes to adopt subdivision (a)(1) to specify that “At least 60 days prior to the cessation of operations, provide each beneficiary, trustor, or legal representative of the beneficiary of each of the establishment’s preneed agreements, or each trustor holding the preneed funeral trusts associated with each preneed funeral agreement (“consumers”) a written notice that their preneed funeral agreements will be transferred to the licensed successor funeral establishment using the form 12-PASFD (New 1/23) required by subdivision (c) of Section 1274,”

BPC section 7737.1 requires funeral establishments intending to cease business operations and transfer their preneed agreements to a successor funeral establishment to provide a notice to affected parties. BPC section 7737.2 authorizes the Bureau to create a form for providing the written notice. The adoption of subdivision (a)(1) is necessary to provide the form funeral establishments intending to cease business operations and transfer their preneed agreements to a successor funeral establishment must provide to affected parties. This regulation will reference the required form.

The form will contain the following:

1. Title of the form, "NOTICE OF TRANSFER OF PRENEED CONTRACT OR AGREEMENT TO SUCCESSOR FUNERAL ESTABLISHMENT"

This is necessary to identify the form funeral establishment funeral establishments intending to cease business operations and transfer their preneed agreements to a successor funeral establishment shall use to provide notice to affected parties. This provides a uniform procedure for this type of notification for funeral establishments to use across the industry.

2. Recipients of the notice, "NOTICE IS PROVIDED TO: Beneficiary/Trustor and/or Legal Representative of Beneficiary/Trustor:" and "Trustee"
3. Explanatory paragraph for funeral establishment to fill in the following: "That (name of funeral establishment) is ceasing operations as of (date) and transferring contract or agreement number _____ to the following licensed, successor funeral establishment for fulfillment:"

Items number (2) and (3) are needed to fulfill BPC section 7737.1(a) that requires funeral establishments to provide notice to affected parties that the funeral establishment is ceasing operations as of (date) and transferring contract or agreement number to the successor funeral establishment for fulfillment. The form provides space for the funeral establishment to list the required recipients, the effective of the transfer, and to identify the successor funeral establishment. This ensures the appropriate recipients have been notified, the successor funeral establishment has been identified, and the contract information has been provided.

4. Name of Successor Funeral Establishment, license number, address, city, state, zip code, telephone number and optional website and email.

The Bureau asks the funeral establishment to identify the successor funeral establishment that will be responsible for the fulfillment of the preneed agreement by name, license number, address, city, state, zip code, telephone number and optional website and email. This information enables the preneed agreement holder to communicate efficiently with the successor funeral establishment.

5. Notification of the following: "If you do not wish to have your preneed contract or agreement transferred, you may cancel your agreement up to sixty (60) days after receipt of this notice by contacting the trustee listed on agreement, this funeral establishment using the contact information below, or the licensed successor funeral establishment using the contact information provided above."

BPC section 7737.1(a) requires the funeral establishments to notify the beneficiaries, trustors, or legal representatives of the beneficiaries or trustors of the preneed funeral agreements, and the trustees holding the preneed funeral trusts associated with the preneed funeral agreements at least 60 days prior to the cessation of operations, that the preneed agreement may be canceled. Item (5) is necessary to notify the consumer of this right.

6. Form requires “Written Certification of Service by Mail” with the following: “On [insert date], I sent an original copy of this notice by regular mail to the following person, addressed as set forth below:”
7. [Insert the following: Name of Person to Whom Notice was mailed, Address, City, Zip Code].
8. Paragraph “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this (date) of [insert month and year].”
9. Signed by, Title and Print Name.

BPC section 7737.1(a)(4)(B) requires the successor funeral establishment to retain a copy of the notice provided and proof that the notice was provided. The Bureau proposes that items (6) through (9), “Written Certification of Service by Mail,” and name, address, city, and zip code of person to whom the notice was mailed be included on the form. This requirement provides a mechanism for the funeral establishment to certify that all statements, answers, and representations are true, complete, and accurate, and the signer is authorized by the funeral establishment. This serves as proof that the notice was provided to the affected parties.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

10. Contact information for the funeral establishment. Name of Funeral Establishment and Contact Person, Address, City, State, Zip Code, Telephone Number and optional Website and Email.

Item (10) is necessary so that recipients may easily contact the funeral establishment issuing the notice.

