

# oppaga

# Progress Report



February 2004

Report No. 04-17

## Improvements to Death Care Industry Still Needed

### *at a glance*

The Department of Financial Services has taken steps to address several of our recommendations for improving its regulation of the death care industry. Bills filed for consideration in the 2004 Session would implement our recommendations to consolidate regulation of the industry within a single agency, which would reduce regulatory fragmentation and increase efficiency.

### Scope

In accordance with state law, this progress report informs the Legislature of actions taken in response to OPPAGA's and the Auditor General's 2002 special examination of the Department of Banking and Finance's regulation of the funeral and cemetery industry.<sup>1,2</sup>

### Background

In Florida, two state agencies regulate the death care industry—the Department of Business and Professional Regulation (DBPR) and the Department of Financial Services (DFS).

### Department of Business and Professional Regulation

DBPR's Board of Funeral Directors and Embalmers administers Ch. 470, *Florida Statutes*, and is responsible for licensing and regulating funeral directors, embalmers, direct disposers, and their facilities. The board's goal is to guard public health and safety by ensuring that individuals entering these professions meet minimum qualifications and that those practitioners that violate the law are appropriately disciplined. The board's primary activities include

- administering professional licensing exams;
- issuing and renewing licenses and registrations;
- annually inspecting licensed facilities; and
- taking disciplinary action against licensees that have violated Ch. 470, *Florida Statutes*.

In Fiscal Year 2002-03, the board oversaw 3,994 actively licensed funeral service professionals (e.g., funeral directors and embalmers).

### Department of Financial Services

Pursuant to Ch. 497, *Florida Statutes*, the Florida Funeral and Cemetery Services Act, DFS regulates numerous death care industries, including sellers of pre-need funeral goods and services, cemetery companies, and monument establishments. In Fiscal Year 2002-03, the department oversaw 3,024 death care businesses and professionals.

<sup>1</sup> [Special Examination: Florida's Regulation of the Death Care Industry Has Many Weaknesses](#), OPPAGA and the Auditor General, Report No. 02-21, March 2002.

<sup>2</sup> Effective January 7, 2003, the Department of Banking and Finance and Department of Insurance were merged under a new Department of Financial Services.

## Progress Report

The department regulates these businesses through the Bureau of Funeral and Cemetery Services and field staff throughout the state. The bureau, located at the department's central office in Tallahassee, provides administrative support for the Board of Funeral and Cemetery Services. The board is responsible for reviewing and approving license applications, trust agreements, pre-need sales contracts, and cemetery by-laws; evaluating examination and complaint investigation reports to determine if there is probable cause that a violation has occurred; and taking disciplinary action against licensees that have violated state law.<sup>3</sup>

Across the state, field staff conduct periodic inspections and examinations of licensees to ensure compliance with state law. Statute and rule require the department to inspect cemeteries and to examine cemetery companies and certificate of authority holders. Inspections are intended to ensure that cemetery licenses and notices, burial records, and grounds are being appropriately maintained. Examinations are more in-depth and are intended to ensure compliance with state law and to verify that all trust account monies are indeed trusted and maintained in accordance with state law. Field staff also investigate and mediate consumer complaints.

## Prior Findings

Our 2002 report focused on the former Department of Banking and Finance's regulatory activities and revealed many weaknesses in Florida's regulation of the death care industry. We found that the department's examination process needed improvement, state law did not sufficiently ensure consumer protection, and the state's regulation of the death care industry was unnecessarily fragmented.

**Examination process needed improvement.** Specifically, our prior review revealed that the department had not performed cemetery

examinations in a timely manner. While state law requires the DFS to examine licensed entities at least once every three years and inspect licensed cemeteries each year, the department was not meeting this time schedule. In addition, these reviews did not adequately assess cemetery burial records or the effectiveness of cemetery controls affecting the accuracy and completeness of burial records. Further, the department's procedures did not require field staff to verify that licensees corrected all violations that cited during these reviews. Finally, the department's examination files lacked evidence that examinations were complete or reviewed by supervisors.

To address these concerns, we recommended that the department improve its regulatory procedures and establish stronger policies and procedures for monitoring activities of its field staff.

**Chapter 497, Florida Statutes, was not sufficient to ensure consumer protection.** Our review also determined that the statutes governing the department's regulation of the death care industry did not provide adequate consumer protection. We found that the department's statutory authority was unclear and narrowly interpreted, the department tended to mediate complaints rather than take strong disciplinary action, and industry disclosure requirements did not provide the public or department sufficient information.

To address these statutory weaknesses, we recommended that the Legislature amend

- s. 497.002, *Florida Statutes*, to require the department to place equal emphasis on regulating cemeteries and pre-need funeral and burial sales;
- s. 497.133, *Florida Statutes*, to prescribe minimum disciplinary actions for the most serious violations of the law and modify s. 497.119, *Florida Statutes*, to designate which violations are intended to be mediation offenses;
- s. 497.201, *Florida Statutes*, to require cemetery companies to survey and plat cemetery grounds and submit a detailed map for approval by the department or

<sup>3</sup> The board and the department are authorized to take disciplinary action against licensees that have violated the law. Disciplinary actions include issuing guidance letters, levying fines, and issuing cease and desist orders. The department does not have the authority to suspend or revoke licenses; only the Board of Funeral and Cemetery Services has that authority.

board and modify s. 497.333, *Florida Statutes*, to require licensed cemeteries to provide consumers with a cemetery map and physical description of the purchased burial plot and to display posters and brochures that describe how the death care industry is regulated and how to file complaints.

