

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 482 Department or Agency Department of Insurance*

Rule No. Chapter 482-3-003

Rule Title: Preneed Contracts and Certificates of Authority

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? N/A*

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? N/A*

Is there another, less restrictive method of regulation available that could adequately protect the public? N/A*

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? N/A*

Is the increase in costs, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A*

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? N/A*

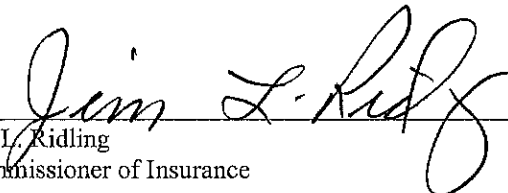
Does the proposed rule have an economic impact? N/A*

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Sections 27-2-17 and 27-7-43, Code of Alabama 1975, and that it complies with all applicable filing requirements of the Alabama Insurance Code.*

Signature of certifying officer



Jim L. Ridling
Commissioner of Insurance

Date: September 19, 2014

*Note: *The Alabama Department of Insurance is exempt from the Alabama Administrative Procedures Act pursuant to Section 41-22-2(e), Code of Alabama 1975.*

Alabama Department of Insurance

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Insurance

RULE NO. & TITLE: Chapter 482-3-003: Preneed Contracts and
Certificates of Authority

INTENDED ACTION: New rule.

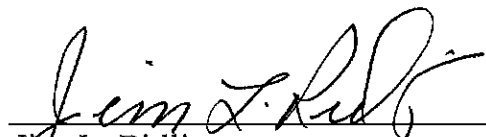
SUBSTANCE OF PROPOSED ACTION: The Commissioner of Insurance is proposing the adoption of a new regulation setting forth the standards and requirements for the sale of preneed funeral and cemetery merchandise and services and operation of endowment care cemeteries by cemetery authorities. The proposed effective date of this new regulation is January 1, 2015, which will coincide with the effective date of the proposed repeal of existing Preneed Regulation No. 1 (Chapter 482-3-001).

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may submit data, views, or arguments in writing at any time prior to the date stated below to the Alabama Department of Insurance, Attention: Legal Division, Post Office Box 303351, Montgomery, Alabama 36130-3351, or orally by appearing at the public hearing, Suite 502, RSA Tower, 201 Monroe Street, Montgomery, Alabama, beginning at 10 a.m., November 13, 2014.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

November 4, 2014

CONTACT PERSON AT AGENCY: Kathleen Healey
Associate Counsel



Jim L. Ridling
Commissioner of Insurance

ALABAMA DEPARTMENT OF INSURANCE
PRENEED REGULATION

CHAPTER 482-3-003

PRENEED CONTRACTS AND CERTIFICATES OF AUTHORITY

TABLE OF CONTENTS

Page

13	482-3-003-.01	Authority and Purpose.	2
14	482-3-003-.02	Definitions.	2
15	482-3-003-.03	Preneed Contract - defined.	3
16	482-3-003-.04	Sale of "return of mortal remains" plans.	6
17	482-3-003-.05	Preneed Contract - filing and approval.	9
18	482-3-003-.06	Preneed Contract - minimum requirements - funeral providers.	10
20	482-3-003-.07	Preneed Contract - minimum requirements - cemetery providers.	12
22	482-3-003-.08	Installation of vaults or outer burial containers before need.	13
24	482-3-003-.09	Certificate of Authority - Required.	16
25	482-3-003-.10	Certificate of Authority - Financial Requirements.	17
26	482-3-003-.11	Transfer of certificate of authority or branch registration.	21
28	482-3-003-.12	Surrender of certificate of authority.	22
29	482-3-003-.13	Effect of certificate surrender or other inactivity.	23
30	482-3-003-.14	Preneed Sales Agents.	24
31	482-3-003-.15	Examinations, generally.	25
32	482-3-003-.16	Response to requests for information; effect of pending administrative action.	27
34	482-3-003-.17	Severability and Effective date.	28

1 **482-3-003-.01 Authority and Purpose.**

2 (1) This Chapter is adopted pursuant to Ala. Code §§ 27-2-17 and 27-
3 17A-1 to -57 (2014).

4 (2) This Chapter sets forth rules, standards and requirements for the
5 sale of preneed funeral and cemetery merchandise and services and operation
6 of endowment care cemeteries by cemetery authorities under the Alabama
7 Preneed Funeral and Cemetery Act of 2002, as amended. This Chapter operates
8 in conjunction with Chapters 482-3-002, 482-3-004, and 482-3-005.

9 **Author:** Commissioner of Insurance
10 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
11 **History:** New _____; Effective January 1, 2015

12 **482-3-003-.02 Definitions.** The definitions set forth in § 27-17A-2, Ala.
13 Code (2014), apply in this Chapter, together with the following definitions:

14 (1) DEPARTMENT. The Alabama Department of Insurance.

15 (2) GAAP (Generally Accepted Accounting Principles). Uniform minimum
16 standards of, and guidelines to, financial accounting and reporting. The
17 Financial Accounting Standards Board (FASB) and the Governmental Accounting
18 Standards Board (GASB) are authorized to establish these principles.

19 (3) FINANCIAL STATEMENT. The written disclosure of financial
20 information by an applicant for or holder of a preneed certificate of
21 authority according to accounting principles and in a form prescribed by this
22 Chapter.

23 (4) PRENEED CONTRACT. As defined in Rule 482-3-003-.03.

