



Proposed Regulation 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	12/6/06

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*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

As a result of its periodic review of Chapter 20, the Board has proposed a number of clarifications and amendments to address certain issues or questions relating to compliance with regulations. Amendments will specify the terminology and responsibilities for an establishment manager of record, revise the renewal schedule for establishments for consistency with other licenses, clarify the licensee's responsibility for compliance with continuing education, increase the requirement for retention of records from one year to three years, and streamline the requirement for a detailed embalming report.

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., the 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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The Board reviewed each regulation in open meetings with the participation of representatives of funeral associations and received input about what needed to be changed. The goal of the proposal was to address questions that have arisen from licensees or inspectors and issues relating to compliance with regulations. Where possible, the Board has tried to make the regulation more flexible and less prescriptive, but has made rules more prescriptive where it was necessary to assist with the licensee with an understanding of his responsibilities relating to the regulations. Compliance with federal and state regulations by funeral service establishments and licensees is essential to protect the public health and safety relating to the financial arrangements and to the preparation and disposition of human remains. Clarity in the regulations will assist the regulants in compliance.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The Board has amended existing regulations to accomplish the following:

- The Board has changed the term "*establishment manager*" to "*manager of record*" for consistency with other health professions that oversee facilities and has specified more accurately the responsibility of the manager.
- The Board has provided 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, and has added 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.
- Amendments eliminate a requirement to notify the Board of a change in the place of employment but 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.

- The renewal dates for all licensees are changed to March 31st of each calendar year for consistency with the renewal schedule for funeral service licenses, funeral director licenses and embalmer licenses.
- The Board has eliminated the specific embalming report and specified four items that such a report must contain.
- Itemized statements and other reports will be required to be maintained for three years rather than the current requirement of one year.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantage to the consumers of funeral services could be an increase in the accountability and responsibility of the manager of record for the condition and maintenance of a funeral establishment and for compliance with federal and state rules relating to public health and safety. By clarifying a number of regulation, the regulated entities may better understand their responsibilities and may be more likely to be in compliance. There are no disadvantages to the public. There is also some advantage to the public to require maintain of all forms and records for a period of three years. Should there be questions relating to the services provided by a funeral establishment, consumers and/or the establishment may be better protected by the availability of records and forms.

2) There are no advantages or disadvantages to the Commonwealth.

3) There are no other pertinent matters of interest.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines</p>
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	mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals and businesses that are likely to be affected by the regulation are funeral service licensees and funeral establishments.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are currently 507 licensed funeral establishments; of that number approximately 350 would be considered small businesses. The rest are establishments that are owned by large, national or international corporations. There are 1434 licensed funeral service providers, 6 embalmers, and 112 funeral directors who are employees of those establishments.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There may be very modest additional costs relating to the retention of records for 3 years, but most establishments already retain records for at least that period so the impact should be minimal. The elimination of Appendix IV with the detailed embalming report will result in a savings in personnel time for completion of a shortened version of the report.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets 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. Several options relating to approval of continuing education were discussed, but no changes in the approval of providers were recommended.

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 identified the regulations that needed to be clarified or specified.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

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.

The Notice of Intended Regulatory Action was published in the Register on November 14, 2005 and sent to the Public Participation Guidelines list with comment requested until December 14, 2005. There was no comment on the NOIRA.

Family impact

Please assess the 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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Sets out definitions for words and terms used in the regulation	Deletion of definition for “establishment manager” and addition of definition for “manager of record” <i>The definition remains virtually the same but the term has been changed as used in the regulation.</i>
15	n/a	Sets out the criteria for delegation of certain disciplinary cases to an agency subordinate	Adds felony conviction by an applicant to the list of cases that cannot be delegated but also adds an exception to the prohibition on delegation of certain cases to allow a committee of the board to determine if it is appropriate to delegate. <i>While the Board agrees that the more serious accusations of unprofessional conduct should be heard by an informal</i>

			<p><i>conference or formal hearing before the Board, certain cases can be referred to an agency subordinate. In 2005, the law was changed to allow someone with a felony conviction who has successfully fulfilled all conditions of his sentence to apply for licensure. Such an application would be referred to an informal conference for a recommendation on licensing, and the Board believes it should not be delegated to a subordinate. However, the current prohibition on delegating certain cases needs some flexibility on a decision to delegate, so the recommended amendment would allow the committee that determines probable cause to make exceptions to the list. The determination to delegate any case that falls within the prohibited list for delegation would have to be made by board members rather than staff.</i></p>
60	n/a	Sets out the requirements for notifying the board and for maintaining accurate information with the board office.	<p>Currently, regulations require notice to the Board within 30 days when certain events occur – including a change in mailing address, name, place of employment, or change in establishment owner, manager or name.</p> <p><i>The Board eliminated the requirement for notice when there is a change place of employment since a licensee must maintain a current mailing address. It also revised the requirement to 14 days for notice whenever the establishment has a change in ownership or manager of record, since those are changes that may necessitate a reinspection or other action by the Board.</i></p>
120	n/a	Sets out the expiration dates for licenses and permits	<p>Changes the deadline for renewal of an establishment license from January 31 to March 31 for consistency with the funeral service license. Also changes the courtesy card expiration from December to March.</p> <p><i>Consistency in renewal deadline will be less confusing to licensees and will enable board staff to focus the renewal activity to one period of time.</i></p>
130	n/a	Sets out the requirements for renewal of licenses and permits	<p>Adds a requirement that the Board shall not renew a license if the licensee fails to attest to compliance with continuing competency requirements.</p> <p><i>Failure to attest on the form will trigger a notice to a licensee, who will then have the opportunity to correct the error, if there is one. If the licensee has not fulfilled the requirements for continuing education, he will not be eligible for renewal until he has obtained the 5 hours of CE.</i></p>
153	n/a	Sets out the requirements for documenting compliance with continuing education requirements	<p>Adds to the responsibility of the licensee that the subject and purpose of the CE courses are in compliance with section 151, in which it specifies that the courses must be directly related to the scope of practice of funeral service and not principally for the promote or sale of goods, products or services.</p> <p><i>The additional language was necessary to clarify that licensees are responsible for choosing CE that complies with their regulations, rather than relying on approved sponsors that may offer a variety of courses – not all of which can be used to meet the requirements of the board.</i></p>
170	n/a	Sets out the requirements for an establishment license	<p>Terminology was changed from establishment manager to manager of record. An additional sentence specifies that the establishment owner cannot abridge the authority of the manager relating to compliance with laws and regulations.</p> <p><i>Such a requirement is necessary to ensure that the manager</i></p>

