



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*  
DATE: March 18, 2020  
RE: Children's Burial Fund Amendments: Public Meeting Comment Review

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On February 13, 2020, a public meeting was held regarding the proposed amendments to the Children's Burial Fund Policy ("the Law"). The public comment period was then held open until February 20, 2020. On March 4, 2020, the Legislative Operating Committee reviewed and considered all public comments that were received. This memorandum is submitted as the Legislative Operating Committee's review of the oral and written comments received during the public meeting and public comment period.

#### **Comment 1 – Qualifications for Financial Assistance from the Fund:**

##### **129.4. Qualifications for Financial Assistance**

**129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:**

- (a) six (6) years of age or younger;**
- (b) not enrolled with the Nation; and**
- (c) eligible for enrollment with the Nation.**

**Ralinda Ninham-Lamberies (oral):** Also, I didn't notice anything in the law that would prohibit an individual from collecting funds from multiple tribes if they're eligible to be enrolled in more than one tribe. And I am not sure that would be something that would be intended in the law. Thank you.

##### ***Response***

The commenter provides that she did not see anything in the Law that would prevent an individual from collecting burial funds from more than one tribe if the deceased child is eligible to be enrolled in more than one tribe and questioned whether the Law should address this issue.

The Law determines qualification for financial assistance from the Children's Burial Fund based on the deceased child meeting the following criteria:

- The deceased child is six (6) years of age or younger;
- The deceased child is not enrolled with the Nation; and
- The deceased child is eligible for enrollment with the Nation.

*[I O.C. 129.4-1].*

The Law does not base qualifying for assistance from the Children's Burial Fund on whether the deceased child is eligible to receive, or has received, burial assistance from another tribe. This Law aims to assure a dignified approach to the final needs of members of the Nation and their families

by providing financial assistance towards the funeral costs of children of a certain age who are not enrolled but are eligible for enrollment in the Nation. [1 O.C. 129.1-1, 129.1-2]. This is accomplished through the qualification measures of section 129.4-1.

Additionally, if the Law required that the family of a deceased child not receive financial assistance from the Nation's Children's Burial Fund if the deceased child was eligible for enrollment in a tribe which offered financial assistance for the burial of a child, and the family then accepted financial assistance from the other tribe, then this would increase the administrative efforts of the Oneida Trust Enrollment Department. The Oneida Trust Enrollment Department would then have to verify if the deceased child is eligible for enrollment in a different tribe and if that tribe provided the family financial assistance for the burial of the child before determining the eligibility of the child to receive financial assistance from the Nation's Children's Burial Fund. Many of the amendments that were sought to the Law were an effort to make the administration of the Children's Burial Fund efficient for all those involved.

Since the Law does not intend to qualify assistance from the Children's Burial Fund on whether the deceased child is eligible to receive, or has received, burial assistance from another tribe, there is no revision recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that the Law should be revised to clarify that even if a deceased child meets the qualifications in section 129.4-1, the child shall not be eligible for assistance from the Nation's Children's Burial Fund if the child is enrolled in another tribe.

The Legislative Operating Committee understands handling the death of a child is a sensitive matter, and that the overall goal of this Law is to assure a dignified approach to the final needs of members of the Nation and their families by providing financial assistance towards the funeral costs of children of a certain age who are not enrolled but are eligible for enrollment in the Nation. [1 O.C. 129.1-1, 129.1-2]. Although the Legislative Operating Committee wants the Children's Burial Fund to be available to the most Oneida families, the Legislative Operating Committee believes that the Fund should only be available to the families of those deceased children who have not been enrolled in another tribe. The Legislative Operating Committee believes that if the deceased child was enrolled in another tribe then the family of that child should be ineligible from receiving assistance from the Children's Burial Fund. The Legislative Operating Committee determined that the purpose of this Law is really to provide financial assistance to those families of deceased children who would have likely been enrolled with the Nation at some point, but it had just not occurred before the child passed away.

The Legislative Operating Committee determined the following revision should be made to the Law based on this comment:

### **129.4. Qualifications for Financial Assistance**

129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:

- (a) six (6) years of age or younger;

- (b) not enrolled with the Nation; ~~and~~
- (c) eligible for enrollment with the Nation; and
- (d) not enrolled with any other tribe.

## Comments 2 through 3 – Required Documentation:

### 129.5. Requesting Financial Assistance

**129.5-3. Upon making a request for financial assistance from the Children’s Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:**

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; and
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

**Keith Doxtator (written):** The Oneida Trust Enrollment Committee (OTEC) motioned at their January 28, 2020 Regular meeting to have the following amendments submitted for the Children's Burial Fund amendments public meeting February 13, 2020.

