

## **NOTICE OF ADOPTION OF EMERGENCY RULE CONCERNING BURIAL CLAIMS**

The Commissioner of the New York City Department of Social Services / Human Resources Administration (DSS/HRA), hereby gives notice, pursuant to his authority under Sections 603 and 1043 of the New York City Charter and Section 141 of the New York Social Services Law, of the adoption of the following emergency rule, effective immediately, making certain changes to DSS/HRA's Burial Claims program and processes, which implement the burial reimbursement under Section 141 of the Social Services Law.

### **Statement of Basis and Purpose of Emergency Rule**

In order to address the unprecedented impact of the COVID-19 pandemic on New York City and the number of fatalities affecting the City's most vulnerable and low-income populations in dire need of financial assistance to provide for respectful and solemn final disposition of their loved ones, the Commissioner of the New York City Department of Social Services / Human Resources Administration (DSS/HRA) issues this emergency rule concerning its Burial Claims program.

Under subdivisions 3(a) and 5 of Social Services Law Section 141, the State will provide reimbursement to local social services districts for payments of up to \$900 that the district makes towards the burial of indigent individuals, but only where the expense of such burial does not exceed an amount fixed by the district.

DSS/HRA's current rule concerning burial claims, set forth in Chapter 2 of Title 68 of the Rules of the City of New York, which was last amended in 2008, sets the maximum allowance for burial and funeral expenses payable by DSS/HRA at \$900 and provides that an allowance from DSS/HRA shall not be available where the total burial and funeral expenses (exclusive of the cost of cremation or the burial plot and grave opening) exceed \$1700.<sup>1</sup> The \$900 maximum burial allowance and the \$1700 expense cap apply to both veteran and non-veteran burials, but the rule sets forth a special process for certain veteran burials.

This emergency rule will enable additional families to arrange for private burials or cremations for their loved ones who have passed away during this pandemic, at rates adjusted to better

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<sup>1</sup> In 2008, DSS/HRA increased the burial allowance payable by DSS/HRA from \$800 to \$900, and the burial expense cap from \$1,400 to \$1,700. Portions of the rule were amended to reflect this, but some references to the older amounts were erroneously left in sections 2-01 and 2-04 of the rule.

reflect current costs. Specifically, this emergency rule does the following with respect to both veteran and non-veteran burials until such time as the final rule is in place:

- (1) Increases the maximum allowance for burial and funeral expenses payable by DSS/HRA from \$900 to \$1,700, with the City responsible for costs that are not otherwise reimbursed by New York State,<sup>2</sup> and provides that such allowance may be used towards expenses that are excluded from the cap, including cremations.
- (2) Increases the expense cap from \$1,700 to \$3,400 and adds the costs charged by a funeral director associated with the disinterment of decedent remains from Hart Island to the items that will not count towards the total expense cap.
- (3) Makes clear that the requirement in the existing rule that applications must be made in-person is not being enforced at this time.
- (4) Changes the time within which a friend, relative or organizational friend of the decedent can file an application for a burial allowance, from 60 days from the date of death to 120 days from the date of death.
- (5) Allows anyone who may qualify for an allowance for burial expenses to apply for such an allowance either prior to or following burial or cremation and suspends the requirement that DSS/HRA must respond to pre-burial or pre-cremation applications within two business days.
- (6) Provides that the value of any resources or income that are not liquid or available at the time of the decedent's death and not available at the time of application will not be deducted from the burial allowance in determining the amount the applicant will receive. However, DSS/HRA will reserve the right recover against such resource consistent with State law.

With respect to veteran burials in particular, the rule removes the prohibition on providing burial expenses pursuant to Section 2-09 of Title 68 for the burial of veterans in private cemeteries other than Calverton Cemetery.

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<sup>2</sup> Currently, State law only provides for partial reimbursement of burial allowances up to \$900. In other words, burial allowances of \$900 or less are partially reimbursable by the State, but any amounts paid by local social services districts above \$900 come entirely out of local funds. The City will seek a legislative change that would provide for additional reimbursement from the State. Whether there is a legislative change may affect the final amounts that the City determines to be practicable in the CAPA rule-making to follow this emergency rule.

