



MURIEL BOWSER
MAYOR

January 23, 2024

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia, pursuant to the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1417), is the “Medical Examiner Records Privacy Regulations Approval Resolution of 2024”.

The resolution would approve rules that update 28 DCMR 5003 and 5005 to conform with the Medical Examiner Records Privacy Act of 2021, effective February 23, 2023 (D.C. Law 24-241, 70 DCR 2913) (the “Act”), and implement a process for distributing personal belongings to survivors of decedents. The Rulemaking amends 28 DCMR 5003 to permit the return of personal property to a decedent’s family in a timely manner. The Rulemaking amends 28 DCMR 5005 to conform the regulations governing OCME record access and record retention requirements with the Act. These changes allow OCME to efficiently manage personal property that may accompany a decedent. Pursuant to the Rulemaking, items of value will be promptly returned to a decedent’s family when they are available, avoiding the cumbersome process of a family having to retrieve property from the MPD property clerk in most cases. Unclaimed property will still go to the MPD property clerk for safe keeping. Items that are of no apparent value or that are hazardous will be destroyed.

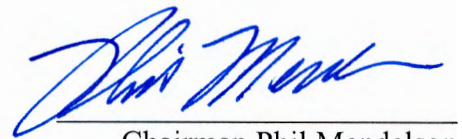
I urge the Council to take prompt and favorable action on this proposed resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser", written over the word "Sincerely,".

Muriel Bowser

Enclosures



Chairman Phil Mendelson
at the request of the Mayor

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A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve proposed final rules to implement the Medical Examiner Records Privacy Amendment Act of 2022.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Medical Examiner Records Privacy Regulations Approval Resolution of 2024”.

Sec. 2. Pursuant to section 2918 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1417), the Council approves the proposed final rules of the Chief Medical Examiner to amend Section 5003 (Possession of Evidence and Property) and Section 5005 (Access to Documents and Record Retention) of Chapter 50 (Medical Examiner) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations, regarding the implementation of the Medical Examiner Records Privacy Regulations, which were transmitted to the Council by the Mayor on _____.

Sec. 3. Transmittal.

31 The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor, the
32 Chief Medical Examiner, and the Administrator of the Office of Documents and Administrative
33 Issuances.

34 Sec. 4. Fiscal impact statement.

35 The Council adopts the fiscal impact statement in the committee report as the fiscal
36 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
37 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47(a)).

38 Sec. 5. Effective date.

39 This resolution shall take effect immediately.

OFFICE OF THE CHIEF MEDICAL EXAMINER

NOTICE OF FINAL RULEMAKING

*as submitted to the Council of the District of Columbia
for its review and approval pursuant to D.C. Official Code § 5-1417*

The Chief Medical Examiner (“CME”) of the Office of the Chief Medical Examiner (“OCME”), pursuant to the authority set forth in Sections 2909, 2913, and 2918 of the Establishment of the Office of the Chief Medical Examiner Act of 2000 (Act), effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code §§ 5-1408, 5-1412, and 5-1417), and Mayor’s Order 2015-200, dated August 17, 2015, hereby gives notice of the adoption of the following amendments to Section 5003 (Possession of Evidence and Property) and Section 5005 (Access to Documents and Record Retention) of Chapter 50 (Medical Examiner) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (“DCMR”)

The regulatory amendments conform to amendments contained in the Medical Examiner Records Privacy Act of 2021, effective February 23, 2023 (D.C. Law 24-241; 70 DCR 000232).

Section 2909 of the Act, which amended D.C. Official Code § 5-1408, provides in part that (a) ... “the medical examiner, a medicolegal investigator, or a law enforcement officer shall take possession of any objects or articles which, in his or her opinion, may be useful in establishing the cause and manner of death or the identity of the decedent and shall hold them as evidence,” and (b) “A law enforcement officer, a medical examiner, or a medicolegal investigator may take possession of all property of value found on or in the custody of the decedent. If possession is taken of the property, the law enforcement officer, medical examiner, or medicolegal investigator shall make an exact inventory of the property and deliver it to the Property Clerk of the Metropolitan Police Department; except, that the CME may instead transfer the property to the person with the right to control the disposition of the remains of the decedent under section 14 of the District of Columbia Funeral Services Regulatory Act of 1984, effective May 22, 1984 (D.C. Law 5-84; D.C. Official Code § 3-413), or to the funeral services establishment that has or takes possession of the remains of the decedent. The CME may dispose of, in any reasonable manner, property of no apparent value or property deemed to be a hazard to health or safety.” The statute authorizes the Mayor to issue regulations concerning the disposition of evidence and property of value in the possession of OCME. The Mayor has delegated this authority to OCME.

