

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Office of Vital Statistics

Statutory Authority: 16 Delaware Code, Sections 122(3) and 3103 (16 Del.C. §§122(3) & 3103)
16 DE Admin. Code 4204

PROPOSED

PUBLIC NOTICE

4204 Care and Transportation of the Dead

Pursuant to 16 Del.C. §§122(3) and 3103, the Department of Health and Social Services, Division of Public Health has the legal authority to promulgate regulations. The Division of Public Health is proposing amendments to regulation 4204 Care and Transportation of the Dead and intends to hold them open for public comment per Delaware law. The revisions include:

- The addition of new sections outlining the purpose and scope of the regulation;
- Updated definitions;
- New language regarding natural organic reduction (pursuant to HS 1 for HB 162 (84 Del. Laws, c. 261, signed May 16, 2024)); and
- Technical changes to bring the regulation into compliance with the *Delaware Administrative Code Style Manual*.

Copies of the proposed regulation are available for review in the September 1, 2024 issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Public comments will be accepted until 4:30 PM on October 1, 2024. Comments will be accepted in written form via email to DHSS_DPH_regulations@delaware.gov, or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901

4204 4602 Care and Transportation of the Dead

1.0 Purpose

This regulation establishes the standards for the care and transportation of dead bodies. This regulation describes the processes and requirements for the different methods of disposition of human remains and ensures the protection of Delaware residents.

2.0 Authority

The Department of Health and Social Services, Division of Public Health, may adopt, promulgate, amend, and repeal such regulations as may be consistent with law pursuant to 16 Del.C. §§122(3) and 3103.

~~4.0~~ 3.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Dead Body" shall mean **body** means any human dead body, including any products of human conception expelled weighing 350 grams or more, or after ~~twenty (20)~~ 20 weeks of gestation, whether born dead or dying thereafter.

"Department" means the Department of Health and Social Services.

"Final remains" means the body of a deceased individual, including what results following cremation or natural organic reduction.

"Funeral Director" shall mean an Undertaker or Mortician means an undertaker or mortician licensed in the State of Delaware.

"Natural organic reduction" means the contained, accelerated conversion of human remains to soil.

"Natural organic reduction facility" means a structure, room, or other space in a building or a real property where natural organic reduction of a human body occurs.

~~“Premises in which Interments Are Made” shall mean~~ in which interments are made means burying grounds, cemeteries, tombs or vaults, or any other places where disposal of bodies may be made.

~~“State Registrar” shall mean~~ means the Director, Division of Public Health.

5 DE Reg. 2300 (06/01/02)

2.0 4.0 Burial Permit Required Burial, Removal, Cremation, or Other Disposition of Dead Bodies

~~No manager, superintendent, caretaker, sexton or other person in charge of any premises in which interments, entombments, cremations or other dispositions of any dead body are made, shall permit the interment, entombment, cremation or other disposition of such body unless it is accompanied by a burial or cremation permit or a temporary certificate authorizing burial, signed by a licensed funeral director. Upon receipt of the burial permit, the person in charge of the premises (or by the funeral director if there is no person in charge) shall sign the permit and retain same as a permanent record of authorization for burial. In the event that the person in charge of the premises receives a temporary certificate authorizing burial, said certificate shall be retained until the burial permit is received. Upon receipt of the burial permit, both the temporary certificate and the burial permit shall be retained by the person in charge of the premises as a permanent record of authorization for burial. If the person in charge of the premises does not receive the burial permit from the funeral director within a period of ten (10) days after burial takes place, he shall notify the State Registrar of Vital Statistics, Dover, Delaware.~~

4.1 Burial-transit permits. A licensed funeral director will print and sign the burial-transit permit in the electronic vital event registration system of the Office of Vital Statistics, after initiating the death record. The burial-transit permit must be given to the person in charge of the cemetery (or retained by the funeral director if there is no person in charge) in which interments or entombment occur.

4.1.1 Upon receipt of the burial permit, both the temporary certificate and the burial permit shall be retained by the person in charge of the premises as a permanent record of authorization for burial.

