

MARYLAND REGISTER

Proposed Action on Regulations

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1. Desired date of publication in Maryland Register: 7/25/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

10 35 01 01, .02, .08, .14, .19, .20 and .21

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator Telephone Number
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6. Check applicable items:
X- New Regulations

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 35 POSTMORTEM EXAMINERS COMMISSION

10.35.01 Medical Examiner Cases

Authority: Health General Article, §5-301, et seq., [10-714] and 18-213 and Estates and Trusts Article, §4-509 and [4-509.1], Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .02, .08, .14, .19, and .20 and adopt new Regulation .21 under COMAR 10.35.01 Medical Examiner Cases.

Statement of Purpose

The purpose of this action is to update the regulations to meet current practice standards.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed action would:

- 1) Increase revenues in Fiscal Year 2015 by increasing certain fees on how medical examiner reports are processed, copied and released; and
- 2) Increase body transportation reimbursement fees by 10 percent per mile from \$3 to \$3.30 per mile for transports over 30 mile.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
(1) Fees Medical Examiners Records	(R+)	FY14 \$4,176 & FY15 \$12,529
(2) Body Transportation	(E+)	FY14 \$13,083 & FY15 \$39,249
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude

D. On regulated industries or trade groups:

(1) Insurance Companies and Attorneys	(-)	FY14 \$4,176 & FY15 \$12,529
(2) Body Transportation Providers	(+)	FY14 \$13,083 & FY15 \$39,249

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1). The cost for the autopsy report for family members and others will remain the same. The proposed action would increase fees to reflect how other reports, such as, X-rays, CT Scans, Tissue Slides and Photographs are electronically copied and distributed on either CD's or DVD's. Since moving into the new facility methods of death investigation and how records are processed, stored and released have been upgraded. For example, prior to moving into the new building full body x-rays and CT scans were unavailable. The requested report fee increases reflect those changes. The proposed action is estimated to increase General Fund revenues in Fiscal Year 2015 by an additional 15 percent over Fiscal Year 2013 revenues (\$83,528) to \$12,529.

A(2). The proposed action would increase the rate paid to Body Transportation Service Providers by 10 percent from \$3 per mile to \$3.30 per mile. The minimum fee of \$100 on transports less than 30 miles would remain the same. Since 2008 there has not been any increase in body transportation reimbursement fees. Approximately 58 percent of all cases transported to the OCME are from distances greater than 30 miles. Several body transportation service providers have stated that due to increased costs they may stop transporting remains. This increase would assist in off-setting some of those operating costs of transporting remains to the OCME.

D(1). See A1 above

D(2). See A2 above.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through

August 25, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General Funds

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The impact on small business is a nominal increase in transportation services and investigation fees. The last increase for transportation services was in 2008 and the last increase for investigation fees was in 2005.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 35 POSTMORTEM EXAMINERS COMMISSION

10.35.01 Medical Examiner Cases

Authority: Health General Article, §5-301, et seq., [10-714] and 18-213 and Estates and Trusts Article, §4-509 and [4-509.1],
Annotated Code of Maryland

10.35.01.01 (November 18, 2013)

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(3) Medical Examiner.

(a) "Medical examiner" means a Chief Medical Examiner, [deputy medical examiner] *Deputy Chief Medical Examiner*, or assistant medical examiner who is a pathologist authorized to carry out the provisions of Health-General Article, §5-301, Annotated Code of Maryland.

(b) "Medical examiner" also means [a:] *an individual authorized by the State to investigate deaths defined as medical examiner cases in Health-General Article, §5-301, Annotated Code of Maryland, including a:*

(i) Deputy medical examiner who assists those examiners in [§B(1)(a)] *§B(3)(a)* of this regulation, *is a physician*, and [who] is appointed by the Postmortem Examiners Commission in accordance with Health-General Article, §5-306, Annotated Code of Maryland; and

(ii) [Physician authorized by the State to investigate deaths defined as medical examiner cases in Health-General Article, §5-301, Annotated Code of Maryland.] *Forensic investigator who assists those examiners in §B(3)(a) of this regulation, has training or experience in trauma or death investigation and is appointed in accordance with Health-General Article, §5-306, Annotated Code of Maryland.*

(4)—(5) (text unchanged)

10.35.01.02 (November 18, 2013)

.02 Report of Medical Examiner Cases to the Police or Sheriff.

