

Caring for the Dead

Updates
July, 2007

Alaska

After a Jewish woman encountered the legal requirement to embalm her mother's body before shipping it out of Alaska, the legislature proposed a bill that would have relaxed the unnecessary interstate-shipping embalming requirement. In 2005, according to the Alaska Star, SB 37:

" would have amended Alaska Statutes to state that the commissioner of the Department of Health and Human Services cannot require the embalming of bodies that it is transporting unless it is known the deceased had a communicable disease or that federal law makes it mandatory."

We can only imagine misguided funeral industry interests scuttled this law. It's a shame the state mandates an invasive, unnecessary process some religions consider mutilation.

Colorado

Colorado now has a designated agent law.

California

CORRECTION: Page 226 says the FTC Funeral Rule has been incorporated by statute. CA has not fully incorporated the Rule. Ca. Business and Professions Code 7685-7685.6 (effective July 1, 2002) requires the Funeral Rule to be followed on the Casket Price List, but it does not require funeral directors to follow all the Funeral Rule requirements on the General Price List given to families before the funeral (although CA law does require most of the same things).

California has a new regulation (unknown when it went in) requiring the following disclosure on GPLs:

"Prior to drafting any contract for goods or services, the responsible party or the decedent's survivor who is handling the funeral arrangements is entitled to receive a copy of any preneed agreement in the possession

of the funeral establishment that has been signed and paid for, in full or in part, by or on behalf of the decedent."

California regulations require refrigeration of unembalmed bodies after 24 hours:

California Code of Regulations,

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

Division 12. State Board of Funeral Directors and Embalmers
(Originally Printed 12-5-46)

Article 1. General Provisions

§ 1223. Embalming, Preparation and Storage Rooms

(c) Every licensed funeral establishment and funeral director who holds unembalmed human remains for a period longer than 24 hours shall cause the

body to be refrigerated at an approved facility with sufficient capacity as defined under section 1223.1(d).

Georgia

UPDATE — July 1, 2006

The Georgia Legislature caved in to industry demands and rolled back some of the consumer protections listed as 1 –5 below. HB 910:

— Lets preneed cemetery sellers keep 10 percent of a customer's account, or one-half the interest, whichever is less, if the customer cancels and wants a refund.

— Lets cemeteries charge up to \$125 to customers if they buy a monument from someone other than the cemetery.

— Appoints a new Board of Cemeteries, made up of six cemetery owners and one consumer member, to write the rules and regulations of the state. This law takes this power away from the secretary of state and gives it to the industry.

Before HB 910, Georgia Code 10-14-7 said:

1. Anyone who sells any funeral, burial or cremation merchandise or services, must be a registered preneed dealer.
2. Preneed dealers must trust 35% of the *retail price* of monuments and vaults, not to be less than 110% of their *wholesale cost*.
3. "Constructive delivery" is prohibited.
4. 100% of the sale price of all other funeral and burial merchandise must be trusted.
5. Refunds of all trusted money must be given to the customer at the purchaser's request.

Now, number 5 isn't valid.

Georgia Idaho Tennessee

Casket sales are no longer restricted. Anyone may sell them.

Illinois

- As of January 1, 2006, Illinois citizens can declare their wishes for disposition in a written document that is legally binding. They may also designate an agent to carry them out, or to make any decisions if no specific instructions are left. The law allowing this is found under in chapter 755 of Illinois Statutes, Estates, Disposition of Remains Act.

CREMATION — Illinois amended its cremation laws, effective July, 2003. These laws are all gathered under Statute 410. Highlights include:

- There is now a 24-hour mandatory wait prior to cremation, though this may be waived if the deceased had a "dangerous" or infectious disease, or if a religious requirement demands a faster cremation.
- Crematory operators must complete a cremation-specific training course before the State Comptroller issues them a license.

Indiana

The state has a designated agent law. Indiana Code section 30-5-5-16 states that a health care power of attorney gives the "attorney in fact" the right to "make plans for the disposition of the principal's body."

