



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2023 Sunrise Review

Funeral Service Professionals



December 29, 2023



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

December 29, 2023

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on June 30 and December 31.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of Funeral Service Professionals and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from harm, whether regulation would serve to mitigate the harm and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

A handwritten signature in cursive script that reads "Patty Salazar".

Patty Salazar
Executive Director



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Background

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review.

The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public;

(I.5) Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public can reasonably be expected to benefit from the direct regulation of the profession or occupation if a practitioner's judgment or practice is limited or subject to the judgment or supervision of others;

(II) Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence;

(III) Whether the public can be adequately protected by other means in a more cost-effective manner; and

(IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must include a description of the proposed regulation and justification for such regulation.

¹ § 24-34-104.1(4)(b), C.R.S.

Methodology

During the sunrise review, COPRRR staff performed a literature search, contacted and interviewed the sunrise applicant, contacted regulators in Colorado, reviewed laws in other states and interviewed stakeholders. To determine the number and types of complaints filed against Funeral Service Professionals, COPRRR staff also contacted regulatory agencies in other states.

Profile of the Profession

Until the early 1900s, most funerals in the United States were organized by the family and friends of the deceased and held in a private residence. With the dawn of the 20th century, funeral homes began to appear to relieve families and friends of the logistical challenges of organizing and hosting a funeral.²

While most funeral homes began as small, family-owned businesses, the industry began to consolidate in the 1960s, even though many of the larger businesses retained the original name of the acquired funeral home to maintain the sense of family. Today, the industry still primarily consists of small, independent businesses, with the four largest funeral operators owning between 15 and 20 percent of the approximately 23,000 funeral homes in the United States.³

Modern funeral homes typically offer three different types of services:⁴

- Traditional, or full-service funerals, which commonly entail some combination of embalming and dressing the deceased's body, rental of the funeral home for the viewing or funeral service, use of vehicles to transport the remains from the funeral home to the internment location, and graveside services;
- Direct burial occurs when there is no viewing or funeral service involved, so there is no embalming, but may include a memorial or graveside service; and
- Direct cremation occurs where there is no viewing or funeral service involved, so there is no embalming, and the cremated remains are returned to the family in a container.

Naturally, every funeral home is different, and the types of other services offered may vary considerably. Additional services may include, but are in no way limited to:

- Transportation of the deceased's remains;
- Preparation of the remains, including embalming and dressing;
- Provision of a facility to host the viewing, funeral service or both;
- Logistical coordination of the viewing, funeral service or both;
- Filing of death certificates;
- Publication of death notices; and
- Cremation.

² Funeralwise. *How the Funeral Industry Has Evolved*. Retrieved June 14, 2023, from www.funeralwise.com/resources/funeral-industry/

³ Funeralwise. *How the Funeral Industry Has Evolved*. Retrieved June 14, 2023, from www.funeralwise.com/resources/funeral-industry/

⁴ Federal Trade Commission. *Types of Funerals*. Retrieved June 14, 2023, from consumer.ftc.gov/articles/types-funerals

The types of individuals employed by a funeral home may also vary and can include:

- Mortuary science practitioners,
- Funeral directors,
- Embalmers,
- Cremationists, and
- Others.

Some funeral homes have their own crematories, while others do not. Similarly, there are some crematories that operate independently of a funeral home, accepting work on a contract basis.

According to one industry report, the 2022 cremation rate in the United States was 59.3 percent, compared to a burial rate of just 35.7 percent. Additionally, “green” alternatives have gained in popularity, with approximately 60 percent of consumers being interested in at least exploring such options.⁵

Two of the more common of these alternatives include natural reduction or natural organic reduction (body composting) and alkaline hydrolysis (water cremation).

In Colorado, only funeral homes and crematories are regulated by way of registration. Title protection is afforded to mortuary science practitioners, funeral directors, embalmers and cremationists.

In June 2023, the Colorado Funeral Directors Association (Applicant) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform in the Department of Regulatory Agencies for review consistent with section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The Applicant proposes licensing Funeral Service Professionals, which include mortuary science practitioners, funeral directors, embalmers, cremationists and natural reductionists, among others.

The Applicant defines funeral directors as those who:⁶

- Arrange and direct funeral services;
- Transfer the deceased from the place of death to the mortuary;
- Prepare the remains, which may include embalming;
- Direct the ceremony intended to acknowledge the life of the deceased;
- Address the emotional needs of the family to mourn; and
- Facilitate the burial or cremation of the remains.

Funeral directors may also prepare and file legal documents, such as death certificates and obituary notices. In short, funeral directors handle the details and logistics of the service.

⁵ National Funeral Directors Association. *Statistics*. Retrieved June 12, 2023, from nfd.org/news/statistics

⁶ Sunrise Application, Question 7.

Embalmers, according to the Applicant, disinfect, preserve and prepare human remains by using germicidal soaps and replacing blood with embalming fluids to disinfect and preserve the remains. They may also be required to restore the remains through the use of cosmetics and reconstructing disfigured or maimed individuals.⁷

Additionally, embalmers may maintain records such as embalming reports and itemized lists of personal effects of the deceased.⁸

The Applicant defines a cremationist as a person who cremates or prepares human remains for cremation, which may include operating a retort that reduces human remains to essential elements through direct exposure to intense heat. Cremationists must verify the identification of the deceased throughout the cremation process and verify that proper authorizations have been obtained. Finally, the cremationist is responsible for the recovery, handling and disposition of pacemakers, defibrillators, prosthetic devices, clothing, jewelry and other personal effects of the deceased.⁹

A natural reductionist, according to the Applicant, reduces or prepares human remains for organic reduction by operating a composting vessel that reduces human remains to essential elements with the use of organic materials and microbial heat activity. Natural reductionists must verify the identification of the deceased throughout the process and verify that proper authorizations have been obtained. Finally, the natural reductionist is responsible for the recovery, handling and disposition of pacemakers, defibrillators, prosthetic devices, clothing, jewelry and other personal effects of the deceased.¹⁰

Finally, mortuary science practitioners possess the training and education to perform the functions of and to supervise funeral directors, embalmers and cremationists.¹¹

The Applicant estimates that there are approximately 1,100 Funeral Service Professionals practicing in Colorado.

Some who enter the funeral industry obtain a formal education. In Colorado, Arapahoe Community College (ACC) offers an Associate of Applied Science Degree in Mortuary Science.¹² The ACC program is the only program in Colorado accredited by the American Board of Funeral Service Education (ABFSE).

⁷ Sunrise Application, Question 7.

⁸ Sunrise Application, Question 7.

⁹ Sunrise Application, Question 7.

¹⁰ Sunrise Application, Question 7.

¹¹ Sunrise Application, Question 7.

¹² Arapahoe Community College. *Mortuary Science*. Retrieved August 2, 2023, from www.arapahoe.edu/academics-programs/programs/mortuary-science

Before beginning the Mortuary Science Program, ACC requires students to have completed approximately 27 credits of general education prerequisites, including:¹³

- Accounting Principles;
- Human Anatomy and Physiology I and II, with lab work;
- Legal Environment of Business;
- Interpersonal Communication;
- English Composition I;
- Human Relations in Organization; and
- General Psychology I or II.

The Mortuary Science Program requires the completion of approximately 41 credits and consists of:¹⁴

- Introduction to Funeral Service;
- Embalming Theory I and II, with lab work;
- Funeral Merchandising;
- Mortuary Law and Compliance;
- Thanato-Microbiology/Pathology;
- Role of Death and Bereavement in Society;
- Restorative Art, with lab work;
- Funeral Directing and Counseling;
- Thanatochemistry;
- Internship; and
- National Board Examination Review.

According to faculty at ACC, the topics of cremation and natural reduction are incorporated into various classes where appropriate.

The Mortuary Science Program can be completed on a full-time basis (generally, over three semesters) or part-time basis (generally, over five semesters). Cost is dependent upon the number of credits taken each semester and whether the student pays in-state or out-of-state tuition, but, in general, the total cost for an in-state student is roughly between \$7,000 and \$8,000, including prerequisites.

Finally, ACC graduates approximately 58 students each year.

Obtaining a degree in mortuary science prepares one to take The International Conference of Funeral Service Examining Board's National Board Examination (NBE), which is the licensing examination accepted by all states that license funeral professionals. Notably, three states (Massachusetts, Mississippi and Alabama) have their own tests that can be taken in lieu of the NBE. The NBE consists of two parts: Arts and Sciences. Each part consists of 170 questions, 150 of which are scored, that must be completed in 170 minutes.¹⁵

¹³ Arapahoe Community College. *Mortuary Science AAS - Academic Plan*. Retrieved October 23, 2023, from www.arapahoe.edu/academics-programs/catalog/academic-plans/2023-2024/mortuary-science-aas-academic-plan

¹⁴ Arapahoe Community College. *Mortuary Science AAS - Academic Plan*. Retrieved October 23, 2023, from www.arapahoe.edu/academics-programs/catalog/academic-plans/2023-2024/mortuary-science-aas-academic-plan

¹⁵ *National Board Examination: Candidate Handbook 2023*, The International Conference of Funeral Service Examining Boards, July 2023, p. 21.

The NBE-Arts covers the following topics:¹⁶

- Funeral Arranging and Directing (51 questions);
- Funeral Service Marketing/Merchandising (21 questions);
- Funeral Service Counseling (19 questions);
- Legal and Regulatory Compliance (35 questions);
- Cemetery/Crematory/Other Dispositions (20 questions); and
- Pretest (20 unscored questions).

The NBE-Sciences covers the following topics:¹⁷

- Embalming (62 questions);
- Restorative Art (34 questions);
- Other Preparation of the Deceased (28 questions);
- Funeral Service Sciences (26 questions); and
- Pretest (20 unscored questions).

Natural reduction and alkaline hydrolysis are addressed in the “Cemetery/Crematory/Other Dispositions” section of the NBE-Arts examination and the “Other Preparation of the Deceased” section of the NBE-Sciences examination.

The NBE is a computer-based examination administered by Pearson VUE,¹⁸ and it can be taken year-round.¹⁹ The fee for each section is \$285.²⁰

Although the NBE is generally considered a licensing examination, between 2018 and 2022, 68 individuals with Colorado addresses took the NBE and 96 had their test scores sent to Colorado. During the same period, the pass rates for first time test takers in Colorado were 71 percent on the NBE-Arts and 70 percent on the NBE-Sciences.

Private Credentials and Training Opportunities

Additionally, several organizations offer private certifications and training opportunities, including, but not necessarily limited to:

- Academy of Professional Funeral Service Practice;
- Cremation Association of North America;
- Colorado Funeral Services Board;
- International Cemetery, Cremation and Funeral Association; and
- National Funeral Directors Association.