11. Footer referencing Business and Professions Code section 7737.1(a) that requires this notice to be provided to the beneficiaries

Finally, item (11) includes the text of BPC section 7737.1(a) to inform the recipients of the applicable sections of law for the notice.

Subdivision (a)(2)

The Bureau proposes to adopt subdivision (a)(2) to provide “Prior to the cessation of business operations, provide the bureau with a copy of the notice provided to consumers specified in subdivision (a)(1) and a list of all preneed funeral agreements transferred to the licensed successor funeral establishment[.]”

Pursuant to BPC section 7737.1(a)(3), the funeral establishment ceasing business operations shall provide the bureau with a copy of the notice and a list of all preneed funeral agreements transferred to the licensed successor funeral establishment prior to the cessation of business operations. The adoption of subdivision (a)(2) is necessary to identify the notice and the list of all preneed agreements that are required to be provided. The list of all preneed agreements transferred provides a transparent record of the disposition of accounts which the funeral establishment is no longer responsible for servicing because they have been transferred to a successor funeral establishment. Without this list, the Bureau has no way of tracing or verifying that these preneed accounts have been serviced, canceled, or escheated in accordance with current law.

Subdivision (a)(3)

The Bureau proposes to adopt subdivision (a)(3) to provide “Prior to the cessation of business operations, provide the licensed successor funeral establishment with a copy of the notice to consumers specified in subdivision (a)(1) and proof that the notice was provided to the consumers as specified in this section.”

This subdivision is necessary to provide proof to the licensed successor funeral establishment that the owners of the preneed agreements which are being transferred to them have been properly notified.

Subdivision (b)

The Bureau proposes to adopt subdivision (b) to provide “A funeral establishment intending to cease engaging in business operations without a transfer of the preneed funeral agreements to a licensed, successor funeral establishment shall give written notice to each beneficiary, trustor or trustee associated with the establishment’s preneed funeral agreements of the cancellation of their preneed funeral agreements at least 60 days prior to the cessation of business operations using the form 12-PACE (New 1/23) in compliance with subdivision (b) of Section 1274. At least 60 days prior to the cessation of business operations, copies of the notice provided to each beneficiary, trustor or trustee required by this subdivision shall also be provided to the bureau by regular mail.”

The adoption of subdivision (b) is necessary to provide a consistent and straightforward process for funeral establishments to notify trustors, trustees, and the Bureau of

cessation of business and planned cancellation or escheatment of its preneed funeral arrangements, and steps trustors need to take regarding their accounts when the funeral establishment is not transferring its preneed arrangements to a successor funeral establishment. In addition, the requirement to provide the Bureau with a copy of each notice sent 60 days prior to the cessation of business operations corresponds with the 60-day requirement for the funeral establishment to provide the notice to other affected parties. Submitting copies of the notices to the Bureau by regular mail provides documentation that the funeral establishment intending to cease business operations has given the required notice to all affected parties.

Subdivision (c)

The Bureau proposes to adopt subdivision (c) to provide “‘Proof that the notice was provided’ shall mean proof of service of any notice required by this section to consumers by mail by completion of a ‘written certification of service by mail’ section on the form 12-PASFD (New 1/23) or form 12-PACE (New 1/23), whichever is applicable, incorporated by reference in Section 1274.”

BPC section 7737.2(b) authorizes the bureau to establish regulations regarding the type of proof of notice that the funeral establishment is required to provide or retain. The adoption of subdivision (c) is necessary to define the term “proof.”

This requirement provides a mechanism for the funeral establishment to certify that all statements, answers, and representations are true, complete, and accurate, and the signer is authorized by the funeral establishment. This serves as proof that the notice was provided to the affected parties.

Amend section 1274, Inability to Perform

Subdivision (a)

The Bureau numbers the only existing paragraph in the regulation as subdivision (a) based on the addition of new subdivisions (b) and (c).

The Bureau proposes to amend “pre need to “preneed.” The amendment is necessary to correct the spelling of “pre-need,” as “preneed” is the predominant spelling of the term.

Subdivision (b)

The Bureau proposes to add subdivision (b) to provide “If a funeral establishment intends to cease engaging in business operations by reason of dissolution, closure, sale, or revocation, without a transfer of preneed funeral agreements to a licensed, successor funeral establishment, it shall complete bureau form 12-PACE (New 1/23), Notice of Cancellation of Preneed Funeral Contract or Agreement, which is hereby

incorporated by reference and provide the completed form to each consumer as defined in Section 1267.1 by regular mail to the last known address provided by the consumer to the funeral establishment.”

