

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
24.147.302 definitions, 24.147.401 fee	)	PROPOSED AMENDMENT AND
schedule, 24.147.407 name change,	)	ADOPTION
closure, transfer, or change of	)	
ownership – mortuary, branch	)	
establishment, crematory, or cemetery,	)	
24.147.507 mortician licenses,	)	
24.147.1105 crematory records,	)	
24.147.1107 cremation authorizations,	)	
24.147.1110 integrity of identification of	)	
human remains, 24.147.1111 cremation	)	
procedures, 24.147.1112 crematory	)	
prohibitions, 24.147.1503 requirements	)	
for sale of at-need, preneed, and	)	
prepaid funeral arrangements,	)	
24.147.2101 continuing education	)	
requirements – morticians, 24.147.2301	)	
unprofessional conduct, and the	)	
adoption of New Rule I preneed	)	
agreements – notification of closure or	)	
change of ownership – mortuary,	)	
branch establishment, or crematory	)	

TO: All Concerned Persons

1. On November 13, 2019, at 1:00 p.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service no later than 5:00 p.m., on November 6, 2019, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov) (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to amend these rules to eliminate outdated, redundant, and unnecessary provisions, and to provide consistency, simplicity, better organization, and ease of use for licensees, educators, program

administrators, and the general public. Additionally, the board is updating the authority and implementation citations throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.147.302 FUNERAL SERVICE DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Authorization for Removal, Transportation and Final Disposition of a Dead Body (ART) form" means the form developed by the Department of Public Health and Human Services per 50-15-405, MCA, which provides:

(a) authorization for removal from place of death per 50-15-405, MCA; and  
(b) authorization from the coroner to cremate per 46-4-122 and 50-15-405, MCA.

(1) remains the same but is renumbered (2).

(3) "Cremation authorization form" means an agreement executed between an authorizing agent and a crematory, mortuary, or branch establishment prior to receipt of the human remains. A cremation authorization form is not any of the following:

(a) a contract for payment of cremation services;  
(b) a coroner's authorization to cremate under 46-4-122, MCA;  
(c) a preneed cremation authorization under 37-19-708, MCA; or  
(d) a prepaid funeral arrangement under 37-19-903, MCA, which can only be made by a licensed mortician at a licensed mortuary.

(2) remains the same but is renumbered (4).

~~(3)~~ (5) "Hazardous implant" means any foreign object or substance that has been surgically or otherwise placed in the human body that may present a threat of injury to the public or the crematory operator, or to the crematory retort or related equipment, during the cremation process. Hazardous implants may only be removed by:

(a) appropriate medical personnel at a medical facility; or  
(b) a mortician or intern at a mortuary or branch establishment with a preparation room. The mortuary or branch establishment must keep a record of the removal and disposition of the implant. Mortuaries and branch establishments must dispose of hazardous implants in accordance with federal, state, and local laws and regulations.

(4) remains the same but is renumbered (6).

~~(5)~~ (7) "Mortician-in-charge" means a Montana-licensed mortician who accepts responsibility for the operation of a mortuary or branch establishment in conformance with all laws and rules pertinent to the practice of mortuary science. The mortician-in-charge:

(a) is personally in full and actual charge of the mortuary or branch establishment;

(b) assures the mortuary or branch establishment and all mortuary personnel

working in the mortuary or branch establishment have current and appropriate licensure; ~~and~~

(c) is responsible for the supervision of nonlicensed personnel as defined in these rules; and

(d) is responsible for ensuring in-person supervision by a mortician for students working in the mortuary or branch establishment who are engaged in a clinical practicum as described in [SB 63 Section 1].

(6) through (14) remain the same but are renumbered (8) through (16).

AUTH: 37-1-131, 37-19-202, [SB 63 Section 1], MCA

IMP: 37-1-131, 37-19-101, [SB 63 Section 1], ~~37-19-402~~, 37-19-702, 37-19-703, 37-19-705, 37-19-706, 37-19-707, 37-19-708, 37-19-814, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is relocating definitions for the Authorization for Removal, Transportation and Final Disposition of a Dead Body (ART) form and the "cremation authorization form" from ARM 24.147.1107 to clarify for licensees and the public which forms are specifically required to authorize cremation. The board determined these additions are reasonably necessary to address a long-standing area of confusion as many relevant definitions also exist in board and DPHHS statutes. The language in (3)(d) is being relocated and clarified from ARM 24.147.1107(3).

The board is amending the definition of "hazardous implant" at (5) to incorporate relevant provisions from ARM 24.147.1107(6) as a more appropriate and logical location.