¹⁶ *National Board Examination: Candidate Handbook 2023*, The International Conference of Funeral Service Examining Boards, July 2023, p. 4.

¹⁷ *National Board Examination: Candidate Handbook 2023*, The International Conference of Funeral Service Examining Boards, July 2023, p. 4.

¹⁸ *National Board Examination: Candidate Handbook 2023*, The International Conference of Funeral Service Examining Boards, July 2023, p. 5.

¹⁹ *National Board Examination: Candidate Handbook 2023*, The International Conference of Funeral Service Examining Boards, July 2023, p. 11.

²⁰ *National Board Examination: Candidate Handbook 2023*, The International Conference of Funeral Service Examining Boards, July 2023, p. 10.

ACADEMY OF PROFESSIONAL FUNERAL SERVICE PRACTICE

The Academy of Professional Funeral Service Practice offers the Certified Funeral Service Practitioner (CFSP) credential, which is intended to designate “those who offer more than what is expected of them.”²¹ To obtain the CFSP, a candidate must hold a current license to practice funeral service and complete 180 hours of required activities across four categories:²²

- Academic—up to 108 hours can be obtained in this category, which includes attending seminars, reading books and completing other academic activities.
- Professional Activities—up to 72 hours can be obtained in this category, which includes attending seminars, conventions and webinars, among other things.
- Career Review—this category can be used by individuals who would like to use their career’s accomplishments to account for up to 54 hours. Under this category, applicants can receive credit for things like formal education, serving on regulatory boards and obtaining private certifications, among other things.
- Public Education and Service—up to 18 hours can be obtained in this category, which includes working on community service activities.

The fee for initial certification is \$95. Annual renewal requires CFSP credential holders to complete 20 hours of required activities across the same four categories and pay a fee of \$75.²³

As of November 2023, 10 Coloradans held the CFSP credential and 3 more were working towards attaining it.

CREMATION ASSOCIATION OF NORTH AMERICA

The Cremation Association of North America (CANA) offers two certifications relevant to this sunrise review: the Crematory Operations Certification and the Certified Cremation Specialist.

The Crematory Operations Certification is intended to increase the participant’s understanding of crematory operations, including both flame and alkaline hydrolysis, as a complement to on-the-job and machine-specific training.²⁴

²¹ Academy of Professional Funeral Service Practice. *Why should you work with a Certified Funeral Service Practitioner?* Retrieved November 3, 2023, from www.apfsp.org/consumers.

²² For the list of the categories, see: Academy of Professional Funeral Service Practice. *The CFSP Designation*. Retrieved November 3, 2023, from www.apfsp.org/About.php#1

²³ Academy of Professional Funeral Service Practice. *The CFSP Designation*. Retrieved November 3, 2023, from www.apfsp.org/About.php#1

²⁴ Cremation Association of North America. *CANA’s Crematory Operations Certification Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/COCP

The cost of the Crematory Operations Certification Program (COCP) is \$495 for CANA members and \$595 for non-members and it may be taken on-line or in-person.²⁵ The COCP consists of seven modules:²⁶

- Overview of the Cremation Process,
- Equipment and Operations,
- The Cremation Process in Detail,
- Chain of Custody,
- Reducing Legal Risk,
- Tying it all Together, and
- Cremation and the Environment.

Participants must take and pass an examination at the conclusion of the COCP to obtain certification.²⁷

Between 2011 and 2023, CANA issued 178 Crematory Operations Certifications to individuals with Colorado addresses.

CANA's Certified Cremation Specialist credential is designed to impart best practices in ethical conduct, verbal and non-verbal communications, and personalizing services and body preparation styles. The cost of the program is \$465 for CANA members and \$615 for non-members.²⁸

The program consists of seven self-paced courses and one live, instructor-led course, all of which are online:²⁹

- The Cremation Choice;
- Communication Skills Fundamentals;
- Cremation Phone Shoppers: Your Best First Impression;
- The Power of Presence, Part 1: An Introduction;
- The Power of Presence, Part 2: Implementation (live, instructor-led course);
- Ethics in Funeral Service;
- Complying with the Federal Trade Commission's Funeral Rule; and
- Presentation without Preservation.

The program culminates in the completion of a capstone project.³⁰

²⁵ Cremation Association of North America. *CANA's Crematory Operations Certification Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/COCP

²⁶ Cremation Association of North America. *CANA's Crematory Operations Certification Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/COCP

²⁷ Cremation Association of North America. *CANA's Crematory Operations Certification Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/COCP

²⁸ Cremation Association of North America. *Certified Cremation Specialist Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/CCS

²⁹ Cremation Association of North America. *Certified Cremation Specialist Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/CCS

³⁰ Cremation Association of North America. *Certified Cremation Specialist Program*. Retrieved October 31, 2023, from www.cremationassociation.org/page/CCS

This certification became available for the first time in 2021, and although CANA has issued 75 certifications since then, none have been to individuals with Colorado addresses.

COLORADO FUNERAL SERVICES BOARD

The Colorado Funeral Services Board (CFSB), a private organization, offers the following certifications:³¹

- Certified Mortuary Science Practitioner (CMSP),
- Certified Funeral Director (CFD),
- Certified Embalming Technician (CET),
- Certified Cremation Technician (CCT), and
- Certified Intern/Trainee (INT).

To obtain a CMSP, a candidate must possess a mortuary science degree with at least 60 credit hours from an ABFSE-accredited mortuary science program, pass the NBE and:

- Complete a one-year internship;
- Perform 25 embalmings, 25 cremations and 25 funeral or memorial services; and
- Complete a required skills checklist.

As of May 2023, there were 28 CMSPs.³²

There are two routes to obtaining a CFD, both of which require completion of a skills checklist:

- Option A: Possess a mortuary science degree with at least 60 credit hours from an ABFSE-accredited mortuary science program or college credit, complete a one-year internship and perform at least 50 funeral or memorial services; or
- Option B: Complete a two-year internship and perform 100 funeral or memorial services.

As of May 2023, there were 17 CFDs.³³

³¹ Colorado Funeral Directors Association. *Colorado Funeral Services Board Credentials*. Retrieved August 2, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019&pk_association_webpage=18469

³² Colorado Funeral Directors Association. *Click here for a current list of CFSB Certified Professionals: Colorado Funeral Services Board 2023 Credentialing Program: Individuals who maintain CFSB Credentials as of May 15, 2023*. Retrieved August 30, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019

³³ Colorado Funeral Directors Association. *Click here for a current list of CFSB Certified Professionals: Colorado Funeral Services Board 2023 Credentialing Program: Individuals who maintain CFSB Credentials as of May 15, 2023*. Retrieved August 30, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019

There are two routes to obtaining a CET, both of which require completion of a skills checklist:

- Option A: Possess a mortuary science degree with at least 60 credit hours from an ABFSE-accredited mortuary science program, complete a one-year internship and perform at least 25 embalmings; or
- Option B: Complete a two-year internship and perform at least 25 embalmings.

As of May 2023, there were six CETs.³⁴

There are several routes to obtaining a CCT, all of which require a high school diploma or General Educational Development (GED) completion:

- Option A: Maintain a CFSB credential as a CMSP, CFD or CET and perform at least 25 cremations within the preceding 24 months;
- Option B: Complete a six-month internship and perform at least 25 cremations; or
- Option C: Perform at least 25 cremations under the supervision of a licensed funeral professional in another state.

As of May 2023, there were two CCTs.³⁵

The INT is intended for use by those serving their internship periods for the aforementioned certifications. To obtain an INT, a candidate must have a high school diploma or GED completion, be employed at a funeral home or crematory, be serving an internship and complete a skills checklist and case logs.³⁶ As of May 2023, there were three INTs.³⁷

Each CFSB certification costs \$100.³⁸ All certifications must be renewed annually at a cost of \$150 and certificate holders must complete six hours of continuing education each year, including two hours covering Colorado law.³⁹ Several individuals hold multiple CFSB certifications.

³⁴ Colorado Funeral Directors Association. *Click here for a current list of CFSB Certified Professionals: Colorado Funeral Services Board 2023 Credentialing Program: Individuals who maintain CFSB Credentials as of May 15, 2023.* Retrieved August 30, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019

³⁵ Colorado Funeral Directors Association. *Click here for a current list of CFSB Certified Professionals: Colorado Funeral Services Board 2023 Credentialing Program: Individuals who maintain CFSB Credentials as of May 15, 2023.* Retrieved August 30, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019

³⁶ Colorado Funeral Directors Association. *Colorado Funeral Services Board Credentials.* Retrieved October 31, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019&pk_association_webpage=18469

³⁷ Colorado Funeral Directors Association. *Click here for a current list of CFSB Certified Professionals: Colorado Funeral Services Board 2023 Credentialing Program: Individuals who maintain CFSB Credentials as of May 15, 2023.* Retrieved August 30, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019

³⁸ Colorado Funeral Directors Association. *Colorado Funeral Services Board Credentials.* Retrieved October 31, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019&pk_association_webpage=18469

³⁹ Colorado Funeral Directors Association. *Colorado Funeral Services Board Credentials.* Retrieved October 31, 2023, from www.cofda.org/site_page.cfm?pk_association_webpage_menu=7019&pk_association_webpage=18469

The International Cemetery, Cremation and Funeral Association (ICCFA) offers the Crematory Operator Certification. This certification can be obtained online, and the training curriculum includes:⁴⁰

- Professional terminology,
- Incinerator terminology,
- Principles of combustion,
- Cremation and the environment,
- Incinerator criteria and design,
- Basics of operating cremation equipment,
- General maintenance and troubleshooting,
- Forms and recordkeeping, and
- Handling and exposure control.

Students must complete the training and an online examination within 60 days of beginning, and the cost is \$395 for ICCFA members and \$545 for non-members.⁴¹

As of November 2023, eight individuals with Colorado addresses held the Crematory Operator Certification.

ICCFA also offers Cremation Arranger Certification, which is a six-hour course designed to provide students with the history of cremation, pertinent laws and regulations and how to identify potential customers with the goal of helping students create a better arrangement for the families they serve. The cost is \$395 for ICCFA members and \$525 for non-members.

As of November 2023, 14 individuals with Colorado addresses held the Cremation Arranger Certification.

Finally, ICCFA also offers a series of “executive” certifications, based on an individual’s career-long experience, including, but not limited to:^{42, 43}

- Certified Cemetery Executive,
- Certified Cemetery Funeral Executive,
- Certified Cremation Executive, and
- Certified Funeral Executive.