Subdivision (b) is necessary to provide a consistent and straightforward process for funeral establishments to notify trustors, trustees, and the Bureau of cessation of business and planned cancellation or escheatment of its preneed funeral arrangements, and steps trustors need to take regarding their accounts when they are not transferring preneed arrangements to a successor funeral establishment. Funeral establishments must use Bureau form 12-PACE (New 1/23), “Notice of Cancellation of Preneed Funeral Contract or Agreement” for the notification, which is incorporated in the regulation by reference.

BPC section 7737.2 requires the Bureau to create and post on its internet website the form funeral establishments are required to provide or retain for purposes of BPC section 7737.1.

The form is necessary to provide notice to the beneficiary or trustor and trustee the funeral establishment) is ceasing business operations and requires the date of cessation on the form. It also informs the recipient that the preneed funeral contract or agreement (identified by number) will be canceled and the funds, including the accrued income, will be escheated to the California State Controller’s Office unless they inform the trustee named on the form in writing within six months of receiving the notice that they wish the funds to be returned to them.

The form further provides space for the funeral establishment to identify the trustee(s) name, address, telephone number, email, and website (optional), so they may be contacted, if needed, by the trustor.

The form requires a written certification of service by mail to be completed by the funeral establishment. It provides blanks for the date the notice was sent, the name, address, city, state, and the zip code of the person to whom notice was mailed. The written certification of service by mail serves as proof the funeral establishment provided the notice as required pursuant to BPC section 7737.2.

The form concludes with a statement certifying all information provided is true and correct under the penalty of perjury. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: “The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith.”].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Bureau.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

Finally, the form includes blanks for the name of the funeral establishment, its address, city, state, and zip code, telephone number, and optionally, its website and email address. This information is included so beneficiaries and trustors or trustees can contact the funeral establishment regarding their preneed agreement if necessary. In addition, the footer provides the text of BPC section 7737.1(a) to inform the recipients of the applicable sections of law for the notice.

Subdivision (c)

The Bureau proposes to add subdivision (c) to provide “If a funeral establishment intends to cease engaging in business operations by reason of dissolution, closure, sale, or revocation, and the preneed agreements are being transferred to a licensed successor funeral establishment, it shall complete bureau form 12-PASFD (New 1/23), Notice of Transfer of Preneed Contract or Agreement to

Successor Funeral Establishment, which is hereby incorporated by reference, and provide the completed form to each beneficiary, trustor, or trustee associated with the establishment’s preneed funeral agreements by regular mail to the last known address provided by the beneficiary, trustor, or trustee to whom the notice is addressed.”

This subdivision is necessary to provide the process for funeral establishments to follow when they cease engaging in business operations by reason of dissolution, closure, sale, or revocation, and the preneed agreements are being transferred to a licensed successor funeral establishment. Funeral establishments must use Bureau form 12-PASFD, titled “Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment.”

BPC section 7737.2 requires the Bureau to create and post on its internet website the form funeral establishments are required to provide or retain for purposes of BPC section 7737.1(a)(4). Section 7737.1(a)(4)(A) provides “[t]he funeral establishment ceasing business operations shall provide the licensed successor funeral establishment with a copy of the notice provided, and proof that the notice was provided, to the beneficiaries or trustees, or their legal representatives, prior to the cessation of business operations.” The proof required by section 7737.1(a) must comply with the regulations adopted by the bureau pursuant to Section 7737.2.” (Bus. & Prof. Code, § 7737.1(a)(4)(C).)

The form serves as a notice to each beneficiary, trustor, and/or legal representative of the beneficiary or trustor the funeral establishment is ceasing operations. The form requires the funeral establishment to state a date they are ceasing operations and the funeral contract or agreement number.

The form provides blanks for the funeral establishment to provide the name of the successor funeral establishment, its Bureau-issued license number, address, city, state, and zip code, telephone number, and optionally, its website and email address. This information is included so beneficiaries and trustors or their legal representatives can contact the successor funeral establishment regarding their transferred preneed agreement.

The form includes a notice stating, "If you do not wish to have your preneed contract or agreement transferred, you may cancel your agreement up to sixty (60) days after receipt of this notice by contacting the trustee listed on your agreement, this funeral establishment using the contact information below, or the licensed successor funeral establishment using the contact information provided above." The form provides this notice so the trustor knows how to proceed if they do not want the named successor funeral establishment to service their preneed agreement.