Iowa

Iowa preneed law changed for the worse and the better in 2001 and 2004, and 2007. *Caring* says on page 314 that "no clear rights on transfer or cancellation exist." This isn't true anymore, but the right of refund and cancellation is riddled with problems for the consumer.

- The law still requires only 80 percent trusting [Iowa Code Chapter 523A.201] of consumers' prepaid money. **Plus** a seller who lacks insurance coverage to protect against loss can legally avoid these trusting requirements in several ways, including "constructive delivery".
- **523A.602, 2, b, 1 and 2** allows sellers to refuse to return customers' money for "cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser."
- **523A.201, 5**, allows sellers to use surety bonds or insurance instead of putting the customer's money in trust.
- **523A.401, 6**, allows preneed sellers to convert a trust fund to an insurance policy, as long as the customer gives permission. But there are no requirements to disclose to the customer that he might get pennies on the dollar if he cancels an insurance policy. Why does the state allow this?
- Consumers have the right to request a transfer or refund of the money in writing and the seller must refund the purchase price amount plus an annual adjustment for inflation within 30 days. BUT, the seller can keep up to 10 percent of "actual expenses" associated with marketing the prepaid funeral or cemetery items. And with only 80 percent trusting, how much will the consumer really get back?

On the plus side:

- preneed sellers can longer skim 50 percent of the interest off the customer's account.

- In 2007, the legislature raised the cap on the preneed protection fund to \$500,000, up from \$200,000
- People who want a license to sell preneed now have to submit to a criminal background check
- The law [523A.602] now requires the seller to print a number of disclosures on the prepaid contract, including whether it is guaranteed or non-guaranteed, as well as the consumer's rights of refund and cancellation. If the contract is non-guaranteed, it must hold a 12-POINT BOLD FACED disclosure, with wording prescribed by the state.

Louisiana

Signed by the Governor in June 2004 —

Section 1.R.S.37:848(D)(2) and (3) are hereby amended and reenacted and R.S.37:848(D)(7) is hereby enacted to read as follows:

(2) If the body is to be held by the funeral establishment longer than thirty (30) hours after the time of death, it shall be embalmed or the body may be refrigerated continuously at a temperature not to exceed forty-five degrees Fahrenheit.

(3) If the body is not embalmed or refrigerated, it shall be buried, cremated, or otherwise disposed of within thirty hours after death or as soon as possible after its release by the proper authorities...

(7) Nothing in this subsection shall be construed to require embalming if specific practices and beliefs of religious groups prohibit it..

Maine

1. Maine Statute Title 32, Chapter 21, Subsection 1401, amended in 1999, now mandates that irrevocable preneed *funeral* contracts be transferable.

2. Unfortunately, the same statute allows funeral sellers to use trust money to purchase permanent life insurance, which would avoid Maine's trusting and refund requirements.

3. Currently, Maine *regulations* allow funeral preneed sellers to keep 7 percent of the *principal* (up to \$200.) in any trust account if the customer transfers or cancels the policy. Preneed sellers may also withdraw 25 percent of the interest annually (up to \$100.)for administrative purposes.

Maryland

Maryland statutes requires that the body be identified before cremation:

§ 5-502. Cremation - Required identification and authorization.

(a) Scope of section.- This section does not apply to the disposition of a body by a school of medicine or dentistry.

(b) In general.- Except as otherwise provided in this section, a person may not cremate a body until it has been identified by:

(1) The next of kin;

(2) A person who is authorized to arrange for final disposition of the body under §§ 5-508 through 5-512 of this subtitle; or

(3) A medical examiner.

(c) Delegation of authority.- If a person who is authorized to arrange for final disposition of a body is not available to identify the body and authorize cremation, that person may delegate that authority to another person by sending to the delegate a telegram that contains the name, address, and relationship of the sender to the deceased and the name and address of the individual to whom authority is delegated. Written authorization shall follow by mail but does not take precedence over the telegram authorizing the identification and cremation.

