

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Funeral Services will hold a rule hearing on Monday, September 23, 2019, at 10:00 a.m. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room.

The purpose of the Rule Hearing is to amend the New Mexico Funeral Service Rules to correct and update language, definitions and requirements. The proposed amendments include changed provisions applicable to all types of licensees. The amendments are intended to update continuing education, clarify definitions and provide uniformity in the application of the following rules:

- 16.64.1 NMAC – General Provisions
- 16.64.2 NMAC – Fees
- 16.64.3 NMAC – Requirements for Licensure
- 16.64.4 NMAC – Requirements for Establishment and Crematories
- 16.64.6 NMAC – Continuing Education
- 16.64.8 NMAC – Funeral Service Intern Practices
- 16.64.9 NMAC – Direct Disposition Practices
- 16.64.10 NMAC – Cremation Practices

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: http://www.rld.state.nm.us/boards/funeral_Services_rules_and_laws.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicholas Karns, Board Administrator, via electronic mail at funeral.board@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, September 20, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All public comments received in the board office will be posted on the board's website at http://www.rld.state.nm.us/boards/funeral_services_rules_and_laws.aspx.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Nicholas Karns, Board Administrator at (505) 476-4622.

Statutory Authority: Legal authority for this rulemaking can be found in the Funeral Services Act, Subsection A of Sections 61-32-6 NMSA 1978 (1977, as amended through 2019), which, among other provisions, specifically authorizes the Board to “adopt in accordance with the provisions of the Uniform Licensing Act and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Funeral Service Act.” The Board may “adopt rules implementing continuing education requirements”, “establish reasonable fees to carry out the provisions of the Funeral Services Act” and “conduct criminal background checks on applicants for licensure” as found in Paragraphs 2, 4 and 8 of Subsection A, of Section 61-32-6 NMSA 1978. The Board may also “adopt by rule additional requirements in the interest of public health, safety and welfare.” as found in Subsection E of Section 61-32-11 NMSA 1978. “The board may adopt by rule the requirements for reapplication or re-inspection.” Subsection B - D of Section 61-32-13 NMSA 1978. The board shall “establish by rule a schedule of reasonable fees and fines for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees” authorized in Section 61-32-23 NMSA 1978.

Summary of Proposed Changes:

16.64.1.7 NMAC, 16.64.9.8 NMAC, 16.64.10.6 NMAC, 16.64.10.7 NMAC and 16.64.10.8 NMAC

The changes for the above replaced the word “cremains” with “cremated remains”.

16.64.1 NMAC - General Provisions, 16.64.1.7 Definitions,

New “custody” and “retort” definitions were added for clarification throughout the document. Definitions were added for new license types, “embalmer” and “funeral arranger”. Definitions were added to differentiate the two types of funeral service intern licenses, “funeral service intern – direct” and “funeral service intern – general”.

16.64.1.10 NMAC - Inspection of Public Records

All language pertaining to “Inspection of Public Records” has been removed and replaced with language concerning advertising. In *Republican Party v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, 13, 283 P.3d 853, the New Mexico Supreme Court noted that the provision of the Inspection of Public Records Act that allows an agency to withhold public records “as otherwise provided by law” may include “regulatory bars to disclosure.” However, administrative rules only rarely provide an adequate justification to redact or withhold records. As noted in the Office of the New Mexico Attorney General’s Inspection of Public Records Act Guide, at 20 (8th ed. 2015), “In most cases, a regulation or ordinance, by itself, may not be used to deny access to public records.” Therefore, requests to inspect public records should be handled as provided by statute.

16.64.1.11 - Documents and Contracts

Amendments were made to allow only funeral service practitioners, arrangers, embalmers, direct disposers and funeral service interns under general supervision to sign official documents and contracts. Also, language was added to include names, dates and times of authorizations to be documented with official authorizations.

16.64.2 NMAC - Fees

Fees were added to accommodate the new license types, “embalmer” and “funeral arranger”. Renewal fees for funeral service interns under direct supervision were previously documented incorrectly and have been amended to match other license types. Also, the fees for taking the jurisprudence examination have been removed.

16.64.3.8 NMAC - Applications

Requirements for new license types have been added. Language has been added requiring applicants to submit for a New Mexico background check with the Department of Public Safety. Also, the 5 years of previous licensure requirement has been removed from reciprocal applications.

16.64.4 NMAC – Requirements for Establishments and Crematories

Language has been added to specify the functions of a “chapel” and to elaborate on current requirements for embalming equipment and supplies. Language has been added to require the time of death on tracking sheets. Also, there have been provisions added for advertising establishments on the internet as well as requiring establishment’s advertisements to include the establishment license number and address.

16.64.6 NMAC – Continuing Education

Changes to include 2 hours of ethics in the already required 10 hours of CE’s annually.

16.64.8 NMAC – Funeral Service Intern Practices

Updating language to indicate which titles can be used by funeral service interns.