



WEST VIRGINIA INSURANCE BULLETIN No. 22-05

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

► **Funeral and Cemetery Expenses for Workers' Compensation Claims** ◀

The purpose of this Insurance Bulletin is to announce a change in the amount deemed to be reasonable funeral or cemetery expenses pursuant to West Virginia Code §23-4-4(a). West Virginia Code §23-4-4(a) requires, in the case of a workers' compensation personal injury causing death, that reasonable funeral or cemetery expenses must be paid to the persons who have furnished the services and supplies or to the persons who have advanced payment for them, and further provides that the Insurance Commissioner shall fix a reasonable amount as he or she determines is proper for funeral or cemetery expenses.

§ 23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

- (a) In case the personal injury causes death, reasonable funeral or cemetery expense, in an amount to be fixed, from time to time, by the commission, and upon its termination, the Insurance Commissioner, shall be paid from the fund, or the private carrier, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for the services and supplies, as the commission may determine proper, in addition to any award made to the employee's dependents.
- (b) A funeral director or cemeterian, or any person who furnished the services and supplies associated with the funeral or cemetery expenses, or a person who has advanced payment for the services and supplies, is prohibited from making any charge or charges against the employee's dependents for funeral expenses which would result in a total charge for funeral expenses in excess of the amount fixed by the commission, and upon its termination, the Insurance Commissioner, unless:
 - (1) The person seeking funeral expenses notifies, in writing and prior to the rendering of any service, the employee's dependent as to the exact cost of the service and the exact amount the employee's dependent would be responsible for paying in excess of the amount fixed by the commission or Insurance Commissioner, and
 - (2) The person seeking funeral expenses secures, in writing and prior to the rendering of any service, consent from the employee's dependent that he or she will be responsible to make payment for the amount in excess of the amount fixed by the commission or the Insurance Commissioner.

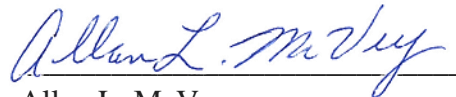
- (c) Any person who knowingly and willfully seeks or receives payment of funeral expenses in excess of the amount fixed by the commission or the Insurance Commissioner without satisfying both of the requirements of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined three thousand dollars or confined in jail for a definite term of confinement of twelve months, or both.

An increase to the amount of funeral or cemetery expenses that must be paid under West Virginia Code §23-4-4 has not been made since 2009. At that time, the amount was raised from \$5,000.00 to \$7,000.00, where it currently remains. The Insurance Commissioner has consulted with the West Virginia Funeral Directors and Crematory Operators Association and has reviewed information from the National Funeral Directors Association. Further, the Insurance Commissioner has reviewed the published amounts of workers' compensation funeral and cemetery benefits that are paid in other states regarding work-related deaths. After doing so, it is the opinion of the Insurance Commissioner that \$10,000.00 better reflects the reasonable cost of funeral and cemetery expenses in West Virginia, and better reflects the average funeral and cemetery benefit paid across the United States regarding work-related deaths.

Accordingly, the Insurance Commissioner hereby directs that effective **July 1, 2022**, in the event a work-related injury causing death, the amount of funeral or cemetery expenses to be paid by the party responsible for the claim shall be up to **\$10,000.00**. Informational Letter 170, issued August 2009, is revoked effective June 30, 2022, and the newly fixed amount shall apply to all funeral and cemetery services provided on or after July 1, 2022. As always, private carriers and self-insured employers may choose to pay a greater amount as circumstances dictate should it be deemed reasonable or necessary by the private carrier or self-insured employer. Private carriers and self-insured employers may request supporting documentation of expenses.

Please e-mail any questions concerning this Insurance Bulletin to OICBulletins@wv.gov.

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Insurance Commissioner