FEDERAL TRADE COMMISSION

SHOPPING FOR FUNERAL SERVICES
AN FTC WORKSHOP

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FTC Workshop
Shopping for Funeral Services

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PROCEDINGS

MS. PLETT: Okay. I think we can get started. Good morning, everyone. Thank you for everyone who's joining us in person and everyone who's joining us virtually. I'm Rebecca Plett. I'm one of the co-coordinators of the FTC's Funeral Rule, with Melissa Dickey, who is joining us in person here today as well.

We have a busy agenda today. We're really excited for some great discussion, but before we get into the substance, I just have to cover a few administrative things before we get going, especially for the folks who are here in person. We are getting the AC cooled down. I know that's been a pain point this morning here in D.C. So that hopefully will kick in more as the morning progresses.

First, I just need to make the disclaimer that the views expressed by me or other folks from the FTC today are our own and are not those of the Commission as a whole or any individual commissioner, except, of course, for Commissioner Slaughter's views, which she will be expressing right after I'm done with these administrative items.

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Restrooms are located outside the auditorium
if you turn left, and there's also a cafeteria that
you can also reach by turning left. I think some
folks have already seen that. Breakfast hours are
8:00 to 11:00. There's some limited service from
11:00 to 11:30 and then lunch is served from 11:30 to
1:00.

Most importantly, I've been asked to remind
everyone that there are no foods or drinks allowed
inside the auditorium. The only beverage you're
allowed to bring in is water. The building is fairly
strict with us, so we will be kind of keeping an eye
on that. But I just wanted to remind everyone.

So that's all I have. And with that, I'll
turn it over to Commissioner Slaughter.

Thank you very much for being here,
Commissioner Slaughter.
(Applause.)
WELCOME AND OPENING REMARKS

COMMISSIONER SLAUGHTER: Thank you so much, Rebecca, and thank you to all of you that are here today, and welcome to Shopping for Funeral Services, An FTC Workshop.

We at the FTC often select workshop titles that are as punny as can be, but I am personally very relieved that I did not have to deliver a pun about death at 9:30 in the morning.

(Laughter.)

COMMISSIONER SLAUGHTER: But as somber as our subject today is, I expect we will all enjoy ourselves and maybe even laugh a little as we work through our very packed agenda.

Last week, my three-year-old was angusting, as three-year-olds always do, about death. I don’t know why it is that at three they start to become very fixated on this, but mine is. And my five-year-old said to her in a very matter of fact tone, death is just a part of life, Hattie; you don’t need to worry about it. And she’s right. Well, they’re both right in a way.

Death is a part of life. Nothing in life is more certain than death. But Hattie was also right that it is a cause of worry and the grief and pain
that are associated with death should not be compounded by anxiety about uncertainty and costs and choosing funeral services, which is something that almost every American is going to have to do at some point usually under very difficult circumstances.

Death is rarely talked about, cloaked in discomfort or taboos. When a loved one dies, family, friends, and others face many difficult and costly decisions about how to honor the deceased, including choosing funeral providers and services.

In 2021, the median cost of a traditional burial in the United States was $7,848, while the median cost for cremation was $6,971. That is a very significant expense for most families in America, the equivalent of buying a used car, and far more than most families have in emergency savings.

Decisions are often made under pressure to act quickly while people are grieving and dealing with significant stress. In one of my own faith traditions, Judaism, the deceased are supposed to be buried as soon as possible, and in all cases, within 72 hours of death. It is difficult to be deliberate and thorough when comparison shopping under such pressures, even in the best of circumstances.

The funeral providers and services consumers
choose can have a significant financial impact. A variety of different burial and related funeral services exist. Prices for services, including the same services by different providers, can vary by thousands of dollars. So it is critical that consumers have easy and quick access to information that lets them choose only those services they want and for a price that works for them.

That is exactly what the Funeral Rule is intended to ensure. The Funeral Rule includes important disclosures designed to ensure that consumers have the information they need to make purchasing decisions. For example, the Funeral Rule requires funeral providers to give anyone who inquires about services in person a copy of the provider’s detailed general price list, which must include a number of common services offered by the funeral provider, such as the cost of a hearse, the cost of a direct cremation, and the cost of an immediate burial.

It also requires providers to give people accurate information, including price information over the phone. The Funeral Rule also allows people to select only those services they want and requires providers to let people know what is and isn’t a required service. Funeral providers must offer
services individually instead of exclusively through bundles, a practice that was common before the Rule was enacted, which resulted in people paying lots of money for services they did not need or want.

I often cite the Funeral Rule as paradigmatic of two things that I love about the work of the FTC. The first is that it is not something that most people think about, other than the people in this room and watching online, on a day-to-day basis and, in fact, most people -- even the people who benefit from its protections probably don’t even know it exists. It’s not headline-grabbing, it’s not front page news, but it is there in the background doing really, really important work to protect consumers just at the moments where they might be the most vulnerable to unfair and deceptive acts and practices.

And the second thing I love about the Funeral Rule is that it is a consumer protection rule that has hugely beneficial effects in service of our competition mission. It demonstrates how the FTC’s consumer protection and competition missions are closely related. Because distinct options for funeral services are separately priced under the Rule, it promotes competition for each aspect and allows consumers to, say, purchase a casket at a big box or
1 online store and then other services from a funeral provider.

   Last year, as part of a standard review of the rule, the FTC sought comments from the public on whether the Funeral Rule, which was enacted in 1984, should be updated or changed. This workshop is meant to help the Commission understand whether and how the Rule can be improved to benefit both consumers and businesses, especially considering changes in technology and shifts in the way we shop for services and care for deceased loved ones.

   This morning, the first two panels will address whether and how funeral service providers should be required to disclose prices online, not just handed out when someone goes to the funeral home and asks about services or calls in by phone.

   The first panel will discuss whether such an amendment is needed, including any potential benefits or drawbacks to consumers and competition from pricing information that is easily accessible online. We will also discuss any potential costs, such as such a requirement could impose on businesses.

   The second panel will discuss practical considerations for online price disclosures if posting were to be required, included where prices could be

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posted and other technical challenges and opportunities around online price disclosures.

After lunch, the third and fourth panels will delve into whether the Funeral Rule needs other updates to benefit consumers or businesses. For example, updates to the professional services fees that cover funeral provider’s overhead costs, updated to clarify disclosures about when embalming is required under state laws, and whether funeral providers should be required to disclose certain additional fees on their price list, such as fees third-party crematories charge the funeral home.

The last panel of the day will discuss new ways of caring for a loved one’s remains. Most people are generally familiar with burials and cremations, but innovations in the death care industry mean that people now have more choices than ever about what kinds of funeral services they want, from alkaline hydrolysis to natural organic reduction. Yes, the “shroom” burial seems to be here to stay. We will discuss a variety of new forms of disposition and whether the Funeral Rule needs to be updated to account for them.

Funerals have always been important to families and communities because, as my daughter
noted, death is a part of life. The Commission’s issuance of the Funeral Rule almost 40 years ago began to bring some of the essential aspects of funeral into the public realm for discussion and ultimately for improvement.

As became all too clear throughout the devastating COVID-19 pandemic, funerals are sadly an experience with which too many Americans are personally acquainted and I think many see room for improvement. Today’s panels will help us identify whether and how to make changes to the Rule.

Before we get to the panels, I’d like to thank everyone who made this workshop possible. First, I want to thank all the panelists and all those who have submitted research and comments in advance of this workshop. Second, I’d like to thank FTC staff, Melissa Dickey, Rebecca Plett, Sammi Nachtigal, Joseph Swindal, Dotan Weinman, and Lois Greisman, for planning this event.

I also want to thank Brent McPeek, Kelly Ortiz, and Margaret Patterson, who offered valuable insights and assistance during the planning process. In addition, I’d like to thank many other FTC colleagues, including those from the Division of Consumer and Business Education and the Office of

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Public Affairs, whose input has been vital. Finally, thank you to everyone who is attending in person or watching online via our live webcast. We encourage you to submit either empirical research or submit a comment with your thoughts. The FTC will continue to accept empirical research and public comments until October 10th, 2023.

I’m looking forward to some thought-provoking and frank discussions, and with that, I’ll turn it back over to Rebecca to moderate our first panel.

Thank you.

(Applause.)
PANEL 1: ONLINE DISCLOSURES: IS IT NEEDED?

THE PROS/CONS

MS. PLETT: Thanks. And just this is a good reminder for myself, but to the panelists, if you can speak towards or into the mic during our panel today, I think that will be helpful for everyone to be able to hear us.

Well, thanks to Commissioner Slaughter for her remarks this morning and good morning to our first panel of the day. Thanks, everyone, for being here.

The theme of the panel is Online Disclosure: Is it Needed? The Pros and Cons.

As a reminder to the audience, for folks who are here in person, if you want to ask the panel a question, you may do so by writing your question on a comment card. We’re going to have folks kind of keeping an eye out for those questions and passing through the room to pick them up to get them back up here to us.

For folks who are joining us virtually online, you are able to ask questions by emailing our inbox, which is funeralrule@FTC.gov.

I’d like to briefly introduce the panelists today. To my right is Lacyn Barton of Service Corporation International.
Beside her is Dr. Hari P. Close, II, of the National Funeral Directors & Morticians Association. Next, we have Chris Farmer from the National Funeral Directors Association. We have Poul Lemasters from the International Cemetery, Cremation & Funeral Association. And then at the end of the table, we have Sarah Pojanowski of Selected Independent Funeral Homes. And joining us virtually is Erin Witte of the Consumer Federal of America.

So welcome, everyone. Thanks for being here.

So we’re about to dig into online price disclosure issues, and just to outline what we’re planning on covering in this panel, we will start out with a discussion about whether current price disclosure requirements are sufficient. We’ll then talk about how consumers shop for funeral services before we turn to the costs and benefits of online price disclosure.

So as an introduction, just so that the audience knows, kind of, everyone’s view on the topic generally, I’d like to start with kind of a yes or no
question to all my panelists, and I think I’ll just go
in the alphabetical order that they’re seated in.
Should the Funeral Rule be amended to require online
price disclosure?
So, Lacyn, I’ll start with you?
MS. BARTON: No, the FTC should not mandate
online price disclosure. In my 20 years of experience
as a funeral director serving hundreds of families, I
know full well that the Funeral Rule works as it
stands because the GPL is explained in context when we
serve families.
MS. PLETT: Dr. Close?
DR. CLOSE: I’m going to say, based on my
membership, no, and I will say 50 percent have a
different perspective. But I will say that, as my
colleague already mentioned, that we need to be able
to explain that general price list. But later on, I
have a different perspective as an individual.
MS. PLETT: Sure.
And, Chris?
MR. FARMER: My answer to that is, no, they
shouldn’t require posting online. I think that the
impact that that would have on the majority of funeral
services, who are small businesses, would
substantially outweigh any benefit, and I think that
any benefit is unstudied and unknown. Consumers don’t shop for funerals by prices. The data shows that; statistics show that. And I don’t think that there’s any harm to consumers for not posting prices online. I think that that would be -- the harm to a small business would outweigh any benefit.

MS. PLETT: And, Poul?

MR. LEMASTERS: Yeah, I will -- for the direct question yes or no, because I do think it’s more complicated, but I’ll say no, specifically as it refers to being required by the FTC. I think that’s a harsh fix. I think there are a lot better solutions than requiring every provider to price. And I would also remind that, you know, every state level has their own regulatory schematic and this could easily be left to the states to determine if in their state, their region, if they want to control this, which they could.

MS. PLETT: And, Sarah?

MS. POJANOWSKI: I’m going to take a slightly different track and say yes in a very limited circumstance. There are certain funeral and cremation providers out there who provide all of the arrangements online and do not have a brick-and-mortar presence. And in that very limited circumstance, I
believe it’s necessary to ensure that consumers have access to pricing data before they select the services that they would like to purchase. So in that certain online-only context, I would support a change in the Funeral Rule. Otherwise, the Funeral Rule works very well for the average brick-and-mortar store and I see no problems with it.

MS. PLETT: And, Erin?

MS. WITTE: So our position would be yes, prices should be available online by funeral providers. It’s clear that consumers will shop online if they have the opportunity, but they don’t because there isn’t consistent price disclosure online. Where consumers shop online more and more every day, this Rule hasn’t been updated in ten years and this is the perfect opportunity for the FTC to make the equitable choice and make these prices required to be disclosed online.

MS. PLETT: Thank you. Thanks, everyone, for their views in that first round. So I think with that we’ll delve more into the first topic of this panel, which is how the current price disclosure requirements are working.

So this is going to be a question for Poul and for Lacyn. The question is, Are current price
disclosure requirements in the Funeral Rule adequate for consumers to get price and service information?

And, Lacyn, I’ll start with you.

MS. BARTON: Thank you. Yes, the current Funeral Rule has the disclosure of providing prices at the time of the purchase decision. And during that time, during the arrangement conference, these families make approximately 120 decisions when they’re sitting down with the funeral director and it’s during a very emotional time. And our general price list at my funeral home has 93 line items. I know going into that funeral arrangement conference that that family is not going to need all 93 items. It’s up to me to engage them in a conversation and find out the handful of items that they actually need to get the customized service that they want.

And funerals, they’re just not commodities. There’s so many facets and moving parts to pull together and it’s an intricate process, and it requires a trained and licensed professional to guide them through that process. Independent data collected by JD Power indicate that our SCI customers are satisfied with arrangements and, in fact, they indicate that the price is about or even lower than they expected.
MS. PLETT: Thank you.
And, Poul, what are your thoughts?
MR. LEMASTERS: I would agree. The question is, is it working as is -- meaning the handing out of the GPL, and it is. And we know this in a couple ways. One, from the Sentinel Report, which I think is very telling, the Sentinel Report every year comes out and it tracks not just hundreds or thousands, but millions of consumer complaints across every topic you can imagine. This past Sentinel Report, there were over 5 million complaints that were registered and the funeral services -- and that isn’t just handing out prices; that’s everything from how much it cost to was it a good funeral, did you get my obit right, I mean, it was every complaint possible -- there were a whopping 1,500. It’s .03 percent. So statistically, we know that this is not an issue.

I know one of the things we always want to hang our hat on is that we look for prices and they’re not there, but, again, from a study we had done with ICCFA and an outside group, over 80,000 families, and they ranked pricing as 8 percent of their factor of what they look for, and only 2 percent even go to the internet to look for statistics. So the idea is, is statistically, is it working? It is.
I also know that the FTC -- every year, we see the sweeps -- well, the FTC will undercover shop funeral homes. And the idea is is that there is, on average, about 20 funeral homes that are cited for failure of handing out the GPL. However, I think it’s important to look into that data deeper because most of those are not that they fail to hand out a GPL, it’s a timing issue.

And it goes to what Lacyn said, is really if we were going to do anything with the Funeral Rule, we need to understand and correct the timing of the price list, not the giving it out, because a lot of those people that were penalized were because the family came in, sat at an arrangement table like this, there happened to be caskets in the room, and they were cited for failure to give out price lists because merchandise was present. Well, that’s a very harsh standard when, at that moment, we haven’t even talked about what funeral they want, if they even needed a casket.

So again, the current price disclosure works, and if we fine-tuned it and worked on the timing, I think you would see that there would be even a higher level of satisfaction and compliance.

MS. PLETT: Thank you.
And the next question to Dr. Close and to Erin is what your reactions are to that. And I’ll start with you, Dr. Close. What are your views on the current price disclosure requirements?

DR. CLOSE: I really think Poul said something that’s very clear. I used to be the President of the State Board of Maryland. And the question was, under a former colleague of yours, do we have the general price list at the door when they walk into our facility, do they have it at the arrangement. So I will use -- personally, I emphasize to our members, have it at the front door, even though you have a receptionist, and have a whole package at their arrangement, take one before you walk in. So I think the issue is timing.

But at the other part of that, I do agree with my colleague that the majority of us are giving them a price list, but it’s about breaking it down, because we know the FTC, when they went and put the general price list, it’s a lot of prices. They just wanted the value of what we consider the cost. And I think what happens for the consumer, they get confused.

All these distinguished gentlemen and ladies
here, we each run a different type of funeral with
different costs. So my general price list is not
going to match someone. And I have four facilities
within a mile of me. Each of us have a different
price structure with different requirements for that
particular provider.

So it’s necessary, but I do agree that we
need to educate, educate, educate. Consumers really
don’t understand. And one day, all of us will be a
consumer and our families will be making the same
decisions under that same duress.

MS. PLETT: And, Erin, what about you? Do
you think the current price disclosure requirements
are working?

MS. WITTE: No. And I have a few things I’d
like to respond to in the prior comments. The first
is the very accurate description of the fact that this
is a highly sensitive and personal decision, and so
requiring online price disclosure will amplify the
consumer’s ability to participate in that conversation
in a meaningful and educated way. If they have a
sense beforehand of -- before even going into a
funeral home, picking which funeral home they may go
to, of what questions they can ask and a general sense
of what they can expect, certainly they will be a more
There was also a comment about the lack of complaints or the characterization, I guess, that there’s a lack of complaints made to the FTC. And there’s a couple reasons I think that this is coming up.

First is that consumers just may feel awkward filing complaints about a funeral home. This is a really personal problem. It’s a really personal issue. And when a consumer has been through the process of going through the funeral, going through the grieving process, they may not be inclined to file a complaint against a funeral home. So that’s one thing. Even if they felt like the price should have been disclosed earlier or they wish they knew more going into it, that might not be the situation where consumers are filing complaints in droves.

The second is that consumers probably don’t always know that the FTC is the agency to which they can file a complaint about something like this. It’s a fairly discrete topic, right? But that speaks to the need for more education, but also more transparency and more disclosure. Requiring online
disclosure will serve all of those purposes. It won’t
harm these efforts; it will only amplify them.

So we certainly think that prices should be
made online earlier. And, again, to speak to the
timing concerns that folks have, earlier, more often
will certainly be better. It will promote one of the
main purposes of the Funeral Rule, which is to allow
consumers to make informed choices.

MS. PLETT: Thank you.

And a follow-up question is, are there
particular -- and I think this will be to Erin and to
Chris maybe -- are there any particular groups of
consumers for whom getting price information is
particularly challenging?

Erin, maybe I’ll start with you.

MS. WITTE: Sure. There are consumers who
may not live near their loved ones for whose funeral
they are planning. So someone who lives in California
and has to plan a funeral for their mother in Texas,
that’s going to be extraordinarily difficult to get
that information. There’s been some research about
even calling funeral homes and trying to obtain price
lists that way. And it’s not easy. So funeral homes
don’t always provide it. The requirements there are a
bit less clear. But requiring these online
disclosures would certainly help with that. There are also consumers who may be homebound, some who are disabled, who are ill. All of these populations of consumers are going to go through this experience at some point, and so we really have to think broadly about how to make this information acceptable to everyone.

MS. PLETT: And, Chris, what are your views on Erin’s response?

MR. FARMER: Well, I think if consumers are calling funeral homes and they’re not giving them prices, they’re already violating the Rule as it exists. So I think that that’s a nonissue as far as calling the funeral home. And the FTC reviewed this back in 1994 and they decided it wasn’t proper to require a production of a price list from a phone call anyway.

So that’s been reviewed and I don’t see anything different. I see no statistics that are different. I see no studies to show that there would be any change in the consumers behavior. The NFDA study showed that only 11 percent of funeral consumers contacted more than one funeral home when looking for services. And, in fact, I think that number is extremely reliable because the Consumer Federation of
America’s Ipsos study, when they cited it in their publications, said 11 percent, too. So we know -- I think it’s a very reliable number to say that only 11 percent of consumers are looking at more than one price.

And of those, everything that the data shows, all the studies that we have, and I know the JD Power studies and the SCI numbers, all show the numbers that Poul just cited that consumers are not having problems finding prices. It’s not an issue. I think that it shows over 90 percent of consumers say they have no problem at all finding prices, and that of the 11 percent in our study that looked online, only 14 percent said that they looked for -- 11 percent shopped at more than one location. Only 14 percent of that said that they looked online.

So we know that it’s out there, we know it’s a possibility, and consumers just don’t shop that way. And so to impose a rule that would have an effect on small business, that doesn’t have an effect on the way consumers shop or their availability to find information at all just doesn’t make sense to us.

MS. PLETT: I’d like to turn next to another question to Sarah and to Chris. Short of online price disclosure requirements, are there ways that price
disclosures, pursuant to the Funeral Rule, could be improved, you know, outside of what we’re talking about with online price disclosures?

And, Sarah, I’ll start with you.

MS. POJANOWSKI: Absolutely. I think one key area where we can improve the price disclosure requirements is the timing, as Poul was referencing earlier. When the Commissioners were voting earlier in the spring on whether to reopen the rule, this came up because we were -- certain people had talked about the timing issue and the comments, and it become very clear that the Commissioners’ idea of what the timing is in the Funeral Rule is not what has been enforced by FTC staff. And that’s a huge gap, a huge problem.

We had some very touching testimony at that time. Why is this timing issue a problem? Because families come in and they’re distraught. You’re there with your family, probably someone you know because a lot of these funeral homes are in very small communities and they’re serving families and friends of theirs, and the first thing you want to do when someone comes in grieving is not hand them a price list. It’s very insensitive. It makes it look like all you care about is price.

Funeral directors are in this because
they’re passionate about helping people at the worst
time of their life, and they don’t want to be seen as
that callous, here’s a price list before they are able
to console the family for a bit, figure out who the
person was, what they were interested in, you know,
give them condolences. It currently says they can
offer condolences, but it doesn’t say you can inquire
anything else about who the person is and really
embrace that with the family to figure out what their
needs are before you hand out the price list. And
that should absolutely be clarified that it’s
perfectly fine to have that introductory conversation,
and only when you switch to the selection of goods and
services should you have to hand out the price list.

That’s better for consumers because
consumers don’t want to feel like all you care about
is money. It’s better for funeral homes because it
will be clearer, it can comply with it, and it will be
better for the FTC because it will be easier to
enforce and to train the people that you send out to
do swaps, to do inspections, how it’s done, because
currently I think there’s a lot of confusion about
that.

I also want to address an earlier point
about the FTC’s data because I think Lacyn had a point
where she was talking about people don’t complain to
the FTC. Data comes from a wide variety of sources,
including States Attorneys General and consumer
protection bureaus. So that’s a much broader scope of
data than I think she is aware of.

MS. WITTE: I’d be happy to respond to that
point, Rebecca.

MS. PLETT: Sure, Erin.

MS. WITTE: About the data. So 22 States
Attorneys General actually asked for online disclosure
as well. So clearly, they’re hearing about these
problems and they also have concerns. So certainly,
consumers may make complaints there, they may not, but
the point is that the AGs who are enforcing some of
these protections, who are communicating with the FTC
about that, also want online disclosure.

Additionally, government agencies are not
the only place where consumers talk about these issues
and raise them. The Funeral Consumers Alliance, in
their comments, pointed to complaints that they
receive from consumers. They may not always make it
to the FTC or to a government agency. The Sentinel is
an enormous resource, it’s very helpful, many
consumers benefit from that. But in this scenario, I
think it’s important to recognize that the lack of
complaints or perceptions therefor does not mean absence of a problem.

MS. PLETT: Thanks, Erin.

And, Chris, to turn to the question about other improvements that the Funeral Rule could use.

MR. FARMER: Sure. I would just like to comment on the data issue. You know, we have data to rely on, and if the data shows something different, we’d like to see it. But it doesn’t. The data is consistent that that is not an issue.

There are anecdotes where people have problems, of course, but the data through all of the different methods that we’ve looked at, different studies, is consistent that consumers don’t have a problem with it.

Now, back to the timing issue, I agree with what Sarah said and what Poul said and what Lacyn has said about it’s a subjective issue when to give the price list. We had a conversation with the FTC staffers a couple months ago, with you all, and it was -- the question was why do we not understand -- why do funeral homes not understand when it needs to be provided. And the issue is -- you know, it’s not a binary conversation between a funeral provider and a consumer. The consumer is not sitting there talking
about their dad and then says, okay, then let’s stop and talk about funeral goods and services.

It is this thing that goes on because, you know, you come in in the middle of the night and you’re doing a removal and they -- you know, they’re grieving about their family and they -- a story I told was, you know, what if the third cousin’s uncle says, hey, do you guys offer cremation. I mean, under some interpretations of the Rule, you’ve got to stop and give him a general price list right there in the middle of the removal. And that’s not about what -- what this should be about. There’s no context.

If the FTC’s goal is to provide more information to consumers for their benefit, I think the best thing they could do is give that conversation context. And we’ve repeatedly proposed, in our submissions, that that context should be when the consumer asks about pricing. That is there’s no subjectivity to that, there’s on confusion. You know, you’re not going to have one investigator citing 20 funeral homes and one investigator citing none as we see now because it is did you ask about pricing.

