



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 65-20 – Agency and Title

Date

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The proposed regulation establishes continuing education requirements for licensed funeral service personnel, requirements for continuing education providers, and provisions for enforcement of the above requirements. The board has proposed requiring that each licensee take five hours of continuing education provided by a board approved continuing education provider. The language of the proposal does not mandate specific content for the continuing education, only that the five hours emphasize ethics, standards of practice, preneed services, and laws and regulations governing the profession of funeral service in Virginia.

The procedures for approving continuing education providers depend on whether the provider is an existing provider of continuing education services or a new provider. All existing not-for-profits with an established record of offering continuing education in this field are automatically approved. New providers must obtain approval from the board each year. To obtain approval, the firm must pay an annual \$200 review fee and submit detailed information about courses and instructors, unless this information has not changed from the previous year. If nothing has changed, the new provider need only notify the board of this, in which case,

approval for the next year is automatic and requires no fee. All providers must maintain records for three years and must provide this information to the board upon request.

Estimated Economic Impact

The Board of Funeral Directors and Embalmers is required to establish continuing education requirements for its licensees. The board is authorized to require up to 5 hours of continuing education per year. Staff at the Department of Health Professions reports that most complaints concerning licensed activities involve issues related to ethics, pre-need contracts, and compliance with current federal and state laws regarding funeral practice. The board has elected to require of its licensees the maximum allowable five hours of continuing education. The proposed rule states that the hours must be taken from licensed providers and that the five hours must emphasize the ethics, standards of practice, pre-need, and laws and regulations governing the profession of funeral service in Virginia.

The costs associated with this regulation include course fees, costs for travel and lodging, and lost work or leisure time. Measuring these costs is complicated by a number of factors, but some estimates are possible. This regulation affects 1,573 board licensees. Agency staff indicate that a majority of licensees already participate in some continuing education. Specific information about how many licensees do not currently take courses and how many hours are taken by those who do currently take some courses is not available. Documentation with the board's submission of this proposal indicate that course fees will range between \$45 and \$100 for the required 5 hours. Travel costs will vary widely. Some courses are associated with meetings that would be attended whether or not courses were available. In other cases, a few hours of travel and even an overnight stay may be required. It seems reasonable to assume two hours as the average time lost to travel.¹ The U.S. Bureau of Labor Statistics reports that average wages of licensed funeral personnel range between \$17 and \$24 per hour. Given these estimates, we can estimate an annual average cost on the order of \$200 for each person not previously taking these courses. Even if only 500 licensees fall into this category, the estimated total cost will be on the order of \$100,000 per year. Additional costs will be incurred by those already taking some continuing education hours but fewer than five and those licensees who are taking courses in other subject areas and who may need to add hours in the mandated subject areas.

Thus, the \$100,000 should be taken as a lower bound on potential costs of compliance with this proposal. The increased cost of providing funeral services will be shared between three groups: consumers of the services, owners of funeral establishments, and licensees. Who actually pays the costs depends on the level of competition in local funeral service markets and the tightness of the local labor markets.

It is also possible that the increased cost of providing funeral services will result in a reduction in the supply of funeral services. This would happen if the increased costs imposed by this regulation resulted in a reduction in hours or the closing of a marginal funeral service establishment. While the \$200 annual cost per licensee may not appear to be enough to result in a reduction in supply, not enough is known about Virginia funeral service markets to draw a firm conclusion about this. In fact, at least one commentator on the funeral services industry actually points to the closing of financially marginal establishments as *an advantage* of continuing education regulations. (See Continuing Education: An Ethical Issue, *Robert W. Ninker, CAE*, available at http://www.fea.org/Funeral%20Ethics/continuing_education.htm.) This is precisely the sort of anti-competitive effect that should be avoided. Although surviving businesses in this industry would find it to their advantage if marginal firms were to close, this would result in less competition and, hence, probably a loss of economic value to consumers. Thus, it is important that the costs of continuing education regulations be kept to a minimum.

