



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Funeral Directors and Embalmers/Department of Health Professions
VAC Chapter Number:	18 VAC 65-20-10 et seq.
Regulation Title:	Regulations of the Board of Funeral Directors and Embalmers
Action Title:	Periodic review
Date:	6/4/03

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Regulations 18 VAC 65-20-10 et seq. provide requirements for the licensure of funeral service personnel and funeral establishments, as well as for registration of crematories and transportation services and the issuance of courtesy cards to out-of-state licensees. Provisions also establish requirements for renewal or reinstatement of a license and set fees to support the regulatory and disciplinary activities of the board. Regulations set forth standards for an embalming room and preparation room in an establishment and for the retention of documents and disclosures to consumers. Finally, grounds for unprofessional conduct of a licensee and for standards of practice are established, including restrictions on advertising.

Amendments are proposed to establish definition of a branch establishment and require the name of the main establishment on the branch application for licensure, to update requirements for a

preparation room, and to provide greater assurance that all state and federal rules related to provision of funeral services are being followed.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The following changes were made by the Board in the adoption of final amendments:

Section 20 Definitions: The definition of a “branch” or “chapel” was amended to eliminate the language indicating that it is a secondary location or other facility where the practice of funeral services occurs, which is owned and operated by a main funeral service establishment. The definition adopted by the Board says that a “branch” or “chapel” is a funeral service establishment which is affiliated with a licensed main establishment and which conforms with the requirements of § 54.1-2811 of the Code of Virginia.

Section 170 Requirements for an establishment license:

The following new requirements proposed in subsection E for identification of a branch were eliminated in adoption of final regulations: 1) The license of a branch or chapel shall clearly reflect the name of the main establishment; 2) The general price list and the itemized statement shall clearly state that the facility is a branch or chapel and identify the name of the main establishment; and 3) All public informational materials or advertisements relating to services provided at or by the branch or chapel, either in print or electronic format, shall state that the facility is a branch or chapel and identify the name of the main establishment. Subsection E now requires the application for licensure of a branch or chapel to specify the name of the main establishment.

New requirements proposed in subsection F for disclosures and a written plan if the preparation of dead human bodies may require that a body be transported between a main establishment, branch, or chapel and another such facility were also eliminated.

Section 350 was further amended to clarify that the requirements for licensure by endorsement, an applicant must possess credentials that are substantially similar to those required by Virginia at the time the person was initially licensed in another state.

Section 570 was further amended to clarify that inventories of embalming and preparation materials must not only be in containers that are impervious to water and provide protection from contamination, but must also be stored in a manner that provides such protection. The Board was concerned that the proposed language could be interpreted as meaning that it would be acceptable to store plastic bottles of embalming fluid in cardboard boxes on the floor, where it would be impossible to clean off potentially hazardous bodily fluids.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On June 4, 2003, the Board of Funeral Directors and Embalmers adopted final amendments to 18 VAC 65-20-10 et seq., Regulations of Funeral Directors and Embalmers, in order to implement amendments pursuant to a periodic review of regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure 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.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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.*
 - 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
 - 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
 - 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
 - 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
 - 12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The legal authority to promulgate regulations funeral services planning is found in Chapter 28 of Title 54.1, which sets forth statutory provisions for the licensure and practice of funeral establishments and funeral service licensees.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5401000002800000000000>

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the amended regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Amendments to regulation are necessary to address several problems identified during regulatory review. The Board has been concerned that its records did not indicate which licensed funeral establishments were actually branches of a main establishment. The final requirements will protect the public by giving the Board more information on branch establishments that are affiliated with main establishments.