If the consumer says how much does it cost, what do you charge, those are clear triggers where the consumer directs the conversation from I don’t know
what I want for my dad, you know, he loved fishing, he
didn’t really know if he wanted to be cremated, to how
much do I have to pay for this. That is a clear
transition. It makes sense. There’s context for
that. There’s context for the funeral director to
have the conversation with the family about that. And
when you give them the general price list, you are
answering their questions.

A simply inquiry about, do you offer
cremation, and then you hand them a price list with,
you know, direct burial and how much caskets cost, it
doesn’t make sense to the consumer and it doesn’t
benefit the consumer. I think the best thing the FTC
could do to help benefit the consumer is to give them
information in context that makes sense on the
conversation of price.

MS. PLETT: Thanks.

And, Dr. Close, do you have any thoughts on
that?

DR. CLOSE: A couple things. Let me bring
up an old issue and then I’ll answer your question.

MS. PLETT: Sure.

DR. CLOSE: My members feel that if we’re
going to deal with any type of change, that all
segments -- no disrespect to my colleagues here in the
audience, but all segments of the industry should be covered by the Funeral Rule. The perception of the public is when they hear about the violation, they always say “the funeral home.” It might not be the funeral home in that segment. So I think we need to address -- let’s address that white elephant in the room.

Regarding the pricing, my colleague from the Consumer mentioned about the public not being -- or being aware of price. I think that we are doing it better. There’s always some bad actors in every industry.

And I’d just like to say this and then I hope I will give a direction. We are the only industry in this country that the FTC regulates. Lawyers, attorneys, accountants, doctors, hospitals, accountants, dentists, chiropractors, nursing, any nursing support, nail salons, they don’t have to put up any pricing. And I’m not -- as my members expressed to me, we’re not complaining that we need to put the pricing, but this is a capitalism system that we need to make sure that we’re all the fair game.

So I do think that the price list should go forth as it has been, as directed by my membership, and I’ll talk about something personally when we come
to that point.

MS. PLETT: Sure. Thank you.

Well, thanks, everyone, for sharing your views on the current state of the Funeral Rule. I think the next topic that we’re going to move to is the way that consumers shop for funeral services. So here I’d like to start with Dr. Close and with Chris.

Do consumers shop for funeral services online? Chris, would you like to respond to that first?

MR. FARMER: Yeah, and I jumped the gun on you so I apologize for that. But we put forth lots of information and we do studies on an annual basis and we show that -- very clearly, the data shows that, number one, it’s not how consumers shop. Consumers are not as price-sensitive to funeral goods and services as I think the FTC believes or as some people would conclude without the data. Again, the 11 percent of funeral consumers -- only 11 percent have looked at more than one funeral home for their needs. It’s just not how they shop.

They look at where did their mom go. They look at where did their grandpa go, where is their friend from the Lions Club, what’s close to me, what’s convenient, you know, what’s the place I drive by
every day, where do I want to go. It’s based on those reasons. And price is just not one of those reasons that’s the primary driver.

Now again, we have Funeral Rule, we have the telephone/verbal price disclosure requirements. People can get that information if they want to, but there is not the requirement. So consumers just don’t shop that way. I don’t think that there’s any data I’ve ever seen that shows that consumers are asking for more price online disclosures other than anecdotal, and I just think that’s -- again, I’m going to go back to the impact that it would have on small business, which is 90 percent of funeral homes, is going to be more severe than any unknown benefit to consumers.

MS. PLETT: And, Dr. Close, in your experience, do consumers shop for funeral services online?

DR. CLOSE: Well, let me -- to my membership that’s probably watching, let me talk as a funeral provider. I was one of those people very hesitant. I have a young team that believe in every electronic internet. About five years ago, maybe six years ago, we put all our general price list on the webpage. My business increased 12 percent.
To come behind Chris, I think it depends on
the geographics of this country; I think it depends on
the market. I do a lot of international business
based on doing online. And as Poul mentioned, we do
-- about people who are out-of-state, as Erin
mentioned, we do a lot of that. So for me from an
economic aspect, it benefitted me.

I know what my members are now saying, but
there are some of us in this country that do put it
online. I might now always agree with my colleagues
here. We’re going to agree to disagree, but from a
personal perspective, it has worked for me.

I have a problem that if we’re going to
require, from my association perspective, firms to
have to put their general price list on my website,
what about those firms that do not have websites?
Then we’re going to penalize a firm that might not
want a website to get a website.

And then the other switch that -- if you’ve
been on a state board, a state board says, as long as
there’s no casket, there’s no flowers, there’s no
hearse, then why should they be required? Then
there’s some state boards -- in Maryland, we actually
license online businesses. So it opens up a whole
Pandora’s box that we really need to look at.
I’ll go back with what Poul was saying. It should be on the state level because each state level has a different requirement, and even the FTC says, if your state board is -- has higher requirements, then you don’t have to follow this.

And it goes to another point, when you have a state board, is that state board under the business law or is that state board under the health code? Because if you’re under a health code board, you’re required more. And I use Maryland. Maryland is a health code board, it’s under the health code. The surrounding states are business code. So those boards that are under the health code have more responsibility for protection of the consumer. So that’s another factor that the FTC has to go and the Commission has to look at because each board is not run -- I’ll use Pennsylvania. The state board doesn’t -- no disrespect to the state board, those board members don’t make a decision. It’s the Attorney General that directs them what to do.

So there’s so many different levels and layers that we have to really consider and the state level would be better for the protection of the consumer, which is already in place.

MS. PLETT: Thank you.
And I think, Chris, you already touched on price, but I’d like to ask Sarah and Erin, do consumers shop for funeral services based on price? And, Erin, maybe I’ll start with you.

MS. WITTE: So I think that consumers have difficulty shopping based on price because they don’t know until they get to a funeral home. I’ve literally never heard any consumer that I’ve spoken with, represented when I was in private practice, complain about paying less money or saving money, want to pay more money or be totally fine with paying more money if they had an opportunity to pay less, or if they had an opportunity to see if they could pay less. But that’s extraordinarily different to do under the current regime.

Maybe consumers don’t shop online because they can’t. It’s really difficult to find that price information, especially if it’s not consistently provided in advance. People do it in -- funeral homes do it in different ways. There’s a 2020 survey performed by CFA and my colleague, Steve Brobeck, about the fact that 91 percent of consumers said that they would be likely to compare prices of several funeral homes before making a decision if the FTC required this sort of online disclosure. So just
because consumers don’t do it now is really no
indicator because not every funeral home posts online
right now.

MS. PLETT: Thanks.

And, Sarah, what’s your view on whether
consumers shop for funeral services based on price?

MS. POJANOWSKI: It’s my view that some
consumers are price-sensitive and are looking for the
cheapest option or shopping based on price. But
generally speaking, funeral consumers do not shop
based on price. They shop based on the things that my
colleague, Chris, mentioned earlier. This is the
funeral home that their family uses and that’s where
they want to go and that’s who they would like to
handle their services. It’s about the quality of
service and what can be provided by the funeral home.

So they would like to go -- like, for
instance, my grandmother was very insistent that she
go to the funeral home with the embalmer that she
liked because that’s what was important to her. She
wanted to look good. She wanted to look like herself.
And, of course, we used that funeral home irrespective
of price. It was not even on our radar to even
consider anything else because the quality of the
service was what was important to my grandmother.
However, there are some people -- the question here is not necessarily like should people post online. I personally recommend my funeral homes to post their prices online and many of them do. Actually, it’s like any other service. If I go to the website and the hairdresser doesn’t have their prices online, I’m going to assume it’s really expensive when, in fact, that might not be the case. So I encourage transparency.

The question is, should it be regulated by the FTC that they have to do it? That’s a very different question, is it a good business decision. In some respects, I think this is a problem that’s going to take care of itself because as funeral homes look and see other funeral homes, like Dr. Close’s, who are successful and more successful after they post their prices online, then they’re going to want to do the same thing. Consumers will figure this out, that they would like to see it online. They’ll go to the funeral homes that are doing it, if that’s what they care about, and ultimately the business market will solve this problem. It does not need further regulation by the Federal Trade Commission.

MS. PLETT: Thanks.

And Dr. Close, I know had touched on what
happened when his home posted their price information line, and this question is for Lacyn. In your experience, what happens when homes post their price information online?

MS. BARTON: Well, the short answer is no, people are not coming to our websites for pricing information. And here’s the data. SCI has posted pricing for over 1,000 of our funeral home locations and consumers are just not coming for pricing. They’re not even looking at it. Less than 2 percent of the visitors to those websites even click through to look at pricing. About 85 percent of our web traffic, they’re looking for obituaries, service information, and leaving online condolences.

Also, for those locations that have pricing posted online, we see no difference in the amount of time that it takes for the arrangement conference to take place.

Now, it’s a complicated process with a lot of decisions, you’re not just deciding between burial or cremation. You are cultivating an event, venue, participants, music, flowers, what colors should they be, the menu for the memorial reception. All of these decisions are coming together and the general price list is an excellent tool to facilitate that
conversation. But even when a consumer can read the
price list ahead of time online, they’re still going
to need explanations of the terminology and what that
means at a particular facility and how it impacts the
services that they want.

GPLs are not apples-to-apples comparisons,
just like hotels and restaurants. We have varying
degrees of customer service and facilities and
amenities. So those types of nuances cannot be
conveyed on a general price list. And, overall, we
are not aware of any analogous services, as Dr. Close
had mentioned, that is required to post their pricing
online. It’s just such a customized service that the
consultation needs to happen with a licensed and
trained professional.

MS. PLETT: Thanks for sharing that and also
the information about how consumers interact with the
websites.

This is a question for Poul and for Dr.
Close. As consumers who are seeking out funeral
services will shift more to, you know, the younger
generations and maybe folks who are digital natives,
do you expect that the way that consumers shop for
funeral services may change?

And I’ll start with Poul.
MR. LEMASTERS: So kind of a two-part.
1 First, I’m going to do something a little different,
2 and for purposes of my first part of the answer, I’ll
3 actually agree with Erin and be the optimist that when
4 this all happens and we put prices online, all of a
5 sudden, consumers will start shopping online. I think
6 that is an optimistic view because the data doesn’t
7 support that right now. That’s not how -- again,
8 80,000 surveyed that we’re aware of, only -- it’s 49
9 percent are because of where they went; it’s 38
10 percent because of location. The point is -- is price
11 is so far down on the list.
12 But even if we were going to say that after
13 this happens everybody shops online, I have to now put
14 on my lawyer and not be so optimistic and look at it
15 this way. I think it’s a disbelief that because
16 pricing online is going to help them become more
17 educated. Again, Erin pointed out that by putting it
18 online, it will amplify all of this pricing
19 information and it will be a win for consumers.
20 Here’s where I see the downfall. That’s not
21 how the internet works. I see this as a huge
22 detriment to small businesses and small funeral homes
23 and providers because they won’t be able to keep up.
24 Consumers don’t surf five, six, seven, eight pages for
information. They look at the first page and they look and they can be misleading. And what they will see is the top funeral home in that area and that can be misportrayed.

You know, my fear is that funeral -- or that the consumers will now actually -- because if they do shop online, they will see less information, they will not make phone calls, they will not rely necessarily on recommendations or where mom went, and they could be misled and this could create a whole new issue that we aren’t even prepared for. And, again, by forcing this and mandating it, it will happen.

Now, I’d like to say this just by belief, but actually we have concrete evidence and you all were part of it, and that is the Damiano lawsuit the FTC filed and won. We’ve already seen this happen. We have seen a provider in death care who basically dominated the web prickings, through SEO became what appears to be a fantastic provider, low cost -- so for people shopping for cost -- and turns out they were far from it. Lawsuits filed in many states, the FTC filed and won against this person.

And to Erin’s last point, where I will differ, Erin made the comment that she has never dealt with a consumer or anyone who said I wish I would have
paid more or I wish I would have done -- I can tell you for -- lawsuit-for-lawsuit that I’ve had, that I have had people from that who have literally said I wish I would not have gone with the cheapest provider that was all over the first page of the internet, I would have paid more, but I didn’t know.

So my fear is requiring pricing online, we are creating a new loophole that could mislead the consumer and we’ve already seen it happen.

MS. PLETT: Dr. Close, what are your perspectives?

DR. CLOSE: Well, great discussion. I have a young staff, as I mentioned, so I had to learn how to communicate by text, when they were in meetings and seeing who’s on the phone, just like some of them right now in the audience are on television or on the phone. So we have to adapt with new technology.

However, new technology can be manipulated and there’s no safeguard. And I know this is another subject matter in another panel, but I think that we need to be very cautious how we use it. I mean, I know it’s, yes, putting it on the internet, but how many of us have been in meetings on funerals and people are on their mobile and they have no control of it. And that’s just to follow up on the great points
that Poul made, that there has to some way we can
protect the consumer.

And though Erin and I might agree to
disagree, you know, I hope that she can teach her
members to -- there’s a segment of this country, as
Sarah has already said, that is price-conscious. Have
your budget before you go into that firm, that
provider. And, remember, you made the selection, not
the funeral home. You said you wanted this after you
sat down with a licensee that went through this.
Hopefully, all of us are going step-by-step.

And I’ll be transparent. We do not start
talking anything. We go over all the price list
immediately. Why? Because I got a warning letter
about ten years ago because I didn’t provide twice --
because I know it’s now twice -- the outer burial
container. I remember that day like it was yesterday.
That person kept asking me, so what is that. Oh, you
don’t need that. So my staff must go over all prices
first. Now, they might not understand all the prices
and then we’ll talk about what kind of selection you
want.

But I think that we need to be very cautious
because all of us know our webpages might not be
controlled -- and I know there’s another panel -- and
it’s being manipulated. I don’t know if you even use
a webcast and you’ll be having a funeral and you’ll
have entertainment of other material while the funeral
is going on. So I think we need to be very cautious
when we’re talking about this because it’s easy to
manipulate if you’re one of those brilliant people on
the internet, and I think they have degrees for that.
So we just need to be very conscious of
that. Thank you, Poul.

MS. PLETT: Thanks.

And I think another topic that Poul touched
on and so a question for Erin and Sarah is, would
consumers shop online and perhaps comparison shop more
if prices were universally available online?

And, Erin, I’ll start with you.

MS. WITTE: Sure. Can I actually go back
and make one quick point about something that was said
about the manipulation of this information and perhaps
people who may use it to actually deceive consumers,
people might scrape this data and use it in a way that
can harm consumers. I just want to be clear that that
will happen in any industry. Any time there is a
regulation that requires price transparency, there
will always be bad actors who take advantage of that.
That’s a problem for FTC enforcement.
But what is equally important when developing the rule is making a rule that’s durable and enforcement-capable, as well as compliance-friendly. Requiring online price disclosure is much more enforcement-capable than the current regime that we have now. The FTC can investigate that issue, they can research, and they can certainly take whatever action they think is necessary.

So with respect to your question, Rebecca, about whether consumers -- I think the question was would more consumers shop online if the prices were available, I alluded to this earlier, but I’m going to point to a survey by my colleague in February of 2020 that said 91 percent of consumers surveyed indicated that they would be likely to compare prices of several funeral homes before making a decision if the FTC passes a requirement that enables them to do so. Sixty-one percent said very likely.

So I think that certainly, as we get accustomed to this new era of online price disclosure, which will amplify funeral homes’ ability to have meaningful conversations, to put things in context, more consumers will be able to do that. But it’s really difficult to do that now because they can’t.

MS. PLETT: Thanks.
And, Sarah, what’s your reaction?

MS. POJANOWSKI: I would like to actually step back for a second and say that, currently, we’re not going to have a new era of online price disclosure because those resources are already out there for consumers. There are third-party providers who go around and ask for GPLs from various funeral homes, from all the funeral homes in the community and post them on their sites. So the GPLs are often out there in almost every community on these websites where you can -- for now, you can shop online, you can compare prices online if you wish to do so. And the fact is that people aren’t doing that.

So I don’t think there’s going to be a sea change as a result of this change if it goes forward because the information is already out there for consumers who wish to shop that way.

MS. PLETT: Thanks.

So the next question and the last question of this section is about if the Commission were to decide to require online price disclosure, who should it apply to. And I will -- this is a question -- I’m sorry, I should have said first -- I think I’ll ask Chris, Sarah, Poul, and Erin to respond to this.

So, Chris, I’ll start with you.
MR. FARMER: I think that if you are a funeral provider who provides the entire arrangement procedure online, if you have the infrastructure, if you’ve got the technological means, if that’s how you interface with the consumer, I think it absolutely makes sense to require production of price lists online. I think it makes sense because they already have the technology there, they have the know-how, and it is part of -- it makes sense within the context of that transaction. So I think that’s -- to me, that just is a logical conclusion.

The problem that I have is that we have so many different avenues of technological access, right? I mean, we have -- and they’re popping up every day. Social media platforms all over the place, there’s a million. And we don’t control them.

I think if -- again, don’t think they should be required, but if it is required by the FTC, I think that you should try to keep it as streamlined and rational and focused as possible, and I think that would be for funeral homes that currently have their own website. So it’s their own -- it’s their URL of their website, they have control over it, they have control as to what goes on there, they have control over changing it, bringing it up, putting it down, and
they have access to that. They’ve got the
technological means to operate that. I think that --
if it’s going to be required, it should only be
required to be produced if a consumer asks for it via
that website.

I don’t want to have, you know, the old
MySpace account, if somebody messages you on your
MySpace account, your funeral home’s MySpace account
from 30 years ago, that you have to answer that
because who knows the last time you checked that,
right? I mean, how many friends do you still have on
that? I don’t know. I didn’t have one, by the way,
just as an idea, right? I don’t want it to have -- I
don’t want it to be any kind of social messaging that
consumers ask for a price list. To me, that doesn’t
make sense.

The reality is funeral directors don’t sit
at their computers. Us nerdy lawyers, we sit at
computers all day. FTC folks, you all probably do,
too. That’s how we live our lives. Funeral directors
don’t do that. They’re out serving families. If you
get a funeral director at a computer for an hour a
day, you’re lucky. You might get three hours a week.
And so to require them to have -- to be able to
respond instantaneously through multiple sources via
computer, it just doesn’t make sense. I think the only way it makes sense is if you have the consumer ask for price information through that funeral home’s website.

It’s just -- I mean, I’ve told this story several times. When I was working for a client looking at acquiring a couple of locations, multiple locations, we said, oh, hey, we’d love to get your contract data, and they said, well, we’re going to have to go pull it from the banker boxes in the shed. And we said, well, we can send somebody up to pull it off your computer. They said, you know, we’ve got a computer, we just haven’t started using it yet. And so funeral directors are -- God love them, they’re just a different breed.

So I think what -- if you’re going to impose a rule, it needs to take into account the reality of the way that funeral directors work.

MS. PLETT: Sarah, what are your thoughts?

MS. POJANOWSKI: Totally echo Chris’ points about online-only providers. If you provide all of your services online start to finish, you should absolutely be posting your price list online.

A couple extra points about if the Rule goes forward, there are a couple of things that would be
really helpful to keep in consideration because most
funeral homes are small businesses. They do not have
a tech guy. The funeral director is the tech guy.
And you’ve heard some stories about the tech skills of
the funeral director. So we have to take that into
consideration.

So most funeral homes do not build their own
website. They use a third-party provider. So there
needs to be a bit of a time period in which they are
given to update the price list once they make their
changes so that there’s a reasonable time period for
them to contact their website provider and make that
change that’s not considered a violation of the
Funeral Rule.

The other issue is, if we’re going to do
this, why don’t we make it easy for funeral homes,
these small, family businesses, who have so many other
things they’re working on and thinking about. Let’s
make a safe harbor for where you post your GPL top --
front and center on your website, you’re good. That
would make it -- funeral directors want to comply with
the Funeral Rule. They want to consumers what they
want. They want to serve families. That’s what they
do. They’re serving people. They don’t want to get
in trouble with the law. They’re not trying to fool
anyone. But sometimes it’s confusing the way the
Funeral Rule is currently written about how to comply
with the Rule.

So if we make a situation where this is what
you do on your website, you put your GPL, you’re good,
then we could serve both consumers, who want that
pricing information, and these small family businesses
who are pulled in so many different directions and
just want to do the right thing.

MS. PLETT: Thanks.

And, Poul, what’s your reaction?

MR. LEMASTERS: Again, I agree completely.

I also think -- along with this, I think this is a
great area where there’s compromise among all parties,
and the reason is is that, again, I think a blanket
rule of everybody post online, I think, is extreme and
it’s not going to fit for every provider out there.

There are providers that will struggle with this.

There are other providers that are
completely online. You can buy everything from the
casket to the service. You never even have to set
foot in a funeral home. They’ll be fine with this.

So the idea is -- this idea of the great
compromise is if you are online and you’re selling
anything and they have the ability to pay online,
absolutely, you have to put GPLs online. For anyone else, if they choose to do that, again, it’s the safe harbor provision. You know what, I don’t have to do it, but I’m going to do it. So by doing that, I’m in a safe harbor, meaning I don’t get shocked by the FTC because I am trying to meet the compliance level.

Also, if we go down that road of — then we also are tackling the when because now it matches pricing. And I know we’ve brought that up a few times, but I think this is an important place to see it. Most people -- and you’ve heard this -- when they go to a funeral home website, they’re not going there looking for pricing, they’re looking for obits, they’re looking for a service time, they’re trying to find out if they can send flowers. So they don’t -- that business may not want to scream out that, hey, you know, here’s our prices before you even look up mom’s obit.

So the idea is to give them that option and tie this to a pricing because now we answer the pricing question on the when and who online and then match it by people that come to a funeral home. When somebody comes into the funeral home and says, I’m here to talk about services, well, let’s talk, what do you want. Well, we’re not sure. Have that
discussion. And then when they say, all right, how
much, you know, what does cremation -- that’s the
trigger. It’s subjective now, both online and in
person, an objective time frame of when and who. And
I think that is a great compromise that actually would
satisfy consumer advocates and then it would also
satisfy the funeral profession.

MS. PLETT: Thank you.

And, Erin, turning to you, who do you think
-- if there were an online price disclosure, who that
should apply to?

MS. WITTE: Well, so I think -- I want to be
clear that CFA certainly does not take the position
that funeral homes should have to create a website so
that they can comply with any requirements of posting
their prices online. We understand that there are
many small businesses. My colleague, Steve Brobeck,
has personally met with many funeral home providers.
This is not their first business. They’re a pastor at
a church and this is the way they supplement their
income. And we certainly don’t want to impose
burdensome requirements and financially burdensome
requirements on those funeral homes that are serving
this purpose.

But the FTC’s study showed that many funeral
homes already have websites and they have fairly sophisticated options on those websites for consumers to interact with. Now, that could be something like sending flowers, making a payment in some way. Certainly, disclosing a PDF of a price list is far simpler than the ability to purchase flowers and have them delivered with a personalized message. So our position is that if a funeral home has a website, they should be required to post that price online.

I am not a tech person. I don’t fully understand all the ins and outs. I know there’s another panel that’s going to have this discussion. But certainly, that would alleviate concerns about timing as well. If funeral homes are consistently required on their websites to post that price online, that solves that problem. And like I said previously, this would also make enforcement much easier for the FTC when they’re looking at whether funeral homes are actually complying with any requirement to post online.

MS. PLETT: Thank you.

So I appreciate the discussion on how consumers shop for funeral services. Next, we’ll talk more about the costs and benefits, so both to businesses and consumers of only price disclosure and
we’ll start by talking about the costs to businesses. And my first question is going to be to Chris, to Dr. Close, and to Sarah, and this is about money. So how much money would it cost businesses to technically implement an online price disclosure?

And I’ll start by turning it to Sarah.

MS. POJANOWSKI: It’s going to vary significantly from funeral home to funeral home. As I said, most funeral homes use a third-party provider, whether that’s a local tech company in their area or one of the larger casket companies. They often provide web services for funeral homes as part of their arrangements. So the costs may not be significant in terms of adding the GPL to the website.

However, I know there are many funeral homes out there that are concerned about the cost to the family because they don’t understand the GPL. So it’s the opportunity cost of being able to explain the document to the family that concerns many funeral homes, because as we’ve talked about before, the GPL is quite confusing. And different GPUs for different funeral homes depending on your market, as Dr. Close was talking about earlier, can look very different.

So not being able to sit down with the family, have that conversation about what they want,
what services they would like to connect, even though the dollar sign for posting the GPL is not high, the opportunity costs for missing out on connecting with that family and being able to have the family walk away feeling like, I understand that, I know what’s going on here, I feel like I chose what I wanted, that’s a significant burden on some funeral homes.

