


# The FTC’s Proposed Regulation of Junk Fees and The Effects on The Funeral Profession

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Over the last few years, consumers and the federal government have grown critical of “junk fees” in a variety of industries and professions. As a result, the Federal Trade Commission is promulgating new regulations designed to address junk fees. The funeral industry is wary of the FTC’s efforts here, and rightly so, which seem to go hand in hand, philosophically, with the potential revisions to the long-established Funeral Rule. Our office has been monitoring the discussion on junk fees and reviewing the proposed text of the regulations with an eye toward impact on the funeral industry.

Junk fees are defined as mandatory fees which are omitted from advertised prices by businesses. All businesses will be subject to these regulations, if they become effective. The Federal Trade Commission describes two practices which result in junk fees, both of which will be limited by these new regulations. First, practices which “misrepresent the total costs [of

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A bait-and-switch fee occurs when a business advertises a lower total price for goods or services by failing to disclose mandatory fees which inflate the actual price. This sounds quite similar to the descriptions of direct cremation sales by certain consumer groups during last Fall's FTC Funeral Rule panels in D.C. They argued that funeral homes advertise a specific price for cremation only for the consumer to be notified of the crematory fee much later in the transaction; think "\$695 Direct Cremation billboard" with no mention of the mandatory \$300 crematory fee. Some are going so far as to call the practice a bait-and-switch.

The Federal Trade Commission is seeking to ban bait-and-switch fees by requiring the disclosure of the *Total Price* of goods and services. Total Price is defined as "the *maximum* total for all fees or charges a consumer must pay for a good or service AND any mandatory ancillary good or service." Ancillary goods or services are any additional goods or services offered to a consumer as part of that same transaction, *even if provided by a third party* – yikes! Shipping charges and government charges, such as tax, are excluded from the definition of junk fees.

The Junk Fees regulations require that businesses disclose the maximum total for a package, including the price of all merchandise, services, and *other fees*. While the funeral industry validly argues, in the context of potential Funeral Rule revisions, that it should not be responsible for keeping up with and publishing the prices of third parties over which it has no control, it seems that the Junk Fees regulation, if/when it comes into existence may mandate third-party fee disclosures -without even requiring a change to the Funeral Rule.

The prohibition on the second type of fees, obfuscating fees, should change less for deathcare industry members, though it could have an impact, particularly on cemeteries. Obfuscating fees are fees which mislead the consumer about the nature and/or purpose of the fee. As an example, obfuscating fees include fees which represent they are non-refundable when actually refundable; business fees which resemble a mandatory government fee, or; advertisements showing a good or service as free when a fee is charged for them within another item. Among the impacted would be "free space" promotions run by cemeteries.

The Federal Trade Commission's proposed obfuscating fee regulations would require that a business clearly and conspicuously disclose the nature and purpose of any amount that a consumer may pay which is excluded from the Total Price prior to the consumer agreeing to pay. This obligation would apply to shipping charges, government charges (taxes and other mandatory fees charged by local, state, federal, or foreign governments), optional fees, voluntary gratuities, and invitations to tip, though the first three are the most applicable to the funeral industry.

Something hopeful, though; there is a potential carve out which will exclude certain types of transactions from the Junk Fees regulations. The funeral profession will be well-served to lobby for an exclusion from the Junk Fees rule given the heavy-handed Funeral Rule already in place, not to mention the anticipated changes to the Funeral Rule intended to address the very types of ills that the proposed Junk Fees rule seeks to stamp out.

Reduced to essentials, it seems the FTC looks to mandate that funeral homes disclose third-party fees one way or another, either through the Junk Fees regulation or through revisions to the Funeral Rule. We will continue to keep up with and keep you updated on the FTC's efforts and their impacts.



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