

House Consumer Affairs Committee
Hearing on Senate Bill 874
Mr. Lawrence Miller, CEO, StoneMor

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House Consumer Affairs Committee
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Mr. Lawrence Miller, CEO, StoneMor

Good morning, Chairman Godshall, Chairman Daley and members of the committee. Thank you for the opportunity to discuss Senate Bill 874, and why the legislation is anti-consumer and anti-competitive.

First, I would like to share with the committee that StoneMor has an outstanding reputation among state regulators. To date, we have worked closely with state officials in Indiana, Michigan, Ohio and Tennessee to rescue cemeteries suffering severe financial difficulties.

In Pennsylvania, what you're being asked is to intervene in a turf war. This bill is not designed to protect the consumer, but rather to protect a handful of funeral directors from Southeast Pennsylvania, who, prior to a lease being entered into by the Archdiocese of Philadelphia and StoneMor, enjoyed a monopoly within the diocesan cemeteries on the sale of vaults and caskets to countless Catholic families throughout Philadelphia and its suburban counties.

The attacks on StoneMor in this turf war started long before the lease was executed. When the Archdiocese of Philadelphia announced an agreement had been reached with StoneMor on September 26, 2013, funeral directors arranged a flurry of letters and phone calls to the Archdiocese, severely criticizing StoneMor. It's important to note, prior to closing, StoneMor insisted on obtaining final approval from both the Pennsylvania Attorney General's office and the Orphans Court, which found that this agreement was in the best interests of the charitable mission of the Archdiocese cemeteries and ultimately the citizens of the Commonwealth.

Upon closing the deal, a far more aggressive and expensive attack campaign was launched by funeral directors in an attempt to distort our company's record and impugn our good reputation. What we saw was reprehensible and dishonest in the form of:

- Negative letters to families;
- Negative newspaper ads;
- Negative TV commercials;
- Negative comments on individual funeral home websites;
- Negative comments on local and state funeral association websites; and
- Negative comments to grieving families.

We also have firsthand knowledge that funeral directors are being less than honest with their customers. Attached is an executive report prepared by an independent shopper covering 13 funeral firms in the Philadelphia area. You will see negative comments regarding StoneMor and a deliberate attempt to direct families away from Archdiocese cemeteries. Apparently, funeral directors who should be promoting Catholic burial rite put their economic interests first.

Here are just two examples:

Joseph A. Quinn Funeral Home of Philadelphia told the shopper, "(StoneMor) had a very high pressure, unethical sales team. Joe told me all the local funeral homes were banning together and were doing everything possible to make them fail."

The shopper said he was told the following during a visit with Tomlinson Funeral Home in Bensalem: "StoneMor had conducted very bad business. He said that this company had done something similar in the Detroit area, and they've actually gone bankrupt."

Of course, the Tomlinson Funeral Home is owned and supervised by Sen. Tommy Tomlinson, who is a co-sponsor of this legislation and has worked aggressively for its passage.

Since I know you've undoubtedly been told this same inaccurate story about the Archdiocese of Detroit, please allow me set the record straight: The Archdiocese of Detroit and StoneMor have a solid relationship.

Like the Archdiocese of Philadelphia, Detroit had financial difficulties. To help address them, StoneMor agreed to take over the operation of its cemeteries. However, both parties agreed at the outset that if and when their financial condition improved, the Archdiocese could elect to regain control. I'm happy to report the Archdiocese was able to cure its financial difficulties and chose to regain control.

So, how can I prove to you that the Archdiocese of Detroit holds StoneMor in high regard? Well, Detroit's archbishop and the CFO both gave positive referrals of StoneMor to the Archdiocese of Philadelphia.

Frankly, I find it unfortunate I even have to share this, but it's been clear from the beginning that certain interests will stop at nothing – and say anything – to kill competition with no regard whatsoever to consumer protection. Frankly, I find it disturbing a Senate committee with the words "consumer protection" in its name released this bill.

Please note throughout this battle the negative references are directed almost exclusively against StoneMor, not cemeteries in general. Again, reinforcing this is a turf war, not the promotion of consumer protection or competition.

This committee should ask for evidence supporting the need for this legislation because there is none. The Pennsylvania Real Estate Commission, the Federal Trade Commission and the Pennsylvania Attorney General's office have found no evidence of improper sales being conducted by cemeteries and certainly no increase within the last few years.

So, why then would this bill be written to prevent private cemeteries from preinstalling vaults and caskets? Because they are the only two products where StoneMor actively competes with funeral homes.

The National Cemetery Administration (NCA) considers preinstalling vaults to be a preferred practice. A copy of their position paper is attached. The paper points out there are economic benefits, as well as safety and health benefits. So, according to this legislation, what apparently is good enough for Arlington National Cemetery should be prohibited in Pennsylvania. Of course, this legislation ignores the fact that the Washington Crossing National Cemetery in Newtown, Bucks County, is currently preinstalling approximately 15,000 burial vaults.

Let me briefly explain the practice of preinstalling vaults. When placed in the ground, concrete cures and strengthens for up to 20 years. We only install if the customer approves in writing and we "warrant" the condition of the vault and leave money in the trust fund to cover any issue at the time of use.

You should know, prior to executing an agreement with the Archdiocese, StoneMor had been preinstalling vaults for over 40 years in the Philadelphia area. Apparently, it's only a problem now because we have leased the Archdiocese cemeteries.

The funeral directors complain it is not a level playing field, yet they have repeatedly been invited to participate under the current Pre-Need law. Or, they can simply hire a third-party agent, have them licensed under the Pre-Need statutes and follow the same rules we do. We don't mind the competition, and as we all know, more competition leads to lower prices for consumers.

Some years ago a number of funeral directors started selling pre-need funerals and trusting 70 percent, and their own board stopped them. Isn't that interesting?

We're here because funeral directors believe Pennsylvania needs stricter regulation.

But, according to the FTC, the current rules are already too restrictive and the proposed bill would "appear to impose additional restrictions and requirements on cemeteries.... these provisions could lessen competition resulting in potentially higher prices and fewer options for consumers without countervailing benefits to consumers."

Funeral directors also want the cemeteries to follow the FTC rules and regulations that govern funeral directors. It's important to note, the rules were established because the FTC found widespread unfair and deceptive practices by funeral homes. Importantly, the FTC noted it did not find evidence that cemeteries and crematories engaged in these types of abuses.

During the most recent review of the funeral rule in 2008, the FTC again chose not to apply the funeral rule to cemeteries based on the rule review record. Why? Because the FTC found insufficient evidence that commercial cemeteries and third-party sellers of funeral goods are engaged in widespread unfair or deceptive acts or practices. The only ones deemed unfair and deceptive in the FTC findings were funeral directors.

Each year, the FTC uses mystery shoppers to test the compliance with the rule. Sadly, in 2014, there were more violations (almost 27 percent of all funeral homes) than when the rule was originally adopted. The record of the funeral directors who primarily service the Archdiocese cemeteries is not much better. Nine have been the subject of disciplinary issues by the Pennsylvania Funeral Board.

Funeral directors are asking you to ignore all of this, and make cemeteries pay for their abuses.

And make no mistake: Pennsylvania's working families would pay for their abuse, too. The immediate impact, if this bill passes, would be the loss of hundreds of jobs created by Pennsylvania's cemeteries in southeastern Pennsylvania alone.

Hard-working families also would be denied the ability to select what goods and services they truly want. And less competition, as the FTC concluded, would cost them more, and most families couldn't afford such a burden. We know this because 7 out of 10 pre-need buyers have household incomes less than \$75,000, and half earn less than \$50,000.

I have also included a recently prepared economic study for New Jersey. New Jersey prohibits cemeteries from selling vaults and caskets and, because of this, consumers are paying \$1,250 more for these items.

In closing, I would like to offer two suggestions for the committee's consideration:

- Funeral homes should apply for licensing under the Pre-Need Act. Don't stifle competition. Encourage it and, in doing so, protect jobs and consumers by driving down costs.
- Lower the trusting percentage from the arbitrary 70 percent of the selling price (set by funeral director special interests) to 110 percent of the cost, or allow a performance bond to be used as an alternative to trusting.

Thank you again for your time. I would be happy to answer your questions.

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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Staff Provides Comments to Pennsylvania General Assembly on Proposals Affecting Pre-Need Cemetery Sales

FOR YOUR INFORMATION

October 20, 2015

TAGS: [Funerals](#) | [Bureau of Competition](#) | [Bureau of Consumer Protection](#) | [Bureau of Economics](#) | [Office of Policy Planning](#) | [Competition](#)

Federal Trade Commission staff has submitted a [comment to Pennsylvania State Representative Robert W. Godshall](#) in response to his request for the FTC's views on legislative proposals that would further regulate the pre-need sale of cemetery and funeral merchandise and services in Pennsylvania.

The comment, submitted by staff of the FTC's Office of Policy Planning and the Bureaus of Economics, Competition and Consumer Protection, concerns SB 874 and HB 1364, as well as SB 1491, a proposed bill from the 2014 legislative session. All bills would amend Pennsylvania's Cemetery and Funeral Merchandise Trust Fund Law.

"The bills, if enacted, appear to impose additional restrictions and requirements on cemeteries that engage in the pre-need sale of cemetery goods," the comment states. "These provisions could lessen competition, resulting in potentially higher prices and fewer options for consumers, without countervailing benefits to consumers."

The staff comment addresses three main issues: (1) prohibitions on the pre-need delivery and installation of cemetery merchandise, (2) requirements for merchandise trust funds and refunds when a consumer breaches a pre-need contract, and (3) compliance with the FTC's Funeral Rule requirements for the sale of merchandise by sellers not covered by the Rule versus specifying state-specific requirements governing such sellers and sales.

The comment notes that prohibiting pre-need warehousing and installation of certain cemetery merchandise could discourage cemeteries from offering these products to consumers as part of a pre-need sale, which could lessen competition between cemeteries and funeral homes, as well as between pre-need and at-need sellers. Such a prohibition also could forestall reported economic and environmental benefits associated with the pre-need installation of burial vaults and lawn crypts.

The staff comment encourages the General Assembly "to consider carefully what percentage amounts should be set aside in merchandise trust funds and whether alternatives such as surety bonds may be equally effective in protecting consumers from performance defaults by sellers." The comment also encourages the legislature to

refrain from a blanket adoption of the FTC's Funeral Rule. The Rule was written to address specific problems in the funeral home industry and does not apply to most cemeteries, and some of its specific disclosures could be confusing if made by cemeteries. The staff recommends instead that any legislative proposals specify the disclosures or prohibitions that the General Assembly thinks are "necessary to address evidence of specific problematic sales tactics by cemeteries engaged in the sale of pre-need contracts."

The Commission vote approving the comment was 4-0. (FTC File No. V150014; the staff contact is Patricia Schultheiss, Office of Policy Planning, 202-326-2877)

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Economics
Bureau of Competition
Bureau of Consumer Protection

October 20, 2015

The Honorable Robert W. Godshall
Majority Chairman, House Consumer Affairs Committee
Pennsylvania House of Representatives
150 Main Capitol Building
P.O. Box 202053
Harrisburg, PA 17120-2053

Dear Chairman Godshall:

The staffs of the Federal Trade Commission's ("FTC") Office of Policy Planning and the Bureaus of Economics, Competition, and Consumer Protection¹ appreciate the opportunity to respond to your invitation for comments on several legislative proposals that would further regulate the pre-need sales of cemetery and funeral merchandise and services. At the time of your request, no bills had been introduced in the Pennsylvania General Assembly, and you had requested that we comment on SB 1491, a proposed bill from the 2014 legislative session, as well as on alternative provisions being considered.² After we received your request for comments, two separate, but similar, bills were introduced in the Pennsylvania General Assembly: SB 874 and HB 1364 ("bills").³ Both bills would amend the current Pennsylvania law, known as the "Cemetery and Funeral Merchandise Trust Fund Law."⁴ The bills, if enacted, appear to impose additional restrictions and requirements on cemeteries that engage in the pre-need sale of cemetery goods. These provisions could lessen competition, resulting in potentially higher prices and fewer options for consumers, without countervailing benefits to consumers.

¹ This letter expresses the views of the Federal Trade Commission's Office of Policy Planning and Bureaus of Economics, Competition, and Consumer Protection. The letter does not necessarily represent the views of the Federal Trade Commission ("FTC" or "Commission") or of any individual Commissioner. The Commission, however, has voted to authorize staff to submit these comments.

² Letter from Rep. Robert W. Godshall, Pennsylvania House of Representatives, to Marina Lao, Director, FTC Office of Policy Planning (Apr. 7, 2015) [hereinafter Rep. Godshall's Request Letter].

³ S.B. 874, 2015-2016 Gen. Assemb., Reg. Sess. (Pa. 2015), available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2015&sessInd=0&billBody=S&billTyp=B&billNbr=0874&pn=1314> (introduced on June 4, 2015, as amended on October 13, 2015); H.B. 1364, 2015-2016 Gen. Assemb., Reg. Sess. (Pa. 2015), available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2015&sessInd=0&billBody=H&billTyp=B&billNbr=1364&pn=1990> (introduced on June 29, 2015).

⁴ 63 PA. STAT. ANN. §§ 480.1-11 (West 2015). We use the terms "funeral goods," "funeral merchandise," "cemetery goods," "cemetery merchandise," and "death care goods and services" interchangeably to cover the same types of merchandise and services.

I. INTEREST AND EXPERIENCE OF THE FTC

The FTC is charged with enforcing Section 5 of the FTC Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁵ Competition is at the core of America's economy, and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation.⁶ For competition to flourish in a free-market economy, however, consumers must be able to make intelligent and well-informed decisions based on truthful and non-deceptive information.⁷

Pursuant to its statutory mandate, the FTC seeks to identify business practices that may harm consumers or unreasonably impede competition. In 1972, the FTC began investigating funeral industry practices and found widespread unfair and deceptive practices by funeral homes, which led to the promulgation of the Funeral Industry Practices Rule ("Funeral Rule").⁸ "The essential purposes of the Funeral Rule are to ensure that consumers receive information necessary to make informed purchasing decisions, and to lower existing barriers to price competition in the market for funeral goods and services."⁹ The FTC's Funeral Rule applies only to "Funeral Providers," defined as "any person, partnership or corporation that sells or offers to sell funeral goods *and* funeral services to the public."¹⁰ During the most recent regulatory review of the Funeral Rule in 2008, the FTC noted that it "has observed an increase in competition in the sale of funeral goods and services. Traditional entities in the death care industry such as cemeteries and monument dealers are now selling goods outside of their traditional product line."¹¹

The Funeral Rule promotes competition and deters deceptive or unfair practices by mandating that, at the outset of discussions of funeral arrangements, funeral providers disclose itemized prices for funeral goods and services. The Funeral Rule also prohibits a number of specific misrepresentations that the FTC found were prevalent in the funeral industry.¹² Importantly, the FTC noted, "the record evidence did not establish that [other] sellers, particularly cemeteries and crematories, engaged in the

⁵ FTC Act, 15 U.S.C. § 45.

⁶ *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) ("The heart of our national economic policy long has been faith in the value of competition.").

⁷ *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 765 (1976) ("So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed.").

⁸ Trade Regulation Rule on Funeral Industry Practices, 16 C.F.R. § 453 (2015).

⁹ See Regulatory Review of the Trade Regulation Rule on Funeral Industry Practices, 73 Fed. Reg. 13,740, 13,741 (Fed. Trade Comm'n Mar. 14, 2008).

¹⁰ 16 C.F.R. § 453.1(i). Although the funeral rule primarily applies to funeral homes, it also applies to for-profit cemeteries with funeral homes on the premises. See *infra* Section II.C, discussing the Funeral Rule.

¹¹ 73 Fed. Reg. at 13,744.

¹² See 16 C.F.R. § 453, enumerating specific unfair or deceptive acts or practices in the funeral industry and the requirements to remedy them.

types of abuses addressed by the rule.”¹³ The FTC conducts annual undercover inspections to ensure industry compliance with the Funeral Rule.¹⁴

The FTC monitors other activities in the funeral industry that may result in higher prices or lower quality of services due to a reduction in competition, such as potentially anticompetitive mergers and acquisitions.¹⁵ The FTC also provides guidance on the proper interpretation of the Funeral Rule,¹⁶ and advocates in favor of policies that promote competition and consumer protection in the funeral industry at both the federal¹⁷ and state¹⁸ levels.

¹³ 73 Fed. Reg. at 13,744 (examples of the abuses the rule was intended to address include the lack of price disclosures, forced bundling of goods and services, and misrepresentations of funeral goods and services).

¹⁴ Funeral homes found to have significant violations, such as failing to provide a required price list, can enter a training program designed to improve compliance. If a funeral home declines to take the training or is a repeat offender after taking the training, the FTC can refer an enforcement action to the Department of Justice for filing in federal court. The 2014 undercover investigation of 100 funeral homes found 27 funeral homes had failed to disclose pricing information to consumers as required by the Funeral Rule. See Press Release, Fed. Trade Comm’n, Undercover Inspections of Funeral Homes in Six States Prompt Compliance with Funeral Rule Disclosure Requirements (May 5, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/undercover-inspections-funeral-homes-six-states-prompt-compliance>.

¹⁵ For example, in 2014, the FTC approved an application by Service Corporation International (SCI) to divest certain funeral and cemetery assets, as required under the FTC’s December 2013 proposed order settling charges that SCI’s acquisition of Stewart Enterprises, Inc. would be anticompetitive. In total, the proposed order required the combined SCI/Stewart to divest 53 funeral homes and 38 cemeteries to ensure competition is maintained in 59 communities throughout the United States. StoneMor Partners purchased divested assets in several states, including Pennsylvania. Petition of Respondents for Approval of Proposed Divestiture, *In re Serv. Corp. Int’l & Stewart Enters.* (F.T.C. 2014) (No. 131 0163), <https://www.ftc.gov/system/files/documents/cases/140326scipetition.pdf>.

¹⁶ See, e.g., *Legal Resources*, FED. TRADE COMM’N, https://www.ftc.gov/tips-advice/business-center/legal-resources?type=advisory_opinion&field_industry_tid=315 (filtered by “Type: Advisory Opinions” and “Industry: Funerals”) (Funeral staff advisory opinions responding to specific questions about the interpretation of the Funeral Rule); Amicus Curiae Brief on Behalf of the United States Federal Trade Commission in Support of Neither Party, *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013) (No. 11-30756), available at https://www.ftc.gov/sites/default/files/documents/amicus_briefs/st.joseph-abbey-et-al.v.castille-et-al./111216stjosephamicusbrief.pdf; FTC Advisory Opinion to Dan Flynn, Representative, Tex. House of Representatives (July 7, 2005), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-advisory-opinion-hon.dan-flynn-concerning-lawful-construction-term-cash-advance-ftcs-funeral-rule/050707funeralruleadvooopin.pdf (concerning the lawful construction of the term “cash advance item” in the FTC’s Funeral Rule).

¹⁷ See, e.g., *The Bereaved Consumer’s Bill of Rights: Hearing on H.R. 3655 Before the Subcomm. on Commerce, Trade, & Consumer Protection of the H. Comm. on Energy & Commerce*, 111th Cong. 16–25 (2010) (prepared statement of Fed. Trade Comm’n), available at https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-commission-law-enforcement-activities-regarding-funeral/100127funeraltestimony.pdf [hereinafter 2010 FTC Congressional testimony] (discussing the FTC’s activities involving the funeral industry, including cemeteries, in connection with proposed legislation to address the types of egregious behavior that occurred at the Burr Oak cemetery in Alsip, Illinois); *Oversight of Cemeteries and Other Funeral Services: Who’s in Charge?: Hearing Before the Subcomm. on Commerce, Trade, & Consumer Protection of the H. Comm. on Energy & Commerce*, 111th Cong. 36–43 (2009) (prepared statement of Fed. Trade Comm’n), available at https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-commission-activities-and-authority-regard-funeral/090727funeraltestimony.pdf [hereinafter 2009 FTC Congressional testimony] (same).

¹⁸ See, e.g., FTC Staff Comment to Joanne C. Benson, Delegate, Md. House of Delegates (Apr. 2, 2004), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-honorable-joanne-c.benson-concerning-maryland-h.b.795-regarding-corporate-ownership-funeral-homes/0404mdfuneralhomes.pdf (concerning Maryland H.B. 795 regarding corporate ownership of funeral homes); FTC Staff Comment to David Wright, Representative, Pa. House of Representatives (Mar. 28, 1994), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-hon.david-wright-concerning-pennsylvania-h.b.2347-regulate-sellers-pre-need-cemetery-or-funeral-goods-or-services/v940010-2.pdf [hereinafter 1994 FTC staff comment on PA HB 2347] (on Pennsylvania H.B. No. 2347 concerning pre-need sales); FTC Staff Comment to Kirby Holmes, Senator, Michigan Senate

II. ANALYSIS OF PROPOSED PROVISIONS

FTC staff was asked to analyze various proposals for possible effects on competition and consumers. In this section we analyze these potential approaches, which appear in SB 1491 (2014), SB 874, or HB 1364, or are otherwise suggested in your letter.

Legislative proposals, such as those under consideration by the Pennsylvania General Assembly and discussed in more detail below, may reduce or eliminate pre-need sales of cemetery merchandise and could inhibit innovative business models and lessen competition between cemeteries and funeral homes, as well as competition between pre-need and at-need providers. This not only could reduce the range of choices available to consumers, but also may increase prices for those consumers interested in prearranging their own funeral. Higher prices could have a disproportionate impact on older and lower-income consumers, some of whom may find it particularly beneficial to pay for their funeral expenses over time pursuant to a pre-need purchase contract.¹⁹

Available data suggest strong and growing consumer demand for pre-need products and services. For example, according to a 2010 survey, 66 percent of respondents said they would prefer to prearrange their own funeral services versus 27 percent who would prefer to allow friends or relatives to arrange the service at need. Twenty-five percent of these survey respondents said they had made some prearrangements for themselves, and of those respondents who had some prearrangements, 65 percent said they had prepaid for some of those arrangements. In 2010, 30 percent of those who had prepaid for funeral arrangements had paid for “everything,”²⁰ compared to 28 percent in 2004 and only five percent in 1999.²¹ Moreover, 49 percent of those who had not made prearrangements responded that they were likely to do so within five years of the 2010 survey.²²

The following sections address three main issues raised by the legislative proposals:

(1) prohibitions on the pre-need delivery and installation of cemetery merchandise; (2) requirements for merchandise trust funds and refunds when a consumer breaches a pre-need contract; and (3) compliance with the FTC’s Funeral Rule requirements for the sale of merchandise versus specifying state-specific requirements governing such sales.

(Apr. 7, 1986), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-hon.kirby-holmes-concerning-michigan-substitute-h.b.4588-regulate-pre-need-funeral-goods-and-services/p864635.pdf [hereinafter 1986 FTC Staff comment on MI HB 4588] (concerning Michigan Substitute H.B. 4588 to regulate pre-need funeral goods and services); FTC Staff Comment to Ginger Barr, Representative, Kansas House of Representatives (Feb. 14, 1986), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-hon.ginger-barr-concerning-kansas-s.b.499-and-h.b.2715-modify-funeral-laws/p864629.pdf (concerning Kansas S.B. 499 and H.B. 2715 to modify funeral laws).

¹⁹ Wirthlin Worldwide, prepared for FUNERAL AND MEMORIALIZATION INFORMATION COUNCIL (FAMIC), *Study of American Attitudes Toward Ritualization and Memorialization, Executive Summary* 22 (Jan. 2005; report of 2004 survey) (people who are older or have lower household incomes are more likely to prepay for at least some of their funeral arrangements) [hereinafter 2004 FAMIC study]. FAMIC commissioned the first study of consumer attitudes in 1990, and follow-up studies were conducted in 1995, 1999, 2004, and 2010 (Harris Interactive conducted the 2010 study).