4.1.2 In the event that the person in charge of the premises receives a temporary certificate authorizing burial, the certificate shall be retained until the burial permit is received.

4.1.3 If the person in charge of the premises does not receive the burial permit from the funeral director within a period of 10 days after burial takes place, they shall notify the State Registrar of Vital Statistics, Dover, Delaware.

4.1.4 The permit must be accessible for inspection or other purposes when requested by the inspecting authority.

4.2 Cremation permit or natural organic reduction permit. A body may be cremated or subjected to natural organic reduction only after the preparation of a special cremation or natural organic reduction permit signed by the Chief Medical Examiner or an assistant or deputy medical examiner. In the presentation of the cremation or natural organic reduction permit to the Chief Medical Examiner or the Chief Medical Examiner's representative for signature, the permit must be accompanied by a death certificate signed by the attending physician and by a cremation or natural organic reduction authorization signed by the next-of-kin or legal representative of the deceased. The signature of the Chief Medical Examiner or the Chief Medical Examiner's representative to the cremation or natural organic reduction permit shall constitute an affirmation that there is no medical reason why the cremation or natural organic reduction should not take place. The Chief Medical Examiner or an assistant or deputy medical examiner shall have the authority to hold the remains of the deceased pending any investigation into the cause and manner of death.

4.2.1 The cremation permit or natural organic reduction permit must be given to and retained by the person in charge of any facility in which cremation or natural organic reduction occurs. The cremation permit or natural organic reduction permit must be accessible for inspection or other purposes when requested by the inspecting authority.

4.2.2 Cremation permits or natural organic reduction permits for bodies where death occurred in Delaware and cremation, or natural organic reduction will be completed in another State require the signature of the Delaware Chief Medical Examiner or an assistant or deputy medical examiner.

4.2.3 Cremation or natural organic reduction in Delaware when death occurred elsewhere is permissible if all the legal requirements of the state or jurisdiction in which the death occurred have been met.

4.2.4 A second copy of the cremation or natural organic reduction permit must accompany the death certificate when it is filed in the Office of Vital Statistics.

5 DE Reg. 2300 (06/01/02)

5.0 Witnesses at Cremation or Natural Organic Reduction

A family member or representative of the family of the individual being cremated or subjected to natural organic reduction may be present at the time the cremation or natural organic reduction is being carried out, subject to crematory or natural organic reduction facility operational constraints.

6.0 Delivery, Transportation, and Disposal of Final Remains

- 6.1 The final remains resulting from the cremation or natural organic reduction process of a deceased human body may be delivered by the attendants of the crematory or natural organic reduction facility to any member of the decedent's family designated to receive them, or to the person arranging for the cremation or natural organic reduction.
- 6.2 After the delivery of the final remains to the designated recipient or recipients, the final remains may be transported in any way within Delaware borders and disposed of in such a way as is desired by the person or persons receiving the final remains.

7.0 Report of Cremation or Natural Organic Reduction

- 7.1 Within 24 hours after the cremation or natural organic reduction is completed, a report shall be forwarded by the person in charge of the crematory or natural organic reduction facility to the central Office of Vital Statistics. The report shall contain the following:
 - 7.1.1 Registrant's name.
 - 7.1.2 Registrant's last known address.
 - 7.1.3 Date and cause of death.
 - 7.1.4 Names and (professional) titles of individuals signing the permit.
 - 7.1.5 Date of the completion of the cremation or natural organic reduction.
 - 7.1.6 Name or names of the designated recipient or recipients of the final remains for disposal.
 - 7.1.7 Date of delivery of final remains to the designated recipient or recipients of the final remains for disposal.

8.0 Cremation or Natural Organic Reduction; Prohibitions and Exemptions

No person may destroy or dispose of a deceased human body, regardless of cause of death, by burning or natural organic reduction, except in a crematory or natural organic reduction facility licensed for this express purpose and under the conditions provided in 16 Del.C. §3158 and §3164.

