

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

**Proposing rule making related to disinterment permits
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 95, “Vital Records: General Administration,” and Chapter 97, “Death Registration and Disposition of Dead Human Bodies,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 144.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 144.3 and 2020 Iowa Acts, Senate File 2135.

Purpose and Summary

2020 Iowa Acts, Senate File 2135, updates Iowa Code section 144.34 regarding a disinterment permit to allow for disinterment of cremated remains without specifying a purpose for disinterment. Disinterment of a dead body or fetus is allowed if the purpose is for autopsy or reburial. The legislation outlines when a court order is required to issue a disinterment permit.

The proposed amendments update language to reflect current registration practices using the electronic death registration system, update the fetal death registration rules to reflect current registration practices using a fetal death certificate, and will allow the Bureau of Health Statistics to support the public and provide clarity regarding when a disinterment permit is to be issued.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s variance and waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 4, 2020. Comments should be directed to:

Melissa Bird
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: melissa.bird@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Cremated remains” and “Cremation” in rule **641—95.1(144)**:

“*Cremated remains*” means all the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions, and may include the residue of any foreign matter including casket material, bridgework, or eyeglasses that were cremated with the human remains.

“*Cremation*” means the technical process, using heat and flame, that reduces human remains to bone fragments, with the reduction taking place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

ITEM 2. Amend rules 641—97.3(144) to 641—97.5(144) as follows:

641—97.3(144) Standard registration of death—up to one year. Iowa death records submitted for registration within one year from the date of death shall be prepared on the standard Certificate of Death form.

97.3(1) The county in which the death occurs or in which the dead human body is found is the county of death.

97.3(2) If the death occurs in a moving conveyance, the county in which the dead human body is first removed from the conveyance is the county of death.

97.3(3) ~~A blank Certificate of Death form shall be used only by the state registrar or authorized agents.~~ Each person with a duty related to death certificates shall participate in the electronic death record system. A person with a duty related to a death certificate includes but is not limited to a physician as defined in Iowa Code section 135.1, a physician assistant, an advanced registered nurse practitioner, a funeral director and a county recorder.

~~**97.3(4)** If a funeral director uses a computer software program to generate death records, the certificate of death form shall be provided to the state registrar prior to the funeral director’s use of the form. The state registrar shall review the form and provide written approval to the funeral director or shall deny approval of the form if the form does not conform to the standard certificate of death as prescribed. Denial shall be provided in writing.~~

641—97.4(144) Standard registration of fetal death—up to one year. Iowa fetal death records submitted for registration within one year from the date of fetal death shall be prepared on the standard Certificate of Fetal Death form. A fetal death certificate shall not be filed after one year from the date of the event. A fetal death record shall not be entered into the electronic death record system.

97.4(1) When a fetal death occurs in an institution, the person in charge of the institution or the person's designee, the physician in attendance at or after delivery, or a medical examiner may assist in preparation of the Certificate of Fetal Death form as directed by the state registrar.

97.4(2) In cases in which a fetus has reached the gestation period of 20 completed weeks or more or a weight of 350 grams or more, a Certificate of Fetal Death form shall be:

- a. Registered and maintained solely at the state registrar's office; and
- b. Filed within three days after delivery and prior to final disposition of the fetus.

97.4(3) The county in which the dead human fetus is found is the county of death. The certificate shall be filed within three days after the fetus is found.

97.4(4) If the fetal death occurs in a moving conveyance, the county in which the fetus is first removed from the conveyance is the county of death.

97.4(5) A blank Certificate of Fetal Death form shall be used only by the state registrar or authorized agents.

~~**97.4(6)** If a funeral director uses a computer software program to generate fetal death records, the certificate of fetal death form shall be provided to the state registrar prior to the funeral director's use of the form. The state registrar shall review the form and provide written approval to the funeral director or shall deny approval of the form if the form does not conform to the standard certificate of death as prescribed. Denial shall be provided in writing.~~

641—97.5(144) Preparation of the certificate of death or fetal death.

97.5(1) The funeral director or person other than the funeral director who first assumes custody of a dead human body or fetus for the purposes of disposition shall:

- a. Obtain the personal data from the next of kin or the best-qualified person or source available;
- b. Obtain the medical certification of cause of death from the medical certifier; and
- c. Within three days after the death and prior to final disposition of the dead human body, file the completed certificate of death using the electronic statewide vital records system or, within three days after delivery and prior to disposition of the fetus, file the completed certificate of fetal death with the state registrar.

97.5(2) The funeral director or person other than the funeral director who first assumes custody of the dead human body for the purposes of disposition shall prepare the certificate of death using the electronic statewide vital records system.