A. Whenever a physician, funeral director, or other person has knowledge of the occurrence of a death that may have been the result of violence or suicide, or may have occurred by casualty or suddenly when the person was in apparent health, or not attended by a physician, or when the death may have occurred in any suspicious or unusual manner, the physician, funeral director, or other person having this knowledge shall report it without delay to the police or sheriff who has jurisdiction in the city or county where the death occurred.

B. *The medical examiner may investigate any location believed to be associated with the death investigation regardless of the location of the body pursuant to applicable law.*

C. *A health care facility may not refuse the medical examiner access to a body which is the subject of medical examiner case at any time.*

10.35.01.08 (November 18, 2013)

.08 The Hospital Agent.

A. (text unchanged)

B. Responsibilities.

[(1) If, during routine autopsy by a hospital pathologist, evidence is encountered which indicates that the death should be under the jurisdiction of the medical examiner, the death then shall become a medical examiner case, and the hospital agent immediately shall notify the police or sheriff, who will in turn notify the medical examiner.

Agency note: The hospital pathologist shall discontinue the autopsy pending the arrival of the medical examiner.]

[(2)] (1) Notification of Police. *In accordance with Regulation .02 of this chapter*, whenever a hospital in Maryland has a medical examiner case, the hospital agent shall report the case to the local law enforcement agency with jurisdiction in that subdivision of the State. The local law enforcement agency so notified shall transmit the information to the medical examiner's investigator on duty.

(2) *A health care facility may not refuse the medical examiner access to a body which is the subject of a medical examiner's case at any time. In order to prevent destruction or alteration of evidence, once death is determined, the hospital should follow medical examiner guidance as to management of the decedent.* The medical examiner shall respond to the location of the body, investigate the case and arrange for transportation of the body.

(3) Preliminary Hospital Reports. The hospital agent designated in accordance with Regulation .08 of this chapter shall submit promptly to the medical examiner *for each medical examiner case, the following* information [on the]:

(a) *The name and age, if known, of each [medical examiner case, with the] decedent;*

(b) *The date and time of admission; [time]*

(c) *Time of death; [diagnosis]*

(d) *Diagnosis, if made; [place]*

(e) *Place, date, time, and manner of accident, or violence, if any; and other information that the Medical Examiner [seeks] may request.*

(4) *Medical Examiner Requests: The hospital agent shall promptly respond to medical examiner request for records and specimens. Failure to provide requested information within 24 hours will result in a report to the Office of Health Care Quality.*

(5) *If, during routine autopsy by a hospital pathologist, evidence is encountered which indicates that the death should be under the jurisdiction of the medical examiner:*

(a) *The death then shall become a medical examiner case;*

(b) *The hospital agent immediately shall notify the police or sheriff, who will in turn notify the medical examiner; and*

(c) *The hospital pathologist shall discontinue the autopsy pending the arrival of the medical examiner.*

[(4)] (6) Clinical and Autopsy Reports from Hospitals. Whenever a medical examiner case is autopsied in a hospital, the hospital agent shall submit to the medical examiner, without delay, a clinical summary report, preferably

filled out by the physician most familiar with the case, and a provisional anatomical diagnosis, and later a copy of the *final autopsy [protocol] report*.

10.35.01.14 (November 18, 2013)

.14 Release of Medical Examiner's Records.

A. Individual files of the Chief Medical Examiner are [not public records but are private] *confidential* medical records protected from disclosure under the provisions of State Government Article, §§10-611 et seq., and *State Government Article, §§4-301*, Annotated Code of Maryland,.

B. (text unchanged)

C. *Records request by court order or subpoena shall be subject to the fee schedule set forth herein.*

[C.] D. Fee Schedule.