9.0 Crematory or Natural Organic Reduction Facility; Approval for Construction; Requirements; Inspection

- 9.1 A person, firm, organization, or association desiring to acquire, erect, or construct a crematory or natural organic reduction facility shall first obtain approval from the Department of Natural Resources and Environment Control.
- 9.2 The crematory or natural organic reduction facility must be constructed in accordance with 7 Del.C. Chs. 60 and 79, and may not be located, managed, or conducted at any time in such a way as to be a public nuisance.
- 9.3 The crematory or natural organic reduction facility is always subject to inspection by the Department of Natural Resources and Environmental Control, the Department of Health and Social Services, and by officers of the state law enforcement departments as may desire to inspect it.
- 9.4 Analysis of material samples for natural organic reduction. A natural organic reduction facility shall be responsible for the requirements as listed in 16 Del.C. §3165.

3.0 10.0 Burial of the Dead

Except as hereinafter provided, all human bodies dead within the State of Delaware shall be cremated or ~~buried, buried~~ or placed within a receiving vault within ~~five (5) 5~~ days after death. Any dead human body to be kept longer ~~than twenty-four (24) than 24~~ hours shall be embalmed or placed in a hermetically sealed casket which will not be opened at any time after this ~~twenty-four (24) 24-hour~~ period, except when medical or legal investigation necessitates a longer period. The Department shall issue a special permit in such cases. Application for such a permit shall be made to the State Registrar of Vital Statistics, Dover. ~~Bodies~~ Human bodies that are to be kept more than ~~twenty-four (24) 24~~ hours under this exception must be stored in suitable, approved refrigeration facilities.

5 DE Reg. 2300 (06/01/02)

4.0 11.0 Depth of Graves

- 11.1 No interment of any human body shall be made in any public or private burial ground unless the distance from all parts of the top of the outer case containing the coffin or casket be not less than ~~eighteen (18) 18~~ inches (.5

meter) from the natural surface of the ground. EXCEPTION: Per ~~Section 6, subsection c., subsection 13.5.3~~ of this regulation, bodies dead of designated high-risk diseases (Anthrax, ~~Small Pox, Plague~~ Smallpox, Plague, and the various Hemorrhagic Fevers) must be buried at a depth of at least 79 inches/ 2 meters.

11.2 The superintendent, ~~sexton~~ person in charge, caretaker, or other person in charge of a cemetery or burial ground shall be responsible that graves are of the depth required by this regulation. ~~In the event that there be~~ If there is no such person in charge, it shall become the responsibility of the person burying the body.

5 DE Reg. 2300 (06/01/02)

5.0 12.0Permanent Entombment Facilities and Receiving Vaults

5.1 12.1Permanent Entombment ~~Facilities:~~ Facilities.

5.1.4 When a body is placed in a permanent entombment facility, all exterior facings of the facility must be firmly and securely closed.

5.2 Receiving:

5.2.4 12.2Receiving vaults may be used for a period not exceeding ~~fifteen (15)~~ 15 days for the reception of bodies provided the bodies are properly embalmed by a licensed funeral director. Beyond this period, special permission from the Department is required. In every case, the death certificate must be filed immediately after death.

5.3 12.3The responsible person in charge of the receiving vault shall make written application to the State Registrar of Vital Statistics, Dover, for this special permission at least ~~one~~ 1 week prior to the expiration of the ~~fifteen (15)~~ day 15-day period.

5.4 12.4~~This section~~ Section 10.0 of this regulation shall not apply to bodies turned over to bona fide medical and surgical groups for anatomical or study purposes.

5 DE Reg. 2300 (06/01/02)

6.0 13.0Preparation, Transport, ~~And~~ and Disposal ~~Of~~ of Bodies Dead ~~Of~~ of Designated High-risk Diseases.

6.1 13.1The Director of the Division of Public Health or Designee shall designate communicable diseases determined to be high-risk from the point of view of handling after death. Currently designated diseases include Anthrax, Smallpox, Plague, and the various Hemorrhagic Fevers.

6.2 13.2Should death occur before a definitive diagnosis can be made and when there is even the remote suspicion of ~~one~~ 1 of these illnesses, the physician or hospital should consult with the Chief Medical Examiner or the Director of Public Health. Should it be necessary to hold a body for longer than ~~six~~ 6 hours pending completion of definitive diagnostic work, the body should be sealed immediately following the taking of such specimens as may be needed. The sealing should be completed as described in ~~Preparation a. (below)~~ Section 10.0 of this regulation and held in isolation (refrigerated when possible) pending removal. Otherwise, removal, transport, and cremation should proceed as prescribed by ~~these regulations~~ this regulation.