The board is adding "branch establishment" to (7) to address licensee questions by clarifying that branch establishments must also have a mortician-in-charge who is responsible for the facility's operation and those individuals working at the facility.

The 2019 Montana Legislature enacted Chapter 49, Laws of 2019 (Senate Bill 63), an act generally revising funeral, mortuary, and cemetery laws. The bill was signed by the Governor March 7, 2019, and will become effective October 1, 2019. The bill creates an exemption for licensure for students currently enrolled in an accredited or approved funeral service or mortuary science degree program who are practicing mortuary science in Montana as part of a required student clinical practicum. The legislation also gave the board the authority to adopt rules pertaining to supervision requirements. The board is amending (7)(d) to implement the bill by describing student supervision requirements at a mortuary or branch establishment.

#### 24.147.401 FEE SCHEDULE

##### (1) Facility application fees

(a) Mortuary	\$375 <u>600</u>
(b) Mortuary branch facility	<del>375</del> <u>600</u>
(c) Crematory	<del>375</del> <u>600</u>
(d) Cemetery	<del>4250</del> <u>2000</u>

##### (2) Facility inspection or reinspection fees

(a) Mortuary	<del>200</del> <u>320</u>
(b) Mortuary branch facility	<del>200</del> <u>320</u>

(c) Crematory	200 <u>320</u>
(d) Cemetery	200 <u>320</u>
(3) Individual application fees	
(a) Mortician	375 <u>600</u>
(b) Crematory operator	300 <u>480</u>
(c) Crematory technician	300 <u>480</u>
(d) Mortician intern	330 <u>528</u>
(4) Activation of inactive license	
(a) Mortician	100 <u>160</u>
(b) Crematory operator	50 <u>80</u>
(c) Crematory technician	50 <u>80</u>
(5) Facility renewal fees (includes annual inspection)	
(a) Mortuary	450 <u>720</u>
(b) Mortuary branch facility	75 <u>120</u>
(c) Crematory	450 <u>720</u>
(d) Cemetery (five-year renewal)	1500 <u>2400</u>
(6) Individual renewal fees	
(a) Mortician - active	300 <u>480</u>
(b) Mortician - inactive	150 <u>240</u>
(c) Crematory operator - active	150 <u>240</u>
(d) Crematory operator - inactive	75 <u>120</u>
(e) Crematory technician - active	150 <u>240</u>
(f) Crematory technician - inactive	75 <u>120</u>
(7) through (9) remain the same.	

AUTH: 37-1-131, 37-1-134, 37-19-202, ~~37-19-301~~, 37-19-303, 37-19-304, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

IMP: 37-1-134, 37-1-141, ~~37-19-301~~, 37-19-303, 37-19-304, 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

REASON: The board determined it is reasonably necessary to increase certain application and renewal fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees at a level that provides the amount of money usually needed for the operation of the board for services. In providing administrative services to the board, the department has determined that unless the fees are increased as proposed, the board's already existing shortfall of operating funds will continue to increase through the end of the current fiscal year and into future fiscal years. Under the current fee structure the board will not have sufficient revenue in FY20 to even cover regular FY20 operating expenses. The board estimates that approximately 473 persons will be affected by the proposed fee changes, resulting in a \$88,173 increase in annual revenue. The board last increased fees in 2012.

24.147.407 NAME CHANGE, CLOSURE, TRANSFER, OR SALE CHANGE OF OWNERSHIP – MORTUARY, BRANCH ESTABLISHMENT, CREMATORY, OR CEMETERY (1) Using forms provided by the department, mortuaries, branch

establishments, crematories, and cemeteries must notify the board within ten days of any of the following occurring:

- (a) through (c) remain the same.
- (d) ~~sale or~~ change of ownership as defined in these rules.
- (2) When there is a change in ownership the license issued to the previous owner is void. The new owner must:
  - (a) apply for a license per the applicable requirements in this chapter; ~~and~~
  - (b) within 30 days of the change of ownership, publish notice of the change of ownership in a newspaper of general circulation in the county in which the facility is located; and
  - (c) once the change in ownership is complete, notify the board per the requirements in [NEW RULE I].
- (3) remains the same.

AUTH: 37-19-202, 37-19-403, 37-19-703, 37-19-816, MCA  
IMP: 37-19-402, 37-19-403, 37-19-703, 37-19-816, MCA

REASON: See REASON for NEW RULE I.

