

TITLE 11
ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH

CHAPTER 22
MORTUARIES, CEMETERIES, EMBALMERS, UNDERTAKERS,
AND MORTUARY AUTHORITIES

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Historical Note: Chapter 22 of Title 11, Administrative rules, is based substantially on the former Public Health Regulations chapter 1, Sections 11, 12, 13, 14, and 15) [Eff. 11/1/37, am 2/1/45, am 9/17/51, am 4/20/53, am 4/16/54, am 8/1/60, am 7/27/61, am 4/1/64, am 7/1/64, am 1/16/71, am 2/2/73, am 9/12/75, am 2/3/79; R Dec 26 1981]

§11-22-1 Purpose. the purpose of this chapter is to provide minimum standards relating to the practice of embalming, to the business of an undertaker, and to the sanitary condition of places where such business or practice is conducted. [Eff. Dec 26 19981] (Auth: HRS §469-2) (Imp: HRS §469-2)

§11-22-2 Definitions. As used in this chapter:
“Cemetery” means a place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either a burial park, for earth interment; a mausoleum; for vault or crypt interments; a structure or place used or intended to be used for the interment of cremated remains; or any combination of one or more thereof.

“Cemetery authority” means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery, the interring of human remains, or the care, preservation, and embellishment of cemetery property, whether or not the person undertakes such activity for profit.

“Director” means the director of health of the State department of health or his duly authorized agent.

“Embalm” means the injection of fluid or agent of sufficient strength and quantity to accomplish a thorough disinfection and preservation of a dead human body, the fluid or agent being injected arterially in addition to cavity injection.

“Funeral services” means arranging for or providing for pick up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

“State” means the State of Hawaii. [Eff. Dec. 26, 1981] (Auth: HRS §§441-1, 469-2) (Imp: HRS §§441-1, 469-2)

§11-22-3 Mortuaries. (a) Requirements for establishing, purchasing, or altering.

- (1) It shall be unlawful to establish a mortuary without the approval of plans and specifications by the director.
 - (2) Any person desiring to establish or purchase a mortuary shall make application to the director, submitting a complete set of plans and specifications therefore, with full description of the grounds, buildings, roads, water supply, and sewage disposal system.
 - (3) The approved plans and specifications of a mortuary shall not be changed without the prior written approval of the director. The facility shall be built or established only in accordance with approved plans.
- (b) Equipment and sanitation.
- (1) A mortuary shall be devoted exclusively to the business of providing funeral services and shall include a preparation room equipped with tile or cement floor, necessary drainage, ventilation, and provided with proper and convenient receptacles for refuse, bandages, cotton, and other waste material and supplies, embalming tables, hoppers, sinks, instruments, and other appliances used in the embalming of dead human bodies for burial or transportation.
 - (2) All mortuaries shall be kept and maintained in a clean and sanitary condition and all equipment, instruments and appliances used in the preparation of dead human bodies for burial or other disposition, shall be thoroughly cleansed and sterilized immediately after each individual case. No linens, sheets, and other materials of any kind, smocks or gowns, which shall have come in contact with any dead human body, shall be used more than once without being laundered, and such linens, sheets, and other materials, gowns, or smocks, shall be sanitized in a disinfectant before being laundered or before they leave the premises to be laundered.
- (c) Licensing.