24 (5) PRINCIPAL. In reference to a preneed contract, the total sum of
25 deposits on the individual items in the contract. In reference to a trust,
26 the total sum of deposits in trust for all preneed contracts.

1 (6) THE ACT. The Alabama Preneed Funeral and Cemetery Act of 2002,
2 Ala. Code §§ 27-17A-1 to -57 (2014).

3 **Author:** Commissioner of Insurance

4 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

5 **History:** New _____; Effective January 1, 2015

6 482-3-003-.03 Preneed Contract - defined.

7 (1) For purposes of this Chapter, a preneed contract is a written
8 contract:

9 (a) entered into on a preneed basis (before the death of the contract
10 purchaser or beneficiary);

11 (b) under which the purchaser pays or agrees to pay to the seller,
12 before need and in whole or part, a purchase price for funeral merchandise
13 and services or cemetery merchandise and services; and

14 (c) the seller's responsibility to deliver the contracted-for
15 merchandise or perform the services, in whole or in part, is deferred until
16 need.

17 (2) The following arrangements or transactions create a preneed
18 contract:

19 (a) Transactions which combine a current sale with an agreement for
20 delivery or performance at need and in which the purchaser assumes a current
21 obligation to pay for future delivery or performance.

22 (b) Transactions in connection with selection of funeral or cemetery
23 merchandise or services which result in a preneed provider being designated,
24 on a preneed basis, as a beneficiary or owner of a financial instrument
25 intended to provide funds for payment of merchandise and service costs at
26 need (i.e., a life insurance policy or annuity, or a deposit of funds like a

1 bank account or certificate of deposit), whether revocable or irrevocable,
2 unless, the preneed seller and the purchaser acknowledge in writing that
3 there is no agreement concerning the purchase of funeral or cemetery
4 merchandise and services entered into as a result of the purchase or
5 assignment of the life insurance policy or annuity at the time of such
6 purchase or assignment.

7 (c) Any transaction or series of transactions which employ any artifice
8 or scheme to evade, or have the effect of evading the requirements of, this
9 Chapter and the Act.

10 (3) The following arrangements or transactions do not result in a
11 preneed contract subject to this Chapter even if entered into on a preneed
12 basis:

13 (a) A retail sale of merchandise and immediate services - delivery or
14 installation - directly relating to that merchandise where: the purchaser
15 pays immediately or agrees to an installment payment plan, the seller
16 delivers the merchandise to the purchaser immediately or within a
17 contractually-defined reasonable time after payment not tied to need or to
18 completion of installment payments, and no future service relating to the
19 merchandise will be required to realize effective use of the merchandise.
20 Non-inclusive examples include caskets and memorials and related services
21 such as delivery and installation of the merchandise. The purchaser must have
22 legal title to and possession of the merchandise upon delivery into a storage
23 arrangement controlled by the purchaser, or by virtue of installation on
24 property under the purchaser's control (such as a cemetery space). The seller
25 may retain a security interest in the merchandise in an installment payment
26 arrangement where merchandise will be delivered before completion of
27 payments. Excluded from this subpart are the following types of transactions
28 which are deemed to result in a preneed contract:

1 1. sales in which a seller delivers the merchandise into some
2 warehouse-type or other storage arrangement controlled by the seller until
3 need;

4 2. sales deferring delivery or performance until need or until
5 completion of installment payments;

6 3. sales involving vaults or other outer burial containers which, by
7 their nature, require future service in the form of reopening, cleaning
8 and/or repair or replacement, placement of the casket, sealing, closing and
9 covering; and

10 4. sales of any type of funeral or cemetery services which are not
11 capable of being performed until need.

12 (b) A prearrangement through which the purchaser specifies certain
13 merchandise and services to be purchased at need, the seller agrees to sell
14 that merchandise and those services at need with or without a preneed
15 agreement on price (or an agreement about how a price will be determined at
16 need), provided that the prearrangement contains no provisions for prefunding
17 or prepayment.

18 (c) The sale of an interment right in a grave space, crypt, or
19 mausoleum provided that the purchaser receives evidence of ownership of the
20 right upon payment and the sale is not accompanied by the sale of any
21 merchandise or service.

22 (d) Sale of a "return of mortal remains plan," addressed in Rule 482-3-
23 003-.04, in conjunction with a preneed contract.

24 (4) A contract or agreement that is not a preneed contract shall not
25 represent that portions of a purchaser's payments are being placed in trust
26 (except as necessary to comply with the requirements concerning cemetery

1 endowment care funds) unless such deposits have been made in fact or
2 otherwise represent or imply that the contract complies with the Act.

3 **Author:** Commissioner of Insurance
4 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
5 **History:** New _____; Effective January 1, 2015

6 **482-3-003-.04 Sale of "return of mortal remains" plans.**

7 (1) For purposes of this Chapter, a "return of a mortal remains plan"
8 refers to a contract or agreement by whatever title or name, sold in
9 conjunction with a preneed contract, in which a third party provider other
10 than the preneed contract seller agrees, in exchange for a cost paid by or
11 for the plan beneficiary, to cause transportation of the decedent's remains
12 in the event the decedent dies outside the scope of any radius clause or
13 geographical limitation expressed in a preneed contract for funeral or
14 cemetery merchandise or services. The plan may or may not:

15 (a) be a "membership"-type arrangement;

16 (b) provide that the agreement provider will arrange and pay for
17 services actually provided by others;

18 (c) provide that the agreement provider will directly perform services;

19 or

20 (d) include services like embalming or other body preparation and
21 merchandise such as a shipping container.