MS. PLETT: Dr. Close, what are your thoughts?

DR. CLOSE: Well, that’s not my area. Also, like Erin, I’m not a techie. It really wouldn’t really be that much cost to give a third party -- that’s part of their process. But I like -- we keep on talking about small businesses and let me clarify. Usually in the United States, when we talk about small business, we’re talking about 500 to 50 employees. A small business in the funeral business is five to ten employees. That’s a small business, which is what built this great country, okay? And we’re using that term because it’s entrepreneurship that keeps this country going. So that’s a small business.

I have had many times -- and some of my funeral directors will say the family has one thought they want, they do not want to hear everything on that general price list. And we say, it’s a state
requirement and it’s also a federal requirement and it’s for the protection of you. So sometimes you’re going over all the details and they’re not hearing you and they’re sitting at the table. So imagine if you’re online and you’re really not hearing us. So we sometimes have to have someone else come behind and repeat what that person already said to make sure that we’re all on the same page.

So from a cost aspect, I don’t think it’s that much cost. It’s just that -- the issue of what it costs that individual to expose their prices.

And let me say this to my -- talk to my association members. Your colleagues, your competitor if you want to use that, already has your prices, as Sarah has already said. So if you’re using that issue, if the direction is to have that, that you don’t want your competitor -- I don’t believe we’re competitors; I think we’re colleagues. I’m competing against myself; I’m not competing against the people in my community. Your colleague has it. You run your business.

My prices are my prices. I’m not comparing with this firm or that firm because you can’t beat my service. And that’s what we’re providing. We’re providing a service. And I think sometimes we forget
this is a service-based profession.

Thank you.

MS. PLETT: Thank you.

And, Chris, what are your thoughts on the cost?

MR. FARMER: Well, I think there’s a couple elements you’ve got to look at. Number one is the pure dollar value, right? And, you know, Dr. Close knows funeral homes very well and, you know, I mean, I know locations that have one employee, right? I mean, that’s just the way they operate. They’re very lean. The statistics we’ve shown, I think that they’ve raised prices an average of 6 percent over the last 20 years and inflation has gone up like 10.

So there is a very, very thin margin you’re working with. So even adding on $10-, $20,000 is a huge, huge difference for the vast majority of funeral homes out there.

I’ve heard a lot of -- you know, just to take everything on context, I’ve heard a lot of tech companies in the funeral industry, who are a lot of my friends, and they’re advocating for online pricing. They’re not doing it because they’re going to make a little bit amount of money. I mean, they’re doing it because they’re going to make a lot of money from
And so the overall impact on the profession is to be -- you know, to be considered, to be -- the impact on small business is not insignificant and, you know, any time you get regulation and increased requirements, you know, I’ve never heard of prices going down because of that. And those costs are going to be passed on to the consumer and it’s going to make an effect on that. So that’s going to be a cost for the consumer.

The other thing I think you have to think about and we’ve talked -- I think we’ve all hinted at it in some way or the other -- is the law of unintended consequences with this, you know, beyond dollars. I think you’re looking at an issue of -- and I think it was pointed out as far as, you know, we don’t want to turn it into a commodity because it’s not a commodity. And I’ve used this analogy several times. You know, some people want to buy a Porsche and some people want to buy a Hyundai. And if you look online and you see two prices next to each other without really any context of the relationship -- how good that funeral director is or how good that embalmer is or how beautiful that chapel is, people are not going to know what they’re buying for that
black-and-white price, and that’s going to hurt the consumer.

And the other element is you think about why do we have funeral director licenses. Why does -- I mean, we know states that require a four-year degree to be a funeral director. Why? Because it’s important that they know how to help that family, because it’s important that they know how to serve that family.

And if a consumer sees nothing but a black-and-white price, they’re not going to get the benefit of that, that relationship is not going to be there, they’re not going to have that, and they’re just going to be buying -- if that’s what happens, then it’s going to be buying based on a number and I think it’s going to ultimately hurt consumers and it’s going to hurt the relationship, and, you know, I think the law of unintended consequences needs to be considered because the repercussions go far beyond how much is it going to cost to put up a cheap website.

MS. PLETT: Thank you.

And just for the panelists up here -- I apologize to the audience -- we have a clock sitting up here that’s counting down. I think because we started a little early, we actually have more than ten
minutes left. So I just wanted to give everyone that
heads-up, that we’re not going to get cut off.

So next, turning back to costs to businesses
and, in particular, time, and this is a question for
Poul and for Lacyn. How much time would homes need to
invest to implement an online price disclosure and
keep it up-to-date?

And I’ll start with Lacyn.

MS. BARTON: Thank you. Well, while I work
for SCI now, I was a funeral director all over the
country for 13 years working for independent funeral
homes, and I can tell you that there is significant
nonmonetary costs when it comes to updating and
maintaining websites because someone has to do that
work, and for a long time, probably as the youngest
person on the payroll and presumably the most tech
savvy, that person was me. So there was significant
opportunity cost, as Sarah was saying.

The time I was investing in updating and
maintaining our website was time I could have better
used serving the families that entrusted me with their
care.

MS. PLETT: Thank you.

And, Poul, what’s your reaction?

MR. LEMASTERS: So I think it’s interesting
-- and I’m going to address time, but, you know, one of the interesting things I think about is when we talk about the costs and time and all that, I think there’s two things that are tied to this. One, we -- I think what everybody’s trying to get across is that it’s minimal cost. And I think everybody sitting here, depending on the size of the business and all that, I don’t know that we can really argue that.

But I think the one thing that everybody has been -- not looked at and I think we have to have eyes wide open, it’s not how minimal the cost is, how much can I spend. And that is where small providers are going to lose this fight. And this is not meant to protect the business, this is meant to protect the consumer.

And I don’t know what this looks like to the audience out there, but when I do this, there’s a giant screen above us, so I’m pointing to somebody. I feel that could be lost outside.

Anyway, but there’s a giant cost to the consumer, too, because, again, while we sit here and go, oh, you could do it for virtually nothing, I think is what was stated at one point, yeah, but what if I am able to spend $100,000 to do this, what if I can dominate, what if I can control not only the top five,
but what if I can control the first five pages of the internet. Well, I’m not helping the consumer now, I’m harming them. And if you don’t think this will be done, it will absolutely be done. And now, all of a sudden, the cost is -- there’s going to be small businesses that will not be able to keep up. They will be lost in this.

And, again, I have to throw this out there, I don’t have to pretend that this could happen, we’ve seen it. The Damiano case showed us that this can and has happened. And when we put everything in that same marketplace, you’re just going to force people to do it. And there will be large providers that will be able to dominate this.

And then the other thing, we talk about time, I think there is a compliance side to this. We have to address the regulatory side. And, you know, we have spent 40 years teaching death care, the right way to do this. I know many of us -- I publicly speak, I am a funeral director, I have known the Funeral Rule since I went to mortuary school. I have taught it across the country. We pound our fists, we shout it, we -- and we have to relearn something and this isn’t like teaching five people, this is teaching tens of thousands because it’s not licensed funeral
directors -- and that was a great point, by the way --
that are doing this.

The Funeral Rule applies to all providers,
meaning if I walk into a funeral home and I say, hey,
I’m curious if you have cremation, if that
receptionist says, yes, we do, and technically doesn’t
give them a price list, that’s a violation because
they specifically asked and we haven’t been giving
that. We have to teach tens of thousands of funeral
professionals and providers what this all means. And
that will be a huge -- no pun intended -- undertaking.

Somebody had to do it.

And so I just think we have to have eyes
wide open, and I think simpler is better and I think
we can compromise on all of this.

MR. FARMER: If I could add just to Poul
real fast, I apologize. Not only is the cost going to
go up as far as, you know, if you’re looking at SEO
costs, you’re looking at advertising, not only that,
but where is that money going to come from. It’s
going to come from salaries, it’s going to come from
updating your cars, it’s going to come from updating
your chapel. It is a zero sum game when it comes to
that, right?

And so they’re going to have to take that
money -- they’re going to say, if this is an online pricing, that’s how we’re going to be forced to play this game, then they’re going to say I’m not going to have consumers coming in to look at how beautiful it is and see how awesome my people are, I just got to get those people online. And so they’re going to take money away from that, which, again, will ultimately hurt the consumer.

MS. PLETT: Thanks.

And one other issue that I’d like to ask about -- and this is a question for Lacyn and for Chris -- is about whether posting price information -- actually, I’m getting ahead of myself.

So I’d like to ask actually -- and this is a question for Lacyn -- are there reasons that providing price information -- and I think you’ve touched on this some -- that providing price information online could lead to confusion among customers?

MS. BARTON: I wouldn’t say that confusion is the right word when describing posting general price lists online. I would say that posting them online without context would be the issue. And this is why I think the current Funeral Rule works, because it requires the provision of a GPL at the time of arrangements when they can consult with a trained and
licensed professional.
The GPL is a document that has, you know, components that come together to create this highly customized celebration of someone’s life and it’s best done in that consultation environment.

Now, like I’ve said, I’ve directly served hundreds of families over 20 years as a funeral director and that GPL is an important tool to facilitate that conversation. And that’s why most states require a trained and licensed professional to help guide families through that process.

MS. PLETT: Thanks.

And, Erin, I’d like to turn to you. What are your thoughts to that or do you have thoughts on whether there would be solution to that?

MS. WITTE: Well, I think I want to point out -- perhaps I’m having some difficulty reconciling some of the comments of my colleagues because it seems like the concern about online disclosure, price sensitivity, and things like that, has a lot to do with the fact that consumers want to go where they want to go, right? They want to go where they know they want their parents or their family members to have the best experience. I know there were some things shared about that, but then there were comments
about how if we post prices online, that won’t happen, we’re going to eliminate that ability.

But that doesn’t really seem to be what’s happening and especially in light of some of the comments that funeral homes are already providing price lists online, certainly not as many as we’d like and not as consistently as we’d like. But I think there’s a lot of anecdotal information about these catastrophic consequences that we just assume. That’s not the trend that we’re seeing given this minimal online disclosure requirement.

Certainly, regulations have a cost to businesses. That is how it goes. That’s not unique to the funeral industry. That is every single industry that is subject to regulation. And that’s not just funeral homes. The FTC has also proposed a regulation that would require transparency when purchasing a vehicle by car dealers. It’s the same thing. Car dealers would love to have the opportunity to speak with consumers, to individualize that experience, see what you want, categorize that, But having more information in advance of the time the consumer goes to a dealership, goes to a funeral home to decide what they want to purchase, they’ve selected that funeral home because it’s where they want to go,
it’s just ultimately a more informed consumer and the benefits to a consumer far outweigh the costs to a funeral home.

There was a reference to a $10,000 cost for a funeral home -- a small funeral home being really burdensome and very substantial. That’s not much higher than the average cost of a funeral for a consumer. And one of the studies that CFA has performed is comparing the effect on prices of online price disclosure, whether prices are lower for funeral homes that disclose in advance or disclose their prices online, and the evidence from that study was that prices were 30 to 40 percent lower in the instances where the prices were post online.

This is an extraordinary benefit to a consumer and certainly outweighs the cost to the funeral homes of providing that information in advance.

MS. PLETT: Thank you.

And to our panelists, we have about seven minutes remaining. The clock is counting us down.

But I think I’d like to turn to the costs and benefits to consumers in the time that we have remaining. And I’d like to start with a question to Dr. Close and to Sarah.
In your view, do consumers benefit from online price disclosures? And I’ll start with Dr. Close.

DR. CLOSE: Well, I’m going to say because I’ve just reinforced, I think they do from my perspective. I also understand for those who are at home from my association and their point of view, so I can go back into that office.

But I think they do, but I really do want to emphasize something my colleagues emphasized. It’s about making sure you’re talking to the right person to educate them. There’s a lot of items on there. And many times people say, I don’t understand, can you say that again? So I think the one-on-one is important, but we know when we’re online -- I had to learn how to make arrangements with Zoom, especially during COVID, and the State of Maryland approved it, which was great. And we’ve kind of kept it, but we’ve made sure, even though it’s online, I still email it and they have to confirm they’ve received it so that we can go step-by-step. That way, I know they physically have the documents in their hand.

So I think they do, but as long as we all agree that you have a trained licensed professional walking them through and answering their questions and
explaining -- because many people, when you talk about
cremation, there’s so many options. I’ll use that for
an example. And people will say, well, I didn’t know
that. Only a trained professional is going to walk
you through, give you your options, and then we just
be quiet and listen.

I used to teach for 14 students. I used to
tell my students, walk out of that room, don’t sit in
there while they’re discussing it among themselves so
they can feel like they are making the decision. You
can’t do that online. You’ve got to sit there and try
to ask them. You don’t want to walk out of the room
when you’re online or doing a Zoom because it’s
considered rude. My staff reminds me that’s
considered rude. And no capital letters, that’s like
yelling at someone. So I had to learn those
technologies. So I think it does if you have the
right person.

MS. PLETT: Sarah, what about you, do you
think there are benefits to online price disclosure to
consumers?

MS. POJANOWSKI: I do think there are
benefits. That’s why I encourage my funeral homes to
do that. I think it’s -- it’s always good to have
transparency. However, there’s a big gap between
seeing what’s on the GPL and the consumer
understanding it, as we’ve talked about before. I
think of it in terms of a lot of us are lawyers.
People get a contract and you get the wheretofore and
all of that. And your average consumer walking in
looks at that and they’re just like just sign it, I’m
not even -- I don’t even read it because I don’t know
what it’s saying, it’s lawyer-speak, it’s a different
language.

And in some ways, the GPL is very similar to
that. There’s lots of terms of art that consumers
aren’t familiar with. They don’t understand what’s
required, what isn’t required, what they need, the
different options that are available to them, and so
having the licensed professional to walk them through
that.

You have to consider, also, the frame of
mind of the consumer. Consumers are generally in this
situation because they’re going through a very
troublesome time in their life. They have a lot of
stress, a lot of grief. They want things to be easy.
They don’t want you making things harder for them.
And just being faced with this document, I think, a
lot of times consumers will look at the price and
they’ll look at that and they’ll just be like, ugh,
I’m just going to go to the funeral director, I want to talk to a person, I don’t want to -- I don’t know what’s going on here.

So having the price available, always good, but then the next step is come in and talk to me and I can help you, I can make this easy for you. And so, you know, the more that we can do to encourage families to say, yes, here’s our price list, but then come and talk to us and we can help you understand the price list is really important.

MS. PLETT: Thanks.

And a question for Poul, Lacyn, and Erin, kind of what your reaction is to that, whether there are benefits to price disclosure for consumers.

And I’ll start with Lacyn.

MS. BARTON: Well, what I want to comment on is that 91 percent of consumers might say on a survey that they will look at the prices online, but our data shows that less than 2 percent click through and access that pricing on our websites. But with having the pricing online, that is a valuable tool for consumers insomuch as that it gives them the terminology they’re going to be hearing and using in the actual arrangement conference with a licensed and trained professional. So there’s the benefit there.
MS. PLETT: And, Poul, what about you?

MR. LEMASTERS: I do believe there’s a benefit if it’s done properly. Again, I think this idea of just everybody put your prices online, that will solve it all, I think that’s just -- that’s very optimistic. And I think you have to allow not only the business to decide.

Back to an earlier point, I think this is already happening. You know, I think the other benefit is, you know, we are seeing technological advances. I mean, we did not really see or hear of, you know, virtual arrangements and then, you know, COVID, and then here we are.

So there are some benefits here and technologically this will be, but it’s got to be done right. And we have to be aware of a lot of things, size of market, you know, what your offerings are, are you really selling on line or are you literally just a platform for obits.

And the other thing -- and, again, I want to end with this last thought is let’s not forget about the state regulatory schemes. One of my fears out of this is there are states that say only a licensed individual can talk about purchasing or funeral goods and services. By opening up the federal side to say
everybody put prices online, well, now what happens?

Now, consumers say, hey, I’m seeing prices and -- well, now we have to have state disclosure saying, well, we can’t talk about these and we can’t do these online. I mean, in other words, we’re creating a possible conflict on state and federal. More reason to allow a broader scheme and let states decide how they want to handle this, if it’s needed in their region.

MS. PLETT: Thanks.

And, Erin, turning to you, what do you think are the benefits or do you think there are benefits for consumers for online price disclosure?

MS. WITTE: Absolutely. Like I said before, our research has shown that prominent price disclosures have a strong correlated effect of lowering prices. Our position is that this is a causal relationship, right? Because those prices are disclosed, competition is present and that ultimately has a beneficial market effect in this country of lowering prices.

One of the stated purposes of the FTC in adopting this rule, maintaining this rule, viewing this rule is lowering barriers to price competition. This is an extraordinarily easy way to do that based
on data.

Additionally are just the benefits that I talked about before, informed consumer choice, which is the other purpose of the FTC’s rule-making here. And a third point is making this available -- making this information available for policymakers to evaluate pricing and to see how prices compare to each other. The survey that I mentioned before also asked consumers whether they would look at a service like Consumer Reports, a pretty well known organization that posts very legitimate information. They can’t do it because they can’t compare all of those prices. So making this information more widely available in a comparable way will serve that purpose of allowing third parties to evaluate it, to make policy decisions, to inform regulators, and things like that.

MS. PLETT: Thank you so much.

And that’s all the time we have for this panel. I’d like to thank all my panelists for joining, for the great discussion we had today. And we have a break until 11:15. So thanks, everyone.

(Applause.)
PANEL 2: ONLINE DISCLOSURES:
PRACTICAL CONSIDERATIONS

MS. DICKEY: Well, good morning, everyone.

This panel is going to address whether -- if the Commission decides to adopt an online disclosure statement requirement, what should that look like in practice. And we put together a great panel who is going to help us answer that question.

I’m going to introduce them just briefly.

We have Effie Anolik from Afterword; Jim Bates from the Funeral Consumer Alliance of North Texas; Layng Guerriero from AskTheDirector.com and FuneralKinetics.com; Barbara Kemmis from the Cremation Association of North America; and Isabel Knight from the National Home Funeral Alliance.

Before we get started, I just want to remind everyone if folks want to submit questions, for people participating virtually, they can submit those at funeralrule@FTC.gov, and for people in attendance in the room, if you filled out a comment card and want that question to be asked, please wave it up in the air and someone will come around and collect it from you.

Okay. So before we dig into the details, I would like to ask all the panelists to briefly provide
an overview about whether, in your view, the Funeral Rule should be amended to include an online disclosure requirements for some or all funeral providers.

And, Effie, I’ll start with you.

EFFIE ANOLIK: Sure. I do believe that it should be amended and that prices should be online. The very first thing that I did when I planned my dad’s funeral in 2018 was pull out my cell phone and Google two things. I Googled how to plan a funeral and next I Googled how much it would cost, and it was mainly because I had no baseline, I had no idea if it was going to be $2,000, if it was going to be $25,000. I had no idea.

And it’s interesting because the panel before this, a few panelists said time and time again that price was not the most -- the item that people made decisions based on and it was a tool. And I agree that you should just take a moment to think about the last big purchase that you did. Did you go online? Did you pick the cheapest option? You probably looked at reviews and you probably picked something that built trust for you; you didn’t pick it based on price.

And the last thing that I’ll say is that regardless of age or generation, there will always be
people who want to meet someone face-to-face and have a discussion, but there are others, like me, who want to make these decisions online and the industry just isn’t supporting them yet.

MS. DICKEY: Thank you.

Jim?

MR. BATES: I definitely think that the FTC should require online price disclosure. I’ve been a consumer advocate for 30 years with the Funeral Consumer Alliance. I’ve made direct contact with thousands of people. And for the past 20 years, I’ve taught at the local junior college in the seniors program. So I know very clearly that this is a control issue, that the consumers feel they have no -- little -- very little control in the process and that the industry, I think, it’s pretty obviously that they want to maintain that control.

In one class, say, I speak to just a -- like an AARP outfit, I can teach people in one hour to gain control of that experience. And it’s very obvious in six one-hour sessions in the junior college curriculum that I teach, I see the smiles come across people’s face. The homework is to go to as many funeral homes as they want to and get a GPL, bring it back to class, get comfortable with the language, understand what it
is, and basically do what they could do online if they had a website.

So we’re talking -- again, it’s just -- it’s a serious -- to me, it’s a very serious emotional event that I’ve dealt with so many people for so long and really would like to see -- the Funeral Consumer Alliance would like to see the control balanced in that consumer decision.

MS. DICKEY: Thank you.

MR. GUERRIERO: I’m not a fan of mandates. I think mandating disclosure is one thing, but also imagine if you were to require a wedding planner to tell me how much a wedding is. It’s very complicated. It could be $50 if you go to the courthouse, it could be $50,000. Same with a funeral home. It’s very difficult.

I do believe that the industry itself is starting to move in that direction because consumers are already asking -- on the fringes, to ask for pricing. And it depends on age and it depends on a lot of factors. People sometimes -- probably 20 percent or less want to feel like price -- I think they said 11 percent earlier. It’s probably a little larger than that. But I would say that, just
1 generally, that’s a -- it’s a growing group of people, 
2 but there’s still a majority of people who are looking 
3 for things like proximity, value, service. It is the 
4 funeral service industry, not the funeral products 
5 industry.

So I think price is coming. Whether or not 
the FTC mandates this or not, it’s still going to 
happen. But over time, I think what happens if it is 
mandated, that it will speed up this natural process 
that’s happening in many industries rather than just 
funeral.

MS. DICKEY: Barbara?

MS. KEMMIS: Thanks, Melissa.

Representing CANA, no one likes to be told 
what to do, right? Nobody likes a mandate. That 
said, our members have been operating within the 
Funeral Rule this whole time and they’ve been doing it 
well. And so we -- in preparation for this panel, I 
surveyed our members and asked them a few questions. 
100 percent of them have websites. We actually looked 
at each of their websites to see. And when we asked 
them how they respond to pricing, a little over 40 
percent already had pricing on their websites, and 
everybody responded obviously with -- to in-person 
inquiries, but phone inquiries, delivered by email --
this was true before the pandemic, it’s true now.

So our members are businesses, right? They want to serve consumers. They want -- and it is a service business. So however they’re requested to deliver information, they will comply with that.

I’m a very data-driven person so I’m going to have other statistics to share as we talk, but just to give a little more context, CANA is the smallest of the national associations that you heard from on the earlier panel, and we’re focused primarily on cremation, but our members provide all -- the whole gamut of funeral services. We represent about a quarter of the funeral homes in the United States that the FTC regulates.

MS. DICKEY: Isabel?

MS. KNIGHT: Yeah. So I am -- I wear two hats. So I’m the president of the National Home Funeral Alliance and I’m also on the board of my local funeral consumers alliance. And for those of you who may not know, one of the main things that we do at the funeral consumers alliance is call funeral homes to ask for their prices and post them on our website.

We would not spend hours doing this if we didn’t think that this was super important for consumers to be able to have access to prices online.
and, frankly, I would love to not have to spend hours doing that.

So to this point, around, you know, other industries don’t have to post their prices online and be mandated to do that. I would say that the funeral -- a funeral is the third most expensive thing that the average consumer buys after a house and a car, but funeral consumers are far less familiar with the prices to expect when shopping for a funeral. And so -- and of those goods, a funeral is the only one of those things that they are legally required to buy. You can’t dump a body in the woods. Like you are required to get either a form of disposition, whether it’s a burial, a cremation, or an alternative disposition method, and you are not required to go to the dentist, you’re not required to buy a house or a car.

Legally, this is the -- it’s a very unique consumer good and so, yes, I would advocate very strongly for having prices be required to be posted online.

MS. DICKEY: Thank you.

So let’s turn to talking about funeral providers who already have a website, but those who do not sell their services online. So there’s no process
where they select their services online and then they complete the purchase online.

In your view, what is the optimal way or ways for funeral providers to make those price lists available to consumers on their already existing website?

Effie, do you want to start us off?

EFFIE ANOLIK: Sure. I think to touch on what the earlier panel kept referring to, which was that pricing needs to be explained by a licensed professional, and technology has come a really far way and there are many, many ways that you can use videos or you can use language to really explain what type of services you’re providing and really guide families through all of their options.

I was having a conversation just before this about how I spoke to a funeral director face-to-face because that was my only option when planning my dad’s, and to this day, there are many things that I learned about like, ah, I wish I knew that, I would have picked that. And so I do think that had I had the opportunity to look through their website, educate myself, I could have picked things that were more applicable to what I would have wanted to do to commemorate my dad.
And it’s just important to note that it’s not just your GPL, and I know that there’s another conversation to talk about adjusting the GPL so that families understand it, it’s really around education. And there’s a lot of tools out there to help you do that now.

MS. DICKEY: Jim?

