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Proposed 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	Periodic Review
Date this document prepared	7/19/19

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 VAC7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board is amending its regulations governing the practice of funeral services by clarifying certain provisions, updating regulations, and strengthening rules for surface transportation and removal and courtesy cards.

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

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 during the periodic review.

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.

18VAC65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers 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 explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The Board is amending its regulations governing the practice of funeral services by clarifying certain provisions, updating regulations, and strengthening rules for surface transportation and removal and courtesy cards.

Changes include a new definition for affiliation of a branch to the main establishment, an allowance for newly licensed persons to be exempt from continuing education for the first renewal, an allowance for a funeral establishment experiencing an emergency to utilize the building in another establishment until restoration, a requirement for a registered surface transportation and removal service to hold liability insurance, an allowance for a crematory to test operation of a retort before it is registered, and establishment of grounds for disciplinary action in the case of an inappropriate sexual relationship between a supervisor and funeral intern.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) The primary advantage of the amendments to the public is assurance of proper care of the human remains of their loved ones and retention of important documents in event of a change of ownership. There are no disadvantages to the public.
 - 2) There are no advantages or disadvantages to the Commonwealth, except more clarity in regulation will assist the Board in interpretation of the law.
 - 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”
- The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth and to enforce the Code of Virginia.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

The regulations are consistent with the Federal Trade Commission rules for disclosures to consumers of funeral services.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <p>a) fund source / fund detail;</p> <p>b) delineation of one-time versus on-going expenditures; and</p> <p>c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no costs for implementation and enforcement. Funds for the Board of Funeral Directors and Embalmers are provided by fees charged to applicants and licensees.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no costs to other agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>None</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no costs to localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Licensed funeral establishments Branch establishments Courtesy card holders Surface transportation and removal services Funeral service licensees Registered crematories</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 420 licensed funeral establishments and 79 licensed as branch establishments. The Board has no estimate of the number of small businesses affected. Individual establishments and branch establishments hold licenses but may be owned by large national companies (i.e., Woody's and Nelson's are local establishments owned by SCI).</p> <p>There are 110 persons who are licensed by another jurisdiction who hold a courtesy card issued by the Virginia board.</p> <p>There are 44 businesses that are registered as surface transportation and removal services.</p> <p>There are 115 registered crematories</p> <p>There are 1463 funeral service licensees with current, active licenses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p>	<p>There will be some costs to surface transportation and removal services that do not already have liability insurance. It is expected that most legitimate businesses do have insurance. The cost would depend on the size and volume of the business in addition to factors such as the driving record of the owner, age of the vehicle(s) etc.</p>

b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	Most of the proposed changes are clarification of current regulation and policy.

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.

There are no viable alternatives to the regulatory changes being considered. Disclosures to the public, which are required by federal law, are included in the appendices that are attached to the regulations.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The agency has not found alternative regulatory methods for clarification of regulation or allowance for less restrictive regulation, such as exemption from CE for new licensees, an allowance to operate out of another establishment in emergency situations, and allowance to test a crematory retort prior to issuance of a registration.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

A 30-day comment period on the NOIRA was open from May 27, 2019 to June 26, 2019; there were no comments received.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Board of Funeral Directors and Embalmers is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
Title of Chapter	The title of Chapter 20 is currently: Regulations of the Board of Funeral Directors and Embalmers	The Board proposes a title change for Chapter 20 to avoid confusion and to reflect that there are four sets of regulations for the Virginia Board of Funeral Directors and Embalmers. The amended title is: <i>Regulations Governing the Practice of Funeral Services</i> .
10	Sets out the definitions for words and terms used in the chapter	The current definition of “branch” or “chapel” states that it is an establishment affiliated with a licensed main establishment. There is an

