**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS**

**10.29.03 Inspection of Funeral Establishments [and Funeral Service Businesses]**

Authority: Health Occupations Article, §§7-101, 7-205, and 7-310, Annotated Code of Maryland

**Notice of Proposed Action**

[19-209-P]

The Secretary of Health proposes to amend Regulations **.01—.05**, repeal existing Regulations **.06** and **.07**, and amend and
recodify existing Regulation **.08** to be Regulation **.06** under **COMAR 10.29.03 Inspection of Funeral Establishments**. This action was considered by the Board of Morticians and Funeral Directors at a public meeting held on July 10, 2019, notice of which was given by publication on the Board’s website at https://health.maryland.gov/bom/Pages/home.aspx pursuant to General Provisions Article, §3–302(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

(1) Update and clarify best practices to align with industry standards within the profession; and

(2) Repeal all provisions referring to inspections of funeral service businesses because these businesses no longer exist in Maryland and the language is obsolete.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 25, 2019. A public hearing has not been scheduled.

**.01 Scope.**

The purpose and intent of this chapter is to prescribe minimum standards for new *and existing* funeral establishments, renovations of existing funeral establishments, and change of ownership of funeral establishments where the practice of mortuary science or funeral direction is conducted.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

*(3) “Funeral director” means an individual who is licensed by the Board to practice all aspects of mortuary science, except for embalming.*

**[**(3)**]** *(4)* “Funeral establishment” means any building, structure, or premises licensed by the Board, with facilities for:

(a) Embalming or holding **[**a dead**]** *of* human **[**body**]** *remains* for disposition;

(b) Viewing of the **[**body**]** *human remains*; and

(c) (text unchanged)

**[**(4) “Funeral service business” means a business owned or co-owned by a licensed mortician or funeral director involving the practice of mortuary science or funeral direction by a licensed mortician or funeral director.**]**

(5) “Holding room” means a room which is:

(a) Used **[**exclusively**]**for the holding of **[**dead**]** human **[**bodies**]** *remains* if arterial embalming is not a function of the funeral **[**home**]** establishment; and

(b) Distinct from the viewing room, chapel, or any other part of a funeral **[**home**]** establishment.

(6) “Inspection” means a survey of a funeral establishment by an **[**investigator**]** *inspector* designated by the Board to ensure compliance with this chapter.

*(7) “Mortician” means an individual who is licensed by the Board to practice mortuary science.*

**[**(6-1)**]** *(8)* (text unchanged)

**[**(7)**]** *(9)* Practice Funeral Direction.

(a) “Practice funeral direction” means *to*:

(i) **[**To operate**]** *Operate* a funeral establishment; **[**and**]**

*(ii) Prepare human remains for disposition and compensation; or*

**[**(ii)**]** *(iii)* **[**To arrange**]***Arrange* for or make final disposition of **[**a dead**]** human **[**body**]** *remains* for compensation.

(b) “Practice funeral direction” does not include**[**, for compensation**]**:

(i) Disinfectingor preserving **[**a dead**]** human **[**body**]** *remains* or **[**a dead human body’s**]** *any of its* parts by arterial or cavity injection or any other type of preservation *for compensation*; **[**or**]**

(ii) Otherwise preparing **[**a dead**]** human **[**body**]** *remains* for disposition**[**.**]***;* *or*

*(iii) The business of operating a crematory.*

**[**(8)**]** *(10)* **[**“Practice mortuary science” means:**]** *Practice Mortuary Science.*

(a) **[**To operate a funeral establishment;**]** *“Practice mortuary science” means:*

*(i) The practice of funeral direction; and*

**[**(b) For compensation, to prepare a dead human body for disposition, including disinfecting**]**

*(ii)* *Disinfecting* or preserving **[**a dead**]** human **[**body**]** *remains* or **[**a dead human body’s**]** *any of its* parts by arterial or cavity injection**[**; and

(c) For compensation, to arrange for or make final disposition of a dead human body**]**.

*(b) “Practice mortuary science” does not include:*

*(i) The pickup, removal, or transportation of human remains, if an unlicensed individual is acting under the direction of a licensed mortician or funeral director; or*

*(ii) The business of operating a crematory.*

**[**(9)**]** *(11)* (text unchanged)

**[**(10)**]***(12)* “Preparation room” means an area with a minimum of 120 square feet which is used exclusively **[**to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the funeral home establishment, and**]** *for the practice of mortuary science,*which is separate and distinct from the viewing room, chapel, or any other part of a funeral establishment.

**[**(11)**]** *(13)* “Supervising funeral director” means a funeral director who is responsible to the Board for compliance with **[**the Maryland Morticians Act**]** *Health Occupations Article, Title 7, Annotated Code of Maryland,*for all operations of a funeral establishment including, but not limited to, the administration of preneed accounts.