Section 129.5-3 : Add sub-section (d) Other relevant documentation to support eligibility of enrollment. (For example: the Trust Enrollment Department generally requests for a parent Birth Certificate in order to establish the link of Oneida descent, when the parent( s) are not enrolled with the Nation).

**Keith Doxtator (oral):** Good morning. The Trust Enrollment Committee discussed this at the last monthly meeting. I have a memo here summarizing the four amendments they would like to propose. May I simply hand this over?

*[Jennifer Webster: Do you want to read it into the record?]*

Their four proposed amendments would be Section 129.5-3, to add a subsection (d) Other relevant documentation to support eligibility of enrollment. For example: if a parent is not enrolled for them to also provide their birth certificate to help establish that link in the enrollment record.

### **Response**

The commenter requests that another subsection be added to section 129.5-3 of the Law that addresses other documentation that may be needed by the Oneida Trust Enrollment Department to make a determination as to if the deceased child is eligible for the Children’s Burial Fund.

The Law provides that upon making a request for financial assistance from the Children’s Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- All original invoices;
- Birth certificate, death certificate, or fetal death report; and
- voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined. *[1 O.C. 129.5-3(a)-(c)].*

There may be situations that arise where the Oneida Trust Enrollment Department needs to request more documentation to support the eligibility of enrollment of the deceased child. In an effort to provide the greatest flexibility, the following recommendation is made based on this comment:

#### **129.5. Requesting Financial Assistance**

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; ~~and~~
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined; ~~and~~
- (d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

#### ***LOC Consideration***

The Legislative Operating Committee determined that the Law should be revised to allow the greatest flexibility in requesting documentation to support the eligibility of enrollment of the deceased child. The Legislative Operating Committee directed the following revision be made to the Law based on these comments:

#### **129.5. Requesting Financial Assistance**

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; ~~and~~
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined; ~~and~~
- (d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

#### **Comment 4 – Clarification on Fetal Death Reports and Stillborn Information:**

#### **129.3. Definitions**

129.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Fetal death report" means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.
- (c) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

#### **129.5. Requesting Financial Assistance**

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; and
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

**Lori Elm (written):** Clarification on Fetal death report and stillbirths information. I found this in Wisconsin State Legislature Chapter 69 Collection of statistic, Subchapter 1, Vital Statistics. I work with the Cemetery for Oneida and we request a Final Disposition for burials. We have run into a few that do not have them because they are stillbirths. According to the wording below it gives more specific information as a guideline.

- (e) a death is a miscarriage and 20 weeks or more have elapsed between the mother's last normal menstrual period and delivery or the stillbirth weighs 350 grams or more, one of the following shall submit, within 5 days after delivery, a fetal death report to the state registrar:  
the miscarriage occurs at or on route to a hospital, the individual who manages the hospital or the hospital's medical records.  
the miscarriage does not occur at or on route to a hospital, the funeral director or other person authorized by at least one parent of the stillbirth.
- 18(1)(e)2.2. Except as provided under subd. 1., no fetal death report is required.

### **Response**

The commenter provides an excerpt of Wisconsin law, and states that she is providing this information as clarification on fetal death reports and stillbirth information. Additionally, the commenter states that while working for the cemetery for the Nation there have been issues with individuals not having a Final Disposition due to stillbirths.

The Law provides that when making a request for financial assistance from the Children's Burial Fund an individual shall provide the following documentation to the Oneida Trust Enrollment Department:

- all original invoices;
  - birth certificate, death certificate, or fetal death report; and
  - voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.
- [ 1 O.C. 129.5-3(a)-(c)].

The Law defines a "fetal death report" as the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths. [1 O.C. 129.3-1(a)]. The Law further defines a "stillbirth" as a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles. [1 O.C. 129.3-1(c)].

The excerpt from Wisconsin law provides who is responsible for registering the death of the stillbirth, and states that in some circumstances no fetal death report is required. [Wis. Stat.



§69.18(1)(e)]. The Wisconsin requirements for registering a death do not necessarily have to be the same as the Nation's requirements for requesting financial assistance from the Children's Burial Fund. An individual will have to provide a birth certificate, death certificate, or fetal death report in order to request financial assistance from the Children's Burial Fund. [ 1 O.C. 129.5-3(b)].

There is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment.

### **Comments 5 through 7 – Funeral Related Expenses:**

#### **129.6. Use of Funds**

##### **129.6-2. The following funeral related expenses are payable if identified on an invoice:**

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;
- (c) cemetery costs;
- (d) church costs; and/or
- (e) food costs.

**Keith Doxtator (written):** Section 129.6-2: This section lists specific "funeral related expenses". Not listed is funeral home costs. Funeral home costs should be added as subsection (f) or the first in the list. Maybe it's being assumed, but since expenses are being listed, funeral homes should be included with all the others.