22 (2) A return of mortal remains plan may be offered in conjunction with
23 the sale of a preneed contract. A foreign (non-Alabama) business entity shown
24 as the provider or seller in the agreement must have registered through the
25 office of the Alabama Secretary of State as and to the extent required by the

1 Alabama Business and Nonprofit Entity Code, Ala. Code § 10A-1-1.01 et. seq.
2 (2010).

3 (3) A preneed provider offering a return of mortal remains plan shall
4 have in effect a written agreement with the plan provider which describes the
5 terms, conditions, and restrictions under which the preneed provider can
6 offer the plan to prospective purchasers. The agreement should include
7 provisions describing the manner in which the cost of the plan is remitted to
8 the plan provider; expressing the amount to be paid to the preneed provider
9 by the plan provider for having sold a plan (or the formula from which that
10 amount can be determined); identifying any third-party provider relied upon
11 to perform the benefits called for in the plan; and any insurance company
12 provider insurance to be used in paying for or defraying the cost of
13 performance of the plan benefits.

14 (4) A preneed provider's sale of a return of mortal remains plan must
15 be documented separately from the preneed contract. The return of mortal
16 remains plan shall not be listed as merchandise, a service, or otherwise in
17 the preneed contract; and the plan's cost shall not be included as part of
18 the total cost of the preneed contract.

19 (5) The price of the plan shall be collected from the purchaser at the
20 time of sale or paid in installments by agreement distinct from the preneed
21 contract. In the event of an installment sale, and if applicable under the
22 agreement between the plan provider and preneed provider, the preneed
23 provider shall disclose that the plan does not become effective until the
24 entire plan price is collected. The plan price shall not be financed as part
25 of the price of the preneed contract.

26 (6) A preneed provider shall account for amounts paid by preneed
27 contract purchasers for return of mortal remains plans separately from
28 amounts paid for preneed contracts. No portion of the payments shall be

1 deposited in a preneed merchandise and services trust or otherwise treated as
2 preneed contract payments. Funds collected as payment for a return of mortal
3 remains plan shall be immediately remitted to the plan provider.

4 (7) The provider or seller of the return of mortal remains plan must
5 furnish the following to the preneed provider for use with prospective
6 purchasers of the plan:

7 (a) A form of brochure or flier describing the benefits to be provided,
8 the terms, conditions, and limitation applicable to the plan, and the price
9 of the plan.

10 (b) The form by which the purchaser buys, applies for, joins, or
11 enrolls in the plan. The form shall identify the price of the plan to the
12 purchaser and, if applicable, shall describe the terms of any installment
13 payment arrangement.

14 (c) The form of certificate or other evidence of coverage or
15 entitlement to benefits to be provided to the purchaser.

16 (d) If not included in the certificate, a description of the benefits
17 to be provided, the terms, conditions, and limitations applicable to the
18 plan, and the manner in which claims for benefits are submitted.

19 (e) All forms shall clearly identify the entity which is undertaking to
20 provide or arrange for the provision of any services or merchandise described
21 as benefits in the plan and shall state the entity's mailing and physical
22 addresses, voice and facsimile telephone numbers, electronic mail address,
23 and, if applicable, website address.

24 (8) If the return of mortal remains plan provider relies on the preneed
25 provider to deliver documentation to a purchaser, the preneed provider shall
26 promptly deliver that documentation to the purchaser.

1 (9) Copies of complete return of mortal remains plan transaction
2 documents as described above shall be maintained by the preneed provider as
3 part of a purchaser's preneed contract file. The documentation shall be made
4 available to the Department as part of a preneed examination or otherwise
5 upon request.

6 **Author:** Commissioner of Insurance
7 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
8 **History:** New _____; Effective January 1, 2015

9 **482-3-003-.05 Preneed Contract - filing and approval.**

10 (1) A preneed contract must be on a written or preprinted contract
11 form, approved by the Commissioner, that is completely filled in and signed
12 by the purchaser and the preneed seller.

13 (2) Preneed contract forms, including forms based on templates supplied
14 by the Department, shall be filed for approval with the Commissioner, in a
15 format and manner prescribed by the Commissioner, and the forms approved
16 before use. A filed contract form may be used beginning thirty (30) days
17 after its filing date unless the Commissioner has disapproved its use during
18 the 30-day period. Any revisions to a preneed contract form must be filed
19 with and approved by the Commissioner prior to use. Revisions required as a
20 result of this Chapter shall be filed within sixty (60) days of the effective
21 date of this Chapter.

22 (3) In order to be approved by the Commissioner, a preneed contract
23 form must adhere to the minimum requirements set forth in Rules 482-3-003-.06
24 and 482-3-003-.07, as applicable.

25 **Author:** Commissioner of Insurance
26 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
27 **History:** New _____; Effective January 1, 2015

1 **482-3-003-.06 Preneed Contract - minimum requirements - funeral providers.**

2 (1) On or after January 1, 2015, a preneed contract for funeral
3 merchandise and services must have, at a minimum, the following required
4 disclosures:

5 (a) A thirty (30) day refund provision in the event of a cancellation.
6 In the event of a cancellation prior to thirty (30) days for contracts funded
7 by trust, letter of credit or surety bond, purchaser shall be entitled to a
8 complete refund of the amount paid. In the event of a cancellation after the
9 expiration of the thirty (30) days, seller shall be entitled to a
10 cancellation fee not to exceed twenty percent (20%) of the purchase price
11 collected, and the balance of payments exceeding twenty percent (20%) shall
12 be refunded to purchaser. If the contract is funded by life insurance, any
13 cancellation after thirty (30) days will entitle the purchaser to be paid the
14 cash value of the life insurance policy or other refunds per the terms of the
15 policy unless the purchaser is given the option to maintain the policy in
16 force by continuing payment of premiums to the issuing insurance company.

