



November 1, 2018

The Virginia Board of Funeral Directors and Embalmers convened for a Regulatory Advisory Panel meeting on Thursday, November 1, 2018 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2<sup>nd</sup> Floor, Training Room #2, Henrico, Virginia.

**BOARD MEMBERS PRESENT:**

Blair H. Nelsen, FSL, Panel Chair  
Joseph Frank Walton, FSL

**BOARD MEMBERS ABSENT**

Mia F. Mimms, FSL, JD

**OTHER PANELISTS PARTICIPATING:**

Annette Greenwood, Estate Assurance Systems, Inc.  
Paul Harris, Regulatory Support Services  
Bruce Keeney, Association of Independent Funeral Homes of Virginia  
RD Monson, Homesteaders Life Company  
James Young, CLU, CIE, State Corporation Commission

**DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING:**

Erin Barrett, Assistant Attorney General, Board Counsel  
Sarah Georgen, Licensing and Operations Manager  
Lynne Helmick, Deputy Director  
Corie Tillman Wolf, Executive Director  
Elaine Yeatts, Sr. Policy Analyst

**OTHER GUESTS PRESENT**

Angela Bezik, Virginia Funeral Directors Association  
Tony Harrison, Atlantic Coast Life Insurance Company  
Barry D. Robinson, Virginia Morticians Association  
Rusty Spence, EOL Solutions

**CALL TO ORDER**

Mr. Nelsen called the meeting to order at 9:35 a.m. and asked the Board and panel members and staff to introduce themselves.

With two members present at the meeting, a quorum was established.

Ms. Tillman Wolf then read the emergency egress instructions.

## **ORDERING OF THE AGENDA**

Ms. Tillman Wolf requested that the Petition for Rulemaking first during the discussion to allow for Ms. Yeatts to provide an overview for the panel's consideration.

## **PUBLIC COMMENT**

There was no public comment.

## **CHARGE OF THE RAP**

Mr. Nelsen stated that the Regulatory Advisory Panel (RAP) was convened pursuant to 18VAC65-11-70 of the Board's Regulations related to Public Participation. The RAP was composed to provide professional specialization or technical assistance to the Board regarding the Preneed Funeral Planning regulations and to make recommendations for the periodic review of the regulations; and to make recommendations regarding a petition for rulemaking.

Mr. Nelsen stated that the Board's periodic review of the preneed regulations was conducted pursuant to 18VAC65-11-110 and the Governor's Executive Order 14. He further stated that the periodic review provides the process for a Board to review and receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance.

## **DISCUSSION**

### *Recommendations regarding Petition for Rulemaking (Watkins)*

Ms. Yeatts summarized the petition and referred the panel to the comments made on the Virginia Regulatory Town Hall website. She noted that the full Board considered the petition at the last meeting on October 16, 2018 and had referred the petition to the RAP for consideration.

Ms. Yeatts noted that an issue related to preneed regulation recently arose based upon the concerns raised by a constituent of Delegate McGuire who encountered unanticipated costs from a preneed burial contract. Representatives from DHP (Ms. Yeatts and Ms. Tillman Wolf) and DPOR (Cemetery Board) met with Delegate McGuire and his constituent to discuss concerns and possible solutions. One suggested solution related to improving the disclosures for preneed contracts to ensure consumers receive clear information regarding guaranteed and nonguaranteed goods and services.

Mr. Nelsen noted that the panel should review the issue of disclosure in the review of the Regulations.

### *Review of Regulations for Preneed Funeral Planning (18VAC65-30-10 et seq.)*

Ms. Yeatts explained the process for a Notice of Intended Regulatory Action (NOIRA) and reminded the panel to make recommendations regarding the Board's regulations. Legislative recommendations may also be noted separately.

Ms. Tillman Wolf questioned whether the disclosures currently in the Board's regulations could be included in an Appendix rather than the text of the regulations. This would enable the Board to address certain issues that arise or make routine edits without undergoing the regulatory process. Ms. Barrett stated concern that legal issues that could arise if there are changes to the disclosures outside of the regulatory process and did not recommend moving/adding the disclosure information to the appendix.