Other amendments or additions to regulation are proposed to provide greater protection to the public health, safety and welfare in guarding against the spread of infectious disease and in assuring the waste materials are disposed of in accordance with local, state and federal law. An amendment to require courtesy card holders to practice in Virginia in accordance with the license held in another state will provide some assurance that funeral directors or embalmers are not practicing outside their expertise. An amendment to require re-inspection of a facility after it has been purchased from a previous owner will also give greater protection to employees and members of the public who come into the establishment as consumers or guests. Finally, an addition to the grounds for unprofessional conduct will make it clear that the Board can take disciplinary action against a license for any violation of law or regulation.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The Board of Funeral Directors and Embalmers has proposed amendments to 18 VAC 65-20-10 et seq. to add a definition and requirements for a branch establishment, modify the requirements for a change of ownership, provide additional access to licensure by endorsement, clarify the scope of practice for courtesy card holders, and require persons who handle remains with a surface transportation and removal service registration to have OSHA training. Other recommendations for the preparation room and its equipment and for documentation of embalming came from a task force on the inspection process.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

Advantages or disadvantages to the public:

The intent of the amended regulations is to protect consumers of funeral services. A requirement that an application for licensure submitted by a branch or a chapel identify the name of the main establishment is intended to ensure that the public dealing with such an entity is aware that it is a branch of another establishment. Requirements for courtesy card holders and for surface removal and transportation companies will provide some assurance that the public is protected by adherence to OSHA standards and by having qualified professionals handling some aspect of the disposition of remains.

There are no disadvantages of these amendments to the public who is better protected and informed by the amendments.

Advantages or disadvantages to the agency or the Commonwealth:

Clarification of certain rules may result in fewer calls to the Board office. Modifications to regulation that responded to the recommendations of the Inspection Task Force may result in fewer citations on inspection for such things as the location of the embalming report or the eye wash station and the storage of embalming and preparation materials. Fewer inspection violations could result in fewer disciplinary cases being opened for the Board.

There are no disadvantages to the agency or the Commonwealth.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Register on December 30, 2002, and the 60-day Comment Period concluded on February 28, 2003. A public hearing was held before the Board of Funeral Directors and Embalmers at the Department of Health Professions in Richmond on February 4, 2003. There was one comment presented at that time, and one written comment received.

One person, representing the Independent Funeral Homes of Virginia expressed opposition to the proposed regulations for a branch establishment. The commenter objected to the requirements for disclosures regarding whether embalming is performed at the branch establishment and whether the body will be transported to another location if necessary. The commenting group objected to the definition of a branch, opposed a requirement for all public materials and advertisements to include the name of the main establishment and believes the proposal discriminates against locally owned and operated independent funeral homes. Finally, the commenter offered an alternative definition for a “branch” or “chapel.”

Board response: In response to comment, the Board modified its definition of a “branch” or “chapel” with language similar to that suggested by the interested parties. It also eliminated the

requirements that were objectionable – namely the requirements to identify on a license and the general price list of a branch the name of the main establishment and to include that information on any public materials or advertisements and the requirements in section 170 for disclosure and a plan for transporting human bodies to another location for preparation. Instead, the Board will require that an application for license by a branch or a chapel indicate the name of the main establishment so that information will be available for Board records and for the public.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 65-20-10. Definitions.

The Board has defined a “branch or chapel” as a funeral service establishment that is affiliated with a licensed main establishment and which conforms with the requirements of § 54.1-2811 of the Code of Virginia.

18 VAC 65-20-50. Posting of license.

Amendments will clarify that any location within the establishment where the license would be conspicuous to the consumers of funeral services is an acceptable location. It is not necessary for licenses to be conspicuous to the “public” attending a funeral or visitation, but it is important to have them available to persons making at-need or preneed arrangements.

18 VAC 65-20-70. Required fees.

Since these regulations were last modified, the Department has adopted “Principles for Fee Development” to establish guidelines for some consistency among fees and professions. In light of the Principles, the Board examines its fees to determine if they are consistent and equitable relative to the actual cost of certain activities. As a result, two fees have been lowered – the fee for a duplicate license or certification is reduced from \$25 to \$15 and the fee for a duplicate wall certificate is reduced from \$50 to \$25. A fee of \$100 is added to offset the cost involved in granting a waiver for the required full-time manager.

18 VAC 65-20-170. Requirements of an establishment license.

Subsection D sets the requirements for a change of ownership; the Board has amended this section to require submission of documentation to determine ownership and to allow the re-inspection to occur on a schedule determined by the Board, but not less than one year after the change. Typically, a change of ownership does not result in immediate changes in the facility, but over time, the new owners may not maintain the standards of the previous owners. Therefore, a delayed inspection might be more useful in detecting possible deficiencies.