⁴⁰ International Cemetery, Cremation and Funeral Association. *COCP Online Training*. Retrieved November 3, 2023, from www.iccfa.com/cocp/

⁴¹ International Cemetery, Cremation and Funeral Association. *COCP Online Training*. Retrieved November 3, 2023, from www.iccfa.com/cocp/

⁴² International Cemetery, Cremation and Funeral Association. *Certified Executive Program*. Retrieved November 3, 2023, from www.iccfa.com/certified-executive-program/

⁴³ *Certification Program Application*. International Cemetery, Cremation and Funeral Association.

The fee for an initial five-year certification is \$150, and the cost to renew is \$75 every five years thereafter.⁴⁴

ICCFA was unable to provide the number of individuals from Colorado who hold these certifications.

NATIONAL FUNERAL DIRECTORS ASSOCIATION

The National Funeral Directors Association (NFDA) offers several certifications and training opportunities relevant to this sunrise review, including:

- Arranger Training,
- Cremation Certification Program,
- Certified Preplanning Consultant, and
- Certified Celebrant Training.

The NFDA's Arranger Training consists of an eight-hour in-person course intended to provide participants with the tools they need to convey the value of their offerings, support families and design memorable life-honoring events. The cost of the course varies between \$160 and \$625 based on a participant's NFDA membership status and whether continuing education credit is being sought. Twenty-seven individuals in Colorado have completed this course virtually, including 25 students at ACC.

The Cremation Certification Program addresses best practices for safe, proper and ethical crematory operations. Upon completion of the course and passage of an examination, participants earn the Certified Crematory Operator credential. The course is offered in a variety of formats in varying durations: in-person (one day); virtual (two days) and online (self-paced). The cost of the course varies between \$160 and \$695 based on the course format, the participant's NFDA membership status and whether continuing education credit is being sought. Since 2007, 75 individuals with Colorado addresses have completed this program.

The Certified Preplanning Consultant (CPC) program is a self-study program accredited by the APFSP intended to assist participants in promoting their expertise and professionalism. Participants complete short review tests at the end of each chapter of the training manual, and then take a final, proctored examination. The course must be completed within six months. The cost for NFDA members or non-funeral directors is \$445 and it is \$575 for non-member funeral directors. Since 2007, three individuals with Colorado addresses have completed this program.

⁴⁴ *Certification Program Application*. International Cemetery, Cremation and Funeral Association, p. 3.

Finally, the Certified Celebrant Training is intended for those who work with funeral directors to provide funeral or memorial services that are personalized and individualized to reflect the personality of the decedent. The three-day program is intended to impart skills relating to, among other things: articulating the value of the funeral; facilitating family meetings; using music and reading resources; the art of ceremonial writing; presentation skills and master of ceremony skills. The cost of the program is \$895 for NFDA members or non-funeral directors and it is \$1,050 for non-member funeral directors. Since 2017, at least five individuals with Colorado addresses have completed this training through NFDA.

Proposal for Regulation

The Colorado Funeral Directors Association (Applicant) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) in the Department of Regulatory Agencies for review consistent with section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The Applicant proposes licensing Funeral Service Professionals, which include mortuary science practitioners, funeral service practitioners, funeral directors, embalmers, cremationists, natural reductionists, morticians, undertakers and funeral arrangers. Importantly, the proposal applies only to those who work with human remains.

The Applicant proposes grandfathering those currently practicing in Colorado as Funeral Service Professionals by requiring them to do the following in order to obtain an initial license:

- Submit an application and fee to the regulator, and
- Pass a basic background check/investigation.

Those new to the industry would need to:

- Graduate from an accredited mortuary science school;
- Pass the National Board Examination administered by the International Conference of Funeral Service Examining Boards;
- Serve a one-year apprenticeship, which could be accomplished concurrently with the required educational program; and
- Pass a basic background check/investigation.

The Applicant envisions the basic background check/investigation as including both a criminal history background check as well as a licensing history background check to ascertain whether the practitioner has had a Funeral Service Professional or similar license revoked in another jurisdiction, which would serve as a bar to licensure in Colorado.

Each licensee would receive a wall plaque and wallet card evidencing their licensure status.

All licenses would be valid for one year, and to renew, each licensee would be required to complete six units of continuing education, including one unit focusing on Colorado's mortuary science laws.

Since mandatory continuing education is a component of the Applicant's proposal, the application required by section 24-34-901, C.R.S., has been submitted to COPRRR.

Summary of Current Regulation

Federal Laws and Regulations

Pursuant to the broad authority granted under the Federal Trade Commission (FTC) Act, the FTC has issued what is commonly referred to as “the Funeral Rule,” which, in general, requires funeral providers to provide certain disclosures and to refrain from engaging in certain acts.

The Funeral Rule defines funeral providers as those who sell or offer to sell funeral goods and services, and it considers funeral goods to encompass “all products sold directly to the public in connection with funeral services.”⁴⁵

Funeral services, in turn, are deemed by the FTC to include services used to:⁴⁶

- Care for and prepare bodies for burial, cremation or other final disposition; and
- Arrange, supervise or conduct the funeral ceremony or final disposition of human remains.

In the context of this sunrise review, the Funeral Rule most clearly applies to the role of Funeral Service Professionals involving sales to the public, rather than the provision of certain services, such as embalming, cremation and natural reduction.

The keystone of the Funeral Rule is the General Price List (GPL), which must be provided to anyone who asks, in person, about funeral goods or services or the prices of such goods or services.⁴⁷

The GPL must:⁴⁸

- Provide the name, address and telephone number of the funeral provider’s place of business;
- A caption that states “General Price List”; and
- The effective date of the price list.

⁴⁵ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 1. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁴⁶ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 1. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁴⁷ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 2. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁴⁸ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 4. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

The GPL must also include disclosures that:

- The consumer has the right to select only the goods and services they want to purchase;⁴⁹
- The law usually does not require embalming;⁵⁰
- The consumer may use alternative containers for direct cremation;⁵¹
- The amount of the basic service fee, which typically includes the charge for services performed, such as making the funeral arrangements, planning the funeral, securing necessary permits, preparing death notices and coordinating cemetery or crematory arrangements;⁵²
- The casket price list;⁵³ and
- The outer burial container price list.⁵⁴

To enable the consumer to select only those goods and services they desire and to enable comparison shopping, the GPL must itemize the prices for the following, if offered:⁵⁵

- Forwarding remains to another funeral home;
- Receiving remains from another funeral home;
- Direct cremation;
- Immediate burial;
- Basic services of the funeral director and staff, as well as overhead (the basic service fee);
- Transfer of remains to the funeral home;
- Embalming;
- Other preparation of the remains;
- Use of facilities and staff for viewing;
- Use of facilities and staff for a funeral ceremony;
- Use of facilities and staff for a memorial service;
- Use of equipment and staff for a graveside service;
- Hearse;
- Limousine;
- Either individual casket prices or the range of casket prices on the casket price list; and
- Either individual outer burial container prices or the range of prices that are on the outer burial container price list.

⁴⁹ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p.5. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵⁰ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 5. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵¹ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 5. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵² *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 6. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵³ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 6. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵⁴ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 6. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵⁵ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 7. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

The GPL can include other information, but it must not change any FTC-mandated language.⁵⁶

Additionally, the Funeral Rule requires that the consumer receive a Statement of Funeral Goods and Services Selected (Statement), which is an itemized list of the goods and services selected by the consumer. Although highly prescriptive in other ways, the Funeral Rule does not require any specific form, heading or caption on the Statement, but it does suggest that the items listed in the GPL correspond to the items in the Statement for ease of comparison.⁵⁷

Finally, the Funeral Rule prohibits six specific misrepresentations:

- A funeral provider must not claim that state or local law requires embalming, unless true;⁵⁸
- A funeral provider must not claim that state or local law requires the consumer to purchase a casket if they are arranging for direct cremation;⁵⁹
- A funeral provider must not claim that state or local law requires the consumer to purchase an outer burial container, unless true;⁶⁰
- A funeral provider must not claim that any federal, state or local law or a particular cemetery or crematory requires the consumer to purchase any particular good or service, unless true;⁶¹
- A funeral provider must not make any representations that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time;⁶² and
- If the funeral provider adds a markup on cash advance items (i.e., goods or services the funeral provider pays for directly and then passes on to the consumer, such as clergy honoraria, flowers and the like) or receives a commission, discount or rebate that is not passed on to the consumer, the funeral provider must not claim that the price charged to the consumer is the same as the funeral provider's own cost.⁶³

In the end, the Funeral Rule does not directly regulate Funeral Service Professionals, but it does provide the legal framework within which they operate.

⁵⁶ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 4. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵⁷ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p.15. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵⁸ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 17. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁵⁹ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 18. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁶⁰ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 18. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁶¹ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 19. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁶² *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 19. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

⁶³ *Complying with the Funeral Rule*, Federal Trade Commission (2019), p. 19. Retrieved on March 13, 2023, from www.ftc.gov/system/files/ftc_gov/pdf/565A_Complying%20with%20Funeral%20Rule_2023_508.pdf

The Colorado Regulatory Environment

Colorado's Mortuary Science Code (Code) can be found in section 12-135-101, *et seq.*, Colorado Revised Statutes (C.R.S.). In general, the Code requires funeral establishments and crematories, the facilities where Funeral Service Professionals most typically work, to register with the Director of the Division of Professions and Occupations (Director and Division, respectively) in the Department of Regulatory Agencies (DORA). The Code also contains title protection provisions for four types of Funeral Service Professionals: mortuary science practitioners, funeral directors, embalmers and cremationists.

The following overview of the Code is intended to provide general context regarding the regulatory environment within which Funeral Service Professionals currently work.

The Code defines funeral home, funeral establishment and mortuary synonymously (and this report will use the term "funeral home") as facilities or establishments that:⁶⁴

- Hold, care for or prepare human remains prior to final disposition, including a crematory or embalming room, but not establishments where people regularly die;
- Hold themselves out to the general public as providing funeral goods and services; or
- Provide funeral or memorial services to the public for compensation.

Funeral goods are defined as those "that are sold or offered for sale directly to the public for use in connection with funeral services or cremation services."⁶⁵

Funeral services are defined as the:⁶⁶

- Preparation of human remains for final disposition other than cremation;
- Arrangement, supervision or conduct of a funeral ceremony or the final disposition of human remains; or
- Transportation of human remains to or from a funeral home.

If a funeral home offers embalming services, it must:⁶⁷

- Maintain a sanitary preparation room;
- Employ universal biological hazards precautions;
- Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;
- Be equipped with the instruments and supplies necessary to protect the health and safety of the public and funeral home employees; and
- Transport human remains in a safe and sanitary manner.