24.147.507 MORTICIAN LICENSES (1) remains the same.

~~(2) All transcripts must be certified and sent directly from the school(s). Applicants must meet the following education requirements:~~

~~(a) minimum of an associate's degree in funeral service or mortuary science from a program accredited by the American Board of Funeral Service Education (ABFSE) or its successor which consists of a minimum of 60 semester credits or 90 quarter credits; and~~

~~(b) an additional 30 semester credits or 45 quarter credits from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education in any of the following subjects:~~

- ~~(i) accounting;~~
- ~~(ii) business;~~
- ~~(iii) computer applications;~~
- ~~(iv) communications/speech;~~
- ~~(v) English;~~
- ~~(vi) history;~~
- ~~(vii) mathematics;~~
- ~~(viii) psychology;~~
- ~~(ix) religion;~~
- ~~(x) sociology;~~
- ~~(xi) education;~~
- ~~(xii) biological sciences; or~~
- ~~(xiii) other subjects germane to the practice of mortuary science.~~

(2) Applicants must have a minimum of an associate degree in funeral service or mortuary science from a program accredited by the American Board of Funeral Service Education (ABFSE) or its successor which consists of a minimum of 60 semester credits or 90 quarter credits. All transcripts must be certified and sent directly from the school(s).

(3) through (5) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-131, 37-19-302, 37-19-303, MCA

REASON: The 2019 Montana Legislature enacted Chapter 46, Laws of 2019 (House Bill 196), an act removing certain licensing requirements for the practice of mortuary science. The bill was signed by the Governor and became effective on March 7, 2019. The bill changed the education requirement for mortician or mortician intern licensure so only an associate degree in funeral service or mortuary science with a minimum of 60 semester or 90 quarter credits is now required. The bill eliminated the requirement for an additional 30 semester or 45 quarter credits in subjects determined by the board. The board is amending this rule to remove the now obsolete requirements and implement the legislation.

24.147.1105 CREMATION CREMATORY RECORDS ~~(1) Each crematory shall maintain on a permanent basis a record of each cremation, including:~~  
~~(a) original, photocopy, or facsimile copies of the following approved forms with validated electronic signatures or physical signatures:~~  
~~(i) removal authorization as provided by 50-15-405, MCA; and~~  
~~(ii) coroner cremation authorization as provided by 46-4-122, MCA.~~  
(1) Crematories must maintain permanent records of all cremations.  
(2) Each cremation record must consist of the following:  
(a) ART form as defined in ARM 24.147.302;  
(b) a cremation authorization form as described in ARM 24.147.1107 and signed by an authorizing agent;  
(c) as applicable, a one or both of the following:  
(i) preneed cremation authorization executed in accordance with 37-19-708, MCA; and/or  
(ii) disposition directions executed in accordance with from a prepaid funeral contract as described in 37-19-903, MCA;  
(d) a cremation log showing the including, but not limited to the following information:  
(i) decedent's name;  
(ii) date, and time the body was received by the crematory;  
(iii) metal tag number;  
(iv) date(s) and times of refrigeration, if applicable;  
(v) date and starting time of cremation; and  
(vi) identification of the staff member performing name(s) and license number(s) of the crematory operator(s) and/or technician(s) who performed the cremation;  
(e) a copy of the receipt of the date, time, and place of the delivery of the cremated remains with dual signatures of the recipient and crematory representative form containing all the information required under 37-19-706(5), MCA; and  
(f) as if applicable, shipping and tracking forms information as required by 37-19-705(13), MCA.

~~(2) In the case of cremated remains that have been abandoned by the authorizing agent, the crematory operator may, after 90 days, maintain or dispose of such remains in a recoverable manner, such as burial or entombment, and shall maintain the identifying metal tag and the location of burial as a permanent record.~~

~~(3) In addition to the records above, if the crematory is independent of a mortuary, the crematory must maintain price lists and otherwise comply with the Federal Trade Commission (FTC) funeral rule if it sells funeral goods. The crematory shall also maintain copies of invoices or contracts as prescribed by these rules.~~

(3) Crematories must maintain records of final disposition of unclaimed remains per 37-19-706, MCA, and ARM 24.147.1111.

(4) If the authorizing agent gives the crematory authority to dispose of the cremated remains in the cremation authorization form, the crematory must maintain the identifying metal tag as a permanent record of the facility.

(5) Crematories providing funeral goods as described in ARM 24.147.1102 must comply with board and FTC recordkeeping requirements per ARM 24.147.406.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-702, 37-19-703, 37-19-706, 37-19-708, 37-19-903, ~~46-4-122, 50-15-405, MCA~~

REASON: The board determined it is reasonably necessary to amend this rule and remove formatting requirements of records maintained per 46-4-122 and 50-15-405, MCA, as those records are beyond the board's authority.