²⁰ Harris Interactive, prepared for FAMIC, *Study of American Attitudes Toward Ritualization and Memorialization* at 22–26, Survey Questions and Responses 14, 14B, 15B, 15B2, 15C (Apr. 2010) [hereinafter 2010 Harris Interactive study].

²¹ 2004 FAMIC study, *supra* note 19, at 22.

²² 2010 Harris Interactive study, *supra* note 20, at 26, Survey Question and Response 16A.

A. Prohibitions on the Delivery and Installation of Certain Cemetery Merchandise Prior to Need

SB 874, HB 1364, and SB 1491 (2014) would prohibit the delivery of most merchandise or products prior to need. HB 1364 and SB 1491, Section 5(b), specifically state, “[t]here shall be no delivery of merchandise or products prior to need except for mausoleums and markers.” SB 874, Section 4(a), states, “[t]here shall be no delivery of merchandise or product, except for mausoleums, cremation gardens, markers and lawn crypts, prior to the death of the person for whose benefit the contract was made.”²³ These bills appear to ban the pre-need warehousing (at the cemetery or elsewhere) or installation of outer burial containers.²⁴

1. Pre-Need Warehousing of Merchandise

The International Cemetery, Cremation and Funeral Association (“ICCFA”) has developed model guidelines for various issues that affect the death care industry.²⁵ One of ICCFA’s model

²³ Neither the bills, nor the Cemetery and Funeral Merchandise Trust Fund Law, 63 PA. STAT. ANN. §§ 480.1–.11 (West 1963), nor the Funeral Directors Law, 63 PA. STAT. ANN. § 479.13(c), defines any of these terms. The International Cemetery, Cremation and Funeral Association (“ICCFA”) provides the following definitions:

BELOW-GROUND CRYPT: A pre-placed enclosed chamber, which is usually constructed of reinforced concrete, poured in place or pre-cast unit installed in quantity, either side by side or multiple depth, and covered by earth or sod and known also as a lawn crypt, turf-top crypt, etc.

MAUSOLEUM: A chamber or structure used or intended to be used for entombment

MAUSOLEUM CRYPT: A chamber of a mausoleum of sufficient size for entombment of human remains

MEMORIAL: Any product, other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds, or career of some decedent including, but not limited to, a monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench, and vase.

OUTER BURIAL CONTAINER: A container which is designed for placement in the grave space around the casket or the urn including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

Glossary of Terms, INT’L CEMETERY, CREMATION & FUNERAL ASS’N, <https://www.iccfa.com/government-legal/model-guidelines/glossary-terms> (last visited Oct. 5, 2015). The ICCFA is an international trade association originally founded in 1887 to represent the cemetery industry, but it now represents more than 8,900 cemeteries, funeral homes, crematories, memorial designers and related businesses worldwide. According to its website, “ICCFA promotes consumer choices, pre-arrangement and open competition and has created more than two dozen model guidelines advocating state legislation on a variety of consumer-related issues. The association also assists consumers more directly through information resources, as well as through a complaint mediation service.” *About ICCFA*, INT’L CEMETERY, CREMATION & FUNERAL ASS’N, <https://www.iccfa.com/about-iccfa> (last visited Oct. 5, 2015).

²⁴ The Funeral Rule defines “Outer Burial Container” as “any container which is designed for placement in the grave around the casket, including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.” 16 C.F.R. § 453.1(n). A number of states, including Pennsylvania under its current law, either permit or do not expressly prohibit the pre-need delivery of outer burial containers through either a transfer of title to and storage on behalf of the purchaser (constructive delivery) or pre-need installation. See *generally Spreadsheet Summarizing Trusting Requirements in the US and Canada*, N. AM. DEATH CARE REGULATORS ASS’N, http://www.nadcre.org/uploads/1/1/5/5/11554126/cemetery_trusting_requirements.pdf (last visited Oct. 5, 2015).

²⁵ The ICCFA has developed a set of 28 model guidelines setting out general concepts for consideration with respect to state laws and regulations. ICCFA states that the guidelines “combine a sensitivity to consumer protection issues with the need for all industry members, whether for-profit or not-for-profit, cemeteries, funeral homes, retail monument dealers or crematories, to conduct their operations according to sound business principles.” *ICCFA Model Guidelines for State Laws and Regulations*, INT’L CEMETERY, CREMATION & FUNERAL ASS’N, <https://www.iccfa.com/government-legal/model-guidelines> (last visited Oct. 5, 2015).

guidelines covers warehousing, a form of “constructive delivery.” Warehousing involves merchandise that is designed to withstand prolonged storage without deterioration and therefore can be purchased in advance of need and stored somewhere. This option provides the purchaser with effective control over the merchandise. For example, the cemetery may certify to the purchaser that it has remitted the wholesale price of the merchandise to the manufacturer, that the merchandise is being stored at the cemetery or in an insured warehouse or similar facility, and that the merchandise will be delivered upon the purchaser’s request.²⁶

Although there are some costs associated with storage, a warehousing option avoids the risk that inflation will raise the cost of the merchandise at some future date when it is needed. Because sellers are likely to pass this risk of inflation to consumers in the form of higher prices, a prohibition on pre-need warehousing could have adverse effects on competition and consumers.

2. Pre-Need Installation of Certain Cemetery Merchandise

Another form of constructive delivery involves the physical attachment or installation of merchandise, such as outer burial containers²⁷ and monuments, to an interment space owned by the purchaser.²⁸ Some cemeteries may find that pre-need delivery and installation of outer burial containers is a more efficient and cost-effective business model than delivery and installation at the time of need. If an outer burial container is purchased and installed pre-need at the then-current price, then neither the seller nor purchaser faces the risk that the cost of merchandise will increase in the future. Hedging against inflation could result in lower prices for consumers. Moreover, if the cemetery digs a gravesite, and purchases and installs the outer burial container prior to the purchaser’s death, then the seller has performed a significant portion of the contract’s requirements. This would eliminate or minimize any risk that funds will not be available in the future to fulfill the contract, and would ensure that this portion of the purchaser’s pre-need arrangements is already complete.²⁹

Another potential benefit of pre-need installation is that cemeteries with large unsold areas may reduce the amount of space needed per plot by preinstalling rows of burial vaults at one time. According to the National Cemetery Administration (“NCA”) in the Department of Veterans Affairs (“VA”):

traditional burial vaults are placed in a 4-5 foot wide, 10-foot long, by 7 foot deep excavation for each gravesite . . . , with 4 feet of space between excavations. This provides a safe amount of soil between gravesite excavations for burial vault installation without the soil falling back in. By installing a whole row or larger area of burial vaults ahead of time, the whole area is excavated, crushed rock is put in to provide a secure

²⁶ *ICCF Model Guidelines, Constructive Delivery/Warehousing*, INT’L CEMETERY, CREMATION & FUNERAL ASS’N, <https://www.iccfa.com/government-legal/model-guidelines/alternatives-trusting-constructive-deliverywarehousing> (last visited Oct. 5, 2015).

²⁷ We use the terms “outer burial container” and “vault” or “burial vault” interchangeably in this letter.

²⁸ *Id.*

²⁹ According to one cemetery company, consumers in 21 states have chosen the pre-installation option (Alabama, California, Colorado, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and West Virginia).

base, vaults are placed against each other, and then covered with two feet of soil. Only a 3-foot by 8-foot area is now needed for each gravesite.³⁰

This pre-need installation of rows of outer burial containers was nominated for the GreenGov Presidential Award,³¹ and is now the standard for military cemeteries, including Arlington National Cemetery.³² The NCA found that “the preplaced vault process was . . . the most efficient and economic method of completing burial areas.”³³ According to the NCA, the “original goal [for preinstalling burial vaults] was to reduce the amount of time required to perform a burial.” The “burial of a casket involves approximately 12 labor-hours. With preplaced vaults, this is reduced to 6 labor-hours.”³⁴ In addition, the NCA noted that in “existing cemeteries, preplaced vaults may double the life of the cemetery, enabling additional years of burial space that may have required a new cemetery.”³⁵ The NCA has shared its preplaced vault methodologies with the ICCFA, as well as with the Institute of Cemetery and Crematorium Management (United Kingdom Cemeteries), apparently as a way to encourage others to replicate the NCA’s approach.³⁶

Based on the NCA’s experience, pre-need installation of rows of outer burial containers likely could enable non-military cemeteries to achieve certain efficiencies, including savings in time and labor needed to prepare gravesites, better use of space, and reduced maintenance costs, particularly if the cemeteries are new or have large, as yet undeveloped tracts.³⁷ A prohibition on the pre-need delivery and installation of burial vaults could therefore prevent the realization of such efficiencies and reduce cemeteries’ incentives to engage in pre-need sales of funeral merchandise.³⁸ This could limit

³⁰ Nat’l Cemetery Admin., Dep’t. of Vet. Aff, 2012 *GreenGov Presidential Award Nomination for NCA Preplaced Burial Vault Program 2* [hereinafter NCA Preplaced Burial Vault Program].

³¹ *GreenGov Presidential Awards*, THE WHITE HOUSE, <https://www.whitehouse.gov/greengov/presidential-awards> (last visited Oct. 5, 2015) (“The GreenGov Presidential Awards celebrate extraordinary achievement in the pursuit of President Obama’s Executive Order on Federal Leadership in Environmental, Energy and Economic Performance. They honor Federal civilian and military personnel, agency teams, agency projects and facilities, and agency programs that exemplify [the] charge to lead by example towards a clean energy economy.”).

³² NCA Preplaced Burial Vault Program, *supra* note 30, at 4 (“Preplaced vaults are now specified in all federal veterans’ cemeteries and federally funded state veterans’ cemeteries.”).

³³ *Id.* at 3.

³⁴ *Id.*

³⁵ *Id.* at 2. In addition, “[l]and requirements and gravesite construction costs decreased by 50% due to land not purchased and sod and irrigation systems not installed. Annual maintenance costs decreased . . . from reduced mowing, irrigation, pesticide/fertilizer applications, and correcting soil settlement. Burial labor time (and injuries) decreased by 50%, as did total personnel, equipment maintenance, and fuel use/emissions compared to maintaining conventional burial areas.” *Id.*

³⁶ *Id.* at 4. The award nomination includes a section on “Project Replication” and states NCA’s approach has been shared with these two organizations.

³⁷ Non-VA cemeteries that preinstall burial vaults also may likely be able to expedite burials by eliminating any potential delays associated with digging the gravesite or the ordering and delivery of the burial vault at the time of need. At the time of death the cemetery needs to remove only approximately two feet of topsoil and grass or other ground cover, open the vault, lower the casket into the vault, secure the top of the vault, and replace the top soil and grass. *See, e.g., id.* at 2.

³⁸ Because there are no definitions in the bills, it is unclear whether the exception in SB 874 for “lawn crypts” is meant to allow the mass installation of outer burial containers or burial vaults. If so, this would eliminate some of the inefficiencies discussed, but it would not resolve other concerns with prohibitions on pre-need installation or pre-need warehousing of outer burial containers. Some cemeteries, including Pennsylvania cemeteries, have developed sections with preplaced lawn crypts and sell spaces in these areas pre-need. It is unclear how the proposed legislation would affect the pre-need sales of these already established lawn crypt areas. *See, e.g., Lawn Crypts for Double Depth Burial*, JEFFERSON MEM’L CEMETERY & FUNERAL HOME (Pittsburg, Pa.), <http://www.jeffersonmemorial.biz/crypt.php> (last visited Oct. 5, 2015). Similarly, some entities, including a company that builds vaults for military cemeteries, refer to pre-need mass installations of rows of multiple vaults in newly developed areas of cemeteries as “lawn crypts,” which leads to some confusion as to whether the

competition in the sale of death care goods and services in Pennsylvania between cemeteries that rely on pre-need sales and funeral homes that sell primarily on an at-need basis, potentially leading to higher prices and fewer choices for consumers.³⁹

Although FTC staff recognizes there may be some risks, such as damage to the outer burial container, associated with pre-need warehousing or installation of merchandise, there may be other ways to address such risks short of completely prohibiting these practices. States can regulate the pre-need installation of outer burial containers by requiring cemeteries to remain responsible for the merchandise prior to need and to provide consumers with options as to whether to accept the pre-need delivery and/or installation of merchandise. For example, some states mandate a specific disclosure form that advises consumers of their option to have pre-need warehousing or installation. In addition, such a form could explain that the cemetery remains responsible for ensuring the burial vault is intact and not damaged when it is delivered for pre-installation or later opened for placement of a casket. In the unlikely event that the burial vault is damaged, the cemetery could be held responsible for cleaning and repairing, or if necessary replacing, the vault prior to placing the casket in the vault. Holding the cemetery responsible for any damage would appear to address potential consumer protection concerns without creating regulatory disincentives for cemeteries that are responding to consumer demand for pre-need sales contracts.⁴⁰

B. Trust Fund and Refund Requirements for Pre-Need Sales

A cemetery that collects consumers' payments on pre-need sales contracts is required under Pennsylvania law to place some portion of the collected payments into a trust fund account, which is a deposit account set up with a banking institution authorized to administer trusts. The primary purpose of a trust fund account for pre-need cemetery sales is to ensure the seller has sufficient funds available to fulfill a contract's requirements at some unknown future date. Thus, some type of merchandise trust fund or an alternative, such as a surety or performance bond, likely is appropriate to protect consumers against the risk that funds will not be available at the time of need.⁴¹ Below we discuss the various legislative proposals and suggest issues and alternatives the Pennsylvania General Assembly may wish to consider.

NCA's program or the Pennsylvania bills are using the terms "outer burial containers," "burial vaults," and "lawn crypts" interchangeably. *See, e.g., Biloxi National Cemetery, Biloxi, Mississippi*, SI CONSTR. SERVS., <http://www.siconstructionservices.com/projects/biloxi.aspx> (last visited Oct. 5, 2015) (description of work at a cemetery in Biloxi, Mississippi); *Georgia National Cemetery, Canton, Georgia*, SI CONSTR. SERVS., <http://www.siconstructionservices.com/projects/canton.aspx> (last visited Oct. 5, 2015) (description of work at a cemetery in Canton, Georgia). The ICCFA glossary also refers to "lawn crypts" as an alternative definition for below-ground crypts installed "in quantity." *Glossary of Terms*, INT'L CEMETERY, CREMATION & FUNERAL ASS'N, <https://www.iccfa.com/government-legal/model-guidelines/glossary-terms> (last visited Oct. 5, 2015).

³⁹ See Letter from The Catholic Cemeteries Association of the Diocese of Pittsburgh to Sen. Lisa Boscola, Pennsylvania Senate, Concerning SB 874 (June 9, 2015) (noting a "cemetery generates approximately 80% of its revenue from pre-need sales, while funeral homes generate the majority of their revenue from at-need sales").

⁴⁰ *See, e.g., ALA. ADMIN. CODE R. 482-3-003 (2015)*, available at <http://www.aldoj.gov/PDF/Legal/PN-003-2014.pdf> (last visited Oct. 5, 2015) (Alabama Department of Insurance Regulations on Preneed Sales); *Alabama Disclosure Regarding Installation of Vaults or Outer Burial Containers Prior to Need*, ALA. DEP'T OF INS. (Jan. 2015 rev.), available at <http://www.aldoj.gov/PDF/Preneed/Disclosure%20for%20outer%20burial%20container.pdf> (last visited Oct. 5, 2015).

⁴¹ Although the FTC has no reason to believe that such situations are widespread, we are aware, for example, of cemeteries that have gone bankrupt due to the embezzlement of funds.

1. Current and Proposed Legislative Provisions

The current law requires cemeteries to deposit 70 percent of the retail price into a merchandise trust account and specifically allows the cemetery to keep 30 percent of the contract price as liquidated damages if a purchaser breaches the contract or defaults on the payments.⁴² One version of SB 1491, introduced in 2014, would have required that 100 percent of the retail price of pre-need merchandise be placed in a merchandise trust fund. In addition, this bill would have mandated that the cemetery refund 100 percent of the monies paid, plus interest, if the consumer were to default on his or her payments at any point prior to full performance of the pre-need sales contract and for any reason.⁴³

HB 1364 states that the seller must place 70 percent of the retail price of merchandise into the trust account, and refund the entire amount paid into the account if the purchaser defaults at any point prior to final performance of the contract.⁴⁴ It is not entirely clear under HB 1364 whether the cemetery would be permitted to keep the 30 percent not deposited in the trust account and whether it would have to refund any interest earned from funds deposited in the account. Clarity on these issues is particularly important because these bills would replace sections of the current law that explicitly allow the seller to keep a certain percentage of the retail price as liquidated damages, including the interest earned from the trust account.⁴⁵ HB 1364 would require the seller to refund the total amount in the merchandise trust account, including interest, if a purchaser moves out of state after making his or her final payment and wants to cancel the contract.⁴⁶

In the most recent version of SB 874, Section 2(b) states that the seller must put funds received as payment for a pre-need sale into the trust account on the last day of the month in which the payment is received "after first deducting the percentage to be retained by the seller."⁴⁷ This appears to permit the seller to keep the 30 percent not deposited into the merchandise trust account. Similar to HB 1364, however, SB 874 eliminates language specifically allowing the seller to keep any monies as liquidated damages, thus creating the same uncertainty discussed above. SB 874 also allows the seller to keep the interest earned from the trust account if a purchaser moves out of state and chooses to cancel the contract.⁴⁸ SB 874 is silent, however, as to whether the seller would have to pay the purchaser the interest on the monies deposited on the trust account if the purchaser defaults.

2. Analysis of the Proposals

Cemeteries and other sellers of pre-need burial merchandise may be hesitant to engage in pre-need sales if the law requires that 100 percent of the retail price be deposited into a merchandise trust account. If all funds must be held in trust, then the seller cannot recover its overhead, selling, or administrative expenses and clear a profit until an unknown and possibly distant future date. A 100

⁴² 63 PA. STAT. ANN. § 480.2(c) (West 2015).

⁴³ SB 1491 (2014), Printers Version 2343, Section 2(a).

⁴⁴ HB 1364, Section 2(c).

⁴⁵ 63 PA. STAT. ANN. § 480.2(c) (West 2015).

⁴⁶ HB 1364, Section 5(a).

⁴⁷ SB 874, Section 2 requires the seller to deposit 70 percent of the retail price into the merchandise trust fund.

⁴⁸ SB 874, Section 5.

percent trust requirement could therefore increase the costs of serving the pre-need market, and deny consumers the lowest possible prices and a full array of pre-need alternatives and pricing options.⁴⁹

These effects could be exacerbated if the seller faces the prospect of having to refund 100 percent of the money collected or any interest earned on the trust account if the consumer defaults for any reason prior to full performance on the contract. For example, the seller might compensate by changing the payment terms of pre-need contracts, such as shortening the period over which 100 percent of the contract price has to be paid or raising the total pre-need price to cover reallocated risks of default. This would have the effect of taxing consumers who do not default to cover the losses from consumers who do default and demand a full refund. Either seller response would appear to disserve one of the purposes of pre-need sales – to provide consumers of modest means a way of assuring that the expenses for their final arrangements are paid. Finally, 100 percent refund requirements may prevent sellers from using trust accounts as assets to secure credit.⁵⁰

FTC staff assumes for purposes of this analysis that the current 70 percent trusting requirement, adopted in 1963 (and included in the current versions of SB 874 and HB 1364), has not inhibited cemeteries in Pennsylvania from engaging in the pre-need sale of funeral goods and cemetery services. Maintaining the current requirement, which allows a cemetery to retain 30 percent of the contract price to cover their costs, would thus preserve cemeteries' existing incentives to engage in pre-need sales. If the General Assembly decides to keep the 70 percent trust requirement, FTC staff respectfully recommends that any proposed legislation clarify that sellers are permitted to retain the 30 percent of funds paid by consumers not deposited into the trust account.

In addition, the General Assembly may wish to consider, as an alternative approach to protect consumers, a proposal that permits pre-need sellers to provide a performance or surety bond under which a third party guarantor would agree to pay the contract amount if the seller does not deliver at the time of need. Such an alternative would avoid the General Assembly having to take on the difficult task of determining in advance the appropriate level of trust funding for the pre-need industry as a whole. Several states permit pre-need sellers of funeral goods and services to use performance bonds in lieu of establishing trust accounts.⁵¹ Competition among guarantors and other market forces would

⁴⁹ FTC 1994 staff comment on PA HB 2347, *supra* note 18, at 5. *See generally* Jerry Ellig, *State Funeral Regulations: Inside the Black Box*, 48 J. REG. ECON. 97, 117 (2015) (study of various death care industry regulations and their effect on price, finding bans on cemetery sales of funeral merchandise are “associated with a \$1159–1268 increase in the average receipts per death in the three states [studied] that have this regulation” and that more than half of the increase comes from “demand inducement,” such as consumers being persuaded to buy merchandise that they might not otherwise acquire from sellers with different incentives).

⁵⁰ *See, e.g.*, 1986 FTC Staff comment on MI HB 4588, *supra* note 18, at 8, n.10 (“A trust requirement can affect prices in less obvious ways. For example, a high trust requirement – combined with a cancellation clause like that found in Section 13 of the bill – will indirectly raise costs. One option that is open to sellers who want more money at the inception of the contract is to borrow the money, using the escrow account as a form of security. . . . If the consumer can cancel the agreement at will, the lender will feel less secure and raise the interest rate the seller pays,” which could raise the seller's costs, likely resulting in higher prices to consumers.). The FTC staff's knowledge of this industry also suggests that at least some cemeteries' accounting practices treat merchandise trust deposits and interest earnings as assets against which they can borrow.

⁵¹ *See, e.g.*, ALA. CODE § 27-17A-14(a) (2015) (“As an alternative to the trust requirement, . . . a preneed provider may, with the prior approval of the commissioner of the department of insurance, purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities on undelivered preneed contracts for merchandise, services, and cash

then set bond prices and other surety terms. In other words, a surety approach would more efficiently shift the task of determining the appropriate level of trust to be accorded each individual seller on third-party guarantors. For example, one seller may be regarded as a better risk than another seller, perhaps because its fixed-asset base is larger. If the guarantor charged the lower-risk seller a lower premium or subjected it to other terms that were less stringent and hence less costly, the seller could pass that savings on to consumers. In other industries, performance bonds have been used to protect consumers' investments.⁵² The General Assembly may therefore wish to consider a proposal permitting pre-need sellers to obtain performance or surety bonds as an alternative and procompetitive consumer protection mechanism to trust accounts. We also suggest that any trusting or surety bond requirement specify that it does not apply to merchandise that is delivered or installed pre-need.

C. Requirement that Sellers of Pre-Need Sales Contracts Adhere to the FTC's Funeral Industry Practices Revised Rules Regarding the Sale of Merchandise

SB 874 and HB 1364, Section 2.1, state, "A seller must provide a detailed price list and detailed description of the vault and casket and must adhere to [the FTC's Funeral Rule] regarding the sale of the merchandise." For the reasons discussed below, we recommend that the General Assembly consider specifying the disclosures or prohibitions that it deems necessary to address any documented instances of problematic sales tactics by cemeteries engaged in the sale of pre-need contracts. The General Assembly should not merely adopt a blanket application of the FTC's Funeral Rule, which was promulgated to apply to funeral homes and generally does not apply to cemeteries.

The FTC's Funeral Rule applies only to "Funeral Providers" as defined. The Rule defines "Funeral Providers," as "any person, partnership or corporation that sells or offers to sell funeral goods *and* funeral services to the public."⁵³ "Funeral services are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; *and* (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies."⁵⁴ The Funeral Rule generally does not apply to cemeteries that do not have a funeral home on the cemetery grounds because cemeteries do not "care for and prepare deceased human bodies for burial."