[An. Code 1957, art. 43, §§ 367B, 367D; 1982, ch. 21, § 2; 1994, ch. 517; 1995, ch. 517.]

NOTE TO CONSUMERS:

The law only requires that the body be identified. It does **not** say this must occur at a funeral home. If you wish to avoid a viewing at the mortuary (and the “preparation” charges some funeral homes may try to levy for this), you can identify the body at the hospital, the hospice, or other place of death, if you are present.

Massachusetts

1. Preneed salespeople must be licensed funeral directors.
2. Sellers must give consumers a “Preneed Buying Guide”.
3. Sellers must give clients a casket/service equal to fair market value of what is now unavailable.
4. Customers may transfer preneeds at will.

5. Customers can cancel revocable preneed contracts at any time without penalty for full refund.
6. 100 percent trusting is required.
7. Reporting: Funeral Directors must give written documentation of deposit of preneed money to the customer each time the customer makes a payment.
8. Regulations require “disinfection” of the body if no embalming is performed.

Unfortunately, MA laws allow funeral directors to force you to view the body for identification purposes **if** the body has not been viewed or identified at another place. For those who wish to avoid doing this at the funeral home, we suggest you sign a form at the place of death (such as the hospital) verifying that you have positively identified the body. Beware funeral directors who will try to tell you that you have to pay them for “preparation for identification viewing.” You do not have to consent to this service or its charge.

This comes from Mass. General Laws 239:

"(b) A licensed funeral establishment which has accepted responsibility for the care of any dead human body may properly require that said body be viewed and identified by the next of kin or duly authorized legal representative of the deceased at said funeral establishment prior to any cremation, burial, medical school donation or anatomical gift donation, if said body has not previously been viewed and identified by said next of kin or duly authorized legal representative elsewhere."

Michigan

As of 2003, Michigan families will have even more difficulty caring for their own dead. Probably in reaction to the publication of “Caring for the Dead,” some Michigan legislator (likely prompted by the funeral industry) added this to Statute 333.2843:

“(3) A death record shall be certified by a funeral director licensed under article 18 of the occupational code, 1980 PA 229, MCL 339.1801 to 339-1812, and shall be filed with the local registrar of the district where the death occurred no later than 72 hours after death.”

The funeral director shall “certify” the death certificate? What this means is unclear, since it is the physician’s or medical examiner’s responsibility to

certify the cause of death. Is the funeral director in charge of determining that the doctor's diagnosis was correct? Is the funeral director expected to ensure that all the information about the deceased and his life circumstances is correct?

The Michigan Department of Vital Records doesn't know. During a telephone conversation with FCA staff in March, 2006, a staffer (who would not identify herself) said she had no idea what it meant to have the funeral director certify the death certificate. And what about errors on the death certificate?

"We get corrections on death certificates all the time," she said.

And who spots the errors and corrects them? "The relatives will get ahold of us with corrections."

Well, of course they do. The relatives are the only people who could supply the information on the death certificate in the first place. Funeral directors have no ability to "certify" that mother's social security number is correct, or that her occupation wasn't misreported. So why in the world must a funeral director be involved?

This will force families to have to deal with a funeral director at some point, even though this is in clear conflict with other provisions of Michigan law that recognize families' rights to control the disposition of their dead. Statute 339.1810 (the Occupational Code governing funeral directors) lists among "Prohibited Conduct" the following:

"(i) Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody

. . .

(j) Obtaining possession or embalming a dead human body without first being expressly directed or authorized to do so by a relative of the deceased person or a person entitled to custody."

So, the family has the right to custody of the body, but they can't dispose of it without a "certified" death certificate, which only a funeral director can file. Hopefully the Legislature will clean up this Kafka-esque scenario and return to families their basic right to bury their own.