The prior regulations at 28 DCMR § 5003 addressed the collection of evidence and information by OCME but did not address the disposition of personal property when a decedent’s remains are released from OCME. In order to implement an efficient and predictable process of distributing personal belongings to survivors of decedents, OCME is instituting the following steps, as set forth in the final rulemaking. Personal belongings will be released to the family’s designated funeral director at the time of receiving the decedent’s remains. If a decedent’s remains are cremated or donated to an educational institution under the District’s public disposition law (D.C. Official Code § 5-1411 and 28 DCMR 5004.2), a family may claim the decedent’s personal belongings at OCME. If no family is readily available, then any personal property of value will be transferred to the Metropolitan Police Department (“MPD”) Property Clerk. Any items that are of no apparent value

or that pose a hazard to health or safety will be destroyed by OCME. This protocol reduces administrative and storage burdens on the MPD Property Clerk, the Department of Forensic Sciences, and OCME.

Also, in light of the Medical Examiner Records Privacy Amendment Act of 2021, effective February 23, 2023 (D.C. Law 24-241; 70 DCR 000232), bringing significantly more clarity to who has access to what OCME records, the Chief Medical Examiner updated 28 DCMR 5005. Subsection 5005.1 remains unchanged. Changes are made to Subsection 5005.2 to reflect the statutory addition of government health and safety organizations having access to OCME records. District fatality review committees and boards have been granted access to OCME records as part of each one's formation documents. They are included here for completeness. Subsection 5005.3 articulates who may request autopsy or external examination reports. In the absence of a right to access, Subsection 5005.4 sets forth the types of information available to the media and general public. Access to photographs or other images is generally prohibited under Subsection 5005.5. Exceptions for litigation, government investigations, and research/education are set forth. Subsections 5005.6, 5005.7, and 5005.8 are renumbering of prior regulations.

A Notice of Proposed Rulemaking was published in the *District of Columbia Register* on September 22, 2023 at 70 DCR 012772 (N132940). No comments were received from the public in connection with this notice during the thirty (30)-day comment period. However, OCME has made the following clarifying edits to the text of the rules as proposed:

- In subsection 5005.2, the phrase “any person” was changed to “all persons”.
- In subsection 5005.3, the phrase “The CME will” was changed to “The CME shall”.
- In subsection 5005.5(b), the phrase “will be made” was changed to “shall be made”.

In accordance with Section 2918 of the Act (D.C. Official Code § 5-1417), the proposed final rules were submitted to the Council for a forty-five (45)-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, and the rules were deemed approved by the Council on [month] [day], 2024, pursuant to the Medical Examiner Records Privacy Regulations Approval Resolution of 2023.

The Chief Medical Examiner adopted these rules as final on [month] [day], 2024, and the rules shall be effective upon publication of this notice in the *District of Columbia Register*.

Chapter 50, MEDICAL EXAMINER, of Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended as follows:

Section 5003, POSSESSION OF EVIDENCE AND PROPERTY, is amended by adding a new subsection 5003.3 to read as follows:

5003.3 Objects or articles that accompany a decedent's remains received at the OCME and that are not deemed to meet the criteria of Subsection 5003.1 shall be handled as follows:

- (a) Objects or articles of value shall accompany a decedent's body if the body

is released to a funeral home as directed by the person with priority in disposition of the decedent's remains under D.C. Official Code § 3-413 unless such objects or articles are deemed to be a hazard to health or safety.

- (b) In the event of public disposition under Subsection 5004.2, objects or articles of value shall be released to the person with priority in disposition of the decedent's remains under D.C. Official Code § 3-413. If no such person is readily available, OCME shall forward all objects and articles of value to the Property Clerk of the Metropolitan Police Department unless such items are deemed to be a hazard to health or safety.
- (c) Any item used for tentative identification shall be released as set forth in paragraphs (a) and (b) after identification is confirmed by scientific means.
- (d) OCME may dispose of, in any reasonable manner, objects and articles of no apparent value and objects and articles deemed to be a hazard to health or safety.