**Keith Doxtator (oral):** Number two is Section 129.6-2 and this would be to add funeral related expenses, I'm sorry. Under the funeral related expenses to add the funeral home costs itself. You did a good job detailing out some other sub-costs, I thought that was the one, big one, that should get noticed.

**Julie Denny (oral):** I kind of concur with what Keith said in reviewing his memo. Okay, I recommend leaving 129-6-1, leaving it for the use of funds after thirty-five thousand (\$35,000) but I would like to see 129-6-2 just totally eliminated and that might cover what Keith just said as leaving it as funeral expenses, because in reviewing a bill from a two (2) year old that was enrolled, which obviously was covered by the OLIPP, that billing of a two (2) year old and if we have somebody that falls under the Children's Burial Fund that's not enrolled or not covered by the OLIPP now has to go with the thirty-five hundred (\$3,500). We're limiting what we can, they can do for funeral expenses with a lot of the incidentals such as people want to pay out clergy, they want to give something, honorariums to a drum group, the Oneida Singers, you know that doesn't, we're limiting what we could, so if we could just leave it at whatever is on that funeral bill and funeral related, so we can include those incidentals that normally would come with, like I said, with a two (2) year old here that was enrolled and all her expenses were covered and we should do

the same for those that fall under the thirty-five hundred (\$3,500) Children's Burial Fund. So right now we're limiting what families can get. So, if you just open it up to funeral regulated expenses.

### **Response**

The first commenter provides that although section 129.6-2 lists the specific funeral home related expenses that are eligible to be paid for by the Fund if identified on the invoice, it does not include general funeral home costs.

The second commenter provides we should not identify specific related expenses that the Fund can be used for, and instead just generally state that the Fund should be used for funeral related expenses in an effort to allow for more flexibility in how the families use the Fund.

The Law provides that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice. [1 O.C. 129.6-2(a)-(e)].

What funeral related expenses to allow to be paid by the Fund if identified on an invoice is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee will have to balance the need to provide families necessary flexibility in the utilization of the Fund with the need to provide specific direction as to what expenditures the Fund is authorized to be used on. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and identify that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice.
2. The Law should be amended so that general costs associated with a funeral home are payable if identified on an invoice in addition to the other costs identified in section 129.6-2. If the Legislative Operating Committee makes this determination then the following revision is recommended:

#### **129.6. Use of Funds**

129.6-2. The following funeral related expenses are payable if identified on an invoice:

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;
- (c) cemetery costs;
- (d) church costs; ~~and/or~~
- (e) food costs; ~~and/or~~
- (f) funeral home costs.

3. The Law should be amended so that it just provides that funeral related costs shall be payable if identified on an invoice, and not provide specific costs that are allowed in an effort to provide the most flexibility to the families in how they use the fund. If the Legislative Operating Committee makes this determination then the following revision is recommended:

#### **129.6. Use of Funds**

129.6-2. ~~The following funeral related expenses are payable if identified on an invoice:~~  
Funeral related expenses may include, but are not limited to:

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;

- (c) cemetery costs;
- (d) church costs; and/or
- (e) food costs.

### ***LOC Consideration***

The Legislative Operating Committee determined that the Law should be amended so that it just provides that funeral related costs shall be payable if identified on an invoice, and not provide specific costs that are allowed. The Legislative Operating Committee wants to ensure that the most flexibility is provided to the families in how they use the fund for funeral costs. The Legislative Operating Committee directed the following revision be made to the Law based on this comment:

#### **129.6. Use of Funds**

129.6-2. ~~The following funeral~~ Funeral related expenses are payable if identified on an invoice: ~~Funeral related expenses may include, but are not limited to:~~

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;
- (c) cemetery costs;
- (d) church costs; and/or
- (e) food costs.

### **Comment 8 – Funeral Related Expenses:**

#### **129.6. Use of Funds**

**129.6-2. The following funeral related expenses are payable if identified on an invoice:**

- (a) monument and/or headstone costs;**
- (b) casket or coffin costs;**
- (c) cemetery costs;**
- (d) church costs; and/or**
- (e) food costs.**

**Lori Elm (written):** Also, the section about food and vendors, majority of the time, I helped with funerals, the funeral home does all of this, and it is locked into their pricing.

### ***Response***

The commenter provides that she is familiar with funerals and often times the funeral home includes the costs of other aspects of a funeral like food costs into their pricing.

The Law provides that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice. [1 O.C. 129.6-2(a)-(e)]. Although some of the costs identified in section 129.6-2(a)-(e) may be included on the invoice for the general cost of utilizing a funeral home, the Law provides a family with the flexibility of utilizing a vendor for those goods and/or services outside of a funeral home if desired.