During the most recent regulatory review of the Funeral Rule in 2008, the FTC chose not to apply the Funeral Rule to cemeteries based on the rule review record. First, the FTC found that "there is insufficient evidence that commercial cemeteries, crematories, and third-party sellers of funeral

advances."); IOWA CODE § 523A.405(1) (2015) ("The commissioner shall, by rule, establish terms and conditions under which a seller may, in lieu of trust requirements, file with the commissioner a surety bond issued by a surety company authorized to do business and doing business in this state."); KY. REV. STAT. ANN. § 367.954(7) (West 2015) ("In lieu of the trust fund deposits required herein, the person may post with the Attorney General, Division of Consumer Protection, a good and sufficient bond by a surety company licensed to do business in Kentucky and in an amount sufficient to cover all payments made by or on account of purchasers who have not received the purchased property and services.").

⁵² See, e.g., 1994 FTC staff comment on PA HB 2347, *supra* note 18, at 7, n.27 (citing to FTC performance bond requirements in orders against health spa operators charged with, among other things, failing to fulfill their contracts with consumers); 1986 FTC Staff comment on MI HB 4588, *supra* note 18, at 8, n.11 and accompanying text (same).

⁵³ 16 C.F.R. § 453.1(j).

⁵⁴ 16 C.F.R. § 453.1(j) (emphasis added). "Funeral goods are the goods which are sold or offered for sale directly to the public for use in connection with funeral services." 16 C.F.R. § 453.1(h).

goods are engaged in widespread unfair or deceptive acts or practices.”⁵⁵ The FTC further found that there “is insufficient evidence of widespread unfair or deceptive practices in the sale of pre-need funeral arrangements” and “that such contracts are already regulated by various state laws,”⁵⁶ as is the case under current Pennsylvania law.

Second, the FTC was concerned that expanding the Funeral Rule to cemeteries could lead to consumer confusion. The FTC Act is not applicable to most not-for-profit entities, and only about 7,500 of the approximately 25,000 cemeteries in the United States operate on a for-profit basis.⁵⁷ Not-for-profit cemeteries consist primarily of those owned or operated by religious organizations or states and municipalities.⁵⁸ The FTC declined to amend the rule to cover for-profit cemeteries, in part, because of concerns that consumers would not understand why some cemeteries would be subject to the rule and others would not, and because of the limited benefit of such an amendment given that only a minority of cemeteries would be covered.⁵⁹

The bills as currently drafted are vague as to the specific Funeral Rule disclosures or prohibitions to which cemeteries must adhere, which could cause confusion for both consumers and businesses. FTC staff recommends that the PA General Assembly examine the requirements of the Funeral Rule and specify the disclosures or prohibitions,⁶⁰ if any, with which it wants cemeteries to comply when selling merchandise.

The current legislative language is also problematic because some of the Funeral Rule’s specific disclosures would not make sense if a cemetery were required to make them. Certain disclosures were designed to remedy specific findings that funeral providers often misrepresented to consumers that state law or cemeteries required the purchase of certain merchandise. For example, the Funeral Rule requires the following disclosure on the outer burial price list: “In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.”⁶¹ If a cemetery is selling the outer burial container and requires that all of its gravesites have one, requiring this disclosure could create confusion. On the other hand, if there is evidence that cemeteries are misrepresenting state law requirements, it may make sense to require cemeteries either to disclose that it is not a state law

⁵⁵ 73 Fed. Reg. at 13,742.

⁵⁶ *Id.*

⁵⁷ See 2010 FTC Congressional testimony, *supra* note 17, at 3, comparing ROBERT G. E. SMITH, THE DEATH CARE INDUSTRIES IN THE UNITED STATES 23 (McFarland & Co., Inc., 1996) (citing estimates of 7,500 commercial cemeteries) with ELIZABETH G. & JAMES D. KOT, UNITED STATES CEMETERY ADDRESS BOOK 1994–95 (Indices Publ., 1996) (providing addresses of “more than 25,000 cemeteries”). In addition, some states prohibit any for-profit cemeteries, including New York, New Jersey, Massachusetts, Wyoming, Connecticut, and Maine. 73 Fed. Reg. at 13,744 & n.38.

⁵⁸ 2010 FTC Congressional Testimony, *supra* note 17, at 10.

⁵⁹ *Id.* at 3–4, citing to Regulatory Review of the Trade Regulation Rule on Funeral Industry Practices, 73 Fed. Reg. at 13,745 (noting that “[t]here would be confusion among the general public as to what type of information they could expect to receive and what rights they have to purchase goods from third parties. To the extent additional requirements are intended to allow consumers to compare costs among cemeteries, the inconsistent application of the Rule to some cemeteries and not others could make such comparisons impossible or impractical.”)

⁶⁰ See, e.g., 16 C.F.R. § 453.3(e) (2) (prohibits representations “that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case”).

⁶¹ 16 C.F.R. § 453.3(c)(2).

requirement or to prohibit them from misrepresenting state law requirements. Similar confusion could occur with other Funeral Rule required disclosures.⁶² FTC staff believes that an independent state law specifying the desired disclosure or prohibition requirements for cemeteries would be preferable to incorporating the FTC's Funeral Rule by reference.

III. CONCLUSION

Prohibiting pre-need warehousing and installation of certain funeral merchandise could discourage cemeteries from offering these products to consumers as part of a pre-need sale. This could lessen competition between cemeteries and funeral homes, as well as between pre-need and at-need sellers, which could result in potentially higher prices and less consumer choice, without producing any countervailing benefits for consumers. FTC staff recommends that the Pennsylvania General Assembly consider whether such a prohibition would serve any legitimate need to protect consumers in the Commonwealth, especially in light of the reported economic and environmental benefits associated with the pre-need installation of burial vaults and lawn crypts.

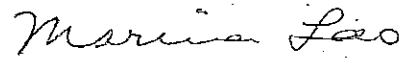
FTC staff also encourages the General Assembly to consider carefully what percentage amounts should be set aside in merchandise trust funds and whether alternatives such as surety bonds may be equally effective in protecting consumers from performance defaults by sellers. We also encourage the General Assembly to consider carefully the role of liquidated damages in protecting sellers from breach by consumers. Specifically, we suggest that the amounts for trusting or surety and for liquidated damages be appropriate both to protect consumers and to avoid creating disincentives for cemeteries to continue offering pre-need sales contracts for those consumers who want them.

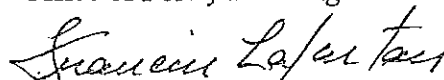
Finally, FTC staff encourages the legislature to refrain from adopting a blanket application of the FTC's Funeral Rule. Some of the Funeral Rule's specific disclosures are inappropriate for cemeteries and could cause confusion. Instead, we recommend that the legislation specify any disclosures or prohibitions necessary to address evidence of specific problematic sales tactics by cemeteries engaged in the sale of pre-need contracts.

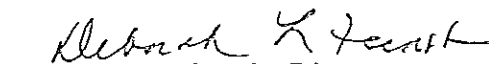
⁶² See, e.g., 16 C.F.R. § 453.3(d)(1) and (2) (this section on general provisions for legal and cemetery requirements remedies one of several deceptive acts or practices engaged in by funeral providers by requiring "that funeral providers must identify and briefly describe in writing . . . any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging"). The part requiring a specific cemetery to confirm its own requirements could appear redundant and confusing. See also 16 C.F.R. § 453.4(b)(2)(i)(B).

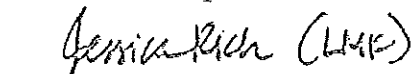
FTC staff appreciates the opportunity to comment on these legislative proposals. We hope the Pennsylvania General Assembly finds these comments helpful as it considers proposed bills to regulate the pre-need sales of funeral goods and services by cemeteries.

Respectfully submitted,


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DEPARTMENT OF VETERANS AFFAIRS
NATIONAL CEMETERY ADMINISTRATION (NCA)
2012 GREENGOV PRESIDENTIAL AWARD

AWARD CATEGORY: Lean, Clean, Green

TITLE: NCA Preplaced Burial Vault Program

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FACILITY:

Nationwide program

A. Project Description

The Department of Veterans Affairs (VA), National Cemetery Administration (NCA), operates 131 national veteran's cemeteries on 20,000 acres of land, irrigating 3900 acres to maintain esthetically pleasing surroundings for our veteran's final resting place. It performs approximately 120,000 burials per year. 60,000 of those are burials in caskets, with the balance cremation remains. New veteran's cemeteries provide burial services for 40+ years, and all cemeteries are maintained in perpetuity. Some Civil War era cemeteries are over 150 years old but are still maintained to VA's high standards.

In the 1990's, NCA investigated installing concrete burial vaults ahead of time rather than excavating and placing them in the gravesite just prior to burial. NCA initiated and developed the preplaced vault concept based on discussions with vault manufacturers and other cemeteries around the world. In 2011, after years of improvements in methods, materials, and equipment, this "preplaced" method became standard practice for new and existing state and federal veteran's cemeteries. Land requirements and gravesite construction costs decreased by 50% due to land not purchased and sod and irrigation systems not installed.

Annual maintenance costs decreased by \$34,000/acre/year from reduced mowing, irrigation, pesticide/fertilizer applications, and correcting soil settlement. Burial labor time (and injuries) decreased 50%, as did total personnel, equipment maintenance, and fuel use/emissions compared to maintaining conventional burial areas. The vaults also use approximately 15% fly ash, a recycled power-plant byproduct, to reduce the amount of cement necessary to construct the vault.

In existing cemeteries, preplaced vaults may double the life of the cemetery, enabling additional years of burial space that may have required a new cemetery, and lower maintenance cost. This reduces taxpayer cost, reduces additional land required, and reduces maintenance.

Traditional burial vaults are placed in a 4-6 foot wide, 10-foot long, by 7 foot deep excavation for each gravesite (see attached photos), with 4 feet of space between excavations. This provides a safe amount of soil between gravesite excavations for burial vault installation without the soil falling back in. By installing a whole row or larger area of burial vaults ahead of time, the whole area is excavated, crushed rock is put in to provide a secure base, vaults are placed against each other, and then covered with two feet of soil. Only a 3-foot by 8-foot area is now needed for each gravesite, up to a 60% saving. It is faster and more efficient than excavating for each row of new burials. Only the top two feet of soil must be removed in the future to access the vault cover, to allow placement of a new casket.

National veteran's cemeteries use three billion gallons/year of irrigation water to maintain a satisfactory appearance, and represents 12% of VA potable and 99% of VA non-potable water use. Reduced land area means reduced irrigation needs. The NCA WaterWise Water Conservation Program uses methods such as domestic/irrigation water system audits, certified water managers/turf managers/irrigation specialists, EPA Water Sense Partnership, computerized irrigation controllers, reclaimed/stormwater/shallow groundwater use, and low water use landscaping materials and methods, especially Xeriscaping. Xeriscaping uses low water use/drought-resistant turf, ground covers, trees, and shrubs/flowers, and water conserving soil amendments and mulch.

Combining the NCA WaterWise Water Conservation Program with the Preplaced Burial Vault Program may result in a decrease in water use of 75% compared to the previous cemetery designs and construction. Bakersfield National Cemetery (CA), a newly opened national cemetery, reduced their footprint by 50% with preplaced vaults and their water use by 99%. This was achieved through the reduced footprint from the Preplaced Burial Vault Program and reduced water use through the NCA WaterWise Program, compared to a traditional national veteran's cemetery designed in the past.

A significant side benefit of all footprint reduction and irrigation reduction is energy reduction. Irrigation systems at VA National Cemeteries use 60% of the electricity used at national cemeteries that irrigate. Irrigation is based on the acres irrigated. Irrigation reduction has a direct impact on the energy used to operate the irrigation pumps, with resulting decreases in electricity and greenhouse gas emissions.

The original goal was to reduce the amount of time required to perform a burial. Each step of gravesite development was analyzed. Using mass production concepts like Henry Ford developed for the Model T, the preplaced vault process was found to be the most efficient and economic method of completing burial areas. The cost of maintenance and reduction of injuries ended up creating more savings than the initial savings on the installation of the vaults.

B. Project Results and Achievements

Using preplaced vaults results in up to a 50% smaller new cemetery, longer use of existing cemeteries, reduced additional land need to expand existing cemeteries, reduced initial costs, annual maintenance, and employee injuries. A significant side benefit is energy reduction. Irrigation systems at VA national cemeteries use 60% of the energy used at an irrigated national cemetery. A 50% reduction in the irrigation footprint reduces energy use by 33% at an irrigated cemetery, energy used to operate a large irrigation pumping system, decreasing Green House Gas emissions.

Approximately 600,000 preplaced vaults were installed since FY2000, saving 800 acres of land not needed to be purchased, \$24 million in land purchase costs, \$56 million in construction costs, and \$136 million in maintenance costs. It also has future cost savings of \$34,000 per acre/year from reduced maintenance costs to sod, fertilize, water, mow grass, correct soil settling around gravesites, and realigning headstones that tilt as soil settles. An additional \$30,000 per acre is saved for burial land not required.

| | |
|--------------------|--|
| Savings: Initial - | \$30,000/acre- Land not purchased |
| | \$44,000/acre - sod not installed |
| | <u>\$25,000/acre - irrigation system not installed</u> |
| | \$99,000/acre/year-saved on initial construction |
| Future | \$3,000/acre/yr – mowing, pesticides/fertilizer |
| Costs | \$3,000/acre/yr – irrigation water and irrigation system maintenance |
| Avoided | \$1,000/acre/yr – electricity |
| | \$17,000/acre/year – correcting settlement of traditional gravesites |
| | <u>\$10,000/acre/yr – Headstone realignment, short term, long term</u> |
| | \$34,000/acre/year-saved per year on maintenance |

Life Cycle Cost Analysis – Preplaced Burial Vaults

600,000 preplaced vaults have been installed since FY2000, saving 800 acres from development, and almost \$80 million in cemetery construction costs. Maintenance costs were reduced by \$136 million compared to maintaining traditional burial areas.

The payback is immediate, as it costs \$750,000 to install 1500 preplaced vaults compared to \$1,155,000 to install 1500 vaults using traditional methods. In addition, there is an immediate \$34,000/acre/year savings on maintenance and reduced workplace injuries.

Health and Safety Effects

Handling of headstones during burials and periodic realignment are a major source of back and hand injuries and worker's compensation expenses. Preplaced vaults require minimal handling of headstones. There is also a reduction of exposure of employees to injuries related to the seven-foot excavations and installation of the vaults. Reduced mowing and pesticide and herbicide use reduces those exposures to both employees and visitors.

Recycling

The vault specifications require that the vaults contain at least 15% fly ash, a recycled power-plant byproduct, to reduce the amount of cement necessary to construct the vaults. On the cemetery projects completed in FY 2011, 3,518 tons of fly ash was used to replace the same amount of cement, with CO2 emissions reduced by 892 tons, and saving 170,000 gallons in gasoline equivalent fuel that would have been used to manufacture the cement.

C. Project Replication

Preplaced vaults are now specified in all federal veterans' cemeteries and federally funded state veterans' cemeteries. Arlington National Cemetery has followed NCA's lead on the use of preplaced vaults, and now is using only preplaced vaults in future burial areas, doubling the burial space of our nation's most famous cemetery. The NCA preplaced vault methodologies have been provided to the International Cemetery, Cremation and Funeral Association (association representing all US cemeteries), and the Institute of Cemetery and Crematorium Management (United Kingdom Cemeteries).

D. Best Practices

Initial Cost Savings

By installing (preplacing) burial vaults ahead of time rather than at the time of need, installation costs were reduced by 33%. By using them in new cemeteries, 50% less land area is needed for the cemetery or twice the active burial lifetime of the cemetery is obtained, and installation cost is reduced by \$100,000/acre. This is typically \$3 million dollars for the first 30 acres of a new cemetery. For existing cemeteries, their active lifetime for burials is extended, so new land is not needed or a new cemetery can be avoided.

Maintenance Savings

Conventional burial areas require irrigation water, irrigation electricity, fertilizers/pesticides, mowing, filling in of soil settlement areas, realignment of headstones as the ground settles after a burial, and maintenance of equipment. It costs \$68,000 per acre according to NCA data to maintain a conventional cemetery. With preplaced vaults, the cost is reduced 50%, a \$34,000 per acre savings as the same number of burials only take up half the space. With 1,000 acres in preplaced vaults, this is a \$34 million savings every year over prior practice, reducing energy use by \$1 million and water use by \$2 million.

Water and Energy Savings

Irrigated areas require approximately 800,000 gallons of water/acre to maintain a satisfactory appearance (DOE estimate) at a cost of about \$2,000 per year. Half the area means half the cost. Reduced footprint means less area to irrigate. Irrigation systems use \$1,000/year/acre for electricity. A typical new cemetery will save about \$100,000 a year on water and electricity.

Burial Labor

Labor cost to perform a burial of a casket involves approximately 12 labor-hours. With preplaced vaults, this is reduced to 6 labor-hours. Only two feet of sod and soil above the preplaced vault must be removed to bury a casket. With a conventional burial, a 6'x10'x7 foot deep excavation is required, with over 15 cubic yards of soil to be removed and disposed of, and future soil settling and headstone misalignment must be corrected.

Handling of headstones during burials and periodic realignment are a major source of back and hand injuries and worker's compensation expenses. Preplaced vaults require minimal handling of headstones. There is also a reduction of exposure of employees to injuries related to the seven-foot excavations and installation of the vaults. Reduced mowing and pesticide and herbicide use reduces those exposures to both employees and visitors.

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E. Environmental Compliance

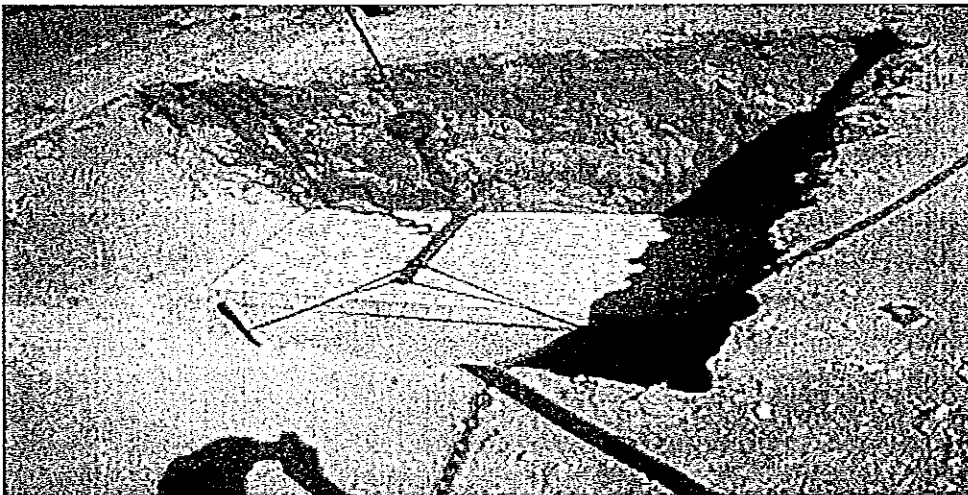
N/A, not cemetery specific

NCA Preplaced Burial Vaults

Traditional Vault Installation



Excavate and store excess soil



Place vault in excavated gravesite

Perform burials, one row at a time,
Backfill with stored soil
Install headstones, sod

