

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? In May, the New York City Human Resources Administration (HRA) issued an emergency rule increasing the HRA burial allowance to \$1700 and making other changes to the burial claims process. HRA now proposes extending the \$1700 allowance through the end of the calendar year and making the other provisions of the emergency rule permanent.

When and where is the hearing? The New York City Human Resources Administration will hold a public hearing on the proposed rule. Due to COVID-19, the public hearing will take place remotely via WebEx on July 23 at 11:00AM. Those wishing to attend the hearing may join by:

- **Phone:**
Dial 646-992-2010. When prompted, enter Meeting ID: 129 932 2460.

- **Internet Video and Audio:**

Visit: <https://nyc-dss.webex.com/nyc-dss/j.php?MTID=m9d8c896bf57be4b442041325357a19bf>

When prompted, enter

Meeting ID: 129 932 2460
Password: Burials

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to HRA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to NYCRules@hra.nyc.gov. Please include "Burials" in the subject line.
- **Mail.** You can mail comments to:

HRA Rules
c/o Office of Legal Affairs
150 Greenwich Street, 38th Floor
New York, NY 10007

Please make clear that you are commenting on the Burial Claims rule.

- **Fax.** You can fax comments to 917-639-0413. Please include “Burials” in the subject line.
- **By speaking at the hearing.** You may sign up to speak at the hearing by calling 929-221-7220 or emailing NYCRules@hra.nyc.gov on or before July 22. Speakers will be called in the order that they signed up and will be able to speak for up to three minutes.

Is there a deadline to submit comments? The deadline to submit comments is midnight on July 23. Comments, including those sent by mail, must be received by HRA on or before July 23.

What if I need assistance to participate in the hearing?

You must tell us if you need interpretation services for the hearing. You can tell us by email at NYCRules@HRA.nyc.gov. You may also tell us by telephone at 929-221-7220. Advance notice is requested to allow sufficient time to make arrangements. Please tell us by July 16.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Shortly after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public on HRA’s website.

What authorizes HRA to make this rule? Sections 603 and 1043 of the City Charter and Section 141 of the New York Social Services Law authorize HRA to make this proposed rule.

Where can I find HRA’s rules? HRA’s rules are in title 68 of the Rules of the City of New York.

Was the proposed rule included in HRA’S regulatory agenda? This rule was not contemplated when HRA issued its most recent regulatory agenda.

What laws govern the rulemaking process? HRA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Notice of Extension of Emergency Rule

Notice is further given, pursuant to New York City Charter Section 1043(i)(2), that the emergency rule issued on May 2, 2020 making certain changes to HRA's burial claims program is hereby extended an additional sixty (60) days, to August 31, 2020. The additional sixty (60) days are needed for HRA to adopt a final rule after completing the public comment and hearing process set forth in New York City Charter Section 1043(e).

Statement of Basis and Purpose of Proposed 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) issued an emergency rule concerning its Burial Claims program on May 2, 2020.

Under the City Administrative Procedure Act (CAPA), a rule adopted on an emergency basis remains in effect for 60 days unless the agency initiates a public notice and comment process for a "final" rule prior to the sixtieth day. Therefore, HRA is now initiating the notice and public comment process in order to extend or make permanent the various provisions of the emergency rule.

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 emergency rule increased the available burial allowance from \$900 to \$1700. HRA proposes making the \$1700 burial allowance available through December 31, 2020. 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 amounts that the City determines to be practicable in the future.

Additionally, HRA proposes making the rest of the provisions of the emergency rule permanent. Specifically, the HRA proposes making permanent the provisions of the emergency rule that do the following:

- (1) Increase 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.
- (2) Make clear that the requirement in the existing rule that applications must be made in-person is not being enforced at this time.
- (3) Change 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.
- (4) Allow 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.
- (5) Provide 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 that will be paid. However, DSS/HRA will reserve the right recover against such resource consistent with State law.
- (6) With respect to veteran burials in particular, remove 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.

DSS/HRA's authority for this proposed 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

13-01. Changes to Burial Claims Generally

Notwithstanding any provision of chapter 2 of this title to the contrary, the following provisions shall apply all applications for an HRA burial allowance:

(a) Notwithstanding the provisions of chapter 2 of these rules, the allowance provided for in section 13-02 of this chapter, or in Chapter 2, as applicable, 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.

(b) 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 from the date of death.

(c) Anyone who is eligible for an allowance for burial expenses or under this section or under Chapter 2, as applicable, 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.

(d) Applications under this section or under Chapter 2, as applicable, 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.

(e) 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.

(f) 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.

13-02. Temporary Increase in Burial Allowance

Notwithstanding any provision of chapter 2 of this title to the contrary, for applications submitted on or before December 31, 2020, the allowance for burial expenses described in chapter 2 that are payable by DSS/HRA is \$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 (a) of section 13-01 of this chapter that are disregarded in determining the cap set forth in such subdivision.

NEW YORK CITY LAW DEPARTMENT

**DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment Provisions Governing Funeral Assistance (Permanent Rule)

REFERENCE NUMBER: 2020 RG 064

RULEMAKING AGENCY: Human Resources Administration

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 17, 2020

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment Provisions Governing Funeral Assistance (Permanent Rule)

REFERENCE NUMBER: HRA-26

RULEMAKING AGENCY: Human Resources Administration

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

June 17, 2020

Date