1. Funeral and Cemetery goods and services that are bought in advance are now treated almost equally in terms of trusting and refunds.
2. Constructive delivery of merchandise is prohibited.
3. Consumers may now get a refund on preneed cemetery goods and services as well as funeral goods and services at any time by canceling the contract.

Continuing problems:

1. Preneed sellers may still charge an additional 10 percent commission, which drives up the cost of preneed.
2. Only 80 percent of preneed money for cemetery merchandise (vaults, markers, etc.) must go into trust. This will decrease any refund for the customer.
3. If no commission was charged at the time of sale, the seller may keep 10% of the customers money.

Mississippi

As of April, 2006, Mississippi increased the preneed trusting requirement from 50 percent to 85 percent, as required by HB 1046. This is a step in the right direction, but everything else the MS chapter cites as being wrong with preneed law is still a problem in this state.

New Hampshire

Title 290:11 has been changed. Dead bodies may now be released to the next of kin or a designated agent. The next of kin or the designed agent may also transport the body.

Chapter 352:40a states — **“Deceased Human Bodies Exposed. – No dead human body shall be exposed to the public for a period in excess of 24 hours unless said body is properly embalmed.”**

In our interpretation, this would apply only to commercial funeral homes, as this statute falls within funeral director law. There is nothing to prevent a family from having a home viewing for as long as they wish. First, a private home is not open to “the public.” Second, the statute says the body cannot be exposed to the public for “a period in excess of 24 hours” without embalming. This suggests that a viewing of a few hours on several successive days would be just fine.

Ohio

There is now a 24 hour wait before cremation may take place.

As of January 1, 2007 — The Board of Funeral Directors adopted a regulation requiring FDs to comply with the FTC Funeral Rule.

UPDATE 3/6/07 — Prepaid cemetery trust requirements changed in 1999, and not for the better. Here's the law (Subsection 1721.211 of the statutes) now:

- Cemeteries have to put EITHER 110 percent of the *wholesale* cost of merchandise (vaults, markers) in trust OR 20 percent of the *retail* price
- Cemeteries have to put 70 percent of the retail price of prepaid services in trust

But get this loophole: Cemeteries don't have to put a dime of your prepaid trust money in the bank until the "seller of cemetery merchandise and services receives final contractual payment. . ." This means if you're paying for a lot on monthly installments, nothing gets put aside in trust for your future burial until you make the last payment. If you decide to cancel the contract, your money has probably already been spent.

In addition, "constructive delivery," the legal fiction where a seller gives you a certificate of ownership for, say, a vault, and says it's being stored for you, lets the seller avoid putting anything at all in trust for prepaid merchandise.

Even worse are the refund provisions for consumers:

- You can get a full refund if you cancel within seven days
- If you cancel a price-guaranteed contract, you get back only 60 percent of the principal you paid (in reality you won't, because they don't have to put that much in trust anyway), and 80 percent of the interest
- You get no refund on merchandise that has been "constructively delivered"
- Many cemeteries are making their contracts *irrevocable*, which the state interprets as "the customer can't reassign the trust fund to another cemetery or change is mind in anyway." The law permits these unfair contracts. [NOTE --- a cemetery has to get your signature on a separate document that specifically states you give up your right to revoke the contract. If they don't get your signature on this, the contract is invalid.]

At the time of this writing (March, 2007), Ted Hornyak is the state's investigator for the Ohio Dept. of Commerce, Div. of Real Estate and Prof. Licensing, Cemetery Dispute Resolution Commission. Ted is very pro-

consumer, and works hard under the constraints of bad laws to help consumers resolve complaints against deceptive and aggressive cemetery salespeople. You can find his division's Web site at <http://www.com.state.oh.us/real/cemain.htm>

Oregon

Oregon Regulations [OAR 830-030-0010 Care of Human Remains] state:

(1) All human remains that will be embalmed shall be disinfected by approved disinfecting solutions in such manner to help eliminate the danger of spreading diseases or infection. All human remains that are not going to be embalmed must be wrapped in a sheet. If a human remains is to be held longer than 24 hours, it must at minimum either be embalmed or refrigerated at 36 degrees F. or less until final disposition.