NCA Preplaced Burial Vaults

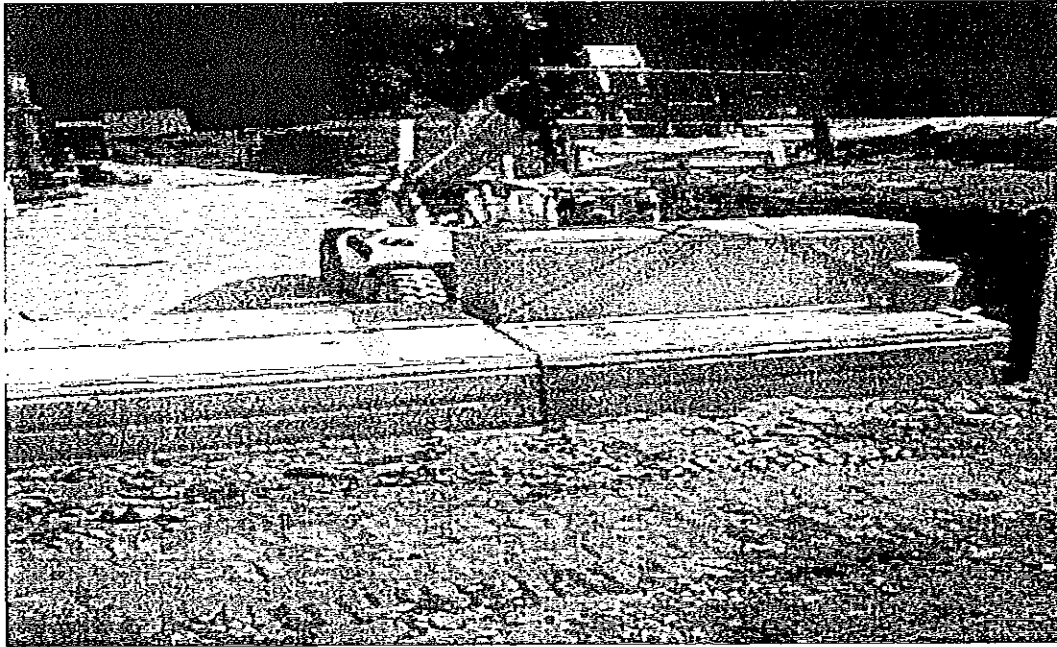
Preplaced Vault Process



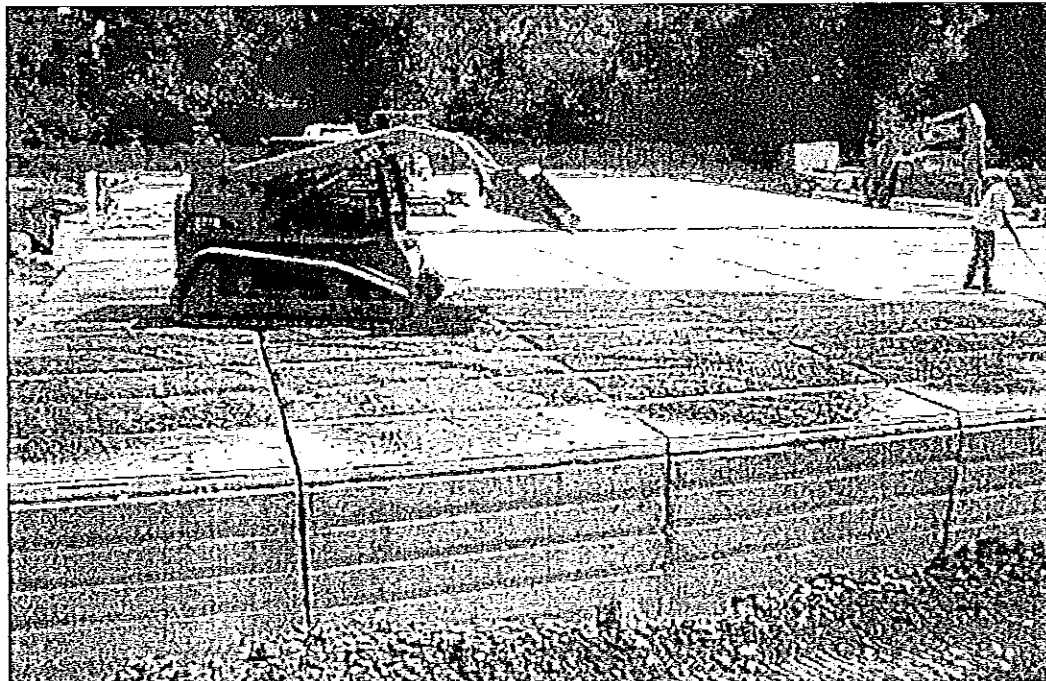
Excavate, level, rock base



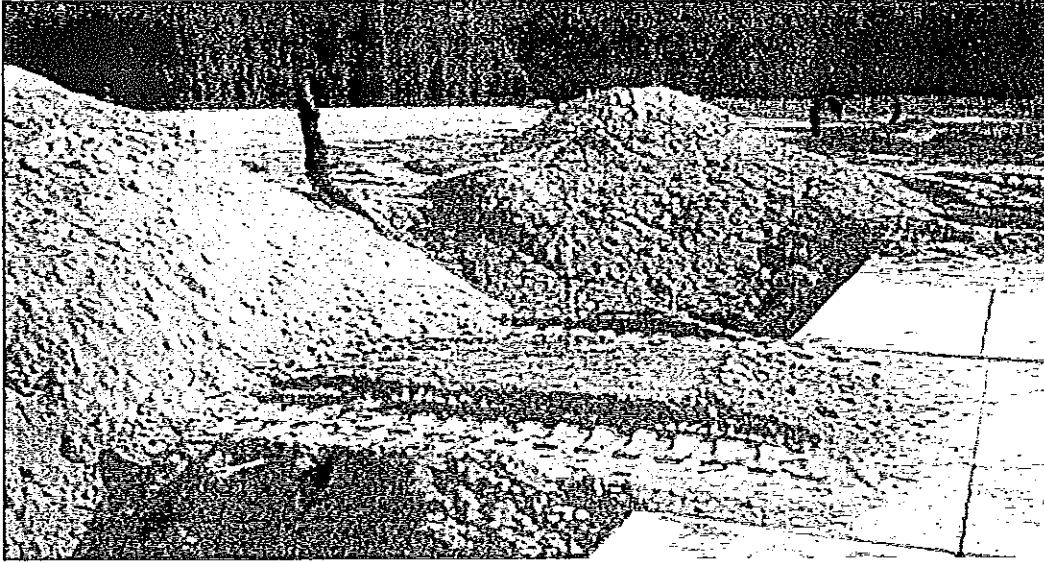
Remove vault from trailer



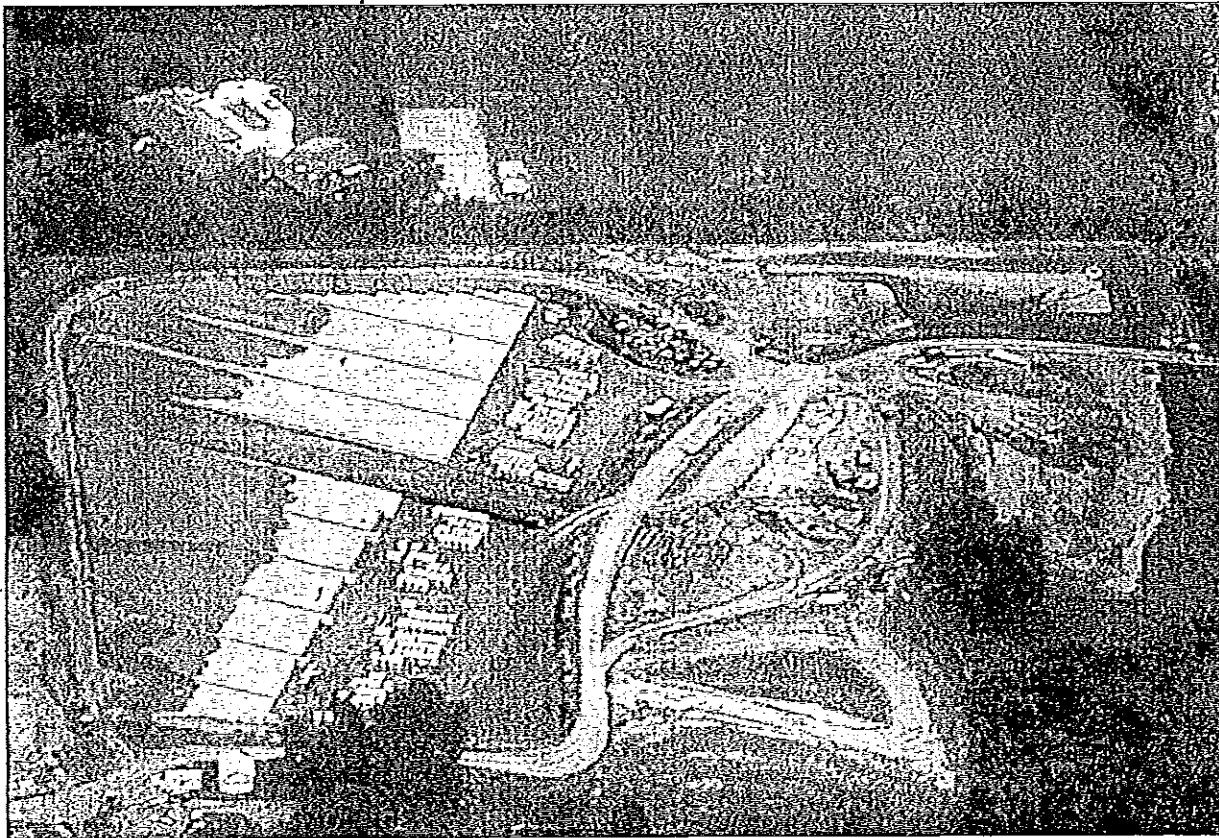
Place vault in excavation



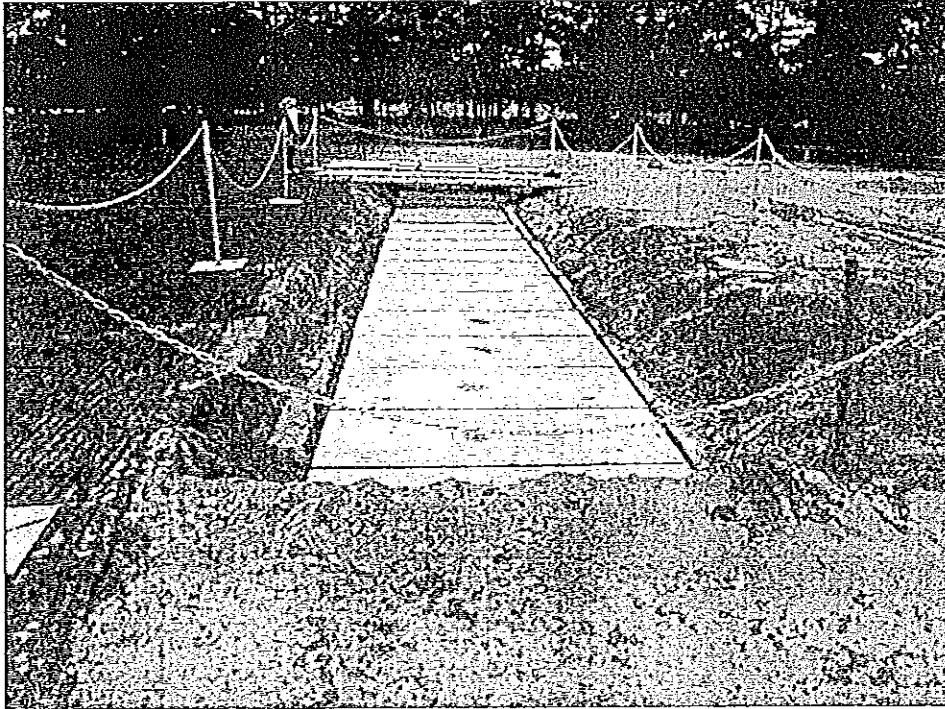
Fill in all gaps with gravel



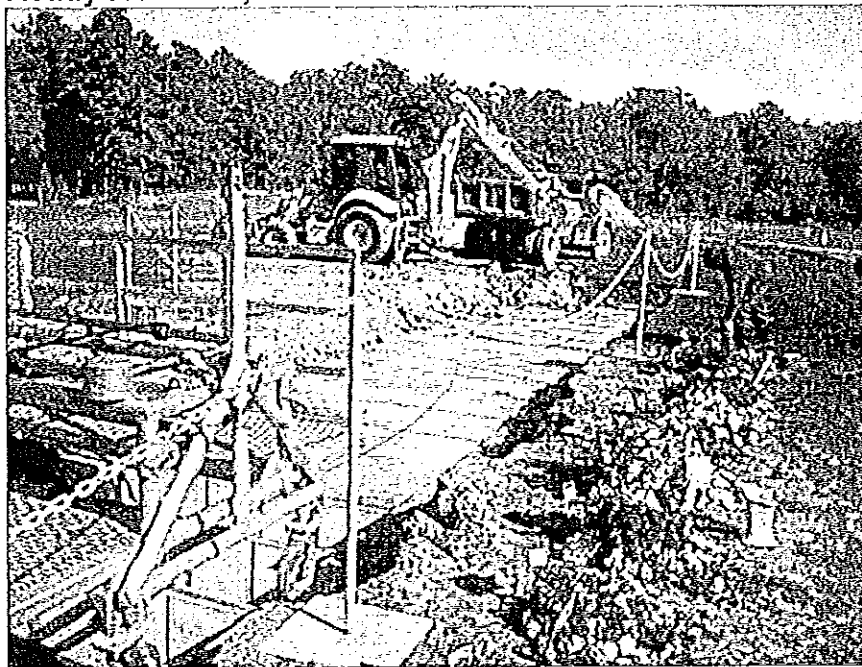
Backfill all areas with topsoil



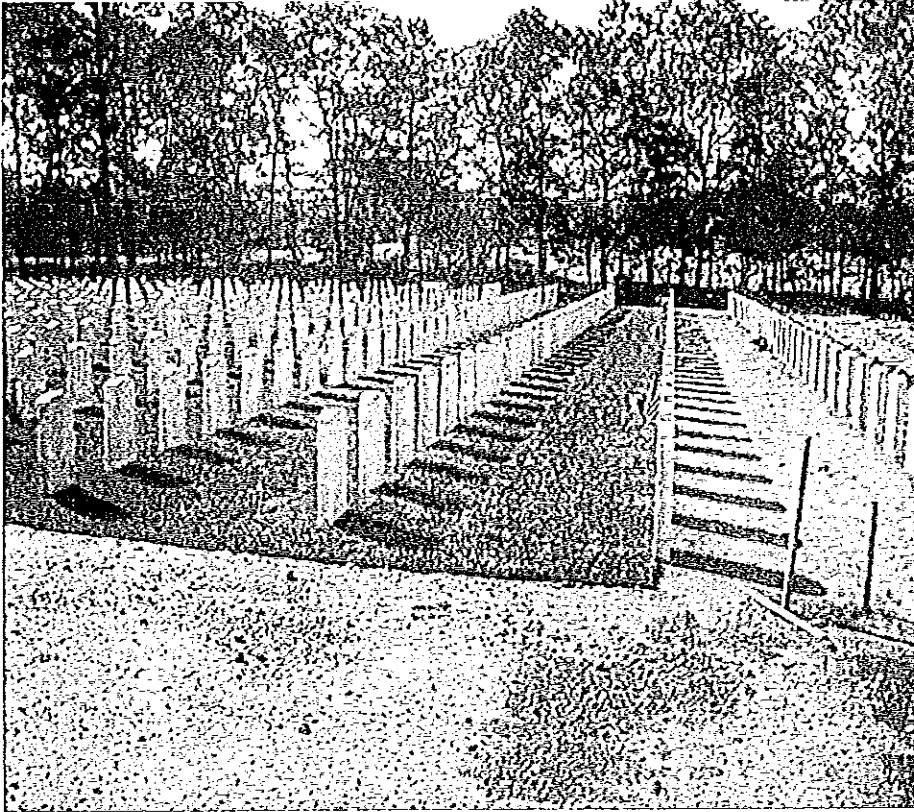
New Cemetery



Ready for burial, one row at a time



Row full, being backfilled



Sod, new burial area ready, to right



EXECUTIVE SUMMARY AND ANALYSIS

**StoneMor Partners
Philadelphia Region
Competitive Funeral Home Study**

December 2014 – January 2015

January 20, 2015

Market Viewpoint, LLC
Glenmoore, PA
www.marketviewpoint.com

Scope:

StoneMor Partners contracted with Market Viewpoint, LLC to conduct a mystery shopping study of competitor funeral homes in the Philadelphia market. The purpose of the study was to better understand the services and pricing offered by these funeral homes. In addition, the shoppers were to report if there was any discussion of StoneMor Partner's recent agreement with the Archdiocese of Philadelphia to manage 13 of the Archdiocese's Catholic cemeteries in the Philadelphia region.

Mystery shoppers were to schedule an appointment with the funeral director, posing as someone who would need to be planning a loved one's funeral in the near future, and wanting to obtain pricing and arrangement information to share with other family members.

Thirteen funeral homes in the Philadelphia region were identified by StoneMor Partners as the competitors to visit. We contracted with one mystery shopper who conducted all 13 shops.

Highlights:***Greeting and Initial Impressions***

The shopper felt that all of the funeral home directors were professional upon initial meeting and conducted themselves in a positive way. All of them met in a private area and started a focused discussion with the mystery shopper about her loved one.

Qualification

Each funeral home director spent several moments with the shopper to understand the situation of the loved one, religious and military background, and individual and family preferences for burial services.

Two of the funeral home directors went into in-depth discussions of life insurance policies/benefits, which the shopper felt were unnecessary. One funeral home director suggested that after the loved one passes, the family should predate a check for 5 days before to cover the funeral expenses. She felt this was an unethical recommendation.

Presentation

All of the funeral home directors provided explanations of the funeral process, options available for services, and showed floor models of caskets. Only one individual did not point out available caskets.

Each funeral home director asked the shopper about cemetery preferences. At each visit, the mystery shopper identified one of the Archdiocese of Philadelphia cemeteries as a consideration or a preference. Upon hearing the name of the cemetery:

- Ten of the funeral home directors immediately said they would not recommend using an Archdiocese cemetery. All ten mentioned that the Archdiocese had contracted with another organization to manage the cemeteries.
- Three specifically named StoneMor Partners as the new managers of the Archdiocese cemeteries; ten did not name StoneMor, but used 'large corporation' or 'another company' to refer to StoneMor Partners.
- Four of the funeral home directors told the mystery shopper that the new company had a very aggressive sales force.
- Two funeral home directors told the shopper that the new company had a bad reputation.
- One funeral home director offered a 'professional word of caution' and told the mystery shopper that burial at Resurrection cemetery would be at considerable cost.
- Ten of the funeral home directors recommended using a Veterans cemetery over a Catholic cemetery.
- Two of the funeral home directors suggested that if the family wanted to use an Archdiocesan cemetery, that the funeral home director would accompany them to purchase a plot.
- One funeral home director gave the name of a manager at an Archdiocesan cemetery, and even called the manager for pricing while the mystery shopper was in his office.
- One funeral home director told the mystery shopper that she also manages Forrest Hill cemetery and she could assist in getting a plot there.

*All comments in regard to presentation and cemetery discussion can be found in **Appendix A**.*

Pricing/Financing

Ten of the thirteen funeral home directors provided the mystery shopper with a general price list.

Seven funeral home directors provided package pricing, two did not and the subject did not come up with the other six.

Only three were willing to negotiate a price; the others said their prices were listed.

Eight funeral home directors provided the shopper with a personalized pricing sheet.

None of the funeral home directors offered a payment plan to the shopper during the visit.

Appendix B provides comments about the pricing and competitor question.

Appendix C shows casket prices comparable to the StoneMor Partner's Praying Hands or Crucifix & Pieta 20 Gauge caskets.

Appendix D shows vault prices provided to the shopper (note one funeral home did not provide vault pricing to the shopper).

Appendix E shows service charges provided to the shopper.

Closing

Twelve of the thirteen funeral home directors reviewed the materials with the shopper, asked if she had additional questions, and summarized the steps needed to be taken upon the death of her loved one.

Summary

When asked if she was satisfied with the way her inquiry was handled, the shopper answered that she was with 11 of the 13 funeral home directors. She would definitely use any of the 11, but would not use two of them because she felt they were either unethical or did not really care about her family and near-death loved one.

Appendix F provides a summary of her comments for satisfaction and future consideration.

Observations

We asked the shopper to provide us with collective observations about her visits:

1. The funeral home representatives that I met with who were younger spoke more professionally about StoneMor. They were able to convey their dislike of the company and their tactics more eloquently. The older the representative, the less professional was their reaction.
2. All of the funeral home directors were not supportive of my potential decision to use one of the StoneMor managed cemeteries. They either strongly suggested using the Veterans cemetery or offered to accompany me to the StoneMor cemetery for my plot purchase. Each seemed to have their own negative thoughts, opinions or personal experiences with the company.
3. When I asked for pricing or information to review I received two very different reactions. The first was very accommodating. I received packets of pricing, pictures, options and packages. To the contrast, at other locations I was told to just take notes or was given very little take away information.
4. In general the funeral homes that I visited were very aware of StoneMor. Resoundingly they told me that the sales team was extremely aggressive in their approach in up selling caskets, vaults and plots. They were ruthless to the extent that they would approach mourning family member's graveside and attempt to sell them a plot. In addition, they no longer considered these Catholic-run cemeteries. Collectively the local funeral homes had every intention of diverting as much business from StoneMor as possible.
5. A number of the funeral home directors told me that they were aware that StoneMor had attempted this same strategy in other states. They had succeeded in a few but went bankrupt in others. Lastly, the funeral homes are informing potential customers that StoneMor will insist on pre-payment and they are not correctly putting the money in an escrow account. They are leading people to believe that their prepayment of products and services could be in jeopardy if StoneMor goes out of business.

Actionable Items and Recommendations

1. Pricing and packages are offered in a variety of ways from funeral homes, but most start their offering at the mid-range of casket pricing that is in the \$2,400 to \$3,000 price range; slightly lower than the \$3,295 priced casket that the shopper had as an example from the Archdiocese to use for comparison.

StoneMor will want to consider the pricing points found in this study, including vault, service and package pricing, when competitively positioning their products and services in the Philadelphia market.

2. StoneMor Partners does not have a positive reputation with the local funeral home directors in the Philadelphia market. It appears that the 'old time' directors may be having difficulty in adapting to a change in management styles, which is a natural reaction; especially as StoneMor will be competing with these funeral homes in sale of caskets and vaults. And it is easy for the funeral home directors to suggest the 'free' or low costs of burials offered at the Veteran's cemeteries. However, the partnership of these funeral home directors in supporting and recommending StoneMor managed cemeteries to families of the deceased is vital to StoneMor's success in this market.

We recommend for StoneMor Partners to take the information learned in this study to open communication with the funeral home directors to dispel fears, rumors and misconceptions that were expressed by them in regard to the management of the Archdiocese of Philadelphia cemeteries.

3. Market Viewpoint recommends that StoneMor Partners plan an advertising and/or public relation campaign to the public, and in particular the Catholic community, endorsed by the Archdiocese of Philadelphia, to the commitment to maintaining the cemeteries as a sacred and affordable place for Catholic burial for everyone.

4. We suggest that StoneMor Partners conduct a repeat of this study in six to nine months in order to understand if any actions taken in the next 12 months have changed the perception of StoneMor Partners to the funeral home directors in the Philadelphia region.

APPENDIX A

ANSWER SUMMARY - Presentation and Cemetery Comments StoneMor Partners: Funeral Home Visit Competitive Study

Please comment on the presentation of the funeral home representative. Tell us what they said when you recommended a particular cemetery.

| Date | Funeral Home Name |
|------|-------------------|
|------|-------------------|

01-02-15 06 - Burns Funeral Home, PA US

Lisa carefully explained the many options for the service. These included specific casket and vault choices. She told me that she normally figures an average price of a casket choice at 1595.00. She asked where we were planning the burial. I told her we were thinking about Resurrection cemetery. She told me to be very careful with that cemetery. She told me that the church had sold the cemetery to a large corporate entity and it was not being run the same. She was very polite but her exact words were, I don't want to appear as if there are sour grapes but I do not recommend them. She asked if my father was a veteran and I told her yes. She highly suggested I look at the veterans cemetery. She told me that the plot was free of charge.

01-02-15 10 - Reilly Funeral Home, PA US

Mike asked me if we had thought about a cemetery. I told him we thought our father wanted to be buried at Resurrection. Mike highly recommended that we find another cemetery and actually encouraged us to go the Veterans cemetery.

01-05-15 05 - O'Leary Funeral Home, PA US

Bill was somewhat organized in his presentation. He jumped around a bit and at times took calls and left the room to attend to other things. I was not sure if he was just really busy or if he was just unprofessional. He began by asking if we had a plot pre-purchased. I told him we were thinking about St Peter and Paul. Bill told me to call Tom at the cemetery and gave me his cell number 215-704-2729. He told me that Tom would take good care of me. Then he actually called Tom and got current pricing at St Peter and Paul including grave opening, vault and monument. He also suggested I purchase it pre-need for \$1995.00. The price would increase to \$2195.00 after he passed.

Bill followed up by asking if my father was a veteran I told him, yes. He told me that Veterans receive ten free death certificates. Bill asked me if I wanted to see the caskets. We walked into the room and he quickly explained the differences of quality and price points.

01-05-15 07 - Galzerano Funeral Home, PA US

Danny started by asking if my father had life insurance and who was listed as the beneficiary. He suggested that, once he passed, we write a post-dated check for five days before his death to pay for the funeral. This was done because it would be considered tax-free. He suggested purchasing an additional death certificate, noting that because he was a veteran, he would get ten free. We went into the casket room, and Danny explained the different types, the construction, and the price points. He emphasized that there was no "right" one, just whatever was our personal preference. I told Danny we were thinking about Resurrection cemetery. He responded by saying they were an OK cemetery. He told me that they had recently changed hands and were no longer run by the church. He highly recommended that he accompany our family if we decided to purchase at Resurrection. Once he realized my father was a veteran, he really suggested we look at the Veterans cemetery. He told me that because my father had served, all of the costs except the casket were free. He said it was a beautiful cemetery, and since the Catholic cemeteries changed management, many families were choosing the Veterans cemetery.

01-05-15 12 - Tomlinson Funeral Home, PA US

Ryan was very well-organized in his presentation of information. He asked me if we had thought about a cemetery, and I told him we were considering St. John Neumann. He then asked if my father was a veteran and if I had his discharge papers. I told him I did not, but I could easily find them. Ryan told me that our family needed to make our own decision regarding the cemetery, but he recommended seriously considering the Veterans cemetery. He told me that my father had earned the right to be buried there, and that the plot, vault, and monument were free for himself and a spouse. He continued to tell me that the Catholic cemeteries were no longer run by the church. He said that a company, StoneMor, had leased them, and they conducted very bad business. He said that this company had done something similar in the Detroit area, and they had actually gone bankrupt. In addition, he said that traditional funeral homes were required to hold the money from a pre-planned funeral in an escrow type of account. He

Market Viewpoint, LLC
Glenmoore, PA
www.marketviewpoint.com

explained that StoneMor was not required to do this because they were not considered a funeral home. He said that they were actually purchasing the vaults and letting them sit outside until they were needed, sometimes for years.

01-05-15 13 - Lambie Funeral Home, PA US

David was very thorough and organized in his presentation. He explained different options depending on our family's choices for the viewing time, place and mass. He showed me various casket options and did not ask me to make a choice. He used a \$2500.00 casket as an average cost. He also asked if my father was a veteran, and I told him yes. At this point in the conversation, he mentioned that Resurrection was no longer run by the Catholic Church. He very nicely cautioned me against using the cemetery. He told me that StoneMor, a large corporation, had leased it for the next 60 years. He said it would be an additional considerable cost if we used Resurrection. He told me that my father qualified for a free burial in Veterans cemetery. The plot, monument, vault and grave opening and closing would all be included at no cost. In addition, his wife could be buried there too.