While it is possible that a continuing education requirement could provide some economic benefit, there are a number of possible arguments in favor of such requirements that are not credible. First, as noted above, driving economically marginal providers out of business is a **cost**, not a benefit, of continuing education. Second, it is often argued that continuing education requirements are actually beneficial for firms since the classes will improve the quality of services provided. This improved quality of service, the argument goes, will result in higher profits for the firm. The idea that the government could or should be in the business of forcing firms to make higher profits is difficult to accept. If an agency of government believes that firms are missing profit opportunities, then a friendly letter of advice, or maybe its electronic equivalent, is the most that is called for.

¹ This cost will tend to fall as more people take on-line courses. On the other hand, the effectiveness of on-line courses relative to in person training is not known.

Finally, it has been argued² that continuing education (CE) requirements will improve the public perception of the profession as a whole. This, in turn, will improve the business climate for firms in this profession, raising all the boats. Assuming for a moment that public perceptions would be improved by a CE requirement, one may ask why the government should be involved. Quality certification of businesses and professionals in a variety of industries has been provided by private associations since the days of guilds. There is nothing to prevent funeral directors and embalmers from forming their own private certification agency. This agency could provide firms with plaques and certificates noting their good judgment in having taken 5 hours of continuing education.

One problem with having the government provide this service, even on a pay-as-you-go basis, is that there isn't any evidence that continuing education improves the quality of service from funeral professionals or that it protects the public health and safety. There is a fair amount of discussion on the value of CE from organizations that sell continuing education services, but no independent, scientifically credible evidence could be located for the preparation of this report. Thus, the government could be getting involved in a certification program that actually misinforms the public about the quality of service from a given professional group.

The argument put forth by the board is different from those already discussed. According to the board, the expected benefits from these regulations arise according to the following logical sequence.³ (1) Each year, approximately 65⁴ founded cases are brought by consumers concerning funeral service providers who failed to follow applicable ethical standards, violated applicable state or federal law, or did not follow applicable standards for arranging and financing pre-need contracts. (2) These violations impose costs on consumers and should be reduced or eliminated. (3) At least a significant proportion of these violations are due to unfamiliarity with the applicable standards on the part of licensees. (4) Five hours of classes per year that

² See the article by Ninker cited previously in this paper.

³ One point not included in this list is that, as a whole, funeral directors as a group may benefit from the public perception that they are more professionally responsible because they are subject to continuing education requirements. (This argument is made explicitly in the article cited in the previous paragraph.) That there may be benefits to the licensees from a system of professional certification does not justify a regulatory response. Generally, professional certification may be handled by private membership organizations.

⁴ According to the board, in FY2000 there were under 35 complaints against funeral establishments and under 45 complaints against funeral directors. Since there may be some overlap in complaints, the total number of independent violations may be smaller than the total of under 90 complaints some 70% of these were found to have merit. Also, the board's documentation did not indicate the relative severity of complaints.

emphasize ethics, standards of practice, pre-need, and laws and regulations will result in fewer violations.

Taking as given the number of founded complaints, the economic cost of these complaints depends on the costs imposed on individuals by the violations. The standard measure of costs for an event is the amount consumers would be willing to pay to avoid that event. Little or no data is available to assess the willingness to pay to avoid the violations of funeral service standards that occur each year. We do know that the complaints vary significantly in the seriousness of the violation. The board applies a score between one (1) and six (6) as a measure of the seriousness of the violation; one being the most serious and six being the least serious. Assuming that the board's scoring is reasonably related to the legitimate damages imposed on consumers, then the most cost-effective rule would be one that had a greater likelihood of reducing the more serious violations rather than the least serious. Without more information, it is not possible to know whether this proposed rule is more likely to reduce one type of violation or another. Later in this analysis, an effort will be made to calculate what level of damages would be needed to justify these regulations on the basis of generating a gain that is greater than the cost of achieving it.

