

# WEST VIRGINIA CODE: §9-5-9

## §9-5-9. Direct cremation or direct burial expenses for indigent persons.

(a) For the purposes of this section:

"Direct burial" means the removal of the remains from the place of death; casket for the deceased and transportation to a West Virginia cemetery.

"Direct cremation" includes the removal of the remains from the place of death; container; and crematory fees.

"Spouse" means the person to whom the decedent was legally married and who survived the decedent: *Provided*, That a petition for divorce had not been filed by either the decedent or the spouse prior to the decedent's death.

(b) The Department of Health shall pay for direct cremation or direct burial for indigent persons in an amount not to exceed the actual cost of the direct cremation or direct burial service provided, or \$1,000 whichever is less.

(c) Prior to paying for direct cremation or direct burial, the department shall determine the financial assets of a deceased person and whether or not the deceased's estate or any of his or her relatives who are liable for the direct cremation or direct burial expenses pursuant to subsection (d) of this section is financially able to pay, alone or in conjunction, for the direct cremation or direct burial expenses. The department shall require that an affidavit be filed with the department, in a form provided by and determined in accordance with the income guidelines as set forth by the department, as well as any other supporting financial information the department may require, including, but not limited to, bank statements and income tax information of the deceased person and the relatives of the deceased person who are liable for the direct cremation or direct burial expenses pursuant to section nine of this article. The affidavit must be:

(1) Signed by the heir or heirs-at-law and state that the estate of the deceased person is unable to pay the costs associated with direct cremation or direct burial and that the sole or combined assets of the heir or heirs-at-law are not sufficient to pay for the direct cremation or direct burial of the deceased person; or

(2) Signed by the county coroner or the county health officer, the attending physician or other person signing the death certificate or the state medical examiner stating that the deceased person has no heirs or that heirs have not been located after a reasonable search and that the deceased person had no estate or the estate is pecuniarily unable to pay the costs associated with direct cremation or direct burial.

(d) The relatives of an indigent person, who are of sufficient ability, shall be liable to pay the

direct cremation or direct burial expenses in the following order:

- (1) The spouse.
  - (2) The children.
  - (3) The parents.
  - (4) The brothers and sisters.
- (e) The department may proceed by motion in the circuit court of the county in which the indigent person may be, against one or more of the relatives liable.
- (f) If a relative so liable does not reside in this state and has no estate or debts due him or her within the state by means of which the liability can be enforced against him or her, the other relatives shall be liable as provided by this section.
- (g) The liability of the relative of an indigent person for funeral service expenses is limited to the amount paid by the department.
- (h) Payment for direct burials or direct cremations for indigents shall be made by the department to the West Virginia funeral director licensed pursuant to §30-6-9 of this code or a crematory operator certificated pursuant to §30-6-11 of this code that provided the direct burial or direct cremation, as the department may determine, pursuant to appropriations for expenditures made by the Legislature. Nothing in this section shall prohibit a family from holding a memorial service for the indigent person: *Provided*, That payment under this section is limited to direct burial and direct cremation and may not include payment for a memorial service.
- (i) In the event that no family members can be found, or refuse to participate, an application for payment of direct cremation or direct burial for indigent persons may be submitted to the department by the provider of such services.
- (j) A direct cremation may not be made of the decedent if objectionable pursuant to decedent's religion or otherwise prohibited by federal law, state law or regulation, in which case, alternate funeral service expenses shall be substituted. In the absence of a religious objection or prohibition by federal law, state law or regulation, an indigent for which payment under this section is authorized shall be cremated.
- (k) A person who knowingly swears falsely in an affidavit required by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than six months, or both fined and confined.