Oregon Regulations [OAR 830-030-0060 Rules for Transportation of Human Remains (Does not Include Removal of Deceased from Place of Death to Funeral Establishment, Cemetery, Crematory or Other Holding Facility)] state:

(1) When an unembalmed human remains is to be transported to a destination after 24 hours after death the remains may be removed from refrigeration and transported as described in OAR 830-030-0080(1) providing that the remains can be transported to its destination within the six hour time-frame. If the remains cannot be transported to its destination within the six hour timeframe, it shall be embalmed or placed in a sealed casket.

Pennsylvania

Pennsylvania now has a designated agent law.

South Carolina

Title 40-19-190 (B) of the statutes has been altered and no longer reads as it does on page 514 of the book. The legal authority for families to care for their own dead is now found in the SC Code of Regulations:

61-19 of the SC Code of Regulations (not the Code of Laws) as follows:

Section 23. Permits Governing the Disposal or Transportation of Dead Human Bodies.

(a) The funeral director, or person acting as such, who first assumes custody of a dead body or fetus shall obtain a burial-transit permit prior to final disposition or removal of the body or fetus from the State but no later than seventy-two (72) hours after death.

Utah

Sometime after the publication of Caring for the Dead, the Utah Legislature decided to interfere with families' rights and make it a crime to sign a death certificate if you're not a funeral director!

[NOTE – Larry and Susan Turpen are very helpful funeral directors who are willing to sign death certificates and file them for any family that wants to do a home funeral. He likely wouldn't even charge, but we suggest offering at least \$50 for their time and trouble.

Larry Turpen, Moab, Utah
Cell - 801-367-3535

Susan Turpen, American Fork, Utah
Cell - 877-259-3980]

Here are the new regulations:

26-2-16. Certificate of death -- Duties of a custodial funeral service director or agent -- Medical certification -- Records of funeral service director -- Information filed with local registrar -- Unlawful signing of certificate of death.

(1) The custodial funeral service director shall sign the certificate of death prior to any disposition of a dead body or dead fetus.

(2) The custodial funeral service director or an agent of the custodial funeral service director shall:

(a) obtain personal and statistical information regarding the decedent from the available persons best qualified to provide the information;

(b) present the certificate of death to the attending physician, if any, or to the medical examiner who shall certify the cause of death and other information required on the certificate of death;

(c) provide the address of the custodial funeral service director;

(d) certify the date and place of burial; and

(e) file the certificate of death with the state or local registrar.

(3) A funeral service director, embalmer, or other person who removes from the place of death or transports or is in charge of final disposal of a dead body or dead fetus, shall keep a record identifying the dead body or dead fetus, and containing information pertaining to receipt, removal, and delivery of the dead body or dead fetus as prescribed by department rule.

(4) (a) Not later than the tenth day of each month, every licensed funeral service establishment shall send to the local registrar and the department a list of the information required in Subsection (3) for each casket furnished and for funerals performed when no casket was furnished, during the preceding month.

(b) The list described in Subsection (4)(a) shall be in the form prescribed by the state registrar.

(5) Any person who intentionally signs the portion of a certificate of death that is required to be signed by a funeral service director under Subsection (1) is guilty of a class B misdemeanor, unless the person:

(a) is a funeral service director; and

(b) is employed by a licensed funeral establishment.

Vermont

As of 2005, crematories are regulated by the state Funeral Service Board. In addition all prepaid arrangements must now be paid with checks made out to the escrow agent, not the funeral home making the arrangements.

5/2007 —

There is now a 24-hour wait prior to cremation. Also, Vermont funeral directors must abide by the cremation waiting periods of other states when dealing with a body from those states.