		<p>understanding of the meaning of “affiliated” but it has not been clearly stated in regulation.</p> <p>The new definition of “affiliation” or “affiliated” states that there is a relationship involving a degree of common or subsidiary ownership. Therefore, a branch establishment (which does not have to meet all of the requirements for a main establishment) cannot be an arrangement with no legal connection between the two. There will be no impact because the interpretation is consistent with that of the Board and its staff for the meaning of a branch establishment and the need for affiliation.</p>
50	Sets out requirements for posting of a funeral service license in a place conspicuous to the public	<p>An amendment will clarify that the license must be posted in each establishment or branch where a licensee practices. The amendment is a point of clarification and not a new requirement. Licensees are allowed to post a photocopy of their license, so there is no cost involved if they practice in multiple establishments.</p>
60	Sets out the requirements for licensees to maintain accurate information and to notify the Board when there is a change in such information.	<p>For consistency with the provision for establishments, an amendment will require a surface transportation and removal service to notify the board within 14 days of any change in the name of the manager of record. Current regulation gives those services 30 days to notify the Board. <i>The change will only affect a handful of the surface transportation and removal services that maintain registration in Virginia.</i></p> <p>An amendment in subsection D will specify that a notice of renewal can be transmitted electronically, consistent with legislation that became effective on July 1, 2018. <i>The Office of the Attorney General has advised that “mailed” means sending hard copy, so the Code was amended to include electronic notifications.</i></p>
70	Sets out the fees charged to applicants and licensees	<p>An amendment will include in section 70 the fees for inactive status that are currently found in section 154.</p> <p><i>It is confusing to have inactive fees not listed with all other fees; there is no change in the fees, only their location in the chapter.</i></p>

		<p>An amendment in subsection F will clarify fee language related to review and renewal for continuing education providers.</p> <p><i>There is no change in fees, but the amendment will clarify that the fee for review of additional courses is per application – it is not a fee for each individual course being reviewed.</i></p> <p>Subsection G is deleted because the language related to shortfall reduction of fees, which is no longer valid.</p>
130	Sets out requirements for renewal of licensure or registration	<p>Subsection A is amended to add a third requirement for renewal of a courtesy card. In order to renew courtesy card, a courtesy card holder must provide documentation of a current, unrestricted funeral service license from the applicant’s licensing authority or authorities.</p> <p><i>In order to be issued a courtesy card to remove bodies from and to arrange funerals in this Commonwealth, a person must hold a license as a funeral director or embalmer or an equivalent in another state. In order to renew such a card, the Board must have documentation that the card holder continues to hold an active unrestricted license in another state.</i></p>
151	Establishes the rules for continued competency for renewal of an active license	<p>An amendment will add subsection E to specify that a licensee shall be exempt from the continued competency requirements for the first renewal following the date of initial licensure by examination in Virginia.</p> <p><i>The language is identical to regulations for other professions with the rationale that a person newly licensed by examination has just demonstrated competency in order to obtain the license.</i></p>
152	Sets the requirements to be approved as a continuing education provider	<p>An amendment to subsection B will clarify the process for continued approval of continuing education providers and for making changes to the application once approved.</p> <p><i>The amendment, consistent with a change in the fee section (70) will clarify that a course review fee is required if there have been additions or changes in the courses approved</i></p>

		<i>on the original application or since the last renewal. The fee is per submission for review, not a per course fee.</i>
153	Sets out the requirements for documenting compliance with continuing education	An amendment to subsection A clarifies what documentation is required and that the retention is a two-year period after the corresponding annual renewal period.
154	Sets out requirements for an inactive license	Amendments will delete renewal fees for inactive status to this section and move them to section 70 on “Required fees.”
170	Sets out requirements for an establishment license	<p>In section A, there is an edit to the reference to manager of record of the establishment.</p> <p>In subsection E, an amendment will require the establishment application to include an attestation related to affiliation of branch or chapel to main establishment.</p> <p><i>Since a branch or chapel is supposed to have a legal affiliation with a fully-licensed establishment, a licensure application should attest to such a relationship.</i></p> <p>Subsection F is added to allow the Board to authorize the emergency operation of a funeral service establishment out of another facility during an emergency.</p> <p><i>This is intended to address rare situations in which an establishment has a fire, flood, or other emergency situation in which the operation of the business is seriously impacted. In order to continue serving families (some of whom may have preneed contracts with the funeral home), it would be necessary to operate out of another establishment until the impacted one can become operational again. Board members believe 60 days, with the possibility of a 30-day extension, is reasonable for such an allowance.</i></p>
171	Establishes the responsibilities of the manager of record.	An amendment to subsection B will clarify that manager of record is responsible for correction of/seeking correction of any deficiencies found during the course of an inspection.