The board is replacing references to "staff" with "crematory operator" and "crematory technician" in (2)(d)(vi) to avoid confusion with unlicensed staff since only these specific licensees can perform the referenced functions.

The board is moving provisions on disposal of unclaimed remains from (2) to ARM 24.147.1112(3) and incorporating recordkeeping requirements from ARM 24.147.1110 to (4) of this rule as more logical and practical locations.

24.147.1107 CREMATION AUTHORIZATIONS ~~(1) A "cremation authorization" is a separate form and does not include a contract for payment of cremation services, and is distinguished from the "coroner's authorization to cremate" under 46-4-122, MCA, set forth on the Authorization for Removal and Transport (ART) form.~~

~~(2) A "cremation authorization" must be executed by an authorizing agent and may not conflict with any preneed cremation authorization executed by the decedent in accordance with 37-19-708, MCA, or disposition directions made in accordance with 37-19-903, MCA.~~

~~(3) The statutory authority to allow an individual or authorizing agent to execute a preneed cremation authorization does not authorize a crematory operator or facility to present, negotiate, or sell prearranged funeral or related services.~~

(4) (1) The A cremation authorization form as defined in ARM 24.147.302 must include:

(a) through (c) remain the same.

(d) the superiority of the authorizing agent's authority among competing rights to act as the authorizing agent per 37-19-904, MCA;

(e) disclosure by the authorizing agent familiar with the decedent of any potentially hazardous implants or other medical devices;

(f) disclosures and authorizations regarding the casket or alternative container as described in ARM 24.147.1102;

(g) disclosures and authorizations regarding multiple cremations per 37-19-705, MCA;

(h) and (i) remain the same.

(j) authorization by the authorizing agent to cremate;

(k) through (m) remain the same.

(n) disclosures regarding the time and place of cremation and whether the decedent is to be embalmed; and

(o) a release from liability per 37-19-707, MCA; and

~~(5) The cremation authorization form shall include the following~~

(p) if applicable, certification by a mortician on behalf of a mortuary that:

(a) through (c) remain the same but are renumbered (i) through (iii).

~~(6) Morticians must exercise due diligence in determining the presence of a potentially hazardous implant in and identification of human remains to be cremated. If a mortician is not involved in the disposition, the person with the right of disposition (i.e., the authorizing agent) for the cremation must warranty the absence of any known pacemaker or potentially hazardous implant or that it has been removed at a medical facility by appropriate medical personnel.~~

AUTH: 37-19-202, 37-19-703, 37-19-708, MCA

IMP: 37-19-703, 37-19-704, 37-19-707, 37-19-708, 37-19-903, 46-4-122, MCA

REASON: The board is relocating definitions for the Authorization for Removal, Transportation and Final Disposition of a Dead Body (ART) form and the "cremation authorization form" from (1) and (2) to the definitions rule, ARM 24.147.302. Additionally, the board is moving and clarifying the provisions of (3) in the "cremation authorization form" definition at ARM 24.147.302.

The board is amending this rule to relocate morticians' duties regarding hazardous implants to the definition for "hazardous implant" in ARM 24.147.302. The board determined this is a more logical location since hazardous implant removal requirements pertain to morticians' scope of practice and not crematories, crematory technicians, or crematory operators. Crematory technicians and crematory operators are not allowed to remove hazardous implants.

The board is deleting from (1)(e) the requirement that authorizing agents are familiar with decedents as it is not a requirement for being an authorizing agent under 37-19-101(3) or 37-19-904, MCA.

24.147.1110 INTEGRITY OF IDENTIFICATION OF HUMAN REMAINS PROCESS ~~(1) A crematory may not accept or cremate human remains until it has received warranties of truthfulness regarding the identity of the remains to be~~



cremated and regarding the authority of the signer to order cremation. A cremation authorization form, properly executed, shall satisfy these warranties.

(1) To maintain the integrity of the identification of human remains, a crematory must:

(a) follow the requirements in ARM 24.147.1111; and

(2) A crematory operator must develop and require crematory staff to strictly follow procedures to accurately maintain the identification of the remains throughout the cremation process, including, at a minimum, the following:

(b) develop procedures and train crematory operators and crematory technicians on those procedures in order to accurately maintain the identification of the remains throughout the cremation process. At minimum, the following must be addressed in the procedures:

(a) Upon receipt of the remains in a container described at ARM 24.147.1102, staff shall examine the cremation authorization, any preneed cremation authorization, and the ART forms, and maintain them together with the container.

