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DEATH SERVICES

State Regulation of the Death Care Industry Varies and Officials Have Mixed Views on Need for Further Federal Involvement

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Highlights of [GAO-12-65](#), a report to congressional requesters.

Why GAO Did This Study

Media reports have identified instances of desecration of graves and human remains at cemeteries, and in one instance, reported that bodies were removed from graves and the sites resold. Allegations have also surfaced about the mismanagement of pre-need funeral plans that are designed to provide consumers the opportunity to fund funeral and cemetery arrangements before they are needed. The FTC's Funeral Rule requires that, among other things, funeral providers give consumers lists that disclose the cost of funeral goods and services before they enter into funeral transactions. Proposed legislation introduced in March 2011 would increase the federal government's role in regulating the industry by, among other things, requiring that the FTC regulate aspects of cemetery operations. GAO was asked to review the regulation of the death care industry. This report discusses (1) how federal and state governments regulate the industry and how regulation has changed since 2003 and (2) state regulators' views on the need for additional regulation.

GAO reviewed FTC's Funeral Rule and interviewed officials representing the FTC and national industry and consumer associations; surveyed state officials to gather data on state regulation of the death care industry; and, where possible, compared the results of the 2011 surveys with those of similar surveys GAO conducted in 2003. The response rate for our 2011 surveys ranged from 78 to 84 percent. GAO also reviewed laws and regulations. GAO is not making any recommendations in this report.

View [GAO-12-65](#) or key components. For more information, contact William O. Jenkins, Jr. at (202) 512-8777 or jenkinswo@gao.gov. To view the e-supplement online, click on [GAO-12-91SP](#).

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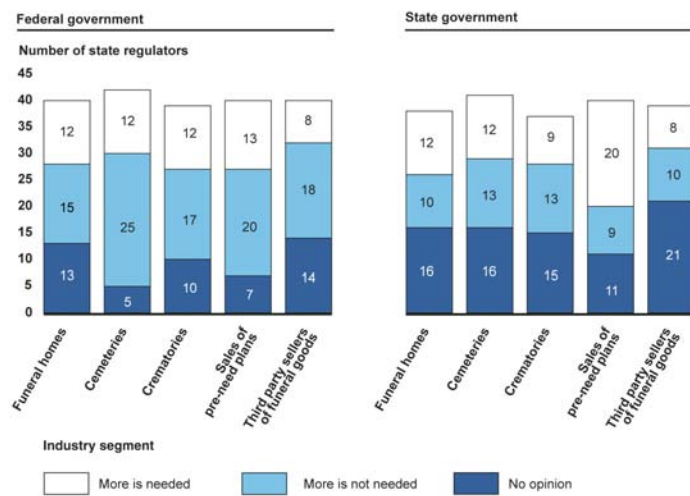
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What GAO Found

The extent to which the federal and state governments regulate the death care industry—funeral homes, cemeteries, crematories, pre-need funeral plans, and third party sales of funeral goods—varies, as does the extent to which regulation has changed since GAO last reported on the regulation of the death care industry in 2003. The Federal Trade Commission (FTC) continues to annually conduct undercover shopping at various funeral homes to test compliance with the Funeral Rule. Of the over 2,400 funeral homes that the FTC shopped since 1996, the FTC reported an overall compliance rate of about 85 percent. With respect to state regulation, consistent with GAO's findings in 2003, the way in which states regulate the industry varies across industry segments and states. Also, the extent to which state regulators reported that they had specific rules or regulations for each industry segment in both 2003 and 2011 varied. Most consistent across states in both years was reporting that there were specific rules or regulations for funeral homes (94 and 95 percent in 2003 and 2011, respectively). In contrast, 77 percent of state regulators of cemeteries reported that their states had specific rules or regulations for cemeteries in 2003, and 88 percent reported this in 2011. Certain state regulators also reported that their states made various statutory or regulatory changes since 2003, primarily to clarify legislation or regulation or to enhance consumer protections, and that they believe these changes strengthened their regulatory program to varying degrees. State regulators reported that these changes came about for a variety of reasons, including accounts of desecration of human remains or proposals from state agencies and industry groups.

State regulators' views on the need for additional federal and state regulation of the industry varied, as shown in the figure below.