		<p><i>This has always been the responsibility of a manager of record; inclusion in this section provides additional clarity for licensees. The manager of record may not be the owner of the funeral home, but he/she is responsible for correcting or seeking corrections for noted deficiencies.</i></p>
240	Sets out requirements for a funeral service license by examination	<p>An amendment to subsection A will clarify that the transcript applicants must submit is the mortuary school transcripts when applying for funeral service licensure.</p> <p>Another amendment will delete the 30-day time requirement for submission of the application package prior to an examination date.</p> <p><i>Since the state examination is computerized, application 30 days in advance is not necessary to schedule the exam.</i></p>
400	Sets out the requirements for registration of surface transportation and removal services	<p>An amendment will clarify who is required to have training in universal precautions.</p> <p>An amendment will require that an applicant for registration provide proof of bonding or liability insurance coverage relating to operation of the service.</p> <p><i>The amendment is necessary because either an individual or a company ("person or private business") can be registered as a ST&R service. Theoretically, a person with a vehicle who takes a course on bloodborne pathogens could apply to be a ST&R service. The requirement for liability insurance would ensure that the person or business operating the service would have adequate insurance coverage in the event of any issues or loss that may impact a family because they are in the business of transporting/handling remains.</i></p>
435	Sets out requirements for registration of crematories	<p>An amendment in subsection A will clarify that a manager of record for a funeral establishment may also serve as the manager of record for a crematory at the same location.</p> <p>A new subsection F will authorize a crematory to conduct a cremation for purposes of testing the functioning of new retort equipment; once the</p>

		<p>retort equipment is deemed functional, the crematory would become registered.</p> <p><i>The amendment will allow operation of a retort before registration in order to test for functionality. The amendment is reasonable and in keeping with the Board's mission to protect the public.</i></p>
436	Sets the standards for registered crematories or funeral establishments relating to cremation.	An amendment in subsection A will clarify that the cremation authorization form must include an attestation of visual identification of the deceased from a viewing of the remains or a photograph of <i>the remains</i> signed by the person making the identification, executed prior to the cremation.
440	Sets out requirements for issuance of courtesy cards	<p>An amendment in subsection B will clarify the verification language to include submission that the license is in current and unrestricted.</p> <p>In subsection C, an amendment will add clarifying language that the holder of a courtesy card does not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia to reiterate the practice restriction imposed by the statute.</p>
500	Sets out disciplinary action and practice that may be unprofessional conduct	An amendment (#10) includes provisions related to inappropriate conduct directed toward interns.
510	Sets out requirements for an embalming report	<p>In subsection B, language is added stating that, if the embalming was assisted in by mortuary science student, the report shall include the name of the student(s) and the signature of their supervisor.</p> <p><i>With passage of legislation in 2018, mortuary science students are now allowed to assist with embalming, so the report needs to include that information.</i></p>
580	Sets out requirements for the equipment in a preparation room	An amendment will clarify that the means or method for the sterilization or disinfection of reusable instruments be by chemical bath or soak; autoclave (steam); or ultraviolet light. Another amendment will add the student to the

		<p>requirement for rubber gloves for all personnel using the embalming room.</p>
700	<p>Sets out requirements for retention of documents</p>	<p>Subsection D is amended to clarify requirements for retention of documents when there is a change of owner or relocation of an establishment.</p> <p><i>The intent of document retention is protection of the public, so they need to be available in a transition of ownership.</i></p>