A new subsection E is added to require a branch establishment, on its application for licensure, to identify the name of the main establishment with which it is affiliated.

18 VAC 65-20-350. Requirements for licensure by reciprocity or endorsement.

Regulations have been amended to provide greater access to those who were licensed out-of-state and now wish to practice in Virginia. Currently, this regulation has been interpreted to require passage of the national examination for licensure by endorsement. Prior to 1972, there was no national exam, so it was not required in Virginia or any other state. Amendments would clarify that there be comparability of examinations, so if a state examination was the standard in Virginia in the year an applicant was initially licensed in another state, the state examination from that state would be the standard for licensure by endorsement.

18 VAC 65-20-400. Registration of surface transportation and removal services.

The Board has added a requirement that anyone planning to operate such a service verify that he has been trained in the requirements of OSHA (Occupational Safety and Health Administration) for this own protection and that of the public who may be exposed to the remains.

18 VAC 65-20-440. Courtesy cards.

This section has been clarified to ensure that a courtesy card holder only practices in Virginia to the extent of his license in another state. For example, if someone holds only an embalmers license in Maryland, the Virginia courtesy card would allow him to embalm a body in this state but would not entitle them to make funeral arrangements. Also, the license held by the courtesy card holder in another state should be annually verified to the Board.

18 VAC 65-20-500. Disciplinary action.

A general provision stating that failure to comply with applicable federal and state laws and regulations may constitute grounds for disciplinary action has been added.

18 VAC 65-20-570. Condition of preparation room.

Rather than a strict prohibition on storing inventories on the floor of the preparation room, the regulation has been modified to require that materials be stored in a container and a manner that is impervious to water and protects them from contamination.

18 VAC 65-20-580. Preparation room equipment.

- The requirement for a metal or porcelain table has been expanded to require the table to be made of material impervious to water, such as fiberglass.
- The requirement for a hydroaspirator is amended to require either an electric aspirator or hydroaspirator equipped with a vacuum breaker.

- Rather than requiring for an eye wash station in the prep room, the rule is modified to require “a readily-accessible” station.

18 VAC 65-20-590. Disposal of waste materials.

To ensure compliance with section 590, an amendment is necessary to require the establishment to provide the Board or its inspectors with evidence of a contract with a medical waste disposal company.

18 VAC 65-20-700. Retention of documents.

While some lists and documents may be maintained for all branches at the main establishment, the regulation was clarified to ensure that embalming reports be retained at the site of the embalming.

Appendix I. General Price List.

- Under the price list for embalming, two prices are currently required – one for embalming of normal remains and one for autopsied remains. Many establishments have a single price, so a notation is added that if the charges are identical, only a single charge for embalming may be listed on the GPL.
- Under the category for immediate burial, the price range for “immediate burial with alternative container” should be listed as “immediate burial with the lowest price container”. Then a new section “C” is added to list the cost for “immediate burial with the lowest price casket.” There have been various interpretations of this subsection, so it needs to be clarified.
- Under the category of direct cremation, the price range listed needs to be clarified; it should indicate the lowest price of cremation with a container provided by the purchaser to the highest price for a casket acceptable for cremation. In the costs for services listed, the direct cremation with alternative container is amended to show the costs with the “lowest price” alternative container. Then a new section “C” is added to list the cost for “cremation with the lowest price casket.”

Appendix III. Itemized Statement of Funeral Goods and Services Selected.

The disclosure under the embalming section needs to be corrected to state that you do not have to pay for embalming you did **not** approve if you selected arrangements such as direct cremation or immediate burial.

Appendix IV. Embalming Record.

- The instruction to place an “N/A” in any blank that does not apply needs to be amended to make it clear that it is acceptable to draw a line through the section or provide some other indication that a section is not applicable to that embalming. It is not acceptable to simply leave the section blank.
- Under “Aspiration” there needs to be an indication for “yes or no.”

- It is unnecessary to require the signature of the receiving funeral director on this form, so it has been eliminated.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. Likewise, there will be no increase or decrease in disposable family income.