

## **Chapter 290**

# **BURIALS AND DISINTERMENTS**

**290:1 Death Records.** – Whenever a person shall die, the physician, advanced practice registered nurse, or physician assistant attending at the last sickness shall complete and deliver to the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 or shall complete electronically and forward immediately to the division of vital records administration, a death record, duly signed, setting forth, as far as may be, the facts required by the department of state, division of vital records administration pursuant to RSA 5-C:63. The cause or causes of death shall be printed or typed on all records required to be furnished under this section. The funeral director, next-of-kin, or designated agent shall transmit electronically the record of death to the division of vital records administration and the certifying physician, advanced practice registered nurse, or physician assistant shall then electronically complete the cause of death information into the transmitted record.

**290:1-a Fetal Death Records.** – Whenever a fetal death shall occur, the attending physician, advanced practice registered nurse, or physician assistant shall fill out a fetal death record. This will be solely a statistical report.

**290:1-b Pronouncement of Death by Registered Nurses.** – If an anticipated death occurs in a hospital, a nursing home, a private home served by a home health care provider licensed under RSA 151, an assisted living residence as defined in RSA 161-J:2, II, or a hospice, the registered nurse attending at the last sickness may pronounce the person dead and release the body to the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent after certifying the fact of death and completing the death record by hand or other approved electronic process. If a contagious disease is known to be present at the time of death, that fact shall be indicated on the death record in accordance with RSA 5-C:62.

**290:2 Repealed by 1977, 530:7, eff. Sept. 13, 1977.** –

**290:2-a Release of Body.** – No dead body of a human being shall be removed from a hospital, a nursing home, a private home served by a home health care provider licensed under RSA 151, or a hospice without a pronouncement of death certified by hand or other approved electronic process by a physician or a registered nurse in accordance with RSA 290:1-b, including the time and date of death. Whenever a contagious disease is involved, the death record shall so state before the body shall be released from the facility.

**290:3 Burial Permits, Obtaining.** – It shall be the duty of the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 to add to the death record the date and place of burial, and having certified the same by hand or other approved

electronic process, to forward it to the division of vital records administration or as otherwise directed by the registrar of vital records, and to obtain a permit for burial from the division of vital records administration in accordance with RSA 5-C:67. In case of a contagious or infectious disease the record shall be completed and transmitted immediately.

**290:3-a Burial Permit for a Fetus.** – Whenever it shall be determined that a dead fetus will be disposed of by means of burial or cremation, the burial permit will be issued in accordance with the rules and regulations of the department of health and human services.

**290:3-b Emergency Burial Permit.** – The division of vital records administration, department of state, may issue an emergency burial permit in an emergency as defined by RSA 5-C:70.

**290:4 Repealed by 1997, 325:22, VII, eff. Aug. 22, 1997.** –

**290:4-a Record of Interment Date.** – In any case in which the town where the death occurred and the town of residence or burial is different, the burial permit shall indicate the actual date of interment where the dead body is stored in a tomb or vault prior to burial.

**290:5 Burial Permit Required.** – No interment of the dead body of a human being, nor disposition of the body in a tomb or vault, shall be made without a permit, and only in accordance with it. No disinterment, except as otherwise provided in this chapter, of the dead body of a human being shall be made without a permit from the department of state, countersigned by the local health officer, and only in accordance with such permit. Before a disinterment permit is granted, the surviving spouse, parents, and children, who are 18 years of age or older, of the deceased human being shall be given written notice by certified mail of the disinterment request and shall be afforded 10 days from the written notice to object to the disinterment before the permit is issued. Such disinterment permit shall not be required for removal of such dead body from a tomb or vault for the purpose of burial, for reinterment of dead bodies after discontinuance of a public cemetery, as provided in RSA 289:15 and 289:16, if a body is to be removed within the geographic boundaries of the same cemetery, nor in a case where an autopsy has been ordered by a county attorney or the attorney general. No person shall assist in, assent to, or allow an interment or disinterment to be made until a permit has been obtained under this section. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

**290:6 Return.** – It shall be the duty of every funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17, or other person having charge of a burial place, who shall receive the permit, to complete it and forward it to the town clerk within 6 days after the burial.