17 (b) An acknowledgement from the purchaser that purchaser has reviewed a
18 current general price list, casket price list, and outer burial container
19 price list prior to signing the contract.

20 (c) A disclosure that the seller is placing funds received under the
21 contract in trust in the statutory amounts, in an annuity, or in life
22 insurance. If the contract is funded with an annuity or life insurance, the
23 contract must include language to the effect that a contract funded by life
24 insurance or an annuity may not have sufficient money to completely fund the
25 contract price at the time of death of the funeral beneficiary; and the
26 difference between the contract price and the money available is due and
27 payable to the provider at the time of fulfillment. If none of these funding
28 methods are used, then the seller must include a disclosure that the preneed

1 contract is to be funded by use of a surety bond or letter of credit in lieu
2 of a trust, annuity or life insurance policy. In the event that individual
3 or group life insurance funding is being used as an alternative to a trust,
4 the disclosure must comply with the provisions of Rule 482-3-004-.11. In the
5 event that the trustee is purchasing life insurance on the contract purchaser
6 or beneficiary, written consent must be made through a document separate from
7 the preneed contract under Rule 482-3-004-.12.

8 (d) An explanation that an "irrevocable option" provision in the
9 contract, when signed by the purchaser, is used when the purchaser is a
10 recipient of or is seeking to qualify for public assistance for such programs
11 as Medicaid and Supplemental Security Income. The purchaser must acknowledge
12 that the purchaser is aware that the contract is revocable unless and until
13 the "irrevocable option" is signed. The purchaser must further acknowledge
14 that an "irrevocable option" is not required to be signed in order to execute
15 the contract.

16 (e) In the event the contract contains a transfer provision, the seller
17 shall to be entitled to a reasonable fee for a transfer. The "reasonable fee"
18 shall be no more than the cancellation fee allowed under (a) of this
19 subsection.

20 (f) An acknowledgment by purchaser that item(s) not guaranteed at the
21 listed contract price are clearly denoted as subject to change and the
22 purchaser shall be responsible for the difference, if any, at the time of
23 contract fulfillment.

24 (g) Provision in the event of a purchaser default. After ninety (90)
25 days or more past due, seller must give thirty (30) days written notice to
26 purchaser to cure any default. At the expiration of thirty (30) days, seller
27 shall be entitled to cancel the contract and withdraw funds in trust. The

1 seller shall refund to purchaser the amount collected less a "reasonable fee"
2 of no more than the cancellation fee under (a) of this subsection.

3 (h) Breach of contract provision where the purchaser shall be entitled
4 to a refund of 100 percent of all money paid on the contract in the event of
5 a breach of contract by the seller.

6 (i) If the seller's practice is to install vaults or outer burial
7 containers before need, the additional provisions described in Rule 482-3-
8 003-.08.

9 (j) If merchandise and services are to be provided as complimentary or
10 free of charge, such merchandise and services must be itemized on the preneed
11 contract and noted as "no charge."

12 (2) Preneed contracts shall be sequentially numbered in a uniform
13 manner. Should pre-printed contracts be used which result in numerical gaps,
14 contracts should be numbered sequentially using an internal numbering system.

15 **Author:** Commissioner of Insurance
16 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
17 **History:** New _____; Effective January 1, 2015

18 **482-3-003-.07 Preneed Contract - minimum requirements - cemetery providers.**

19 (1) On or after January 1, 2015, a preneed contract for cemetery
20 merchandise and services must have, at a minimum, the following required
21 disclosures:

22 (a) The cancellation provision shall allow not less than three days
23 after the date of the contract execution for cancellation by the purchaser
24 without further obligation. In the event of a timely cancellation, purchaser
25 shall be entitled to a complete refund of the amount paid. The contract shall

1 further provide that the purchaser is entitled to a refund of all money paid
2 on the contract in the event of a breach of contract by the seller.

3 (b) A disclosure that the seller is placing funds received under the
4 contract in trust in the statutory amounts, in an annuity, or in life
5 insurance. If none of these methods are used, then seller must include a
6 disclosure that the preneed contract is to be funded by use of a surety bond
7 or letter of credit in lieu of a trust, annuity or life insurance policy.

8 (c) If the seller's practice is to install vaults or outer burial
9 containers before need, the additional provisions described in Rule 482-3-
10 003-.08.

11 (d) If merchandise and services are to be provided as complimentary or
12 free of charge, such merchandise and services must be itemized on the preneed
13 contract and noted as "no charge."

14 (2) Preneed contracts shall be sequentially numbered in a uniform
15 manner. Should pre-printed contracts be used which result in numerical gaps,
16 contracts should be numbered sequentially using an internal numbering system.

17 **Author:** Commissioner of Insurance
18 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
19 **History:** New _____; Effective January 1, 2015

20 **482-3-003-.08 Installation of vaults or outer burial containers before need.**

21 (1) The sale of a vault or outer burial container on a preneed basis is
22 a preneed contract even if the contract provides for installation of the
23 vault or outer burial container before need.