The board reports that a substantial portion of the founded cases are due to licensee unfamiliarity with the applicable standards rather than to an intentional violation. Knowing the proportion of unintentional violations is important because it would be reasonable to assume that five hours of continuing education would not be effective in preventing many of the intentional violations. No information was available on the distribution of complaints according to the level of intent or negligence displayed by the licensee. For some subset of complaints, where the board determines that the violation is primarily due to inadequate management attention to compliance issues, the board will require some continuing education hours as part of any disciplinary action it may impose. When violations result from gross mismanagement or even willful disregard of the standards of practice, one may question whether any amount of continuing education requirements can have much of an effect on whether additional violations of this type will occur in the future. Thus, even if we assume that continuing education requirements *will* prevent a subset of complaints, it almost certainly *will not* prevent others. In fact, given that a majority of licensees already take some continuing education, it would seem

likely that some of the violations occurring now are by licensees already taking continuing education classes.

The expected benefits of this proposed rule depend directly on the number of cases that will be prevented by this rule. If it is true that there are about 65 founded cases per year, then we can assume that the number of cases that would be prevented by this rule would be somewhat fewer than 65 per year, possibly significantly fewer. Unfortunately, there is no data readily available to allow a good estimate of the expected reduction in founded cases that would occur due to a new continuing education requirement. Also, reductions in founded cases may not measure all of the benefits of continuing education. Some improvement may occur in professional practices that would not have been the subject of a complaint. Those licensees who take continuing education classes voluntarily presumably do so because they feel that it improves the quality (and hence market value) of the services they provide.

The final step in thinking about the benefits likely to result from this proposal involves an assessment of the type and amount of coursework required. As already noted, the department reports that most complaints concerning licensed activities involve issues related to ethics, pre-need contracts, and compliance with current federal and state laws regarding funeral practice. The board's response is to require that its licensees take the maximum allowable five hours of continuing education, that the hours must be taken from licensed providers, and that the five hours must emphasize the ethics, standards of practice, pre-need, and laws and regulations governing the profession of funeral service in Virginia.

Even assuming that well-targeted continuing education could prevent complaints in the areas of concern, it is simply not known whether the education requirements in the regulation effectively address the issues that give rise to consumer complaints. For example, how will the 5 hours of CE be divided between the required subjects?

This also raises the question of how often a given course should be required. How often do funeral providers need to be reminded about their ethical obligations? Every year? Every two years? Given that the ethical standards in the industry do not change significantly from year to year, then a short (say, two or three hours) course every two years would seem sufficient unless the board has evidence to the contrary. Any more frequent or more lengthy requirements would be unlikely to produce any additional economic benefit whatsoever. It could be that the

laws and regulations in this area change so frequently that some annual coursework in this area is justified. However, that is not explicitly required in this regulation. It is not at all clear how much coverage of laws and regulations will occur in classes taken pursuant to this proposal. Again, the board has not justified either the frequency or length of training based on the expected gain to the public. These rules could produce a minimal amount of gain for the maximum cost allowed by statute.

Summary

We have argued above that even under the most favorable assumptions, these education requirements will affect only some fraction of the expected 65 or so annual founded cases against funeral homes and funeral service providers. In addition, the structure of the education requirements do not appear designed in a way that would maximize their effectiveness in reducing violations of funeral service rules. A fairly optimistic assumption would be that these rules will reduce founded cases by as much as half. In addition, our estimates indicate that complying with these rules will cost on the order of \$100,000 per year or more. With an assumed reduction of 33 founded cases per year, the average cost will be at least \$3,030 per case reduced. Under less optimistic assumptions, the cost per case could be much higher. Given the analysis here, there is no reasonable assurance that this proposal will provide any net benefit to Virginia and could easily result in a net economic cost.

Businesses and Entities Affected

The proposed rule affects approximately 1,573 licensees of the Board of Funeral Directors and Embalmers. In addition, the rules affect an unknown number of firms and associations that may provide continuing education services under this regulation.

Localities Particularly Affected

This proposal applies statewide and is not expected to have a disproportionate impact on any particular localities.

Projected Impact on Employment

The proposed rule raises the cost of maintaining a license as a funeral service provider. However, the increased cost is not likely to be enough to cause a measurable reduction in the number of funeral service providers. Thus, no measurable effect on employment is anticipated.

Effects on the Use and Value of Private Property

The proposed regulation protects the interests of existing, not-for-profit continuing education providers at the expense of potential entry by competing firms. This increases costs to the licensees and their customers and reduced the ownership value of for-profit providers of continuing services.