OFFICE OF THE CHIEF MEDICAL EXAMINER

NOTICE OF EMERGENCY RULEMAKING

The Chief Medical Examiner of the Office of the Chief Medical Examiner (OCME), pursuant to the authority set forth in Section 2918 of the Establishment of the Office of the Chief Medical Examiner Act of 2000 (Act), effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1417 (2019 Repl.)), and Mayor's Order 2015-200, dated August 17, 2015, hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 50 (Medical Examiner) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR). Additionally, this emergency rulemaking is being promulgated in accordance with Mayor's Order 2020-045, dated March 11, 2020, Mayor's Order 2020-046, dated March 11, 2020, and Mayor's Order 2020-050, dated March 20, 2020, declaring a public emergency and public health emergency for COVID-19 and extending those emergencies through May 15, 2020.

Section 2912 of the Act (D.C. Official Code § 5-1411) provides that the Chief Medical Examiner (CME) "shall release the body of [a] decedent to the person having the right to the body for the purpose of burial or other disposition pursuant to law. If after a reasonable time, established by regulation by the Mayor, no authorized person claims the body of the decedent, the CME shall dispose of the body in accordance with the law." Current regulations provide that the period of time for an authorized person to claim the body of a decedent is thirty (30) days. This emergency rulemaking amends the prior regulations to provide that the reasonable time period for an authorized person to claim the body of a decedent shall be fifteen (15) days during, and within forty-five (45) days after, the COVID-19 public health emergency.

This emergency rulemaking action is necessary for the immediate preservation or promotion of the health, safety, and welfare of District residents. The World Health Organization has declared the COVID-19 outbreak as a pandemic. No specific treatment exists for COVID-19 and a vaccination against COVID-19 does not exist. The death rate for COVID-19 is substantially higher than the death rate for influenza (which has a specific treatment and a vaccination). In the District, there have been 139 individuals who have lost their lives from COVID-19 as of April 23, 2020, in a period of approximately one month. The OCME currently has space to store up to two hundred (200) bodies, with additional efforts being made during the COVID-19 public health emergency to expand the storage space available, both on-site and off. It is anticipated that the District may no longer be able to adequately store the number of deceased bodies for the current regulated time period of thirty (30) days, due to the COVID-19 public health emergency.

Inadequate storage capacity results in the inability of OCME to recover and transport bodies for storage from homes, streets, public and buildings and transportation venues, amongst other death scenes, resulting in: a) hazardous public health and environmental conditions throughout the District; b) overcapacity in health care facility morgues (*i.e.*, hospitals, nursing homes, hospice) with the burden of managing such overcapacity possibly impeding upon the provision of quality health care services that promote the District's public, safety and welfare; and c) delays in processing bodies that have accumulated due to overcapacity, in turn, prohibiting timely provision of post-examination findings and reports, as well as proofs of death, to next of kin.

Eighty-two percent (82%) of decedents transported to OCME are identified. The identification process is not only visual, it may be made by DNA comparison, X-ray, radiograph, and of fingerprint for example. Eighteen percent (18%) of decedents are not identified at the time of transport but may be subsequently identified. Of the decedents where the next of kin is not identified at the time of transport, twenty-five percent (25%) of the next of kin are identified and claim the decedent within an average of fifteen (15) days from the time of transport to the agency. The remaining seventy-five percent (75%) of the unclaimed decedents proceed to public disposition and are cremated after the thirty (30) day period. Moreover, the cremains of bodies are stored for up to one (1) year after cremation until final burial at an annual city-wide memorial.

Therefore, OCME has determined that due to the COVID-19 public health emergency when the death rate has increased at a significant rate, and is expected to accelerate at least throughout the next month, and due to the limited space available for bodies, the reasonable time for an authorized person to claim the body of a decedent is fifteen (15) days.

The emergency rulemaking was adopted on April 27, 2020, and became effective immediately on that date. The emergency rulemaking will expire one hundred twenty (120) days after the date of the rule's adoption, or until such time as the Chief Medical Examiner determines that the emergency has passed and the regular, thirty (30) day storage rule is practicable.

Chapter 50, MEDICAL EXAMINER, of Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended as follows:

Section 5004, DELIVERY OF BODY; EXPENSES, is amended as follows:

Subsections 5004.2 is amended to read as follows:

5004.2 Bodies which are unidentified or unclaimed after a period of thirty (30) days following reception at the Office of the Chief Medical Examiner shall be released to the Anatomical Board pursuant to law or shall be cremated, or otherwise disposed of according to law; provided, that, as a result of the COVID-19 public health emergency, bodies which are unidentified or unclaimed after a period of fifteen (15) days following reception at the Office of the Chief Medical Examiner may, at the discretion of the Chief Medical Examiner, be released to the Anatomical Board pursuant to law or may be cremated, or otherwise disposed of according to law if storage for a longer time period is infeasible. For the purposes of this subsection, the term "COVID-19 public health emergency" means the period of time during which the public and public health emergencies declared by the Mayor in Mayor's Orders 2020-045 and 2020-046, issued March 11, 2020, and any extensions or revivals thereof, are in effect.