24 (2) On or after January 1, 2015, where a provider's practice is to
25 install vaults or outer burial containers before need, the preneed contract
26 must grant to the preneed contract purchaser the sole option to have a

1 contracted-for vault or outer burial container installed before need or at
2 need and must otherwise conform to the requirements in this Rule.

3 (3) The preneed contract must contain a conspicuously-displayed
4 provision, to be signed by the purchaser separate from signing the contract
5 as a whole, in the following or substantially similar terms:

6 It is the Seller's practice to install a vault prior to need unless the
7 Purchaser elects to have the vault installed at the time of need.

8 _____ I elect to have my vault installed prior to need.

9 _____ I elect not to have my vault installed prior to need.

10 (4) The preneed contract must clearly distinguish between service fees
11 to install the vault/outer burial container before need and fees for re-
12 opening the previously installed vault/outer burial container, placing the
13 casket, and closing and covering the vault/outer burial container at need.
14 The disclosed fee for installing a vault/outer burial container before need
15 must be described in the preneed contract using the term "vault installation
16 fee," "burial (or grave) space excavation fee," or other words reasonable
17 descriptive of the nature of the services being performed. The fee may not be
18 described by use of the word, "interment."

19 (5) The amount of the disclosed fee to install a vault/outer burial
20 container before need shall not exceed fifty percent (50%) of the total
21 amount (expressed in dollars) of that fee and the disclosed fee charged for
22 opening the installed vault/outer burial container, placing the casket, and
23 closing and covering the vault/outer burial container at need. This allowed
24 allocation notwithstanding, the Department may require a provider to increase
25 the amounts trusted for opening/closing services at interment in the event
26 (i) a provider ceases performing the service using its own employees and
27 equipment in favor of contracting with third parties to perform the service,

1 or (ii) as a condition for the Commissioner's approval of an application by
2 the provider to transfer or to surrender of a certificate of authority or
3 branch registration, or (iii) if the provider's financial condition warrants
4 an increase in the trust amount.

5 (6) The preneed contract shall specify a time period within which the
6 vault/outer burial container will be installed before need (if so elected by
7 the purchaser).

8 (7) The preneed contract shall provide that, in the case a purchaser
9 elects preneed vault/outer burial container installation, the preneed
10 provider bears any risk of damage to the vault/outer burial container when
11 installed and will provide and install a new vault/outer burial container of
12 comparable quality at no cost to the preneed contract purchaser or
13 beneficiary if required by the circumstances at the time of interment.

14 (8) No other preneed contract provisions can conflict with, qualify,
15 defeat, or diminish the contractual option granted to the preneed contract
16 purchaser/beneficiary.

17 (9) At the time the preneed contract is negotiated, the preneed seller
18 must furnish the contract purchaser a disclosure substantially in the form of
19 the model disclosure developed by the Department and published on the
20 Department's website. The actual form of the disclosure must have been
21 submitted to and approved by the Department before use. The original
22 disclosure signed by the preneed contract purchaser(s) and the responsible
23 preneed sales agent must be retained by the preneed provider as part of the
24 preneed contract file. The preneed contract purchaser(s) must be furnished a
25 copy of the signed disclosure at the time the preneed contract is finalized.

26 (10) Any preneed provider offering installation of a vault/outer burial
27 container before need must implement a program to instruct its preneed sales

1 agents about properly explaining installation of vaults/outer burial
2 containers before need and answering purchaser inquiries about installation
3 before or at need. The program must include reasonable measures for
4 monitoring preneed sales agents' actual explanation methods to purchaser. The
5 program must be maintained in a form that can be produced to the Department
6 for review upon request.

7 (11) The vault/outer burial container must be installed within thirty
8 (30) days prior to the time the first trust deposit is required to be made
9 under the contract in accordance with state law. If the contract is funded by
10 another method, the vault/outer burial container must be installed within
11 thirty (30) days from the date of the preneed contract.

12 (12) Any preneed provider offering installation of a vault/outer burial
13 container before need must maintain records sufficient to permit the
14 Department's examiners to verify that vaults/outer burial containers
15 contracted for installation before need have been installed.

16 **Author:** Commissioner of Insurance
17 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
18 **History:** New _____; Effective January 1, 2015

19 **482-3-003-.09 Certificate of Authority - Required.**

20 (1) Every preneed seller subject to the Act must have a valid preneed
21 certificate of authority to sell preneed contracts and to collect payments
22 for preneed contracts. Each branch affiliated with a certificate holder
23 must have a valid branch registration.

24 (2) The certificate of authority or branch registration, as
25 applicable, shall be prominently displayed in a public area of the
26 certificate holder's or branch registrant's facility. In the event a
27 certificate of authority or branch registration is surrendered, non-renewed,

1 suspended or revoked, the certificate or branch registration shall not be
2 displayed and must be returned to the Department.

3 **Author:** Commissioner of Insurance
4 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
5 **History:** New _____; Effective January 1, 2015

6 **482-3-003-.10 Certificate of Authority - Financial requirements.**

7 (1) An applicant for a preneed certificate of authority must meet, and
8 a certificate holder must maintain, the financial requirements set forth in
9 this Rule demonstrating its ability to discharge its liabilities as they
10 become due in the normal course of business, and must have sufficient funds
11 available to perform its obligations under its existing preneed contracts.