[(1)] A fee of \$30 for a first degree relative may be charged.

(2) A fee of \$120 for all others may be charged for providing a requested autopsy report and included toxicology report.]

(1) Autopsy reports may be sent electronically to the requestor. The fees schedule is the same for paper or electronics reports and is as follows:

(a) A fee of \$30 for a first degree relative may be charged; and

(b) A fee of \$120 for all others may be charged for providing a requested autopsy report and included consultation reports.

[(3)] (2) Requests for other information or material shall be accompanied by a court order or subpoena unless the Custodian of Records determines compelling circumstances exist warranting the release of materials. If releasable, the contents of the file will be copied at a cost of \$1 per page with a minimum charge of \$25 excluding any item independently listed in [§C] §D of this regulation.

[(4)] (3) Photographs are [\$20 each] *copied electronically. There is a \$50 processing fee for each CD, plus \$5 per each image copied. X-rays and CT scans are copied electronically. There is a \$50 processing fee for each CD, plus \$25 per x-ray.*

[(5)] Duplicate glass slides are \$20 each if available. If glass slides were not originally made, there is an additional charge of \$10 per slide.]

(4) Slides are copied electronically. There is a \$50 processing fee for each CD, plus \$20 for each image copied. Slides may be viewed in the Office of the Chief Medical Examiner facility at a rate of \$200 for the first hour and \$50 for every 15 minute increment thereafter, partial or whole. The reviewer will have access to the medical examiner during the review.

[(6)](5) (text unchanged)

[(7)](6) If any or all of the items listed in [§C] §D of this regulation are requested in digital format (CD or DVD), an additional fee of \$60 shall apply.

[(8)] (7) (text unchanged)

[D] E. (text unchanged)

10.35.01.19 (November 18, 2013)

.19 Deputy Medical Examiners/Forensic Investigators.

A.—B. (text unchanged)

C. Each deputy medical examiner appointed shall be a physician. [If necessary, a deputy medical examiner may deputize another physician in the county to act as deputy medical examiner.]

D. (text unchanged)

E. [For] *Entitled Fees.*

(1) As provided in the State budget, for each medical examiner's case investigated, the deputy medical examiner or forensic investigator is entitled to a fee of \$80[, as provided in the State budget].

(2) If the case does not meet the requirements of Health-General Article, §5-309, Annotated Code of Maryland, and is declined, the deputy medical examiner or forensic investigator is entitled to a decline fee of \$10.

(3) The deputy medical examiner is entitled to \$25 for certifying the death and completing the death certificate. [If the deputy medical examiner, or forensic investigator as the examiner's designee, is called as a witness before a grand jury or in a criminal case, the examiner or investigator is entitled to:

(1) The fee that the court sets; and

(2) Any additional compensation the county provides.]

10.35.01.20 (November 18, 2013)

.20 Body Transportation Reimbursement.

A.—E. (text unchanged)

F. Payment.

(1) Providers of body transportation services shall be paid as provided in the State budget, [\$3] \$3.30 per mile, one way, by the shortest route, plus any tolls, with a minimum of \$100 if the distance is less than 30 miles from the scene of death to a designated location. The shortest route may be verified by the OCME.

(2)—(3) (text unchanged)

(4) The [provider is responsible for completing the] Office of the Chief Medical [Examiner's] *Examiner is responsible for completing the* Transportation of Bodies Report for payment.

(5) (text unchanged)

.21 Fees for Other Services.

A. When a deputy medical examiner, or forensic investigator as the examiner's designee, is called as a witness before a grand jury or in a criminal case, the examiner or investigator is entitled to:

(1) The fee that the court sets; and

(2) Any additional compensation that a county or court provides.

B. When any deputy medical examiner or forensic investigator is called as a witness in a civil case they are entitled to:

(1) Twenty dollars per hour; and

(2) Any additional compensation that a county or court provides.

JOSHUA M. SHARFSTEIN, M.D.

Secretary of Health and Mental Hygiene