There is no revision to the Law recommended based on this comment.



### ***LOC Consideration***

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment as the Law provides that funeral related costs are payable if identified on an invoice.

#### **Comments 9 through 10 – Drafting of Section 129.6-4:**

### **129.6. Use of Funds**

**129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund for other burials.**

**Keith Doxtator (written):** Section 129.6-4: The line reads "Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials. It's recommended the sentence should end after the word "Fund".

**Keith Doxtator (oral):** Number three, Section 129.6-4, the line reads “Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund for other burials.” The Committee wants to recommend the sentence should end after the word “Fund.”

### ***Response***

The commenter requests that section 129.6-4 be revised to remove “for other burials” from the end of the sentence.

The Legislative Operating Committee may determine whether section 129.6-4 should be revised to eliminate “for other burials” from the end of the sentence. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and provide that “*Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials.*”
2. The Law should be revised to remove “for other burials” from the end of the sentence in section 129.6-4. If the Legislative Operating Committee makes this determination then the following revision is recommended:

### **129.6. Use of Funds**

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund ~~for other burials~~.

### ***LOC Consideration***

The Legislative Operating Committee determined the Law should be revised to remove “for other burials” from the end of the sentence in section 129.6-4. The Legislative Operating Committee directed the following revision be made to the Law based on this comment:

## **129.6. Use of Funds**

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund ~~for other burials~~.

### **Comment 11 – Unexpended Monies from the Fund:**

## **129.6. Use of Funds**

**129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund for other burials.**

**Ralinda Ninham-Lamberies (oral):** Good afternoon, Ralinda Ninham-Lamberies. I am not sure that 129 point, I'm sorry, wait, 129.6-4 is necessary in the law. I believe it maybe was necessary prior to OLIPP, but there isn't a budget allocation for these types of funeral costs, so there, because there is no allocation, there would be nothing to remain, so I am not, I'm not sure that that is necessary.

### ***Response***

The commenter provides that section 129.6-4 of the Law may not be necessary since there isn't a budget allocation for these types of funeral costs so nothing would remain.

The Law provides that any unexpended monies after payments have been made shall remain in the Children's Burial Fund for the use of other burials. [1 O.C. 129.6-4]. Without more information provided by the commenter on how the Children's Burial Fund is budgeted and maintained, a response as to whether this section is necessary based on budget allocation is unavailable. This section is still useful for the reader of the Law because it provides that if the full three thousand five hundred dollars (\$3,500) is not utilized by a family for the funeral costs, then the unexpended monies are placed back into the Children's Burial Fund to be used for the burials of other children, meaning that the unexpended monies are not refunded to the families who sought financial assistance for the burial. This provides notice to the families that request financial assistance from the Children's Burial Fund so they have a better understanding of how its used.

There is no revision to the Law recommended based on this comment.

### ***LOC Consideration***

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment.

### **Comments 12 through 13 – Appeals to the Oneida Trust Enrollment Committee:**

**Keith Doxtator (written):** Add an Appeal Section (129.6-6) : It should identify the OTEC as the body which appeals shall be submitted to. The OTEC is the final hearing body which hears all appeals relating to enrollment matters (including denials). The OTEC already has an approved Appeals Standard Operating Procedure

**Keith Doxtator (oral):** And finally, number four, to add a sixth dash to that 129.6 section which identifies the Trust Enrollment Committee as the body which appeals shall be submitted to.

### ***Response***

The commenter requests that an additional section be added to the Law that identifies that appeals under this Law shall be submitted to the Oneida Trust Enrollment Committee. The commenter provides that the Oneida Trust Enrollment Committee is the final hearing body for all matters related to enrollment.

Currently, the Law does not address whether appeals are allowed, and whom the appeals would be made to. The Legislative Operating Committee will have to determine if the Law should allow for appeals of decisions of the Oneida Trust Enrollment Department to be made to the Oneida Trust Enrollment Committee. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as drafted and not address appeals of the Oneida Trust Enrollment Department's decision.
2. The Law should be revised to provide that appeals of the Oneida Trust Enrollment Department's decision should be made to the Oneida Trust Enrollment Committee. If the Legislative Operating Committee makes this determination then the following revision is recommended:

#### **129.7. Appeals**

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department's decision as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) calendar days of receipt of the decision.

### ***LOC Consideration***

The Legislative Operating Committee determined that the Law should be revised to provide that appeals of the Oneida Trust Enrollment Department's decision should be made to the Oneida Trust Enrollment Committee. The Legislative Operating Committee directed that the following revision be made to the Law based on this comment:

#### **129.7. Appeals**

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department's decision as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.