



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Funeral Directors and Embalmers
VAC Chapter Number:	18 VAC 65-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Funeral Directors and Embalmers
Action Title:	Periodic review
Date:	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Regulations 18 VAC 65-20-10 et seq. provide requirements for the licensure of funeral service personnel and funeral establishments, as well as for registration of crematories and transportation services and the issuance of courtesy cards to out-of-state licensees. Provisions also establish requirements for renewal or reinstatement of a license and set fees to support the regulatory and disciplinary activities of the board. Regulations set forth standards for an embalming room and preparation room in an establishment and for the retention of documents and disclosures to consumers. Finally, grounds for unprofessional conduct of a licensee and for standards of practice are established, including restrictions on advertising.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 28 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 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.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of*

Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Chapter 28 of Title 54.1 sets forth statutory provisions for the licensure and practice of funeral establishments and funeral service licensees. The web link for Chapter 28 is:

http://www.dhp.state.va.us/fun/fun_laws_regs.htm#law

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the board's review of its regulations governing the practice of funeral services was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public

comment was received from March 26, 2001 until April 25, 2001. During that period, no comment was received from members of the public. However, the Regulatory Review Committee specifically consulted with others who have particular expertise in certain aspects of practice, reviewed comments regarding regulations received in previous months, reviewed recommendations resulting from a Board workshop in 2000 on issues in the funeral industry, and considered recommendations from a Task force on the Inspection Process. During its meetings, the Committee invited and received full participation by parties interested in the regulations of the Board.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

- 1) Achieve a reduction in the number of facility violations.

The investigators within the Department of Health Professions perform an inspection of each funeral establishment approximately every three years. Information from the Enforcement Database of the Department indicates the following

<u>YEAR</u>	<u>INSPECTIONS</u>	<u>DEFICIENCIES</u>	<u>AVG/INSPECTION</u>
2001 YTD 8/1/01	78	294	3.8 (*)
2000	289	1167	4.0 (*)
1999	250	508	2.0
1998	90	232	2.6
1997	73	205	2.8
1996	94	247	2.6

(*) The average has increased because the inspection form was updated in 2000 to include current laws and regulations and the inspectors have been better trained to identify deficiencies. Also the process for entering inspections into the database was changed in 2000 to assure that all inspections are entered.

There are presently 499 current active funeral establishments.
The reduction of inspections in 2001 is due to the transition from a two to a three-year inspection cycle.

To ensure that members of the public are protected in their contacts with the funeral industry, both fiscally and physically, the Board has been actively striving to educate licensees about deficiencies that inspections have uncovered. Periodically, the Enforcement Division of DHP prepares its “Dirty Dozen” list of most-commonly cited deficiencies; that information is disseminated to the licensed establishments with citations of the law or regulation being violated and suggestions for correction. Education coupled with enforcement is a high priority of this Board.

In addition, the Board was concerned about occasional differences between its interpretation of a regulation versus that of an inspector. Since inspections are performed by investigators working

in various regions of the state, there was occasional disparity among the reports as to what would be cited as a violation or deficiency. To address individual differences and disparities in interpretations, the Board involved all the inspectors and the Deputy Director for Enforcement in its workshop in September, 2000. From that evolved a Task Force on the Inspection Process to review each regulation as it related to an item on the inspection checklist. From that effort, the Board developed an Inspection Guidance Document to offer licensees and inspectors its interpretation of how each regulation is to be enforced. For example, regulation 18 VAC 65-20-540 requires that “the floor and wall surfaces shall be of a material or covered by a material impervious to water;” the guidance on that regulation is that enamel-based paint is an acceptable surface. That guidance has alleviated a lot of confusion among licensees and inspectors, some of whom understood the regulation in that manner and others who did not. In offering guidance, the Board was careful to interpret the regulation rather than alter it, but did use the work of the Task Force in making several recommendations for amendments during its regulatory review.



Funeral Dirty Dozen
2000.doc

- 2) Achieve positive ratings on the Customer Service Satisfaction Survey for application process and renewal of licensure.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of licensure was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 100% of the funeral establishments and funeral service applicants agreed or strongly agreed that the instructions were easy to understand. Asked if the application was processed promptly, 100% of the funeral establishments and funeral service applicants agreed or strongly agreed. Asked if the forms were easy to complete, 100% of the funeral establishments and 95% of the funeral service applicants agreed or strongly agreed. Therefore, no changes in regulations are being considered in the application process.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

During its review of regulations, the Board identified the following issues and discussed various alternatives for addressing them:

1) Definition of a “Branch establishment”

Since branch establishments are not required to meet the same standards as a main funeral establishment (primarily, no preparation room is required for embalming), many facilities are licensed as branches of another. The problem lies in the lack of definition or requirement for a

branch, so the Board has no basis on which to deny licensure to a facility that applies. The intent of establishing a branch is have different locations of the “parent” establishment, but the result has sometimes been a nebulous connection which is not apparent to the consumer. For example, the majority of branches carry the name of the main establishment and identify the geographic location of the branch, but there is no requirement that a branch be so identified, that it be located within the same community or that it even have the same ownership.

