



**Virginia  
Regulatory  
Town Hall**

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

<b>Agency Name:</b>	Board of Funeral Directors and Embalmers
<b>VAC Chapter Number:</b>	18 VAC 65-40-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Resident Trainee Program in Funeral Services
<b>Action Title:</b>	Periodic review
<b>Date:</b>	

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 governing the resident trainee program in funeral services provide definitions for certain terms, fees for registration, requirements for renewal or reinstatement of a registration as a trainee, and requirements for a trainee in the program. For the funeral establishments, there are qualifications for the training sites, requirements for supervision, and required reports to the board. Finally, regulations establish the specific responsibilities of the supervisor in the education and training of a resident trainee.

## 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. Excerpts related to resident trainees are:

**§ 54.1-2800. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Advertisement" means any information disseminated or placed before the public.*

*"At-need" means at the time of death or while death is imminent.*

*"Board" means the Board of Funeral Directors and Embalmers.*

*"Cremate" means to reduce a dead human body to ashes and bone fragments by the action of fire.*

*"Cremator" means a person or establishment that owns or operates a crematory or crematorium or cremates dead human bodies.*

*"Crematory" or "crematorium" means a facility containing a furnace for cremation of dead human bodies.*

*"Embalmer" means any person engaged in the practice of embalming.*

*"Embalming" means the preservation and disinfection of the human dead by external or internal application of chemicals.*

*"Funeral directing" means the for-profit profession of directing or supervising funerals, preparing human dead for burial by means other than embalming, or making arrangements for funeral services or the financing of funeral services.*

*"Funeral director" means any person engaged in the practice of funeral directing.*

*"Funeral service establishment" means any main establishment, branch or chapel which is permanently affixed to the real estate and for which a certificate of occupancy has been issued by the local building official where any part of the profession of funeral directing or the act of embalming is performed.*

*"Funeral service licensee" means a person who is licensed in the practice of funeral services.*

*"In-person communication" means face-to-face communication and telephonic communication.*

*"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over eighteen years of age, custodial parent, noncustodial parent, siblings over eighteen years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over eighteen years of age and paternal siblings over eighteen years of age, or any other relative in the descending order of blood relationship.*

*"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.*

*"Preneed" means at any time other than at-need.*

*"Preneed funeral contract" means any agreement where payment is made by the consumer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.*

*"Preneed funeral planning" means the making of arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.*

*"Resident trainee" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.*

*"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or funeral service provider.*

#### **§ 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:*

- 1. To establish standards of service and practice for the funeral service profession in this Commonwealth.*
- 2. To regulate and inspect funeral service establishments, their operation and licenses.*
- 3. To require licensees and resident trainees to submit all information relevant to their practice or business.*
- 4. To enforce the relevant regulations of the Board of Health.*
- 5. To enforce local ordinances relating to funeral service establishments.*
- 6. To advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.*
- 7. To establish, supervise, regulate and control, in accordance with the law, programs for resident trainees.*
- 8. To establish standards for and approve schools of mortuary science or funeral service.*
- 9. To 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.*

**§ 54.1-2806. Refusal, suspension or revocation of license.**

*The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:*

- 1. Conviction of any felony or any crime involving moral turpitude;*
- 2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;*
- 3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;*
- 4. False or misleading advertising or solicitation;*
- 5. Solicitation at-need or any preneed solicitation using in-person communication by the licensee, his agents, assistants or employees; however, general advertising and preneed solicitation, other than in-person communication, shall be allowed;*
- 6. Employment by the licensee of persons known as "cappers" or "steerers," or "solicitors," or other such persons to obtain the services of a holder of a license for the practice of funeral service;*
- 7. Employment directly or indirectly of any agent, employee or other person, on part or full time, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;*
- 8. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing business;*
- 9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed activity;*
- 10. Aiding or abetting an unlicensed person to practice within the funeral service profession;*
- 11. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;*
- 12. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;*
- 13. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;*
- 14. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to custody;*
- 15. Knowingly making any false statement on a certificate of death;*
- 16. Violation of any provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;*
- 17. Failure to comply with § 54.1-2812, and to keep on file an itemized statement of funeral expenses in accordance with Board regulations;*
- 18. Knowingly disposing of parts of human remains, including viscera, that are received with the body by the funeral establishment, in a manner different from that used for final disposition of the body, unless the persons authorizing the method of final disposition give written permission that the body parts may be disposed of in a manner different from that used to dispose of the body;*
- 19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry practices;*
- 20. Violating or cooperating with others to violate any provision of this chapter or the regulations of the Board of Funeral Directors and Embalmers or the Board of Health;*
- 21. Failure to comply with the reporting requirements as set forth in § 54.1-2817 for registered funeral trainees;*
- 22. Failure to provide proper and adequate supervision and training instruction to registered funeral trainees as required by regulations of the Board;*

23. Violating any statute or regulation of the Board regarding the confidentiality of information pertaining to the deceased or the family of the deceased or permitting access to the body in a manner that is contrary to the lawful instructions of the next-of-kin of the deceased; and

24. Failure to include, as part of the general price list for funeral services, a disclosure statement notifying the next of kin that certain funeral services may be provided off-premises by other funeral service providers.

