



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC65-20
Regulation title	Regulations of the Board of Funeral Directors and Embalmers
Action title	Standards for refrigeration, storage transportation of human remains and animal remains
Date this document prepared	9/18/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Regulatory action is necessary because funeral service providers need specific standards for the handling of remains to include refrigeration of an *unembalmed* body if it is to be stored for more than 48 hours to prevent significant deterioration of the remains before burial. Current regulations for crematories require refrigeration after 24 hours, but there is no such requirement for funeral homes. Standards for storage and transportation would include protecting the dignity and composition of remains by appropriate covering or container and would require disclosure to the public if the body is to be stored at a location other than the funeral establishment. Finally, there will be a prohibition against transporting or refrigerating animal remains together with human remains.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations, administer a registration and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations...*

In addition to the general powers and duties of a health regulatory board, the Board of Funeral Directors and Embalmers has specific statutory authority as follows:

§ 54.1-2803. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this subtitle, the Board shall have the following specific powers and duties to:

- 1. Establish standards of service and practice for the funeral service profession in the Commonwealth.*
- 2. Regulate and inspect funeral service establishments, their operation and licenses.*
- 3. Require licensees and funeral service interns to submit all information relevant to their practice or business.*
- 4. Enforce the relevant regulations of the Board of Health.*
- 5. Enforce local ordinances relating to funeral service establishments.*
- 6. Advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.*
- 7. Establish, supervise, regulate and control, in accordance with the law, programs for funeral service interns.*
- 8. Establish standards for and approve schools of mortuary science or funeral service.*
- 9. Regulate preneed funeral contracts and preneed funeral trust accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts.*
- 10. Inspect crematories and their operations.*

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Regulations for crematories, which became effective July 8, 2009, require that whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, it must maintain the remains in refrigeration at 40 degrees Fahrenheit or less, unless the remains have been embalmed. Additionally, regulations for crematories require that human remains must be transported to a crematory in a cremation container that substantially meet all the following standards: 1) be composed of readily combustible materials suitable for cremation; 2) be able to be closed in order to provide complete covering for the human remains; 3) be resistant to leakage or spillage; and 4) be rigid enough for handling with ease.

However, recent articles in the Washington Post have called attention to the fact that there are no such regulatory standards for the storage, transportation and handling of dead human remains by funeral establishments. Without more specific regulation, there is the possibility of decomposition of unembalmed remains prior to burial and of inappropriate storage and covering of remains. For those who are employed to handle human remains, there is a need to ensure health and safety. For the families whose loved one is being stored and transported prior to burial, there is a need for assurance that the remains are being treated appropriately.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The recommendations of the Ad Hoc Committee charged with study of regulation needed to set standards for funeral establishments similar to those for crematories made the following recommendations:

- 1) That a funeral establishment must ensure that a dead human body is embalmed or maintained in refrigeration at 40 degrees Fahrenheit or less, if it is to be stored for more than 48 hours. A funeral establishment would not be required to have a refrigeration unit, but would be required to make arrangements for storage in refrigeration.
- 2) That while a body is stored in refrigeration, it must be appropriately covered, and when it is removed from refrigeration, it must be maintained in a container that substantially meets the following: a) be able to be closed in order to provide complete covering for the human remains; and b) be resistant to leakage or spillage.
- 3) That if a dead human body is to be stored at a location other than at the funeral establishment that has taken custody thereof, the establishment must disclose to the contract buyer the location where the body is stored and the method of storage.

4) That funeral establishments, crematories or transportation services shall not transport animal remains together with dead human bodies nor refrigerate animal remains in a unit where dead human bodies are being stored.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

In response to concerns about improper handling of human remains, the Board appointed an ad hoc committee to consider regulatory action. Six members of the Board met with ten persons representing funeral establishments (both urban and rural) and representatives of the Virginia Mortuary Association, the Virginia Funeral Directors Association and the Independent Funeral Homes of Virginia. The committee reviewed sample regulations from Oklahoma, Wyoming, Utah, Texas, Washington, North Dakota, New York, and Oregon; they also looked at regulations for veterinary facilities on storage of animal remains. Following wide-ranging discussion, the committee recommended regulatory action to establish standards for refrigeration, storage and transportation of human remains.

The only alternative to regulatory action is to continue to investigate cases of “inappropriate handling of human remains,” which is currently the statutory or regulatory standard. However, additional specificity about the handling of human remains may prevent a funeral establishment from acting unprofessionally and would more appropriately protect the public who is concerned about the storage and decomposition of remains of members of their family. With delays of several weeks and even months in the burial of veterans, funeral establishments are increasingly faced with issues relating to storage of remains, so the Board does not expect the issues that this regulatory action addresses to abate.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Richmond, VA or by email to elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held after publication of the proposed regulation; notice of the hearing, once scheduled, may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board has already used an ad hoc advisory committee for the development of recommendations on the proposed regulation. It will continue to work with interested parties who participate in its meetings and discussions as the regulatory process proceeds.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact of the proposed regulatory action on the institution of the family and family stability.