01-06-15 09 - Wetzel Funeral Home, PA US

Robert's presentation was extremely well organized but also very lengthy. He reviewed so many aspects in detail. I was clear that we were interested in a traditional burial, but he still explained the cremation process. In addition, he reviewed aspects such as wills and life insurance in great detail. I am not sure if he thought this was helpful, but I perceived it as being a bit condescending. We discussed casket options, and he gave me a general price list. Robert asked if my father was a Veteran. I told him yes. He explained that the Veterans cemetery was a much better option rather than Resurrection or any other Catholic cemetery. He continued by saying that the cemeteries had been leased by a large corporation, and he did not recommend them to anyone. He said that the priest at a local church cautioned his parishioners during church one Sunday against using the cemetery.

01-06-15 11 - Fluehr Funeral Home, PA US

Barry was extremely organized in his presentation. He began by asking about my father's church and if he was a veteran. I told him that he was a veteran. Barry told me that I needed to get a copy of his DD214 records for his veteran's benefits. He asked me about a cemetery preference, and I told him we were thinking about Resurrection. He told me to be very careful with that decision. He said that they had a very aggressive sales team. He offered to go with our family to purchase a plot. We looked at caskets, and he recommended choosing a mid-priced option.

01-06-15 15 - Rowan Grant Funeral Home, PA US

Barbara reviewed caskets with a brochure. We did not actually look at any caskets on display. She asked me if we had thought about a cemetery choice. I told her we were considering Resurrection. She told me that they used that cemetery quite often and then broadly reviewed their pricing. She also told me that she represented Forrest Hills cemetery, and she could help me with a plot at that location too. She asked if he was a veteran, and I told her yes. At this point, she highly recommends we consider the Veterans cemetery as an option. She told me that they were all inclusive, and it was no charge because of my father's military service.

01-06-15 04 - Joseph A Quinn Funeral Home, PA US

Joe was organized in his presentation. He really focused on the cemetery choice for a considerable amount of time. He explained that the Church no longer managed the cemeteries. He continued by telling me that they were taking out full page misleading advertisements. He said that they were supposed to make the management change January 1st. StoneMor went in on Ascension Thursday when the offices were closed, and they took over, either by moving current employees' desks to garages or simply changing the locks. He continued by telling me that they had a very high pressure sales, unethical sales team. Joe told me that all of the local funeral homes were banding together and were doing everything possible to make them fail. He said that they tried to do the same thing in other states and had succeeded in some and failed in others. He then told me that StoneMor had no idea how strong the Catholic parishioners were in the Philadelphia area, and he was sure they would fail. He also gave me a copy of a letter that was distributed earlier in the year. Joe asked if my father was a veteran, and I told him yes. He explained that the Veterans cemetery was a beautiful inexpensive option. He told me that many of the local funeral homes were highly encouraging families to avoid the Catholic cemeteries and go to Washington's Crossing. We went into the casket room and he explained the differences in prices, metal and wood construction. Joe told me he would write up a quote with an average priced casket. We discussed the option of having the viewing the night before and a short one the day of the actual burial.

12-26-15 02 - Cavanaugh Funeral Home, PA US

Lee began his presentation by asking me to consider a few basic options. He began by asking if we were interested in cremation and if we were, he would tailor the conversation towards the cremation process. He told me that they have their own crematory. They do not offer this service to outside funeral homes only to their own families. He explained that we could plan a viewing and service with his body or the cremation remains. We also had the option of having this in their funeral home and or the church. We discussed casket options and toured the separate casket building. They had approximately fifteen sample versions with multiple variations. They were all labeled clearly with gauge of metal or type of wood. He also told me and later showed me a very large catalog of caskets. I told him that we had a plot in Saint Peter and Paul's Cemetery in Springfield. I told him that my father is Catholic but I was not and was unsure of the protocol involving a Catholic burial. I asked him if I needed to follow specific guidelines or rules regarding the casket or any aspect of the funeral. This prompted him to elaborate on the cemetery topic.

12-30-15 14 - Donohue Funeral Home, PA US

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John asked if my Father already owned a plot or if it was where he was considering purchasing a plot. John carefully reviewed the different options available to us. He asked me if I knew if my father had expressed any preference to be cremated or a regular burial. We discussed the viewing option of days and times as well as viewings or mass in the church. We reviewed the casket options and then actually walked into the casket room. John reviewed the many different types of materials and finishes available. He explained the metal gage options and various ways in which they could customize the casket. John showed me the different types of vaults. He helped me to understand how each one was different from the others and why there was a price difference.

12-31-15

03 - Danjolell Funeral Home, PA US

Anthony began by reviewing and taking notes of personal information. He was careful to ensure proper spelling and accurate family information. We discussed the choices for viewing times and locations. In addition we discussed the various vault options, the differences in the vault price points and his own personal recommendation. We discussed casket options and he gave me a casket price list. At this point he asked me if I would like to see some of the casket options they had on display. We walked into the casket room and Anthony pointed out the differences in casket construction and materials used for the exterior.

In the adjacent room there was a display of the vaults with pricing and details clearly marked.

We returned to the library room and discussed the possibility of the need for a plot or if we already previously purchased one. I told him that I was unsure if we actually owned one or if my mother was looking at one in St Peter and Paul. I explained we had gotten some literature about the Archdiocese cemeteries and I was confused if I should call the number on the brochure. At this point Anthony told me that the Catholic church no longer owned the cemeteries because of financial problems. He continued by telling me that an outside company had bought them and they had an extremely aggressive sales force. He assured me if we needed to purchase a plot he would help us and take care of the details. He then told me that he was going to get the cemetery to fax him the pricing for the plots. He excused himself and returned with a copy of the prices and a map of the cemetery. He explained there were differences in the type of stone allowed depending on the plot size. Again, he reassured me that he would be involved with purchasing the plot if necessary.

APPENDIX B

ANSWER SUMMARY- Pricing and Competitor Comments StoneMor Partners: Funeral Home Visit Competitive Study

What comments were made about competitor pricing? Was StoneMor partners named?

| Date | Location | Partner Name |
|----------|------------------------------------|--------------|
| 01-02-15 | 06 - Burns Funeral Home, PA US | |
| 01-02-15 | 10 - Reilly Funeral Home, PA US | |
| 01-05-15 | 05 - O'Leary Funeral Home, PA US | |
| 01-05-15 | 07 - Galzerano Funeral Home, PA US | |
| 01-05-15 | 12 - Tomlinson Funeral Home, PA US | |
| 01-05-15 | 13 - Lambie Funeral Home, PA US | |

01-02-15 06 - Burns Funeral Home, PA US

Lisa did not supply me with a general price list. She did give me a Statement of Funeral goods and services. She individually listed professional services, facilities and equipment, automotive equipment and cash advances. It was in the cash advance area that she listed advertising, flowers, and death certificates. Lisa did not mention StoneMor by name. She did, though reference that a company had purchased the cemetery from the Archdiocese.

01-02-15 10 - Reilly Funeral Home, PA US

Mike referred to a general price list throughout our appointment. He asked me to take notes and specifically told me what to write. He offered one package that was, all inclusive for 4000.00.

This included

- casket
- 2 hour funeral home viewing
- embalming
- dressing
- use of facility
- hearse
- service car

He highly recommended we use the Veterans cemetery because as a veteran he would receive the following for free

- plot
- vault
- grave opening
- upright monument stone

01-05-15 05 - O'Leary Funeral Home, PA US

Bill gave a very broad, non specific overview of pricing. He did not refer to a general price list during his presentation. He did not take notes regarding any specific aspects of the funeral. There was no package pricing presented. I asked several times if there was paperwork I could take home to share with my family. I was told that his secretary was out and he did not have access to the price list. It was only at the very end of our appointment that I asked once again for literature. He went into his office and got me a general price list and a casket selection and pricing guide.

He never mentioned StoneMor by name. He told me to call Tom and that he would help me with purchasing a plot.

01-05-15 07 - Galzerano Funeral Home, PA US

StoneMor in particular was not mentioned by name, only as a different management company. Danny gave me two Statements of Cash Advances. One was specific to the Veterans cemetery, and one was for Resurrection. In addition, he gave me a Statement of Funeral goods and services. He did not give me a general price list because he told me that their pricing was all inclusive. The only changes would be the casket and vault choice. He made a recommendation of Birds of Paradise for our florist.

01-05-15 12 - Tomlinson Funeral Home, PA US

Ryan gave me a general price list in addition to a Statement of Funeral goods and services. There was no package type pricing presented. The quote was for items and services personally selected by the family. Yes, StoneMor was mentioned. Ryan told me that the sales people at the cemetery were very high pressure. They would attempt to sell me things I did not need or could get cheaper through the funeral home.

01-05-15 13 - Lambie Funeral Home, PA US

There was no specific discussion about competitor pricing other than a general reference to Resurrection cemetery in comparison to no-charge at the Veterans cemetery. David gave me a general price list in addition to a statement of funeral goods and services. There was no package pricing listed or discussed.

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01-06-15 09 - Wetzel Funeral Home, PA US

Robert gave me a general price list and a casket price list. He mentioned flower options and recommended a local florist. In addition, we discussed newspaper obituary costs and a funeral luncheon. There were no packages offered or price negotiations. The only time he mentioned a competitor was when referring to the choice of cemeteries.

01-06-15 11 - Fluehr Funeral Home, PA US

Barry gave me a general price list in addition to a statement of goods and services. He did not offer or discuss package pricing. We briefly discussed a luncheon and florists, I was given a very comprehensive folder with recommendations for each. Barry did not discuss any competitor pricing other than the earlier mention of cemetery choices.

01-06-15 15 - Rowan Grant Funeral Home, PA US

StoneMor was never mentioned during the appointment. We discussed pricing for a newspaper obituary and for a luncheon. She also mentioned the use of a Celebrant. This was a person who can be hired to personalize a deceased's service. She discussed the number of death certificates that should be ordered and drafting a letter to the credit bureaus. She offered a few options for package pricing and reviewed each.

01-06-15 04 - Joseph A Quinn Funeral Home, PA US

StoneMor was named during the conversation. He elaborated by telling me that the sales team was attempting to sell caskets, vaults and other funeral related items. Joe gave me a general price list and a statement of funeral goods and services. They did not offer packages or package pricing, just services and optional items.

12-26-15 02 - Cavanaugh Funeral Home, PA US

Lee gave me a general price list rather early in our discussion. He reviewed the various options listed as we discussed them in more detail.

He also mentioned various additional costs such as newspaper obituaries, flowers, opening the grave, church fees and death certificates. We discussed the options of transportation and military guard for veterans. We briefly discussed packages but he did not refer to them in that terminology. He referenced it by mentioning that once certain preliminary decisions were made such as open or closed casket, church or funeral home services and even cremation were decided there were certain follow up decisions to be made such as a type of casket and vault. They had a price range for various packages. Lee briefly discussed competitor pricing. He spoke generally and never mentioned StoneMor by name. He was not overtly negative but he did kindly warn me that they had a very aggressive sales force.

12-30-15 14 - Donohue Funeral Home, PA US

John gave me a very comprehensive price list for vaults and caskets.

We discussed the services that were not included in the basic fees such as flowers and newspaper obituary costs. He explained there was a charge for the grave opening, organist, priest, altar servers and pallbearers if needed. In addition, he suggested prayer cards and limousine service. We really did not discuss package pricing. It seemed to be structured so that there were basic services for a fee and the rest of the services were a type of "a la carte" depending on our family's wishes.

When I told John that we were considering All Souls and actually received literature from them, he seemed perplexed. He told me that the Catholic church was losing money and had sold their cemetery to a big conglomerate, StoneMor. He continued to say that StoneMor was not in the funeral home industry. He said that they were just trying to sell plots and did not really care about the deceased. He told me they had a very aggressive sales force and to be very careful. John summarized by saying, "You know I don't even think they are Catholic, I am pretty sure they are Jews."

12-31-15 03 - Danjolell Funeral Home, PA US

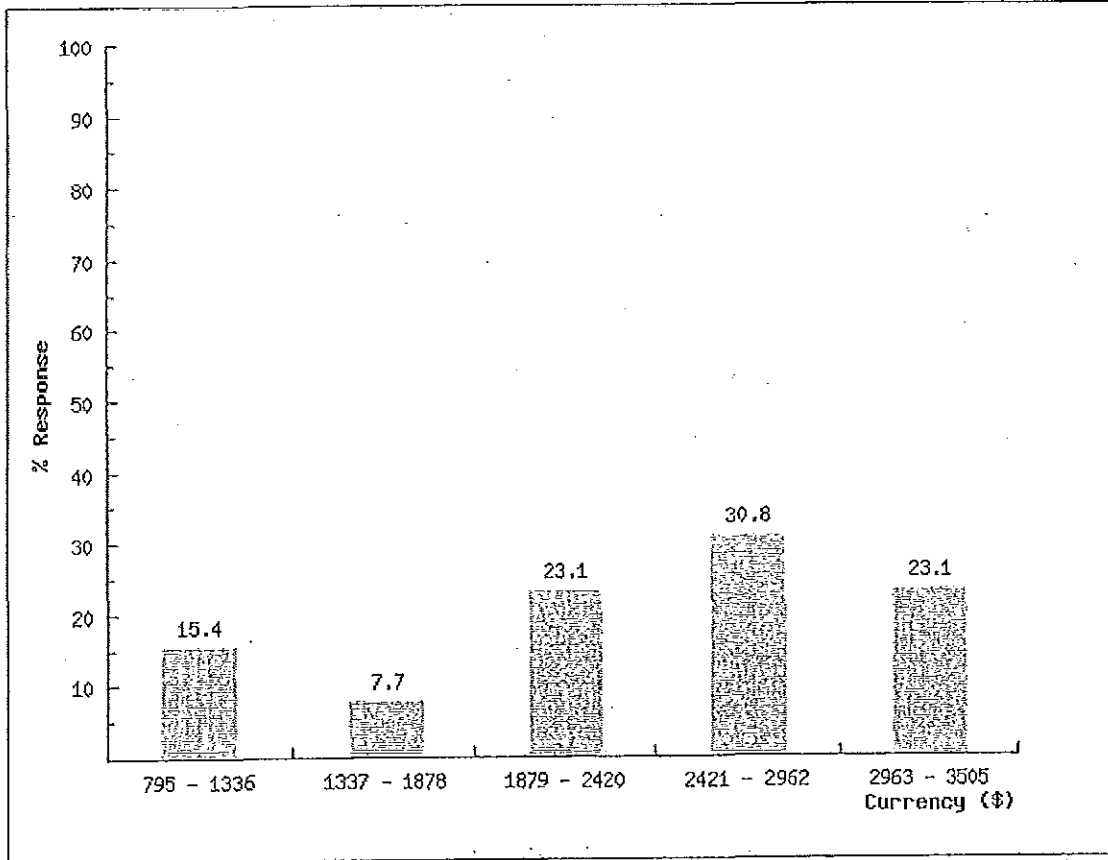
Anthony gave me a general price list which listed detailed services and preparation of the deceased. It did not necessarily appear to be package pricing but more of a logical list of relevant services depending on a traditional funeral compared to a cremation.

He also discussed that there were other variable charges depending on our individual choices. These would include flowers, clothing, and newspaper obituaries. The use of limousines and the day of the week we chose for the services. He also reviewed the very broad price range for our casket and vault choice.

The only time that competitor pricing was discussed was regarding the cemetery plot itself. This was limited to his personal opinion of the sales team and his thoughts on the Catholic church's decision to sell the cemetery.

APPENDIX C

Casket Pricing



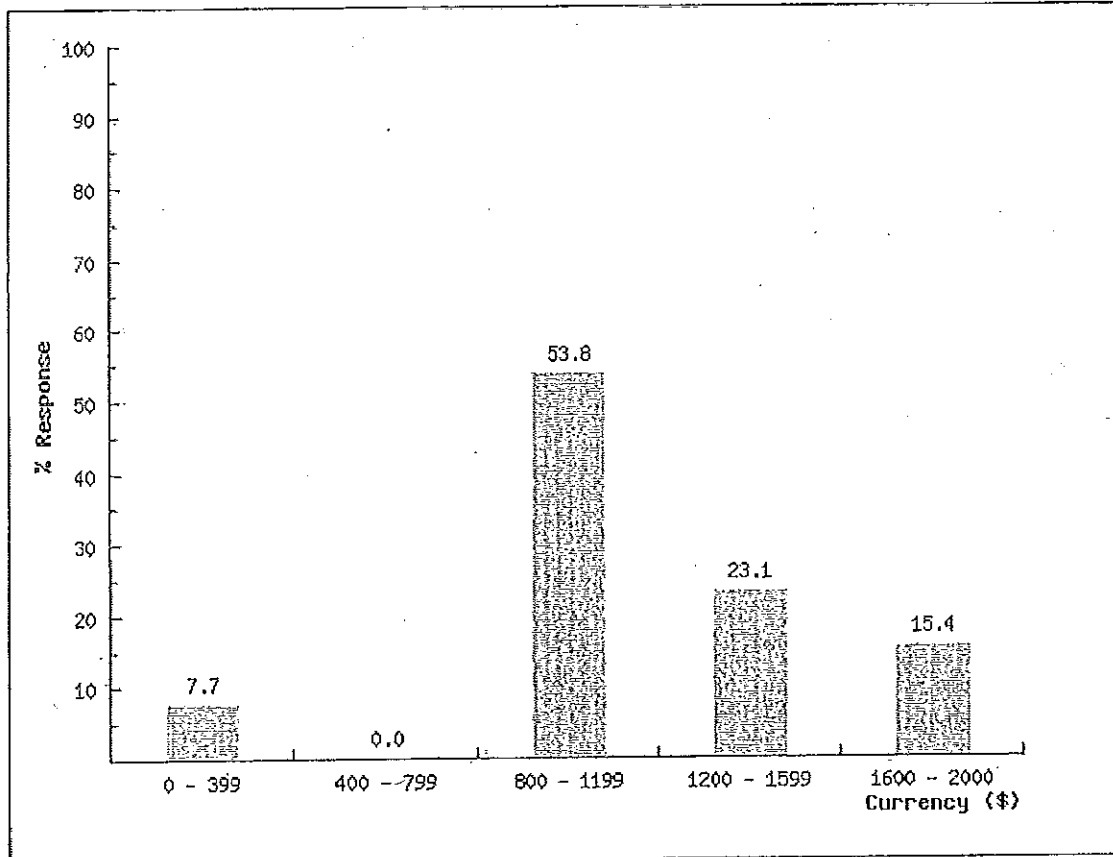
| Date | Location | Price |
|------|----------|-------|
|------|----------|-------|

| | | |
|----------|------------------------------------|---------|
| 01-02-15 | 06 - Burns Funeral Home, PA US | 1595.00 |
| 01-02-15 | 10 - Rellly Funeral Home, PA US | 1275.00 |
| 01-05-15 | 05 - O'Leary Funeral Home, PA US | 2200 |
| 01-05-15 | 07 - Galzerano Funeral Home, PA US | 3000.00 |
| 01-05-15 | 12 - Tomlinson Funeral Home, PA US | 3500.00 |
| 01-05-15 | 13 - Lambie Funeral Home, PA US | 2500.00 |
| 01-06-15 | 09 - Wetzel Funeral Home, PA US | 2500.00 |

| | |
|----------|---|
| 01-06-15 | 11 - Fluehr Funeral Home, PA US |
| 1895.00 | |
| 01-06-15 | 15 - Rowan Grant Funeral Home, PA US |
| 3500.00 | |
| 01-06-15 | 04 - Joseph A Quinn Funeral H home, PA US |
| 2150.00 | |
| 12-26-15 | 02 - Cavanaugh Funeral Home, PA US |
| 795.00 | |
| 12-30-15 | 14 - Donohue Funeral Home, PA US |
| 2795.00 | |
| 12-31-15 | 03 - Danjolell Funeral Home, PA US |
| 2795.00 | |

APPENDIX D

Vault Pricing



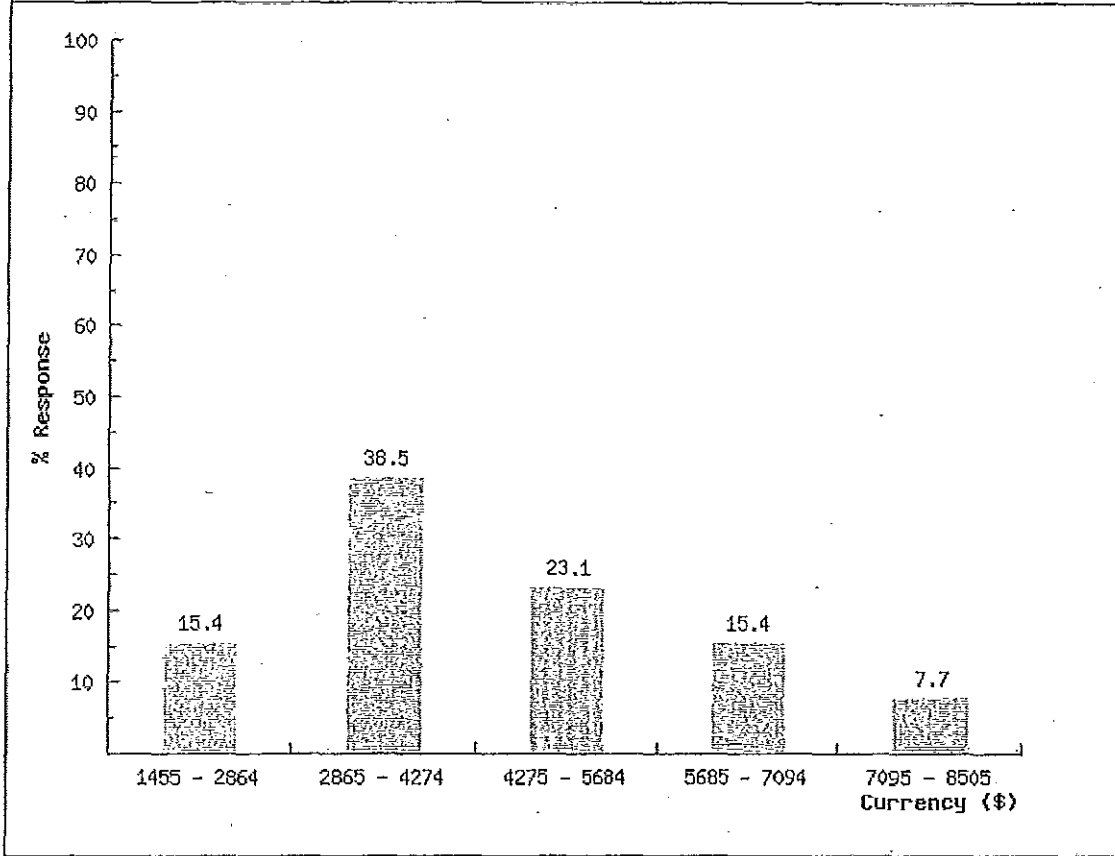
Q1: What is the average price of a vault? (in dollars)

| Date | Response ID | Name | Price |
|----------|-------------|-------------------------------|---------|
| 01-02-15 | 06 | Burns Funeral Home, PA US | 1200.00 |
| 01-02-15 | 10 | Reilly Funeral Home, PA US | 0 |
| 01-05-15 | 05 | O'Leary Funeral Home, PA US | 1000.00 |
| 01-05-15 | 07 | Galzerano Funeral Home, PA US | 1995.00 |
| 01-05-15 | 12 | Tomlinson Funeral Home, PA US | 1050.00 |
| 01-05-15 | 13 | Lamble Funeral Home, PA US | 1095.00 |
| 01-06-15 | 09 | Wetzel Funeral Home, PA US | 1500.00 |

| | |
|----------|---|
| 01-06-15 | 11 - Fluehr Funeral Home, PA US |
| 1125.00 | |
| 01-06-15 | 15 - Rowan Grant Funeral Home, PA US |
| 1000.00 | |
| 01-06-15 | 04 - Joseph A Quinn Funeral Home, PA US |
| 1025.00 | |
| 12-26-15 | 02 - Cavanaugh Funeral Home, PA US |
| 1000 | |
| 12-30-15 | 14 - Donohue Funeral Home, PA US |
| 1295.00 | |
| 12-31-15 | 03 - Danjolell Funeral Home, PA US |
| 1650.00 | |

APPENDIX E

Service Charges



| Qtr | Month | Company Name |
|-----|-------|--------------|
|-----|-------|--------------|

| | | |
|----------|------------------------------------|---------|
| 01-02-15 | 06 - Burns Funeral Home, PA US | 4840.00 |
| 01-02-15 | 10 - Reilly Funeral Home, PA US | 4000.00 |
| 01-05-15 | 05 - O'Leary Funeral Home, PA US | 8500.00 |
| 01-05-15 | 07 - Galzerano Funeral Home, PA US | 1455.00 |
| 01-05-15 | 12 - Tomlinson Funeral Home, PA US | 5225.00 |
| 01-05-15 | 13 - Lambie Funeral Home, PA US | 4900.00 |
| 01-06-15 | 09 - Wetzel Funeral Home, PA US | 6950.00 |

| | |
|----------|---|
| 01-06-15 | 11 - Fluehr Funeral Home, PA US |
| 3715.00 | |
| 01-06-15 | 15 - Rowan Grant Funeral Home, PA US |
| 3395.00 | |
| 01-06-15 | 04 - Joseph A Quinn Funeral H home, PA US |
| 3470.00 | |
| 12-26-15 | 02 - Cavanaugh Funeral Home, PA US |
| 1995 | |
| 12-30-15 | 14 - Donohue Funeral Home, PA US |
| 3595.00 | |
| 12-31-15 | 03 - Danjolell Funeral Home, PA US |
| 6580.00 | |

Appendix F

ANSWER SUMMARY- Would You Use the Services of this funeral home Comments StoneMor Partners: Funeral Home Visit Competitive Study

Would you use the services of the funeral home? Why or why not?