MR. BATES: Yeah. On the -- you know, developing a rule to put online pricing, I think it needs to be tight. The language needs to be tight and descriptive as far as where and what words are to be put in the -- on the websites and also -- and I’ve got some examples here. At the right time, I can show you.

MS. DICKEY: Yeah, whenever you’re ready, Jim.

MR. BATES: Okay, all right.

MS. DICKEY: Just say the word “next,” and it will pop up magically I’ve been told.

MR. BATES: Okay, all right. So slide 1, please.

All right. When I got the call to talk to FTC, I propose that I put together a quick website mockup just to help us all have something to look at, you know, create discussion on how to do this if it’s
made a rule.

I’ve been a web developer for over -- since 1995. A lot of the time was in the corporate world with almost unlimited funds, and then as I retired and segued to the nonprofit world -- I wasn’t in it prior to that -- did web development with almost no money.

So I know pretty well both ends of it.

So I put this thing together. We’re not able to see the website live, but you’ll get some screen shots of it. But anyway, it’s up and running. You can go to it if you want to look at it and get your hands on it. It’s at acmefuneralretailer.com.

So if you can go there, just take -- it’s very simple and all that.

So next slide, please.

So what the mockup is showing there is what to deal with as far as writing the rule itself is -- what’s suggested in here is up there at the very top to have the term “consumer pricing” in the main menu so that it’s quickly seen by anybody looking at the webpage.

Another reason for doing that is when you flip on -- and most people will be looking at a website on their phone in a hospital, nursing home, stuff like that. So you can’t really predict exactly
1 how a software is going to flip from the web -- you
2 know, the vertical -- I mean, the horizontal on the
3 screen, the computer screen to the vertical on the
4 phone. So by putting that consumer pricing name up at
5 the top in that top mini bar and having a consistent
6 terminology, then wherever it goes on the phone, it
7 will still be fairly prominent.
8 So that’s the terminology and the webpage
9 location. So that’s a suggested place to put that.
10 Next slide, please.
11 MS. DICKEY: Oh, next slide after that,
12 sorry.
13 MR. BATES: Okay. And then the second page,
14 this would be defined in the rule, too, as requested,
15 would be to have -- this will be a consumer pricing
16 page, the terminology and the location, and it’s a
17 beginning page. And the reason for this is to have
18 this next page after consumer pricing, is to give
19 something to the consumer that they can comprehend in
20 seven seconds. Out there in the web world and design,
21 you have -- that’s pretty much the agreed target. You
22 have seven seconds to get someone’s attention or else
23 they move on.
24 So as a consumer advocacy group, we are
25 wanting it to give them some reinforcement, to give
them a prize, you know, to get their attention to an abridged price list. And what is in there that’s in this mockup, you can’t see all of it, but it’s the GPL, the casket price list, and the outer burial container, just a short version of those things so that the consumer, while they’re crying and hurting and everything else going on in circles around their mind, they can at least find something to focus on to go to figure out -- start getting oriented and figure out what to do.

And then, also, in there is circled -- and I know it’s hard to see or impossible to see from where you’re at -- is -- but it’s circled on there, is a link to the full GPL, which is the subsequent screen. But you’ve got some other -- something else you wanted to do or do I keep going?

MS. DICKEY: Well we do have -- maybe we should finish off with the rest of the panel and then come back to you if there’s time. I know you’ve got some other slides to show later on, perhaps, or do you want to cover them now.

MR. BATES: I’ll just go now. It will be quick.

MS. DICKEY: Okay, great.

MR. BATES: Okay. Next slide, please.
Okay. Then the next one would be a GPL navigation page, real short and sweet, a lot of white space, again, allowing focus for the consumer to go to that GPL.

And next slide please -- and a link to that -- and then there’s that GPL and hoping that the rule can be written, that that GPL would be like a PDF format that could be viewed online or downloaded and that is an exact copy of the paper GPL that is handed out in the funeral establishment.

And that’s it. Thank you.

MS. DICKEY: Thank you, Jim.

MR. BATES: Mm-hmm.

MS. DICKEY: Layng?

MR. GUERRIERO: So I’m a big fan of Wile E. Coyote, but I’m not a big fan of calling funeral service providers Acme funeral retailer. I don’t appreciate that because I know they don’t appreciate that. This is a funeral service business. And I think the more we commoditize the profession, the worse it is for the consumer.

The other thing that’s a -- as a website developer, you would also know that when you say consumer pricing, that’s a lot of text. If you’re going to have a mobile application, you have a very
limited amount of space. So you’ve got to give -- if
you’re going to mandate this, you’ve got to give the
developers options to make it smaller, fee, sort of
words because they have other navigation on there they
want.

The other thing is, as a funeral service
provider, there’s not a story there about how they’re
going to help create a memorable service, a meaningful
service for your dad or your mom. It’s all about
pricing. I don’t think that’s fair. I think
consumers need to see the entire picture and not just
the nuts and bolts of the funeral home.

MS. KEMMIS: Yeah, I agree Layng. As we
were reviewing CANA member websites, and over half of
them have already -- are posting pricing online in
three main categories. The first is, sure, they’ll
post their GPL online in a downloadable PDF or maybe
it’s a page with package pricing and then a link to a
downloadable PDF, and certainly the minority, but
there are those out there that are completing the
sales of funeral goods and services. Some of that’s
limited by the state level, but those who are
completing sales obviously have pricing both
downloadable displayed throughout the shopping cart
process and then at the end. Those are the three kind
of methods that we saw where that pricing was displayed.

And most often, that pricing information was discoverable through maybe a drop-down menu on the main navigation or in the foot -- the footer of a -- I keep wanting to say the footnote -- the footer of the website. But as we know, most people find websites by a search anyway. So if they’re searching for pricing, they’re going to find the pricing page. So sure, navigation and clear and conspicuous is something we talked about in preparation for this panel. All of those things, you know, hit clear and conspicuous.

But when we asked our members how often people go to pricing, talked about this a little bit on the earlier panel, and with so many thousands of members posting pricing on their website and the response being a third of 1 percent or half of a percentage point up to a percentage, 1 percent, of visitors to their website looking for pricing. That means 99.9 percent of visitors to those websites are finding them through search for the most part.

And what are they searching? Obituaries, right? They’re searching information -- service information, they’re leaving online condolences. So 99.9 percent of visitors to the website are looking
for an address of where to show up for the service,
where to order flowers from, how to leave a message,
and reading more about that person. And maybe they’re
linking to that from social media or search as I
mentioned.

Interestingly, too, we -- I just think this
is a fascinating statistic and it’s been durable for
the last four years. For that percentage of CANA
members who are completing or facilitating the
complete sale of funeral goods and services online,
there’s a remarkably high number of abandoned shopping
carts.

So imagine this, you go to the funeral home
website, you are planning ahead, perhaps it’s pre-
need, perhaps it’s at-need. You know what you want.
You’re going through, you’re selecting. So initially
what happens is you have the option to download or
have the GPL emailed to you. Different people do
different things. It’s a business decision, right,
how they want to guide you through this. You’re
nodding your head, Isabel, like you’ve experienced
some of this, right, by looking at them.

You go through the shopping cart experience.
You’re picking the different things you need. And 85
to 95 percent of those shopping carts are abandoned.
That means that they have the opportunity to enter their credit card information, right?

Now, that seems like it would be bad news for the funeral provider. It’s not, because you’ve also entered some of your information throughout that. These are actual leads in sales terms, right? These are people. But why are they abandoned online? Why?

Because this is a complex process, right?

I would imagine -- and the providers who provide these services report that when these people are followed up with and asked, why did you abandon the shopping cart, answers range from, well, I’m not the only one paying, multiple family members are contributing to the payment of this funeral, or I just really wanted to get a sense and put together a budget before going into the funeral home because it’s not just me making the decision, there’s multiple people making the decision.

And so, you know, 85 to 95 percent of sales are not completed at the time of looking online, but those consumers who were looking at things do have tools to then take to the decision-makers.

MS. ANOLIK: Can I add something to that after --

MS. DICKEY: Um, if that’s --
MS. ANOLIK: Go ahead.

MS. DICKEY: -- okay with you, Isabel.

MS. KNIGHT: Sure.

MS. ANOLIK: Okay. Sorry. There are just two stats that I thought were interesting, the one that -- thank you for already describing that, you know, 99 percent of people coming to the website in this scenario are looking for a service, they’re looking for an obituary, but the other panel also mentioned a really low stat for the website traffic looking for pricing. We should actually be looking for the data for that 1 percent.

Like what are the 1 percent who are not coming for an obituary doing on your website? Are they going to the obit? Are they looking at your services? Are they looking for price? We can’t just look at hey, 1 percent of website visitors are looking for price. We actually don’t know that. It could be 90 percent of that 1 percent and it’s just important to note that we split that data and that’s actually okay. That’s all. Thanks.

MR. GUERRIERO: I agree with that. I do.

MS. ANOLIK: Yeah, they’re just really important.

MR. GUERRIERO: One percent is -- actually,
1 percent is the death rate essentially for the whole country.

MS. ANOLIK: Oh, actually, sorry, I have one more comment for that. Sorry. Also, the stat about 90 percent of online shoppers are dropping off, it’s also important to note -- and I know there’s another panel for this that’s going to talk about how GPLs are written in funeral speak and not in terms that families really understand. A lot of the current tools for online planning are very similar. Pick three packages. Do you want option A, option B, option C? And they are written in the same format as a GPL. Families don’t understand that, of course, they need to call the funeral home to ask you, hey, it looks like I have this alternate container, what is that, why do I have to pay for it?

And so it’s important to note that we just need to do -- as vendors, do a better job building tools for that. And the same for all of the forms you are giving them, here’s all the vital information. Of course, people aren’t going to drop off and have someone try to help them with that.

MS. KEMMIS: But let me be clear that they weren’t citing confusion --

MS. ANOLIK: Right.
MS. KEMMIS: -- as a reason for abandonment. They were citing collaborative planning or pooling money to make that decision. It was more complex. I mean, they weren’t confused.

MS. ANOLIK: Yeah.

MS. KEMMIS: They understood what their options were. They needed more time or it was a phased process.

MS. ANOLIK: Yeah, I do believe that software can be built in a way to help families do both of those things.

MS. KNIGHT: Yeah, I think that’s a really good point, like there is a way to show a GPL in a way that is not confusing and it just requires explanation of each of the individual items the same way that you would explain in person, right?

So from the perspective of trying to figure out how we can make this as accessible as possible, with respect to the question around how we should implement this, I do think that as opposed to just having guidelines that say things like “clear and conspicuous,” I think that we should have very clear specifications around the GPL needs to be in the top line navigation, it needs to use consumer-friendly words like “pricing.” It should use very readable
language, ideally at a third- or fourth-grade reading level, and there absolutely is a way to accomplish all of those things.

Another thing that I wanted to point out around the search is that the one state that has implemented a requirement for online prices to be displayed for funeral homes is California. And one of the things that we have seen in California is that there are ways for funeral homes to try to sort of get around that by, for example, taking the price lists that they do list on the website out of their -- I’m a web developer, so this is a little bit of jargon, but what’s known as their robots.txt file, which is what Google and other search engines used to find the price list when you search on Google.

So one thing that I would recommend is make sure that the price list is indexable by search engines since that’s where a lot of people are going to -- a lot of that traffic is going to be coming directly from search engines, and on the flip side, ensure that it’s also available in a human readable format.

So for example, you can technically have a price list listed on your website that’s machine-readable that Google could find, but it’s in white
text at the bottom of the page so that a human can’t actually read it. So we need to satisfy both of those requirements. It needs to be both searchable and machine-readable, and then it also needs to be actually readable by a human being.

MS. DICKEY: Thank you.

Shifting gears, this is a question for Effie, Jim, and Layng. Is there a preferred format that the price list should appear on the website and, specifically, I think we’ve talked about that there are pros and cons between posting them in PDF format versus having the text of the GPL available in the website.

Effie, do you want to start us off?

MS. ANOLIK: Sure. Yeah, PDFs are great because they are the universal digital format, but -- and they’re easy to -- arguably easy to create. Though I would say they’re -- I wouldn’t say that they’re best choice for putting it online because you should be thinking about all the different devices that people are accessing this. So try to open a PDF on your phone, in a lot of cases, it will be really hard to read. It will also, in a lot of cases, be many, many pages. So you really -- it’s not easy to navigate through. I think it should be built into the
website in a more clear way and it should also provide
some guidance.

So for example, if someone -- this can be
done through questions. If someone’s looking for, you
know, a Hindu service, for example, then we should be
showing them a funeral service with a cremation and
only showing them the services that are relevant to
them, so they’re not sifting through, you know, a big
PDF.

MR. BATES: Yeah, from a programming and
developer view, the PDF is definitely the best way to
go, especially like earlier talking about the smaller
funeral homes with limited resources, it’s fairly easy
to turn whatever they document they’ve got into a PDF.
It’s also -- it entwines really well with the search
engines out there to dig down into the -- a drill-down
through search and find something like, you know,
vault or whatever, you know, something like that it
will drill down into -- in there.

To try to come up with a format, again,
looking at it from a programmer/designer standpoint,
to define an FTC code, how exactly to change that
format or to have it -- something beyond like the
simplified price list on here could be bad. It just
could be really tough, you know, to -- if you asked me
to write it, I’d go uh-uh. So it just gets around the PDF thing.

And I do understand, you know, what you’re saying about going to the phone and a PDF. That’s a tough one. But it’s like that with pretty much everything you get on the phone. You get to a contract or something that’s got a lot of words on it, you’re going to need to find a printer and print that thing out. So PDF is -- I think is the way to go.

MR. GUERRIERO: PDF is the best way. But the real problem is the GPL, it’s already confusing. So whatever format you choose, it’s taking them to something that’s already confusing.

The other thing on the PDF is the naming -- the naming of it. If you have a PDF -- if you’re going to play pin the tail on the donkey and you’re going to specifically -- be that specific, I think you should also think about making sure that the name of the document is defined, because if you have a PDF with the year at the end of the name of it, you’re going to have all of these PDFs all over the internet as opposed to just replacing that one file. And there will be old GPLs floating everywhere.

So maybe just one and call it the Johnson Funeral Home price list and that’s it. And then they
just replace that file and not make all these
different price lists that are floating everywhere.

MR. BATES: Yeah, that’s a very good point
to have some sort of document control title in the
rule so that the customer, the consumer, and the
business are looking at the same document. Very good.
Thank you.

MS. DICKEY: So for Layng, Effie, and
Barbara, what is the cost to funeral homes that
already have a website to post a general price list on
that website and then keep it updated?
And, Barbara, I’ll start with you for this one.

MS. KEMMIS: Thank you. So, you know,
again, we researched this, right? We asked. We asked
our members and we asked suppliers, and as we
discussed in the previous panel, you know, the
question that was posed was how much does it cost to
post a PDF. And, realistically, not much. The third-
party providers who support funeral home websites now
will make a way to do that. And will it be an add-on,
will it be incorporated into the fees or marketing
services or other services that are provided?
Probably. Prices typically don’t go down with these
third-party providers. They only go up. So we can
anticipate that.

But I just want to reemphasize points that the previous panel made about staffing and about opportunity costs of having that pricing on there without context. That’s real. Our members tend to be some of the largest providers in funeral service. They average 300 cremation calls per year. So that can be anywhere from, you know, 300 calls per year to thousands of calls per year if their cremation percentage is low.

These are big businesses and they’re still a fraction of what the FTC considers a small business. They all have staffing below 50 people, the members I’m talking about. Even the big corporations, when it comes to the locations, they have lower staffing. So there’s -- we’re concerned because we don’t know what the unintended consequences will be of this.

The other thing we learned from our research is the people who use third-party providers can sometimes get what are called free websites in exchange for marketing services or other services, they spend a minimal amount of money a year on domain names and, you know, other things like that. That’s polarized on one end. They’re posting obituaries, they’re posting service information. Those examples
of websites tend not to have pricing on them. That’s
not the purpose of their website.
I don’t mean this in a disparaging way, but
imagine an online brochure with, you know, obituaries
accessible, right? All the key information is there.
Then it’s polarized the other way. So that’s $2,500
or less CANA members are spending and then it’s
$10,000 or more. And these are websites that are
highly customized. They want to differentiate from
their competitors. Unlike the example that Jim
showed, there are obituaries present, there are video,
there is maybe a video tour of the facility, every --
there’s lots and lots of pictures, lots and lots of
eamples of service that that provider has conducted
in the past, and they want to, you know, stand apart.
And they also may have an e-commerce function on there
as well.
So chances are they’ve already invested in
it. So is there going to be an increase? No, they’re
going to stand out that much more. So I hope that
gets at your question.

MS. DICKEY: Thank you.
Layng?

MR. GUERRIERO: I think the cost is minimal,
but then it could be very prohibitive at the same
time. The cost is -- to put a PDF is nothing, but in funeral home communities -- when there’s communities and funeral homes are competing, they’re a very “me, too” kind of business. Like my competitor is now doing it, I should do that. And I think what you’ll see is the funeral homes with more resources will build these funnels, these purchase funnels, and they’ll be very expensive. And they’ll feel like they have to have more than that PDF to stay in business and that’s where the cost really starts to rise.

MS. DICKEY: Effie?

MS. ANOLIK: Yeah, I agree with everything that they said, so I won’t repeat it, but I’ll say as one of the vendors on these panels today, it’s a shared responsibility for us to also help support you comply with these rules. So if you’re with a website provider that’s going to charge you a ton to add a PDF or to make it in a readable way, find a vendor that will help you for a nominal cost because websites should not cost you a lot. It’s the -- you know, every funeral home should have a website and you shouldn’t be spending 5 to 10 grand on it.

MS. DICKEY: I’d like to shift gears here and talk about funeral providers who are selling their services online. And I know we’re running a little
bit short on time here, but if folks have views on this, I think I’d be interested in hearing if, in your view, the rule should require funeral providers who are selling their services online, that they should be required to post their price list on whatever platform they’re selling those services.

So for example, if someone has an app and they’re selling their services on an app, meaning the consumer goes through the complete process on that app, should that app also have to have a price list?

MS. KEMMIS: So my understanding from suppliers who kind of -- again, there’s some people who build a proprietary website to do this. I mainly focused on the CANA supplier members who support this and they -- they’re doing it. They’re disclosing the pricing. How can you sell and complete sales of the services without disclosing the pricing. And, again, typically -- typically, it happens in three parts.

You can download a GPL; you can request it to be emailed to you. Then you go through the shopping process and you see the pricing throughout. And then at the end, you get a statement of goods and services summarizing what you’ve selected. So that’s happening already.

I forgot the second part of your question.
MS. DICKEY: Well, I think you covered my question --

MS. KEMMIS: Okay. Excellent.

MS. DICKEY: -- right there. Well, I suppose the question would be should the rule require them to have that price list on whatever platform that they’re selling it. But I think you might have --

MS. KEMMIS: Yeah, I think this is -- I think the solution is already there. I’m not sure a requirement is necessary because how are we going to do it without doing it?

MR. GUERRIERO: Yes.

MS. ANOLIK: Also yes.

MR. BATES: Yeah, if it’s on an app, there should be price disclosure. Yeah, there’s some detail in there that’s going to be really tough to right a rule for it. But, yeah, it’s got to be there. What I can imagine a bad thing happening would be a funeral outfit would have a webpage and it just says get the app. And then you go to the app and if it’s not very well defined by the rule what to do in there, then that’s not too good.

But anyway, I’m thinking that natural evolution on the app, like you’re saying, would get the pricing out there. The competition to get the
1 consumer’s attention with clarity and brevity of
2 message will pay for the business and help the
3 consumer as well.

4 MS. KEMMIS: One more comment about apps, I
5 think -- I’ll confess, I didn’t know. When we talked
6 about this to prepare for the panel, I thought I have
7 apps on my phone, I know what apps are, right? But
8 the apps I have on my phone are things I use
9 frequently, purchases I make frequently. Funeral
10 service is not, thankfully, something I’ve had to
11 arrange frequently.

12 And so the one app, I was able to discover
13 provider by a supplier member of CANA’s is actually --
14 they call it an app. They license it as an app, but
15 it’s actually website. It’s mobile-friendly. It
16 works fantastic. But it’s not an app in the sense
17 that you download it to your phone and it operates
18 independent of a website. And I think that’s key to
19 note with this because I learned, you know,
20 nomenclature matters, right? Words matter.

21 It is quite possible -- and I’m not aware of
22 them now; I’m sure they exist -- there are some
23 companies out there that are starting to provide
24 concierge services or third-party services. So a
25 funeral provider can pay them, right, to list the
goods and services and then that concierge can work with the grieving family and make -- pick and choose from all sorts of places, right? That exists; that’s happening; that’s likely to grow. It’s still not app-based in the sense of my American Airlines app or whatever. That is not a commercial.

So I -- yeah.

MS. ANOLIK: I was going to jump in actually before you jumped in to exactly say don’t build an app for this. There are some things you do not need an app for. And if you’re thinking about -- a family needs the information when they need the information in the least -- in the easiest way possible. And so requiring them to download an app in any format to try to navigate this experience is maybe not the best idea. So don’t build an app.

MS. DICKEY: I think we have two more questions I’d like to try to cover in the six minutes we have left. So the first is social media, if a funeral provider is on social media, should they post their price list on social media and is it even feasible to do so? How would that work?

MS. KEMMIS: I would love -- go ahead, Isabel.

MS. KNIGHT: Okay. So what I would say to
this is that, in my ideal world, we just require
funeral homes to have websites and not have a
requirement around putting prices on social media.
But if that doesn’t end up happening, my next best
case would be if, for example, a funeral home only has
a Facebook page, for example, that they are then
required to post the prices on that Facebook page or
whatever their social media page is.

MS. KEMMIS: And I would add that when we
surveyed our members, again, 100 percent have
websites, and the social media activities they perform
are primarily like their Google business page or a
Facebook page, maybe a LinkedIn page. There’s no
functionality to post a PDF. They could post a photo
or photos and sometimes do, but in most cases, it all
goes back to their website because the functionality
they need on their website, obituary posting,
services, even pricing if they choose to do that, is
-- it serves better on their website.

A Google business page is, are you open,
where are you located, how’s parking, reviews, those
kinds of things. So I just don’t think it’s feasible,
first of all, nor necessary.

MS. ANOLIK: Yeah, we need to be thinking
about where families are finding information and where
they’re shopping, and so they’re not likely going to your Facebook page and then making their purchasing decisions there. So I don’t think it’s necessary. You can link to a PDF, but I really don’t think it’s necessary. We just need to think about where they’re searching for information and I may make that I think every funeral home should definitely have a website.

MR. GUERRIERO: I think the website only because that’s what they control, and if they have a problem and they can’t figure out the password, they could just call that vendor. You can’t call Facebook. So sometimes, often, you’ll see these Google, Facebook, other platforms where someone who used to work there had it and set it up, but nobody knows where that person is. So they’re trying to comply with the rule and they can’t even get access to it.

MR. BATES: Yeah, social media is a real tough one. It’s got -- yeah, it’s got so many tentacles and all that to it. So all I can think of really is just to have -- require a reference, you know, a little link to go to that PDF GPL is the app is part of a funeral establishment that has a website. Keep it simple.

MS. DICKEY: So turning back to funeral providers who sell their services online, I would love
your views on whether the rule should contain specific requirements about where the price list should be disclosed as part of that shopping process. So should -- it has to be, for example, emailed at the start of the shopping process to the consumer so they know they received a price list.

Is there any other sort of rule provisions that should be put in place to dictate where it should be given, understanding that in that circumstance, consumers may not be able to go to a funeral home and meet with a funeral provider to get all their questions answered?

MS. KNIGHT: I think having the option to have the price list emailed to you is a good one, but I don’t think that should be a requirement to get access to the price list because I don’t believe that consumers should have to divulge any of their own personal information to get access to prices as they’re going through the shopping process.

MS. KEMMIS: I mean, the current status is more that you can download it before, obviously experience the pricing as you go through the process, and then receive that summary at the end of what you’ve selected and purchased with the disclosures, et cetera. I’m not going to argue for requirements. I
think that this is -- it’s impossible to predict the
future and it’s just so interesting to see how
technology is serving funeral consumers now as far as
what they can find. And the business models that are
-- that are evolving, it’s fascinating.

I mean, and so I would -- I think that
there’s a risk of being overly restrictive. I mean, I
think, you know, one of my concerns which hasn’t been
mentioned, but would be silly because I think we can
all on this panel agree that pop-ups are really
annoying, so how terrible would it be if you had to
visit a funeral home website and a pop-up with the
pricing link came up, I mean, given what we know about
who visits websites?