⁶⁴ § 12-135-103(16), C.R.S.

⁶⁵ § 12-135-103(17), C.R.S.

⁶⁶ § 12-135-103(18), C.R.S.

⁶⁷ § 12-135-112(1), C.R.S.

If a funeral home transports human remains, it must use a motor vehicle that is appropriate for the task and transport the remains in a safe and sanitary manner.⁶⁸

A crematory is a place where human remains are reduced to essential elements, processed and placed in a container. Importantly, the term “cremation” does not include natural reduction.⁶⁹ Implanted medical devices must be removed before human remains are transported to a crematory.⁷⁰

To operate as a funeral home or crematory, the relevant registration must be obtained from the Director. The following information must be submitted to the Director to register:⁷¹

- The specific location of the applicant;
- The full name and address of the applicant’s designee or responsible individual;
- The date the applicant began doing business; and
- A list of the services to be provided by the applicant.

To be appointed as the designee of a funeral home or crematory, an individual must:⁷²

- Be at least 18 years old;
- Have two years of experience working for a funeral home or crematory, as the case may be;
- Be employed by the funeral home or crematory the designee represents;
- Have the authority to require personnel at the funeral home or crematory to comply with the Code; and
- Not be designated for more than one funeral home unless the additional establishment is operated under common ownership and management and no such funeral home is more than 60 miles from another held under the same ownership conditions.

There is no requirement that anyone in a funeral home’s ownership structure, or that the designee, be a Funeral Service Professional.

Funeral homes must have the appropriate equipment and personnel to provide the services they contract to provide. They must provide written notice to the consumer if any subcontractors or agents routinely handle or care for human remains. Such notice must be given when the consumer inquires about funeral goods or services.⁷³

Crematories must maintain a safe and sanitary retort or crematory chamber; employ reasonable care to minimize the risk of transmitting communicable diseases; be equipped with instruments and supplies to protect the health and safety of their

⁶⁸ § 12-135-112(2), C.R.S.

⁶⁹ §§ 12-135-103(4) and (8), C.R.S.

⁷⁰ § 12-135-112(3), C.R.S.

⁷¹ §§ 12-135-110(2)(a) and 12-135-303(2)(a), C.R.S.

⁷² §§ 12-135-110(3) and 12-135-303(3), C.R.S.

⁷³ § 12-135-104(1), C.R.S.

employees and the public; and transport human remains in a safe and sanitary manner.⁷⁴

Additionally, crematories are prohibited from cremating human remains unless they obtain a statement from an appropriate individual that contains, among other things:⁷⁵

- The identity of the decedent;
- The date of death;
- Authorization to cremate the remains;
- Verification that the remains do not contain an implanted device;
- The name of the person authorized to receive the cremated remains; and
- A list of items delivered to the crematory with the remains.

The Code also stipulates that the remains of one person cannot be commingled with those of another, absent written authorization.⁷⁶

Prior to selecting the funeral, the funeral home must provide to the person with the right of final disposition, a written itemized list of the prices of all available merchandise and services.⁷⁷ The funeral home must make every reasonable effort to fulfill the expressed needs and desires of the person with the right of final disposition.⁷⁸

A funeral home must embalm, refrigerate, cremate, bury or entomb human remains within 24 hours after taking custody of the remains.⁷⁹

A funeral home or crematory may dispose of cremated or naturally reduced remains, at the expense of the person with the right of final disposition, 180 days after cremation or natural reduction if the person was given clear prior notice and a reasonable opportunity to collect the remains.⁸⁰ The Code specifies the manner in which such remains may be disposed.⁸¹

The Code's provisions relating to funeral homes do not apply to:⁸²

- An officer of a public institution;
- An officer of a medical college, county medical society, anatomical association or college of embalming; or
- A person acting under the provisions of state law pertaining to unclaimed human remains.

⁷⁴ § 12-135-307(1), C.R.S.

⁷⁵ § 12-135-307(2)(a), C.R.S.

⁷⁶ § 12-135-307(4), C.R.S.

⁷⁷ § 12-135-107(2), C.R.S.

⁷⁸ § 12-135-107(1), C.R.S.

⁷⁹ § 12-135-106, C.R.S.

⁸⁰ § 12-135-109(5)(a)(I), C.R.S.

⁸¹ §§ 12-135-109(5) and 12-135-302(2), C.R.S.

⁸² § 12-135-109(1), C.R.S.

The Code contains provisions to establish a chain of custody for human remains. For example, funeral homes and crematories are prohibited from taking custody of human remains without an attestation by an enumerated individual of positive identification of those remains, and the Code further requires a funeral home to track those remains from the time it takes custody until:⁸³

- Final disposition has occurred;
- The remains are released in accordance with the instruction provided by the person with the right of final disposition; or
- The remains are released to another funeral home, crematory, repository or entity authorized by the person with the right of final disposition.

The Code requires crematories to issue certain types of receipts. When a crematory takes delivery of human remains, it must issue a receipt to the person who delivered those remains, and that receipt must include:⁸⁴

- The date and time of delivery,
- The type of casket or container delivered,
- The name of the person who delivered the remains and the name of any business with which they might be affiliated,
- The name of the person who received the remains, and
- The name of the decedent.

Similarly, when a crematory releases cremated remains, it must issue a receipt to the person receiving those remains, and that receipt must include:⁸⁵

- The date and time of release,
- The name of the person to whom the remains were released,
- The name of the person at the crematory who released the remains, and
- The name of the decedent.

The Code decrees many acts as unlawful, including:⁸⁶

- To disinfect, preserve or make final disposition of human remains with knowledge sufficient to arouse a reasonable suspicion of a crime in connection with the cause of death of the deceased until the permission of the coroner, deputy coroner or district attorney has been obtained;
- To discriminate because of race, creed, color, religion, disability, sex, sexual orientation, gender identity, gender expression, marital status, national origin or ancestry in the provision of funeral services;

⁸³ §§ 12-135-113(1) and (2) and 12-135-308(1) and (2), C.R.S.

⁸⁴ § 12-135-305(1), C.R.S.

⁸⁵ § 12-135-305(2), C.R.S.

⁸⁶ § 12-135-105(1), C.R.S.

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- For any public officer or employee or any other person having a professional relationship with the decedent to approve or cause the final disposition of human remains in violation of the Code;
 - For a person in the business of paying for or providing death benefits, funerals, funeral ceremonies, final dispositions or preneed funeral contracts to pay or provide benefits in a manner that deprives the next of kin or legal representative of the right to use those payments or benefits at a funeral home of their choice;
 - For a funeral director, mortuary science practitioner, embalmer, funeral home or facility in which people regularly die to engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, embalmer or funeral home;
 - For a county coroner to direct business to a funeral home in which the coroner owns an interest or at which the coroner is employed;
 - To transport or otherwise transfer human remains by common carrier unless certain conditions apply;
 - To advertise as holding a degree, a certificate of registration, a professional license or a professional certification issued by a governmental agency unless the person holds such credential;
 - For a funeral director, mortuary science practitioner or embalmer to admit or permit anyone to visit the embalming, cremation or preparation room during the time human remains are being embalmed, cremated or prepared for final disposition, unless certain conditions apply;
 - To refuse to properly and promptly release human remains, naturally reduced remains or cremated remains to the custody of the person who has the legal right to effect the release, regardless of whether any costs have been paid;
 - To tell a person that a casket is required when the expressed wish is for immediate cremation;
 - To embalm, naturally reduce or cremate human remains without obtaining permission from the person with the right of final disposition;
 - To engage in willfully dishonest conduct or to commit negligence in the practice of embalming, funeral directing or providing for final disposition of human remains that defrauds or causes injury or is likely to do so;
 - To fail to include in a contract for funeral services the following statement: "INQUIRIES REGARDING YOUR FUNERAL AGREEMENT MAY BE DIRECTED TO THE DEPARTMENT OF REGULATORY AGENCIES" along with the current address and telephone number of DORA;
 - To sell or offer to sell the soil produced by the natural reduction of human remains;
 - To commingle without the consent of the person or persons with the right of final disposition, in the course of ordinary business, the soil produced by natural reduction of more than one person or the human remains of more than one person within the container in which natural reduction produces soil;
 - To use, in the ordinary course of business, the soil produced by the natural reduction of human remains to grow food for human consumption; and
 - To actually or to attempt to prohibit, hinder or restrict:

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- The offering or advertising of immediate cremation, natural reduction, advance funeral arrangements or low-cost funerals;
 - Arrangements between memorial societies and funeral industry members; or
 - A funeral service industry member from disclosing accurate information concerning funeral merchandise and services.

The Code further specifies that it is unlawful for a crematory:⁸⁷

- To approve or cause the final disposition of human remains in violation of the Code;
- To engage in a business practice that interferes with the general public's freedom of choice to choose a funeral director, mortuary science practitioner, cremationist, embalmer or funeral home;
- To admit or permit anyone to visit the crematory or preparation room when human remains are being cremated or prepared for final disposition, unless certain conditions apply;
- To cremate human remains in a facility that is not registered with the Director;
- To refuse to accept human remains that are not in a casket or to require human remains to be placed in a casket;
- To allow a crematory operator to perform services beyond their competency, training or education; and
- To engage in willfully dishonest conduct or commit negligence in the practice of cremation or providing for final disposition that actually or is likely to defraud or cause injury.

It is also unlawful for either of the following to own more than a 10 percent indirect interest or any direct interest in a nontransplant tissue bank: ⁸⁸

- A person who owns more than a 10 percent indirect interest in a funeral home or crematory; or
- A person who owns any direct interest in a funeral home or crematory.

Any person who violates the provisions of the Code relating to funeral homes or crematories commits a Class 1 Misdemeanor.⁸⁹

⁸⁷ § 12-135-301(1), C.R.S.

⁸⁸ §§ 12-135-105(1)(p) and 12-135-301(3), C.R.S.

⁸⁹ § 12-135-108, C.R.S.

The Director is also authorized to deny, suspend, refuse to renew or revoke a funeral home or crematory registration, or issue a letter of admonition to a registrant that has:⁹⁰

- Filed an application containing material misstatement of fact or has omitted any required disclosures;
- Had revoked a state-issued credential to practice mortuary science, embalming or cremating human remains; or
- Violated the Code or the Director’s rules.