State Regulators' Views on the Need for the Federal and State Governments to Take a More Active Role in Regulating the Death Care Industry, as Reported in 2011



Source: GAO surveys of state regulators.

The FTC provided technical comments, which GAO incorporated where appropriate.

Appendix IV: Illinois's Regulation of the Death Care Industry

Regulatory Structure

In Illinois, two state entities directly regulate the death care industry. Some regulatory responsibilities may transition between the two entities under legislative changes that are being made.

- The Illinois Department of Financial and Professional Regulation has regulatory responsibility for funeral directors, embalmers, and cemetery operators. The department has eight total staff and three investigators. Depending upon how the recently enacted Cemetery Oversight Act is ultimately implemented, additional staff may be added to help with the oversight of cemetery operators. Staff have responsibilities other than dealing with death care-related matters. In addition, two boards within the also assist with regulation. The Funeral Directors and Embalmers Licensing and Disciplinary Board provides advice and recommendations to the department staff upon request regarding rulemaking and disciplinary decisions. The board is made up of seven members appointed by the Secretary—this should include six licensed funeral directors and embalmers, and one public member. The Cemetery Oversight Board consists of the Secretary of the Illinois Department of Financial and Professional Regulation, who serves as chairperson, and eight members appointed by the Secretary; the eight members must include five members who represent segments of the cemetery industry, two members who represent consumer interests, and one member who represents the interests of the general public.
- The Illinois Office of the Comptroller regulates sales of pre-need plans and crematory operators. The office is authorized 10 staff positions and 10 field auditor positions.

According to the state regulator who responded to our survey on the third party sellers of funeral goods, there are no rules or regulations specific to third party sellers of funeral goods in Illinois.

Requirements and Enforcement Mechanisms

Funeral Homes, Funeral Directors, and Embalmers

Licensing requirements. Funeral homes are not regulated, but funeral directors and embalmers are required to be licensed to operate in the state. This was also the case in 2003 when we surveyed the Illinois state regulator. Illinois offers a joint license for funeral directors and

embalmers. Prospective licensees are required to, among other things, (1) pay an application fee, (2) be at least 18 years of age, (3) complete an internship of at least 1 year under a licensed funeral director or embalmer, (4) pass the requisite exam, (5) complete 30 semester hours of college credit, and (6) have an associate's or baccalaureate degree in mortuary science from an approved program of mortuary science or an equivalent associate's degree. Funeral directors and embalmers must renew their joint license every 2 years as well as complete 24 hours of continuing education within a 24-month period. In June 2011, Illinois Department of Financial and Professional Regulation officials reported that there were 2,794 funeral directors and embalmers licensed in Illinois.¹

Inspection and audit requirements. The Illinois Department of Financial and Professional Regulation has the authority to conduct inspections and audits. According to department officials, the department has audited funeral homes in the past but has not done so recently because of resource constraints. During these prior audits, officials stated that they would contact staff at a sample of funeral homes and ask them to produce certain information, such as continuing education records, and in some cases, officials visited funeral homes in person.

Consumer complaints and violations. Consumer complaints regarding funeral homes and funeral directors are collected by various entities in Illinois.

- According to the 2009 Cemetery Oversight Task Force report, the Illinois Attorney General receives about 70 complaints each year for cemeteries, funeral homes, and monument companies.² According to the Attorney General, complaints against funeral homes were often based on the failure of the funeral homes to provide promised services, the quality of the products or services, or confusion about the cost of services.

¹ In addition to the joint licensees, officials reported that there were 142 licensed interns and 89 funeral director licensees—the latter of which were issued prior to the state offering the joint license.

² In 2008, the Illinois Attorney General received a total of 33,335 consumer complaints.

- An official from one industry association stated that it receives about one to two complaints each week. According to this association, it will attempt to resolve the matter if it involves one of its members, and about 75 percent of the time the association is able to do so. Most complaints the association receives are related to a consumer who is unhappy with a service received from a funeral director, but on occasion the association will also get complaints in which consumers claim that they paid for something but did not receive it.
- Another industry association reported that from January 2002 to June 2011 it had received 305 complaints or inquiries regarding the industry. Complaints consisted of concerns about maintenance, contractual obligations, customer service, business conduct, and general questions. According to officials, the association will intervene on behalf of the consumer regarding complaints against the industry and attempt to resolve these issues.