(i) upon receipt of the human remains, the crematory operator or crematory technician must examine the ART form and any preneed cremation authorization. Those forms must be kept with the cremation container at all times;

(b) Prior to the cremation, using sequentially numbered metal tags, staff shall assign a number to the human remains and record the number on the cremation documents, a separate log, or both.

(ii) prior to cremation, the crematory operator or crematory technician must assign a number to the remains from a sequentially numbered metal tag. The number on the assigned tag must be recorded on all cremation documents and the cremation log described in ARM 24.147.1105;

(c) Staff shall place the metal tag on the outside of the retort during the cremation process. During final processing, staff shall place the metal tag on the container or tray containing the human remains.

(iii) the crematory operator or crematory technician must place the metal tag on the outside of the cremation chamber retort during the cremation;

(iv) the crematory operator or crematory technician must place the metal tag on the cremation container or tray during final processing of the remains;

(d) After the cremation process, staff shall either place the metal tag with the cremated remains in a securely fastened plastic bag or securely fasten the tag to the exterior of the bag.

(v) following final processing, the crematory operator or crematory technician must ensure the metal tag is kept with the remains. If the remains do not fit within one temporary container, then the temporary containers must be identified and labeled per ARM 24.147.1111; and

(e) Staff shall affix an identification label to the closed urn or container in a permanent manner that ensures the integrity of the identification of the remains.

(vi) the crematory operator or crematory technician must affix an identification label to:

(A) the temporary container;

(B) an urn, as defined in 37-19-101(34), MCA; or

(C) a sealed container.

~~(3) When directed by the cremation authorization, and agreed to by the crematory to scatter cremated remains, the licensee shall maintain the identifying metal tag as a permanent record of the facility.~~

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-703, 37-19-704, 37-19-705, 37-19-707, 37-19-708, MCA

REASON: The board is relocating specific recordkeeping provisions from this rule and ARM 24.147.1111 to the crematory records rule, ARM 24.147.1105, as a more logical and practical location.

The board is replacing references to "staff" with "crematory operator" and "crematory technician" throughout this rule and ARM 24.147.1111 to address questions and avoid confusion with unlicensed staff since only these specific licensees can perform the referenced functions.

Further, all crematory prohibitions in ARM 24.147.1110 through 24.147.1112 have been consolidated into ARM 24.147.1112 for ease of use by licensees, the public, and department staff.

24.147.1111 CREMATION PROCEDURES ~~(1) As set forth in 37-19-704 through 37-19-706, MCA, a crematory shall comply with the procedures further described in this rule.~~

~~(2) Prior to the beginning of the cremation process, the crematory must have in its possession written authorizations to cremate bearing the original, photocopied, electronic, or facsimile signatures from:~~

~~(a) the authorizing agent; or~~

~~(b) the coroner having jurisdiction or the state medical examiner, if the death occurred in Montana.~~

(1) In addition to the requirements and procedures in 37-19-704 through 37-19-706, MCA, and the rules in this subchapter, crematories must comply with this rule.

(2) A crematory must have the following authorizations in its possession before a crematory operator or crematory technician can begin cremation:

(a) ART form as defined in ARM 24.147.302;

(b) cremation authorization form as described in ARM 24.147.1107; or

(c) if applicable, one of the following:

(i) preneed cremation authorization executed in accordance with 37-19-708, MCA;

(ii) disposition directions from a prepaid funeral contract as described in 37-19-903, MCA; or

(iii) at-need cremation authorization.

~~(3) Whenever a crematory is unable to cremate human remains immediately upon taking custody, but in no case less than 24 hours after the time of death, the crematory shall hold human remains in a holding area marked "private" or "authorized personnel only," that is secure from access by unauthorized persons.~~

(4) (3) A crematory may not hold unembalmed Unembalmed human remains held longer than 48 hours after the time of death must be refrigerated per ARM 37.116.103 outside of a refrigerated facility. Individual circumstances, however, may

dictate that refrigeration at approximately 35 degrees Fahrenheit or less begins sooner than 48 hours after the time of death.

(4) Human remains not cremated by a crematory operator or crematory technician immediately upon receipt per 37-19-705, MCA, or ARM 24.147.1111 must be held in a holding facility marked "private" or "authorized personnel only."