**§ 54.1-2817. Resident trainees.**

*A person desiring to become a resident trainee shall apply on a form provided by the Board. The applicant shall attest that he has not been convicted of a felony and holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a resident trainee for an individual convicted of a felony, if he has been pardoned or has had his civil rights restored. The Board, in its discretion, may refuse to approve an application to be a resident trainee for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.*

*When the Board is satisfied as to the qualifications of an applicant, it shall instruct the secretary to issue a certificate of resident traineeship. When a resident trainee wishes to receive in-service training from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and the resident trainee later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the resident trainee an affidavit showing the length of time served with him. The affidavit shall be filed with the Board and made a matter of record in that office. Any resident trainee seeking permission to continue in-service training shall submit a request to the Board.*

*A certificate of resident traineeship shall be signed by the resident trainee and shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered resident trainee at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time, a penalty fee shall be due in addition to the renewal fee.*

*The registration of any resident trainee who is in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of his service. The Board may also waive the renewal fees for such military personnel.*

*All registered resident trainees shall report to the Board at least every six months upon forms provided by the Board, showing the work which has been completed during the preceding six months of resident traineeship. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.*

*Before such resident trainee becomes eligible to be examined for the practice of funeral service, evidence shall be presented along with an affidavit from any licensee under whom the trainee worked showing that the trainee has assisted in embalming at least twenty-five bodies and that the trainee has assisted in conducting at least twenty-five funerals. In all applications of resident trainees for licenses for the practice of funeral service, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the resident traineeship shall not entitle him to any privilege except to be examined for such license.*

*Credit shall not be allowed for any period of resident traineeship that has been completed more than three years prior to application for license or more than five years prior to examination for license. However, the Board may waive these limitations for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service. The Board may also waive these limitations if it determines that their enforcement will create an unreasonable hardship. The Board shall have power to suspend or revoke a certificate of resident traineeship for violation of any provision of this chapter.*

*No more than two resident trainees shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered resident trainee must be actively employed by a funeral establishment.*

### 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 resident trainee program 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 late reports from supervisors and trainees.

While statistics on late reports have not been maintained, Board staff has made a concerted effort to assist supervisors in making timely reports and has notified them promptly when reports are delinquent. Each month, a member of the staff checks through every trainee file to determine if reports are being made on time. If not, the supervisor is notified, so the oversight may be corrected quickly. If reports are not filed with the Board, the trainee may not receive credit for the time spent in training. Therefore, the Board has worked with licensees and establishments to convey the importance of timely reporting.

- 2) Achieve positive results in the number of trainees passing the licensure examination.

After each offering of the funeral examination, the Board receives a report on passage or failure by the candidates. Cumulatively, the passage rate is approximately 82%, so the Board is satisfied that the examination and training are adequate. The one exception is training and education in preneed. If a trainee is working in a funeral establishment that does not make

preneed arrangements, he may not receive any experience or information related to preneed. Yet there are a myriad of federal and state laws and regulations on preneed, and it is a topic covered in the examination. That lack of training has resulted in failure for some candidates and handicapped some new licensees who do not have knowledge in preneed arrangements. The Board intends to correct that by amending its requirements for a trainee program.

## 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 determined that regulations for the resident trainee program were sufficient to achieve their purpose which is to ensure trainees have appropriate and sufficient training to become licensed providers of funeral services.

The only recommended change is the inclusion of a requirement for a supervisor to provide the trainee with experience in making preneed arrangements and instruction in the laws and regulations governing preneed contracts and disclosures. (See above)

## 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 65-40-10 et seq. be amended to specify that information and training about preneed funeral contracts must be included in the resident trainee program. 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.*

The only change that would be implemented is:

### **18 VAC 65-40-340. Supervisors' responsibilities.**

Amendments are recommended to specify that in addition to experience in arranging funerals, the supervisor must provide experience in making preneed arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures.



**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.