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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.
Regulation title	Regulations of the Board of Funeral Directors and Embalmers
Action title	Regulatory review recommendations
Document preparation date	9/13/05

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.

As a result of its periodic review of Chapter 20, the Board does not intend to propose any substantive changes in regulations. However, amendments will clarify certain rules and terms, revise the renewal schedule for establishments for consistency with other licenses, and make the fees and requirements for reinstatement less burdensome. The goal is to eliminate inconsistencies with rules for other health professions and address problems or questions that have arisen in implementation or enforcement of the current regulations.

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.

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, levy fees, 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.*
- 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...*

In addition to the General powers and duties of a health regulatory board, the Board of Funeral Directors and Embalmers has specific statutory authority to:

§ 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 resident trainees 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 resident trainees.*
- 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.*

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.

The Board intends to amend existing regulations in the following sections:

18VAC65-20-10. Definitions.

The Board intends to change the term “*establishment manager*” to “*manager of record*” for consistency with other health professions that oversee facilities and to more accurately describe the responsibility of the manager.

18VAC65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

In subsection B, the Board intends to provide an exception to those cases that may not be delegated to a subordinate to allow a committee of the Board (the special conference committee) to authorize delegation of any case. The Board will also consider an addition to the listing of cases that may not be delegated to include a case involving a felony conviction of an applicant for licensure or registration as a resident trainee.

18VAC65-20-60. Accuracy of information.

Amendments are planned to eliminate a requirement to notify the Board of a change in the place of employment, but to require any change in the ownership, manager of record or name of a funeral establishment or facility to be made within 14 days rather than the current requirement of 30 days. A funeral service licensee would continue to have 30 days for notification of a change in his name or address.

18VAC65-20-70. Required fees.

The section would be clarified to include a fee for the change in the name of a surface removal and transportation company in the fee currently charged for a change in the manager or establishment name. The fee for reinstatement will be amended for consistency with other professions in which a flat fee is charged for reinstatement, regardless of the number of years a license has been lapsed or expired. The Board will also consider adding a fee for additional programs offered by an approved continuing education provider.

18VAC65-20-120. Expiration dates.

The Board will consider changing all renewal dates to March 31st of each calendar year for consistency with the renewal schedule for funeral service licenses, funeral director licenses and embalmer licenses.

18VAC65-20-140. Reinstatement of expired license or registration.

In order to make reinstatement for its licensees consistent with the DHP Principles for Fee Development and with other professions, the Board will amend provisions for reinstatement to

allow a late renewal for up to one year following expiration and then reinstatement thereafter. Evidence of continued competency would include up to three years of CE, but after a license has been expired for three years or more, an applicant for reinstatement would have to pass the state examination (current requirement) but would not have to reapply for licensure.

18VAC65-20-151. Continued competency requirements for renewal of an active license. An amendment would allow a licensee to carry over up to three hours of continuing education from one year to the next renewal cycle.

18VAC65-20-170. Requirements for an establishment license. Consistent with the change in definitions, this section will be amended to utilize the term “manager of record” and to specify what is required of the manager in terms of being fully engaged and responsible for the operation of the establishment and practicing full-time for at least 40 hours a week.

18VAC65-20-350. Requirements for licensure by reciprocity or endorsement. The subsection with reference to reciprocity can be deleted since neither this board nor any other health regulatory board has a reciprocity agreement with another state or jurisdiction. Persons licensed in other states are licensed in Virginia by endorsement.

18VAC65-20-400. Registration of surface transportation and removal services. The Board may add a waiver from the requirement for registration by eliminating the emergency medical services agencies.

18VAC65-20-510. Embalming report. The Board intends to eliminate any reference in this section and others to an Appendix and replace it with language referring to a form prescribed by the Board.

Other standards for embalming in Part VII will be reviewed with the inspectors for the Department to determine if requirements are unclear or insufficient to address problems being encountered.

18VAC65-20-700. Retention of documents. Currently price lists, itemized statements and other reports are required to be maintained for one year. However, inspections of funeral establishments only occur every two to three years, so documents may need to be retained for up to three years in order to be available for inspectors.

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.

Beginning with a work session in October of 2004, the Board identified several issues that needed to be addressed through regulatory action. At that meeting, they discussed continuing education and the advisability of maintaining the current policy of board-approved providers or

in making some revision in the process. Duties of an establishment manager were also reviewed in light of a few disciplinary cases involving the accountability of the manager. The Board held discussions with the Executive Directors of the Boards of Pharmacy and Veterinary Medicine, both of which have a licensee designated as the person in charge of the facility. As a result of its discussion, the Board referred these issues and others to the Legislative/Regulatory Committee to work with funeral associations and other interested parties on a thorough review of regulations. A Notice of Periodic Review was issued in April of 2005, so comment of the review could be considered and incorporated into the recommendations of the Committee, which has identified the regulations that may need to be clarified or specified.

Family impact

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

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

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The Notice of Periodic Review was published in the Register on April 4, 2005 and sent to the Public Participation Guidelines list with comment requested until May 4, 2005. The Virginia Funeral Directors Association commented on the Resident Trainee and Preneed regulations but made no specific comment on Chapter 20, the General Regulations. Other interested parties have actively participated with the Regulatory/Legislative Committee in the section-by-section review of this regulation.