Smith County
Pauper Burial Policy
(Revised 9-25-12)

Introduction and Purpose:

The policies contained herein have been established to govern the disposition of the remains of a Pauper by Smith County, Texas in accordance with Title 8 Sections 692A.009 and 694.002 of the Texas Health and Safety Code.

Sec. 1 – Definitions & Use of Terms:

Anatomical gift - means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
Cemetery - a place that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.
Columbarium - a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.
Cremated remains - the ashes and bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.
Cremation - the irreversible process of reducing human remains to ashes and bone fragments through extreme heat and evaporation, which may also include the processing and pulverization of bone fragments.
Crematory - a structure containing a furnace utilized for the cremation of human remains.
Crypt - a chamber in a mausoleum of sufficient size to inter human remains.
Entombment - interment in a crypt.
Funeral Home - a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in co-partnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.
Grave - a space of ground located in a cemetery or burial park and that is used or intended to be used for interment in the ground.
Interment - the permanent disposition of remains by entombment, burial, or placement in a niche.
Mausoleum - a durable, fireproof structure used or intended to be used for entombment.

Next of Kin - a person designated in Title 8 Section 711.002(a) of the Texas Health and Safety Code and Section 38(a) of the Texas Probate Code.
Niche - a space in a columbarium used or intended to be used for the placement of cremated remains in an urn or other container.
Part - means an organ, an eye, or tissue of a human being. The term does not include the whole body.
Pauper - a very poor person, more especially, a person who must be supported at public expense.
Plot - space in a cemetery or burial park owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.
Remains - human remains or cremated human remains.

Sec. 2 - Legal Authority:

Tex. Health & Safety Code § 692A.009:

§ 692A.009. Who May Make Anatomical Gift of Decedent's Body or Part[1]

(a) Subject to Subsections (b) and (c) and unless barred by Section 692A.007 or Section 692A.008, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
(1) an agent of the decedent at the time of death who could have made an anatomical gift under Section 692A.004(2) immediately before the decedent's death;
(2) the spouse of the decedent;
(3) adult children of the decedent;
(4) parents of the decedent;
(5) adult siblings of the decedent;
(6) adult grandchildren of the decedent;
(7) grandparents of the decedent;
(8) an adult who exhibited special care and concern for the decedent;
(9) the persons who were acting as the guardians of the person of the decedent at the time of death;
(10) the hospital administrator; and
(11) any other person having the authority to dispose of the decedent's body.

(emphasis added)

[1] Enacted by Acts 2009, 81st Leg., ch. 186 (H.B. 2027), § 1, effective September 1, 2009.

Tex. Health & Safety Code § 694.002

§ 694.002. Duty of Commissioners Court Concerning Disposition of Body of Deceased Paupers[2]

(a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. ***The commissioners court may adopt rules to implement this section.***

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

(c) If a county discovers cash in the possession of a deceased pauper, a county may use the cash to pay the actual costs incurred by the county in disposing of the pauper's body.

Sec. 3 - General Provisions:

a. All proceedings relating to the final arrangements for Pauper remains shall be conducted with the utmost solemnity and respect for the decedent.

b. Decedent must have died within the boundaries of Smith County, Texas.

c. Decedent must have domiciled and/or resided within the boundaries of Smith County, Texas for a minimum of six (6) months.

d. All Pauper remains accepted by Smith County will be reviewed for appropriateness and eligibility for donation as an "anatomical gift of decedent's body" pursuant to Tex. Health & Safety Code § 692A.009(11). If an anatomical gift of decedent's body for authorized purposes is not appropriate and available as an option, then the only other available option shall be to have the body cremated unless there is positive verification that cremation conflicts with the beliefs and practices of the decedent's religious affiliation (Title 8, Section 711.002(a) of the Texas Health & Safety Code).

e. If the remains are to be cremated, the cremation shall conform with all applicable state and federal regulations.

f. The actual preparation, cremation and/or interment of Pauper remains shall be accomplished by a licensed Funeral Director at a facility designed and licensed for the purpose.