From January 2011 to June 2011, the Illinois Department of Financial and Professional Regulation took disciplinary actions against 11 different funeral directors or embalmers. Specifically, the department took action on 4 of these licensees because they defaulted on an educational loan or did not pay their state taxes, issued cease and desist orders against two funeral directors who were unlicensed, and reprimanded and fined another for failure to implement sufficient protocols to prevent misidentification of cremated human remains. For the remaining 4, the Illinois Department of Financial and Professional Regulation either placed them on probation or revoked their licenses for actions that included violation of regulations, unprofessional conduct, or untrustworthiness.

Cemeteries and Cemetery Operators

Licensing requirements. Licensing requirements for cemetery operators have changed since we surveyed state regulators in 2003. According to officials representing the Illinois Office of Financial and Professional Regulation, in 2003, cemetery operators had to be audited if their cemetery had a care fund of more than \$250,000, and licensed if they were selling pre-need plans and were not exempt.³ This requirement

³ According to the state regulator who responded to our survey in 2003, the types of cemeteries that were exempt from regulation at the time included fraternal, municipal, state, federal, religious, and family cemeteries. Regardless of whether a cemetery maintains a care fund or sells pre-need plans, every cemetery is required to register with the Illinois Office of the Comptroller.

remained the same until passage of the Cemetery Oversight Act in 2010, which requires cemetery operators and customer service personnel to be licensed to operate in the state. However, according to officials from the Illinois Department of Financial and Professional Regulation, since rules implementing applicable provisions of the act have not been approved as of November 2011 and because trailer bills are being discussed that would change the act, not all requirements under the act have been implemented. As presently enacted, the act exempts or partially exempts some cemeteries from its requirements.

- Cemetery operators of family burial grounds; cemetery operators that have not engaged in any interments, inurnments, or entombments in the last 10 years and do not accept or maintain care funds; and cemeteries that are smaller than 2 acres and that do not accept or maintain care funds are fully exempt from requirements of the act.
- Cemetery operators of public cemeteries, religious cemeteries, and cemeteries with 25 or fewer interments, inurnments, or entombments in the prior 2 years that do not accept or maintain care funds may apply for partial exemption from requirements of the act.⁴

Under the act, to become a cemetery operator (referred to as a cemetery authority in the act), prospective licensees must, among other things, (1) pay an application fee, (2) establish that he or she is of good moral character, and (3) provide evidence that the applicant has financial resources to comply with maintenance and record-keeping provisions of the act. Prospective licensees for positions of cemetery manager or customer service employee at a licensed cemetery must, among other things, (1) pay an application fee, (2) be at least 18 years of age, (3) complete a high school education or an equivalent, and (4) pass the requisite exam. The act further provides that license expiration, renewal, and other requirements, which have yet to be implemented. According to an official from the Illinois Department of Financial and Professional Regulation, Illinois does not have current data on the number of cemeteries that operate in the state, but will as a result of the Cemetery Oversight Act.

⁴ Operators of partially exempt cemeteries are not required to be licensed, but must meet other requirements such as filing and maintaining a map of the cemetery; entering the number of interments, inurnments, or entombments into the department's database; and adhering to the consumer bill of rights.

Inspection and audit requirements. The Illinois Department of Financial and Professional Regulation has the authority to conduct inspections and audits. In addition, the Cemetery Oversight Act requires that all cemeteries subject to the act submit an annual report to the department, subject to any rules of the department specifying the contents of the required reports.

Under the Cemetery Oversight Act, cemeteries are required to keep various records.

- Cemeteries are required to record burials and cremations in the Illinois Department of Financial and Professional Regulation's Cemetery Oversight Database. From December 2010 to June 2011, 1,037 cemeteries entered 23,290 burials into the database. The Illinois Department of Financial and Professional Regulation estimates that this is about 75 percent of all required burial entries. According to one industry association, although some cemetery operators of smaller cemeteries were initially concerned that the database would be burdensome, once it was implemented, many operators reported the usefulness of having digital records as a result of the new database.
- Cemetery operators are required to maintain a cemetery map, detailing items such as the location of all plots.
- Cemeteries are required to provide consumers with a price list for all cemetery products offered for sale.

Consumer complaints and violations. Consumer complaints regarding cemeteries or cemetery operators are collected by various entities in Illinois.