- (1) Each mortuary in the State shall upon application and payment of a fee of \$50, be licensed by the director, provided that the mortuary has been approved in accordance with §11-22-3(b) (1), and further provided that an embalmer, licensed by the director, is employed full-time by the mortuary, except that the director may approve a part-time embalmer in unusual circumstances; and that the person in charge of the mortuary shall have his name, residence, and official title registered with the director.
- (2) Each licensed mortuary shall, between July 1 and 10 of each year, renew its license by registering with the director, paying a renewal fee of \$10, and being inspected and approved by the director within three months immediately preceding the date of registration for renewal. Every license that is not renewed shall expire on August 1, and shall not be renewed except upon payment of \$25 and compliance with other provisions for renewals.
- (3) The director shall be notified when there is a change in the person in charge of a mortuary, and the new officer shall register with the director in accordance with §11-22-3(c) (1).
- (d) Employment of part-time embalmers. Mortuaries employing licensed embalmers on a part-time basis in addition to a full-time embalmer as required by §11-22-3(c) (1), shall be required to have a contract in writing with the employee showing a bona fide employer-employee relationship and such agreement shall be available for inspection by the director.
- (e) Soliciting. A mortuary authority shall not authorize or ratify the solicitation of funeral or embalming business, after a death, or while a death is impending, by its employees, agents, or by commission persons. Violation of this provision shall constitute grounds for suspension of license in addition to the penalty provided in §11-22-8. This section does not prohibit general advertising or the sale of insurance plans involving embalming and funeral services. [Eff. Dec. 26, 1981] (Auth: HRS §§321-9, 321-11, 469-2) (Imp: HRS §§321-11, 441-19.5, 469-2)

§11-24-4 Embalming and embalmers. (a) Embalming.

- (1) No person shall embalm a dead human body unless licensed by the director as an embalmer or registered with the director as an apprentice embalmer under the supervision of a licensed embalmer.
- (2) Except as provided in §11-22-4(a) (3), a dead human body shall be embalmed, if the condition of the body permits, cremated, or buried within thirty hours after death, unless the body has been placed in the custody of the coroner, medical examiner, county, or county physician. In such instances, the body shall be embalmed, cremated, buried within thirty hours after release, or placed in refrigerated storage in a State approved hospital.
- (3) No embalming fluid, or substitute therefor, shall be injected into any dead body:
 - (A) if the death is subject to investigation by the coroner or medical examiner, or

- (B) if the death was from plague, asiatic cholera, smallpox, epidemic typhus fever, yellow fever, or louse-borne relapsing fever, or any approved term indicating such diseases. Permission to embalm in case (A) above must be secured from the office of the coroner or medical examiner and in case (B) from the director.
- (b) Embalmer's license.
 - (1) Any application for an embalmer's license in the State must be made under oath to the director on forms provided for that purpose. the applicant shall meet the requirements prescribed by §469-1, HRS.
 - (2) An examination shall be held at least once a year and at such time as the director may determine. All applications shall be filed with the director on or before the first of the month in which the examination is to be held. A fee of \$25 shall be submitted with the application.
 - (3) There shall be a written examination, supplemented by a practical examination. Applicants shall be examined in the subjects of embalming, anatomy, pathology, bacteriology, and chemistry and in such other related subjects as the director may prescribe. all examination papers shall be filed in the department of health.
- (c) Apprentice embalmers.
 - (1) Whenever any person wishes to qualify as an apprentice embalmer, the person shall register with the director upon forms furnished for the purpose and shall otherwise comply with the requirements of §469-4, HRS.
 - (2) An apprentice who is a graduate of an embalming school recognized by the Commission of Schools of the American Board of Funeral Service Education may begin embalming upon registration; an apprentice without such training may not actually embalm as defined in §11-22-2, until after completing one year of apprenticeship. In all cases, an apprentice shall embalm only in the presence of and under the direction of a license embalmer.
 - (3) The maximum term of apprenticeship shall be not more than two years beyond the required period of practical experience specified in §469-1, HRS, except that apprentices on register as of July 1, 1957 shall not be affected.
 - (4) The director may grant leaves of absence and approve absences during the term of apprenticeship.
 - (5) An apprentice must work under the personal supervision of the licensed embalmer under whom apprenticed. The director must be notified of any substitute arrangement with another licensed embalmer that is expected to last more than one month. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-11, 469-1, 469-2, 469-4)

§11-22-5 Burial. (a) Cemeteries; Requirements for establishing, constructing, modifying, operating.