**Death care regulation fragmented.** These problems were complicated by fragmentation of the state’s regulatory oversight of the death care industry. Many funeral homes and funeral directors licensed under the Department of Business and Professional Regulation were also conducting activities that were subject to oversight by the former Department of Banking and Finance. This dual regulatory system caused several inefficiencies, including two agencies maintaining parallel licensing, support, and management systems; two separate state-level regulatory boards; multiple visits to licensees and their businesses by state inspectors; and two entities handling consumer inquiries and complaints.

To reduce regulatory fragmentation and increase efficiency, we recommended that state regulation of the death care industry be consolidated within one agency, with the existing boards combined into one. Based upon our consideration of the advantages and disadvantages associated with placement within either agency, we concluded that the Department of Business and Professional Regulation should administer a consolidated program.

## Current Status ---

The Department of Financial Services has taken steps to address several of our recommendations for improving its regulation of the death care industry. Specifically, the Chief Financial Officer reported that the department has

- centralized all aspects of cemetery and pre-need industry regulation by eliminating regional management and having field staff report directly to bureau management;
- developed a database for tracking examination scheduling;

- developed risk assessment criteria for examinations and follow-up procedures for determining if licensees have completed corrective action;
- amended examination procedures relating to the review of burial records; and
- conducted statewide examiner training to promote consistency in examination procedures.

In addition, the department has drafted a discussion paper that describes legislative changes intended to enhance and strengthen industry regulation.<sup>4</sup> These changes address many of our recommendations. For example, the document describes new examination and investigation statutes intended to centralize and enhance the department’s examination, investigation, and inspection functions. The discussion paper also includes a requirement that all new cemeteries and additions to existing cemeteries be professionally surveyed and platted, and that a cemetery map, along with a brochure describing consumer rights and cemetery regulation, be provided to purchasers. Moreover, the document describes amendments to current disciplinary statutes, including classifying as violations the failure to create and maintain accurate and complete burial records, performing burials that intrude or infringe upon another burial space, and burying someone in a space belonging to someone else. We recommend that the department develop proposed legislation to implement these changes.

However, the department does not intend to pursue the adoption of several of our recommendations. Specifically, the department does not believe that it is advisable to amend s. 497.002, *Florida Statutes*, to require that equal emphasis be placed on regulating cemeteries and pre-need funeral and burial sales; the department believes that amending the law in this manner would “rigidly require an equal regulatory emphasis” that would prevent the

<sup>4</sup> *Proposed Changes to Chapter 497, Cemetery and Funeral Services: Discussion Paper*, Department of Financial Services, October 2003. The department emphasized that this document is for discussion purposes only and does not necessarily reflect the views of the agency or agency staff.

## Progress Report

best use of department resources. Similarly, the department has not worked with the Legislature to revise s. 497.133, *Florida Statutes*, to prescribe specific minimum disciplinary actions for the most serious violations, because it believes that such a change would “prevent the use of informed experience and judgment that should be applied in determining the appropriate sanction.”

Finally, the department does not plan to develop proposed legislation revising s. 497.119, *Florida Statutes*, to designate which violations are intended to be mediation violations. Instead, in its legislative discussion paper, the department proposes repealing the mediation statute and enhancing the citation statute (s. 497.121, *Florida Statutes*) to deal with minor violations.<sup>5</sup> The discussion paper also suggests that strengthening existing provisions to allow the department to petition for receivership over cemeteries that would currently be subject to license suspension or revocation would be a more appropriate modification of disciplinary guidelines.<sup>6</sup>

While we recognize that the department has concerns about amending these statutes, we continue to recommend that the Legislature should consider modifying ss. 492.002, 497.133,

and 497.119, *Florida Statutes* to clarify legislative intent, strengthen regulation, and ensure adequate consumer protection.

Our final recommendation—to consolidate death care industry regulation within one state agency—has not yet been implemented. However, recent reports from industry and legislative committees and current proposed legislation address consolidation. A January 2003 report from the Legislative Partnership Committee (an industry workgroup that included representatives of the Funeral and Cemetery Alliance, the Florida Funeral Directors Association, and the Florida Morticians Association) acknowledged that the issue of consolidating industry regulation under one state agency is ‘meritorious’. A November 2003 Florida Senate report examined the appropriate manner by which to combine industry regulation within one agency.<sup>7,8</sup> Bills have been filed for consideration during the 2004 legislative session, [Senate Bill 528](#) and [House Bill 323](#) that propose consolidating industry regulation within the Department of Financial Services.<sup>9</sup> We continue to recommend that the Legislature consolidate regulation of the death care program within a single agency to reduce regulatory fragmentation and increase efficiency, with the existing boards combined into one.

---

<sup>5</sup> The department proposes including the following language in the citation statute: “Citations will not be used where there was serious consumer harm related to the violation. Citations may be used if there was only slight consumer harm and the licensee has corrected same before the licensee is offered a citation.”

<sup>6</sup> Currently, s. 497.437, *F.S.*, provides that “any dissolution or liquidation of a certificate holder shall be under the supervision of the board, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of companies.” The department’s legislative discussion paper proposes extensive changes to this statute.

---

<sup>7</sup> *Proposed Funeral, Cemetery, and Cremation Legislation for the 2003 Session*, Legislative Partnership Committee, January 2003.

<sup>8</sup> [Cemetery and Funeral Regulatory Boards](#), Florida Senate Committee on Regulated Industries, November 2003.

<sup>9</sup> These bills also address some of our other recommendations, including requiring that undeveloped cemetery land be surveyed and mapped and that cemetery companies make maps available to the department and public.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

**Florida Monitor:** <http://www.oppaga.state.fl.us/>

Project supervised by Debra Gilreath (850/487-9278)

Project conducted by Kara Collins-Gomez (850/487-4257)

Gary R. VanLandingham, OPPAGA Interim Director