The Director may also deny or revoke a registration if the funeral home, crematory or designee has been convicted of a felony related to an activity governed by the Code or any felony of moral turpitude.⁹¹

Additionally, the Director may fine a funeral home or crematory between \$100 and \$5,000 per violation of the Code or the Director’s rules.⁹²

Although the Code does not create a regulatory structure for Funeral Service Professionals, it does protect the use of several professional titles:

- Mortuary science practitioner,
- Funeral director,
- Embalmer, and
- Cremationist.

A mortuary science practitioner is a person who, for compensation:⁹³

- Embalms or cremates human remains;
- Arranges, directs or supervises funerals, memorials or graveside services; or
- Prepares human remains for final disposition, not including preparing human remains for natural reduction.

To lawfully use the title “mortuary science practitioner,” an individual must:⁹⁴

- Have at least 2,000 hours practicing as a mortuary science practitioner, including experience in cremation and embalming;
- Have graduated from a program or school accredited by the American Board of Funeral Service Education; and
- Pass the National Board Examination (NBE) administered by the International Conference of Funeral Service Examining Boards.

⁹⁰ § 12-135-401(1), C.R.S.

⁹¹ § 12-135-401(2), C.R.S.

⁹² § 12-135-404(2), C.R.S.

⁹³ § 12-135-103(22), C.R.S.

⁹⁴ § 12-135-111(1), C.R.S.

A funeral director is a person who, for compensation:⁹⁵

- Arranges, directs or supervises funeral, memorial services or graveside services; or
- Prepares human remains for final disposition by means other than embalming.

To lawfully use the title “funeral director,” an individual must have at least 2,000 hours practicing as a funeral director and have directed at least 50 funerals or graveside services.⁹⁶

An embalmer is a person who, for compensation, embalms human remains or prepares them for embalming.⁹⁷ Embalming entails the disinfection and temporary preservation of human remains by chemically treating human remains to, among other things, retard decomposition.⁹⁸

To lawfully use the title “embalmer,” an individual must have at least 4,000 hours practicing as an embalmer and have embalmed at least 50 human remains.⁹⁹

A cremationist is a person who, cremates human remains or prepares them for cremation.¹⁰⁰ Cremation entails reducing human remains to their essential elements, processing the remains and placing them in a cremated remains container. Importantly, cremation does not include natural reduction.¹⁰¹

To lawfully use the title “cremationist,” an individual must have 500 hours practicing as a cremationist and have cremated at least 50 human remains.¹⁰²

Regulation in Other States

Although titles, entry requirements and the level of oversight vary by jurisdiction, at least 48 U.S. jurisdictions regulate funeral directors, 42 regulate embalmers and 17 regulate cremationists as distinct professions.¹⁰³

To provide a more detailed view of how other states regulate those in the funeral industry, COPRRR staff surveyed the laws of some of Colorado’s neighbors.

⁹⁵ § 12-135-103(15), C.R.S.

⁹⁶ § 12-135-111(2), C.R.S.

⁹⁷ § 12-135-103(12), C.R.S.

⁹⁸ § 12-135-103(11), C.R.S.

⁹⁹ § 12-135-111(3), C.R.S.

¹⁰⁰ § 12-135-103(7), C.R.S.

¹⁰¹ § 12-135-103(4), C.R.S.

¹⁰² § 12-135-304, C.R.S.

¹⁰³ The International Conference of Funeral Service Examining Boards. *Regulations in Licensing*. Retrieved June 27, 2023, from www.theconferenceonline.org/wp-content/uploads/2022/07/Regulations-in-Licensing-2021-updated-June-2022.pdf

Arizona

Arizona has three license types: Funeral Director, Embalmer and Cremationist.

Funeral Directors arrange, direct and provide service in the disposition of human remains.¹⁰⁴ To obtain a license, candidates must pass the NBE-Arts, pass a state jurisprudence examination, graduate from an accredited mortuary science educational program and have assisted in directing or arranging at least 25 funerals.¹⁰⁵

Embalmers disinfect, preserve and reconstruct human remains.¹⁰⁶ To obtain a license, candidates must pass the NBE-Sciences, pass a state jurisprudence examination, graduate from an accredited mortuary science educational program and have assisted in embalming at least 25 human remains.¹⁰⁷

Cremationists operate crematory retorts and perform the actual cremation of human remains.¹⁰⁸ To obtain a license, candidates must complete a crematory certification program and pass a criminal history background check.¹⁰⁹

Arizona also requires the completion of 12 hours of continuing education each year.¹¹⁰

Kansas

Kansas has three license types: Funeral Director, Assistant Funeral Director and Embalmer.

Funeral Directors prepare human remains for disposition by means other than embalming, assist families with making funeral arrangements and maintain funeral homes or crematories.¹¹¹ To obtain a license, candidates must complete an accredited mortuary science educational program, possess one-year of practical experience as an Assistant Funeral Director, conduct at least 25 funeral services and pass an examination.¹¹²

To obtain a license as an Assistant Funeral Director, a candidate must be of good moral character.¹¹³

¹⁰⁴ Ariz. Rev. Stat. § 32-1301.28

¹⁰⁵ Ariz. Rev. Stat. § 32-1322.B

¹⁰⁶ Ariz. Rev. Stat. § 32-1301.24

¹⁰⁷ Ariz. Rev. Stat. § 32-1322.A

¹⁰⁸ Ariz. Rev. Stat. § 32-1301.18

¹⁰⁹ Ariz. Admin. Code, § R4-12-210, Board of Funeral Directors and Embalmers Rules.

¹¹⁰ Ariz. Admin. Code, § R4-12-413, Board of Funeral Directors and Embalmers Rules.

¹¹¹ Kan. Stat. Ann. § 65-1713

¹¹² Kan. Stat. Ann. § 65-1714(b)

¹¹³ Kan. Stat. Ann. § 65-1717(b)

Embalmers prepare human remains for final disposition by means of chemical preparation.¹¹⁴ To obtain a license, candidates must possess an associate degree in mortuary science, complete a one-year apprenticeship and pass an examination.¹¹⁵

Kansas also requires 12 hours of continuing education every two years.¹¹⁶

Nebraska

Nebraska has two license types: 1) Funeral Directing and Embalming; and 2) Apprentice.

The single Funeral Directing and Embalming license authorizes holders to counsel families;¹¹⁷ direct or supervise the burial, disposition or cremation of human remains;¹¹⁸ maintain a funeral establishment¹¹⁹ and embalm human remains.¹²⁰ To obtain a license, a candidate must complete an accredited mortuary science educational program plus 40 semester hours of college credit, complete a one-year apprenticeship and pass an examination.¹²¹ Representatives of the regulator in Nebraska reported 408 licensees as of November 2023.

The Apprentice license is intended for those who are working to complete their one-year apprenticeship, and they must have completed half of their educational program to obtain this license.¹²² Representatives of the regulator in Nebraska were unable to provide data as to the number of Apprentice licenses in the state.

Nebraska also requires 12 hours of continuing education every two years.¹²³

Representatives of the regulator in Nebraska reported having taken just three disciplinary actions in 2021 and 2022, but it was unclear how many of these were taken against individuals or facilities. Regardless, all three actions resulted in probation. Complaint data were not available.

¹¹⁴ Kan. Stat. Ann. § 63-1-1(g)

¹¹⁵ Kan. Stat. Ann. § 65-1701a(a)

¹¹⁶ Kan. Stat. Ann. § 63-6-1(c)

¹¹⁷ Neb. Rev. Stat. § 38-1410

¹¹⁸ Neb. Rev. Stat. § 38-1410

¹¹⁹ Neb. Rev. Stat. § 38-1410

¹²⁰ Neb. Rev. Stat. § 38-1409

¹²¹ Neb. Rev. Stat. § 38-1414(1)(a)

¹²² Neb. Rev. Stat. § 38-1416

¹²³ 172 Neb. Admin. Code § 67-007

New Mexico

New Mexico has five license types: Funeral Arranger, Funeral Embalmer, Funeral Service Practitioner, Funeral Service Intern and Direct Disposer.

Those holding a Funeral Arranger license may arrange and direct funeral services.¹²⁴ To obtain a license, candidates must complete a one-year internship, pass a jurisprudence examination, pass the NBE-Arts, pass a criminal history background check and possess an associate degree in mortuary science.¹²⁵

Those holding a Funeral Embalmer license may disinfect, preserve and restore human remains.¹²⁶ To obtain a license, candidates must complete a one-year internship, pass a jurisprudence examination, pass the NBE-Sciences, pass a criminal history background check and possess an associate degree in mortuary science.¹²⁷

Those holding a Funeral Service Practitioner license may provide the services of a Funeral Arranger, Funeral Embalmer and Funeral Service Intern. To obtain a license, candidates must complete a one-year internship, pass a jurisprudence examination, pass the NBE-Arts and the NBE-Sciences, pass a criminal history background check and possess an associate degree in mortuary science.¹²⁸

Those holding a Funeral Service Intern license are in training to work in the funeral industry and must work under the supervision of a Funeral Service Practitioner.¹²⁹ To obtain a license, candidates must pass a jurisprudence examination and pass a criminal history background check.¹³⁰

Those holding a Direct Disposer license may provide for the disposition of human remains as quickly as possible, without performing or arranging a funeral, graveside or memorial service and without embalming the remains.¹³¹ To obtain a license, candidates must possess an associate degree in mortuary science, pass an examination and not have been convicted of unprofessional conduct or incompetency.¹³²

New Mexico also requires 10 hours of continuing education every year.¹³³

¹²⁴ N.M. Stat. § 61-32-3.R

¹²⁵ N.M. Stat. § 61-32-9.B

¹²⁶ N.M. Stat. § 61-32-3.M

¹²⁷ N.M. Stat. § 61-32-9.C

¹²⁸ N.M. Stat. § 61-32-9.A

¹²⁹ N.M. Stat. § 61-32-3.T

¹³⁰ N.M. Stat. § 61-32-9.D

¹³¹ N.M. Stat. § 61-32-3.H and I

¹³² N.M. Stat. § 61-32-9.E

¹³³ N.M. Code R. § 16.64.6.8

Oklahoma

Oklahoma licenses Funeral Directors, Embalmers and Apprentices.

Funeral Directors sell funeral goods and services, maintain funeral establishments and prepare or supervise the preparation of human remains for burial or disposition.¹³⁴ Embalmers disinfect and preserve human remains with chemical substances, fluids or gasses.¹³⁵ Candidates for either type of license must have graduated from an accredited mortuary science educational program, have completed a one-year apprenticeship and pass an examination.¹³⁶ Oklahoma currently licenses 1,100 Funeral Directors and 1,022 Embalmers.

Apprentices are those who are in the process of serving the apprenticeship required to obtain a license as a Funeral Director or Embalmer.¹³⁷ They must be of good moral character and have completed high school or its equivalent.¹³⁸ Oklahoma currently licenses 129 Apprentices.