~~(5) Except for persons having the right of disposition who request to witness the cremation, board inspectors, or persons authorized by the crematory operator in charge to be present, unauthorized persons may not be permitted in the cremation chamber area while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber. This section may not be construed to allow a crematory that is not attached to a mortuary to:~~

~~(a) conduct a viewing of the body on the crematory premises; or~~

~~(b) hold or charge to hold a funeral or memorial service.~~

(6) (5) As described by 37-19-705, MCA, in processing cremated human remains, crematory staff shall When processing cremated remains following cremation, crematory operators and crematory technicians shall:

(a) commingle cremated human remains only if the authorizing agent provides written authorization for a simultaneous cremation of more than one person authorized by the authorizing agent in the cremation authorization form;

(b) remove the recoverable residual of the cremation process from the cremation chamber and sweep it the cremation chamber clean;

(c) remains the same.

(d) process remaining bone fragments to unidentifiable particles and place the particles and all remaining residue from (b) in a container as described in ARM 24.147.1110. If the cremated remains;

(e) place the bone particles, together with the remaining residue and metal identification tag in a securely fastened plastic bag;

(f) place the bag in a sturdy, properly closed temporary container, or in an urn provided by the authorizing agent, with the name of the deceased person and other proper identification affixed to the outside of the containers; and

(g) clean all containers or trays used in the cremation process to avoid commingling of cremated remains.

(7) (i) If the cremated remains do not adequately fill the container's interior dimensions of the temporary container or urn, staff the crematory operator or crematory technician may fill the extra space with packing material that will not become intermingled with the cremated remains; and/or:

(8) (ii) If cremated remains do not fit within one temporary container or urn, staff shall the crematory operator or crematory technician must use an additional temporary container or urn per 37-19-705, MCA. The temporary container(s) and/or urn(s) must further be labeled, similarly sealed and affixed with identification, and marked "1 of 2" and "2 of 2."

(9) When requested to ship cremated remains, the crematory shall place the temporary container or container holding the urn in a single, sturdy, pressure-resistant, and properly sealed shipping box. Multiple containers of cremated remains of a single person shall be placed in one shipping box as described. The crematory shall label the container "CREMATED REMAINS" and ship using an

internal tracing system that requires a signature by the person taking delivery of the cremated remains and a return receipt to the crematory.

~~(10) If the authorizing agent does not claim the cremated remains within 90 days from the date of cremation, the crematory may dispose of the cremated remains in any manner permitted by law. "Any manner permitted by law" does not include scattering, but rather means disposal in a recoverable manner, such as burial in a grave, crypt, or niche. The crematory must maintain a record of the disposition made and may issue an invoice to the authorizing agent to recover the costs of the disposition.~~

(6) Cremated remains being shipped shall be shipped per 37-19-705(10) through (13), MCA. Additionally:

(a) the shipping container must be labelled "CREMATED REMAINS"; and

(b) if there are multiple temporary containers and/or urns containing the same decedent's remains, the crematory operator or crematory technician must place temporary containers and/or urns within the same shipping container.

(7) Crematories which dispose of unclaimed remains per 37-19-706(2), MCA must maintain a record of the disposition and may issue an invoice to the authorizing agent to recover the costs of the disposition.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-703, 37-19-704, 37-19-705, 37-19-706, 46-4-122, 50-15-405,  
MCA

24.147.1112 CREMATORY PROHIBITIONS ~~(1) No crematory facility, operator, or technician shall do any of the following, unless also licensed as a mortician~~ Crematories, crematory operators, and crematory technicians shall not:

~~(a) transport human remains without the direction of a mortician who is responsible for the transport, make arrangements, engage in funeral directing, or engage in mortuary science, as such terms are defined in 37-19-101, MCA;~~

(b) commingle human remains from more than one person unless authorized per 37-19-705, MCA, and ARM 24.147.1107;

~~(b) (c) cremate fetuses, limbs, and body parts from private or public health agencies, medical doctors, or colleges and universities, without;~~

~~(i) proper~~ required federal, state, and local permits; and

(ii) cremation authorizations as described in ARM 24.147.301 and 24.147.1107;

~~(e) (d) use or allow the use of the same cremation chamber for the cremation of human remains and animals;~~

~~(d) (e) accept prepayment for cremation services, unless covered in a prepaid funeral agreement executed by a mortician per 37-19-903, MCA;~~

~~(e) (f) require that human remains be placed in any particular container other than a basic combustible container, e.g., including but not limited to a casket, before cremation; or~~

(g) require that cremated remains be placed in a cremation urn, cremation vault, or receptacle designed to permanently encase the cremated remains;

(f) (h) remove any dental gold, jewelry, medical devices, body parts, or other items of value from human remains prior to the cremation or from the cremated

remains after cremation, unless the cremation authorization form described in ARM 24.147.301 and 24.147.1107 specifically authorizes such removal; or

~~(g) (i) remove a potentially hazardous implant from human remains or knowingly cremate human remains with a potentially hazardous implant in place.~~

(2) Only the following persons are permitted in the cremation chamber area of a crematory while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber:

(a) persons authorized by the crematory operator-in-charge;

(b) department and board personnel; and

(c) persons having the right of disposition under 37-19-904, MCA, who request to witness a cremation.