Maybe everybody wouldn’t agree, but anyway,
I just -- we don’t want something that interrupts the
consumer. Any requirements that interrupt the
shopping experience or annoy the consumer, I just
think we have to remember that funeral providers are
businesses who want to service grieving families.
They do. So they are going to make decisions that
help them. And if they don’t make decisions that help
those families, they’re not going to be in business
very long. The market will prevail.

MR. GUERRIERO: I think if you create and
end-to-end application or funnel to take someone from a website to a completed purchase, I think it should mimic the Funeral Rule and it should be part of the funnel, and there should be some portion in there where they have to get the disclosure, a checkbox or some kind of “I agree, I’ve read this,” just like a funeral director, but a robot.

MR. BATES: Yeah, if the consumer comes in to a website or an app or whatever and is hit with a chat button, say they don’t see the pricing link on there, right, then it’s tough as to how to, you know, still comply with the Rule. So maybe something could be written in the Rule that says any electronic presentation from the vendor that has to do with pricing, there must be a direct link to pricing, something like that.

MS. ANOLIK: Yeah, it’s interesting that the stat is 31 percent of funeral homes that have any sort of pricing on their website have it in a prominent place. So what I mean by that is above the fold, in the navigation. The footer is not a prominent place because you have to go through the entire website in order to get to it. And we do just have to remember that we want to make it easy for families to find the information that they need. That’s why your
obituaries are usually right, front, and center.

Same as pricing and services. That should all also be in a prominent location. So I do think that we should -- I’m not sure mandate or suggest, but it should definitely be in a prominent place because consumer behavior is changing.

I planned a funeral much earlier than most of my peers and I went looking for that information and couldn’t find it. I don’t live where my parents live. So people are going to go to your website, and if they don’t find the information they need, they’re just going to leave your website. So it’s also to your benefit to put it in a place they can find it.

MS. KNIGHT: And can I just add really quickly, I think that when we talk about the statistics of, oh, we have websites, but no one is actually going to the pricing page, in a lot of those cases, as I’ve seen, as I’ve been trying to, you know, find prices on funeral homes’ websites, it might not be in a prominent place enough for people to actually find, and that might be the source of some of that data that we’re hearing.

MS. ANOLIK: That’s a good point.

MS. DICKEY: Well, we are out of time.

Thank you all so much for your time. This has been a
great discussion and I very much appreciate it.

So we are now heading to the lunch break.

We will be reconvening at 12:45. Thank you all.

(Applause.)
POST-LUNCH INTRODUCTION

MR. WEINMAN: All right. Good afternoon, everyone. My name is Dotan Weinman. I’m part of the FTC team that oversees the Funeral Rule. Welcome back to the workshop. And I know that it’s always the most exciting part that comes after lunch.

(Laughter.)

MR. WEINMAN: So after very good discussions, very informative discussions about price disclosure online, we’re going to move to the basic service fee. That will be our first panel. It’s an issue that we get a fair amount of question about. I think it’s going to be an interesting discussion and very important for us.

And then we’re going to discuss mandatory disclosures in the general price list in another panel, and we’re going to finish it with a discussion of novel methods of disposition, which I think it’s a great way to cap an event like this.

Another reminder, not that I see anybody that needs it, but no food and drink other than water in this auditorium.

And for those people who are joining us virtually, you can submit questions via email, funeralrule@FTC.gov. And we are looking at every
comment, every email that comes in. So please send them away.

With that, I’ll hand it over to Rebecca in our next panel about basic service fee.
PANEL 3: BASIC SERVICE FEE

MS. PLETT: Great. And just --

(Laughter.)

MR. LEMASTERS: For the record, I suggested we sit beside each other. She said, no way, the further apart, the better. I mean, we look like we are just sworn enemies right now.

MS. PLETT: Yeah, yeah.

MR. LEMASTERS: This is fantastic.

MS. PLETT: Yeah, no, I -- just to clarify, this is a hybrid panel, so we have a virtual participant joining us. Erin is joining us. And so to avoid us turning around every time she speaks, I suggested we have this set-up, although, yeah, it does feel a little unnatural.

But we so appreciate that both Poul and Erin are joining us again for this very important next panel. It’s a short one, but I think we’ll have a great discussion about the basic services fee or the professional services fee, as it’s also know. And I think it’s a fairly technical topic. So to start out, I’m just going to go over what the fee is and some of the history behind both the reason for including the basic services fee in the original rule and also some of the Staff Advisory Opinions we’ve issued since.
So with that -- oh, and I should also say, I know Dotan announced that we get questions from folks online via our email inbox, funeralrule@FTC.gov. But for folks who are here in person, feel free to write your question on the comment cards, hold it up and wave it. We have someone in the back who’s keeping an eye out for that and who will collect your card and will get those questions to us.

So with that, the basic services fee is a fee that, in the Funeral Rule, is defined as the basic services that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

So it’s a fee which funeral providers are not required to charge under the Funeral Rule, but which they can charge to recover some of their overhead expenses that they may incur in arranging any funeral. And if a funeral home decides to charge this fee, they can make it nondeclinable so that consumers are required to pay it.

One of the purposes of the Funeral Rule when it was enacted was to allow consumers to pick only the services that they want. So under the Funeral Rule,
consumers can pick only -- can decline goods or services that they don’t want and a funeral home cannot condition the purchase of one good on the purchase of another, other than things that may be required by law or this basic services fee, which funeral homes can make nondeclinable.

And the way that funeral homes can charge their basic services fee is to list it separately as a line item on the GPL, on the general price list, or they can also add it to the cost of caskets. Those are kind of two options.

For certain minimal services, such as direct cremation, immediate burial, forwarding or receiving remains from another funeral home, the basic services fee must be included already in the price that’s disclosed on the GPL.

And so since the rule was enacted, staff have issued certain opinions to clarify some issues around the basic services fee, and there’s a staff opinion that sets out that in most situations funeral homes must charge all consumers the same basic services fee and can’t discount it in some situations, but not others. So some of the reasoning behind that was that the basic services fee of overhead expenses can’t be used to encourage consumers to purchase
things they don’t want by discounting it in some places and not others. I think, in particular, at the time that the staff opinion was issued, there was a concern about caskets.

Staff has since issued additional advisory opinions that homes may, but do not have to, charge a reduced basic services fee, so a discounted basic services fee for situations that use comparatively less overhead than a full funeral service. So for example, your direct cremation, immediate burial, those kinds of services.

So with that, that’s kind of an overview of the basic services fee and I’ll dive right in into an overview, some of the kind of headline questions. And so the first question is, does the basic services fee still serve a purpose?

And I’ll start with Poul. What are your thoughts on that

MR. LEMASTERS: It does. It’s part of the pricing structure that we set up 40 years ago. It clearly defines, again, this portion that every consumer can expect and, again, it’s just -- the problem is it’s what we have and, you know, it has now become literally a defining item on the GPL. And so it’s 40 years of funeral homes
building their business off of this and it does allow businesses, providers, to take a proportion of certain fees and set them aside so that a family isn’t paying $6,000 for a visitation, you know. And, again, part of this comes from the idea that we have to itemize all of our prices. So in order to do that, you need this portion that can be allotted out.

MS. PLETT: Erin, what do you think? Does the basic services fee still serve a purpose?

MS. WITTE: Well, I’d like to actually echo a lot of the sentiments of my colleague, Poul. It’s the system that we have. But the context for this system we have is really important, that the reason why we have the basic services fee was the result of this unbundling and allowing consumers to pick and choose what they want and the basic services fee arose sort of as a concession to funeral homes to say, we understand that if we’re going to have this itemized price list, there are fees and services which may accrue to the funerals that you have across the board and so you can charge this fee -- you can recover those amounts through charging this fee.

Note that you can, you don’t have to. So it’s not a requirement; it’s an option. And I completely agree with Poul, the industry has developed
and moved forward around this structure, but it’s not perfect. So the question is whether it serves a purpose. And I would sort of push back and say that the question is really is the purpose that it serves or achieves consistent with the purpose of the Funeral Rule. And what the Funeral Rule’s statement and purpose says, which I alluded to a few times in the first panel is lowering barriers to price competition and consumer choice.

So with respect to price competition, we want lower prices for consumers, and a real problem with the basic services fee is that the prices have gone up. There are comments that identify basic services fees which are sometimes as high as $5,000. There’s also a broad range oftentimes of basic services fees that are imposed by funeral homes.

So price competition, I think it’s not exactly clear that the basic services fee really furthers that purpose of the Funeral Rule itself.

With respect to informed consumer choice, another thing that commenters have raised, including CFA and the Funeral Consumers Alliance, is the confusion that consumers have about this exact fee. It’s not clear what they’re paying for.

It seems that [connection issue] should be
intuitive on a general price list because it doesn’t use fancy terms of art. I know that folks have talked before about how complicated some of these concepts can be, like using phrases of caskets and containers and things like that. Basic services feels like it should be basic, but it’s really not. What we see and what we’ve heard from consumers is that they’re confused about this.

So I think that when we’re sorting through does it serve a purpose, the question should be is it furthering the purposes of the Funeral Rule. And it’s just -- it’s complicated; it’s not easy.

MS. PLETT: Thanks. Yeah, I think it is a fairly complicated issue.

If the Commission decides to retain the basic services fee as it is now, should the Rule be updated to adopt the advisory opinions, the staff opinions that allow reduced basic services fees in certain situations, like the four limited services that are in the staff opinion.

And maybe for this one, I’ll start with you, Erin.

MS. WITTE: Yes, sorry, I just have to unmute every time I talk.

So yes, I definitely agree that funeral
homes should be permitted to reduce their basic services fees and we completely agree with the reason that I think a lot of funeral homes have asked or raised concerns about, which is that they're charging a very high fee for very limited services in these special circumstances, the four circumstances that were raised in the Staff Advisory Opinion.

So we would definitely agree that there should be permission for those -- the basic services fees to be reduced in those scenarios.

MS. PLETT: Poul, what do you think?

MR. LEMASTERS: I agree. So this is good, Erin. See, we're -- right now, we're all agreeing.

And actually, of all topics, I think there is, again, I believe there’s commonality in all of this and we just have to find it. The basic service fee, I agree, the issue is it is complicated and it’s outdated. You know, when the Rule was originally written -- and you used this term yourself -- it was arranging any funeral and it was meant to serve as a guideline for those services that you provided to the majority of all your families.

We don’t have that family anymore. There is no cookie-cutter funeral arrangement anymore. We now have families that only want cremation. We have
families that bring their own casket. We have --
there are families now that go do a cremation one
place and then show up to another facility and say, I
just want to use your facility for a service. And
none of this was ever comprehended at the time.

So I agree that we should allow this limited
service exception, but I think it’s just a beginning.
I think really the easier thing to do here is to
create a variable basic service fee. And it really
flows in line with what -- this would be for consumers
and everyone. The idea is what we arbitrarily did was
say, the basic service fee, whatever that number is --
and I know we’re not allowed to talk dollars and
cents, but let’s just make up -- you said $5,000, so
I’m going to use your number, Erin.

Well, I’m a funeral director as well. A lot
of people might not know that, but I’ve met with
thousands of families back in my day, and one of the
most difficult things was to tell a family, here’s our
basic service fee, it’s $5,000. And the family says,
we just want direct cremation. And you say, well, we
have a discounted option for that, it’s actually 995.
And they go, well, that’s fantastic. And then we talk
and the family says, you know, I think mom would have
wanted just a little bit more, you know. What if we
all get together after the direct cremation and just
have a memorial service, I noticed on your price list
that’s an extra $500.

And then as a provider, as a funeral
director, I have to tell that family, actually, no, I
can’t add that $500 on because under the term-of-art
definitions that we all agree are simply complicated,
that is no longer a direct cremation. So I now have
to go and take the $5,000 to start with and add all of
the itemized items that we haven’t created, but the
FTC Funeral Rule has created, add them but explain to
a family that by adding a memorial service to that
995, it’s not 1,495, it is now 5,000, plus the 500,
plus the cremation, plus the removal, plus the
transport -- it’s 8,000.

And as a provider, I will tell you it’s one
of the most difficult conversations you can ever have
because I can’t even explain it. And what is amazing
about that is it’s not what a provider wants to do,
it’s required. So enter the idea of a variable rate.
The basic service fee should be the cap. No different
than a hotel.

Consumer groups, and I’m not picking on you,
they use hotels as examples all the time when they
compare our profession. And they say, you know, hey,
you know, I’ve looked around and, you know, they have different rates and they do and -- but the idea is is hotels have a maximum rate that they’re allowed to charge. And as a funeral provider, I should have that. $5,000, that is the maximum I can charge, but then allow me, the provider, to have packages that align with that, never going over. Because right now, we have an artificial, basically floor, of direct cremation, 995, and then I can’t have another funeral until it goes above 5,000.

Now, think about how that affects a consumer. There is no middle ground. A family either wants direct cremation or they’re going over $5,000 at that funeral home and it’s not what that funeral home wants to do. So allow me to say, hey, we have a limited cremation service and it is a -- it’s a cremation with memorial service, you may like that.

Now, it’s not 995, but it’s not 5,000 either. It’s actually 2,000.

Because, again, to your point, Erin, you’re right. I think how that number was created originally was meant to encompass all that basic overhead. The problem is is we don’t -- back in those days -- I’m not that old, so I’ve talked to people about back in those old days, but I do remember working at funeral
homes and it was two days of visitation and a service
on the third day, and that was the standard. Every
funeral was like that. So it was very easy to say
this is our -- now, again, we don’t know what the
overhead will be. So allow each provider to determine
what that is.

And as long as it’s disclosed on the price
list, which is what we’re all talking about, I think
it’s a fair allowable item for the funeral home,
because, right now, it is a penalizing -- not only for
funeral providers, but really consumers. There is no
middle ground.

MS. PLETT: Erin, would you like --
MS. WITTE: So I think --
MS. PLETT: -- to respond to that? Yeah.
MS. WITTE: Yeah. I want to bring up
something that I actually saw in some of the comments
about this idea of a variable basic services fee, and
one major problem with this is that it makes FTC
enforcement very difficult. It’s granting pretty
broad discretion to funeral homes about the amount
that they can charge. So going from this flat fee to
broad discretion about when it can be discounted and
in what circumstances could be quite amorphous for the
FTC to review and evaluate to see whether prices are
being charged unfairly or things like that. I think there are several ways to approach this problem. Certainly, I think, Poul, one of the suggestions -- I hear your suggestions about that, but there are ways to get at this. I don’t know what the best one is, but certainly they’re worth talking about. Poul, I think that you alluded perhaps to amending the definition of the service that encompasses this limited viewing or a limited graveside service or something like that, allowing a different fee structure for that different definition. That could cause an overall higher price for those services. If you have a cap, it sometimes can be a race to the top. But it also could limit the discretion about variable basic service fees to those set-forth scenarios within the Rule.

The FTC suggested adding a provision that identifies the scenarios that were set forth in the Staff Advisory Opinion and saying, in these scenarios, the funeral home can charge a reduced basic services fee. And then there were also some comments about permitting disclosure of a separate price just for those additional limited services. So a set price for a limited viewing or a limited graveside service or something like that.
1 All of these have positives and negatives, right? Certainly, we love more transparency with being more clear about prices, but the way that the basic services fee has a cascading effect on other parts of the Rule and compliance with the provisions of the Rule, I think is also something to think about.

MR. LEMASTERS: So just to -- because you’re right, but I guess I’ll -- two things. One, I do not think this would be hard to regulate at all, and the reason is is because we’re already doing it, meaning when I look at GPLs -- and I know when they are checked, what they do is they look, they say, is there any package that is lower than the direct cremation? If there is, there’s a violation somewhere because you can’t go lower.

And the idea is -- what I don’t like is, again, us sitting here, the FTC, you, even me, trying to determine and decide every possible limiting package that a family may choose. Again, as we sit here today, if you would have told me ten years ago somebody is going to show up at your funeral home and just bring in an urn and want you to do a memorial service, I’d say, you’re crazy, we don’t do that, they would have gone to the first place. But it’s happening.
So where does that fit. And the idea is we should, as a business, of all things we decide today, of all things, at least allow a business to set its own prices. That is the consumer and the business deciding. That is nowhere the Government should regulate. As long as I fall in and it’s disclosed, fair, it’s got to be disclosed, but I may want to sit there and tell a family, look, if you do your funerals all on Wednesday, because we’re never busy on Wednesday, and it’s all in one, basically two hours, because I have staff and all that, I should be able to do that and discount my basic service fee.

One of the things that was said at the very beginning was that one of the rules -- one of the goals, you said it yourself, was to lower pricing for consumers. Of all the things out here, we have an opportunity to make a variable basic service fee that will actually crush your goal. It’s what you’re asking for and now you’re saying, no, we can’t regulate it, it’s too confusing. It’s all confusing. This is the one thing I can easily tell you every provider could comply, it would be simple, you could regulate it because it would be disclosed. And it’s an ultimate win for funeral homes and consumers.

Yeah, I’ve struggled on this and thought,
you know, to me this is such an easy one to be on the same page, and here it is where I do it -- and what’s ironic about it, last point, is that the FTC, in their opinions, have given funeral homes permission to absolutely charge more. In other words, there’s an opinion -- again, it’s just what’s out there. Somebody wrote an opinion, can I charge more for an obese body, right, because it’s the world we live in. And the FTC said, absolutely, you can charge a family more, you just have to disclose it.

The FTC has allowed us to create packages in death care. We can discount a visitation and a memorial service and a funeral basically to zero as long as we never drop below that basic service fee. Why not quit skirting around all this, allow providers to create meaningful packages based on where they live, what their demographics want, and allow them to have these options? It’s the ultimate win. Of all the things that we’re here for today, this is absolutely the easiest thing we can fix.

MS. PLETT: And, Erin, briefly, I know we’re almost out of time, but do you have a response to that?

MS. WITTE: Yeah. I just want to say that we have to keep in mind how we got here. By bundling
these packages and not giving consumers choices about what should be included in that is why we have this basic services fee and the approach that we’re taking now. And so, you know, I want to point back from a Staff Advisory Opinion from the FTC that talks about a potential unintended consequence of reducing or discounting basic services fees with respect to caskets that led to unintended or indirect casket handling fees, which is absolutely prohibited.

So certainly we advocate for lower prices. We don’t want consumers to be paying more for things that they’re not getting. I think, frankly, another weakness of the basic services fee is it subsidizes more expensive funerals for lower-income consumers who don’t want that much.

But we have to keep in mind that this is an industry that we don’t know a lot about, right? I mean, we know the practices that led to the reasons why we have this fee today and I think it’s just wise to keep that in mind.

Now, all of this assumes that we maintain the basic services fee, right, that the FTC decides to keep it. I don’t -- we’re not advocating today for a total elimination of the basic services fee for a lot of the reasons that we’ve discussed and, Poul, that
you’ve alluded to. The industry has formulated around it. It’s really hard to pull that back. But this is unique for the funeral home industry. Most other market places, most other industries don’t get the opportunity to put this fee for overhead expenses, general costs separately. It’s normally spread out across other products and services and things like that. So this is a bit unique. And I just want to make sure that we’re highlighting that point as we have these discussions.

MR. LEMASTERS: You’re right, it is unique. But I want to, again, add one thing. It’s unique and everybody here, consumer groups especially, you keep saying that this is such a unique business and that’s why we have to have the Funeral Rule in the first place. So I’m going to give you -- you’re right, we’re unique, but then you allow us this, and the idea is is this is just an opportunity. It’s a benefit because it’s more packages, it’s more options for families, which is what you’re after. Again, I just think if we can just make a variable rate, allow businesses to decide what’s right for them.

And the other thing you brought up are the caskets. It’s not really an issue anymore. Back in the day when the Rule was written, there were not
other options. We have online distributors, funeral homes across the board, they do not rely on the sale of a casket, a vault, a monument, or anything anymore. So some of the concerns that built that Rule that you point out, they’re not even here anymore. That’s why the basic service fee should just be variable, that they control as a cap.

MS. PLETT: Thank you so much. That’s all the time we have, but thanks to both of you for delving into this topics.

MR. LEMASTERS: Thanks, Erin.

MS. WITTE: Thank you.

(Applause.)
FEE DISCLOSURES AND MANDATORY EMBALMING DISCLOSURES

MS. DICKEY: Good afternoon, everyone.

We’re now going to turn to a panel that will discuss whether the price disclosure requirements in the Funeral Rule should be updated.

The panelists who will help me answer that question are as follows: We have Chris Farmer from the National Funeral Directors Association; Barbara Kemmis from the Cremation Association of North America; Isabel Knight from the National Home Funeral Alliance; Sarah Pojanowski from the Selected Independent Funeral Homes; Wendy Wiener from WRW Legal; and Erin Witte, from the Consumer Federation of America.

And I don’t see Erin up there just yet, but hopefully she’ll be up soon.

Okay. We’ve been told we should hold for one second. Apparently, we’re having technical difficulties.

(Pause.)

MS. DICKEY: We’ll go ahead and get started.

And I’m going to apologize because I’m going to start off by talking about the mandatory embalming disclosure, and I was hoping to have a PowerPoint
slide up so you didn’t have to listen to me, but I’m going to go ahead and read currently what the Rule requires with respect to the mandatory embalming disclosure.

So currently, every general price list must state that, “Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with a viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.”

And the Rule also says that the phrase, “‘except in certain special cases,’ need not be included in this disclosure if state or local law in the areas where the provider does business does not require embalming under any circumstances.”

Okay. Erin, in your view, does this disclosure work as drafted or should it be improved?

MS. WITTE: I definitely think it should be improved. It’s quite confusing to consumers about when it’s required and in what circumstances it’s required and who’s requiring it. I think it’s important to remember that the requirements are
usually a policy of the funeral home, not necessarily
a requirement of the state, that a body be embalmed.

So I’ll answer future questions about the
ways to do that, but just to answer the bare basic
question, we definitely think it should be improved.

MS. DICKEY: Isabel, what are your thoughts
on this?

MS. KNIGHT: Yes, I agree that it could be
improved. I think my main issue is basically with
that second sentence that says, “it may be necessary,”
because I think a lawyer might look at that sentence
and understand that embalming is not required by law,
but the average consumer might not be able to
understand that based on the way it’s currently
worded.

So I would love for there to be an
improvement such that people understand that in most
cases, there is simply a preservation requirement,
which means that consumers may also opt for
refrigeration if that is available, and if it’s not
available, then that should also be -- they should be
made aware that that is the situation that is causing
the funeral home’s policies to require that embalming
is required.

And so I think that basically, if it were up
to me, I would just take that part out and let the
funeral homes describe the situations that their
policies require. I think that the main thing that
they need to know is that it is not required by law.

MS. DICKEY: Chris, what are your thoughts
on this?

MR. FARMER: Well, I think it’s important to
focus -- to refocus the conversation a little bit
because I don’t think we’re talking about making a
decision. The FTC is not looking into whether or not
they should prohibit funeral homes from making their
own policies on whether or not embalming is required
with certain circumstances. That’s been left up to
the states and the states can address that issue.

And I think it’s important, also, to notice
that if you include other forms of preservation, like
refrigeration, almost 80 percent of states require
that deceased human remains either embalmed or
refrigerated within a certain amount of time span,
whether it’s 24 to 72 hours, are preserved in some
way.

And so the NFDA’s proposal that we’ve set
forth, we actually think it should be changed by
adding refrigeration to that. So essentially, it
would say -- I’m not going to read it out either
because, you know, read the whole thing, but accept as noted below, embalming and refrigeration are not required by law, and then embalming or refrigeration may be necessary because that kicks it up to 80 percent of the states where that would apply. And so that makes a lot more sense, I think. It gives the consumers more information.

And then the proposal that NFDA has put forth talks a little bit more about -- goes into a little detail to allow the explanation of what the state law is and whether or not it’s the state law or whether it’s the funeral home’s policy. But, you know, seeing enough bad embalming cases, at least alleged, you know, I think it’s important that consumers be given the opportunity to know, hey, we require embalming, it’s important, and here’s why. And so I think there are ways we can clean it up. I think it’s better for consumers. I think it’s better for the funeral homes and more accurate. So I think there are some changes that we can make.

MS. DICKEY: Erin, what are your thoughts on how the Rule can be improved?

MS. WITTE: Well, like I said, I think it needs to be a little bit more clear to the consumer about if it’s required or if there’s a policy, because
those are two very different things. If the funeral home’s policy requires it, that’s certainly very different than if the state law requires it, which in most cases it does not. I think, in fact, in all cases, embalming is not required by the state.

So if we are considering language or ways to make this more clear to a consumer, we have to keep in mind exactly what the consumer is confused about. Is this required by law? No. Is it the policy of the funeral home? Yes. Does the consumer have the opportunity to decline this service? Yes. But is it the policy of the funeral home? I think that keeping the emphasis on the opportunity to decline it and the fact that it is the funeral home’s policy are things that should be emphasized in language about the embalming disclosure.