**290:7 Repealed by 1997, 325:22, VIII, eff. Aug. 22, 1997. –**

**290:8 Prerequisites.** – No such permit shall be issued until there has been delivered to the division of vital records administration a death record completed in accordance with RSA 290:1.

**290:9 Repealed by 1997, 325:22, IX, eff. Aug. 22, 1997. –**

**290:10 Record of Death.** – The record of death upon which the permit is issued shall be forwarded to the town clerk within 6 days after it is received.

**290:11 Release; Transfer of Body; Liability Limited. –**

I. No dead body of a human being may be released or transferred from any residence, hospital, or other facility to any person other than a funeral director or designee, or to the next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 who shall be responsible for the completion of forms as required by RSA 290:12.

II. The body of any deceased person may be transferred to another town for preparation or for burial or cremation only under the direction of a funeral director, next-of-kin, or designated agent; provided that death was not sudden, or the result of violence, and provided that such body shall be returned to the town in which death occurred within 36 hours, or a permit for permanent removal, as required by this chapter, has been secured within that time.

III. Any person or institution releasing a body pursuant to this chapter shall be held harmless against and shall not be liable for, any harm, loss, cost, injury, damage, or claim of any kind whatsoever incurred by any party in connection with the release of the body.

**290:12 By Whom.** – Such transfer shall be made under the direction of a funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17, and the funeral director, funeral director's representative, next-of-kin, or designated agent shall leave with the institution from which or the person from whom such body is received, on forms supplied by the department of health and human services, the name of the funeral director, next-of-kin, or designated agent, the name of the person making the transfer, such person's address, the funeral director's license number or the address of the next-of-kin, or designated agent, and the date and hour such body was delivered.

**290:13 To Another Town.** – Any body for which a burial or removal permit has been secured, in accordance with the provisions of this chapter, may be taken through or into another town for funeral services without additional permits.

**290:14 Penalty.** – Any person who shall violate any of the provisions of RSA 290 shall be guilty of a misdemeanor.

**290:15 Order for Disinterment.** – A justice, upon complaint made on oath by any person that he has reasonable ground for suspecting that a deceased person who has been interred came to his death by some unlawful means, may issue his warrant, requiring that the body shall be disinterred and examined, and may summon and examine witnesses in relation to the truth of such complaint.

## **Custody of Remains of Deceased Persons**

### **290:16 Definitions. –**

In this subdivision:

- I. "At-need funeral arrangements" means funeral arrangements made after death.
- II. "Custody and control" means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including but not limited to possession, at-need funeral arrangements, final disposition, and disinterment.
- III. "Estranged" means living in separate residences and having a relationship characterized by hostility or indifference.
- IV. "Next-of-kin" means a person having the following relationship to the subject, in the following order of priority:
  - (a) The spouse.
  - (b) An adult son or daughter.
  - (c) A parent.
  - (d) An adult brother or sister.
  - (e) An adult grandchild.
  - (f) An adult niece or nephew who is the child of a brother or sister.
  - (g) A maternal grandparent.
  - (h) A paternal grandparent.
  - (i) An adult aunt or uncle.
  - (j) An adult first cousin.
  - (k) Any other adult relative in descending order of blood relationship.
- V. "Subject" means the person whose remains are placed in the custody and control of another person pursuant to this section.

### **290:17 Custody and Control Generally. –**

The custody and control of the remains of deceased residents of this state are governed by the following provisions:

- I. If the subject has designated a person to have custody and control in a written and signed document, custody and control belong to that person. The person designated by the subject shall

be entitled to no compensation or reimbursement of expenses related to the custody and control of the subject's body.

I-a. If the subject has designated a person on a United States Department of Defense Record of Emergency Data (DD Form 93), custody and control belong to that person if the decedent died while serving in the United States armed forces and executed the DD Form 93, or its successor form.

II. If the subject has not left a written signed document designating a person to have custody and control, or if the person designated by the subject refuses custody and control, custody and control belong to the next of kin.

III. If the next of kin is 2 or more persons with the same relationship to the subject, the majority of the next of kin have custody and control. If the next of kin cannot, by majority vote, make a decision regarding the subject's remains, the court shall make the decision upon petition under RSA 290:19, IV.