12 (2) Unless exempted under paragraph (8), a preneed seller must file
13 with the Department a financial statement in order to apply for a certificate
14 of authority or renew an existing certificate of authority. The financial
15 statement shall, at the preneed seller's option, be

16 (a) a financial statement accompanied by a compilation, review or audit
17 report from a licensed certified public accountant prepared in conformity
18 with GAAP, or

19 (b) a financial statement in the form furnished by the Department and
20 published on the Department's website using the alternate basis of accounting
21 described in paragraph (5).

22 (3) The financial statement must be for the preneed seller holding a
23 certificate of authority or the applicant seeking a certificate of authority.
24 Information in the financial statement must be accurate and contain all
25 relevant notes and disclosures appropriate to the accounting basis used. The
26 financial statement must be signed by the certificate holder or applicant

1 and, if prepared by a certified public accountant or public accountant, by
2 the accountant.

3 (4) Financial statements prepared in conformity with GAAP that are
4 consolidated must include supplementary consolidating schedules to provide
5 supporting detail for each consolidated financial statement presented.

6 (5) The financial statement form developed by the Department reflects a
7 basis of accounting adopted by the Department as an alternative to GAAP
8 reporting. This alternative basis differs from the measurements and
9 disclosures required by GAAP in the following respects:

10 (a) GAAP requires consolidation of certain equity investments and of
11 variable interest entities under FIN 46(R), entitled Consolidation of
12 Variable Interest Entities. The Department requires that only the primary
13 reporting entity's accounts and activities be reported. Investment in trusts
14 are to be marked-to-market as of the financial statement date. Closely-held
15 investments should be recorded using the equity method.

16 (b) Deferred revenue for preneed contracts incurred prior to May 1,
17 2002 (the Act's effective date), is to be equal to the current cost of
18 providing the preneed services and merchandise.

19 (c) A noncurrent receivable is to be recorded for the face amount of
20 life insurance policies used to fund preneed contracts, with the offset being
21 a credit to deferred revenue.

22 (6) The financial statement of an applicant or certificate holder (in
23 the case of annual renewals) must demonstrate the following levels of equity
24 determined on the basis of the accounting method used in the financial
25 statement:

26 (a) An applicant or certificate holder with total preneed deferred
27 revenue of \$100,000 or less must have a minimum of \$10,000 equity.

1 (b) An applicant or certificate holder with total preneed deferred
2 revenue of \$100,001 to \$1,000,000 must have equity in an amount not less than
3 ten percent (10%) of the total preneed deferred revenue.

4 (c) An applicant or certificate holder with total preneed deferred
5 revenue in excess of \$1,000,000 must have a minimum of \$100,000 equity.

6 (7)(a) If, based on the accounting method used in its financial
7 statement, the certificate holder or applicant does not meet the requirements
8 of paragraph (6), the certificate holder or applicant may voluntarily submit
9 to the Commissioner additional evidence or enter into written agreements
10 intended to demonstrate the certificate holder's or applicant's ability to
11 meet the requirements of Ala. Code § 27-17A-11 (2014), and as a condition for
12 receiving and/or retaining a certificate of authority. Such additional
13 evidence or agreements may include any or all of the following as deemed
14 appropriate by the Commissioner:

15 1. Submission of monthly financial statements.

16 2. Submission of quarterly financial statements.

17 3. Appraisal of the certificate holder's or applicant's property
18 and/or a broker's opinion of the value of the certificate holder's or
19 applicant's assets.

20 4. A credit report on the certificate holder or applicant or its
21 principal owners (in the case of an entity).

22 5. An agreement to subordinate debt, on a form approved by the
23 Department, as to debts identified by the Department.

24 6. An indemnification/subrogation agreement binding the certificate
25 holder or applicant and its principal owners (in the case of an entity).

26 7. Written explanation of past financial activity.

1 8. Submission of a twelve month projected business plan which shall
2 include all of the following:

3 (i) Statement of cash flows.

4 (ii) Pro forma income statement with sources of revenue identified.

5 (iii) Marketing initiatives.

6 9. The certificate holder's or applicant's agreement to make deposits
7 to a merchandise and services trust and/or cemetery endowment care trust in
8 amounts and at times which exceed the requirements of the Act, or certificate
9 holder's or applicant's agreement to use life insurance or annuities as their
10 exclusive funding mechanism for preneed contracts.

11 10. Posting of a surety bond or letter of credit acceptable to the
12 Commissioner in addition to any surety bond or letter of credit provided to
13 comply with the Act's security requirements.

14 11. Such other conditions or agreements as the Commissioner may
15 determine are warranted under the particular circumstances.

16 (b) The Commissioner, in his discretion, may issue or renew a
17 certificate of authority if the Commissioner determines based on such
18 additional information or agreement(s) that the applicant or certificate
19 holder meets the requirements of Ala. Code § 27-17A-11 (2014), in which event
20 the certificate may be expressly conditioned on satisfactory continued
21 compliance with any and all terms or conditions set forth in any agreement(s)
22 entered into by the person or entity receiving the certificate.

23 (8) Upon receipt of a written request on a form or in a format
24 prescribed by the Commissioner, which must be received by the Department on
25 or before April 1 of each year, the Commissioner may exempt a certificate
26 holder from filing financial statements at renewal.