6.3 13.3Whenever death occurs from a designated high-risk disease, immediate notification shall be provided by the reporting physician, other provider, or the hospital to the Division of Public Health, next of kin, and the funeral director who will have responsibility to handle, transport, or dispose of ~~said~~ the body. These reports may be made by fax, telephone, or electronic mail. After business hours, the Division of Public Health emergency line is (302) 739-4700.

6.4 13.4The Chief Medical Examiner, hospital or funeral director shall ensure that anyone handling a body so designated shall follow strict universal precautions in a manner that minimizes contact between the body, other persons, and the environment. ~~For information concerning universal precautions contact the Office of Vital Statistics.~~

6.5 13.5Preparation: Preparation

6.5.4 13.5.1The body shall be wrapped in a sheet saturated with a suitable disinfectant. This may be concentrated commercial disinfectant approved for such purpose or it may be embalming powder or high index cavity fluid. This shall be followed by enclosure in a heavy-duty impervious bag designed for such purpose to assure against leakage.

6.5.2 13.5.2For transport, the body prepared as in subsection "a." 13.9 of this regulation shall be placed in a suitable firm container such as a "cremation container" in which case it shall be cremated therein, or it may be transported in a temporary firm protective container from which it may be removed for cremation.

6.5.3 13.5.3For burial or other exempted disposition, the body shall be enclosed in a metal casket liner or a casket that is constructed ~~so as~~ to not allow any seepage from the casket or casket liner whatsoever ~~therefrom~~

and is to be sealed. Burial of bodies dead of designated high-risk disease must be at a depth of at least 79 inches/ 2 meters.

6.6 13.6 Labeling: Labeling.

6.6.4 It will be the responsibility of the funeral director to ensure that there are attached to the body and its containers in several visible places labels bearing in prominent legible letters the words, "This body is infected with a designated high-risk disease specified by the Division of Public Health and must be handled and transported in accordance with the precautions required by ~~these regulations~~ this regulation.".

6.7 13.7 Handling: Handling.

6.7.4 Neither embalming nor autopsy shall be performed on such bodies unless specifically authorized by the Chief Medical Examiner or designee.

6.8 13.8 Transport: Transport.

6.8.4 Transport of a body so designated must be under the conditions described above with the addition that the body must be protected in such a way as to assure that it shall not become uncovered in any reasonably foreseeable accident. Transport out of state shall be prohibited unless approved by the Director of Public Health or designee and the receiving jurisdiction.

6.9 13.9 Removal: Removal.

6.9.4 A body may be removed from the firm protective container in which it was transported once it has reached the funeral home or crematory where the body shall be prepared for cremation or other disposition if authorized. Such container used exclusively for transport may be re-used following suitable disinfection.

6.10 13.10 Services: Services

6.10.1 13.10.1 No viewing of the body or public services in the presence of the body shall be permitted.

6.10.2 13.10.2 Cremation is the disposal method of choice for any designated high-risk communicable disease. If burial is permitted as an exception, it must be promptly ~~performed~~ performed, and the body must remain sealed as described ~~above~~ in Section 10.0 of this regulation throughout the burial process.

6.10.3 13.10.3 The Director of Public Health or designee upon request may waive any requirement of ~~these regulations in order~~ this regulation to accommodate religious or traditional practices if ~~he or she~~ the Director of Public Health is satisfied that the proposed practices present no substantial additional risk to any person or the environment.

7.0 14.0 Shipment ~~Of of~~ Bodies Dead ~~Of of~~ Non-contagious Diseases

7.1 14.1 The body of any person dead of a non-contagious disease shall not be removed by common carrier from the registration district in which death occurred except under the following conditions:

7.1.1 14.1.1 When the remains have been thoroughly embalmed and disinfected or when shipped to such a point as can be reached within ~~twenty-four (24)~~ 24 hours after death, the dead body shall be placed in a substantially constructed casket or coffin; every outside case holding any dead body offered for transportation by common carrier shall be an approved shipping case.