MS. DICKEY: So, Chris, Isabel, and Erin, this is a question for you. The Commission has sought comment regarding whether the mandatory embalming disclosures should be amended to state when embalming is required under state law, state what the funeral home’s policy is with respect to embalming, and state whether the funeral home offers refrigeration. Is this a good solution?

Isabel, I’ll start with you.
MS. KNIGHT: Yes, I think that having those additions to the embalming disclosure would be helpful to allow consumers to understand the exact sort of level of requirement. Basically, is it an actual law or is it a policy? So that they -- the point is to make sure they understand that if they don’t want embalming, for example, they can go to a different funeral home. And that is something that we allow for, for example, for religious exemptions, but that’s something that should be allowed for every consumer. Every consumer should have the option and should have the understanding of what they’re allowed to decline and what they cannot.

MS. DICKEY: Chris?

MR. FARMER: I think that if we -- I think we’re probably a lot closer together, I think, than it sounds like we are right now, the three of us, at least. And, again, I would say go back and look at NFDA’s proposal. It addresses that -- the first sentence addresses whether it’s required by law or not. The second sentence addresses what the funeral home’s policy is, and then it also adds refrigeration in there and it also says, you know, if it is required, except as noted below. So then you would have the requirement of identifying the state law.
below if it is required.

So I think that we’re probably all kind of in the same ballpark on that and I would invite you to check out NFDA’s proposed revisions to that because I think that will address everyone’s concerns that I’ve heard so far.

MS. DICKEY: Erin, what are your thoughts?

MS. WITTE: Yeah, I think I would just repeat my comments from earlier about -- and that echo a lot of what Isabel said as sort of explaining the reason for the potential for embalming and whether or not it’s required, who requires it, and whether it’s the funeral home’s policy.

Like Isabel said, the consumer should know that they have the ability to decline and they could go to a different funeral home where that’s not a policy of that funeral home. It’s a significant and expensive transaction. And so if someone has the opportunity and the desire to avoid it, they shouldn’t feel defeated or pressured by difficult-to-understand language in a mandatory disclosure. I then think it’s no longer serving the purpose of really educating consumers about what their choices are.

MS. KNIGHT: The only other thing that I would add is that in terms of the actual mandatory

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requirement, I think that it might be almost -- like I don’t necessarily know if it even necessarily makes sense to put the funeral home’s actual policies as part of the mandatory disclosure. I think that they could feasibly be able to explain that themselves without having that regulation. But I do think that having more options where people can understand that they are allowed to decline is our goal.

MS. WITTE: And I would add to that, Isabel, that if we’re thinking about this holistically -- and the first half of the day was about online disclosure and what information is being provided to the consumer in advance so that they can make an informed choice -- to the extent that the information about the funeral home’s policy is also part of this mandatory disclosure, which is being provided online and in advance, that consumer could then quickly say, well, I’m going to look at a different funeral home that doesn’t have this policy.

MS. KNIGHT: And, actually, if I could add one more thing, I would love to also see a disclosure that lets them know that if they choose to, they can -- they are -- it is their legal right to do a funeral at home, in which they can just use ice and that can avoid some of those embalming or refrigeration costs,
MR. FARMER: I just think we’re getting into some state law issues, some health and safety issues that the state law cover and, you know, it’s -- I appreciate everyone’s input on this. I just think that if we’re going to talk about the disclosure -- the embalming disclosure, you know, I would say let’s try to find some specific solutions to that one issue.

MS. DICKEY: Well, thank you, everyone.

Let’s shift gears and talk about the disclosure of third-party crematory fees. And just to make sure we’re all on the same page, I’m going to start off by providing a little background about what the law requires right now.

So currently, if a funeral provider uses a third-party crematory to conduct cremations, consumers have to pay two cremation fees. They have to pay one to the funeral home and one to the crematory, and that’s legal. And many funeral homes currently combine both of those fees into one direct cremation fee. In the comments that we’ve received during the rule-making, we received comments suggesting that 22 to 40 percent of funeral homes who use third-party crematory don’t do that. So their price list will lists the cremation charge of the funeral home, but
And the result of that is that consumers may review the price list, they may reasonably assume that the direct cremation fee is the total amount they’ll have to pay for cremation, and not discover until the end of the arrangements process that they also have to pay a second cremation fee. This practice is permissible under the current Rule. The Rule says that any third-party charges are cash-advance items. So they don’t have to be disclosed in the general price list. They only have to be disclosed in the statements of goods and services that’s provided at the end of the arrangements conference.

The FTC has issued guidance that if the cost of cremation is not included in the direct cremation price, that that needs to be disclosed, but that is not currently required by the Rule as drafted.

My question for all the panelists is, is this a problem and should the Rule be amended?

And, Wendy, I’ll start with you.

MS. WIENER: Sure, thank you.

It is a problem. Unfortunately, the way that that disclosure is written, as contemplated in the Rule, really does make it unclear to consumers, unfortunately. So my clients generally and I agree
that there should be clarification when there is a third-party crematory fee that is required. However, including that fee on the general price list in terms of numbers strongly disagree with that. That is a cash-advance item.

And I’m afraid that over the course of the discussions about what’s on the general price list and what’s not, it’s -- the fact that the consumer knows what the estimate of that fee is before they sign their contract is known to them for every cash-advance item that is included in a contract. And if the crematory fee is required to be included, then that crematory fee would go on the contract as a cash-advance item. On the statement of funeral goods and services, there would be a dollar figure there. So the consumer, the purchaser, the family knows what they’re paying for, or at least an estimate of what they’re paying for, and that really solves the problem.

It’s not a hidden fee. And I feel like over the course of talking about the idea of the general price list, there’s been this idea that somehow that’s a hidden fee when, in fact, it is disclosed every time to a consumer.

MS. DICKEY: Sarah?
MS. POJANOWSKI: I always, when I’m talking with people who are not in the funeral profession, come back to the sort of bizarre nature that if you buy -- if you have a price for a direct cremation, it doesn’t include the cremation. People don’t understand it. Consumers don’t understand it. It is misleading.

You know, addressing it later in the process, fine, they disclose it, that’s fine, but when the consumer comes in and sees the price for a direct cremation, they generally think they’re going to get a cremation. And I think it’s -- we obviously need to update this rule so we’re all on the same playing field.

Where this comes into practice is with low-end advertising. You’ll have these scenarios where you’ll see a billboard or the cremation for 695 or whatever and that doesn’t include the cremation. But the price that the consumer thinks that they’re going to pay is not the actual price. At the end of the day, it’s significantly higher because it has those cash-advance items added on at the end. That also penalizes people who own their own crematory, who have invested in the process of having a crematory because there, they do not have a third-party cash-advance
item. So it’s not comparing apples to apples; it’s comparing -- you know, their price has to include the entire price and then they advertise.

So if we look at it from the perspective of the consumer, who’s not necessarily saying, well, fees added up over the course of when I was choosing what I wanted and, you know, everybody knows it’s going to cost more, you know, if you have an advertised price, that should be the advertised price plus tax for a direct cremation, in my opinion.

MS. KNIGHT: Yeah, I think it should definitely be required to have the third-party crematory fees disclosed on the general price list. It doesn’t make sense to have them in in two different places. When someone is handed a price list, their assumption is that these are going to be the prices. They’re going to wind up on my bill. And if they see an additional price on the bill and it doesn’t match up with that original conversation where they were talking about the general price list, that’s a problem, right? There’s a lot of people who feels as if that is sort of predatory behavior.

And so I think even from the perspective of the funeral homes, if there are funeral homes that are avoiding putting that third-party crematory fee on
1 their price list, they’re going to look way more
2 competitive than the funeral homes that do. So I
3 think having that standardization would be helpful
4 both from a consumer standpoint to know what is
5 actually going to wind up on their bill at the end of
6 the day and then also from the industry standpoint.
7 And it’s not difficult to disclose third-
8 party crematory fees. Like you, I think, should be on
9 top of the third-party prices in the first place. And
10 if they change their prices, they should be notifying
11 you what those prices are.
12 MS. DICKEY: Barbara?
13 MS. KEMMIS: I think -- I think a lot -- I
14 agree with a lot of what’s been said. When consumers
15 call CANA, we’ve learned over the years that direct
16 cremation has become a package in their mind. It’s
17 all they need. Direct cremation is all they need, but
18 there’s really at least five elements, right? There’s
19 removal of the deceased from the place of death.
20 There’s secure, refrigerated storage because
21 cremations don’t happen the same day. Consumers think
22 it does; it doesn’t. And so then there’s the
23 cremation itself and then there’s the return of
24 cremated remains, and that’s not even counting any
25 kind of service or identification, viewing, or
anything that might be involved in that.

And so I think the way I want to address
this question is let’s unbundle this package that has
happened because I think we need to be cautious about
how we approach this. It’s really -- there’s
marketing strategies. As you’ve said, Melissa, both
are legal. Well, I think that’s what I -- how I
understand you.

There’s business models and, right now,
there are 3,451 crematories in the United States. As
of the end of 2022, about half are owned by funeral
homes, about half are owned by cemeteries and third-
party businesses. That’s a lot of consumers that are
-- or funeral providers who are engaging with third-
party crematories. Five states by statute -- the
District of Columbia doesn’t allow crematories in
their jurisdiction; the City of Chicago doesn’t, where
I live. So there’s a lot of variance. And we don’t
want the unintended consequence of a preference for
one business model or one marketing tactic over
another.

So I understand the dilemma, but I think
there’s other ways to get at this by perhaps
standardizing direct cremation and unpacking it a bit.

MS. DICKEY: Chris?
MR. FARMER: I think everybody has made some very good points. You know, my perspective is that if someone advertises a direct cremation price and doesn’t make it clear that the cremation cost is not included in that, I think that’s probably violating the Funeral Rule as being fraudulent, and I think it’s probably violating a lot of state laws as being fraudulent, right? I mean, if you say this is the cost and don’t make it clear that there’s other cost, if you say this is the direct cremation cost and it’s not, I think that’s a problem. So I think that it does need to be made clear whether or not the cost is included.

I agree with Wendy that it is disclosed in the statement of goods and funeral services, and I understand that, you know, consumers want to know. But as long as they -- they can ask the question at the time if they identify it’s not included.

The problem I have with disclosing third-party costs is we don’t know what they are. We cannot be responsible for what third parties charge, and it’s not as simple as just knowing what it is. I have lots of clients who use multiple crematories. I have clients that use no third-party crematories and yet they may have to if their machine goes down, right?
So you may -- you won’t know that until it happens. There’s just so many scenarios that I can think of that are problematic for requiring a funeral home to post -- a funeral provider to post somebody else’s prices. I just don’t think it’s feasible, I don’t think it’s possible. I think it’s a trap for, you know, someone who -- oh, well, sorry, I forgot to tell you, I raised my fees today. Oh, well, now I have, you know, 10,000 or 5,000 copies of my general price list printed off and those are all trash now because you changed it.

We’ve seen the problem that comes in when vendors provide or -- all of a sudden, hey, we’re having a rough year, we’re having a rough quarter. We’re going to give you a surcharge. Well, the FTC said you can’t tack surcharges on your GPL. So you have to go back and reprice everything. You’ve got to change your GPL. You’ve got to make all those changes.

So I understand the consumers need to know whether or not the price of the cremation is included in there. I totally agree, it should be very clear. In my mind, it -- the Rule requires it. It needs to know what the cost of the cremation is and what’s included. So I think you have to disclose whether or
not it’s included in the cremation cost or not, but I don’t think it’s possible to be compliant every day with the way the changing prices, changing vendors, surcharges, fuel surcharges, and the time and investment that you have in preparing your GPL, and then to go back and change that. And now if you require posting online, then you’ve got to go back and change your GPL online, too.

So I think there are just too many variables for a business to be required to keep up with another business’ prices.

MS. DICKEY: Erin?

MS. WITTE: Thank you. So we do think that this should be changed and it is an extreme issue of confusion and deception for consumers about whether or not this fee is included, that this fee exists at all, and that they’re actually not getting a cremation for the advertised price of a cremation.

There’s been some discussion about whether fees are hidden or disclosed, and I would suggest that it’s not really that simple. Disclosing a fee at the end of the process in a conversation with a consumer where they’ve made arrangements, they think they’ve gotten to the point where they know what they want, and then they’re hit with a fee that they expected to
be included initially and rightfully so, that doesn’t
mean that it’s not hidden. Disclosing it at the end
is not the same thing as a consumer making an informed
choice about that service and the cost of that
service.

I would also suggest that consumers who are
considering direct cremation are often price-
conscious. This is not the most expensive, certainly,
service that they could be provided with or that
they’re choosing, and so this crematory fee of $250,
$300, $350 is going to be a big expense. And that’s
something that funeral homes are absolutely in a
position to know some information and, in fact, much
information about -- that that fee exists, how much it
is or may be, and that consumers should expect that at
the beginning.

And, again, tying this into the conversation
about online disclosures, if that fee is disclosed to
the consumer early and often in the process, they are
in a much better position to be able to ask questions
about it, to engage with the funeral home provider
about their options, what’s included and what’s not.

And I would be remiss if I didn’t point out
the national conversations that we’re having about the
disclosure of fees. It’s apparent that this is a pain
point for consumers. So many people can identify with the issue of a fee not being disclosed until too late in the process. Virtually, every federal agency -- this administration is dealing with this problem that has really been an issue for consumers across industries. This is just a pretty discrete example within this industry of how it could be made better and a little bit less deceptive for consumers.

MS. DICKEY: Barbara, in practice, can you tell us a little bit about what the typical relationship is between funeral homes and third-party crematories?

MS. KEMMIS: Yes, yeah. So in addition to the statistics I gave for the crematories that aren’t owned by a funeral home and may work with multiple funeral homes, there is -- at least CANA teaches that there ought to be an annual contract in place, that those funeral directors should inspect that crematory and not merely trust that the cremations are taking place, and that here should be adequate insurance in place and protection for all parties included and we get into a little bit more detail with that.

But the reality, as it plays out, is much like Chris described. You’re not -- depending on your service area, you may have contracts with multiple
crematories. That pricing may change depending on how much volume of business you send those crematories, whatever fuel surcharges or other things. We’ve seen so many additional fees charged to the funeral homes over the past few years.

And it also is true, the crematories are equipment. They need maintenance. They need to be rebuilt every so often. They’re very durable. They last decades. But still there can be downtime. And when there’s downtime, even a funeral home that owns their crematory, may be seeking a third-party crematory for the first time. So all things going well, contracts are in place, prices are known, but we have to discuss all the contingencies here.

So it’s not quite a Wild West, that third-party crematories are charging whatever they feel like, but there is significant variance, and that’s why they belong as cash-advance items. It’s similar to death certificate fees. We can’t control what the government entities charges or what the florists charge or those kinds of things. So I just don’t see a way that it -- unless it’s a marketing practice, that it could be disclosed elsewhere.

MR. FARMER: If I might add in, a survey of -- an NFDA survey of its members, 70 percent of
funeral homes use third-party crematories.

MS. KEMMIS: Your members? Yeah, yeah.

MR. FARMER: Yeah, from our side. So you gave the breakdown of funeral home owners, so it’s -- there’s a lot of it out there. And, again, it’s a -- being able to keep up with that and then updating everything and keeping everything going, it’s just a trap. I mean, you could -- you miss one day and that’s when your secret shopper comes in, you know, you could have a violation right there because your price was different than what it was in the GPL.

MS. WIENER: Melissa, can I just add, before we move away from this topic, I think one thing is abundantly clear, that -- well, to me, anyway, and I think to a lot of the people on this panel. I do think we need some clarification.

While Chris is right, the rule does require disclosure, in the guidance in complying with the Funeral Rule materials, the only way that someone would know that they were not buying the actual crematory fee was if the words “and cremation” were not included in the definition. That is truly misleading.

I mean, it’s hard. I totally agree with the consumer advocates and everyone on the panel that says
if I buy a direct cremation and there’s going to be another mandatory fee that has to be paid, I should know about that when I buy it, not necessarily the figure, but I’m going to get an estimate because that’s going to be on the statement of funeral goods and services, but absolutely let me know that there’s going to be another fee. Otherwise, we do end up with the 695 versus 995 because one includes and one doesn’t and how is one consumer to compare.

So I think we’re all basically in alignment on that.

MS. POJANOWSKI: May I add something as well? I think it’s -- my issue with the cash advance aspect of the third-party crematory is this isn’t like a $10 death certificate fee. This is a significant fee. It’s a significant portion of the direct cremation. Businesses price things all the time that they buy from wholesalers or services that they buy from other people. It’s not impossible to price a third-party cremation. There are techniques to do this. There are ways to average it out if you are using multiples. There are ways of saying, I’ll do 70 percent of this and 30 of the other, and charge somewhere in the middle to your consumer to pass that on.
You know, there’s pricing is possible in this scenario. I don’t think it’s like, oh, they might change, we can’t price the thing because -- it just seems to me disingenuous a bit.

MS. KNIGHT: And if there is downtime, you can list those things -- for example, if you have to go to a different crematory and you have, you know, two or three crematories in your area that would be the possible crematory you go to if your main crematory is down, you can put that on the GPL as well.

MS. DICKEY: So let me ask Wendy and Chris. You both have mentioned that there might be circumstances where the funeral home can’t predict that they might have to use a different crematory. Is there a middle ground here? So for example, could funeral homes disclose a range of possible fees, their average fees, or the fee of the crematory that they typically use? Would any of those solutions work?

MS. WIENER: I think the problem with any of those solutions is that they, themselves, might lead to some misleading information being given to consumers at the time that they’re making the arrangements. The fact of the matter is that the FTC was wise when it allowed for cash-advance item prices
not to be included in the general price list. I mean, there’s sound thinking with regard to that and that sound thinking should prevail today.

It’s just too slippery of a slope. When do we -- like when does that stop? Do I -- now, do I need to have a flower price list from the three florists in the area? What if they want to order flowers from the internet? Whose prices am I going to be responsible to provide and when and how will I keep them up? And if I’m a small business, as many of my clients are, when will I have to update my general price list again and print -- most of my small business clients don’t have 10,000 copies of their GPL, but, you know, when are they going to have to print 500 more or put another updated general price list online, and then, oh, wait, what about one of those other cash-advance items that might change.

So I think that disclosing even a range of possibilities on the general price list is not necessary because it imperils the small businesses and even the large businesses that might get it wrong because there’s a change. But, remember, before the arrangements are made -- yes, it might be later in the process, but before the arrangements are made, an estimate of what that consumer can expect to pay has

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been provided and it has been agreed to.

And if our goal is for consumers to have choices, if they look at the statement of funeral goods and services in front of them or on their screen and they say, oh, I didn’t know I had to pay that fee, what’s that fee. And they go, well, that’s the fee for the estimated cost of the crematory fee, it might be higher or lower at the time of need, they can say, you know what, I don’t want to go through with this process, and there are other funeral homes that will serve them.

MR. FARMER: I would agree with what Wendy said. I think that it is a slippery slope and I think if the range is -- I think that would be preferable than requiring the specific number, but still I think it’s imprecise. I think it’s going to cause confusion with consumers and I think, you know, if you have -- the slippery slope issue just, to me, is the same thing. The FTC has looked at this and they said, hey, this doesn’t make sense, we understand you don’t have control over them and it should -- we don’t have it updated.

I mean, I would say that my guess is I don’t think funeral homes, on average, I don’t think they update their GPLs maybe every four to five years. I
don’t know. They don’t do it very often, maybe three.
And so they do print in batches. Maybe not 10,000, I
agree with you on that. I was just pulling a number
out there. But it’s not something that they update
regularly and it does involve real cost, not to
mention manpower and those things.

And the other thing I would say is -- I’m
going to go back to my it’s a trap for regulatory
enforcement. If you’re looking at a $46,000, $48,000
violation because you didn’t know that your crematory
changed their pricing, I mean, that doesn’t seem fair
and I don’t think it’s going to help consumers.

MS. KEMMIS: Yeah, I don’t know. We didn’t
ask our members how frequently they update their GPLs.
So I don’t know if it’s -- how frequently it is. But
I wouldn’t think it would be more than annual, let’s
just say, you know, as they hear from their vendors or
understand price increases.

But to answer your question, Isabel, in the
scenario where a crematory goes down and can’t be
used, in that situation, they’ve already finalized the
contract with the consumer and now they’re holding the
cremation, right? So it’s not like they can go back
to them and say, you paid for this and we intended to
use our crematory, but -- I mean, they could,
obviously, do that. They could, obviously, do that. 

But as a matter of practice -- and this is anecdotal; 

I also did not ask my members this question -- they 

don’t. They eat the extra cost. They don’t pass it 
on to the consumer. Because, in good faith, they 
thought their crematory was going to be up and running 

and they offer that. 

And I think that’s part of the challenge 

here is that in the consumer’s mind, direct cremation 
is just all-in-one. I choose that, I get everything, 

and I don’t really want to know the details. We try 
to, you know, encourage consumers who contact us to 

ask for those five elements to compare against 
different business models and different marketing 
practices and it’s revelatory. They do, you know, 
respond to us and tell us that that’s useful. 

So an informed consumer helps with this, 
too. But, yeah, it’s a cash-advance item. I just -- 
I have a really hard time imagining it otherwise. So 

thank you. 

MS. DICKEY: Well, one idea we’ve heard 
today is that the FTC should standardize the 
definition of direct cremation to only -- so that -- 
currently, as the way the rule is written, the price 
lists have to state what the direct cremation
includes, but it doesn’t necessarily have to state what it doesn’t include. So you might have different providers providing defining direct cremation differently.

Should the FTC define direct cremation to include certain things? And if so, what should be included in the definition of direct cremation?

Chris?

MR. FARMER: Well, you know, I think the definition of direct cremation is already standardized. It’s in the CFR as what direct cremation is. And so I -- you know, whether -- I understand the purpose of the question would be would it be a mandatory disclosure on the price list. But, again, I’m going to circle back and say, I think it has to be disclosed. I think if the crematory fee is in there, if the cremation is included in the cost, it’s got to be disclosed. If the crematory fee is not in there, it’s got to be disclosed because the definition of direct cremation includes cremation.

And so if you offer a direct cremation package, to me, that means you have to include that, because it is a defined term in the CFR.

So I would circle back around again and say, you know, maybe there’s some clarification as to what
it currently calls for, but in my reading of it, it’s very clear it’s got to be included and either tell you whether the price is -- that’s included in the price or not because direct cremation includes cremation.

MS. KEMMIS: I would argue for a more radical change, which is to move toward a disposition-neutral Funeral Rule and delete direct cremation. My rationale for that is the Funeral Rule was designed when burial was the dominant practice and direct cremation was an add-on. So there was one mention of cremation in the Funeral Rule, as I understand it, and now we have multiple forms of disposition. I’m foreshadowing the next panel. But I think this is a real opportunity to -- and I don’t know the details and I’m not actually asking for more regulation, I’m asking for less in this case, that let disposition be disposition.

And the things related to those dispositions -- because, you know, I’ll use burial, for example, which is odd for me to do, but we’ve been talking about embalming disclosures as if all burials are embalmed. And burial is a continuum now between green or natural burial with an unembalmed body all the way to an embalmed body with a visitation and that sort of thing.
So it’s more of a continuum and I would -- I don’t know, because I don’t have any data to back this up, but my hunch is as a profession, we’re talking less about disposition first and we’re talking more about memorialization first. We should be. In my opinion, we should be talking about how you want to celebrate this life lived, how do you want to memorialize this person, and then, okay, body preparation, disposition, related goods and services.

And I would argue for that because I think it will sort out then and it won’t be this assumption that all cremation is direct and is cheap and doesn’t require staffing or doesn’t create liability for the funeral provider. It should be exactly what the consumer wants. It doesn’t have to be fit into this small definition.

MS. KNIGHT: I would say that, overall, I would love for there to be standardization including, as you mentioned, alternative disposition methods, and I think that if there is going to be a -- I would love for there to be disclosure of the actual number. I think that if the prices change, you know, you have to update your general price list and you have to print more. I feel like that’s a very reasonable ask.

But overall, I would love for there to be --
as everyone has been mentioning, it’s very difficult to read a general price list for the average consumer, right? And so I would love for there to be an initiative to try to standardize the language such that it’s readable, it’s actually understandable for consumers, and they don’t necessarily need somebody to have to sit down with you for an hour to explain everything. I think that that is absolutely possible. And, honestly, if we’re talking about disclosures, I think that literally every single thing that’s part of the Funeral Rule should be a disclosure, right? Because at the National Home Funeral Alliance, we try to educate consumers and I do all kinds of presentations about what people’s rights are. I do that for the Funeral Consumers Alliance, as well. And as much as I like to think that those efforts are meaningful, there’s just not enough people who are going to come out to the library to watch a presentation about their funeral rights. They need that information at the point of sale, at the time where that information is actually going to be relevant to them.

