



townhall.virginia.gov

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(s)	18VAC65-30-10 et seq.
Regulation title(s)	Regulations for Preneed Funeral Planning
Action title	Periodic Review
Date this document prepared	1/30/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board intends to amend its regulations governing preneed funeral planning to ensure greater protections for the public in disclosures of information about what they is and is not included in a contract, in retention of documentation, and in notification if a funeral home closes or changes ownership.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

N/A

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. The comment period on the periodic review began on May 14, 2018 and ended on June 13, 2018; there were no comments on this chapter.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

18VAC65-30-10 et seq. Regulations for Preneed Funeral Planning are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board with authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title.

In addition, § 54.1-2803 sets out the specific powers and duties of the Board:

§ 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.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is to provide clear, enforceable regulations. Both the licensees and the public need clarity on contracting preneed funeral plans, so public health and safety is not jeopardized.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Regulatory Advisory Panel convened to review all provisions of Chapter 30. Pursuant to its periodic review of regulations, the RAP recommended that the Board consider the following amendments:

18VAC65-30-10. Definitions.

- Remove definition of “capper, steerer, or shill” as those terms are no longer used.

18VAC65-30-50. Solicitation.

- Clarify that registered funeral service interns are not allowed to engage in funeral preneed planning and/or sales.

18VAC65-30-60. Records; general.

- For consistency with record retention requirements for other funeral-related documents, change in the requirement that preneed contracts and reporting documents be maintained on the premises of the establishment for three years after the death of the contract beneficiary.

18VAC65-30-70. Record reporting.

- In (A)(4), the alphabetical or chronological listing of all preneed contracts should also include where the contract is funded (e.g. name of insurance provider)/where the funds are maintained in addition to the existing requirement of how the contract is funded.
- In (B), consider requiring notification to the board and the existing contract buyer(s) when a contract provider changes ownership. Any notification should include any name/address change and whether the new establishment intends to honor or dishonor existing contracts.
- Consider whether notification regarding change of ownership is to each individual contract buyer or by public notification means.
- Consider addition of requirement that the contract provider who discontinues business operations provide a current list of preneed contracts to the board at the time of closure.

18VAC65-30-90. Disclosures.

- Consider a requirement for licensees to obtain acknowledgement from contract buyers that they have received the general price list and preneed disclosure questions and answers.

18VAC65-30-110. Cancellation or transfer of contract.

- Consider whether reference to Virginia Code § 64.2-730 appropriate in (D).

18VAC65-30-180. Life insurance or annuity.

- Consider whether reference to Virginia Code § 54.1-2820(C) is appropriate in first paragraph.

18VAC65-30-220. Content of preneed contracts.

- Review overall content of contract requirements for accuracy and clarification of language.
- Clarify language related to “guaranteed” prices/services/goods to avoid confusion for consumers.
- Change reference to Virginia Funeral Director to Virginia Funeral Service Licensee to accurately reflect licensure type.

18VAC65-30-230. Content of disclosure statements.

- Review overall content of disclosure statements for accuracy and clarity for contract buyers/consumers, as well as compliance with federal FTC regulations.
- Clarify language and/or further explanation related to “guaranteed” prices/services/goods to avoid confusion for contract buyers/consumers.
- Consider addition of language to encourage contract buyer/consumer to maintain a copy of the preneed contract as they would any legal document (e.g. safe place, provide to family member, etc.).

- Consider addition of language to explain what happens if a funeral home closes or changes ownership and what impact that change may have on a contract buyer's/consumer's choice.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

At its meeting on October 16, 2018, the Board considered a petition for rulemaking relating to preneed contracts. While the Board voted to take no action on the petition, it referred the petition to a Regulatory Advisory Panel (RAP) for consideration within the context of a periodic review of regulations.

The issue addressed in the petition related to the loss of funds in a preneed contract when a funeral home closed without notice. It was suggested that there should be some improvement in the disclosures for preneed contracts to ensure consumers receive clear information regarding the options available to consumers in the event a funeral establishment closes.

Subsequently, a RAP was convened on November 1, 2018 and included the following panelists:
 Blair H. Nelsen, FSL, Panel Chair & Board member
 Joseph Frank Walton, FSL, Board member
 Annette Greenwood, Estate Assurance Systems, Inc.
 Paul Harris, Regulatory Support Services
 Bruce Keeney, Association of Independent Funeral Homes of Virginia
 RD Monson, Homesteaders Life Company
 James Young, CLU, CIE, State Corporation Commission

The Chair noted that the Board's periodic review of the preneed regulations was conducted pursuant to 18VAC65-11-110 (Public Participation Guidelines) and the Governor's Executive Order 14. He further stated that the periodic review provides the process for a Board to review and receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance.

The panel thoroughly reviewed the regulations, noted that they are mandated by the law and necessary for public health, welfare and safety, and recommended several amendments for greater clarity and consumer protection.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review. This NOIRA is the result of a periodic review announced on May 14, 2018.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The Board of Funeral Directors and Embalmers is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by FAX to (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

A Regulatory Advisory Panel has served as the panel to review the regulations and make recommendations for amendments.