IV. If the next of kin or person designated by the subject under paragraph I is missing and cannot be located using reasonable efforts, the missing person shall lose custody and control and custody and control shall pass to the next in order of priority.

V. If the next of kin holding custody and control will not cooperate with the funeral director in making arrangements, the next of kin shall lose custody and control after 3 days of noncooperation and custody and control shall pass to the next in order of priority.

VI. If the individual holding custody and control of the subject is arrested for criminally causing the death of the subject, custody and control shall pass to the next in order of priority.

VII. If no person is designated by the subject to have custody and control and no next of kin can be located using reasonable efforts, the funeral director holding custody of the body shall retain custody and control of the body for purposes of carrying out the disposition of the body.

VIII. A funeral director acting in good faith may rely upon representations made by individuals claiming to have custody and control of the subject.

**290:18 Estranged Spouse.** – Notwithstanding RSA 290:17, if the surviving spouse and the subject were estranged at the time of death, the spouse shall not have custody and control of the subject's remains. In this case, custody and control belong to the next of kin following the spouse.

**290:19 Court Determination.** –

Notwithstanding other provisions of this subdivision, the court of probate for the residence of the deceased may award custody and control to the person determined by the court most fit and appropriate to carry out the responsibilities of custody and control, and may make decisions regarding the subject's remains if those having custody and control cannot agree. The following provisions apply to court determinations under this section:

I. Before the subject's death, the subject or subject's legal representative may file a petition regarding custody and control of the subject's remains.

II. A relative of the subject may file such a petition.

III. A person who claims and establishes through evidence that person has or had a closer personal relationship to the subject than the next of kin may file a petition, if that person lived with the subject and was not in the employ of the subject or the subject's family.

IV. If the next of kin is 2 or more persons with the same relationship to the subject, and the next of kin cannot, by majority vote, make a decision regarding the subject's remains, 2 or more persons who have custody or control or a funeral director may file a petition asking the court to make a determination in the matter. The court shall consider the following in making its determination:

- (a) The reasonableness and practicality of the proposed arrangement.
- (b) The degree of the personal relationship between the subject and each of the 2 or more persons with custody and control.
- (c) The desires of the person or persons who are ready, able and willing to pay the costs of the arrangements.
- (d) The convenience and needs of other family and friends wishing to pay respects.
- (e) The expressed written desires of the subject.
- (f) The degree to which the arrangements would allow maximum participation by all wishing to pay respect.

**290:20 Wishes of Subject.** – If the subject has left written and signed instructions regarding funeral arrangements and disposal of the subject's remains, the person having custody and control shall abide by those wishes to the extent that the subject paid for those arrangements in advance or left resources for the purpose of carrying out those wishes.

**290:21 Effect of Payment by Others.** – Except to the degree it must be considered by the court under RSA 290:19, IV, the fact that a person other than the subject has paid or agreed to pay for all or part of arrangements does not give that person a greater right to custody and control than that person would otherwise have.

**290:22 Authority of Personal Representative.** – The personal representative of the estate of the subject does not, by virtue of being the personal representative, have a greater right to custody and control than the person would otherwise have.

**290:23 Immunity.** – A party who, in good faith, acts upon the instructions of the party having custody and control is not liable for having carried out those instructions.

## **Ownership of Cemetery Plots or Burial Spaces**

**290:24 Ownership of Cemetery Plots or Burial Spaces.** –  
The ownership of a cemetery plot or burial space, as defined under RSA 289:1, II, shall be governed by the following provisions:

- I. If the deceased has designated a person to assume ownership of the cemetery lot or burial space in a written and signed document, ownership passes to that person, subject to the regulations established under RSA 289:2.
- II. If the deceased has not designated a person to assume ownership of the cemetery lot or burial

space in a written and signed document, ownership shall be determined under the provisions of RSA 561:1 and RSA 289:2.

III. Notwithstanding other provisions of this subdivision, when the ownership of a cemetery plot or burial space is unclear or in dispute, the court of probate for the residence of the deceased may, upon receipt of a petition filed by the next of kin or other interested party, render a determination regarding ownership of the cemetery plot or burial space in compliance with applicable law, including any regulations established by the municipality or cemetery trustees under RSA 289:2.