And so I would go even further than just having the embalming disclosure and having the current disclosures. I would say every single element that
consumers need to know as to what their rights are under the Funeral Rule should be a disclosure and it should be printed in the same font size and it should be next to the relevant item that is -- it is referring to so they can know that are allowed to legally get an outside casket, they know that they’re allowed to do funerals at home. Every single element, I think, should be a disclosure.

And to go even further, I would say they should also -- there should also be a disclosure for how to report violations of the Funeral Rule to the FTC so that consumers know that as well, because that’s another thing we need to educate people about. And it’s super time-consuming and that would be the perfect location to let them know what their rights are as a consumer.

MS. WITTE: Can I add something about the -- I’m sorry, I didn’t mean to go out of turn here, but I wanted to add something about the standardization of the definition of direct cremation. I think the suggestion by Chris was to disclose in the definition whether or not that third-party fee is included within the definition. And like Isabel, I would certainly push for standardization, but it should include that number.
I think it is unrealistic to accept the proposition that funeral homes don’t know how much a third-party crematory fee is going to cost. Certainly, any funeral home that is creating a general price list, that is advertising these services to consumers is not operating in the dark. They know, or at least they have a reasonable estimate, of what that cost is going to be.

And I want to point out one suggestion that was made by a commenter about disclosing the highest price. But the highest price in the disclosures, charge the actual price if it’s less. That ensures consumers are actually -- they have some measure of what it’s going to be. It takes it out of this conversation about a range, which can be quite unrealistic for some consumers, but disclose the highest price, at least let consumers know what they can expect and find out later on that the prices may be lower than what was actually disclosed. I don’t think that any consumer would really have a problem with that.

MS. DICKEY: Sarah?

MS. WITTE: And, sorry, I think -- one other thing I just wanted to add here is the element of competition. The more that we disclose up-front and
the more these prices can be evaluated in advance, it
only serves to benefit one of the stated purposes of
the Funeral Rule, which is to prohibit barriers to
price competition.

MS. POJANOWSKI: So I’m going to meander
back to the original question again about whether
direct cremation should be standardized, and I
absolutely think that the Rule, as Chris said, mostly
does standardize it. The variable in that question
is, is the cremation included or isn’t it with that
“and cremation” language that Wendy was talking about?

I absolutely think we should include the
cremation price and the cremation. The “and
cremation” should become standard. You’ve already got
it set up, it works for the industry. And then we do
away with the cash advance of that direct cremation.
The additional crematory fee, I think it’s possible to
price. Funeral homes are already pricing it if they
own a crematory because that’s really, you know, that
they’ve vertically integrated that cremation business
into their business model. The cremation isn’t free
if you do it yourself. It’s what -- you know, the
costs to your funeral home are still there and you’re
probably still making a little profit on that or you
wouldn’t do it.
So it’s already happening. And I think it would be easy to solve this problem just by taking that “and cremation” option and making it permanent.

MS. WIENER: So I want to talk about two things, standardizing the definition of cremation -- or direct cremation, rather, being the second one -- but I just want to remind everyone about what happened when COVID was here. Crematory fees went crazy. No funeral home could have seen what was happening in certain communities with regard to the fees being charged for cremations, because crematories were running around the clock.

There would have been no way to say -- so to the idea of including the highest price and coming downward, I have clients who paid like $2,000 crematory fees during COVID. It was not that long ago. None of us predicted it. It’s back. None of us know what’s going to be next. It’s just a cash advance. If it’s not mine, I shouldn’t have to disclose its fee except to give a good faith estimate on my contract.

As to standardizing the definition of cremation, there’s something else that we’re not talking about here, which is that consumers want to buy what consumers want to buy. And, today, that
largely means that they want to buy a cremation and
maybe some kind of a service or a visitation with the
human remains present.

And to Chris’ and Poul’s prior discussion on
the panel regarding the basic services fees, there’s
really only, in my estimation at this time, two ways
to address this, and that is either to keep a
definition of direct cremation as it is, but to allow
for a reduced basic services fee when providing those
certain kinds of direct disposition or direct limited
services, or to revise the definition of direct
cremation to exclude that reference to services with
the human remains present or with the body present.
And I don’t remember exactly what it says, but it, in
essence, says, we can’t have a service with the
remains there or else you’re back to your basic
services fee and your whole panoply of prices.

So I think when we’re talking about
standardizing the definition -- and I fully support
Barbara’s idea that we convert to a direct disposition
and I think a lot of the industry agreed on that, I
think what we have to keep in mind is that consumers
want to be able to buy a package that includes some
method of direct disposition, but also some other
things perhaps with the human remains present, not
just the cremated remains.

So it’s really important that in whatever revisions to the Rule occur, we give the capacity for that to happen.

MR. FARMER: If I can briefly can kind of -- there’s a lot to unpack from all that.

MS. DICKEY: There is a lot to unpack.

MR. FARMER: Okay.

MS. DICKEY: I completely agree, Chris. But we only have five minutes and there’s a couple other topics we need to cover. So let me move on to those. And as everyone knows, there’s an open comment period. So, you know, please feel free to add that in your comment.

MR. FARMER: Absolutely.

MS. DICKEY: Thank you.

Okay. So one topic we haven’t talked about yet is other fees charged by the funeral provider with respect to direct cremation. Should the funeral provider have to disclose those fees on the general price list, as well as other fees that are commonly charged with respect to cremation that aren’t charged by the funeral home?

So in certain states, for example, there’s a mandatory medical examiner’s fee that has to be
charged and it’s something that is required by the consumer -- that they have to pay. Should that be something that has to be disclosed on the general price list, either the existence of that charge or the amount of that charge?

And I know that’s a big question, but we’ve got 3 minutes and about 48 seconds left and I’m sure we can cover both.

So, Chris, please go ahead.

MR. FARMER: I think the Rule requires that if you’re going to provide a direct cremation and it’s a fee you charge, it’s got to be charged in the package price. I think that the Rule already requires that. You know, that’s what I always tell my clients when they call, if that’s the one price, if it’s -- that’s the one nondeclinable price for direct cremation. If there’s other options, then that’s a different issue. But if it’s a charge from the provider, it has to be in that price. That seems -- I think the Rule requires that.

As for the third-party charges, I’m going to go back around to everything everyone said. I think that it’s a slippery slope and we’ve already taken two more steps down the slope. You know, I think that it’s got to be -- it’s something that is -- if it’s
something that is a state fee, it’s knowable, then I
think it should be disclosed in there. It should be
what it has to be. But if it’s something that’s a
variable fee that’s unknown, then I don’t think they
should be required to talk about it.

You know, with regard to standardization, I
think standardization is as possible as standardizing
a funeral. There is not a standardized funeral,
right? I mean, we have -- you can’t standardize --
you can’t give every disclosure because consumers
would be getting something this thick and only two
pages may apply to them.

I have a client -- somebody was talking
about a -- they wanted to do a natural burial, and the
question was, hey, do I have to give them a casket
price list and an outer burial container price list,
even though we don’t offer them? The Rule doesn’t say
that that’s an exception, you know. While there’s
certain things where the Rule very clearly says if you
don’t offer it, you don’t have to provide it, it
doesn’t say that for those.

And so the more you try to standardize
things, the more confusing it’s going to be for
consumers, the less information they’re going to
actually absorb because they’re going to be giving
them more information that doesn’t apply to them and
they’re going to tune it out. So I think you need to
focus on what’s important as far as standardization
and realize that it’s not going to apply in all
situations because funerals are -- there is no
standard funeral anymore.

MS. KEMMIS: The only thing I’ll add as a
final comment is that the fines for violation are so
steep and third-party -- you know, cash-advance items,
third-party fees are outside of the funeral providers
control and, yet, they’re liable for a violation. And
that’s just something I really ask you to take into
consideration with this because I think transparency
is good and I think fees that the funeral provider
charges for cremation, whatever those may be, if it’s
within their control, should be disclosed because they
control those, they do control those. But it is an
issue of control.

MS. KNIGHT: I’m just going to go back to
disclose everything and I don’t know what this concept
is of an unknowable fee. If you don’t know it, text
them and ask them and write it on the general price
list. Like it’s not hard to do that. So, yeah, you
know my opinion.

MS. POJANOWSKI: I think there’s some
limitations on the ability to disclose everything that
goes into the entire aspect of the Funeral Rule in the
price list, because it becomes -- it’s already a quite
long document. If you’ve ever been handed a general
price list, it’s often several pages.

If you start adding multiple disclosure on
top of that, you get into -- what are they called,
COLAs or something -- where you have an agreement --
you know, there’s this really, really long agreement
on the internet that says you’re going to abide by
every single rule imaginable and by ability and all
this stuff and you just want access to the hotel WiFi,
and you’re like, yep, got that, no one is going to
read it and understand it, it’s going to go right past
them and they’ll have, in fact, less information about
what the actual prices are because it’s hidden within
this other information about rights and this and that
and reporting.

And, you know, I strongly -- I respect the
work that consumer groups do. I think you should
continue doing it, do more of it. Make sure those
consumers know what they’re getting into. Educate
them. Absolutely, we wholly support that. But not in
the GPL. There’s a place to do that. That’s not the
right place. But we highly respect that work.
MS. WIENER: Agree.
MS. DICKEY: Erin?
MS. WITTE: Yeah, similar to Isabel, we think that more disclosure is better. But I do identify with the comments made by my colleagues about sometimes over-disclosure and things getting lost. And so the really important components of this are what should be prioritized, and I think that’s sort of where we may have some disagreement, is where standardization is so important because of its place within the industry and what consumers are likely to suggest.

So I think it’s correct to be mindful of that concern. I reference the four car dealers which are the epitome of forwarding people many, many documents that they don’t have the opportunity to read or understand. But, again, it would also bring this back to the context of online disclosures and ensuring that it’s not just disclosing the fee, it’s disclosing it online. And it’s just not disclosing the fee online, but there are also educational efforts that will be extraordinarily helpful. So if you use these things together and make it easier for the funeral homes to comply, for consumers to understand and to give them that opportunity, we just -- we have to
think about these things all together, not necessarily in a vacuum.

MS. DICKEY: All right. Well, we, unfortunately, are out of time, but thank you everyone for participating. This has been a great discussion. We are going to head on a break next. So thank you.

(Applause.)
PANEL 5: ALKALINE HYDROLYSIS, NATURAL ORGANIC REDUCTION, AND OTHER NEW TRENDS IN THE FUNERAL INDUSTRY

MS. NACHTIGAL: All right. We’re going to go ahead and get started on the final panel today.

All right. Panel 5 today is about alkaline hydrolysis, natural organic reduction, and other new trends in the funeral industry. This panel is to discuss new trends in the funeral industry and whether and how the Funeral Rule should be amended to account for these new trends.

Today’s panelists include some folks that will be joining us virtually. I’m going to start with who’s with us in person today, Tanya Marsha, from Wake Forest University School of Law; and Sarah Chavez from the Order of the Good Death; Katrina Spade from Recompose; and Beverly Tryk from People’s Memorial Association.

To start off, especially if there’s some folks that are listening and who are not quite sure what we mean by alternative methods of disposition, we’re going to discuss what that is. So starting with Katrina, who is joining us on the screen, what is natural organic reduction and how is it different from methods specifically stated in the Funeral Rule,
including burial, immediate burial, cremation, and
direct cremation?

MS. SPADE: Thank you. Good morning. All
right. So the formal definition and legal definition
of natural organic reduction is the contained
accelerated conversion of human remains to soil. And
what that means at Recompose is we place a body into a
vessel, which is a large container, surrounded by
plant materials, such as wood chips, alfalfa, and
straw, and over the next two to three months, the body
decomposes naturally. We’re providing air into that
vessel and the process is technically composting.
So that is the service that Recompose
offers. We charge a fee of $7,000 for that
disposition method.

MS. NACHTIGAL: All right. I’ll turn to
Beverly now. In addition to natural organic
reduction, Washington State, where you’re located, has
legalized several other alternative disposition
methods. What are those methods and how are they
different from each other and from dispositions
specifically stated in the Rule?

MS. TRYK: Well, in Washington, we have what
I like to call a sort of embarrassment of riches. We
do have five different legal options for what you can
do with your body when you die. Of course, we are very proud to have natural organic reduction in Washington. Of course, we also have classical burial, we have cremation, which is far and away the most popular choice amongst Washingtonians.

We also do have alkaline hydrolysis, which is a water-based form of cremation that’s growing in popularity with folks especially up here in Washington, who are really enthusiastic environmentalists, a great alternative that’s a little more environmentally-friendly, and also, of course, we also have anatomical donation, which is also a very popular choice here in Washington.

MS. NACHTIGAL: Sarah, what are death doulas and home funerals? That’s an area we haven’t hit yet. How are they different than the funeral services that were contemplated when the Rule was enacted?

MS. CHAVEZ: So I just want to preface this by saying that while the titling on our panel refers to these options as new trends, that’s not appropriate. I think it’s important to note that with the exception of aquamation and composting, that these practices have been in use for as long as people have been dying.

So for example, death doulas, they carry on
an ancient practice that’s integral to many cultures. Similar to a birth doula to give support during an infant birth, a death doula provides support to dying individuals and their families while on medical support through the death and dying process. Their primary mission is to educate and guide others and assist with [connection issue] and all of this in an effort towards helping people define what their idea of death is and how they can go about achieving that.

And then for what we call -- what we refer to as home funerals, these are what we [connection issue] funerals since all death care and funerals used to take place in the home and was carried out by the family and by the community. So today, a home funeral means keeping at home the body from a few hours to a few days, depending upon what the family wants, during which time they can provide those [connection issue] of care for their person and have whatever type of funeral service they want or ritual they want at home. And caring for our dead in these ways are really always the fundamental part of [connection issue].

MS. NACHTIGAL: Thank you.

And, Tanya, are there any alternative disposition methods or new death care trends or death care trends that we’re returning to in the case of
home funerals that haven’t been mentioned yet or are there important differences to bring out?

MS. MARSH: Sure. So I don’t think there are any currently commercially viable and legally permissible methods of disposition other than those which have just been mentioned. But I wanted -- I have more to say on that, but let me circle back for a second to the questions that you asked Katrina and Beverly about the difference between NOR and alkaline hydrolysis and the definitions of burial, cremation, immediate burial, and direct cremation.

So the definitions in the CFR are very specific. Like cremation is defined as -- and I didn’t memorize it or write it down -- but incineration. It uses the word “incineration.” So NOR and alkaline hydrolysis can both involve heat, but they are using other biological mechanisms to break down human remains. And so there -- I think in an ideal world there should be -- and Katrina mentioned the legal definition that’s been used by the states that have legalized NOR, which is seven at this point, and counting, and it is being defined as a separate process. So I think we’ll talk more about that in future questions.

As far as other things that we should keep
in mind, I think -- and this has been sort of alluded to by a number of different people on different panels -- but, you know, when the Funeral Rule -- well, when the FTC first did its investigation on the late ’70s, and then the Rule was drafted in ’82, and then the Rule was finally promulgated in ’84, we were a society that embalmed our dead, we had open casket viewings in a chapel, at a funeral home, and then we buried our dead. And so the cremation rate in 1984, when the final rule was put in place, was still only 13 percent.

Now, we’re at almost 60 percent. We’re on track to get to 70 percent, and four states, including Washington, which two of our folks here are from, is over 80 percent or at -- or nearly 80 percent. So that’s a fundamental shift in not only custom and practice and how people are relating to their dead, but also in the fundamental economics of the funeral industry. And so I think that not only do these new trends make us reconsider how the Funeral Rule sort of functions and its relationship to the industry, but just the rise of cremation alone has to make us think about that. So I don’t want to lose track of that.

MS. NACHTIGAL: No, that’s great, and that previews kind of the next area of discussion. It is
about consumer response and changing expectations. This is a question for the whole panel. How are consumers responding to new trends, including alkaline hydrolysis, natural organic reduction, green burials, home funerals, and others? How have consumer expectations around death care generally changed since the Funeral Rule was first enacted?

I’ll start with Sarah.

MS. CHAVEZ: So people have always wanted their deaths to reflect the values that they have in life. And while that definitely remains here today, those values and beliefs are changing and we’re seeing that reflected in the way people do funerals. People want more control, they want authenticity, and they’re seeking out and willing to pay more for an eco-friendly option. And we see these changes reflected in death care.

So for example, for the first time in our history, more than half our population is choosing cremation over a standard burial. The National Funeral Directors Association has predicted that by 2035, that number is going to rise to 80 percent. And while it would be logical to assume that this choice is primarily driven by lower costs, that might not be the whole picture.
Between 2017 and 2020, researchers at the University of Bath did a study on families who had chosen direct cremation. And what they found that cost wasn’t even a factor, families were choosing it because it afforded them more control over the funeral itself and who was in attendance, and also because not having a funeral at the time of cremation was consistent with their beliefs and values. And, yes, I know that it was not a U.S. study, but in a similarly kind of Westernized country where societal trends often are shared, I think it’s still a valuable consideration. And aquamation meets this growing need by providing an eco-friendly alternative.

Also according to the NFDA, 60 percent of Americans are interested in greener funeral options. And one of the ways we see this reflected is through the growth of green burial grounds. In 2015, there was a total of 105 green burial grounds in the U.S. And today, that number has tripled to 355.

In speaking with folks at places like the Green Burial Council and then individual stewards of these spaces, they’ve all stated to me that consumer demand was a primary catalyst for them opening a green burial ground.

But, of course, nothing has gotten people
more engaged and interested in learning and talking about death care and what’s possible than human composting. Thank you. Thank you, Katrina.

And while it’s clearly a choice that really resonates with people, we have to ask then if this is -- the interest is really translating to business and providers. So I reached out to a number of providers -- not Katrina, though, because she’s here and can speak to Recompose -- and they all confirmed that, yes, this was the case. So one of the larger providers, they provided service for 250 immediate need families and have 2,800 others who have completed or are finalizing their pre-need plans for the process.

Another provider shared with me that they have been operating at capacity over the past year and a half since they opened and noted that composting services are driven by demand.

In Colorado, a smaller funeral home owner, Seth Viddal, told me that they’ve already served 110 families since March of last year, and that composting is the fastest-growing segment of his funeral home with over 35 percent of families choosing composting over all of the other options that they offer, which is everything. And then also adding that body
composting is the single-most requested service for pre-planning families.

These composting providers also shared that funeral homes in states where the process hasn’t been legalized yet have been reaching out to create partnerships with composting providers to meet the demand for their own local families. So I think it’s really evident that consumers are interested in not just these options, but reimagining how they’re doing death and funerals.

MS. NACHTIGAL: Thank you, Sarah.

And I’ll turn now to Beverly for your response.

MS. TRYK: No, I’m really glad that Sarah mentioned some of those statistics because here in Washington, People’s Memorial Association has been conducting a statewide price survey of all the funeral homes here for decades. The earliest record I could find was from 1978. And we just conducted it this past fall. And that would have been the first price survey since the legalization of alkaline hydrolysis and natural organic reduction here in Washington.

Since 2020, we have found that 27 percent of Washington funeral homes are offering alkaline hydrolysis and 20 percent are offering natural organic
reduction through business-to-business partnerships with one of the four primary providers of NOR here in Washington, which if we know anything in the advocacy space, it’s that the funeral industry can be one of the slowest to respond to developments in death care. And so the fact that these changes are already happening, that so many are opting this in Washington, is incredibly promising for the increase in options. This shows consumers want this. We know it’s resonating with them. You know, that might be colored a little bit by the fact that the West Coast does tend to adopt changes in death care a little bit faster than other parts of the country as we’ve seen, but I think that’s largely because we do have a less-embedded death culture than places like the South or the Atlantic Region. But it’s really exciting and I think there’s a -- what I’ve noticed, this is a really great sort of transition into more a participatory death care model.

You know, here in Washington, we have lots of folks that strongly identify as environmentalist, so they’re excited about options where they see themselves giving back to the environment and returning to the earth in cyclical ways and they’re looking for opportunities to touch and to contribute,
you know, not always in like the full-on, country, granola, kind of hippie way where you’re, you know, doing everything yourself, you’re digging the grave, you’re preparing the body, the whole experience where you’re talking control of all of it, which is absolutely a right protected by law, you know, folks are doing that, but also it’s in the small things. More consumers are interested in participating in the washing of their loved one. They’re more interested in, you know, coming in and cosmetizing their loved one themselves or they’re looking for opportunities to be involved in carrying caskets or lowering the grave or filling the grave. And I would attribute this, in part at least, to COVID-19. There have been so many times where we have gone through extreme emotional distress in the last few years and we’ve been so distant from each other that when we’re experiencing repeated loss the way so many of us have in the light of the pandemic, that we had to change the way we grieved. And now that we’re getting more of that access back, we want tangibility, we want contribution and we want community. And I think this is a really wonderful return to -- like Sarah and Katrina both have alluded to, that, you know, we’re not looking at
like filling new death care options. These are really returns to the more community-based death care that was more the standard in the U.S. prior to the Civil War.

You know, the way that we have done death care hasn’t always been the case, you know. Tanya mentioned back when the Funeral Rule was passed, there was a pretty standard way that folks did things. But we really only developed that standard in the fairly recent history. And so it’s really exciting to see the way that consumers are starting to see themselves as part of the death care continuum, not just as a thing that they hand off to some professionals and, you know, those folks take care of everything. If that’s what they want, obviously, they should absolutely continue to have access to that, but it’s really beautiful to see the way that people are starting to want more connection.

MS. NACHTIGAL: Thank you, Beverly.

And I’ll turn to Katrina. If you could talk specifically about what you’re seeing at Recompose as far as consumer interest and how the industry is changing.

MS. SPADE: Certainly. So I think my past anecdotal evidence of this change is -- has to do with
the tours we give of our physical plant, of our
facility. We have about 70 people coming through each
month, all walks of life, all ages, coming to see what
it is that Recompose offers, what is natural organic
reduction, what are these vessels we’ve seen on the
news.

And there’s a great curiosity around the end
of life, a curiosity around the disposition of one’s
body, and I think a relief and a general enthusiasm
that there are new disposition options coming. It, to
me, seems to go back also to this idea of a renewed
sense of intentionality around the end of life. So
whereas before, as Beverly pointed out, we would keep
it at an arm’s length and pass it off simply to
professionals, there’s more of an interest in having
an intentional choice around what happens to our
bodies, how we approach that, you know, moment, event
in life. And providers who are giving something a
little bit unique or more approachable, I think, are
finding a lot of consumer interest.

MS. NACHTIGAL: Thank you.

And, Tanya, if you could add your response?

MS. MARSH: Sure. And just a couple things
to follow up, because they all made great points.

So first on NOR, you know, cremation was
legalized in this country for the first time in what, the 1870s, 1880s, and it took 100 years to hit double digits in terms of what the cremation rate was. NOR went from Katrina’s master’s thesis to legalized in seven states in what, less than a decade? About that. So that unbelievable. I mean, unbelievable rapidity of adoption of this method of disposition. And I think one of the most interesting things about it is how consumer-driven it has been. So Katrina led the effort in Washington State to get it legalized in the first state, but there’s been a number of -- I mean, every once in a while we’ll chat and it’s like, did you know it was pending in front of legislature in state X? No, they haven’t talked to anybody. They haven’t talked to anybody who’s involved in the movement thus far and they just -- it became -- it was organic and an organic effort to take it to the legislature, which is really interesting and cool and also sort of raises some regulatory drafting problems that we can talk about.

The second point that I just wanted to echo -- and I think Chris sat here a couple -- a panel or two ago and said there is no standard funeral anymore, right? So to the continuum of choices, that is, I
think, one of the big consumer changes in behavior in the last several decades is the level of customization and personalization of what they want is -- they feel empowered to do it and then they want to be seeing the providers reflecting back to them the level of personalization that they really want, which I think exposes sort of this false binary that’s baked into the Funeral Rule which, again, dates back to the world in which it was created in, the difference between burial and immediate burial, cremation and direct cremation.

We don’t have two binary choices. We have a continuum of choices. And that has, I think, a lot of implications.

MS. NACHTIGAL: Thank you.

Moving now to talking about explicitly including new methods of disposition in the Funeral Rule. I’m going to start with Beverly. I hope that you can talk to us a little bit about alkaline hydrolysis and whether including alkaline hydrolysis under the cremation or direct cremation definitions in the Rule makes sense or should it be separately defined and set out?