1 **Author:** Commissioner of Insurance
2 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
3 **History:** New _____; Effective January 1, 2015

4 **482-3-003-.11 Transfer of certificate of authority or branch registration.**

5 (1) A transaction which has the effect of transferring a certificate of
6 authority or branch registration must be authorized by the Commissioner prior
7 to the closing of the transaction. Without limitation, authorization is
8 required for the sale of a certificate of authority or branch registration,
9 the sale of a certificate holder's business or assets to the extent the
10 transaction includes transfer of the certificate of authority or branch
11 registration, and sale of all or a controlling interest in any business
12 entity certificate holder or branch registrant.

13 (2) Prior to the closing of the transaction which will give rise to a
14 transfer, the certificate holder shall give notice of the proposed
15 transaction in a form prescribed by the Commissioner and provide the
16 following to the Commissioner:

17 (a) A copy of any fully signed letter of intent with any exhibits,
18 attachments, or schedules referenced in the letter of intent.

19 (b) A copy of the fully signed purchase agreement or other form of
20 contract which describes the terms of the transaction which will result in a
21 transfer with any exhibits, attachments, or schedules referenced in the
22 agreement or contract. Any such purchase agreement or contract must be
23 conditioned upon approval of the Commissioner to the transfer and must
24 specifically address the parties' agreements concerning performance of
25 preneed contracts previously sold, but unperformed, by the certificate
26 holder. If the proposed transaction will result in a change of ownership of
27 the certificate holder, the agreement or contract must provide that preneed

1 contract holders will be notified in writing of the change of ownership
2 within ninety (90) days after the transfer is complete.

3 (c) If not otherwise addressed by the purchase agreement or contract,
4 evidence acceptable to the Commissioner that all required amounts have been
5 deposited in trust and that the certificate holder's interest in each trust
6 will be conveyed to the purchaser or transferee as part of the transaction
7 without a diminution or pay out of trust assets or gain on such assets to the
8 transferring certificate holder or another as part of the transaction.

9 (d) Any other documentation requested by the Department of the seller
10 or purchaser in order for the Commissioner to make a determination on the
11 proposed transfer.

12 (3) For sale or transfer of endowment care cemeteries, all payments
13 required to be paid to the endowment care trust fund must be paid to date.
14 The endowment care trust must continue to hold the trust funds after the sale
15 or transfer. No funds held by the endowment care trust may be withdrawn as a
16 result of a sale or transfer.

17 **Author:** Commissioner of Insurance
18 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
19 **History:** New _____; Effective January 1, 2015

20 **482-3-003-.12 Surrender of certificate of authority.**

21 (1) Surrender of a certificate of authority must be accepted by the
22 Commissioner to be effective.

23 (2) The certificate holder shall give prior notice of the surrender in
24 a form prescribed by the Commissioner and provide the following to the
25 Commissioner:

1 (a) Copies of the certificate holder's existing trust agreements if not
2 already on file with the Department.

3 (b) A sample copy of each form of preneed contract sold.

4 (c) The certificate holder's report of the status of all outstanding
5 preneed contracts sold current to the proposed time of the surrender.

6 (d) The trustee's report of the status of all trusts current to the
7 time of submission.

8 (e) The certificate of authority.

9 (3) Surrender shall not be authorized in the following events:

10 (a) Findings or violations identified in the immediately preceding
11 examination remain have not been resolved to the Commissioner's reasonable
12 satisfaction.

13 (b) Any previously-imposed fines, assessments, or examination expenses
14 remain unpaid in whole or in part.

15 **Author:** Commissioner of Insurance

16 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

17 **History:** New _____; Effective January 1, 2015

18 **482-3-003-.13 Effect of certificate surrender or other inactivity.**

19 (1) For purposes of this Rule, "inactivity" means surrender of a
20 certificate of authority, lapse of a certificate due to non-renewal, or
21 revocation of a certificate, and also includes assumed inactivity due to the
22 following circumstances:

23 (a) The certificate holder has ceased transacting business, either in
24 general, or with respect to the particular business that is the subject of
25 the certificate.

1 (b) The certificate holder has filed a petition for relief under
2 Chapter 7 of the United States Bankruptcy Code or a bankruptcy court with
3 jurisdiction has ordered relief according to said Chapter 7.

4 (c) If the certificate has been suspended, the holder has failed to
5 reinstate the certificate in the time set forth in the order of suspension
6 or, if not so addressed in the order, within six months after the date of the
7 order of suspension.

8 (2) In the event of inactivity, a certificate of authority shall be
9 canceled and of no further force and effect, and the certificate holder shall
10 cease all sales of preneed contracts and collection of payments for preneed
11 contracts. The certificate holder shall immediately collect and deposit in
12 trust that portion of funds paid toward preneed contracts sold before
13 inactivity which are to be trusted in accordance with the Act, including,
14 where applicable, contributions to a cemetery endowment care fund.

15 (3) In the event of inactivity, all existing trusts and, if applicable,
16 any cemetery endowment care fund shall be held intact and in trust, and shall
17 not be disbursed except as allowable under the Act.

18 **Author:** Commissioner of Insurance

19 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

20 **History:** New _____; Effective January 1, 2015

21 **482-3-003-.14 Preneed Sales Agents.**

22 (1) Each employee or agent selling preneed contracts or who execute
23 contracts on behalf of a certificate holder must be registered by that
24 certificate holder as a preneed sales agent (PSA). To sell preneed contracts,
25 every certificate holder must have at least one PSA registered. The fee for
26 issuing or renewing a certificate of authority does not include payment for any
27 PSA registrations.

1 (2) Application for registration shall be made on the form published on
2 the Department's website. Each PSA registration requires payment of a \$25
3 registration fee, which is to be paid with the initial registration and
4 annually thereafter. Each PSA registration must be renewed annually.