Oklahoma also recognizes a Funeral Director in Charge, who is an individual who is licensed as both a Funeral Director and an Embalmer and who is responsible for the operation of a funeral establishment.¹³⁹

Oklahoma also requires six hours of continuing education every year.¹⁴⁰

Representatives of the regulator in Oklahoma reported that in calendar years 2021 and 2022, they received 104 complaints resulting in 42 fines totaling \$112,368. Of note, the same agency regulates both individuals and facilities.

Utah

Utah licenses Funeral Service Directors and Funeral Service Interns.

A Funeral Service Director is one who may receive and transport human remains; prepare them for final disposition; embalm; arrange services; perform cremation, calcination and alkaline hydrolysis; sell funeral goods and services and manage funeral establishments.¹⁴¹ To obtain a license, a candidate must possess an associate degree or higher in mortuary science, complete a one-year internship which must include at least 50 embalmings and pass an examination.¹⁴² Representatives of Utah's

¹³⁴ Okla. Stat. tit. 59, § 396.2.2

¹³⁵ Okla. Stat. tit. 59, § 396.2.1

¹³⁶ Okla. Stat. tit. 59, § 396.3

¹³⁷ Okla. Stat. tit. 59, § 396.2.4

¹³⁸ Okla. Stat. tit. 59, § 396.11

¹³⁹ Okla. Stat. tit. 59, § 396.2.12

¹⁴⁰ Okla. Admin. Code § 235:10-13-10

¹⁴¹ Utah Code Ann. § 58-9-102(2)

¹⁴² Utah Code Ann. § 58-9-302(1)

regulator reported that as of December 2023, there were 413 licensed Funeral Service Directors.

A Funeral Service Intern is one who is working towards completing the requirements of a Funeral Service Director license. To obtain a license, a candidate must have completed high school or its equivalent and pass an examination.¹⁴³ Representatives of Utah’s regulator reported that as of December 2023, there were 53 licensed Funeral Service Interns.

Utah also requires 20 hours of continuing education every two years.¹⁴⁴ Representatives of Utah’s regulator reported receiving 12 complaints in 2021 and 2022, seven of which pertained to unethical conduct and three of which alleged criminal conduct. During the same period, the regulator took three disciplinary actions, including one citation, one license surrender and placing one licensee on probation. Importantly, Utah also regulates funeral establishments, and these data do not indicate the types of licenses against which complaints were filed or disciplinary actions taken.

Wyoming

Wyoming licenses Funeral Service Practitioners, Apprentice Funeral Service Practitioners and Funeral Directors.

Funeral Service Practitioners are generally defined as including funeral directors and embalmers. To become licensed they must have no criminal convictions that would impact their ability to practice, complete an accredited mortuary science educational program, complete a one-year apprenticeship and pass an examination.¹⁴⁵

Apprentice Funeral Service Practitioners are those who are authorized to engage in funeral directing, embalming and final disposition of human remains under the supervision of a licensed Funeral Service Practitioner.¹⁴⁶ They must have no criminal convictions that would impede their ability to practice, and they must pass an examination.¹⁴⁷

Funeral Directors are those who are responsible for the operations of a funeral home, crematory or chemical disposition facility and who are responsible for ensuring that such facilities comply with the law.¹⁴⁸ They must either have been licensed as a funeral director or embalmer prior to 2014 or be licensed as a Funeral Service Practitioner.¹⁴⁹

Wyoming requires eight hours of continuing education every two years.¹⁵⁰

¹⁴³ Utah Code Ann. § 58-9-302(2)

¹⁴⁴ Utah Code Ann. § 58-9-304(1)

¹⁴⁵ Wyo. Stat. Ann. § 33-16-517

¹⁴⁶ Wyo. Stat. Ann. § 33-16-502(a)(ii)

¹⁴⁷ Wyo. Stat. Ann. § 33-16-519

¹⁴⁸ Wyo. Stat. Ann. § 33-16-502(a)(xv)

¹⁴⁹ Wyo. Stat. Ann. § 16-502(a)(xv)(A)-(B)

¹⁵⁰ 035-9 Wyo. Code R. § 9-3

COPRRR's requests for the number of licensees, the number and nature of complaints and the number of disciplinary actions for each state received no responses, with the exceptions of Nebraska, Oklahoma and Utah.

Regardless, these summaries of state licensing requirements demonstrate that while some states issue licenses based more on function, such as embalming or cremating, others issue a single license type that encompasses multiple functions. While titles vary, most of the states examined require some sort of formal education, a period of supervised practice, the passage of an examination and a criminal history background check.

Additionally, according to information provided by the Applicant, all but nine states that regulate individuals in the funeral industry require continuing education. These requirements vary widely from a high of 24 hours every two years in Iowa and Illinois to a low of six hours every two years in Pennsylvania and South Carolina.

Analysis and Recommendations

Public Harm

Sunrise criterion I asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public.

In order to determine whether the regulation of Funeral Service Professionals is necessary, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff requested that Colorado Funeral Directors Association (Applicant) and other stakeholders provide specific examples of harm.

It is reasonable to question what consists of harm when dealing with those who have passed. Although harm can take many forms, in the context of this sunrise review, harm is typically emotional in nature, although it can be financial, and it is typically suffered by the families and loved ones of the decedents in question.

The Applicant offered nine cases as examples of harm to the public. The case summaries presented below were compiled by utilizing descriptions in the sunrise application, as well as related media, internet and other accounts. COPRRR's analysis appears in italics following each case presentation.

Case #1

Between 2010 and 2018, the operators of a registered funeral home and crematory in Montrose, Colorado sold hundreds of bodies and body parts without permission. The operators of the facilities, who also owned a body donation service, would meet with families to arrange for the cremation of their loved ones. The operators then sold the remains or portions of them and then either returned nothing to the families, or returned non-human remains. The registrations for the funeral home and the crematory were summarily suspended in 2018 and later surrendered in lieu of discipline. In January 2023, one defendant was sentenced to 15 years in prison and another to 20 years for selling body parts or entire bodies without permission.

This case represents a clear example of grievous harm to multiple consumers. Although the exact roles played by the two criminal defendants is not clear (e.g., were they acting as funeral directors, mortuary science practitioners or cremationists?), it is clear that the various roles they played amounted to those of a Funeral Service Professional. Regardless, without regulation, these two individuals could, theoretically, re-enter Colorado's funeral industry upon their release

from prison. Further, it is reasonable to question whether regulation of Funeral Service Professionals would have prevented these events since professional regulation is rarely effective at preventing people from committing intentional acts. However, the regulatory proposal put forward by the Applicant includes a requirement that Funeral Service Professionals pass a background check, and such a background check would surely prevent these defendants from working in Colorado's funeral industry again.

Case #2

In February 2020, law enforcement in Lake County, Colorado was contacted when a family became suspicious that the ashes of their infant child did not fit inside an infant-sized urn. Testing confirmed that the remains consisted of at least two people. The operator of the funeral home was also the Lake County Coroner who operated multiple funeral homes and a crematory. Upon entering one of the operator's facilities, law enforcement found unrefrigerated human remains, dried bodily fluids on the floor of the embalming room, dead animals, piles of trash and used body bags. The facilities' registrations were summarily suspended in October 2020 and surrendered in lieu of discipline in December of the same year. In February 2023, the facilities' operator was sentenced to 180 days in jail on two misdemeanor counts of unlawful acts involving cremation.

This case represents a clear example of grievous harm to multiple consumers. Although the exact roles played by the defendant are not clear (e.g., was he acting as a funeral director, a mortuary science practitioner or a cremationist?), it is clear that the various roles he played amounted to those of a Funeral Service Professional. Regardless, without regulation, this individual could re-enter Colorado's funeral industry upon his release from jail. Further, it is reasonable to question whether regulation of Funeral Service Professionals would have prevented these events since professional regulation is rarely effective at preventing people from committing intentional acts. However, the regulatory proposal put forward by the Applicant includes a requirement that Funeral Service Professionals pass a background check, and such a background check would surely prevent this defendant from working in Colorado's funeral industry again.

Case #3

In 2014, a Las Vegas couple was visiting Pueblo, Colorado when the wife passed away. The husband contracted with a funeral home in Aspen to arrange for the cremation, paying \$1,300. The husband did not receive his wife's cremated remains.

This is an example of harm, but it is not clear whether the harm can be attributed to an individual, which professional regulation might be able to address, or the facility.

Case #4

From July 2012 through September 2013, an employee of a funeral home in Arvada, Colorado offered 60 potential clients cash discounts for funeral services. Although the clients received the services for which they paid, the employee did not transfer the funds to the funeral home, but rather retained them. The employee was arrested in September 2013.

No consumer harm is alleged in this example. Rather, the funeral home employer seems to have been harmed by the employee's theft.

Case #5

In 2016, the new owners of a funeral home in Montrose, Colorado discovered the cremated remains of 170 individuals in the building's basement. The building had been used as a funeral home beginning in 1931, and some of the remains dated to as early as 1947. Some containers had simply not been claimed by families, but others bore directions for disposition that had not been complied with, some were not labeled, some labels were illegible and some containers had been damaged by flooding.

This is an example of harm, but it is not clear whether the harm can be attributed to an individual or individuals, which professional regulation might be able to address, or the many funeral homes that operated at the location over the span of several decades.

Case #6

As early as 2016, the National Funeral Directors Association was warning the funeral industry of an internet “middleman,” acting through several different companies, posing as a locally-owned and trusted funeral home offering low-cost cremation services. In actuality, the companies and their owner were an unlicensed seller of funeral services that contracted with local funeral homes and crematories to actually provide the contracted services. However, the companies misled consumers as to prices and locations such that families were required to pay more than they previously agreed to and had to travel farther than expected to attend funeral services, collect cremains or both. Regulators in six states, including Colorado have taken action against the companies and their owner. As recently as 2018, at least one of the companies was organized under Colorado law. In April 2022, the U.S. Department of Justice (USDOJ) and the Federal Trade Commission (FTC) sued the companies and their owner for misrepresenting their location and prices, illegally threatening and failing to return cremains to consumers and failing to provide disclosures required by the FTC’s Funeral Rule. In April 2023, USDOJ and FTC obtained a settlement which included the payment of \$275,000 in civil penalties and injunctive relief compelling compliance with the FTC’s Funeral Rule.