- (1) No place shall be used as a cemetery (as defined in §441-1, HRS) without the prior written approval of the director.
- (2) No place shall be approved for use as a cemetery unless
 - (A) It has been dedicated pursuant to chapter 441, HRS;
 - (B) All planned construction and all existing construction of the grounds, plots, buildings, roads, water supply, and sewage disposal system has been approved by the director;
 - (C) Proposed rules governing the operation of the cemetery have been approved by the director; and
 - (D) A cemetery authority has registered pursuant to §11-22-5(a) (5) herein.
- (3) All construction shall be only in accordance with approved plans and specifications. Any changes must be submitted in writing and approved by the director prior to construction.
- (4) Every cemetery shall have and be supervised by a cemetery authority properly licensed under chapter 441, HRS. The cemetery authority shall insure compliance with all regulations made by the director relating to cemeteries and burials.
- (5) Every person who acts as a cemetery authority shall register with the department of health on a form to be designated by the director.
- (6) A cemetery authority shall be responsible for the prevention of any unhygienic condition or danger to public health arising from operation of the cemetery; shall oversee that no damage is done to the tombs, grave markers, and fences; shall prevent cattle and beasts from entering the cemetery; shall maintain and deliver, whenever required by the director, records of burials; shall deliver said records over to successor cemetery authorities; shall provide for the identification of tombs, vaults, or other sites of burial by appropriate markings; and shall prepare and keep up-to-date a map or plot showing the location of each body buried or interred within the cemetery.
 - (b) Location; depth of grave.
 - (1) It shall be unlawful for any person to bury any human body unless he has first obtained a burial-transit permit from the local agent of the department. The burial shall be made only in a cemetery approved by the director.
 - (2) A dead human body shall be interred at a depth sufficient to prevent the creation of any public nuisance or public health hazard and to make it impossible for hogs and other animals, or surface drainage or wash, to uncover it. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-11, 338-23, 441-195)

§11-22-6 Transportation of bodies. (a) By common carrier

- (1) The transportation of dead human bodies by a common carrier shall be conducted in such a manner as not to be a menace to the health of the general public.
 - (2) A burial-transit permit issued pursuant to chapter 338, HRS, or chapter 841, HRS, shall accompany the body.
 - (3) The body must be placed in a coffin or casket. If the death resulted from a disease specified in §11-22-4(a) (3) and the body is not embalmed, it shall be placed in a hermetically sealed coffin or casket and encased in an outer box; provided, however, that no section of this chapter shall be interpreted to prohibit the transportation of dead bodies without the use of an outer case or box in closed vehicles designed exclusively for the transportation of dead human bodies.
- (b) Disinterred bodies. No disinterred body shall be shipped or transported within the State or out of the State without approval by the director. Such approval shall be given in the form of burial-transit permit, provided that no burial-transit permit shall be issued until a disinterment permit is issued in accordance with section 338-25.5, HRS. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-11, 338-25, 338-25.5)

§11-22-7 Public funerals. A public or a church funeral shall not be held for any person who has died of a disease specified in §11-22-4(a) (3) unless the written consent of the director has first been obtained. If a funeral is held, attendance at the funeral shall be restricted to those persons who are not in the quarantinable stage of the disease as determined by the director. [Eff. Dec. 26, 1981] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-1, 321-11)

§11-22-8 Penalties. (a) Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year or both, as provided in §321-18, HRS.

(b) Any person who practices as an embalmer or undertaker without being registered with the department of health as herein provided shall be fined not less than \$50 nor more than \$250 or imprisoned no less than thirty days nor more than ninety days, or both, as provided in §469-8, HRS.

(c) Each and every violation of the provisions of this chapter shall constitute a separate offense. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-18, 469-8)

§11-22-9 Severability. Should any section, paragraph, sentence, clause, phrase, or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of this chapter shall not be affected. [Eff. Dec. 26, 1981] (Auth: HRS §§321-9, 321-11) (Imp: HRS §321-9)

The Department of Health authorized the adoption of Chapter 22 of Title 11, Administrative Rules on Dec 7 1981 following public hearing held on Oahu on October 28, 1981, on Hawaii on October 27, 1981, on Kauai on October 29, 1981, on Maui on October 26, 1981 after public notice was given in the Honolulu Star Bulletin on October 2, 1981, in the Hawaii Tribune-Herald on October 2, 1981, in the Garden Isle on October 2, 1981, and in the Maui News on October 2, 1981.

Chapter 22 of Title 11, Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.