			<i>has full authority for compliance with law and regulation. While the owner may maintain authority to make business decisions for the establishment, it is the responsibility of the manager to ensure that there is no unlicensed activity, that forms and disclosures are appropriately given to consumers, that the establishment meets inspection requirements, etc. If the owner attempts to interfere with the manager’s authority relating to compliance, the Board would have grounds for action against the establishment license.</i>
n/a	171	n/a	<p>Sets out the responsibilities of the manager of record. While the Board has always had a requirement for an establishment manager, the responsibilities for that person have not been clearly delineated. In the proposed regulation, the role of the manager of record is consistent with manager of the other two establishments regulated within the Department of Health Professions – pharmacies and veterinary establishments.</p> <p>In §54.1-2810, the law requires a funeral establishment to have a licensee in charge, <u>full time</u>, but neither the law or the regulation has specified what that means. It has been interpreted by some to mean that a manager cannot hold another part-time job elsewhere or that the manager must be at the establishment at least 40 hours a week. The proposed regulation would specify that full-time means 40 hours of employment, which would allow more flexibility for a manager of record, depending on the needs and schedule of the establishment.</p> <p>The proposed rule also sets out the accountability of the manager for such things as maintenance of the facility within established standards, retention of records, and reporting to the board changes in information. A more specific regulation for the manager will enable the board to hold those individuals responsible for non-compliance in an establishment for which they are the manager of record.</p>
240	n/a	Sets out the requirements for examination and applications	<p>Changes the requirement for submitting an application package to sit for the state examination from not less than 45 days prior to the examination date to not less than 30 days. The change will allow more flexibility for students who are preparing to sit for the exam.</p>
350	n/a	Sets out requirements for reciprocity or endorsement	<p>Since the board has no agreements of reciprocity established with any other jurisdiction, that language was removed from the regulation to avoid confusion in terminology. Applicants from other states are licensed by endorsement of their licensure and credentials.</p>
420	n/a	Sets out the prohibition against a surface removal and transportation service misrepresenting itself as an official of any local jurisdiction	<p>In the proposed amendments, the last sentence would be eliminated. <i>To say that the Board is the sole determinant of the appropriateness of the pertinent qualities of the service and staff implies that the service must seek board approval for its name, uniforms, services, etc. If a complaint of misrepresentation is filed, it would be investigated and adjudicated as any other violation of law or regulation.</i></p>
440	n/a	Sets out the requirements for issuance of a courtesy card permit to an out-of-state licensee	<p>A clarification is needed to ensure that the “license” that is required to be in good standing with the applicant’s licensing authority means the “funeral service” license, rather than a business or other type license.</p>
500	n/a	Sets out the grounds for	<p>Corrects an error in a cite</p>

		disciplinary action	
510	n/a	Requires a funeral establishment to prepare and maintain an embalming report on a form prescribed as Appendix IV	<p>The proposed regulation would eliminate Appendix IV and most of the required information, relating to the condition of the body and the techniques and supplies used for the embalming. Instead the report would contain basic information to include: 1. The name of the deceased and the date of death; 2. The date and location of the embalming; 3. The name and signature of the embalmer and the Virginia license number of the embalmer; and 4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor.</p> <p><i>With the concurrence of inspectors, it was agreed that the detailed information about the body and the embalming was not necessary and was virtually impossible to verify in an inspection. Recordkeeping on the embalming of bodies is necessary for compliance with state and federal rules, so the data required in the proposed regulation would be sufficient for those purposes.</i></p>
590	n/a	Sets out requirements for disposal of waste materials	<p>The rule was clarified to ensure that licensees understand the need to comply with federal regulations, such as those of the Occupational Safety and Health Administration.</p>
700	n/a	Sets out the schedules and requirements for retention of certain documents	<p>The retention schedules are amended for price lists, itemized statements and embalming reports from one year to three years. The responsibility for such retention is placed with the manager of record.</p> <p><i>Records need to be maintained for more than one year because funeral establishments are inspected approximately once every three years. In addition, an investigation of unprofessional conduct may not be initiated and completed within one year of an event for which the record must be reviewed.</i></p>