(3) Crematories which dispose of unclaimed remains per 37-19-706, MCA, and ARM 24.147.1111 must dispose of remains in a recoverable manner, such as burial in a grave, crypt, or niche.

~~(2) A hazardous implant may only be removed by a mortician at a mortuary or branch mortuary establishment with a preparation room, unless removal has taken place at a medical facility by appropriate medical personnel. The mortician shall keep a record of the removal and disposition of the implant. Morticians must recycle hazardous implants if such service is available, and may only discard them in accordance with federal, state, and local laws and regulations.~~

~~(3) This rule may not be construed to prohibit an independent crematory not associated with a mortician from discussing cremation procedures with customers or selling combustible containers or cremation urns. If such funeral goods and services are sold, they may only be paid for by the consumer "at need" and not as preneed funeral goods and services, which may only be offered, negotiated, or sold by a licensed mortician. An independent crematory operator who sells funeral goods must comply with the funeral rule and have a general price list (GPL).~~

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-101, 37-19-703, 37-19-704, 37-19-705, 37-19-706, 37-19-707, 37-19-708, MCA

REASON: The board is amending (1) to remove provisions regarding mortician scope of practice as this rule pertains to crematories, crematory technicians, and crematory operators.

It is reasonably necessary to relocate provisions from ARM 24.147.1111(5) to (2), as a more practical location. The modified language will further clarify which individuals are allowed in a cremation chamber at which times and address confusion regarding when statute allows unlicensed people in the cremation chamber. Prohibitions located in ARM 24.147.1110 and 24.147.1111 have been consolidated in this rule for ease of use by licensees, the public, and staff.

The board is moving provisions on disposal of unclaimed remains from ARM 24.147.1105(2) to (3) of this rule as a more logical and practical location.

The board is amending this rule to relocate morticians' duties regarding hazardous implants in (2) to the "hazardous implant" definition in ARM 24.147.302. The board determined this is a more logical location since hazardous implant removal requirements pertain to morticians' scope of practice and not crematories,

crematory technicians, or crematory operators. Crematory technicians and crematory operators are not allowed to remove hazardous implants.

The board is striking (3) and moving relevant provisions to ARM 24.147.1105(5) as a more practical location. Provisions regarding what crematories may sell are clearly set forth in the FTC funeral rule. The reference to independent crematory has been removed since "independent crematory" is not a term defined by statute. "Crematory" and "mortuary" are two distinct licenses and are both defined in 37-19-101, MCA.

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRENEED, AND PREPAID FUNERAL ARRANGEMENTS (1) remains the same.

(2) The following monies shall be ~~construed as trust funds in the possession of~~ held in trust by a mortician, mortuary, branch establishment, cemetery, or any other person, firm, or corporation:

(a) through (4) remain the same.

(a) When there is a closure or change of ownership of a mortuary, branch establishment, or crematory, the requirements of [NEW RULE I] must be met.

(5) remains the same.

(6) No later than 30 days from issuance of the death certificate following the performance of preneed funeral arrangements pursuant to a prepaid funeral agreement, the mortician, mortuary, branch establishment, cemetery, crematory, or any other person, firm, or corporation holding trust funds shall close and distribute the funds to trust beneficiaries.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-823, 37-19-827, 37-19-828, 37-19-829,  
MCA

REASON: The board is amending (2) to align with proposed amendments to the definition of "mortician-in-charge" in ARM 24.147.302 and the adoption of NEW RULE I. Specifically, the board determined it is reasonably necessary to clarify that mortuary branch establishments are also already allowed under statute to hold money in trust.

See REASON for NEW RULE I for changes to (4)(a).

Additionally, the board is adding (6) to set a specific time by which mortuaries, branch establishments, cemeteries, and crematories must wind-up and distribute trust funds. This change will ensure proper distribution of trust funds per preneed contracts, so licensees are not indefinitely holding onto monies held in trust per prepaid funeral agreements already fulfilled by the licensees.

24.147.2101 CONTINUING EDUCATION REQUIREMENTS – MORTICIANS

(1) through (7)(a) remain the same.

(b) A board meeting is worth ~~one hour~~ two hours of continuing education credit.

(8) and (9) remain the same.