The footer of the form states "Pursuant to Section 7737.1(a) of the Business and Professions Code, this notice shall be provided to the beneficiaries, trustors, or legal representatives of the beneficiaries or trustors of the preneed funeral agreements, and the trustees holding the preneed funeral trusts associated with the preneed funeral agreements at least 60 days prior to the cessation of operations." This statement is included on the form so the trustor knows the timeframe allotted for taking action on their preneed agreement.

The second page of the form requires a written certification of service by mail to be completed by the transferring funeral establishment. It provides blanks for the date the notice was sent, the name, address, city, state, and the zip code of the person to whom notice was mailed. The written certification of service by mail serves as proof the funeral establishment provided the notice as required pursuant to BPC section 7737.2.

The form concludes with a statement certifying all information provided is true and correct under the penalty of perjury. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: "The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith."].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Bureau.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

Finally, the form includes blanks for the name of the transferring funeral establishment, its address, city, state, and zip code, telephone number, and optionally, its website and email address. This information is included so beneficiaries and trustors or their legal representatives can contact the transferring funeral establishment regarding their transferred preneed agreement if necessary.

Amend section 1275, Requirements of Preneed Trust Agreements

Subdivision (d)

The Bureau proposes to add a comma after “address” for grammatical correctness.

Subdivision (f)(2)

The Bureau proposes to add a comma after “rule” for grammatical correctness.

Subdivision (h)

The Bureau proposes to amend “pre need to “preneed” in two instances. The amendment is necessary to correct the spelling of “pre-need,” as “preneed” is the predominant spelling of the term.

Amend section 1277.5, Disclosure of Preneed Funeral Agreement

Subdivision (c)

The Bureau proposes to amend section 1277.5(d) by adding the word “be” to correct grammar.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- AB 293 (Kalra, Chapter 514, Statutes of 2021)
- Advisory Committee Meeting Minutes, May 19, 2022

Business Impact:

The Bureau has made the initial determination the proposed regulations will not have statewide adverse economic impact directly affecting businesses, including the inability of California businesses to compete with businesses in other States.

This initial determination is based on the following facts:

- The Bureau has determined the only types of businesses that may be affected are funeral establishments holding preneed trust funds for consumers which are already licensed by the Bureau.
- As of July 2022, the Bureau is responsible for 1,101 licensed funeral establishments throughout California. Of these, 713 report having preneed trust funds. The Bureau has determined this number is insufficient to create a statewide adverse economic impact.
- Existing law requires licensed funeral establishments to maintain records of preneed funeral agreements. The proposed recordkeeping, reporting, and information requirements add to existing regulations and are not anticipated to add significant additional costs to the funeral establishments.

Economic Impact Assessment:

This Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because this proposed regulation does not affect the day-to-day operations of funeral establishments. It imposes a nominal amount of effort to meet the added recordkeeping, notification, and other requirements that are minor and absorbable.
- It will not create new business or eliminate existing businesses within the State of California or the expansion of business currently doing business within the State of California. The proposed regulations are only applicable to funeral establishments that are already licensed by the Bureau.
- This regulatory proposal will affect the health and welfare of California residents because funeral establishments holding consumer monies in preneed trust that should have been escheated will now be rightfully returned to the trustor or beneficiary. In addition, the regulations will provide more checks and balances to protect consumers when funeral establishments are ceasing business operations by ensuring that all preneed funds have been fully accounted for by cancellation, transfer, or escheatment.

- This regulatory proposal does not affect worker safety because it does not relate to worker safety.
- This regulatory proposal does not affect the state's environment because the regulations have no impact on the environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected or accepted:

Alternative 1: Do nothing. This alternative was rejected because it would make the Bureau non-compliant with the statutory requirements of AB 293.

Alternative 2: Adopt new regulations and amend existing regulatory sections. This alternative was accepted as the most efficient option for the Bureau to enact AB 293.

Incorporated by Reference:

The following forms have been incorporated by reference:

Notice of Cancellation of Preneed Funeral Contract or Agreement, 12-PACE (New 1/23).

Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment, 12-PASFD (New 1/23).

The forms would be cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. The forms will be available on the Bureau's website and hard copies will be available from the Bureau upon request.