01-02-15 06 - Burns Funeral Home, PA US

Yes I would use this funeral home. Lisa was very professional during our meeting. She seemed to have a desire to assist me through a hard time of preplanning a funeral.

01-02-15 10 - Reilly Funeral Home, PA US

I would not use this funeral home. I was completely put off by his hesitation in supplying the general price and irritated at his blatant sneakiness in removing it while offering to clip it together for me. If he was willing to be sneaky at the beginning of our transaction I would not trust him in any other aspect.

01-05-15 05 - O'Leary Funeral Home, PA US

No, I would not use this funeral home. Bill was not professional. I did not appreciate that he withheld the price list until the very end. I found him dishonest in that he initially told me he did not have access to the price list. He had a very casual almost disrespectful attitude throughout our appointment.

01-05-15 07 - Galzerano Funeral Home, PA US

I would use this funeral home. Danny was professional and friendly. He made me feel that he really wanted to help me in a difficult situation. Although, I was surprised when he advised me to post date a check to pay for services. Perhaps this was good information, but it gave the impression of impropriety.

01-05-15 12 - Tomlinson Funeral Home, PA US

I was very satisfied. Ryan was very open and honest yet professional in his opinion of cemetery choices. He did not make me feel pressured to choose the most expensive of any of the options. He was thorough in his explanations and estimated quotes.

01-05-15 13 - Lamble Funeral Home, PA US

Yes, I would use this funeral home. David was extremely nice and professional. He carefully reviewed the options and made sure I understood them. He did not speak poorly of StoneMor but just offered a professional word of caution.

01-06-15 09 - Wetzel Funeral Home, PA US

I was somewhat satisfied with this visit. Robert reviewed so many topics. Most of them I did not ask about, but he seemed compelled to explain them to me in great detail. I am not sure if this would be helpful or just overwhelming and exhausting if I were actually planning a funeral.

01-06-15 11 - Fluehr Funeral Home, PA US

Barry was very professional during his presentation. He gave me a very comprehensive folder of information about not only his services but also those of florists and restaurants. I really felt that he wanted to help me make good decisions for our family.

01-06-15 15 - Rowan Grant Funeral Home, PA US

Yes, I would use the funeral home. Barbara was very professional and had a very kind nature. I did not like the package approach in pricing. At first it seemed that it might be a convenient option for families, but I think it allowed the opportunity for overcharging.

01-06-15 04 - Joseph A Quinn Funeral Home, PA US

Yes, I would use this funeral home. Joe was thorough in his review of the necessary items and steps to pre-plan a funeral. He seemed to be concerned that our family would be taken advantage of by StoneMor and offered to accompany us to the cemetery.

12-26-15 02 - Cavanaugh Funeral Home, PA US

Yes, I would use this funeral home. I was very happy with his kind and compassionate attitude. He was willing to explain the process and the many options and choices. I appreciated that they had an on site crematorium.

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Glenmoore, PA
www.marketviewpoint.com

12-30-15 14 - Donohue Funeral Home, PA US

I was very satisfied. John was thoughtful and empathic to the situation. He gave me the impression he wanted me to have a full understanding of the process and the associated costs. He encouraged me to call if I had additional questions. I would use this funeral home.

12-31-15 03 - Danjolell Funeral Home, PA US

Yes I would use this funeral home. I interacted with three separate people during this visit and all three were very kind and compassionate.

Anthony was very transparent in his explanation of services and options. He gave me price lists and services include lists for reference.



Funeral Consumers Alliance of Philadelphia

PO Box 246, Philadelphia PA 19105 • 267-712-9695 • www.fcaphilly.org

October 18, 2015

Mr. Harry Neel
Jefferson Memorial Cemetery and Funeral Home
401 Curry Hollow Road
Pittsburgh, PA 15236

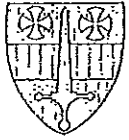
Dear Mr. Neel,

The executive director of Funeral Consumers Alliance is Joshua Slocum. As those in the funeral industry well know, FCA is the national advocacy group for consumer rights in the USA. It was directly through the efforts of the FCA that the FTC adopted the "funeral rule" in 1984. I was general counsel at the time.

Mr. Slocum has looked into the conflict in PA between the cemeteries and the funeral directors relating to the sale of merchandise. In the opinion of FCA, this matter is, in Josh's words, "a turf war." We have received no complaints from consumers relating to the sale of merchandise by cemeteries.

Sincerely,

David Rittenhouse Morrison, Esq.
Acting President of the Funeral Consumers Alliance of Greater Philadelphia



THE CATHOLIC CEMETERIES ASSOCIATION
of the Diocese of Pittsburgh

October 13, 2015

Dear Senator:

Re: Opposition to Senate Bill 874

On behalf of The Catholic Cemeteries Association of the Diocese of Pittsburgh, we ask that you oppose the passage of Senate Bill 874. It is our understanding that this Bill may come up for vote this week. The Catholic Cemeteries Association is a nonprofit religious organization that administer the Church's corporeal work of mercy of burying the dead and caring for their resting places. We are part of the Catholic Diocese of Pittsburgh. Catholic Cemeteries in southwestern Pennsylvania bury nearly 8,000 individuals a year.

The changes proposed by this Bill will seriously impact the financial stability of our Catholic Cemeteries and impact how we do business in the future. There are not, nor have there been any consumer complaints or problems on the delivery of merchandise that have occurred that necessitate a change in the current law. This current law has been in effect since 1965 and provides adequate protection for the consumer with oversight by the Orphans Court in each county.

These changes would restrict cemeteries from entering into binding contracts with the consumer and would create additional administrative burden and expense. In addition, the changes suggested create unequal standards for different consumers.

In our view this is an attempt by Funeral Directors to interfere with Cemeteries from engaging in business that is necessary for the continued financial health of cemeteries and a benefit to the consumer so Funeral Homes can gain a competitive advantage. There is an old adage that applies here, "If it isn't broken don't fix it." The current law works and provides the consumer safeguards.

Here are some additional reasons this legislation is bad for Pennsylvania consumers and workers:

- Harms consumers because less competition means higher prices.
- Makes selling pre-need extremely difficult for cemeteries, thereby restricting consumer options. Recently the Veterans Administration designated pre-installation of vaults a best practice. This legislation would prevent that.
- *The contract becomes illusory* because the bill requires that the cemetery must return all funds received from the purchaser within 60 days if the purchaser defaults on payment before final payment is received.
- Consumers will lose the option to purchase ahead of time at lower prices, as this bill makes pre-need sales so restrictive that cemeteries will not offer them. Buying from the funeral director at the time of death with higher prices will be the only option available to Pennsylvania families.
- Cemetery employees will lose their jobs when revenues from pre-need sales (which cemeteries have relied on for 50 years) end.


"Catholic Cemeteries - ~~are~~ Reliquaries of Saints"

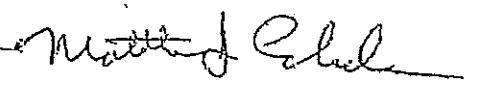
- Consumers already receive written estimates from cemeteries. The FTC has twice declined to put cemeteries under the Funeral Trade Rule citing nearly zero cemetery complaints (as opposed to the myriad of funeral home complaints that generated the rule).
- Will raise consumer costs by adding new and unnecessary reporting and compliance rules.
- Consumers' ability to eliminate higher future costs will be infringed upon because this bill prohibits delivery of merchandise.

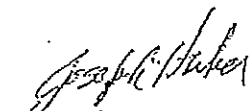
There are no consumer issues needing to be addressed:

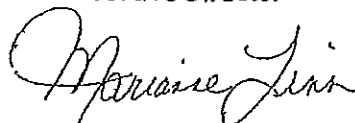
- The State Real Estate Commission, which regulates cemeteries in Pennsylvania, has received no complaints from consumers about not receiving cemetery goods and services purchased pre-need.
- The Funeral Trade Rule specifically deals with the funeral profession. Many of these provisions make no sense for cemetery business. Incorporating the entire rule into a Pennsylvania Statue makes no sense. What happens if the rule is changed or eliminated?
- The FTC has twice declined to put cemeteries under the Funeral Trade Rule citing a lack of complaints. *However, in 2014 the failure rate for funeral homes, at 27 percent, was higher than when the Funeral Trade Rule was first instituted in 1983.*
- This dispute between cemeteries and funeral homes has been on-going since 1965 – 50 years!


We would be happy to speak with you and answer any questions that you may have. Thank you for your consideration.

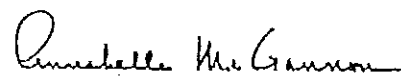

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Marianne Linn
Director of Operations


Duane Vula
Associate Director of Family Service


Annabelle McGannon
Director of Parish Cemeteries

State funeral regulations: inside the black box

Jerry Ellig^{1,2}

Published online: 13 May 2015
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Abstract This study estimates the effects of state regulations affecting funeral markets. It accounts for multiple major categories of regulations and demand inducement as well as direct price effects. While concurring with prior studies that find ready-to-embalm regulations increase funeral costs and decrease the percentage of cremations, this study finds that several other state regulations are associated with significantly higher receipts per death. The regulation with the largest apparent effect on average funeral costs is the direct disposition license, which is associated with a \$1250 reduction in receipts per death. Restrictive regulations affect the revenues of funeral homes and services to a much greater extent than they affect the revenues of cemeteries and crematories, and in some cases the regulations even increase funeral homes and services' share of industry revenues. Thus, it appears that funeral homes receive most of the benefits of regulation.

Keywords Funeral · Regulation · Funeral regulation · Funeral director · Cemetery · Occupational licensing · Death care

JEL Classification K23 · L51 · L84 · L88 · H73

1 Introduction

The cost of death care is a big concern in the United States. Consumers spent approximately \$15 billion on death care in 2007, according to the most recent figures available

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from the US Economic Census. In a 2010 survey, consumers who said they wished they could change something about their recent funeral home experience overwhelmingly named "price" as the factor they would change (FAMIC 2012, 53). The Federal Trade Commission was so concerned about death care costs that it adopted its Funeral Rule in 1982. Among other provisions, the Funeral Rule requires funeral directors to maintain and furnish to consumers an itemized price list that includes the separate charge for the funeral director's basic services. Since 1994 the rule has prohibited funeral directors from imposing additional charges if consumers purchase funeral merchandise (such as caskets) elsewhere.

Courts too have seen their share of activity generated by disputes over death care costs, and particularly regulations that may contribute toward those costs. Federal courts have invalidated several states' requirements that only funeral directors can sell caskets as violations of the U.S. Constitution's due process and equal protection clauses.¹ In these cases, courts declared that naked protectionism of an intrastate economic interest (funeral directors) from the plaintiffs (casket sellers who are not funeral directors) does not qualify as a legitimate state interest.² In a recent case successfully challenging a Minnesota statute that required all funeral homes to have embalming rooms, the plaintiffs noted that an embalming room would cost \$30,000 or more even if it were never used.³ Legal commentators have suggested that some state funeral regulations might be vulnerable to challenge under the dormant Commerce Clause as well, if the regulations affect electronic commerce in funeral goods or have other interstate effects (Agarwal and Ellig 2006).

In addition to being of obvious interest to consumers, the effects of state funeral regulations on death care costs could thus be of interest to courts for several reasons. If regulations increase consumer costs, then courts may want to consider seriously whether protection of incumbent firms is the sole motive for the regulation. If consumers are among the plaintiffs challenging the regulations, evidence showing how the regulations affect consumer costs could play a significant role in determining whether consumers are actually harmed. If a state proffers a consumer protection defense in support of a challenged regulation, information about the regulation's actual effect on consumer costs could help the court determine whether the regulation protects or harms consumers. Finally, if a state's funeral regulations were to be challenged under the dormant Commerce Clause, then empirical analysis of the regulation's effects on death care costs and the volume of commerce could help determine the size of any interstate effect, if coupled with evidence that consumers cross state lines to purchase funeral goods and services.⁴

¹ *St. Joseph Abbey v. Castille*, 712 F.3d 215 (2013); *Craigmiles v. Giles*, 312 F.3d 220m (6th Cir. 2002); *Casket Royale v. Mississippi*, 124 F.Supp. 2d 434 (S.D. Miss. 2000).

² One casket case held that naked protectionism is a legitimate state interest. See *Powers v. Harris*, 379 F.3d 1208 (2004).

³ See Findings of Fact, Conclusions of Law, and Order for Judgment, *Verlin Stoll et. al. v. Minnesota Department of Health*, State of Minnesota, County of Ramsey, Second Judicial District, Civil File No. 62-CV-12-443 (Oct. 9, 2013), 16.

⁴ For example, the author's parents resided in Cincinnati, Ohio, all of their lives, but they are buried in a cemetery across the river in Northern Kentucky.

Published economic research suggests that some, but not all, state funeral regulations have a significant effect on death care costs. Empirical studies find that state funeral regulations can increase consumer costs directly, by limiting competition or raising production costs (Harrington and Treber 2012; Harrington 2007), or indirectly by facilitating funeral directors' efforts to sell more expensive packages of services (aka "demand inducement;" see Harrington 2007; Harrington and Krynski 2002). On the other hand, death care costs in states that prevent parties other than funeral directors from selling caskets appear to be about the same as death care costs in states with no such restriction (Chevalier and Scott Morton 2008; Sutter 2007).

Prior studies, while providing valuable information, nevertheless have several drawbacks. No prior study assesses the effects of major state licensing, business structure, and merchandise sales regulations together. Most research has addressed either individual merchandise restrictions (Sutter 2007, 2005; Chevalier and Scott Morton 2008) or licensing and business structure regulations (Harrington and Treber 2012; Harrington 2007; Harrington and Krynski 2002), but not both. In addition, the only merchandise restriction studied previously is state restrictions on casket sales by parties other than funeral directors. Complete bans on all merchandise sales by cemeteries, the most likely competitor to funeral homes for sales of caskets and other merchandise, have received no attention. Finally, with one exception (Harrington 2007), prior studies do not explicitly account for the possibility that the same regulations might simultaneously affect both death care costs that stem from price increases and costs that stem from demand inducement by funeral directors.

This study addresses these issues by including numerous death care regulations that pertain to sales of merchandise, licensing requirements, and business structure. It finds that some regulations of all three types are correlated with death care costs. For example, requiring funeral directors to be embalmers is associated with a \$342–390 increase in receipts per death for the death care industry. Because this regulation is so widespread, it is the most expensive regulation, costing consumers an estimated \$400 million annually. A direct disposition license, which allows cremators to transport bodies without having to be licensed funeral directors, is associated with a \$1246–1251 reduction in receipts per death for the death care industry. These figures imply that if all states offered direct disposition licenses, consumers could save approximately \$2.8 billion annually. The prohibition on cemetery sales of funeral goods is associated with a \$1268–1547 increase in average receipts per death, costing consumers \$255–279 million annually.

By examining the potential effects of regulation on funeral industry revenues and cremations, this study considers both major ways funeral regulations might affect consumer costs. The requirement that funeral directors be embalmers and the cemetery goods prohibition are associated with higher receipts per death; direct disposition licenses and the requirement that crematories must be in cemeteries are associated with lower receipts per death. But the first two regulations are also correlated with a lower cremation percentage, and the second two are correlated with a higher cremation percentage. In addition to affecting the prices of services, these regulations may well affect demand inducement by funeral directors, and the demand inducement effects appear to be relatively large.

Finally, by examining receipts per death for components of the death care industry, this study finds substantial evidence that funeral directors, rather than cemeteries and crematories, are the primary beneficiaries of most restrictive regulations. Regulations have the quantitatively largest and most statistically significant effects on the revenues of the funeral homes and services segment of the industry. In some cases, restrictive regulations even appear to increase the share of revenues received by funeral homes and services.

Section 2 of this paper outlines the economic theories suggesting how funeral regulations may affect death care costs and summarizes prior empirical research on the topic. Section 3 explains the regulations covered in this paper and compares average death care costs in states with and without the regulations. Section 4 presents the econometric analysis and uses the results to calculate the effects of various regulations on death care costs. Section 5 summarizes the paper's findings, concluding that state funeral regulations may have a larger effect on the cost of dying than previous research indicates.

2 Regulation and death care costs

Funeral industry regulations could affect consumers' death care costs directly, via higher prices, or indirectly, by facilitating "demand inducement" that prompts consumers to purchase a more expensive package of funeral goods or services.

2.1 Higher prices

First and most obviously, regulations could increase consumer costs directly by creating barriers to entry or increasing production costs. McChesney (1990, pp. 14–15) identifies state regulation as the principal barrier to entry into the death care industry, arguing that entry is otherwise easy. Licensing requirements that include multiple years of training or require funeral directors to be trained as embalmers are straightforward examples of regulations that could raise costs. Prohibitions on mortuary-cemetery combinations, or requirements that crematories must be located in cemeteries, exclude competitors with specific types of business models that may facilitate lower costs or better service. On the other hand, regulations affecting combinations might also lower costs by preventing funeral directors from steering customers to their own (higher-priced) cemeteries or crematories. A direct disposition license, which allows the holder to transport a body, cremate it, and transport the remains to the family without a funeral director's license, is an example of a regulation that reduces entry costs.

Existing empirical research finds that some of these types of regulations are associated with higher prices. Harrington (2007) estimates that regulations requiring all funeral homes to be capable of embalming bodies increase the price of simple cremations by \$313 and the price of traditional funerals by \$546 per burial. He finds that funeral expenditures per burial increase by \$212 for each year of required training for funeral directors. Harrington and Treber (2012) estimate that cemetery-funeral home combinations can handle a funeral at a cost that is \$492–880 less than a stand-alone

funeral home, implying that state laws banning cemetery-funeral home combinations increase the cost of producing funerals.

Regulations that give funeral directors a monopoly on the sale of caskets or other funeral merchandise, or that prevent specific entities from selling merchandise, might also increase funeral costs by reducing competition. The empirical literature on this topic has focused on caskets. Although caskets are available from third parties at lower cost than from funeral directors (Sutter 2005), the literature finds the bans have no effect on average death care costs, most likely because of the “one monopoly rent” phenomenon. Funeral directors who face competition in the sale of caskets can simply cut their casket prices and then extract monopoly profits by increasing the prices they charge for their other goods and services (Chevalier and Scott Morton 2008; Sutter 2007). All customers would be affected by these price changes, because the FTC’s Funeral Rule prohibits funeral directors from selectively imposing additional charges on customers who obtain their caskets elsewhere.

No prior empirical study has assessed whether regulations prohibiting cemeteries from selling funeral merchandise have any effect on death care costs. Cemeteries are arguably the businesses best positioned to compete with funeral directors in the sale of merchandise such as caskets, vaults, markers, and urns. In 2010, 92 % of Americans aged 40 and above who planned a funeral indicated that they used a funeral director; 52 % used a cemetery. Roughly the same percentage of consumers purchase grave markers from cemeteries as from funeral homes (FAMIC 2012, pp. 30–33). Unlike the situation with online competitors or big box retailers that sell caskets, buying funeral merchandise from a cemetery does not require the consumer to go out of his or her way to purchase from a “nontraditional” source. Cemeteries may thus enjoy economies of scope in selling other merchandise along with burial services. Cemeteries may also have economies of scale; since there are generally more funeral homes than cemeteries, a typical cemetery handles more burials than a typical funeral home handles funerals. Nevertheless, several populous states—New York, New Jersey, and Massachusetts—prohibit cemeteries from selling funeral merchandise. For example, New York’s law explicitly prohibits cemeteries from selling any monuments (other than flush bronze markers), caskets, burial vaults or other grave liners.

2.2 Demand inducement

Regulations can also alter consumer costs by facilitating or inhibiting “demand inducement” (Harrington and Krynski 2002). When poorly-informed consumers rely on the seller for expert advice and information, the seller has an opportunity and incentive to persuade the customer to purchase goods or services that a better-informed customer would decline to buy. For funeral directors, this means steering customers away from low-cost cremations and toward traditional funerals, which involve embalming, caskets, public viewing, and other services that funeral directors traditionally provide. The Federal Trade Commission’s (1978) report justifying the Funeral Rule argued that funeral directors steer consumers away from cremations because cremations typically use fewer of the funeral director’s services (FTC 1978, p. 57).

Regulations that create barriers to entry into the funeral home industry could facilitate demand inducement by reducing competition among funeral directors, so consumers are less likely to access competing streams of information from competing funeral directors. To the extent that regulations such as training or embalming room requirements create greater uniformity in the services funeral directors offer, they may diminish competition even if consumers have access to multiple competitors.

Regulations that prevent cemeteries or other vendors from selling caskets or other funeral merchandise could likewise facilitate demand inducement by depriving consumers of alternative sources of information about death care options. In addition to funeral homes, cemeteries are the other main businesses consumers are likely to contact to make death care arrangements. Many consumers may have contact with a cemetery long before they need a funeral director's services, as a recent survey indicated that half of respondents or their families already own cemetery property or a grave site (FAMIC 2012, p. 65). Daniel (1989) finds that consumers who receive price information earlier in the purchasing process tend to spend less on funerals. If cemeteries can also sell funeral merchandise and arrange for cremations, they are more likely to invest in providing consumers with information about these options. A state that prohibits cemeteries from selling funeral merchandise would likely see fewer consumers informed about alternatives to traditional funerals, reducing demand for cremations and increasing demand for traditional funerals. Since cremations are less expensive than traditional funerals, death care costs would be higher in states that prohibit cemeteries from selling funeral merchandise. Similar logic may apply to regulations that prohibit parties other than funeral directors from selling caskets, but consumers likely have to make additional efforts to purchase from these nontraditional suppliers and many are not comfortable with the idea of purchasing funeral goods from an independent retailer or over the Internet (FAMIC 2012, p. 98). Therefore, merchandise sales prohibitions that apply specifically to cemeteries might affect demand inducement even if regulations that apply to independent retailers have no such effect.