7.1.2 14.1.2 When the ~~bodies are~~ body is not embalmed or the embalming destination cannot be reached within ~~twenty-four (24)~~ 24 hours after death, ~~either the casket or outside case must be metal or metal lined and permanently sealed.~~ sealed and:

14.1.2.1 Metal; or

14.1.2.2 Metal lined.

7.1.3 14.1.3 When a body is ~~removed~~ transported by common carrier, the State law requires a transit permit, which will be secured by the common carrier from the Office of Vital Statistics.

5 DE Reg. 2300 (06/01/02)

8.0 15.0 Burial - Transit Permit

A burial-transit permit will be issued by the Office of Vital Statistics upon the compliance of the funeral director with the provisions of Section 7 14.0 of this regulation and the presentation of the death certificate.

5 DE Reg. 2300 (06/01/02)

9.0 16.0 Disinterments

9.1 16.1 No dead body shall be removed from its place of original interment unless a permit from the State Registrar marked "Disinterment Permit" is secured by a licensed funeral director in charge of the disinterment (EXCEPTION – Title 16, 3154 of the **Delaware Code**). The qualified person making the application shall present to the State Registrar the correct name, age, date of death and cause of death of the body to be

disinterred, place of disinterment (hundred and county), together with written consent of next of kin. The State Registrar may require legal proof of such kinship.

~~9.2 16.2~~ All disinterment permits shall be void after the expiration of ~~thirty (30)~~ 30 days from the date of issue.

~~9.3 16.3~~ Procedures: Procedures

~~9.3.1 16.3.1~~ The disinterment and removal must be under the direction of a licensed funeral director and in accordance with ~~the rules~~ this regulation governing the transportation of the dead.

~~9.3.2 16.3.2~~ The casket in which disinterred bodies are contained shall not be opened at any time.

~~9.3.3 16.3.3~~ The funeral director authorized to conduct a disinterment shall be held personally responsible for the enforcement of these requirements.

~~9.4 16.4~~ Special Provision: Provision. A separate permit shall be secured in respect to each body to be disinterred, except that under special conditions the Department may make special provisions for the mass removal of a ~~number of bodies~~ more than 1 body from a cemetery or burial ground.

5 DE Reg. 2300 (06/01/02)

40.0 17.0 Disposition of Amputated Parts of Human Bodies

~~17.1~~ 17.1 ~~An amputated part of a~~ A human body part amputated during surgery or recovered at an operation or from an accident may be kept for anatomical purposes and/or purposes. The amputated human body part may be disposed of by burial in a cemetery or by licensed cemetery, cremation in a licensed crematory, or natural organic reduction in a licensed natural organic reduction facility. If the hospital or institution has facilities for incinerating, the amputated part or parts may be incinerated in ~~such the~~ such the hospital or institution upon the written approval of the patient or next of kin. Where a patient or ~~his~~ his next of kin desires ~~such the~~ such the amputated part to be ~~buried in a cemetery or cremated in a licensed crematory~~ buried, cremated, or naturally reduced by the respective licensed facility, a permit shall be secured by the funeral director from the Office of Vital Statistics upon presentation of a duly executed "Certificate of Amputation".

~~17.2~~ 17.2 The director of the hospital or institution wherein the amputation was performed shall have completed a "Certificate of Amputation" on a form furnished by the Department for immediate delivery to the funeral director, who shall file ~~said the~~ the "Certificate of Amputation" within ~~forty-eight (48)~~ 48 hours with the proper local or deputy registrar. Such "Certificate of Amputation" may be signed by the operating surgeon or by the intern who assisted in the case. No regular death certificate shall be filed for amputated parts.

5 DE Reg. 2300 (06/01/02)

44.0 18.0 Date of Effect

~~These regulations~~ This regulation shall be in full force and effect immediately upon ~~their~~ its approval and adoption by the Department.

5 DE Reg. 2300 (06/01/02)

28 DE Reg. 204 (09/01/24) (Prop.)