*Recommendations for Periodic Review of and Amendments to Regulations for Preneed Funeral Planning*

Mr. Nelsen reviewed, and the panel discussed the recommendations by section of the regulations as follows:

**18VAC65-30-10. Definitions.**

- Consider removal of definition of "capper, steerer, or shill."

**18VAC65-30-50. Solicitation.**

- Add clarifying language that registered funeral service interns shall not engage in funeral preneed planning and/or sales.

**18VAC65-30-60. Records; general.**

- For consistency with record retention requirements for other funeral-related documents, change requirement in (B) that preneed contracts and reporting documents shall be maintained on the premises of the establishment for three years after the death of the contract beneficiary.

**18VAC65-30-70. Record reporting.**

- In (A)(4), the alphabetical or chronological listing of all preneed contracts should also include where the contract is funded (e.g. name of insurance provider)/where the funds are maintained in addition to the existing requirement of how the contract is funded.
- In (B), consider requiring notification to the board and the existing contract buyer(s) when a contract provider changes ownership. Any notification should include any name/address change and whether the new establishment intends to honor or dishonor existing contracts.
- Consider whether notification regarding change of ownership is to each individual contract buyer or by public notification means.
- Consider addition of requirement that the contract provider who discontinues business operations provide a current list of preneed contracts to the board at the time of closure.

**18VAC65-30-80. Content and format.**

- No changes recommended by the RAP.

**18VAC65-30-90. Disclosures.**

- Consider language to require that licensees obtain acknowledgement from contract buyers that they have received the general price list and preneed disclosure questions and answers.

**18VAC65-30-100. Finance charges prohibited.**

- No changes recommended by the RAP.

**18VAC65-30-110. Cancellation or transfer of contract.**

- Consider whether reference to Virginia Code § 64.2-730 appropriate in (D).

**18VAC65-30-120. Escrow account.**

- No changes recommended by the RAP.

**18VAC65-30-130. Real estate.**

- No changes recommended by the RAP.

**18VAC65-30-140. Personal property.**

- No changes recommended by the RAP.

**18VAC65-30-170. Trust accounts.**

- No changes recommended by the RAP.

**18VAC65-30-180. Life insurance or annuity.**

- Consider whether reference to Virginia Code § 54.1-2820(C) is appropriate in first paragraph.

**18VAC65-30-200. Supplies and services.**

- No changes recommended by the RAP.

**18VAC65-30-220. Content of preneed contracts.**

- Review overall content of contract requirements for accuracy and clarification of language.
- Consider clarification of language related to “guaranteed” prices/services/goods to avoid confusion for consumers.
- Change reference to Virginia Funeral Director to Virginia Funeral Service Licensee to accurately reflect licensure type.

**18VAC65-30-230. Content of disclosure statements.**

- Review overall content of disclosure statements for accuracy and clarity for contract buyers/consumers, as well as compliance with federal FTC regulations.
- Consider clarification of language and/or further explanation related to “guaranteed” prices/services/goods to avoid confusion for contract buyers/consumers.

- Consider addition of language to encourage contract buyer/consumer to maintain a copy of the preneed contract as they would any legal document (e.g. safe place, provide to family member, etc.).
- Consider addition of language to explain what happens if a funeral home closes or changes ownership and what impact that change may have on a contract buyer's/consumer's choice.

**NEXT MEETING**

Mr. Nelsen stated that the recommendations of the RAP will be presented to the full Board at the next meeting scheduled for January 24, 2019. He stated that the Board will consider those recommendations for purposes of developing a NOIRA.

**ADJOURNMENT**

With all business concluded, the meeting adjourned at 10:57 a.m.

  
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Blair Nelsen, FSL, Panel Chair

  
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Corie Tillman Wolf, J.D., Executive Director

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