Washington State

Embalming and Refrigeration Summary — As of December, 2005, a body must be embalmed or refrigerated as soon as the funeral home gets it. Because of a Board of Health directive in the same month, the body does not have to stay refrigerated if the family wants a viewing, or to wash and dress the person, or to perform religious rituals. Families who arrange their own funerals should not be affected by this at all.

Detail

In 2005, the state legislature passed 5752, which changed some of the funeral statutes. One portion (RCW 18.39.215) states embalming or refrigeration is required, but that funeral homes may not embalm without family permission. How this can square with the fact that no law requires funeral homes to offer refrigeration is unclear! Here's the whole statute:

“(1)(a) No licensed embalmer shall embalm human remains without first having obtained authorization from the individual or individuals that that have the right to control the disposition under RCW 68.50.160.

(b) The funeral director or embalmer shall inform the family member or representative of the deceased that embalming is not required by state law, except that embalming is required under certain conditions as determined by the state board of health.

(2)(a) Any licensee authorized to dispose of human remains shall refrigerate or embalm the human remains upon receipt of the human remains. However, subsection (1) of this section and RCW 68.50.108 shall be complied with before human remains are embalmed. Upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specified period of time”

Washington Health Regulations (WAC-246-490-040) state that “if humans remains are refrigerated [by a funeral home] they must remain so until final disposition or transport.”

Altogether, it looks like families are forced to embalm, or they're not allowed to even briefly view the person. Recognizing this problem, Dr. Kim Marie Thorburn, Chair of the Washington Department of Public Health, and Liz Luce, Director of the Dept. of Licensing, wrote an open letter to funeral directors and embalmers. The letter formally waives the “constant refrigeration” requirement so that families will not be restricted. This waiver is to remain in effect through June of 2006, by which time the Board of Health will have rewritten the regulations. The letter states, in part:

“Some religious and cultural traditions — Jewish religious law, for example, and many Native American religious traditions — oppose embalming . . . constant refrigeration may prevent the decedents' families and community members from engaging in other customary practices. . .”

“Until rule making is complete, please remember that it is not the intent of the Washington State Board of Health that this section [of regulations] should infringe on religious or cultural practices.”

Wisconsin

Wisconsin Administrative Code requires:

HFS 136.04 Preparation of bodies prior to embalming.

HFS136.04(1) Prior to embalming, or prior to public viewing or final disposition of the body if embalming is not performed, the funeral director shall do all of the following:

HFS136.04(1)(a) Remove all clothing from the body and wash the entire body thoroughly with a germicidal soap or detergent;

HFS136.04(1)(b) Clean the body orifices and treat with a topical disinfectant

HFS136.04(1)(c) Perform pars. (a) and (b) in compliance with the terms and conditions set forth in the U.S. Occupational Safety and Health Administration (OSHA) standard for occupational exposure to blood borne pathogens, 29 CFR 1910.1030.

HFS136.04(2) The funeral director shall return clothing removed from a dead human body to the family or other appropriate individual. Any soiled clothing shall be disinfected and sanitized before it is returned.

UPDATE JUNE, 2005 —

AB 75 passed, the first cremation regulations in the state. Takes effect “7 months after publication.” AB 75:

a. Creates a “crematory authority council” composed of three funeral directors who run crematories, three cemeterians, and one “public member.” The council operates under the dept. of regulation and licensing

b. requires crematories to “register” with the state for \$53, but does not require the state to do an initial inspection

c. does not require any formal training to run a crematory

d. requires crematories to maintain an “identification system” throughout the custody of the body, but provides no specifics

e. prohibits families from scattering ashes that exceed 1/8 inch in diameter (!!)

f. empowers the dept. of regulation and licensing to make rules based on the statute, but gives no specifics

g. says the dept. "may" inspect crematories, but does not require the dept. to do so

h. maximum punishment for a violator is \$1,000 fine, 6 months in jail, or both

i. original version of the bill would have allowed a person to designate an agent to carry out cremation wishes. That was stripped out, leaving the next of kin with this power, despite the decedent's wishes!