

RULE MAKING ACTIVITIES

Department of Health

NOTICE OF ADOPTION

Food and Beverages in Funeral Establishments

I.D. No. HLT-49-17-00002-A

Filing No. 703

Filing Date: 2018-07-30

Effective Date: 2018-08-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 77.5, 78.1 and 79.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3401

Subject: Food and Beverages in Funeral Establishments.

Purpose: To lift the ban of the consumption of food and beverages in funeral establishments.

Text of final rule: Paragraph (6) of subdivision (c) of section 77.5 is amended as follows:

(6) Food and beverages. The provision of space, facilities, equipment, accommodations or supplies for, or the preparation, sale, service or distribution of, *or the consumption of*, food or *nonalcoholic* beverages [in any part of a funeral establishment] to or by friends, relatives, mourners, family, visitors or next of kin of any deceased person in the funeral establishment is [prohibited.] *permitted, but not required to be offered. Food or nonalcoholic beverages may also be provided by a third-party catering service, provided that such catering service is not owned by or affiliated with the funeral firm engaged in funeral directing at the funeral establishment. This paragraph is subject to the following conditions:*

(i) the preparation and serving of food and nonalcoholic beverages in the funeral establishment shall be limited to arranging, opening, displaying, and assembling items for consumption, and does not include cooking or heating of food items with the exception of hot beverages such as coffee, tea or similar items;

(ii) food items must be limited to incidental refreshments such as baked goods, sandwiches, snacks, platters, pre-packaged food items and

items which may be required by the religious practices of the family members, mourners, visitors or friends of the deceased;

(iii) the preparation and serving of any food and beverages shall be prohibited in the: preparation area as defined in section 77.5(d)(3) of this Part; and the chapel or reposing room as defined in section 77.5(d)(1) of this Part, whenever there is deceased person present for a viewing, visitation or funeral services;

(iv) any separate charges for the use of facilities for the serving of food and nonalcoholic beverages (a) shall be charged only for a specifically dedicated food and beverage service area, (b) shall be stated clearly on the General Price List, and (c) shall include any charges for cleaning, equipment or the like, as required by section 79.4(e)(6).

Subparagraph (iii) of paragraph (4) of subdivision (b) of section 78.1 is amended as follows:

Charges for additional services and merchandise selected by the customer, which the funeral firm purchases for the customer, such as hairdressing, flowers, death notices, pallbearers, clothing or burial garments, musicians and watcher, *catering services, food, and nonalcoholic beverages*, shall be specifically described and may be made either as a "Funeral Home Charge" under the section "Additional Services and Merchandise Selected," if the funeral firm charges for its services in purchasing these items, or as a "Cash Advance," if the funeral home does not charge the customer in excess of the amount advanced to a third party. If the funeral firm charges more than it advances to a third party or receives and retains a rebate, commission, trade or volume discount or other benefit, the items must be listed under the heading "Additional Services and Merchandise Selected."

Paragraph (9) of subdivision (e) of section 79.4 is amended as follows:

(9) Additional services and merchandise.

(i) The price of acknowledgment cards, *catering services, food, nonalcoholic beverages*, [and] or any additional services and merchandise routinely offered by the funeral firm must be stated with an explanation of what is included.

(ii) If the funeral firm offers to purchase additional merchandise or services and charges more than the actual cost or receives and retains a rebate, commission, trade or volume discount or other benefit, the firm must include a statement under this heading that it will purchase additional merchandise and services for the customer. In immediate conjunction with this statement must be the sentence, "The prices in this section include a charge for our services in buying these items."

Final rule as compared with last published rule: Nonsubstantive changes were made in section 77.5(c)(6)(iii).

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to the proposed regulation. The public comment period for this regulation ended on January 22, 2018. The Department received a total of four comments from representatives of the funeral directing community, including the New York State Funeral Directors Association, Service Corporation International which operates approximately 80 funeral firms in New York State, and two licensed, registered funeral directors.

COMMENT: Three of the four commenters expressed a similar concern, stating that the proposed language in § 77.5(c)(6)(iii) is too restrictive, insofar as it prohibits funeral firms from giving refreshments to families in the arrangement office during the arrangement conference.

RESPONSE: **The intent of this regulation is to permit the service of food and beverages in funeral establishments except in areas where a deceased person may be present.** In light of the comments received, the Department has made technical amendments to clarify that food and beverages may be served in a funeral establishment's arrangement office, in accordance with this intent. The changes protect the sanctity of the deceased and the public health, while allowing for the service of refreshments to families while making the funeral arrangements, as well as during visitations or calling hours where the chapel is being used for a memorial service in circumstances where the deceased person is not present (for example, when only a cremation urn is present).

COMMENT: One commenter supported the amended regulation with a general, positive statement about the allowance of food and beverages in funeral establishments.

RESPONSE: The Department notes the comment in support of this amendment. No change was made to the regulation in response to this comment.