To address this long-standing concern, the Board has considered two alternatives – define “branch” in the Code of Virginia through the introduction of legislation or in its regulations through a regulatory action. In either alternative, the challenge has been to develop a definition that is reasonable, effective and not overly burdensome. The Board has studied definitions from a number of other states and finds that a branch is usually defined in terms of common ownership and/or specific, limited functions and/or distance between establishments. During the review of its regulations, the Board was advised that it could address the issue through regulation, so it is seeking to receive comment on its intended regulatory action.

Another option to defining a branch is to eliminate the concept of a “branch” and issue limited licenses to establishments that wish to be exempt from certain requirements of regulation – such as the preparation room. Similar to those issued to some pharmacies, a limited license would identify and limit the purpose and function of the facility based on the application presented to the Board. The Board has considered this option and did not choose to pursue a legislative change to implement limited licenses.

2) Continuing competency

Chapter 1 of Title 54.1 authorizes health regulatory boards to impose additional requirements on licensees seeking renewal.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

The Board of Funeral Directors and Embalmers is concerned about the continued competency of many of its licensees and is considering the need to require some additional education as a condition of renewal. Laws and regulations governing the funeral industry are complex and varied – ranging from FTC rules to local ordinances on disposal of hazardous waste. Highly infectious diseases borne by decedents can expose licensees and members of the public to significant danger. The arranging and financing of preneed contracts requires continuous updating of knowledge. In FY 2000, there were 20.95 complaints against funeral establishments and 28.61 complaints against funeral service providers per 1,000 licensees. The Board believes it is time to consider the advantages to continuing education in terms of public safety and consumer protection.

Prior to the development of a continuing competency requirement, the Board will consider comments received during the NOIRA period, review requirements of other boards within the

Department, and study the requirements of other states. With the exception of the Board of Counseling, all other boards have adopted continuing competency standards for some or all of their licensees. As of 1999, 31 states have adopted continuing education for funeral service licensees, and others were in the process with a range of three hours over a three-year period in West Virginia to 24 hours a year in Iowa. All states bordering Virginia require CE for renewal – Maryland requires 12 hours/year; Tennessee requires 10 hours/2 years; North Carolina requires 5 hours/year; and Kentucky requires 4 hours/year.

Any competency hours required by the Board would need to be reasonably available, easily accessible, and relatively inexpensive. Since many funeral establishments are small operations with very little staff, the Board does not intend to impose an unnecessary burden on its licensees.

3) Recommendations of the Task Force on the Inspection Process

Many of the proposed changes to these regulations result from recommendations of the Task Force on Inspections that looked at the process and deficiencies and identified improvements. For example, the requirement for an inspection at the time ownership has changed is unnecessary – often there is no change in the facility at that time, but changes made by the new owner may need to be inspected at a later date. Rules for the preparation room equipment and condition have not always been consistently enforced, and in some cases are unnecessary, so several amendments are suggested. The inspectors have sometimes found it difficult to confirm compliance with the requirement for waste materials to be disposed of in conformity with local, state, and federal law; the proposed amendment would clarify that a record of a contractual agreement with a licensed medical waste disposal provider is necessary. The regulations may also clarify whether documents may be stored at the main establishment or at a branch establishment. Finally, amendments to the price lists are necessary to clearly communicate with and disclose to the consumer; in doing so, the inspectors will be able to inspect more consistently and equitably.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board of Funeral Directors and Embalmers is recommending that 18 VAC 65-20-10 et seq. be amended to modify the requirements for a change of ownership, to provide additional access to licensure by endorsement, to clarify the scope of practice for courtesy card holders, and to require persons who handle remains with a surface transportation and removal service registration to have OSHA training. Other recommendations for the preparation room and its equipment and for documentation of embalming came from a task force on the inspection process.

During the development of regulations, the Board intends to receive comment on the need to require continuing education renewal and on the definition of a branch establishment. It will also consider any other issues raised during public comment on the Notice of Intended Regulatory Action.

Substance

Please detail any changes that would be implemented.

18 VAC 65-20-10. Definitions.

The Board has identified the need to define a “branch” of a main establishment and would like to receive comment on that issue. (see “alternatives” above)

18 VAC 65-20-50. Posting of license.

Amendments will clarify that any location within the establishment that is available to the public and where the license would be conspicuous is an acceptable location.

18 VAC 65-20-70. Required fees.

Since these regulations were last modified, the Department has adopted “Principles for Fee Development” to establish guidelines for some consistency among fees and professions. In light of the Principles, the Board will examine its fees to determine if they are consistent and equitable relative to the actual cost of certain activities. Additionally, the fee information now stated in section 110 will be incorporated into section 70.

New section: 18 VAC 65-20-135. Continuing competency requirements for renewal of license.