97.5(3) The funeral director or person other than the funeral director who first assumes custody of the dead fetus for the purposes of disposition shall prepare the certificate of fetal death on the official form and paper issued by the state registrar ~~by one of the following means:~~

- ~~a. Use of a typewriter with dark blue or black ribbon to complete the standard certificate form;~~
- ~~b. Use of a funeral director's computer program to complete the form that has been preapproved by the state registrar pursuant to subrules 97.3(4) and 97.4(6);~~
- ~~c. Use of an electronic form prescribed by the state registrar; or~~
- ~~d. As directed by the state registrar.~~

97.5(4) Unless otherwise directed by the state registrar, a certificate of fetal death shall be accepted for filing and registration only when:

- a. All names are ~~typed~~ documented in the spaces provided;
- b. All items are completed as required;
- c. No alterations or erasures are apparent;
- d. All signatures are original and genuine and are in dark blue or black ink;
- e. The certificate presented for registration is on the approved form and official paper prescribed by the state registrar;
- f. Data are consistent with the facts of death; and

g. The form is prepared in conformity with these rules or instructions issued by the state registrar.

ITEM 3. Amend rule 641—97.14(144) as follows:

641—97.14(144) Disinterment permits.

97.14(1) A disinterment permit may be issued as follows:

a. Disinterment of a dead human body or fetus, without a court order, shall be allowed for the purpose of autopsy or reburial only, and then only if ~~the disinterment is accomplished~~ supervised by a funeral director.

b. Disinterment of cremated remains, without a court order, shall be allowed, but only if supervised by a funeral director.

c. The state registrar, without a court order, shall not issue a permit without the consent of the person authorized to control the decedent's remains under Iowa Code section 144C.5.

d. Disinterment of a dead body or fetus for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public, and then only if supervised by a funeral director.

e. Disinterment of a dead body or fetus for the purpose of autopsy by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the person authorized to control the decedent's remains under Iowa Code section 144C.5, and then only if supervised by a funeral director.

f. Disinterment of a dead body or fetus for the purpose of cremation may be allowed by court order if supervised by a funeral director. Subsequent to the disinterment, cremation of the body shall only be allowed upon a determination by the state or county medical examiner that the death was due to natural causes.

97.14(2) A permit for disinterment shall be issued by the state registrar according to rules adopted pursuant to Iowa Code chapter 17A or when ordered by the district court of the county in which such body is buried. A person authorized to control final disposition of a decedent's remains under Iowa Code section 144C.5 is an interested person and shall be entitled to notice prior to the obtaining of a court order.

97.14(2) 97.14(3) Disinterment permits shall be required for any relocation aboveground or belowground of remains from the original site of interment. Disinterment permits shall be valid for 30 days after the date the permit is signed by the state registrar. Disinterment permits are issued on a form as prescribed by the state registrar with copies to be distributed as follows:

a. One copy filed with the sexton or person in charge of the cemetery in which disinterment is to be made;

b. One copy to be used during transportation of the remains;

c. One copy filed with the sexton or person in charge of the cemetery of reburial; and

d. One copy to be returned to the state registrar by the funeral director within ten days after the date of disinterment.

97.14(3) 97.14(4) When removed from the vault for final burial, a dead human body or fetus, properly embalmed and placed in a receiving vault, shall not be considered a disinterment.

97.14(4) 97.14(5) The following persons who are competent adults may acquire a disinterment permit without a court order pursuant to Iowa Code sections 144.34 and 144C.5 in the following descending order:

a. A designee, or alternate designee, acting pursuant to the decedent's declaration.

b. The surviving spouse of the decedent, if not legally separated from the decedent, whose whereabouts are reasonably ascertainable.

c. A surviving child of the decedent or, if there is more than one surviving child, a majority of the surviving children whose whereabouts are reasonably ascertainable.

d. The surviving parent or parents of the decedent whose whereabouts are reasonably ascertainable.

e. A surviving grandchild of the decedent or, if there is more than one surviving grandchild, a majority of the surviving grandchildren whose whereabouts are reasonably ascertainable.

f. A surviving sibling of the decedent or, if there is more than one surviving sibling, a majority of the surviving siblings whose whereabouts are reasonably ascertainable.

g. A surviving grandparent of the decedent or, if there is more than one surviving grandparent, a majority of the surviving grandparents whose whereabouts are reasonably ascertainable.

h. A person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent under the rules of inheritance for intestate succession or, if there is more than one such surviving person, a majority of such surviving persons whose whereabouts are reasonably ascertainable.

i. A person who represents that the person knows the identity of the decedent and who signs an affidavit warranting the identity of the decedent and assuming the right to control final disposition of the decedent's remains and the responsibility to pay any expense attendant to such final disposition. A person who warrants the identity of the decedent pursuant to this paragraph is liable for all damages that result, directly or indirectly, from that warrant.

j. The county medical examiner, if responsible for the decedent's remains.

~~97.14(5)~~ 97.14(6) A funeral director may await a court order before proceeding with disinterment of a decedent's remains if the funeral director is aware of a dispute among:

a. Persons who are members of the same class of persons described in subrule ~~97.14(4)~~ 97.14(5);
or

b. Persons who are authorized under subrule ~~97.14(4)~~ 97.14(5) and the executor named in the decedent's will or personal representative appointed by the court.

97.14(7) Due consideration under this rule shall be given to the public health, the preferences of a person authorized to control final disposition of a decedent's remains under Iowa Code section 144C.5, and any court order.