MS. TRYK: Oh, absolutely. So I think one of the things -- I’ve been watching all the panels
today. I woke up super early and got my Starbucks to
tune in for what Sarah’s team really aptly called the
Super Bowl for us death care folks. And I heard the
phrase “disposition neutral” in a previous panel and
it was just like, ugh, that’s a terrible term, I’m
very much against it.

And I think that there’s some really
wonderful evidence in Washington to demonstrate how
important it’s going to be that we absolutely don’t
embrace a disposition neutral sort of language in this
legislation.

So the world has meaningfully changed since
this law was enacted and it’s made a lot of wonderful
changes and a lot of things about the world have
changed and improved and we’ve seen that in a lot of
the discussions surrounding methods of communication
and ways that we’re talking about things. And, you
know, we talked in some of our meetings with the FTC
representatives about how hard it’s going to be for us
to anticipate what’s the world going to look like in
another 40 years. Maybe those folks down in
Scottsdale are finally going to sort out how to do the
freeze-dried thing where you can revive people with
cryogenics. Like maybe we’re going to see some big
developments, but it’s going to be impossible to
anticipate.

For the time being, though, we do already have alkaline hydrolysis and natural organic reduction being embraced in a number of states. Last I checked, alkaline hydrolysis was legalized now in, I think, 22 states, and I’ve seen estimates saying that this is going to reduce the carbon footprint as compared to conventional fire-based cremation by between one-sixth to one-tenth. People are really excited about the lack of greenhouse gases emitted, the lack of heavy metals that are being vaporized during the process, which makes it so much safer for the operators who are caring for these bodies over their long careers to stay healthier by not dealing with those occupational hazards. It’s really exciting.

And there’s a lot of people that are thinking -- you know, looking at Washington, for example, that in the next 20 years, we could see alkaline hydrolysis supplant a conventional cremation as the option of choice in areas like the Pacific Northwest, where people are heavily motivated by environmental decisions, because we know that the number two reason that people choose cremation behind its affordability -- that’s the number one reason with a bullet while people choose cremation, its
affordability -- we know that people are opting for that because they perceive it to be the most environmentally friendly option.

And now that we’ve expanded those options so consumers have more choices, when that is a priority for them, we know that they’re going to look at all their options equally -- it seems we have a guest.

So that’s -- one of the things that we found really exciting when we did our statewide price survey this past fall was that of the 209 funeral homes that we contacted for pricing information, that the average cost of a cremation across the state was hovering at about $1,500, whereas the average cost of an alkaline hydrolysis was only $1,600. So Washington’s going to see some exciting changes.

Excuse you.

So I think that one of the things that’s really challenging, though, when we’re looking towards the future of how do we make these options more widely available so that the consumers that are enthusiastic about it have access, one of the things that’s really challenging for us in Washington right now is that the law is vague enough so that providers that are looking to create access to alkaline hydrolysis or natural organic reduction are still grouped under the same law.
as cremation, and we have a notoriously bureaucratic
process here in Washington for businesses that are
looking to open either an actual crematory or an
alkaline hydrolysis facility. The legislative
barriers -- or not legislative, but the bureaucratic
barriers are -- they're a little bit exhausting.

We've been doing some reach on our own to
kind of have an understanding of what that flow looks
like because businesses are excited about it. Right
now, there are only two alkaline hydrolysis machines
in the State of Washington, and everyone that offers
it has got to partner up with one of those businesses,
and only one of them is operational.

So people that are looking at this explosion
and enthusiasm and trying to increase access to
everyone are coming up against these same barriers
where the application process and the licensure
process for opening a crematory, even though this
isn't technically a crematory, are still being held up
for multiple years. As if it weren't enough of a
challenge to deal with the capital costs associated
with opening a business like this that has so many up-
front costs, these folks are sitting in this sort of
bureaucratic purgatory for a number of years because
they're still considered crematories under the law.
If these folks had some legal distinction in the State of Washington that shows that their business is run differently, that the environmental and occupational concerns were different and that these are fundamentally different business, this process could be a little bit easier because we know that people are just sitting waiting, and we’re finding that there’s a lot of bottlenecking with death care in Washington as a consequence of this. Even people looking to open up more conventional crematories are finding that it’s a multi-year process.

If something were to happen in some of the core crematories in the state that are third-party providers to multiple businesses, when they lose staffing, when a machine goes down for either regular maintenance or for repairs, that bottlenecks multiple funeral homes throughout the region and slows down the access to death care and meaningfully impacts the quality of care businesses can offer to consumers. And it seems like alkaline hydrolysis could be a big solution to that if more businesses were able to open.

But we know that people are waiting and waiting, and even once these applications are approved, sometimes the sort of fine print on them is a little bit ridiculous. We know of a business out on

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the Olympic Peninsula that, once they were finally approved for their crematory license, has a limit of 400 pounds of people they’re allowed to cremate per day. That’s like three, maybe two-and-a-half modestly-sized adults. That’s not enough to sustain a business.

So just grouping all of these things together in a disposition neutral way is impacting access to quality care for consumers. These are not -- in a lot of ways, these are analogous services, but when it comes to the law we know that just assuming things are scooped together is already not serving consumers. This isn’t working already and so we need to be more explicit.

You know, People’s Memorial was really heavily involved in the original passage of the Funeral Rule and I thought it was really such a great reminder watching a lot of the earlier panel contributions that there was a priest that testified in the ‘70s to the original process who said that if you don’t believe that consumers are uniquely vulnerable during this time to exploitation, you know, to the power differential that exists between death care providers and the bereaved, then you absolutely deserve to be regulated. We know that when we give
folks an inch, they take a mile.

MS. NACHTIGAL: Beverly, I’m going to move on and I’m going to ask Katrina to talk about whether NOR needs to be separately listed and/or defined or if it can be incorporated into some all-encompassing language like direct disposition.

MS. SPADE: Thank you.

So, yeah, I believe that NOR and each disposition option, cremation, alkaline hydrolysis, et cetera, that’s available on the market should be listed and defined separately. To me, the overall term that those go under is simply “disposition,” which is what happens to the body. So every body gets a disposition. So that’s a great overall term. And then defining each option separately, I believe, is important and Recompose believes is important.

I also don’t think that listing direct in front of a disposition option is very meaningful or helpful to consumers. We’ve never done that at Recompose. We have a price for the disposition, which is the NOR. And then clients can choose to add on different products or services, such as a ceremony or extra NOR containers, which are analogous to urns for cremated remains. But, to me, that’s much clearer than calling one thing a direct NOR and one thing
another kind of NOR.
So, yeah, that’s my answer there. Thank you.

MS. NACHTIGAL: Thank you, Katrina.
And, Sarah and Tanya, I’m going to ask you to both respond to this question. Should the Funeral Rule be modified to explicitly include new methods of disposition, and if so, how can the FTC best modify the Rule to account for new methods that might crop up in the future?

And I’ll start with Sarah.

MS. CHAVEZ: It seems only logical that the Funeral Rule would include all forms of legal disposition, which, of course, includes all of the forms we’re talking about today. I think inclusion by a trusted institution like the FTC that works in the best interest of consumers helps to not only reassure them, but also helps to inform about their choices, because many Americans are still unaware of some of these more eco-friendly options.

They’re all part of the funeral industry. So I think amending the embalming disclosure to clarify that it’s not a legal requirement and state cases in which it is, so there’s no cause for confusion or misunderstanding on the part of the
consumer, and adding that, in some institutions, like
pre-burial or for cultural or religious reasons, there
may be a requirement that bodies are not embalmed, as
well.

So while I hope that all of our current
choices, including embalming and standard casket and
burial, will always be available to families that want
them, these alternative options are the future of
death care. Including them now will only serve to
strengthen the Funeral Rule and benefit consumers in
the years to come.

MS. NACHTIGAL: Thank you, Sarah.

And, Tanya?

MS. MARSH: Yes. I think we should define
alkaline hydrolysis and natural organic reduction in
the Funeral Rule, and then if a funeral home offers
those services, they should be on the GPL. I don’t
think you need to worry about other things that
haven’t come in front of state legislatures yet
because we’ll have warning because they have to go in
front of the state legislatures before they become a
thing. And so I wouldn’t -- I wouldn’t try to write
the Rule so broadly, like creating some overarching
definition of disposition that you would include
everything that might be invented in the future, I’d
just deal with the concrete things that we have now. And to Beverly’s point, they are different from one -- and to Katrina’s point, they’re different from one another. They have different requirements, embalming not permitted and now NOR is permitted and AH and cremation, right? They’re not interchangeable with one another, even though none of them are burial.

MS. NACHTIGAL: Thank you.

And this segues well into our final discussion area, which is about the specifics -- specific requirements in the Funeral Rule that should be modified in response to the new trends.

I’m going to start actually with you, Tanya. What requirements of the Funeral Rule are out of sync with new forms of disposition and how should the Funeral Rule be modified to better serve consumers shopping for alternative disposition services?

MS. MARSH: So I’m going to reframe the question a little bit because I think, as I mentioned before and has been mentioned before, the Funeral Rule was written for a world that doesn’t exist anymore and it was written -- and this is true of all funeral and cemetery law, that when legislatures write laws and agencies promulgate regulations, they are describing that which exists at that time that they put the rule
into place. So that totally makes sense. But we have seen such rapid change and are continuing to see such rapid change in terms of what consumers want. So I’m afraid that the Funeral Rule sets up this sort of binary choice and sort of preserves some of these outdated ideas.

I mean, baked into the basic services fee, what are basic services, right? The basic services in 1984 may or may not be the basic services today. So maybe if you want to keep that idea -- and I’m not a fan of the basic services fee -- maybe you need to realign it with what are truly the basic services. Everybody needs a death certificate and burial transit permit. Okay? That’s a basic service. Is the body even going to come to the funeral home, right? Is there going to be removal? Maybe, but maybe not, especially if you’re dealing with a third-party provider who’s dealing with some of the -- providing some of these other methods of disposition.

So I was also struck that, on the first two panels, so many people said something along these lines. I stopped writing it down. That basically that GPLs are so complicated that you need a licensed person to explain them to the consumer. Well, I would suggest that maybe then GPLs are too complicated,
right? And so maybe we need to -- instead of saying, well, that’s the reason you shouldn’t have them online, instead you should say, well, what can we do to make the GPL more straightforward and more understandable to consumers.

So here’s my modest proposal to deal with the new forms of disposition and sort of that complication factor. It seems to me there’s three buckets of things that funeral providers offer, right? They offer ceremonies, they offer methods of disposition or access to methods of disposition, right? Because the cemetery is really providing the burial. Perhaps an outside crematory is really providing the cremation. And then they provide preparation of the body.

So if you broke the funeral -- if you broke the GPL down into those buckets and started the conversation with, well, what do you want in terms of memorialization, do you want to have a ceremony, do you not what to have a ceremony at all, do you want to have it offsite, do you want the body to be present, not present, right? There may be 120 questions that families have to answer and make decision about during an arrangements conference, but they can be categorized.
And then disposition, the method of disposition does not drive answers to all those other questions. And I think that’s kind of the false certainty that the definitions of direct cremation and immediate burial sort of lead us to.

So what I don’t want to do is, if we’re adding AH and NOR to the Funeral Rule, to like continue down that path, because I think that making it more complicated in sort of false ways is not going to be helpful to the industry in terms of how to price or how to offer things to consumers.

MS. NACHTIGAL: Thank you, Tanya.

MS. MARSH: Mm-hmm.

MS. NACHTIGAL: Sarah, what requirements do you think are out of sync with new forms of disposition and what modifications should be made, and if you could speak specifically about how the Rule could be amended to accommodate consumers interested in home funerals and death doulas?

MS. CHAVEZ: So one of the main barriers I hear about from people who are looking into having a home funeral is this inherent fear that they’re doing something illegal because the language around embalming is so confusing and even misleading to the average consumer. We see this not just amongst
families, but other professionals in hospitals and hospices.

So over the years at Order, we’ve had dozens of emails from people whose person died at the hospital or in a hospice facility and when the family says that they are planning to take their person home, which is usually within their rights, instead of support, they’re being faced with people in positions of authority who are misinformed and tell them that they are breaking the law or they make statements that uphold the myth that a dead body poses a risk to public health and must immediately be embalmed.

We know home funerals are a safe and legal choice for families in communities in every U.S. state, but the way that our current death care structures are set up, they limit a family’s access to their dead. They’re restricted. Clear and transparent information is also limited. These things limit information and limit access, and, in turn, they’re limiting their rights. Home funerals and death doulas can kind of help shift some agency back to the families by providing unbiased information and education.

Amending and clarifying the Funeral Rule’s embalming disclosure and including all options would
really empower consumers with the information that they need to make the choices and decisions about the best and most affordable death care for themselves.

MS. NACHTIGAL: Thank you, Sarah.

Katrina, what requirements of the Funeral Rule are out of sync with natural organic reduction?

MS. SPADE: Yeah. So at Recompose, we are a funeral home. We offer only one disposition option. That’s NOR. We don’t sell caskets and we, in fact, can’t offer the service of embalming because embalming directly impedes the process of NOR. So on our price list, we’re required to have several federal disclosures which mention caskets, of course, and embalming as well.

And the way we’ve sort of managed that issue is we have the federal disclosure and then we have a note to our consumers about why we had to have this federal disclosure, even though we don’t sell caskets and we don’t provide the service of embalming. And as you can just imagine, that’s confusing potentially. Even though we’re trying to undo the confusion with the note, the fact that we have to have that disclosure and then put that note here can be super confusing and makes the price list unnecessary longer than it needs to be.
So of course, I just -- I don’t think that if a funeral home -- unless a funeral home offers caskets or the service of embalming, they shouldn’t have to have those disclosures on their price list. I don’t think consumers are helped by having items on the price list for a funeral home if that funeral home isn’t offering those items.

That said, I do believe that if a funeral home is offering embalming, I think it’s still important, in the way the industry works today, to have that embalming disclosure and likewise for caskets. But if you’re not offering those services or products, those disclosures shouldn’t be in the price list.

MS. NACHTIGAL: Thank you, Katrina.

And, Beverly, you know, I’m inviting your response to what has been said in this kind of question round, but also with your work for PMA, you review a lot of GPLs. Have there been issues you’ve seen on GPLs that are a source of confusion for funeral homes that offer alternative dispositions?

MS. TRYK: Yeah, absolutely. I’ve got a couple notes of some patterns I’ve noticed. As a part of our price survey, I’ve read a couple hundred GPLs, mostly Washington-based, but a couple other folks...
around the country, and these are newer disposition 
options and I feel as though it’s not uncommon for the 
funeral homes offering them to just not understand the 
processes perhaps as well as they do things like 
cremation.

And so I don’t think that any funeral homes 
at this point are trying to mislead people, but it 
does seem as though they are struggling to comply with 
some of the existing language that is in the Funeral 
Rule, like looking at something like package pricing. 
I’ve noticed that a lot of the -- or at least a 
percentage of the funeral homes that are offering NOR 
through a business-to-business partnership with a 
licensed funeral home are frequently framing it as 
though it is a package service and it’s not as clear 
as it could be about what the individual costs are 
going into that item.

I see this especially looking at things like 
a laying-in ceremony, which is something that we talk 
about really frequently when we do community education 
about NOR. And it’s one of the things about the 
process that resonates the most with consumers, that 
they love the most about it, and are most eager to 
participate in. But it’s unclear frequently in the 
pricing whether or not that service is actually
included in the cost of the care.

And then with respect to alkaline hydrolysis -- and I’m -- you know, I like to say that if I’m reading a GPL and I don’t understand what’s going on, that’s a real problem because it’s a huge part of my job and it’s been nearly impossible for me to suss out whether out or not funeral providers in Washington that are offering alkaline hydrolysis are including the cost of an urn in the cost of the care.

When are you offering cremation, you have to be clear on there whether or not the cost of a standard black plastic urn or a cardboard urn is included in the cost of care and consumers certainly have that protected right to furnish their own container should they like or purchase that item directly from the funeral home. And it’s a reasonable expectation on the part of a consumer that when accessing alkaline hydrolysis that it’s going to be provided to them in a container. So why aren’t we seeing that same level of granularity on these items as we have come to expect from other disposition options?

And I don’t think this is born out of an intent to deceive consumers. I think it’s just that they don’t quite know how to talk about it yet and so
this is an indication that could use some guidance on how to break these costs down a little bit more to make it clearer to consumers and to help manage those expectations.

Like I said, I was sitting in one of the panels and I found it really fascinating to hear -- like Tanya said, I was taking notes about the number of times that people said that, oh, gosh, GPLs are so confusing. And to me, it kind of feels like funeral homes telling on themselves. If your GPL is confusing, write a better GPL. PMA has a member-owned funeral home and that GPL is crystal clear. It’s not hard to include a little bit of explanation about what a service is. It’s not hard to explain what an outer burial container is. That’s the point of the GPL, is to do that education.

And I’m sure that Sarah’s probably experienced this a lot because we both do a lot of community death care education, but if we were to ever produce educational materials that left people with that many questions about what we meant, that were designed to make every person that read them call us for clarification, that would be an indication we were really bad at our jobs.

Why are we allowing funeral homes to display
this level of learned helplessness about how confusing
the language is? It’s their responsibility to educate
the community on what it is they’re offering and it
sounds like a form of learned helplessness that
they’re saying, gosh, it’s just so confusing, we’ve
got to counsel people on an individual basis to make
sure they understand it. But it’s our job as death
care providers.

And like I said, I’m on both sides of this,
as an educator and also I’m the communications manager
for that funeral home. We know it’s possible to do
this well, to do this clearly, and to not impact the
quality of care provided to members or the business
side. We know that NFDA members report that they
serve an average of 150 or so families per year. The
coop funeral home serves 860 per year and they do so
with a crystal clear GPL. It doesn’t seem to be
hurting their business any to be open, honest, and up-
front and use readable, consumable language, like
Isabel suggested earlier.

It’s a smart business choice. And it’s
really concerning to see some -- I’ve sat in on some
webinars lately that are helping to sensitize funeral
homes to the potential updates that their websites are
going to need should the online disclosures be passed,
and I’m concerned about the fact that it seems like they’re coaching people to place them in inconspicuous places, was one of the terms I heard in a webinar recently. And even the attendees, the funeral homes that were there were saying, are you suggesting that we hide this information. And the presenter said, oh, no, that’s certainly not it. But they did suggest like here are some ways that you can technically comply with the word of the law, but undermine the spirit of it.

We know that this is what consumers want. They want honest information. They’re already using so much of their bandwidth on this incredible loss and it’s our job to support them through that as educators and as funeral professionals. So it’s just -- I find it a little bit exhausting to hear how many people were complaining that the current law is already asking too much. But if this were meeting the needs of consumers, memorial associations like ours and the other 50 other associations around the country wouldn’t be necessary. Sarah and I could retire. So could the entire Funeral Consumers Alliance, you know. Consumers feel that their interests aren’t being well represented and they feel like they’re on the defensive and that’s -- it’s less than ideal. So
we know that we need to spell these things out and offer more guidance. So that’s some of what I’ve noticed in the intense amount of GPL research that comes with my job. There’s a lot of room for improvement, I’ve noticed.

MS. NACHTIGAL: Thank you, Beverly.

We do have just a few more minutes. Unless there are any question cards available from the audience, I’m going to turn to just generally for the panel to weigh in on. Like I said, there’s only a few more minutes. But what is something you wish more people, including but not limited to the Federal Trade Commission, understood about alternative dispositions?

I’ll start with Tanya -- or, I guess, anyone can jump in. This is a free round, I guess. But, Tanya, since you are sitting next to me.

MS. MARSH: I think I already said it, but I’ll just reiterate it. I think that there -- that I’ve seen in state legislatures that are trying to legalize both alkaline hydrolysis and NOR, that they think that the easy way to do that is to just redefine cremation to include all three processes and that doesn’t help anybody because the processes are very different.

So I think people -- you know, these
alternative methods are coming. They are in states like Washington, which already have them both. We can sort of see how quickly they are becoming popular. And so people just need to understand that they are different from one another.

MS. NACHTIGAL: Thanks, Tanya.

Anyone joining us remotely want to chime in on what’s something you wish that people understood more about alternative dispositions?

MS. SPADE: I’d just echo what Tanya said and mention that one of the reasons to treat them differently is that they actually can play pretty nicely together. So this isn’t something that Recompose currently offers, but there are funeral homes out there that offer alkaline hydrolysis, cremation, burial, and NOR, and to be able to offer that menu of choices for your clients is pretty special.

So I think, especially if you’re doing that, you want those to be treated differently. At the very base level, we want to be tracking the numbers out there and knowing how many consumers are treading towards these new disposition options and how many are still doing cremation. If we had it all under cremation, the potential for that confusion is pretty
great, to have everything counted as cremation. We’re not understanding how the industry is changing over time, and I think all of us do want to understand how the industry is changing over time.

So whether it’s a funeral home out there that eventually licenses our system from Recompose and places it, you know, adjacent to their crematory or if it’s another provider out there that starts with their own system, I think, again, it benefits all funeral homes and all providers to have things listed separately.

MS. TRYK: I think one thing that I would like to make sure that everybody knows, and I’m always trying to yell it from the rooftops, is that sometimes it seems like a lot of the organized efforts against the legalization of these alternative options or the roadblocks placed in terms of accessing green burial or home funerals is that people are worried that we’re trying to replace their death care traditions. And at least at PMA, our position is that there is no right death care choice. Like the only wrong one is an uninformed one. And so the idea, at least from our perspective, is that we are trying to add to the pantheon of options so that every consumer is finding something that’s resonating with them.
The reason that we need folks like Katrina advocating for expanding these options is because the existing options aren’t meeting everyone’s needs. So I think that that is some of the fear that we’re encountering in terms of educating people about these options and seeing some of the pushback from different lobbying groups in other states, is that we think that everyone’s going to roll in and aquamate their grandmas. But the fact of the matter is that’s not what any of us want. We just want to make sure that you’re seeing something that’s resonating with you personally.

We know that there’s an incredibly rich burial culture in the South and it’s probably going to stay that way for a long time and it should because it’s meaningful to those people. But for people in other parts of the country or even down in the South where they’re not seeing traditions or care options that resonate with them personally and certainly that might be out of reach for them financially, those folks deserve better options. It’s not good enough.

So I think that’s an important thing to make sure that’s always clear, is that no one is trying to replace cremation, to replace conventional burial. If embalming’s meaningful to you, go ahead and do it.
But we just don’t want you being pressured into those decisions.

MS. NACHTIGAL: Thank you.

And we are out of time. Sarah, I invite you, if you have a response to this last question to please submit a comment, as well as everyone else, by the due date, October 10th.

And I will turn it over to Lois here to give us our closing remarks.
CLOSING REMARKS

MS. GREISMAN: Thanks, Sammi. And good afternoon, everyone.

At the outset, my deep thanks to all panelists, a tremendous job, and to everyone involved on the FTC staff side for making this happen, particularly our three moderators, Sammi, Melissa, and Rebecca.

(Applause.)

MS. GREISMAN: A couple of thoughts, so when you talk about the death care industry, it is a very lively topic of conversation, whether you’re talking about the industry itself, consumer angles, or the Funeral Rule. And, you know, this was not designed to reach agreement on anything. It was designed to dig into some issues that are very pressing.

We did see some consensus about concerns. Basic services fees, not so good. The disclosure of third-party fees, particularly crematory fees, problems there. And embalming disclosure, problematic.

Then, though, we hit a little bit of a more raw nerve about whether or not to do online disclosures, pros and cons; whether to mandate; whether to not mandate; what’s going on now. Is
what’s going on now useful to consumers? Do they care? Are they looking? If they’re looking, can they find it? Is it prominent? Do they know to look online?

And then sort of a shift to some of the challenges of, you know, if you were to disclose, what does it look like? Where do you place it? Again, the issue of prominence, cost. Well, there’s some real suggestion it’s not so costly, but who’s going to bear those costs and what are the ramifications going to be to the industry as a whole, to competition -- competition in the industry, especially when you look at small businesses. No shortage of disagreement on those issues. And then the fascinating discussion of this last panel, reimagining the death care industry, choices, options, innovations.

So where do we go from there? What’s next? The comment period is open until October 10. Please take advantage of it. I know a good number of you here and outside of the room have not hesitated to express your views with some vigor. There is an open regulatory review. It is not a formal rule-making. The Commission has not initiated that. What happens is all those comments come into FTC staff and we digest and we make recommendations based upon them and
the recommendation goes to the Commission and then the
Commission is the ultimate decider of any next steps.
So basically, what I can say is stay tuned.
You know how to reach all of us. Don’t hesitate to.
Again, please take advantage of the comment period. I
am enormously grateful for those here in person and
for those who have been listening on the webcast.
Thank you.
(Appause.)
(The Shopping for Funeral Services Workshop
concluded.)