



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

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Mr. Thurman Higginbotham, President  
Independent Funeral Directors Association of DC  
3145 Lady Banks Lane  
Waldorf, MD 20603

Dear Mr. Higginbotham:

Your request for a staff opinion states that funeral providers serving the District of Columbia have encountered a problem when a natural death occurs in a family home. Because they may not lawfully transport the body to the funeral home until death is pronounced,<sup>1</sup> and because the D.C. Medical Examiner's Office does not pronounce most deaths from natural causes,<sup>2</sup> it may be necessary for funeral providers to locate and pay a licensed physician to perform that service. You ask whether, and if so how, a charge for that service should be disclosed by a provider on the General Price List ("GPL"), and entered on the Statement of Funeral Goods and Services Selected ("SFGSS"), in order to comply with the Funeral Rule.<sup>3</sup>

The Rule specifies that a funeral provider may charge only one non-declinable fee, the basic services fee, unless another fee is necessitated by any legal, cemetery or crematory requirement that is disclosed in writing on the SFGSS.<sup>4</sup> Accordingly, the Rule expressly prohibits funeral providers from charging:

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<sup>1</sup> A notice dated February 4, 2016, from the D.C. Board of Funeral Directors, states that a funeral provider "should not transport a body to a funeral services establishment for funeral services prior to an official pronouncement of death." It cites a directive of the D.C. Department of Health dated December 23, 2015, which emphasizes that a death may be pronounced "only" by "a hospital emergency room physician or an authorized official from the District's Office of the Chief Medical Examiner, unless otherwise permitted by law."

<sup>2</sup> D.C. statutes state that the District's Office of the Chief Medical Examiner must pronounce and investigate possible unnatural deaths in enumerated circumstances, DC Code § 5-1405, and that a body may be removed from the place of death "only" with "the consent of the medical examiner or the treating physician who certifies the cause of death," DC Code § 7-214(c)(1), or when an expected death occurs at home, after a registered nurse assisting a treating physician signs the pronouncement of death section of the death certificate. DC Code §§ 7-211(j); 7-214(c)(2). Thus, if the treating physician or her assistant registered nurse is unavailable when an anticipated death occurs, or there is no treating physician when an unanticipated death from natural causes occurs, a funeral provider may find it necessary to locate and pay a physician to pronounce the death.

<sup>3</sup> 16 C.F.R. § 453.

<sup>4</sup> 16 C.F.R. §§ 453.2(b)(4)(iv), 453.3(d)(2).

any fee as a condition of furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C) [basic services fee]; (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased [*i.e.*, by legal, cemetery or crematory mandates], as explained on the itemized statement [SFGSS] in accordance with § 453.3(d)(2).<sup>5</sup>

While the Rule does not permit a second non-declinable fee, it does permit fees for funeral goods and services voluntarily “selected by the purchaser.” It is therefore staff’s opinion that funeral providers may offer to locate and pay a physician to pronounce an in-home death from natural causes for a fee that is optional. No Rule violation occurs if purchasers voluntarily choose such a service and are free to avoid the cost by, for example, declining it and making arrangements for the death pronouncement themselves.<sup>6</sup>

To allow purchasers to make a voluntary choice about finding and paying a physician to pronounce an in-home death from natural causes, the funeral provider must disclose the optional fee on the provider’s GPL. The provider must notify the purchaser about the optional fee orally and by providing a copy of the GPL when removal arrangements are discussed, or promptly upon arriving for the removal of the body.<sup>7</sup> The disclosure should state whether the provider’s fee includes or is in addition to the physician’s fee. The provider should also list the fee on the SFGSS, and the physician’s fee, if not included, should be listed as a cash advance item.<sup>8</sup>

Please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff members charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are now routinely posted on the FTC website currently located at: [https://www.ftc.gov/policy/advisory-opinions?title=&term\\_node\\_tid\\_depth=3507&date\\_filter\[min\]\[date\]=&date\\_filter\[max\]\[date\]](https://www.ftc.gov/policy/advisory-opinions?title=&term_node_tid_depth=3507&date_filter[min][date]=&date_filter[max][date]).

Respectfully yours,

Craig Tregillus  
Funeral Rule Coordinator

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<sup>5</sup> 16 C.F.R. § 453.4(b)(1)(ii).

<sup>6</sup> Staff Opinion 13-2 (Jan. 3, 2013) at 2, *available at* <https://www.ftc.gov/policy/advisory-opinions/opinion-13-2>.

<sup>7</sup> Such a fee can be listed on the GPL, for example, as “Optional service fee for arranging a physician to pronounce a death from natural causes at a D.C. residence if no treating physician exists or if neither the treating physician nor her assistant registered nurse is available. This fee is **in addition** to the physician’s fee.”

<sup>8</sup> Such a fee can be listed on the SFGSS, for example, as a “Service fee for arranging a physician to pronounce death at a D.C. residence. This fee is **in addition** to the physician’s fee.”