- As stated previously, the Illinois Attorney General receives about 70 complaints each year regarding cemeteries, funeral homes, and monument companies. The most frequent complaints they receive calls about are regarding cemetery maintenance—such as the upkeep of gravesites—and issues with respect to pre-need contracts.
- According to officials representing the Illinois Department of Financial and Professional Regulation, the department's consumer hotline has been in effect since March 2010, and they have received just over 175 calls as of December 2010, but more than half of the calls were not complaints. Of the calls received, 84 were complaints—about 50 of which were related to maintenance and about 30 were related to

memorial or marker issues. According to the state regulator who responded to our 2011 survey on the regulation of cemeteries, the complaint hot-lines are one of the state's most effective consumer protections.

- As stated previously, an Illinois industry association reported that from January 2002 to June 2011 it had received 305 complaints or inquiries regarding cemeteries and funeral homes. Complaints consisted of concerns about maintenance, contractual obligations, customer service, business conduct, and general questions.

Crematories and Crematory Operators

Licensing requirements. Crematory operators are required to be licensed to operate in the state. Prospective licensees are required to, among other things, (1) pay an application fee and (2) obtain a certification from an approved training program for all employees who will operate the cremation unit. There are no requirements for crematory operators to renew their licenses. In June 2011, the Illinois Office of the Comptroller reported that there were 102 licensed crematory operators.

Inspections and audit requirements. The Illinois Office of the Comptroller has the authority to conduct inspections and audits.⁵ In addition, each crematory operator is required to file an annual report with the Illinois Office of the Comptroller.⁶ The report must, among other things, provide the total number of cremations performed at the crematory in the prior year and include an attestation by the licensee that all applicable permits and certifications are valid.

Consumer complaints and violations. According to the state regulator who responded to our 2011 survey, no consumer complaints regarding crematories were received in 2008, 2009, and 2010 and no violations against crematories or crematory operators were reported since 2008.

⁵ Effective March 12, 2012, the Department of Financial and Professional Regulation is the authority responsible for conducting such inspections.

⁶ Effective March 12, 2012, such annual reports are to be filed with the Department of Financial and Professional Regulation.

Cremation rate. According to the Cremation Association of North America, Illinois had a 34 percent cremation rate in 2009.⁷

Sales of Pre-Need Plans

Licensing requirements. Sellers of pre-need plans are required to be licensed to operate in the state. Prospective licensees are required to, among other things, (1) pay an application fee and (2) provide a detailed statement of their assets and liabilities. Further, according to the state regulator who responded to our survey, a licensee must be associated with a licensed funeral home or cemetery. There are no requirements that pre-need sellers renew their licenses. As of June 2011, the Illinois Office of the Comptroller reported that there were 1,042 pre-need sellers licensed in the state.

Inspection and audit requirements. The Illinois Office of the Comptroller has the authority to conduct inspections and audits and examine any books or records related to a pre-need licensee. According to officials representing the Illinois Office of the Comptroller, they try to audit pre-need sellers every 4 to 5 years. Given limited resources, officials stated that they try to focus on those businesses with the largest amount of money invested in pre-need. In addition, licensees must file an annual report with the Illinois Office of the Comptroller. According to officials representing the office, they review these annual reports, examining the financial information in the reports to ensure that funds have been properly trusted and there is no abnormal fluctuation from beginning to end of year data.

Contract and trusting requirements. Various contract and trusting requirements exist in the state of Illinois.⁸

- Insurance-funded and trust-funded pre-need contracts are permitted in Illinois. According to officials representing the Illinois Office of the Comptroller, funeral homes began to move from more trust-funded plans to more insurance-funded plans. They explained that from the consumer's standpoint, consumers who purchase insurance-funded plans are more in control of their funds and such plans are less risky.

⁷ These data are preliminary. As of September 2011, association officials stated that the data had not been finalized.

⁸ For more information on pre-need plans, see app. II.

According to the state regulator who responded to our 2011 survey, irrevocable, revocable, guaranteed, and nonguaranteed pre-need contracts are all permitted in Illinois. However, pre-need cemetery plans must be sold on a guaranteed price basis.