This is an example of harm in which consumers were misled at a time of particular vulnerability. However, this example also illustrates the difficulty in regulating internet-based businesses. This case spans several jurisdictions, most of which regulate Funeral Service Professionals or an equivalent. As such, it is not clear how the regulation of Funeral Service Professionals in Colorado would either prevent this type of activity from happening in the first place or prevent it from happening again. Finally, professional regulation is rarely effective at preventing people from committing intentional acts, which these appear to be.

Case #7

In 2015, a Northglenn, Colorado man contracted with a funeral home in Arvada for cremation services for his deceased wife. After two weeks, the cremains still had not been delivered and phone calls were not promptly returned. The funeral home’s registration had expired in November 2014 and the business address was actually a residence. In the end, the man received his wife’s ashes.

Although the husband seems to have had to wait a lengthy period of time to obtain his wife’s cremated remains, which very likely added to his grief, he eventually did obtain them. As such, it is difficult to see that any individual caused harm that would justify the regulation of Funeral Service Professionals.

Case #8

In 2011, a Colorado Springs, Colorado funeral home faced the loss of its building when it was unable to make loan payments due to its previous manager allegedly stealing between \$12,000 and \$250,000 over two years.

No consumer harm is alleged in this example. Rather, the funeral home employer seems to have been harmed by the employee's theft.

Case #9

In May 2012, a funeral director in Colorado's Arkansas Valley pleaded guilty to sexual assault on a child by a person in a position of trust. The funeral director's victim had been 15 years old at the time and claimed the offenses occurred while helping out at the funeral director's funeral home. In October 2012, the funeral director was arrested in connection with a murder in Otero County.

Although this funeral director appears to have caused significant harm to those in the community, no harm is alleged as the result funeral-related services. Regardless, the Applicant's proposed background checks would likely prevent this individual from practicing in Colorado's funeral industry again.

Finally, the Applicant also provided information relating to a 2012 FTC investigation in which 11 funeral homes in Denver were visited, one of which was found to have committed significant violations of the Funeral Rule. As no additional information was provided, it is not possible to ascertain whether consumers were harmed by this funeral home, what that harm might have been and whether the violations were attributed to any individuals or the facilities.

Additionally, the Colorado Funeral Services Board (CFSB) receives complaints and attempts to resolve them. The CFSB offered the following cases as examples of the consumer complaints it receives.

Case #1

The CFSB received complaints regarding the funeral home and crematory outlined in Case #1 above as early as 2017.

Case #10

In February 2019, the CFSB received a complaint from a woman regarding the prices charged by a funeral home related to contacting the Veteran's Administration and arranging for an honor guard for her deceased father-in-law. The CFSB contacted the funeral home and discovered that the funeral home was in compliance with the Funeral Rule and had the right to charge the family what it was charging.

Although this case illustrates some of the communications issues that can be involved in arranging funeral services, no consumer harm is alleged.

Case #11

In January 2021, the CFSB received a complaint that a coroner would not allow the family to see the body of their loved one prior to the completion of an autopsy and the funeral director of the only funeral home in town would not allow the family to see the body without first embalming it. The CFSB concluded that it is normal practice for a coroner to deny a viewing at the coroner's office since they typically lack the proper facilities. Further, the CFSB concluded that while a funeral director can recommend against viewing a body that has not been embalmed, it is unlawful to require an embalming.

This case is an example of harm in that the funeral director unlawfully told the family that they had to embalm their loved one. A properly trained funeral director would have known this, and a regulatory program could discipline a licensee for such a violation.

Case #12

In January 2021, the CFSB received a complaint from Funeral Director A claiming that Funeral Director B, at a different funeral home, had refused to pay an agreed upon price of \$345 for the transfer and refrigeration of a decedent from Funeral Home B to Funeral Home A. Funeral Director B allegedly verbally abused Funeral Director A and claimed that members of the Colorado Funeral Directors Association had a standing agreement to charge each other only \$100 for such transfers and refrigeration. The CFSB contacted Funeral Director B to inform them that there is no such agreement and that Funeral Director B should pay the agreed upon price of \$345.

Although this case provides some insight into how funeral homes and funeral directors interact with one another, no consumer harm is alleged.

Case #13

In May 2021, the CFSB received a complaint from a widow against the funeral director she had hired for her husband's service. Her complaint alleged poor customer service, failure to post the obituary on time, memorial folders of poor quality, unreturned personal effects, mismanagement of burial/transit permits, packing an embalmed body on ice and doubling the cost of the funeral (from \$9,850 to \$18,494) upon learning that the decedent's employer would pay for anything over \$10,000. The CFSB was unable to make contact with the funeral director.

It is difficult to ascertain what actually happened in this case, but it is clear that the complainant suffered emotional harm, and potentially financial harm. Poor customer service, while unfortunate in the funeral industry in particular, is not generally grounds for discipline in a regulatory program. However, if the allegations regarding the inflated pricing were true, then perhaps disciplinary action might be warranted, if a regulatory program were in place. Also, failing to return personal effects would likely constitute a violation under a regulatory program. Regardless, this case exemplifies a dissatisfied consumer and a funeral director who was unwilling to cooperate in the CFSB's investigation. If the funeral director were regulated, then perhaps the regulator could compel cooperation and a proper investigation could be conducted.

Case #14

In June 2021, the CFSB received a complaint against a funeral director and funeral home in Lamar, Colorado. The complainant alleged that a family member of the funeral director convinced the complainant's mother, a resident in a long-term care facility, to execute a power of attorney assigning a portion of complainant's inheritance to pay for a funeral for which the mother had already paid a portion. This occurred during the COVID-19 pandemic, so the complainant was unable to attend the funeral, but desired to receive a death certificate, a memorial folder and the guestbook. The funeral director refused to provide these things until the funeral was paid in full. In the end, the life insurance company denied the payment and the CFSB was able to resolve the situation.

This case presents an example of harm. Although it appears as though this case was resolved, there are a few troubling aspects that perhaps a regulatory program could address. First, the issue regarding the power of attorney is suspect and may have involved an element of fraud. If such were the case, then perhaps a proper investigation by a regulator could ascertain whether disciplinary action is warranted. Second, refusing to provide a death certificate and memorabilia until payment was made in

full seems dubious. If a regulatory program were in place, then a proper investigation could be conducted. Regardless, this case exemplifies the fragile state of consumers when interacting with the funeral industry.

Case #15

In September 2023, the CFSB received a complaint from a woman against a funeral director in Colorado Springs for mishandling the remains of the woman's son. The funeral director allegedly mishandled obtaining the burial/transit permit, forged her name on the coroner's release and refused to update her on transfer information of the decedent to New Mexico. When the body arrived in New Mexico, a memento she placed in the casket was missing. Further, the funeral director refused to communicate with the decedent's father. In the end, the mother alleged that the funeral director was unprofessional, showed a lack of compassion, was disorganized, was non-communicative and showed a lack of respect and dignity for her son. The CFSB escalated the case within the corporate structure of the company in which the funeral director worked.

This case presents an example of harm although it is not clear what the ultimate outcome of this case was, or whether the memento was ever recovered. If a regulatory program were in place, a proper investigation could be conducted to ascertain whether any practice-related violations occurred and whether disciplinary action was warranted.

Case #16

In April 2022, the CFSB received a complaint against a cemetery, not a funeral director or a funeral home, regarding the misplacement of a grave marker. CFSB referred the matter to another organization for resolution.

Although unfortunate, this case alleges no consumer harm caused by a Funeral Service Professional.

Case #17

In June 2023, the CFSB received a complaint from a woman who had two of her pets cremated and had yet to receive the remains and urns for which she had already paid. The CFSB referred her to law enforcement and suggested she contact an attorney as the CFSB does not handle pet funerals or cremations.

Although unfortunate, this case alleges no consumer harm caused by a Funeral Service Professional dealing with human remains, which is the focus of this sunrise review.

Case #18

Beginning in 2007, the CFSB received multiple complaints against a funeral director in Weld County. Among the allegations were refusing to serve families and theft of personal effects and cash. In 2014, the funeral director was sentenced to 12 years in prison for stealing more than \$31,000 from customers who prepaid for funeral services. As of November 2023, an individual with the same name was working as a funeral director in Colorado.

This example presents two issues of harm. First, theft of personal effects and cash is a criminal offense. If a regulatory program were in place, it could, theoretically, take disciplinary action if the allegations were true. Next, this funeral director was convicted of theft. If a regulatory program were in place, it could discipline the funeral director. Finally, if this individual is again working in Colorado, this is an example of how a lack of regulation enables those who have harmed consumers to continue to do so, even after criminal convictions. Additionally, it calls into question the proposal to grandfather current practitioners into any new regulatory program.

While several of the CFSB complaints allege consumer harm, many do not. Regardless, even those that do not allege consumer harm provide insight into the vulnerable state in which many consumers find themselves when interacting with the funeral industry.

Although Colorado does not regulate individuals involved in the funeral industry, the Director of the Department of Regulatory Agencies' Division of Professions and Occupations (Director and Division, respectively), registers funeral homes and crematories. In fiscal year 22-23, the Director received 43 complaints involving funeral homes and 18 complaints involving crematories, and the Director took eight disciplinary actions against funeral homes and three disciplinary actions against crematories that same fiscal year. Since the Director's regulation of funeral homes and crematories focuses on the facilities rather than individuals, it is difficult to ascertain the extent to which Funeral Service Professionals were involved in the various violations. Regardless, Division staff did recall one complaint involving an embalming.

Case #19

In January 2021, the Director received a complaint against a registered funeral home in Wheat Ridge, Colorado. The complaint alleged that the decedent, who had been a skin and bone donor, had been improperly embalmed before being transported to North Dakota for the funeral service. The funeral home in North Dakota reported leaking fluid, odor and decomposition, resulting in a closed-casket funeral. The Director's expert concluded, among other things, that the decedent had been improperly embalmed. The Director suspended the funeral home's registration for 30 days for negligent embalming and improper storage of human remains.

This case demonstrates harm to the public as the result of improper embalming. Due to the improper embalming and the condition of the decedent's body upon arrival in North Dakota, the desired open-casket service was not possible, causing the family additional grief. Although the decedent had been a skin and bone donor, a proper embalming could have been performed.

One recent case, while still under investigation, merits attention here.

Case #20

In October 2023, law enforcement in Penrose, Colorado discovered at least 189 improperly stored bodies in various states of decomposition at a funeral home for which the registration had lapsed in November 2022. The Director summarily suspended the operations of a funeral home in Colorado Springs that operated under the same ownership. In November, two individuals were arrested in Oklahoma in connection with the case.