An alternative hypothesis is that some or all of these regulations protect consumers from demand inducement by keeping out unscrupulous funeral directors, instilling a professional ethos in funeral directors, and preventing other sellers who do not share that ethos from advising consumers (Harrington and Krynski 2002, p. 207). Another hypothesis is that demand inducement rarely occurs because most consumers are generally well-informed (McChesney 1990). Both hypotheses suggest that empirical analysis should reveal no demand inducement effect associated with state regulations.

There is some empirical evidence that stricter state regulation facilitates demand inducement in funeral markets. Harrington and Krynski (2002) find that a smaller percentage of deaths are cremated in states whose laws create greater barriers to entry into funeral directing, and customer characteristics have less influence on the cremation percentage in the more heavily regulated states—results consistent with the theory that funeral directors steer more customers away from cremation when the market is less competitive. States which require crematories to be located in cemeteries have higher cremation percentages. Ready-to-embalm laws, meanwhile, are associated with lower cremation percentages (Harrington 2007, p. 205). No study has tested to

see whether restrictions on casket sales or merchandise sales by cemeteries have a demand inducement effect; the analysis below fills that gap.

3 Regulations in this study

This study considers eight types of regulations that might affect barriers to entry, production costs, or demand inducement in the death care industry:

Casket restriction indicates whether the state enforces laws that restrict sales of caskets by parties other than funeral directors

Cemetery goods prohibition indicates whether the state prohibits cemeteries from selling all funeral goods. This includes not just caskets, but also markers, vaults, urns, flowers, etc.

Embalmer indicates whether the state requires funeral directors to be embalmers

Embalming room indicates whether the state requires all funeral homes to have embalming rooms

Crematories must be in cemeteries indicates whether the state requires that crematories be located in cemeteries. Several states with this regulation on the books have crematories operating outside of cemeteries that were grandfathered. This variable is coded as “1” only if there are no grandfathered crematories outside of cemeteries.

Mortuary-cemetery combinations prohibited indicates whether the state prohibits mortuary and cemetery combinations⁵

Training indicates the number of years of training required for funeral directors, including both formal education and apprenticeships

Direct disposition indicates whether the state offers a “direct disposition license,” which allows the holder to transport bodies, cremate them, and return the remains to the family without having to get a funeral director’s license.

Table 1 shows the coding for each state. The casket restriction variable indicates whether prohibitions on sales of caskets by parties other than funeral directors are actually enforced. Chevalier and Scott Morton (2008) find that casket sales restrictions have no effect on funeral costs; they use a list of states with restrictive laws on the books compiled by Fulton (2004). Sutter (2007) finds that casket sales restrictions sometimes affect funeral markets; he uses a shorter list based on information submitted at a Federal Trade Commission workshop that suggests only five states enforce their casket sales restrictions. Since enforcement apparently matters, this study uses the same list as Sutter.

The rest of the variables were coded by a researcher at the law firm of Blank Rome LLP, who looked up each state’s funeral industry laws and regulatory code to ascertain which restrictions applied to which segments of the industry. Some of the more common regulations have some degree of correlation with each other. For example, the states that require funeral directors to be embalmers require an average of

⁵ As with the regulation requiring crematories to be in cemeteries, I considered whether there are any grandfathered mortuary-cemetery combinations in states where they are prohibited, but Harrington and Treber (2012, p. 42) report that no such combos exist in these states.

Table 1 State funeral industry regulations

| | Casket restriction | Cemetery goods prohibition | Embalmer | Embalming room required | Mortuary-cemetery combinations prohibited | Crematories must be in cemeteries | Years of training | Direct disposition license |
|----|--------------------|----------------------------|----------|-------------------------|---|-----------------------------------|-------------------|----------------------------|
| AL | 1 | 0 | 0 | 1 | 0 | 0 | 2 | 0 |
| AK | 0 | 0 | 0 | 1 | 0 | 0 | 2 | 0 |
| AZ | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| AR | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 |
| CA | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 0 |
| CO | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CT | 0 | 0 | 1 | 1 | 1 | 0 | 3 | 0 |
| DE | 0 | 0 | 1 | 1 | 1 | 0 | 3 | 0 |
| DC | 0 | 0 | 1 | 1 | 0 | 0 | 2 | 0 |
| FL | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 |
| GA | 0 | 0 | 1 | 1 | 0 | 0 | 3 | 0 |
| HI | 0 | 0 | 0 | 1 | 0 | 0 | 2 | 0 |
| ID | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| IL | 0 | 0 | 1 | 1 | 0 | 0 | 3 | 0 |
| IN | 0 | 0 | 1 | 1 | 0 | 0 | 3 | 0 |
| IA | 0 | 0 | 1 | 0 | 0 | 0 | 4 | 0 |
| KS | 0 | 0 | 0 | 1 | 0 | 0 | 3 | 0 |
| KY | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 |
| LA | 1 | 0 | 0 | 1 | 0 | 0 | 3 | 0 |
| ME | 0 | 0 | 1 | 1 | 1 | 1 | 3 | 0 |
| MD | 0 | 0 | 1 | 1 | 1 | 0 | 3 | 0 |
| MA | 0 | 1 | 1 | 1 | 1 | 1 | 4 | 0 |

Table 1 continued

| | Casket restriction | Cemetery goods prohibition | Embalmer | Embalming room required | Mortuary-cemetery combinations prohibited | Crematories must be in cemeteries | Years of training | Direct disposition license |
|----|--------------------|----------------------------|----------|-------------------------|---|-----------------------------------|-------------------|----------------------------|
| MI | 0 | 0 | 1 | 1 | 1 | 0 | 4 | 0 |
| MN | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| MS | 0 | 0 | 0 | 1 | 0 | 0 | 2 | 0 |
| MO | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| MT | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| NE | 0 | 0 | 1 | 0 | 0 | 0 | 4 | 0 |
| NV | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| NH | 0 | 0 | 1 | 1 | 1 | 0 | 3 | 0 |
| NJ | 0 | 1 | 1 | 1 | 1 | 0 | 5 | 0 |
| NM | 0 | 0 | 1 | 0 | 0 | 0 | 3 | 1 |
| NY | 0 | 1 | 1 | 1 | 1 | 0 | 3 | 0 |
| NC | 0 | 0 | 0 | 1 | 0 | 0 | 2 | 0 |
| ND | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| OH | 0 | 0 | 0 | 1 | 0 | 0 | 6 | 0 |
| OK | 1 | 0 | 1 | 0 | 0 | 0 | 4 | 0 |
| OR | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 1 |
| PA | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| RI | 0 | 0 | 1 | 1 | 1 | 0 | 4 | 0 |
| SC | 1 | 0 | 0 | 1 | 0 | 0 | 4 | 0 |

Table 1 continued

| | Casket restriction | Cemetery goods prohibition | Embalmer | Embalming room required | Mortuary-cemetery combinations prohibited | Crematories must be in cemeteries | Years of training | Direct disposition license |
|----|--------------------|----------------------------|----------|-------------------------|---|-----------------------------------|-------------------|----------------------------|
| SD | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| TN | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 |
| TX | 0 | 0 | 0 | 1 | 0 | 0 | 2 | 0 |
| UT | 0 | 0 | 1 | 0 | 0 | 0 | 3 | 0 |
| VT | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 0 |
| VA | 1 | 0 | 1 | 1 | 0 | 0 | 3 | 0 |
| WA | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 |
| WV | 0 | 0 | 1 | 1 | 0 | 0 | 4 | 0 |
| WI | 0 | 0 | 1 | 1 | 1 | 0 | 4 | 0 |
| WY | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |

Coding shown is for 2007. For 2002, there is just one difference: Texas required crematories to be in cemeteries in 2002

3.6 years of training, whereas states without this restriction require 2.2 years of training. Many of the states that require funeral homes to have embalming rooms also require funeral directors to be embalmers. Standard tests, however, do not reveal a significant multicollinearity problem with the regulatory variables.⁶ The author's attempts to combine the regulatory variables into a single index or to group them using factor analysis produced no intelligible results. For these reasons, each regulatory variable enters the regression analysis below as a separate dummy variable (or, in the case of *Training*, the number of years).

The analysis utilizes state-level data from the two most recent years of the U.S. Economic Census: 2002 and 2007.⁷ Three data series are of interest: revenues for the death care industry (NAICS code 8122), plus its two constituent components—funeral homes and funeral services (NAICS code 81221), and cemeteries and crematories (NAICS code 81222). Dividing revenues by deaths in each state yields an approximation of consumer costs per death. Examining separate data series for the two sectors helps determine which parts of the industry receive benefits or bear costs as a result of the regulations.

Table 2 compares average receipts per death for the death care industry, funeral homes and services, and cemeteries and crematories in states with and without these regulations. A striking feature of the table is that regardless of the regulation, regulated states virtually always have higher average death care costs than non-regulated states. (Costs are lower in states with a direct disposition license because this is a deregulatory measure that allows cremators to transport bodies without having to be licensed funeral directors.) Costs even tend to climb as more years of training are required. For most regulations, the increase in revenue is much larger for funeral homes and services than for cemeteries and crematories. Indeed, for some regulations, such as *Casket Restriction*, *Embalmer*, *Embalming Room*, and *Crematories Must be in Cemeteries*, the revenue difference for cemeteries and crematories is negligible or even negative.

Figure 1 charts the cost differences for receipts per death in the death care industry. Receipts per death are more than \$2000 lower in states that offer a direct disposition license. The next largest difference is for the cemetery goods restriction; in 2007, average death care costs are \$1782 higher in states that have this restriction. The difference in costs for states requiring the least training (0 years) and the most training (5 years) is even larger—\$3058 in 2007. Based on these figures, several state death care regulations may contribute substantially toward higher costs.

⁶ The highest pairwise correlation coefficient between the regulatory variables is 0.54, between *Embalmer* and *Training*; a popular rule of thumb suggests that multicollinearity may be significant if a correlation coefficient exceeds 0.8 or 0.9 (Farrar and Glauber 1967). The mean variance inflation factor for the regulatory variables is 1.39, and the VIFs for individual regulatory variables are all below 2. There is little agreement on what level counts as high (Belsley et al. 1980, p. 93), but the author has never seen a VIF below 2 identified as "high." The condition index for the regulatory variables is 8.27. Belsley et al. (1980, p. 153) suggest that a condition number exceeding 15 or 30 could indicate significant multicollinearity.

⁷ The regressions do not control for possible endogeneity of funeral regulations. Because this study uses 2 years of state-level data, it is not feasible to control for endogeneity using state-specific fixed effects. Harrington and Krynski (2002) found that restrictive funeral regulation is correlated with lower cremation rates regardless of whether they controlled for endogeneity.

Table 2 Average death care costs in regulated vs. non-regulated states (\$2007)

| | 2007 Death care | 2007 Funeral homes and services | 2007 Cemeteries and crematories | 2002 Death care | 2002 Funeral homes and services | 2002 Cemeteries and crematories |
|---|--------------------|---------------------------------------|---------------------------------------|--------------------|---------------------------------------|---------------------------------------|
| Casket restriction (5) | \$6220 | \$5133 | \$1087 | \$6664 | \$5445 | \$1219 |
| Other states | \$5999 | \$4828 | \$1071 | \$6333 | \$5226 | \$1120 |
| Difference | \$221 | \$305 | \$16 | \$331 | \$219 | \$99 |
| Cemetery goods restriction (3) | \$7694 | \$5848 | \$1846 | \$7686 | \$5942 | \$1744 |
| Other states | \$5912 | \$4,891 | \$1022 | \$6283 | \$5204 | \$1091 |
| Difference | \$1782 | \$957 | \$824 | \$1403 | \$738 | \$653 |
| Embalmer (29) | \$6411 | \$5337 | \$1074 | \$6672 | \$5562 | \$1129 |
| Other states | \$5456 | \$4386 | \$1070 | \$5963 | \$4833 | \$1130 |
| Difference | \$955 | \$951 | \$4 | \$709 | \$729 | -\$1 |
| Embalming room (*) | \$6254 | \$5158 | \$1095 | \$6559 | \$5414 | \$1160 |
| Other states | \$5441 | \$4423 | \$1016 | \$5902 | \$4847 | \$1056 |
| Difference | \$813 | \$735 | \$79 | \$657 | \$567 | \$104 |
| Mortuary-cemetery combinations prohibited (12) | \$6694 | \$5438 | \$1256 | \$6884 | \$5685 | \$1246 |
| Other states | \$5803 | \$4791 | \$1013 | \$6206 | \$5113 | \$1094 |
| Difference | \$891 | \$647 | \$243 | \$678 | \$572 | \$152 |

Table 2 continued

| | 2007 Death care | 2007 Funeral homes and services | 2007 Cemeteries ¹ and crematories | 2002 Death care | 2002 Funeral homes and services | 2002 Cemeteries and crematories |
|-----------------------------------|--------------------|---------------------------------------|--|--------------------|---------------------------------------|---------------------------------------|
| Crematories in cemeteries (2) | \$6283 | \$5345 | \$938 | \$6358 | \$5839 | \$801 |
| Other states | \$6010 | \$4932 | \$1078 | \$6366 | \$5223 | \$1143 |
| Difference | \$273 | \$413 | -\$140 | -\$8 | \$616 | -\$342 |
| Direct disposition license (3) | \$3772 | \$2884 | \$887 | \$4440 | \$3336 | \$1104 |
| Other states | \$6168 | \$5084 | \$1084 | \$6486 | \$5367 | \$1131 |
| Difference | -\$2396 | -\$2200 | -\$197 | -\$2046 | -\$2031 | -\$27 |
| Years of training | | | | | | |
| 0 | \$4561 | \$3633 | \$929 | \$5227 | \$4512 | \$714 |
| 1 | \$4818 | \$4524 | \$294 | \$5227 | \$4905 | \$322 |
| 2 | \$5283 | \$4304 | \$979 | \$5751 | \$4635 | \$1116 |
| 3 | \$6356 | \$5117 | \$1238 | \$6635 | \$5369 | \$1299 |
| 4 | \$6238 | \$5294 | \$945 | \$6619 | \$5588 | \$1032 |
| 5 | \$7619 | \$5516 | \$2103 | \$8063 | \$5777 | \$2286 |
| Difference 0-5 years | \$3058 | \$1883 | \$1174 | \$2836 | \$1265 | \$1572 |

* 36 states in 2002, 35 in 2007

Note Arkansas and Wyoming are excluded in 2007 because the Economic Census does not report receipts for their death care industry

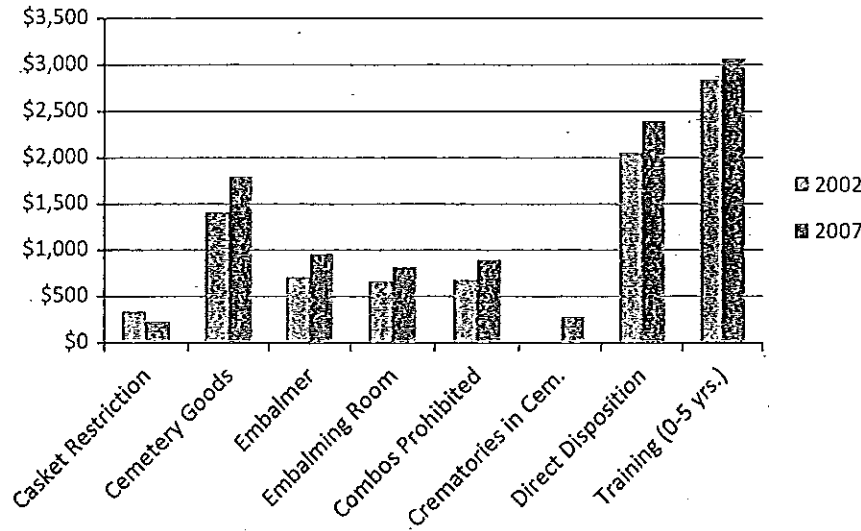


Fig. 1 Differences in receipts per death, regulated vs. non-regulated states

4 Econometric analysis

Of course, many factors affect death care costs. Even if regulation has an effect, it is just one factor, and so the differences in Table 2 may over- or under-state regulation's effects. The econometric analysis below controls for a variety of regulatory and demographic factors that might explain death care costs.

4.1 Econometric approach

A small economics literature on the death care industry has identified numerous factors that affect death care costs, such as population age, mobility of the population, income, education, race, religion, state regulations, and the percentage of deaths that are cremated (Daniel 1989; Fan and Zick 2004; Harrington 2007; Sutter 2007; Chevalier and Scott Morton 2008). The econometric approach taken in most of the literature is to regress death care costs on the cremation percentage, various socioeconomic and religious control variables, and dummy variables indicating the presence of state policies of interest.

A problem with this approach, however, is that the cremation percentage is also significantly affected by many of the same policies and control variables (Harrington 2007; Harrington and Krynski 2002). This correlation may mask the effects of some variables or make some variables appear to have a statistically significant effect even if they do not. For example, in his study of restrictions on casket sales by non-funeral directors, Sutter (2007, pp. 229–230) found that inclusion of the cremation percentage in his regressions often reduced and sometimes reversed the effect of casket sales regulations on death care costs.

To avoid this problem, this study estimates receipts per death as a function of regulatory and demographic factors. To check for possible demand inducement effects, a separate regression estimates the state's cremation percentage as a function of the

same regulatory and demographic variables. A regulation's negative correlation with the cremation percentage may provide some idea of the size of the demand inducement effect. But it will not capture all demand inducement, since demand inducement can also take the form of a more elaborate traditional funeral rather than substitution of a traditional funeral for cremation.

Demographic variables control for factors commonly controlled for in other published studies of cremation or death care costs:

Percent of the population 65 years or older

Real median household income

Real median home price⁸

Percent of the population living in Primary Metropolitan Statistical Areas

Percent of the population with a college degree

Racial variables: percent African-American, Asian, and Hispanic

Percent of the population born in the state⁹

Religious affiliation: the number of people out of 1000 who are members of main-line Protestant, evangelical Protestant, Catholic, or Jewish congregations¹⁰

Regional fixed effects variables (Northeast, Midwest, and South; the omitted category is West).

Finally, since the regressions pool the 2002 and 2007 data, they include a year 2002 dummy to control for shifts in the cremation percentages or death care costs that occurred between years. The 2002 death care cost figures are converted to 2007 dollars for the regressions.

Descriptive statistics and data sources are listed in the Appendix. Regressions are ordinary least squares with Huber-White robust standard errors.

4.2 Regression results

Table 3 shows the principal regression results. Five different dependent variables are used: (1) receipts per death for the death care industry, (2) receipts per death for funeral homes and services, (3) receipts per death for cemeteries and crematories, (4) the percentage of industry revenues received by funeral homes and services, and (5) the percent of deaths cremated.

⁸ This is likely the best variable available on the state level that proxies for variations in the cost of living. The US Bureau of Labor Statistics calculates the Consumer Price Index for selected urban areas and for four regions of the country, but not for states. Neither statistic accurately reflects differences in the cost of living across different states, and BLS explicitly warns that the indices for different metropolitan areas should not be used to compare the cost of living across locations. See http://www.bls.gov/cpi/cpifaq.htm#Question_19.

⁹ Industry sources indicate that population mobility is a major factor affecting the cremation decision (CANA 2012), and the percentage of the population born in the state helps measure mobility.

¹⁰ Published research indicates that religious affiliation has a much more significant effect on the cremation percentage than on funeral expenditures (Harrington 2007, p. 205), although industry sources suggest that religion is a much less important factor than it used to be because most major religions now accept cremation (CANA 2012).

Table 3 Funeral industry restrictions, funeral costs, and cremation percentage, 2002 and 2007 pooled data

| | Dependent variable | | | | |
|---|-------------------------------------|---|---|--------------------------------------|----------------------------|
| | (1) Receipts/death Death care | (2) Receipts/death Funeral homes/services | (3) Receipts/death Cemeteries/crematories | (4) Funeral home % of revenues | (5) Percent Cremated |
| Casket restrictions | -232.84 (0.82) | -190.33 (0.81) | -24.72 (0.26) | 0.002 (0.19) | 1.82 (0.95) |
| Cemetery goods prohibition | 1267.82 (2.19**) | 1546.82 (3.01***) | -387.64 (1.17) | 0.074 (1.81*) | -23.93 (5.06***) |
| Embalmer | 341.69 (2.11**) | 390.36 (2.59**) | -44.72 (0.54) | 0.026 (1.89*) | -4.97 (2.68***) |
| Embalming room | -108.58 (0.50) | -316.04 (1.63) | 199.85 (2.20**) | -0.023 (1.77*) | 3.06 (1.26) |
| Mortuary-cemetery combinations prohibited | -458.11 (1.28) | -172.51 (0.59) | -259.56 (2.05**) | 0.026 (1.72*) | 7.25 (2.29**) |
| Crematories must be in cemeteries | -1404.77 (4.52***) | -818.79 (2.95***) | -422.64 (1.92*) | 0.044 (1.23) | 14.07 (4.45***) |
| Years of training | -82.17 (0.96) | -111.35 (1.44) | 31.73 (0.91) | -0.008 (1.36) | 1.59 (2.23**) |
| Direct disposition | -1251.00 (4.81***) | -1044.73 (4.85***) | -200.73 (1.42) | 0.002 (0.09) | 8.44 (3.12***) |
| Percent over 65 | 68.39 (0.94) | -1.82 (0.03) | 65.02 (2.28**) | -0.013 (3.04***) | 0.48 (0.68) |
| Real median household income | 0.007 (0.23) | -0.01 (0.41) | 0.01 (1.51) | <-0.00001 (1.58) | -0.0001 (0.51) |
| Real median home price | 0.002 (0.99) | 0.001 (0.92) | 0.0004 (0.49) | <-0.00001 (0.90) | -0.00002 (1.68*) |
| Percent in PMSA | 12.24 (1.75*) | 2.03 (0.32) | 9.87 (3.77***) | -0.002 (5.02***) | -0.02 (0.33) |

Table 3 continued

| | Dependent variable | | | | |
|--------------------------|-------------------------------------|---|---|--------------------------------------|----------------------------|
| | (1) Receipts/death Death care | (2) Receipts/death Funeral homes/services | (3) Receipts/death Cemeteries/crematories | (4) Funeral home % of revenues | (5) Percent Cremated |
| Percent College | 42.52 (1.79*) | 18.24 (0.86) | 22.97 (2.45**) | -0.003 (2.18**) | 0.35 (1.37) |
| Percent African-American | -48.27 (3.76***) | -24.88 (2.17**) | -22.83 (4.38***) | 0.003 (4.06***) | -0.18 (1.63) |
| Percent Asian | 9.23 (0.37) | -14.81 (0.85) | 25.47 (2.52**) | -0.003 (3.37***) | 0.52 (3.62***) |
| Percent Hispanic | 5.86 (0.48) | -4.65 (0.43) | 11.51 (2.22**) | -0.002 (2.08**) | -0.17 (1.37) |
| Year 2002 | 498.83 (2.86***) | 339.79 (2.21**) | 170.43 (2.73***) | -0.01 (1.65) | -7.45 (4.33***) |
| Northeast | 1144.10 (2.15**) | 1206.83 (2.67***) | -9.80 (0.05) | 0.06 (2.43**) | -12.94 (2.49**) |
| Midwest | 2050.65 (4.66***) | 2016.64 (5.23***) | 52.44 (0.30) | 0.06(2.60**) | -13.40 (3.22***) |
| South | 3045.31 (6.91***) | 2355.64 (5.84***) | 680.24 (4.50***) | -0.01 (0.44) | -23.17 (6.27***) |
| Percent born in state | 72.26 (6.01***) | 43.01 (4.14***) | 29.28 (6.29***) | -0.003 (4.06***) | -0.61 (5.68***) |
| Mainline protestant | -4.65 (2.32**) | -1.76 (0.95) | -2.80 (3.74***) | 0.00002 (1.97) | -0.01 (0.54) |
| Evangelical | -4.63 (3.24***) | -3.69 (2.60**) | -1.02 (1.60) | 0.00002 (0.22) | 0.004 (0.20) |
| Catholic | 0.87 (0.61) | 0.06 (0.05) | -1.09 (2.07**) | 0.0002 (2.12**) | -0.001 (0.04) |
| Jewish | 0.79 (0.07) | -17.09 (1.93*) | 17.17 (3.18***) | -0.002 (3.31**) | 0.20 (1.92*) |
| Constant | -1332.07 (0.58) | 2303.21 (1.18) | -3454.16 (4.09***) | 1.43 (12.33***) | 76.42 (3.79***) |
| N | 100 | 100 | 100 | 100 | 100 |
| R-squared | 0.84 | 0.83 | 0.85 | 0.86 | 0.89 |

T-statistics based on Huber-White standard errors are in parentheses. Statistical significance: * 10 %; ** 5 %; *** 1 %

4.2.1 Consumer costs

The econometric results suggest that multiple state regulations affect consumer death care costs, even after controlling for numerous demographic factors and other regulations. The first three equations show that *Cemetery Goods Restriction* and *Embalmer* are associated with higher receipts per death for the death care industry and for funeral homes and services, but not for cemeteries and crematories. Equation 5 implies that some of this cost increase could stem from demand inducement. Both regulations are associated with a significant reduction in the cremation percentage.

