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Final Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC65-20-10 et seq.
Regulation title(s)	Regulations of the Board of Funeral Directors and Embalmers
Action title	Identification of human remains
Date this document prepared	February 10, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The key provisions of the amended regulation are guidance on the identifiers that may be used for visual identification of the remains and the resources available to achieve positive identification if visual identification is not feasible.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On January 13, 2015, the Board of Funeral Directors and Embalmers adopted final amendments to 18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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...*

Chapter 377 of the 2010 Acts of the Assembly amended § 54.1-2818.1 and provided the specific mandate to adopt regulations for identification of human remains as a prerequisite for cremation.

§ 54.1-2818.1. Prerequisites for cremation.

No dead human body shall be cremated without permission of the medical examiner as required by § 32.1-284 and visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or a sheriff, upon court order, if no next-of-kin, designated person or

agent is available. When visual identification is not feasible, other positive identification of the deceased may be used as a prerequisite for cremation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The intent of the regulatory action is compliance with the second enactment of Chapter 377 of the 2010 Acts of the Assembly. While the statute is fairly explicit about the prerequisites for cremation, the regulation further amplifies how visual identification can be done – through viewing the remains or a photograph or by use of unique identifiers and markings. If positive identification must be used, the regulations specify who may be consulted for that purpose. In order to ensure authorization for cremation can be obtained in accordance with § 54.1-2818.1 in a timely manner, the proposed regulation expands on the statutory mandate for visual identification, or if that is not feasible, positive identification. Visual identification may be accomplished by viewing unique identifiers or markings (tattoos, birth marks, etc.). If positive identification must be used, a crematory may consult with law enforcement for fingerprints, DNA, etc., with the local medical examiner or with medical personnel at a hospital or other facility. With the amendments the Board has adopted, the statute can be more clearly implemented, and families or designated persons are able to achieve closure in a more humanely and timely manner. Proper identification of human remains prior to cremation is essential to the health, safety and welfare of the public because it is necessary to ensure that misidentified or unidentified persons are not cremated. Cremation eliminates the possibility that a lost loved one could later be identified or that the remains may provide evidence in a criminal investigation.

Substance

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

The Code requires “visual identification” of the deceased before cremation; proposed regulations clarify that visual identification may be made by viewing unique identifiers or markings on the remains. Further, the Code allows the use of positive identification if visual identification is not possible. Proposed regulations clarify that a crematory may use positive identification of the deceased in consultation with the law enforcement, a medical examiner or medical personnel.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the

agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public is further clarification of the statutory requirements for identification of a body prior to cremation. With the amendments the Board has adopted, the statute can be more clearly implemented, and families or designated persons are able to achieve closure in a more humanely and timely manner. There are no disadvantages.
- 2) While there are no advantages or disadvantages to the agency; greater clarity of law and regulation can resolve questions and issues that are sometimes fielded by Board staff.
- 3) There are no other matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Family impact

Please assess the impact of this 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 on the institution of the family and family stability.

Changes made since the proposed stage

Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.

There were no changes to the text of the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

There was no public comment.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
436	n/a	Sets out the authorization requirements for cremation	Subsection A is amended to provide regulatory guidance on the attestation of visual identification of human remains. The amended language specifies that: 2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. <u>Visual identification may be made by viewing unique identifiers or markings on the remains.</u> If visual identification is not feasible, the law permits the funeral establishment to use positive identification of the remains. Regulatory guidance on positive identification is provided in the amendments to #3: 3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased <u>in consultation with law enforcement, a medical examiner, or medical personnel</u> as a prerequisite for cremation

			<p>pursuant to § <u>54.1-2818.1</u> of the Code of Virginia.</p> <p><i>For visual identification of remains, there are recognizable features or markings that may be used by the next-of-kin or a representative of the deceased. For positive identification, if visual ID is not feasible, the funeral establishment may rely on positive identification – such fingerprints, DNA, dental records, etc. A positive identification will require consultation to obtain the necessary record.</i></p>
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