DSS/HRA's authority for this emergency rule may be found in section 141 of the New York Social Services Law and sections 603 and 1043 of the New York City Charter.

New text is underlined.

Deleted text is [bracketed].

Section one. Title 68 of the Rules of the City of New York is amended by adding a new chapter 13 to read as follows:

## **Chapter 13: Changes to Burial Claims During Pendency of COVID-19 Emergency**

### **13-01. Emergency Provisions**

Notwithstanding any provision of chapter 2 of this title to the contrary, while this emergency rule amending such chapter remains in effect:

(a) The allowance for burial expenses described in chapter 2 that are payable by DSS/HRA is increased to \$1,700. This allowance can be used towards burial expenses, as defined in chapter 2, including the costs set forth in paragraphs (1) and (2) of subdivision (b) of this section that are disregarded in determining the cap set forth in subdivision (b).

(b) Notwithstanding the provisions of chapter 2 of these rules, the allowance provided for in subdivision (a) of this section shall not be available where the total burial expenses, as defined in section 2-02 of this title, exceed \$3,400. In determining whether such \$3,400 cap has been exceeded, the following costs will be disregarded:

(1) the cost of cremation or the burial plot and grave opening; and

(2) any costs charged by a funeral director that are related to the disinterment of a body that was buried on or after March 12, 2020 on Hart Island.

(c) The time within which any person may submit an application for a burial allowance is increased from sixty (60) days to one hundred and twenty (120) days.

(d) Anyone who is eligible for an allowance for burial expenses under this section may apply for such expenses either prior to or after burial or cremation. The requirement in section 2-09(d) of this title that DSS/HRA must decide any applications made prior to burial or cremation within two

business days is suspended. However, DSS/HRA will make decisions on all applications within a reasonable time.

(e) Applications under this section need not be made in person and may be made online, by email, by fax and by any other remote means as DSS/HRA may designate.

(f) In determining the amount of the allowance, the value of any resources or income that are not liquid or available at the time of the decedent's death and not available at the time of application shall not be deducted. However, DSS/HRA reserves the right to recover against any such resources consistent with State law.

(g) The provisions of section 2-09(b)(ii) of this title, prohibiting an allowance for veteran burials that occur in private cemeteries other than Calverton Cemetery, are suspended.

### **Required Finding Pursuant to New York City Charter Section 1043(i)(1)**

IT IS HEREBY CERTIFIED that the immediate effectiveness of this emergency rule is necessary to make DSS/HRA's burial allowance available to more New Yorkers during the COVID-19 pandemic.

On March 12, 2020 Mayor de Blasio declared a state of emergency in New York City due to the mounting illness and death associated with the SARS-CoV-2 and the associated illness COVID-19. Since the declaration of the State of Emergency over 15,000 New York City residents have died from either a confirmed or suspected case of COVID-19.

Changes to the Burial Allowance program, which is authorized in part by subdivisions 3 *et seq.* of Social Services Law Section 141, are needed during this unprecedented crisis to ensure that more private burials and cremations can occur. COVID-19 has been shown to have a disproportionate impact on low-income residents of New York City, who may struggle to secure the money necessary to secure arrangements for their loved ones during non-emergency times, let alone during this emergency.

Delaying implementation of this rule pending non-emergency rulemaking would adversely impact the increasing number of New Yorkers who need access to financial assistance in order to provide their loved ones with a respectful and solemn private disposition — either through burial or cremation. It is therefore necessary to act by emergency rulemaking so that DSS/HRA can immediately begin to facilitate the disbursal of financial assistance to the survivors of decedents in the midst of this pandemic that has given rise to this growing emergency.

Pursuant to section 1043(i)(2) of the Charter, the emergency rule will remain in effect for not more than 120 days while HRA prepares a permanent rule.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of this rule concerning burial allowances is necessary.

Dated: May 2, 2020

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STEVEN BANKS  
COMMISSIONER,  
NYC DEPARTMENT OF SOCIAL SERVICES / HUMAN  
RESOURCES ADMINISTRATION

APPROVED:

\_\_\_\_\_/s/\_\_\_\_\_  
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BILL DE BLASIO, MAYOR