The Board would like to receive comment on the need for continuing competency for licensed funeral directors, embalmers and funeral service licensees. While no specific proposal has been considered, the Board is aware that at least 31 other states have continuing education requirements for their licensees with a range of 3 hours per year to 24 hours per year. Some states have specific requirements for hours of education in HIV or in preneed. With the exception of counselors and nurses, all other health-related professions require some evidence of continuing competency to renew a license in Virginia.

18 VAC 65-20-170. Requirements of an establishment license.

Subsection D sets the requirements for a change of ownership; the Board intends to amend this section to require submission of documentation to determine ownership and to allow the re-inspection to occur on a schedule determined by the Board, but not less than one year after the change. Typically, a change of ownership does not result in immediate changes in the facility, but over time, the new owners may not maintain the standards of the previous owners. Therefore, a delayed inspection might be more useful in detecting possible deficiencies.

18 VAC 65-20-350. Requirements for licensure by reciprocity or endorsement.

Regulations need to be amended to provide greater access to those who were licensed out-of-state and now wish to practice in Virginia. Currently, this regulation has been interpreted to require passage of the national examination for licensure by endorsement. Prior to 1972, there was no national exam, so it was not required in Virginia or any other state. Amendments would clarify that there be comparability of examinations, so if a state examination was the standard in Virginia in the year an applicant was initially licensed in another state, the state examination from that state would be the standard for licensure by endorsement.

18 VAC 65-20-400. Registration of surface transportation and removal services.

The Board intends to add a requirement that anyone planning to operate such a service verify that he has been trained in the requirements of OSHA (Occupational Safety and Health Administration) for this own protection and that of the public who may be exposed to the remains.

18 VAC 65-20-440. Courtesy cards.

This section needs to be clarified to ensure that a courtesy card holder only practices in Virginia to the extent of his license in another state. For example, if someone holds only an embalmers license in Maryland, the Virginia courtesy card would allow him to embalm a body in this state but would not entitle them to make funeral arrangements. Also, the license held by the courtesy card holder in another state should be annually verified to the Board.

18 VAC 65-20-500. Disciplinary action.

A general provision stating that failure to comply with applicable federal and state laws and regulations may constitute grounds for disciplinary action.

18 VAC 65-20-530. Documentation of embalming.

The Board recommends an amendment to require the licensee to document the attempt he has made to seek approval from an authorized person prior to embalming the deceased. Sometimes the authorized person is not readily available, and it is necessary to proceed with embalming before permission can be granted.

18 VAC 65-20-570. Condition of preparation room.

Rather than a strict prohibition on storing inventories on the floor of the preparation room, the regulation may be modified to require that materials be stored in a container impervious to water or in a manner that protects them from contamination.

18 VAC 65-20-580. Preparation room equipment.

- The requirement for a metal or porcelain table may be expanded to require the table to be made of material impervious to water, such as fiberglass.

- The requirement for a hydroaspirator should be amended to require either an electric aspirator or hydroaspirator equipped with a vacuum breaker.
- Rather than requiring for an eye wash station in the prep room, it may be modified to require “a readily-accessible” station.

18 VAC 65-20-590. Disposal of waste materials.

To ensure compliance with section 590, an amendment is necessary to require the establishment to provide the Board or its inspectors with evidence of a contract with a medical waste disposal company.

18 VAC 65-20-700. Retention of documents.

While some lists and documents may be maintained for all branches at the main establishment, the regulation needs to be clarified to ensure that embalming reports be retained at the site of the embalming.

Appendix I. General Price List.

- Under the price list for embalming, two prices are currently required – one for embalming of normal remains and one for autopsied remains. Many establishments have a single price, so a notation may be added that if the charges are identical, only a single charge for embalming may be listed on the GPL.
- Under the category for immediate burial, the price range for “immediate burial with alternative container” should be listed as “immediate burial with the lowest price container”. Then a new section “C” should be added to list the cost for “immediate burial with the lowest price casket.” There have been various interpretations of this subsection, so it needs to be clarified.
- Under the category of direct cremation, the price range listed needs to be clarified; it should indicate the lowest price of cremation with a container provided by the purchaser to the highest price for a casket acceptable for cremation. In the costs for services listed, the direct cremation with alternative container needs to be amended to show the costs with the “lowest price” alternative container. Then a new section “C” should be added to list the cost for “cremation with the lowest price casket.”

Appendix III. Itemized Statement of Funeral Goods and Services Selected.

The disclosure under embalming needs to be corrected to statement that you do not have to pay for embalming you did **not** approve if you selected arrangements such as direct cremation or immediate burial.

Appendix IV. Embalming Record.

- The instruction to place an “N/A” in any blank that does not apply needs to be amended to make it clear that it is acceptable to draw a line through the section or provide some

other indication that a section is not applicable to that embalming. It is not acceptable to simply leave the section blank.

- Under “Aspiration” there needs to be an indication for “yes or no.”
- It is unnecessary to require the signature of the receiving funeral director on this form, so it should be eliminated.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.