**[**(12)**]** *(14)* “Supervising mortician” means a mortician who is responsible to the Board for compliance with **[**the Maryland Morticians Act**]** *Health Occupations Article, Title 7, Annotated Code of Maryland,*for all operations of a funeral establishment including, but not limited to, the administration of preneedaccounts.

**[**(13)**]** *(15)* “Viewing room” means an area in which **[**a dead**]** human **[**body is**]** *remains are* placed on display and which is a separate and distinct area from the preparation and holding room.

**.03 License Required for Funeral Establishment.**

A. The Board shall license a funeral establishment before the *funeral*establishment may be used for the practice of mortuary science.

B. The Board shall issue a funeral establishment license to a funeral establishment that *has*:

(1) **[**Has complied**]** *Complied* with all applicable federal, State, and local laws;

(2) **[**Has submitted**]** *Submitted* an application to the Board on the required form **[**at least 60 days before the opening of the business**]**;

(3) **[**Has paid**]** *Paid* the application fee *and, when applicable, the family security trust fund fee*; and

(4) **[**Operates**]** *Operated* in accordance with Health Occupations Article, Title 7, Annotated Code of Maryland.

C.—D. (text unchanged)

E. Upon a sale or change in ownership of the funeral establishment, the new owner shall **[**request**]***:*

*(1) Notify the Board within 14 days; and*

*(2)* *Request* a new license **[**which shall be submitted**]** *by submitting an application* to the Board in writing with supporting documentation reflecting the sale or change of ownership.

F. The Board shall issue a new *funeral* establishment license reflecting the sale or change in ownership if:

(1) The **[**Board approves the submitted**]** *applicant* *submits* *the required* documentation *to the Board*; and

(2) An inspection of the *funeral* establishment results in a finding that the *funeral* establishment is in compliance with all applicable*federal, State, and local* laws.

G. A license, and the licenses of individual licensees employed at the *funeral* establishment, shall be displayed prominently at the premises.

H. The funeral establishment:

(1) Shall employ and designate, on a form provided by the Board, a supervising mortician or supervising funeral director, licensed in accordance with State laws, who shall be **[**continuously responsible**]** *in compliance with Health Occupations Article, Title 7, Annotated Code of Maryland*;

(2) Shall prominently display on a sign, not smaller than **[**5**]** *8 and 1/2* inches by 11 inches, *immediately* located either **[**immediately**]** outside or **[**immediately**]** inside the main entrance, in letters not less than **[**1-inch**]** *one-half inch* high, the **[**following information**]** *names of*:

(a) **[**The names of each**]** *Each* licensee who holds at least a 10 percent ownership interest in the partnership, professional association, or sole proprietorship which operates the funeral establishment;

(b) **[**The names of any**]** *Any* individual, **[**corporations**]** *corporation*, or other business **[**entities**]** *entity*, which either directly or indirectly **[**hold**]** *holds* an ownership interest of 10 percent or more in the corporation or business entity that operates the funeral establishment; and

(c) **[**The names of all**]** *All* restricted *funeral* establishments operating from that funeral home.

(3)—(4) (text unchanged)

(5) Shall notify the Board, on a form provided by the Board, of **[**a**]** *any* change of supervising mortician or supervising funeral director within 10 days **[**of any change**]**;

(6) (text unchanged)

(7) Shall **[**either:

(a) Ensure**]** *ensure* that medical waste is picked up by a licensed medical waste disposer not less **[**often**]** than every 60 days from the date generated**[**; or

(b) Develop a written plan to submit for approval by the Board that outlines specific procedures for disposal of medical waste not later than 60 days from the date generated, in accordance with methods**]** *as* outlined in COMAR 10.06.06.

**.04 Inspection by the Board [of Morticians].**

A. (text unchanged)

B. Each funeral establishment shall be inspected:

(1)—(2) (text unchanged)

(3) Upon the sale or change of ownership of the *funeral* establishment.

C. (text unchanged)

D. The following forms shall be available for inspection, with a copy given to the inspector for the inspector’s records:

(1)—(3) (text unchanged)

(4) A price list of outer *burial* containers, as charged to the public;

(5) (text unchanged)

(6) A preneed contract form *along* with a bank statement form, for verification of an escrow or trust account*, and, if provided, an insurance statement*;

(7) (text unchanged)

(8) An authorization to release the body to the *funeral*establishment.

E. Standards for Inspection of Licensed Funeral Establishments.

(1) Preparation Room. If arterial or cavity injection will take place at **[**the**]** *a* funeral establishment, the funeral establishment shall maintain on the premises a preparation room which shall be adequately equipped and maintained in a sanitary manner for the preservation and care of **[**dead**]** human **[**bodies**]** *remains*. The minimal requirements **[**are**]** *shall be* as follows:

(a)—(f) (text unchanged)

(g) If a refrigeration unit is on the premises, **[**the refrigeration unit**]** *it* shall be clean, sanitary, and in good working condition.

