



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Board of Funeral Directors and Embalmers/Department of Health Professions
<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 – training in preneed
<b>Date:</b>	3/22/02

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

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. Regulations that establish the specific responsibilities of the supervisor in the education and training of a resident trainee are amended to ensure that the trainee receives training in preneed funeral arrangements.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure 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.*
- 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.*

The legal authority to promulgate regulations for resident trainees is found in Chapter 28 of Title 54.1, which sets forth statutory provisions for the licensure and practice of funeral establishments and funeral service licensees. Excerpts related to resident trainees are:

**§ 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.*

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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.

If the resident trainee with inadequate training in preneed becomes a funeral service licensee, it may put the public at risk in its dealing with that person for preneed arrangement. To protect the public safety and welfare in preneed arrangements, the Board has determined that a specific requirement for inclusion of information on preneed in the training of funeral service providers is essential.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The proposed amendment has some definite advantages to the public. By having licensees appropriately trained in preneed, there is less opportunity for inappropriate handling of preneed funding and misrepresentation of services that will be provided. There are no disadvantages to the public, which is better protected by a requirement for training in preneed.

There are advantages to funeral service establishments, which can be better assured that newly licensed providers will have adequate knowledge and training in preneed arrangements, and to the licensed funeral service providers who are less likely to violate state or federal laws out of ignorance.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the*

*individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

**Projected cost to the state to implement and enforce:**

(i) Fund source: 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.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

**Projected cost on localities:**

There are no projected costs to localities.

**Description of entities that are likely to be affected by regulation:**

The entities that are likely to be affected by these regulations would be resident trainees in funeral services and the funeral service licensees who supervise their training and education.

**Estimate of number of entities to be affected:**

Currently, there are approximately 156 persons registered with the Board as trainees.

**Projected costs to the affected entities:**

There should be no additional cost to the trainees.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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.

### Alternatives

*Please describe the specific 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.*

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. The Board would leave it to the discretion of the training site to determine the scope of information and training to be given. If a training site does not currently offer preneed packages to its clients, it would be the responsibility of the establishment to arrange for the trainee to work with another establishment in learning the rules and regulations governing preneed funeral arrangements.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received until December 5, 2001. During the 30-day comment period, no comments were received from members of the public.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

The Legislative/Regulatory Committee of the Board has carefully reviewed existing regulations and worked with interested parties to address any clarifications or amendments necessary. The regulatory review report was reviewed and approved by the Department of Planning & Budget, the Secretary of Health and Human Resources and the Office of the Governor. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations will be reviewed again during the 2004-05 fiscal year.

### Family Impact Statement

*Please provide an 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. Likewise, there will be no increase or decrease in disposable family income.