5 (3) A PSA registration is not active if the registrant is not affiliated
6 with any certificate holder.

7 (4) An individual may be registered as a preneed sales agent on behalf
8 of more than one certificate holder if the individual has received written
9 consent of all certificate holders. The consent must be filed with the
10 application for PSA registration.

11 (5) The certificate holder shall notify the Department within 30 days
12 after a registered PSA's affiliation with a certificate holder has terminated.

13 **Author:** Commissioner of Insurance

14 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

15 **History:** New _____; Effective January 1, 2015

16 **482-3-003-.15 Examinations, generally.**

17 (1) The Commissioner has the power to examine the books and records of
18 any certificate holder or endowment care cemetery operating in the State.
19 Examination authority extends to an endowment care cemetery irrespective of
20 whether the cemetery authority is also a preneed certificate holder.

21 (2) Prior to a routine examination, a questionnaire will be provided
22 for completion by an authorized representative of the certificate holder or
23 cemetery authority.

24 (3) Prior to a routine examination, the certificate holder or cemetery
25 authority will be issued a call letter given notice of the examination and
26 listing the types of records that must be made available during the

1 examination. Additional records or information may be requested during the
2 examination or at any time before or after the examination.

3 (4) Any forms, reports or other documentation in response to or part of
4 the examination, examination report, or subsequent corrective action report,
5 shall be signed by an authorized representative of the certificate holder or
6 cemetery authority.

7 (5) Upon conclusion of an examination, the certificate holder or
8 cemetery authority will be provided an examination report which specifies any
9 deficiencies or violations found by the examiner. The Department will
10 schedule an exit conference to review the examination report and any findings
11 either as part of the examination or at a later time.

12 (6) If the examination report specifies issues for correction, the
13 certificate holder or cemetery authority shall have twenty (20) days from the
14 date of the report within which to object or to respond with a corrective
15 action plan to resolve the issues identified in the report. Any objection to
16 the examination report must be in writing and specifically state the
17 objections the certificate holder or cemetery authority has to the findings
18 of the report. A corrective action plan must be in writing and be mutually
19 agreed to by the Department and the certificate holder or cemetery authority.
20 The failure of the preneed entity or endowment care cemetery to respond to
21 issues identified in the examination report shall cause suspension of the
22 certificate of authority until such time as an adequate response has
23 occurred.

24 **Author:** Commissioner of Insurance

25 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

26 **History:** New _____; Effective January 1, 2015

1 482-3-003-.16 Response to requests for information; effect of pending
2 administrative action.

3 (1) If records, information, and/or a response are requested in writing
4 of any applicant for or holder of a preneed certificate of authority by any
5 duly appointed employee, examiner, or agent of the Commissioner, the
6 requested records, information, or response shall be provided within ten (10)
7 business days of receipt of the request unless the request specifies another
8 time not less than ten (10) business days from receipt. A failure to timely
9 respond to a request shall be deemed a violation of this chapter unless the
10 Commissioner or the person making the request grants an extension in writing
11 or the applicant or certificate holder can demonstrate to the satisfaction of
12 the Commissioner that there is reasonable justification for failure to timely
13 respond.

14 (2) If the Department has notified an applicant for or holder of a
15 preneed certificate of authority of any administrative action, that action
16 must be addressed and/or resolved to the Commissioner's satisfaction before
17 the Department will:

18 (a) issue a certificate of authority or branch registration,

19 (b) renew a certificate or branch registration,

20 (c) approve a proposed transfer of a certificate or branch
21 registration, or

22 (d) enter an order of termination on an application for voluntary
23 surrender of a preneed certificate.

24 (3) For purposes of this Rule, "administrative action" includes:

25 (a) A pending administrative complaint alleging violation(s) of the Act
26 and/or violations of the Alabama Insurance Code in connection with activities

1 engaged in under or pursuant to a certificate of authority or without a
2 certificate of authority in violation of the Act.

3 (b) Failure to comply with requirements imposed in a prior settlement
4 agreement, consent order, or final adjudicated order in an administrative
5 complaint proceeding or court action.

6 (c) A preneed examination which has identified issues to be addressed
7 in order to bring the certificate holder into compliance with the Act and
8 subsequent regulation.

9 (d) Payment of or compliance with a payment arrangement for all
10 examination invoices and/or amounts otherwise imposed by prior settlement
11 agreement, consent order, or final adjudicated order in or in lieu of an
12 administrative complaint proceeding, to include, where applicable, deposits
13 in a merchandise and services trust and/or cemetery endowment care trust.

14 **Author:** Commissioner of Insurance

15 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)

16 **History:** New _____; Effective January 1, 2015

17 **482-3-003-.17 Severability and Effective Date.**

18 (1) The provisions of this Chapter are severable. If any portion of this
19 Chapter or the application of a provision to any person or circumstance is held
20 invalid, the remainder of this Chapter, or the application of the provision to
21 a person or persons or circumstances other than those to which it is held
22 invalid, shall not be affected.

23 (2) This Chapter shall be effective January 1, 2015, upon its approval by
24 the Commissioner of Insurance and upon its having been on file as a public
25 document in the office of the Secretary of State for ten days.

- 1 **Author:** Commissioner of Insurance
- 2 **Statutory Authority:** Ala. Code §§ 27-2-17, 27-17A-1 to -57 (2014)
- 3 **History:** New _____; Effective January 1, 2015