As of the writing of this sunrise report, this case is still under investigation. However, it is clear that improperly storing human remains in the manner that was done here would certainly rise to the level of discipline if a regulatory program were in place. Additionally, should the individuals involved be convicted, the regulatory program proposed by the Applicant would preclude them from obtaining a Funeral Service Professional license upon their release, whereas now, they could re-enter the state's funeral industry immediately upon release.

Finally, during the course of this sunrise review, COPRRR staff interviewed or received input from nearly 100 individuals. Some of the anecdotal harm relayed by these individuals includes improper recordkeeping; decedents being physically mistreated; improper embalming leading to decomposition, odor, leaking and deformities due to gas buildup; improper storage of human remains; improper refrigeration of human remains; decedents laying in pools of their own bodily fluids; cremated remains being

left on cooling trays overnight in an unsecured manner and decedents laying in unclean trays. In short, these are allegations of a general lack of respect and dignity for the deceased and are not the types of things that family members would necessarily know about.

As the cases above illustrate, consumer harm is caused by those working in Colorado's funeral industry although the exact roles played by the individuals inflicting that harm is not always clear. The harm identified above can generally be divided into two categories: lack of competency and intentional harm.

Examples involving competency issues include Cases 11, 13, 14, 15, 19 and 20.

Examples involving intentional actions include Cases 1, 2, 4, 6, 8, 9, 13, 14, 18 and 20. Many of these also involved criminal activity, although two (Cases 4 and 8) involved harm to the employing funeral home, rather than consumers.

Finally, COPRRR also inquired of other states as to the number of complaints they receive and any disciplinary actions taken. Representatives in Nebraska reported taking three disciplinary actions in 2021 and 2022, all resulting in probation. Representatives in Oklahoma reported receiving 104 complaints, resulting in 42 fines totaling \$112,368. Representatives in Utah reported receiving 12 complaints in 2021 and 2022, resulting in three disciplinary actions. In all three instances, it was not possible to discern whether the actions were taken against individuals or facilities.

Regardless, it is clear that the public is harmed by the general lack of regulation of Funeral Service Professionals in Colorado.

Independent Judgement

Sunrise criterion I.5 asks:

Whether the practitioners of the profession or occupation exercise independent judgment, and whether the public can reasonably be expected to benefit from the direct regulation of the profession or occupation if a practitioner's judgment or practice is limited or subject to the judgment or supervision of others.

The extent to which Funeral Service Professionals exercise independent judgment is largely dependent upon the type of facility in which they work. For those who work in larger, corporate settings, there are likely to be multiple layers of supervision. Regardless, while corporate policy and protocols may dictate practice parameters, individuals in these settings may still be called upon to exercise some judgment. Each family is different and has different needs. Each decedent is different, presenting unique demands for embalming, restoring and cremation.

In contrast to large corporations are the small funeral homes in which one person may perform multiple or all functions of a Funeral Service Professional. The person who meets with the family and makes the funeral arrangements may very well be the same person who will embalm the decedent and/or operate the retort. Such individuals are called upon to exercise independent judgment on a regular basis in terms of how to best work with the family, how to best embalm and restore the decedent and the proper process to follow for cremation.

In the end, the level of independent judgement exercised by Funeral Service Professionals is largely dependent upon the setting in which they work, but some independent judgment is typically called for.

Need for Regulation

Sunrise criterion II asks:

Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence.

This sunrise criterion requires an analysis of whether the examples of harm presented earlier in this report were the result of incompetence, and if so, whether an assurance of initial and continuing competence would protect the public.

The examples of harm presented in this sunrise review are many and varied. Of particular relevance to this sunrise criterion are Cases 11, 13, 14, 15, 19 and 20. Although some of these cases may have involved some intentional conduct, it is at least arguable that a lack of competency may have played a role in each. As such, perhaps the public would benefit from an assurance of initial competence.

The Applicant has also requested that Funeral Service Professionals be required to obtain mandatory continuing education should a regulatory program be enacted. In accordance with section 24-34-901, Colorado Revised Statutes, the Applicant has submitted the required application for review.

In support of this proposal, the Applicant points to various ways in which the funeral industry has advanced in recent years, necessitating the need for continuing education:

- New methods of disposition such as natural reduction,¹⁵¹ alkaline hydrolysis¹⁵² and promession;¹⁵³
- New types of embalming fluids;
- The rise of new infectious diseases such as COVID-19; and
- The rise in popularity of green funerals and burials.

While the funeral industry may be advancing, as most industries do, none of the examples of harm discussed in this sunrise review relate to any of these advancements. As a result, an assurance of continuing competence does not appear to be necessary in order to protect the public.

Alternatives to Regulation

Sunrise criterion III asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The Applicant has proposed licensure as the ideal level of regulation for Funeral Service Professionals. In doing so, they have proposed the following licensing requirements:

- Possession of a mortuary science degree,
- Completion of a one-year internship,
- Passage of a national competency assessment, and
- Passage of both criminal and licensing history background checks.

While these are fairly typical licensing requirements compared to what other states require for those in the funeral industry, sunrise criterion III requires an examination of alternatives, several of which are readily apparent:

- Private certification,
- Apprenticeships, and
- Licensed responsible parties.

As discussed in the Profile of the Profession section of this sunrise report, there are no fewer than five private organizations offering multiple private credentials and training opportunities to those in the funeral industry. While the list of organizations and

¹⁵¹ Natural reduction is also referred to as body composting.

¹⁵² Alkaline hydrolysis is also referred to as water cremation.

¹⁵³ Promession is a type of “cremation” whereby the body is immersed in liquid nitrogen to a temperature of -196 degrees Celsius, at which point the body becomes brittle and is then cryolated into small particles.

credentials described therein is likely not exhaustive, it is demonstrative of the plethora of ways in which Funeral Service Professionals could obtain various levels of education and training to fit their specific needs. As a result, one viable alternative to the Applicant's proposal would be to require Funeral Service Professionals to obtain a private certification or other credential.

Next, the Applicant proposes that all Funeral Service Professionals, which encompass a good number of individuals who work in the funeral industry, to obtain a mortuary science degree. Such degrees can take several years to complete and cost several thousands of dollars to obtain.

An alternative would be to require the completion of apprenticeships in lieu of a mortuary science degree. Such an approach would require the establishment of formal apprenticeship programs to ensure that the necessary competencies are imparted to apprentices by properly qualified supervisors. Apprenticeships could be less costly and less time intensive than the completion of a mortuary science degree.

Finally, Colorado law currently requires each registered funeral home and crematory to have a designee, who is a person with the authority to ensure compliance with the Mortuary Science Code. However, there is no requirement that such an individual have any demonstrable knowledge of the funeral industry. As the examples of harm discussed earlier indicate, this is a shortcoming in the current regulatory structure.

Thus, an alternative to the Applicant's proposal of licensing all funeral directors, mortuary science practitioners, embalmers, cremationists and natural reductionists as Funeral Service Professionals becomes apparent. Under this alternative, the State could require that the designee hold the license proposed by the Applicant. Nothing would prevent others in the funeral industry from pursuing a license, but only those who are responsible for the operation of the facility would need to be licensed and then the state could hold an individual responsible, as opposed to a legal entity, when violations occur.

Based on the examples of harm discussed earlier in this sunrise report, several alternatives to the full licensure of all Funeral Service Professionals are readily apparent, and more very likely exist.

Collateral Consequences

Sunrise criterion IV asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The Applicant has proposed that those applying for a Funeral Service Professional license pass a basic background check/investigation as a condition of licensure. According to the Applicant, such a background check/investigation should entail:

- A criminal history background check; and
- A licensing history background check to ascertain whether the practitioner has had a Funeral Service Professional or similar license revoked in another jurisdiction, which would serve as a bar to licensure in Colorado.

In determining whether an individual's criminal history should serve as a barrier to any potential licensing program of Funeral Service Professionals, it is reasonable to revisit the examples of harm presented earlier in this sunrise report. Examples 1, 2, 4, 8, 9, 14, 18 and 20, to one degree or another, all involve some aspect of criminal behavior. To recap, they described cases of selling human remains without permission, improper handling of human remains, theft, fraud, sexual assault and even murder.

Since most of these examples pertained to the individuals' actual participation in the funeral industry, it seems entirely reasonable to use an individuals' criminal history as a bar to entering the profession, should the General Assembly enact legislation creating a regulatory program for Funeral Service Professionals.

Whether an individual's licensing history should serve as a bar is a question that is beyond the scope of this sunrise criterion. Nevertheless, anecdotal evidence was provided to suggest that at least one funeral home regularly receives inquiries from such individuals and, according to the Applicant, at least seven funeral homes in Colorado currently or have in the past employed individuals who lost their licenses in other states. However, the Applicant was unable to provide the names of the funeral homes or the individuals involved. As a result, these claims cannot be substantiated.

Conclusion

It is important to place this sunrise review in context. In October 2023, COPRRR released "2023 Sunset Review: Portions of the Mortuary Science Code," which addressed the regulation of funeral homes and crematories, as well as the title protection provisions relating to mortuary science practitioners, funeral directors, embalmers and cremationists. That report contained 11 statutory recommendations and an administrative recommendation. The statutory recommendations will be discussed by the General Assembly during the 2024 legislative session. This may occur alongside any legislation that may result from this sunrise report.

The primary question in any sunrise review is whether regulation is necessary to protect the public health, safety and welfare. Thus, the primary analysis in a sunrise review focuses on harm. More specifically, this sunrise review must ascertain whether the public is being harmed by Funeral Service Professionals such that state intervention in the marketplace is justified.

While not all of the examples presented in this sunrise report actually constitute harm to the public, at least six cases (Cases 11, 13, 14, 15, 19 and 20) present issues of the public being harmed by an arguable lack of competency and at least eight cases (Cases 1, 2, 6, 9, 13, 14, 18 and 20) present issues of intentional and/or criminal conduct resulting in harm to the public with two more (Cases 4 and 8) presenting criminal conduct resulting in harm to the funeral home as opposed to consumers. Although regulation is generally a poor deterrent to intentional conduct, it can serve as an effective barrier at preventing individuals who have engaged in such conduct from doing so again, thereby reducing the likelihood of additional victimization. Thus, it is reasonable to conclude that regulation is necessary to protect the public.

Although the role played by the various individuals involved in these cases of harm is not always clear and their individual levels of training is unknown, the examples of harm, taken as a whole, justify the regulation of Funeral Service Professionals. Such regulation will help to ensure that those in whom the public places trust to care for their deceased loved ones is not misplaced, and when it is, appropriate disciplinary actions can be taken.

Therefore, the General Assembly should regulate Funeral Service Professionals.

Recommendation – Regulate Funeral Service Professionals.