Direct disposition licenses and the requirement that crematories must be located in cemeteries are associated with lower receipts per death for the death care industry and funeral homes and services. As Eq. 5 shows, these two policies are associated with significant increases in the cremation percentage.

The increase in cremations associated with direct disposition licenses likely indicates demand inducement in states where direct disposition licenses are not available. Where customers do not have to utilize a funeral director to transport the body, funeral directors have fewer opportunities to talk customers into purchasing more expensive funerals instead of cremations. This can be expected to result in substantially higher cremation percentages, and lower average death care costs, in states with direct disposition licenses. An alternative explanation would be that cremations simply cost less in states with direct disposition licenses because crematories or third parties charge less to transport the body than funeral directors charge. But the regression coefficients in Eqs. 1 and 2 indicate that the cost difference exceeds \$1000, whereas funeral directors charged an average of \$420 to transport a body in 2005 (Harrington 2007, p. 2). The size of the cost difference is too large to be fully accounted for by lower transportation charges in states with direct disposition licenses.

The requirement that crematories must be in cemeteries appears to lower death care costs by encouraging cremation. This is consistent with cremation advocates' belief that locating crematories in cemeteries would make cremation more acceptable to the public (Harrington and Krynski 2002, p. 12). The states requiring crematories to be in cemeteries do not offer direct disposition licenses, so funeral directors still have an opportunity to sell traditional funerals to every customer in those states. This regulation might also lower costs by preventing funeral directors from steering customers to their own, higher-priced crematories.

Embalming Room and *Years of Training* do not appear to be correlated with industry receipts per death. This is consistent with Harrington and Krynski's (2002) observation that these regulations are closely related to and often correlated with *Embalmer*. Prohibition of mortuary-cemetery combinations is not correlated with industry receipts per death. Harrington and Treber (2012) present evidence that mortuary-cemetery combinations have lower costs but may also lead customers to purchase more services, so their effect on overall death care costs would be ambiguous. Casket restrictions are not correlated with any of the dependent variables—another result consistent with prior literature (Chevalier and Scott Morton 2008; Sutter 2007).

4.2.2 Intra-industry effects

Three regulations appear to help funeral homes primarily: the cemetery goods restriction, the embalmer requirement, and the absence of direct disposition licenses. These have a statistically significant correlation with receipts per death for funeral homes and services (Eq. 2), but not with receipts per death for cemeteries and crematories (Eq. 3). Perhaps not surprisingly, the first two regulations also increase the share of industry revenues received by funeral homes and services, although the coefficients in Eq. 4 are only marginally significant.

The requirement that crematories must be in cemeteries appears to reduce average receipts for both major segments of the death care industry. This probably occurs because it is associated with an increase in cremations, so funeral directors sell fewer traditional services and cemeteries sell fewer burial plots. Since the cemeteries are selling the cremations, this regulation may increase their profits even if it reduces their revenues from the sale of burial plots.

Two regulations are correlated with receipts only for cemeteries and crematories. *Embalming Room* is positive and significant in Eq. 3, perhaps because embalming services can be (but do not have to be) a complement to burial plots. It may not be correlated with funeral homes' average receipts because *Embalmer* already captures the effect of "ready-to-embalm" regulations.¹¹ *Embalming Room* is also the most prevalent regulation, present in 36 states. The prohibition of mortuary-cemetery combinations is associated with reduced revenues per death for cemeteries and crematories without affecting revenues for funeral homes and services. Perhaps this is an artifact of the data. If some revenues from mortuaries that are combined with cemeteries in states where these combinations are legal are reported as cemetery revenues, then cemetery revenues would appear to be lower in states where such combinations are not legal. Alternatively, Eq. 5 suggests that prohibitions of mortuary-cemetery combinations encourage cremations, which may lower cemeteries' average revenues per death. The increase in cremations may be an inefficient response to the regulation, if consumers substitute cremation for traditional burials because the regulation creates barriers to entry or increases costs.

Two regulations appear to have little or no correlation with death care costs for any segment of the death care industry. *Casket Restriction* is never statistically significant. *Years of Training* has no significant correlation with any measure of industry revenues and is associated with a very small increase in the cremation percentage.

4.3 Quantification of regulatory costs

The coefficients in Table 3 can be used to estimate the potential effects of the regulatory variables on death care costs. There are three different ways of calculating consumer costs from the regression equations. The first, and most direct, is to multiply the

¹¹ Adding a variable that indicates whether a state had both of these regulations, following Harrington and Krynski (2002), did not change these results.

coefficients in Eq. 1 by the number of deaths in each state that has each regulation, then sum:

$$\text{Consumer savings}_i = \sum_{j=1}^n (\beta_{1i} * \text{Deaths}_j), \quad (1)$$

where i indicates the regulation, β_{1i} is the i th regulation's coefficient in Eq. 1, and j indicates each state that has the regulation.

The second, a useful cross-check, is to calculate the net effect on average receipts per death using coefficients for the two segments of the industry in Eqs. 2 and 3, multiply this amount by the number of deaths in each state that has the regulation, then sum:

$$\text{Consumer savings}_i = \sum_{j=1}^n ((\beta_{2i} + \beta_{3i}) * \text{Deaths}_j), \quad (2)$$

where i indicates the regulation, β_{2i} is the i th regulation's coefficient in Eq. 2, β_{3i} is the i th's regulation's coefficient in Eq. 3, and j indicates each state that has the regulation.

The third is to estimate the change in consumer costs implied by the change in the cremation rate indicated by the coefficients in Eq. 5. A cremation normally allows the consumer to avoid the costs of a casket, burial vault, embalming, and grooming the body, which totaled \$3771 in 2005 (Harrington 2007, p. 202). To estimate the cost savings in this way, multiply the change in cremation percentage from the coefficients in Eq. 5 by the number of deaths in each state with the regulation, multiply this figure by \$3771, then sum:

$$\text{Consumer savings}_i = \sum_{j=1}^n (\beta_{5i} * \text{Deaths}_j) * 3771, \quad (3)$$

where i indicates the regulation, β_{5i} is the i th regulation's coefficient in Eq. 5, and j indicates each state that has the regulation.

This third method yields some insight into the potential size of demand inducement effects. If a regulation is negatively correlated with the cremation percentage, then that may signify that the regulation encourages funeral directors from to induce demand for traditional funerals, and *vice versa*.

Table 4 shows these calculations for the four regulations that are correlated with receipts per death for the death care industry. The most expensive regulation is the requirement that funeral directors must be embalmers. This regulation is associated with a \$342–390 increase in receipts per death for the death care industry. Because the regulation is so prevalent, its total cost is large: approximately \$400–404 million per year. Given the significant cost of this regulation, it's not surprising that it has attracted a great deal of attention from prior researchers (Harrington 2007; Harrington and Krynski 2002). Based on its correlation with cremation rates in equation 5, at least half of the cost of this regulation (\$216 million) appears to be attributable to demand inducement.

Table 4 Estimated effects of funeral regulations, 2007

| | Cemetery goods prohibition | Embalmer | Crematories must be in cemeteries | Direct disposition license |
|----------------------------------|----------------------------|---------------|-----------------------------------|----------------------------|
| <i>Method 1</i> | | | | |
| Coefficient from Eq. 1 | \$1268 | \$342 | -\$1405 | -\$1251 |
| * Deaths in affected states | 220,360 | 1,170,585 | 65,410 | 214,980 |
| = Total cost | \$279,416,480 | \$400,340,070 | -\$91,901,050 | -\$268,939,980 |
| <i>Method 2</i> | | | | |
| Coefficient from Eq. 2 | \$1547 | \$390 | -\$819 | -\$1045 |
| + Coefficient from Eq. 3 | -\$388 | -\$45 | -\$423 | -\$201 |
| = Sum of coefficients | \$1159 | \$345 | -\$1242 | -\$1246 |
| * Deaths in affected states | 220,360 | 1,170,585 | 65,410 | 214,980 |
| = Total cost | \$255,397,240 | \$403,851,825 | -\$81,239,220 | -\$267,865,080 |
| <i>Method 3</i> | | | | |
| Coefficient from Eq. 5 (%) | -24.1 | -4.9 | 14.1 | 8.5 |
| * Deaths in affected states | 220,360 | 1,170,585 | 65,410 | 214,980 |
| = Change in cremations | (53,107) | (57,359) | 9223 | 18,273 |
| * Costs avoided due to cremation | \$3771 | \$3771 | \$3771 | \$3771 |
| = Total cost | \$200,265,592 | \$216,299,526 | -\$34,779,217 | -\$68,908,614 |

The direct disposition license is associated with an approximate \$1250 reduction in average receipts per death in the three states that offer this license. Based on these figures, direct disposition licenses save consumers about \$268 million annually. At least \$69 million appears to stem from demand inducement. Alternatively, the coefficient implies that adoption of direct disposition licenses in the 48 jurisdictions that do not have them could save consumers approximately \$2.8 billion annually.¹² Thus, one might view the *absence* of direct disposition licenses as the most expensive funeral regulation.

The ban on cemetery sales of funeral merchandise is associated with a \$1159–1268 increase in average receipts per death in the three states that have this regulation.

¹² $\$1250 \times 4 \times 2,208,732$ deaths in 2007 (in the District of Columbia and 47 states that do not offer direct disposition licenses) = \$2,760,915,000.

The cost totaled \$255–279 million in 2007. A noticeable portion of this cost—\$201 million—appears to stem from demand inducement.

The requirement that cemeteries must be in crematories is associated with an \$81–91 million reduction in consumer costs. As with the other regulations, a substantial percentage of the savings is attributable to the associated increase in cremations. However, this cremation effect accounts for less than half of the cost difference.

There is likely more uncertainty surrounding these figures than the precise calculations in Table 4 indicate. For some closely-related regulations, it is still possible that a single variable might capture most of the effect in the regression equations, thus leading some regulations to appear insignificant even if they contribute to higher costs. Coefficients for some regulations might also be biased upward if these regulations are correlated with other unobserved anti-competitive regulations not included in the study. This study includes all major funeral industry regulations that have been included in prior published empirical studies, but it does not include some less-studied regulations such as requirements that only funeral directors can own funeral homes or that each funeral home must be supervised by a licensed funeral director. Thus, the estimated coefficients could include the effects of these unobserved regulations. Nevertheless, the basic result is clear: many funeral regulations have substantial costs.

4.4 Interstate effects

Prior published research considers only the effects of state funeral restrictions on the families of in-state decedents. A state's ban might affect cremation percentages or funeral costs in neighboring states because metropolitan areas, and hence local funeral markets, can span state lines. Table 5 shows regression results when dummy variables are included to account for potential interstate effects of the regulatory variables.

For each regulatory variable, a state is coded as a neighbor state if it borders a state that has the regulation but does not itself have the regulation. This approach ensures that effects of a state's own regulations are not erroneously attributed to a neighbor state's regulations. There is no neighbor coefficient for *Embalming Room* because this regulation is so prevalent that every state either has this regulation or borders a state with this regulation.

Intrastate results for the regulatory variables in Table 5 are very consistent with those in Table 3. No coefficient on a regulatory variable changes signs (except for *Casket Restriction*, which is never statistically significant). Regulatory variables that are statistically significant in Table 3 usually become even more significant in Table 5. Coefficients are generally the same order of magnitude, except that the coefficients on *Embalmer* are about twice as large in Table 5, and the coefficients on *Crematories Must be in Cemeteries* are larger by several hundred dollars in Eqs. (1–3) in Table 5.

The *Neighbor States* dummy variables suggest that several regulations may have interstate spillover effects. These include *Cemetery Goods Prohibition*, *Embalmer*, *Cemeteries Must be in Crematories*, and *Direct Disposition*. For two regulations, *Cemetery Goods Prohibition* and *Direct Disposition*, the coefficient for the interstate variable is noticeably lower than the coefficient for the intrastate variable—an intuitively sensible result. For *Embalmer*, however, the intrastate and interstate coefficients on receipts

Table 5 Coefficients on regulatory variables when interstate effects are included

| | Dependent variable | | | | |
|--|-------------------------------------|---|---|--------------------------------------|----------------------------|
| | (1) Receipts/death Death care | (2) Receipts/death Funeral homes/services | (3) Receipts/death Cemeteries/crematories | (4) Funeral home % of revenues | (5) Percent Cremated |
| Casket restrictions | 283.10 (0.76) | 224.90 (0.67) | 43.57 (0.23) | 0.01 (0.25) | -5.71 (1.56) |
| Neighbor states | 581.59 (0.47) | 48.42 (0.16) | 71.90 (0.44) | -0.01 (0.38) | -4.79 (1.45) |
| Cemetery goods prohibition | 1593.00 (3.31***) | 1907.61 (3.98***) | -457.71 (1.89*) | 0.086 (2.14***) | -25.86 (5.45***) |
| Neighbor states | 581.59 (1.61) | 900.72 (2.36**) | -403.72 (2.32**) | 0.064 (2.15**) | -9.96 (2.63**) |
| Embalmer | 807.37 (3.01***) | 866.73 (3.37***) | -63.50 (0.53) | 0.054 (2.75***) | -10.62 (3.34***) |
| Neighbor states | 806.42 (2.98***) | 730.50 (2.91***) | 73.62 (0.71) | 0.029 (1.75*) | -5.53 (1.85*) |
| Embalming room | -249.41 (1.21) | -394.60 (1.98*) | 135.44 (1.58) | -0.019 (1.45) | 2.84 (1.27) |
| Mortuary-cemetery combinations prohibited | -321.97 (0.86) | -278.12 (0.86) | -17.49 (0.10) | -0.001 (0.04) | 11.58 (2.82***) |
| Neighbor states | 152.60 (0.63) | -50.78 (0.21) | 201.44 (1.90*) | -0.019 (1.15) | 5.25 (1.88*) |
| Crematories must be in cemeteries | -2157.58 (6.17***) | -1164.26 (3.11***) | -609.95 (3.97***) | 0.086 (2.57***) | 11.48 (2.87***) |
| Neighbor states | -3297.42 (8.41***) | -2747.19 (6.80***) | -609.95(3.28***) | -0.016 (0.65) | 13.35 (2.99***) |
| Years of training | -65.20 (1.05) | -89.50 (1.63) | 23.68 (0.64) | -0.006 (1.08) | 1.28 (1.58) |
| Direct disposition | -1565.01 (5.16***) | -1371.36 (5.56***) | -198.59 (1.31) | 0.016 (0.65) | 11.58 (3.45***) |
| Neighbor states | -388.49 (1.91*) | -439.40 (2.14**) | 52.10 (0.50) | -0.03 (1.48) | 5.43 (1.87*) |
| N | 100 | 100 | 100 | 100 | 100 |
| R-squared | 0.92 | 0.92 | 0.88 | 0.88 | 0.89 |

Control variables are the same as in Table 3 but omitted to conserve space

T-statistics based on Huber-White standard errors are in parentheses. Statistical significance: * 10 %; ** 5 %; *** 1 %

per death in Eq. (1) are virtually the same. The results for *Crematories Must be in Cemeteries* are even more unusual; the coefficients suggest an interstate effect that is larger than the intrastate effect.

The presence of these odd results suggests that Table 5 should be interpreted with caution. The regressions have 31 explanatory variables and only 100 observations, so these results are at best suggestive of interstate effects. A larger data set is likely required to produce more definitive findings.

5 Conclusion

This study accounts for multiple major categories of regulations and demand inducement as well as direct price effects. Consistent with prior literature, this analysis finds that regulations pertaining to embalming are often associated with higher death care costs and lower cremation percentages, requiring crematories to be in cemeteries has a positive correlation with the cremation percentage, and state restrictions on casket sales are not correlated with death care costs.

However, this study also presents new results. It suggests that two regulatory reforms—granting direct disposition licenses and allowing cemeteries to sell funeral merchandise—could each reduce death care costs by about \$1200. Direct disposition licenses are associated with a \$268 million annual reduction in death care costs in the three states that offer them. Adoption of direct disposition licenses in the 48 jurisdictions that do not offer them could save consumers almost \$2.8 billion. The ban on cemetery merchandise sales is associated with a \$255–279 million annual increase in death care costs. Thus, the total cost of state death care regulations may be much higher than previously thought.

The main beneficiary of funeral regulations is the funeral homes and services segment of the industry. For the two regulations associated with higher death care costs—*Embalmer* and *Cemetery Goods Restriction*—the coefficients on receipts per death for funeral homes and services are much larger and more significant than the coefficients for cemeteries and crematories. These two regulations also are associated with a higher share of industry revenues going to funeral homes and services. Direct disposition licenses likewise have a much larger negative correlation with funeral homes' revenues than with cemeteries' and crematories' revenues. Finally, the sole regulation associated with lower death care costs—the requirement that crematories must be in cemeteries—has a much larger negative correlation with revenues for funeral homes than cemeteries and crematories. Given these realities, it is no surprise that the funeral homes vigorously defend most restrictive funeral industry regulations (see, e.g., Harrington and Treber 2012, p. 47).

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Appendix: Descriptive statistics and data sources

Descriptive statistics

N = 100

| Variable | Mean | Std. Dev. | Min | Max |
|---|-----------|-----------|----------|-----------|
| <i>Receipts per death (\$2007)</i> | | | | |
| Real receipts per death, death care | \$6197 | \$1460 | \$2884 | \$8461 |
| Real receipts per death, fun homes/svcs. | \$5101 | \$1263 | \$2335 | \$7390 |
| Real receipts per death, cem./crem. | \$1101 | \$608 | \$101 | \$2928 |
| Cremation percent | 32.81 | 16.63 | 4.44 | 66.72 |
| <i>Regulatory variables</i> | | | | |
| Casket restriction | 0.100 | 0.302 | 0 | 1 |
| Cemetery goods restriction | 0.060 | 0.239 | 0 | 1 |
| Embalmer | 0.580 | 0.496 | 0 | 1 |
| Embalming room required | 0.710 | 0.456 | 0 | 1 |
| Mortuary-cemetery combinations prohibited | 0.240 | 0.429 | 0 | 1 |
| Crematories must be in cemeteries | 0.040 | 0.197 | 0 | 1 |
| Years of training | 3.000 | 1.231 | 0 | 6 |
| Direct disposition license | 0.060 | 0.239 | 0 | 1 |
| <i>Demographic variables</i> | | | | |
| Percent over 65 | 12.63 | 1.79 | 5.7 | 17.6 |
| Real median household income | \$49,706 | \$7,428 | \$33,831 | \$67,576 |
| Real median home price | \$173,963 | \$91,293 | \$78,357 | \$555,400 |
| Percent in PMSA 2000 | 69.02 | 20.54 | 27.7 | 100 |
| Percent college | 26.86 | 5.30 | 15.9 | 47.5 |
| Percent African-American | 11.10 | 11.65 | 0.3 | 60 |
| Percent Asian | 3.37 | 6.47 | 0.5 | 50 |
| Percent Hispanic | 8.79 | 9.52 | 0.7 | 44.4 |
| Year 2002 | 0.51 | 0.50 | 0 | 1 |
| Northeast | 0.18 | 0.39 | 0 | 1 |
| Midwest | 0.24 | 0.43 | 0 | 1 |
| South | 0.33 | 0.47 | 0 | 1 |
| Percent born in state | 58.68 | 12.99 | 21.3 | 79.5 |
| <i>Religion (adherents per 1000, year 2000)</i> | | | | |
| Mainline protestant | 111 | 68 | 14 | 346 |
| Evangelical protestant | 142 | 111 | 16 | 431 |
| Catholic | 200 | 123 | 32 | 517 |
| Jewish | 14 | 17 | 0 | 87 |

Data sources

Revenues for the Death Care industry and its two major components (Funeral Homes and Services, Cemeteries and Crematories), Economic Census 2002 and 2007: Downloaded using American Factfinder interface at www.census.gov.

Deaths: Centers for Disease Control and Prevention, "Deaths: Final Data for 2007," *National Vital Statistics Reports* 58:19 (May 20, 2010), p. 101; "Deaths: Final Data for 2002," *National Vital Statistics Reports* 53:5 (Oct. 12, 20004), p. 89.

Cremation Percentage: "CANA Cremation Statistics," *The Director* (Nov. 2009), pp. 51–54.

Casket Restrictions Enforced: Daniel Sutter, "Casket Sales Restrictions and the Funeral Market," *Journal of Law, Economics, & Policy* 3:2 (Spring 2007), 219–240.

Cemetery Goods Prohibition, Embalmer, Embalming Room, Mortuary-Cemetery Combo Prohibited, Crematories Must be in Cemeteries, Years of Training, Direct Disposition License: Furnished by Blank Rome LLP. A researcher looked up each state's funeral industry laws and regulatory code, then coded each state accordingly.

Years of Training includes formal education and apprenticeships. Where an apprenticeship was required, but the law was not clear whether it could be done simultaneously with schooling, it was assumed the apprenticeship could be served during schooling if that reconciled with the training years on the 1995 table in Harrington and Krynski (2002, pp. 204–05) and there had been no change in the requirements since 1995. Where mortuary schooling was required, but the number of credits were not specified, nor was an associate or bachelor degree required, it was assumed 1 year of schooling was required if that reconciled with the 1995 table in Harrington and Krynski (2002, 2004–2005) and there had been no change in the requirements since 1995.

Median Household Income:

<http://www.census.gov/hhes/www/income/data/historical/household/h08.html>.

Real Median Home Price, Percent of Pop. in PMSA, Percent over 65, Percent Born in State, Percent African-American, Percent Asian, Percent Hispanic, Percent Native or Islander: Downloaded using American Factfinder interface at www.census.gov. Figures for 2007 are from the American Community Survey. Figures for 2000 are from the U.S. Census.

Percent with College Degree: 2007: Sarah R. Crissey, "Educational Attainment in the United States: 2007," *Current Population Reports* (Jan. 2009), p. 8, <http://www.census.gov/prod/2009pubs/p20-560.pdf>; 2002—"Educational Attainment in the United States: 2002—Detailed Tables," Table 13, <http://www.census.gov/hhes/socdemo/education/data/cps/2002/tables.html>.

Religion (adherents per 1000): Association of Statisticians of American Religious Bodies, "Religious Congregations and Membership Study, 2000 (State File)," <http://www.thearda.com/Archive/Files/Descriptions/RCMSST.asp>.

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