

This is an amendment to 16.64.4 NMAC, Sections 8, 9, and 11, effective 11/1/2019.

16.64.4.8 GENERAL PROVISIONS: The following requirements pertain to all establishments and crematories:

A. The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable federal, state and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

B. The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable state and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.

C. There shall be some identification visible from the street identifying the name of the establishment as licensed by the board; provided, however, that crematories shall not be required to have visible identification.

D. Within this state there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Funeral Services Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

[2/7/1976...6/15/1996; 16.64.4.8 NMAC - Rn & A, 16 NMAC 64.4.8, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

16.64.4.9 MINIMUM REQUIREMENTS OF ESTABLISHMENTS:

A. To be licensed by the board, each funeral services establishment shall have and maintain the following minimum requirements:

(1) ~~[a chapel in which funeral services may be conducted,]~~ a chapel/room specifically used for gatherings, rituals and ceremonies, which shall be at least 600 square feet (inside-wall-to-inside-wall) in size, and shall:

(a) have the capacity for seating not less than 60 persons and for the proper display of a casket containing the deceased;

(b) have good ventilation;

(c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

(2) a casket display room which shall be not less than 450 square feet (inside-wall-to-inside-wall) in size and shall:

(a) contain burial caskets or a range of models and prices with not less than 12 different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

(b) be adequately illuminated; and

(c) any rental casket considered for internment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and

(3) a preparation room which shall be not less than 150 square feet (inside-wall-to-inside-wall) in size and shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation including running hot and cold water,

embalming table, head/arm/foot block, embalming machine, aspirator, arterial tubes, trocar with hose, cavity fluid injector, metal drain tubes or spring forceps, aneurysm needles/hooks, scissors, vascular clamps/locking forceps, hypo treatment needle, nasal aspirator, scalpel with sufficient blades, suture needles and suture thread, cotton, sufficient trocar buttons with applicator, razor, cosmetics, sealing powder, hardening compound, arterial and cavity fluid; and

(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

(1) a preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and
(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and

(3) commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Funeral Services Act.

C. To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

(1) a room for sheltering dead human bodies which shall:
(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
(b) be equipped with necessary drainage, lighting and ventilation;
(c) have a refrigeration unit thermostatically controlled with a minimum storage area of 12 and one-half cubic feet per body;
(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors;

(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and

(3) if the establishment contains burial caskets or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

D. To be licensed by the board, each funeral establishment shall:

~~(1)~~ entirely complete a body tracking sheet ~~[as provided by regulation and licensing]~~ which shall be kept in the deceased file; and

~~(2)~~ obtain and maintain body transport record log at the time of which the deceased is transported to the establishment which shall be kept in the deceased file; the log shall include:

- ~~(a)~~ (1) name of deceased;
- ~~(b)~~ (2) date of death;
- (3) time of death;
- ~~(c)~~ (4) date and time placed in refrigeration;
- ~~(d)~~ (5) date and time removed from refrigeration;
- ~~(e)~~ (6) condition of body prior to transport;
- ~~(f)~~ (7) condition of body at the time of delivery; and
- ~~(g)~~ (8) weather conditions during time of transport.

[2/7/1976...9/26/1993, 1/22/1999; 16.64.4.9 NMAC - Rn & A, 16 NMAC 64.4.9, 9/15/2001; A, 4/2/2010; A, 8/8/2012; A, 11/1/2019]

16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:

A. An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the board on an application form prescribed by the board, accompanied by the required fees, within 30 days following any such change.

(1) Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service

or direct disposition held by a stockholder, officer or director is not authority to the corporation to operate as a funeral or direct disposition establishment.

(2) The organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The change of ownership of fifty percent or more of the stock in a corporation or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

(7) A change in location of an establishment or crematory shall require a new establishment or crematory license.

(8) A change in the name of an establishment or crematory shall require a new establishment or crematory license.

(a) Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the board.

(b) All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., as well as those on the internet, of an establishment or crematory licensed by the board shall include the name, license number and address of the establishment or crematory, exactly as licensed by the board, and all references to the new name shall be changed within 30 days following the board meeting at which the new license was issued.

B. Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

C. Failure to file for a change of an establishment or crematory license within the 30 day period shall be grounds for termination of licenses of the establishment and the licensee in charge, or of the crematory license.

D. Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next board meeting, provided all other provisions of the Funeral Services Act are followed.

E. Re-inspections.

(1) The requirement for a re-inspection is based on the following:

(a) the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours and that the licensee in charge is not available within one hour of contact made or attempted by the inspector; or

(b) the establishment or crematory is found to be in non-compliance with the board's inspection requirements.

(2) A re-inspection and penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection and penalty fee is being assessed and the reason for the re-inspection.

(3) If the board has good reason to believe that the Funeral Services Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection and penalty fee will be assessed only if a violation exists.

[2/7/1976...9/26/1993; 1/22/1999; 16.64.4.11 NMAC - Rn & A, 16 NMAC 64.4.11, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

History of 16.64.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

Regulation No. 10, Necessary Drainage, Ventilation, Sanitary Flooring and Necessary and Suitable Instruments,

Supplies and Merchandise in a Funeral Establishment, 8/15/1988.
Regulation 10, Minimum Requirements of Funeral Establishments, Commercial Embalming Establishments, Direct Disposition Establishments and Crematories, 4/15/1991.
Reg. 11, Minimum Requirements of Establishments and Crematories, 8/27/1993.
Regulation No. 7, Transfer of Funeral Establishment License, 8/28/1990.
Regulation 7, Changes of Establishment and Crematory Licenses, 4/15/1991.
Reg. 13, Changes of Establishment and Crematory Licenses, 8/27/1993.
Regulation No. 8, Separate Establishment, 8/15/1988.
Regulation 8, Separate Funeral Establishment, 4/15/1991.
Regulation 8, Separate Funeral and Direct Disposition Establishments, 4/15/1992.
Reg. 12, Separate Establishments, 8/27/1993.
Regulation No. 22, Embalming, 1/7/1981.
Regulation No. 11, Embalming, 8/15/1988.
Regulation 11, Embalming, 4/15/1991.
Reg. 14, Refrigeration, 8/27/1993.
Section 5, Direct Disposition Rules and Regulations - Establishment, 12/9/1988.
Section 7, Crematory Rules and Regulations - Crematories - Inspections, 12/9/1988.

History of Repealed Material: [RESERVED]