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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board of Funeral Directors and Embalmers, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC65-20
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Funeral Services
<b>Action title</b>	Adjustment of requirements related to documentation of continuing education pursuant to 2022 legislation
<b>Date this document prepared</b>	July 15, 2022, edited September 16, 2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*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.*

Ch. 170 of the 2022 Acts of Assembly amended continuing education requirements for licensees of the Board. Previously, licensees were required to obtain one hour of continuing education per year in preneed funeral arrangements and one hour per year of compliance with state and federal laws and regulations governing the profession. Under the 2022 legislation, licensees now must obtain one hour per year of continuing education in compliance with state and federal laws or preneed funeral arrangements, provided that a licensee completes one hour of continuing education in preneed funeral arrangements every three years.

The current regulation governing retention of documents requires licensees to maintain documentation of completion of continuing education for two years. Given the new statutory requirement that a licensee must complete continuing education regarding preneed funeral planning at least once every three years,

the Board has amended 18VAC65-20-153 to require licensees to retain evidence of compliance with continuing education requirements for three years.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

CE = continuing education

### Statement of Final Agency Action

*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 July 15, 2022, the Board of Funeral Directors and Embalmers voted to amend the Regulations Governing the Practice of Funeral Services by fast-track action.

### Mandate and Impetus

*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, or board decision). 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."*

*As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

There is no mandate for this action. The impetus was the passage of HB99 in the 2022 General Assembly, which required licensees only complete CE related to preneed funeral arrangements once every three years.

### Legal Basis

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

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. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system."

Additionally, Virginia Code § 54.1-2816.1(A) requires the Board to "promulgate regulations governing continuing education requirements for" licensees of the Board.

### Purpose

*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.*

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The purpose of this action is to ensure licensees retain appropriate documentation of continuing education compliance for audit and investigation purposes. Because 2022 legislation changed the requirement for preneed funeral arrangement CE to at least once every three years, a two year retention requirement is no longer sufficient.

### Substance

*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.*

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18VAC65-20-153 currently requires licensees to retain evidence of compliance with CE requirements for two years. The word "two" is removed and replaced by "three."

### Issues

*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.*

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- 1) The primary advantage to private citizens and licensees is clear guidance regarding how long a licensee must maintain documentation of compliance with continuing education and an assurance that, if audited, the Board will be able to confirm the licensee is compliant with requirements. There are no disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of amending this regulation is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth and of the legislative change to permit licensees to take only one particular type of CE every three years. The Board is authorized under § 54.1-2400 "[t]o 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." The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

### Requirements More Restrictive than Federal

*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.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*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, 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. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no projected costs, savings, fees, or revenues from this action for this agency.
<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.	There are no impacts on other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no benefits to state agencies.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
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Benefits the regulatory change is designed to produce.	There are no benefits to localities
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**Impact on Other Entities**

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.	Funeral service licensees, licensed funeral directors, and licensed embalmers of the Board will need to maintain documentation of a required continuing education for a period of three years. As of June 30, 2022, there were a total of 1,566 licensees in the categories of funeral service licensee, funeral director, or embalmer in Virginia.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; 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.	There are no projected costs for individuals, businesses, or entities except for the very minimal cost of maintaining documents licensees are already required to maintain for an additional year.
Benefits the regulatory change is designed to produce.	There are no benefits.

**Alternatives to Regulation**

*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.*

The current requirement to maintain documentation of continuing education is in regulation, and the Board is required to promulgate regulations related to continuing education. Therefore there are no alternatives to amending this regulation.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 amendments are necessary to ensure practitioners maintain evidence of compliance with continuing education requirements set forth in statute. 1) The compliance requirement of maintaining evidence of compliance with continuing education, which is already in the regulation, cannot be less stringent without being absent completely. 2) There are no reporting requirements. 3) The requirement is already extremely simple. 4) There are no design or operational standards in the regulation, and the regulation does not apply to businesses of any kind. 5) The regulation does not apply to businesses of any kind.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Funeral Directors and Embalmers is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov) or by fax to (804) 915-0382. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

**Detail of Changes**

*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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

<b>Current chapter-section number</b>	<b>Current requirements in VAC</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
20-153	Licensees are required to maintain original documentation of CE for a period of two years.	<p>Licensees will be required to maintain original documentation of CE for a period of three years.</p> <p>The intent behind this change is to ensure licensees maintain documentation of compliance with CE requirements given the legislative change allowing licensees to only complete CE on preneed funeral arrangements once every three years.</p>