Section 5005, ACCESS TO DOCUMENTS AND RECORD RETENTION, is amended to read as follows:

5005 ACCESS TO DOCUMENTS AND RECORD RETENTION

5005.1 The CME shall be responsible for maintaining full and complete records and files, properly indexed, which provide the following information:

- (a) The name, if known, of every person whose death is investigated;
- (b) The place where the body was found;
- (c) The date the body was found;
- (d) The cause and manner of death; and
- (e) All other relevant information and reports of the medical examiner concerning the death.

5005.2 The CME shall promptly deliver copies of records relating to deaths as to which further investigation may be advisable to all persons designated below, and the records and files maintained under the provisions of Subsection 5005.1 shall be open to inspection upon written request by any person designated by:

- (a) The Mayor;
- (b) The Office of the United States Attorney for the District of Columbia;

- (c) The Metropolitan Police Department;
- (d) Any other law enforcement agency;
- (e) A government organization responsible for protecting health or safety; or
- (f) A District fatality review committee or board.

5005.3 The CME shall release a copy of an external examination or autopsy report to the following persons upon such conditions and payment of such fees as may be prescribed under this chapter and applicable privacy laws after a written request is made by:

- (a) A person with the priority right to control disposition of the decedent's remains ("next of kin");
- (b) A person who has the written authorization of the next of kin for release of the records;
- (c) A person who has the authority to receive the records under a valid subpoena issued by a court having jurisdiction over OCME;
- (d) A person to which a court having jurisdiction over OCME has ordered the release of the records; or
- (e) A healthcare professional, facility, or peer review committee for the purpose of reviewing the quality of the decedent's healthcare.

5005.4 A person who is not listed in Subsection 5005.3 may obtain the following information about a decedent upon such conditions and payment of such fees as may be prescribed under this chapter, the Freedom of Information Act, and applicable privacy laws:

- (a) Name of the decedent;
- (b) Race of the decedent;
- (c) Sex of the decedent;
- (d) Age of the decedent;
- (e) Cause of death;
- (f) Manner of death;
- (g) Place of death;

- (h) Case identification number;
- (i) Date of examination; and
- (j) Name of the examiner performing the external examination or autopsy.

5005.5 (a) Photographs, video, and other images of a decedent, or any part of the body of a decedent, are exempt from the Freedom of Information Act under D.C. Code § 2-534(a)(2) or (a)(3)(C), as an unwarranted invasion of privacy of the survivors of the decedent. The CME shall not release photographs, video, or other images of a decedent, or any portion of the body of a decedent, except under the circumstances provided in Subsection (b) of this subsection.

(b) Copies of photographs, video, or other images of a decedent, or any portion of the body of a decedent, shall be made available upon such conditions and payment of such fees as may be prescribed under this chapter and applicable privacy laws in only the following circumstances:

- (1) In a criminal action or proceeding related to the decedent's death upon written request by a prosecuting attorney or upon service of a valid subpoena by an attorney defending a person charged with a crime related to the death of the decedent;
- (2) In a civil action or proceeding upon the written authorization of the person with the right to control disposition of decedent's remains or upon service of a valid subpoena by an attorney representing a party in litigation related to the death of the decedent;
- (3) In an investigation by a person listed in Subsection 5005.2 upon written request; or
- (4) In medical or scientific education or research where the CME has granted permission and the identity of the decedent is kept confidential.

5005.6 Information obtained by the OCME from the Homicide Section of the Metropolitan Police Department pursuant to Subsection 5005.1 shall not be available to those individuals covered under Subsection 5005.3.

5005.7 Records and files maintained pursuant to Subsection 5005.1 shall be preserved by the CME for a period of thirty (30) years except that records and files related to an open investigation of a homicide shall be retained for sixty-five (65) years from the date the CME initiates its investigation of the homicide.

5005.8 Toxicology specimens shall be preserved by the CME for a minimum of twelve (12) months and histology specimens shall be preserved for a minimum of three (3) months.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Sarina Loy
Deputy Director
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: December 8, 2023

SUBJECT: Legal Sufficiency Review of Draft Approval Resolution Accompanying Notice of Final Rulemaking to Amend Chapter 50 (Medical Examiner) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (AR-22-142-C)

This is to Certify that this Office has reviewed the above-referenced proposed legislation and has found it to be legally sufficient. If you have questions regarding this certification, please do not hesitate to contact me at 724-5524.

A handwritten signature in black ink that reads "Megan D. Browder". The signature is written in a cursive style with a large, stylized "M" and "B".

Megan D. Browder