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[2] Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 211, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 929 (H.B. 2301), § 1, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 404 (H.B. 1843), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 480 (S.B. 530), § 1, effective June 19, 2009.

g. Eligibility requirements shall be based on the same eligibility requirements for the county's indigent healthcare programs. Authorization by the Office of the Smith County Judge is mandatory **prior to** the pick-up, transportation, storage, preparation and/or disposition of the remains of a person for which the county is assuming responsibility for final arrangements. A funeral home taking possession of the remains of such a person, without the express authorization of the Office of the Smith County Judge, shall have assumed all responsibility for that person's final arrangements.

Sec. 4 - Specific Provisions:

a. County shall be the sole authority regarding its responsibility for disposition of the remains of a person in accordance with Title 8 Sections 692A.009 and 694.002 of the Texas Health and Safety Code.

b. County will assume responsibility for disposition of the remains of a person **only** when all other avenues of accountability, including the responsibilities of a person and/or persons listed in Section 711.002(a) of the Texas Health & Safety Code, (Next of Kin), have been thoroughly exhausted and it has been conclusively established that the decedent is indeed legally entitled to cremation/burial at county expense.

c. County shall be the sole authority regarding whether the decedent meets the Pauper criteria.

d. County will not act on behalf of anyone including, but not limited to, social agencies, medical facilities, funeral homes, their employees and/or individuals, concerning the disposition of the remains of a Pauper.

e. County will not offer or give legal advice or opinions to anyone including, but not limited to, social agencies, medical facilities, funeral homes, their employees and/or individuals, concerning the disposition of the remains of a Pauper.

f. County will not participate jointly with anyone including, but not limited to, social agencies, medical facilities, funeral homes, their employees and/or individuals, concerning the disposition of the remains of a Pauper.

g. County may, at its option, relinquish its authority over the disposition of the remains of a Pauper, once established.

h. County shall be the sole authority regarding the method of disposition of the remains of a Pauper.

i. County shall be the sole authority regarding the facility utilized for disposition of the remains of a Pauper.

j. County reserves the right to witness the disposition of the remains of a Pauper.

k. County shall be the sole authority regarding the location of the final resting place of the remains of a Pauper.

l. Unless an "anatomical gift of decedent's body" is made, final resting place of the remains of a Pauper shall be internment in a grave, or niche in a Columbarium used or intended to be used for the placement of cremated remains, or in a Mausoleum crypt.

m. County shall arrange for the proper and lawful safekeeping of Pauper remains.

n. Documentation as to the whereabouts of the remains shall be kept in the records of the attending Funeral Home in accordance with Title 8, Section 711.003 of the Texas Health & Safety Code, and in the Office of the Smith County Judge.

o. Proper documentation must accompany the entire process at all times and copies shall be furnished in a timely manner to the Office of the Smith County Judge.

p. Any and all authorizations, certificates, orders to cremate, etc., shall be properly filled out in accordance with state law and signed by the County Judge **prior to** the pick-up, transportation, storage, preparation and/or disposition of the remains of a person for which the county is assuming responsibility for final arrangements.

q. Next of Kin desiring to claim the remains of a Pauper, will be required to reimburse Smith County for its associated costs **before** Smith County relinquishes its authority over, and possession of, the remains.

Conclusion:

All policies contained herein are in strict compliance with Title 8 Sections 692A.009 and 694.002 of the Texas Health and Safety Code. These policies are subject to change at any time. All questions relating to the aforementioned policies should be directed to the Office of Smith County Judge.

AMENDED AND APPROVED this the 25 day of September, 2012.

Joel P. Baker
Smith County Judge

Jeff Wark
Commissioner, Precinct 1

Terry Phillips
Commissioner, Precinct 3

Cary Nix
Commissioner, Precinct 2

JoAnn Hampton
Commissioner, Precinct 4