(2) Holding Room. If arterial or cavity injection will not take place at **[**the**]** *a* funeral establishment, the funeral establishment shall maintain on the premises a holding room which shall be adequately equipped for the holding of **[**dead**]** human **[**bodies**]** *remains* which shall be kept in a clean and sanitary manner **[**and used exclusively for the holding and storage of deadhuman bodies**]**. The minimal requirements for the holding room shall be as follows:

(a)—(f) (text unchanged)

(3) (text unchanged)

(4) Water Supply.

(a) Each *funeral* establishment shall have hot and cold running water.

(b) (text unchanged)

(c) Floor drainage is **[**not**]** required in the **[**holding**]***preparation*room of a funeral establishment where **[**emblaming does not take**]** *embalming* *takes* place.

(5)—(6) (text unchanged)

(7) Removal Vehicle. The removal vehicle shall be suitable for the transportation of **[**dead**]**human remains **[**with remains**]** obscured from public view and maintained in a sanitary manner.

(8) Funeral Service Establishment Premises.

(a) The remaining areas of the *funeral* establishment shall be in good repair*,* **[**and**]** clean*,* and safe.

(b) If **[**the**]***a* funeral establishment has a memorial gathering area, it shall be **[**in**]***:*

*(i)* *In* good repair **[**and clean**]**;

*(ii)* *Clean; and* **[**if that area is built or renovated, or the establishment is acquired that memorial room shall be at**]**

*(iii)* *At* least 300 square feet in area.

(c) If a funeral establishment **[**has a casket display room**]** *displays any form of casket selection*, *the* prices shall *also* be **[**displayed on the casket or caskets**]***shown*.

(d) The inspection shall assess the general cleanliness of the *funeral* establishment and whether there are properly functioning, sanitary restrooms.

(e) The business telephone shall be in working order at the *funeral* establishment.

(f) A sign or lettering on the windows or building indicating the name of the *funeral* establishment shall be conspicuously displayed and the name on the sign shall be the same name on the *funeral* establishment license.

(g) If one or more businesses, in addition to a funeral establishment, are **[**under one roof**]** *operating on the same premises*, a separate sign shall indicate the entrance and exit of the funeral establishment.

F. After the inspection is completed, an exit interview shall be conducted to apprise the owner or supervising mortician of the findings of the inspection. A copy of the inspection report shall be left with the owner or supervising mortician who shall verify receipt of the *inspection* report.

**.05 Establishment Inspection Report and Deficiencies.**

A. (text unchanged)

B. The Board shall notify the *funeral* establishment in writing of the results of the inspection.

C. If **[**a**]** *the funeral establishment* licensee passes **[**an**]** *the* inspection, the licensee shall prominently display on the premises a statement issued by the Board that the *funeral* establishment has successfully passed **[**an**]** *the* inspection.

D. (text unchanged)

E. Correction of Deficiency.

(1) (text unchanged)

(2) The Board may require immediate correction of a deficiency if the Board considers the correction necessary **[**in**]** *to* the interest of public health.

(3)—(5) (text unchanged)

(6) Upon notification, the Board or its designee shall **[**reinspect**]** *re-inspect* the *funeral* establishment and the Board shall notify the owner in writing of the results of the **[**reinspection**]** *re-inspection* within 1 week.

(7) If **[**reinspection**]** *re-inspection* reveals additional deficiencies not cited in the first *inspection* report, the owner shall correct those deficiencies in the time period specified **[**by the inspection agency**]** unless an extension of time is requested by the owner and approved by the Board **[**for correction of the additional deficiencies**]**.

**[.08] *.06* Penalties.**

A. Failure to allow an inspection of the *funeral* establishment or funeral service business shall result in an immediate suspension of an establishment license or in the case of a funeral service business, the licensee’s license, subject to a subsequent opportunity for a hearing under Health Occupations Article, §7-319, Annotated Code of Maryland.

B. Failure to comply with a notice to correct deficiencies or violations within the 30-day period, or any reasonable extension granted by the Board **[**in**]** *under* Regulation .05E **[**or .07C**]** of this chapter, shall result in an immediate suspension of **[**an**]** *a funeral* establishment license or in the case of a funeral service business, the licensee’s license, or the denial of a renewal of **[**an**]** *a funeral*establishment license, subject to a subsequent opportunity for a hearing as set forth under Health Occupations Article, §7-319, Annotated Code of Maryland.

C. Disciplinary action may not be taken against a supervising mortician or funeral director for the acts or omissions of another unless the supervising mortician or funeral director knew or should have known of a violation of **[**the Maryland Morticians Act**]***:*

*(1) Health-General Article, Title 5, Annotated Code of Maryland; or*

*(2) Health Occupations Article, Title 7, Annotated Code of Maryland.*

ROBERT R. NEALL
Secretary of Health