



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	18VAC65-20-10 et seq. 18VAC65-40-10 et seq.
Regulation title	Regulations of the Board of Funeral Directors and Embalmers Regulations for the Resident Trainee Program for Funeral Service
Action title	Fee increase
Document preparation date	7/29/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The issue to be addressed is the need of the Board of Funeral Directors and Embalmers to increase fees to cover expenses for essential functions of the licensing practitioners and facilities, investigation of complaints against licensees and establishments, and adjudication of disciplinary cases required for public safety and security in the Commonwealth.

At the conclusion of the FY02-FY04 biennium, the Board had a modest cash balance of \$28,288. However, the 2006-08 biennium projections indicate expenditures will exceed revenues beginning in FY06, resulting in a cash balance by the end of the biennium of approximately (\$102,902). Therefore, it is necessary for the Board to increase its fees for renewals that begin in January of 2007.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. Since the fees from licensees are no longer generating sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential.

In order to have sufficient funding for the operation of the Board by fiscal year 2007, it is necessary to begin the promulgation of amendments to regulations.

No preliminary regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the Board to consider in its adoption of proposed regulations. Expenditures related to various functions of the Board will be examined to determine if fees directly related to those activities are sufficient to cover the expenses. As in the past, the Board will apply the Principles for Fee Development adopted by the agency in 1999 to ensure equitable distribution of costs and fees that are proportional to the activities they support.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18 VAC 65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees that are sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

The **contemplated regulation is mandated by § 54.1-113**; however the Board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Need for Fee Increases

Fee increases are primarily related to increased costs for enforcement and overall costs for personnel. For the 2003-04 biennium, enforcement costs allocated by the Department to Funeral Directors and Embalmers were \$198,743; it is projected to be \$227,322 in the 2005-06 biennium and \$268,043 in the 2007-08 biennium. Direct and allocated costs are also related to increased need for funds for staff pay and related benefit increases over the past few years, especially in health insurance, and for the general costs of doing business, such as operation of the DHP data system under VITA.

The Board has not increased fees since 1998. In the 1998-00 biennium, expenditures for the Board were \$716,902 and revenue was \$841,502. In the 2002-04 biennium, expenditures for the Board were \$870,679 and revenue was \$834,245. It is expected that revenue will remain relatively stable, since the Board is experiencing very modest growth in the number of licensees. In June of 1998, there were 2,405 entities or persons licensed or permitted by the Board; in 2000, there were 2,463, and in 2005, there are 2,472. During the same period, expenditures related to salaries and health benefits have continued to increase.

Therefore, fee increases for licensees regulated by the Board of Funeral Directors and Embalmers will be necessary by the 2007-08 biennium in order for the Board and the Department to continue performing essential functions of approving applicants, licensing funeral service providers and establishments, inspections and protecting the public from continued practice by incompetent or unethical practitioners.

Comparison of fees in other states

Comparative data on Funeral Directors and Embalmers fees in neighboring states would indicate that fees in Virginia are generally lower for renewals and applications. A comparison of fees for **funeral service licensees and funeral establishments** in neighboring states is as follows:

State	Fees for funeral service licensees	Fees for establishments
Virginia	Application - \$150 Annual renewal - \$150	Application - \$225 Annual Renewal - \$225
Maryland	Application - \$500 Biennial renewal - \$500	Application - \$600 Biennial Renewal - \$600
North Carolina	Application - \$150 Annual renewal - \$60	Application - \$250 Annual Renewal - \$150
Tennessee	Application - \$200 Biennial renewal - \$275	Application - \$575 Biennial Renewal - \$575

		<i>Change of ownership or location - \$575</i>
Kentucky	Application - \$125 Annual renewal - \$50 (for each license – director and embalmer)	Application - \$125 Annual Renewal - \$125
West Virginia	Application - \$160 Annual renewal - \$160	Application - \$350 Annual Renewal - \$350

Renewal Schedule

Funeral service establishments and other facilities licensed or registered by the Board renew every year by January 31st. Funeral service licensees, funeral directors and embalmers renew their licenses by March 31st. While this action will not be concluded in time for renewal in 2006, it is necessary to have an increased fee in place in 2006 to begin collecting the increased application fee and have the higher renewal fee in effect prior to notices being sent for the 2007 renewal.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

In taking action to respond to deficits incurred by a regulatory board, the Board of Funeral Directors and Embalmers may consider three options as follows:

1. Increase fees through the promulgation of regulations.

As required by law, the Board is obligated to establish and collect fees that are necessary to fund operations of the Board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by patients who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

2. General Fund Support.

If the alternative is not to increase professional fees to meet increased cost of operations, then the only other source of funding the cash deficit is the General Fund. To permit General Fund support, the *Code of Virginia* would need to be amended to allow such funding as the *Code* restricts board revenue to fees. There are, however, potential and serious consequences with General Fund support.

1. Increasing General Fund support as more boards acquire deficits in the future.
2. Negative public reaction.
3. The use of general revenues (taxes) to support health regulatory boards which does not target costs to providers and consumers of services.

3. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would basically need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- Investigations and discipline
- License renewals
- Regulation
- Inspections of funeral establishments

Delays in licensing and investigation could place consumers at risk as licensees who should not be practicing would continue to practice, and the supply of practitioners needed for the health care system would be delayed or curtailed. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.