- All pre-need contracts sold in Illinois must contain certain information and disclosures to assist consumers. Required information or disclosures include (1) a clear identification of the purchaser and the beneficiary, (2) a complete description of the goods and services purchased, and (3) the cancellation policy.
- Sellers are required to trust 85 percent of the purchase price of outer burial containers; 95 percent of the purchase price of funeral services, personal property, and merchandise; and 50 percent of all cemetery goods and service sales, except outer burial containers (of which 85 percent must be trusted), with a corporate fiduciary.
- A trustee is generally allowed to withdraw a reasonable fee. In addition, a trustee is required to annually furnish to each purchaser a statement identifying (1) the receipts, disbursements, and inventory of the trust, including an explanation of any fees or expenses charged by the trustee; (2) an explanation of the purchaser's right to a refund, if any; and (3) the primary regulator of the trust as a corporate fiduciary under state or federal law.
- With respect to a pre-need cemetery sale, if a seller changes trustees, the trustee must provide written notice of the change to the Comptroller no less than 28 days prior to the change in trustee.
- According to the state regulator who responded to our survey, consumers can transfer or cancel their contracts but penalties may apply. According to an Illinois Funeral Directors Association guide, unless a contract is made irrevocable, a consumer may cancel a pre-need contract at any time. The penalties for canceling a pre-need contract will be different depending upon when the contract is canceled.
- According to officials from the Illinois Office of the Comptroller, if money is left over in a trust fund for guaranteed contracts, the money should go to the estate. However, if the contract is nonguaranteed, there is no applicable requirement.

Consumer protection accounts. Illinois has two consumer protection accounts—one for pre-need cemetery plans and another for pre-need

funeral plans. The cemetery account was created in 1986 and the funeral account in 2010. For each pre-need contract sold, sellers must contribute \$5 to the respective account. Funds from these accounts are to be used for consumer restitution. According to officials representing the Illinois Office of the Comptroller, in June 2011, no claims have been made for the funds from the funeral account but the cemetery account was utilized in 2010, although prior to this use, the account had not been used in about 10 years.

Funds invested in pre-need trusts. As of June 2011, the Illinois Office of the Comptroller reported that there was over \$300 million held in trusts for pre-need funeral plans, over \$1.4 billion held in insurance for pre-need funeral plans, and over \$71 million held in pre-need merchandise funds.

Consumer complaints and violations. Consumer complaints regarding pre-need sellers are collected by various entities in Illinois. According to the state regulator who responded to our 2011 survey on the regulation of pre-need plans, the state had received about 27 consumer complaints regarding pre-need plans in 2008, 46 in 2009, and 21 in 2010. Officials representing the Illinois Office of the Comptroller stated that the common types of complaints received included those related to contract disputes and refund delays. Further, these officials stated that a newer complaint that they are starting to receive is related to pre-need plans that are funded by extended life insurance policies, and that in these cases, consumers are paying a lower monthly payment for a limited time period at the end of which they are to pay the entire remaining balance. If consumers are unable to pay the remaining balance, they are required to continue to make payments but end up paying significantly more than their purchase is worth. Officials stated that they are looking into this issue to determine if there is any violation of the law.

According to the state regulator who responded to our 2011 survey on the regulation of pre-need plans, there were approximately 100 violations against licensees for pre-need sales since 2008. The top three most prevalent types of violations noted by the state regulator who responded to this issue were (1) improper entrustment of funds, (2) improper fiduciary oversight of funds or improper withdrawal, and (3) contract language failing to meet statutory requirements. Officials representing the Illinois Office of the Comptroller stated that they are very limited on the types of disciplinary actions that they can take against licensees. For example, to revoke or suspend a license, the process is slow and the proceedings are very costly. Officials compared this to other states where

if a licensee doesn't file the appropriate information, then the license is automatically suspended.

Officials noted that they believe that one of the benefits of the Cemetery Oversight Act is that between the Illinois Department of Financial and Professional Regulation and the Illinois Office of the Comptroller, the state will likely be able to take more actions. Illinois Office of the Comptroller officials also stated that they would like to have a licensee lookup system similar to the one the Illinois Department of Financial and Professional Regulation has for its funeral director and embalmer licensees—which is available for public use. The Illinois Office of the Comptroller is discussing doing this but needs to define terms, such as what is considered a significant issue.