(10) Licensees found to be in noncompliance with continuing education requirements may be subject to ~~disciplinary action~~ administrative suspension.

Licensees may not apply continuing education hours used to complete delinquent continuing education plan requirements for the next continuing education reporting period.

(11) and (12) remain the same.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending (7)(b) to increase the number of CE hours licensees can obtain by attending a board meeting. The board determined this change is reasonably necessary to align with the average length of board meetings and the general topics pertaining to license regulations which are covered at an average board meeting.

The board is amending (10) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

24.147.2301 UNPROFESSIONAL CONDUCT (1) through (1)(f) remain the same.

(g) failing to exercise appropriate supervision of students working in the mortuary or branch establishment who are engaged in a clinical practicum as described in [SB 63 Section 1];

(g) (h) allowing nonlicensed personnel to perform duties that are statutorily reserved for licensees or exempt students as described in [SB 63 Section 1];

(h) through (y) remain the same but are renumbered (i) through (z).

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered by the board to be unprofessional conduct. The board is adding (1)(g) and amending (1)(h) to align with the definition in ARM 24.147.302(7) describing the supervision requirements per Senate Bill 63 for students currently enrolled in an accredited or approved funeral service or mortuary science degree program who are practicing mortuary science in Montana as part of a required student clinical practicum. The changes will implement the bill by clearly delineating that improper supervision of students practicing mortuary science is considered unprofessional conduct.

5. The proposed new rule is as follows:

NEW RULE I PRENEED AGREEMENTS – NOTIFICATION OF CLOSURE OR CHANGE OF OWNERSHIP – MORTUARY, BRANCH ESTABLISHMENT, OR CREMATORY (1) When there is a closure of a mortuary, branch establishment, or crematory, in addition to the requirements in ARM 24.147.407, the owner must:

(a) notify all preneed funeral arrangement purchasers prior to closure or change of ownership; and

(b) within 30 days of the closure, notify the board that the purchasers have been notified of the closure.

(2) When there is change of ownership of a mortuary, branch establishment, or crematory, the following must occur within 30 days of the change of ownership:

(a) the previous owner must notify the board that the new owner has been informed of all existing preneed agreements and monies held in trust; and

(b) the new owner must:

(i) notify all preneed funeral arrangement purchasers of the change of ownership; and

(ii) notify the board that all purchasers have been notified of the change of ownership.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-402, 37-19-403, 37-19-703, 37-19-807, 37-19-823, 37-19-827, 37-19-828, MCA

REASON: Beginning in March of 2018, the board has acquired preneed trust fund information from mortuaries and crematories as well as cemeteries. Since that time, the board has compared licensee information with that obtained from financial and banking institutions and concluded that confusion exists regarding the management of preneed trust accounts. The board determined it is reasonably necessary to adopt this new rule and amend ARM 24.147.407 to further clarify the responsibilities of mortuaries, branch establishments, and crematories holding preneed contracts when there is a closure or change of ownership of the facility. These rules supplement the board's existing statutory and rule requirements regarding licensees' management of preneed funeral trust monies and records.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdnfr@mt.gov](mailto:dlibsdnfr@mt.gov), and must be received no later than 5:00 p.m., November 15, 2019.

7. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/fnr> (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate



whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov); or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Regarding Senate Bill 63, the primary bill sponsor was contacted on May 8, 2019, by telephone. Regarding House Bill 196, the primary bill sponsor was contacted on May 8, 2019, by telephone.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.147.302, 24.147.407, 24.147.507, 24.147.1105, 24.147.1107, 24.147.1110, 24.147.1111, 24.147.1112, 24.147.1503, 24.147.2101, and 24.147.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.147.401 will significantly and directly impact small businesses. The group of small businesses likely affected are 134 mortuaries, branch establishments, crematories, and cemeteries that have fewer than 50 full-time employees. The probable significant direct effect is an average of \$580 increase annually per facility license/small business assuming facility licensees pay the fees of all other licensed morticians, mortician interns, crematory operators, and crematory technicians working at each licensed facility. The board must raise its fees to cover annual board expenditures to finance its operations. This board is solely funded using licensing fees. Based on current projections regarding annual expenditures and the number of individuals and facilities licensed under this board there is no way to continue operating per legislative mandate to license people and address complaints and address public health and safety without increasing the licensing fees paid by individuals and the licensed small businesses that employ those individuals.

Documentation of the board's above-stated determinations is available upon request to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov).

11. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE  
JOHN TARR, PRESIDING OFFICER

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ GALEN HOLLENBAUGH  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 8, 2019.