Third Party Sellers of Funeral Goods

According to the state regulator who responded to our 2011 survey on the regulation of pre-need plans, other than rules or regulations that generally apply to all businesses, Illinois does not have rules or regulations in place that specifically address third party sellers of funeral goods.

Legislative Changes and Rationale

State regulatory officials reported various changes to state laws and regulations regarding the death care industry. As reported by the state regulators who responded to our 2011 surveys, changes included those that enhanced consumer protections, provided clarification of legislation or regulation, changed the state's regulatory organization, and imposed stricter licensing requirements, and that these changes either slightly or significantly strengthened the state's regulatory program. Specific examples of these changes include the passage of the Cemetery Oversight Act and amending the Illinois Funeral or Burial Funds Act.

- The Cemetery Oversight Act was passed in 2010 in response to a reported incident at an Illinois cemetery and to address task force recommendations, as indicated by officials from the Illinois Department of Financial and Professional Regulation. Workers at an Illinois cemetery were reported to have desecrated and vandalized graves in a scheme to resell burial plots to unsuspecting members of the public. As a result of these allegations, the Governor created the Cemetery Oversight Taskforce to review the incident and make recommendations. The task force concluded that among other things, the lack of regulatory oversight was a contributing factor to the criminal scheme that occurred at the cemetery. Recommendations made by the taskforce included the following: (1) consolidate the

regulatory authority of funeral and burial practices to the Illinois Department of Financial and Professional Regulation, (2) consider the adoption of new legislation that provides for the licensure of cemetery managers and ensure that only qualified persons are authorized to own or operate a cemetery, and (3) consolidate and amend existing statutes. Among other things, the Cemetery Oversight Act requires certain cemetery operators to be licensed to operate in the state,⁹ requires that cemeteries conspicuously display the department's consumer hotline number, requires cemeteries to file cemetery maps, and requires cemeteries to enter burials and cremations into a database developed by the Illinois Department of Financial and Professional Regulation.

According to officials from the Illinois Department of Financial and Professional Regulation, because of concerns about the costs to cemeteries in meeting requirements under the Cemetery Oversight Act, particularly smaller cemeteries, no rules have been issued as of November 2011. According to one Illinois industry association, the association supported the act despite knowing that there were concerns and more work would need to be done before the act was fully implemented. An official representing this association stated that, as a result of the incident at the Illinois cemetery, the political climate demanded that some legislation be passed. According to another industry association, laws were already in place, prior to the Cemetery Oversight Act that addressed conduct that occurred at this cemetery. The Illinois Department of Commerce and Economic Opportunity analyzed the potential impact of the Cemetery Oversight Act and agreed that the act would have a significant impact on approximately 119 small businesses.¹⁰ According to officials from the Illinois Department of Financial and Professional Regulation, trailer bills have since been introduced to address the concerns related to the act.

⁹ Specifically, it requires the operators and other specified parties at nonexempt cemeteries to be licensed to operate in the state.

¹⁰ Specifically, the report stated that (1) fully regulated cemeteries will have a minimum additional cost of about \$127 per burial; (2) partially exempt cemeteries will incur a minimum additional cost of about \$34 per burial; (3) the industry believes that in some cases, it could cost as much as \$10,000 per year to be in compliance with licensing, legal fees, fines, accounting fees, and additional staff; (4) the act will have a significant impact on approximately 119 small businesses; and (5) none of the small businesses affected gross more than \$4 million per year.

- The Illinois Funeral or Burial Funds Act was amended in 2010 in response to the concerns regarding an Illinois association's management of pre-need funds (see more on this issue in app. II). The new law, among other things, (1) established a consumer protection fund for pre-need funeral contracts and (2) required that all pre-need sales be entrusted with a corporate fiduciary that is independent.

Although the state regulators reported that changes such as the Cemetery Oversight Act and the amendments to the Illinois Funeral or Burial Funds Act have strengthened Illinois's regulatory program, some state association representatives in Illinois stated that they believe that these laws would not have prevented incidents similar to those that occurred at the Illinois cemetery or with the funeral association trust. State regulators state that there is no way to be sure if the changes to the laws would have prevented these kinds of incidents, but that there may have been the ability to do so earlier. Further, state regulators in Illinois stressed the importance of consumer education and whistleblower protections to help prevent and detect future problems.