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Final Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC65-20-10 et seq.
Regulation title(s)	Regulations of the Board of Funeral Directors and Embalmers
Action title	CE credit for attendance at Board meetings
Date this document prepared	4/17/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board has amended 18VAC65-20-151, which provides requirements for continued competency for renewal of an active license. The Board amended the section by offering one hour of CE credit every other year for attendance at a meeting of the board or a committee of the board or at an informal conference or formal hearing. In the year the one hour of credit was granted, it could meet the statutory requirement for “one hour per year covering compliance with federal or state laws and regulations governing the profession (§ 54.1-2816.1).”

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On April 17, 2018, the Board of Funeral Directors and Embalmers adopted amendments to 18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

18VAC65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board with authority to promulgate regulations to 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:

- ...
- 6. *To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title.*

Specific regulations for continuing education requirements are found in:

§ 54.1-2816.1. Continuing education requirements; promulgation of regulations.

A. The Board shall promulgate regulations governing continuing education requirements for funeral services licensees, funeral directors and embalmers licensed by the Board.

B. The Board shall approve criteria for continuing education courses, requiring no more than five hours per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors and embalmers. Approved continuing education

courses shall include, but not be limited to, at least one hour per year covering compliance with federal or state laws and regulations governing the profession, and at least one hour per year covering preneed funeral arrangements. Course providers may be required to register continuing education courses with the Board pursuant to Board regulations. The Board shall not allow continuing education credit for courses where the principal purpose of the course is to promote, sell or offer goods, products or services to funeral homes.

C. All course providers shall furnish written certification to licensees of the Board attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of two years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of two years the written certification issued by any Board-approved provider of continuing education courses. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary, to ensure compliance with continuing education requirements.

D. The Board shall have the authority to grant exemptions or waivers in cases of certified illness or undue hardship.

E. The Board may provide for an inactive status for those licensees who do not practice in Virginia. The Board may adopt regulations reducing or waiving continuing education requirements for any licensee granted such inactive status. However, no licensee granted inactive status may have their license changed to active status without first obtaining additional continuing education hours as may be determined by the Board. No person or registrant shall practice in Virginia as an embalmer, funeral director, or funeral service licensee unless he holds a current, active license.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

At a recent meeting of the International Conference of Funeral Service Examining Boards, it was reported that other states have adopted such a regulation and found it to be beneficial to practitioners. Attendance at board meetings or disciplinary hearings gives a licensee the perspective of issues facing funeral service and actions that may be deemed unethical or unprofessional. Ultimately, the additional education has the benefit of protecting the public health, safety, and welfare by encouraging practice in accordance with law and regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The Board amended section 151 by offering one hour of CE credit every other year for attendance at a meeting of the board or a committee of the board or at an informal conference or formal hearing. In the year the one hour of credit was granted, it could meet the statutory requirement for *“one hour per year covering compliance with federal or state laws and regulations governing the profession (§ 54.1-2816.1).”*

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 there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage of the amendments to the public is assurance that funeral service licensees are aware of their ethical and legal responsibilities. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to *“promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”*
The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth and to enforce the Code of Virginia.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

There is no impact on the family.

Changes made since the proposed stage

*Please list all changes that made to the text since the proposed regulation was published in the Virginia Register of Regulations and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

There were no changes to the text since the proposed regulation was published.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

There was a public comment period from January 8, 2018 to March 9, 2018. A public hearing was held on January 16, 2018 with one question for clarification.

Commenter	Comment	Agency response
Barry Robinson	Asked whether a witness or a respondent in a disciplinary proceeding would be able to get CE credit for attending a hearing.	The Board responded that CE credit could not be awarded for attendance at a hearing by a respondent or witness.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
151	Section 151 currently requires one hour per year to cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements.	<p>The amended section allows the one-hour requirement on compliance with laws and regulations to be met once every two years by attendance at a meeting of the board or a committee of the board or at an informal conference or formal hearing.</p> <p><i>The rationale for the amendment is to encourage licensees to participate in the regulatory and disciplinary work of the board by attending meetings and observing actions and discussions about laws and regulations and their application to practice. Board members often comment that they learn so much during their tenure on the board, and particularly in their participation in disciplinary hearings. Since there is a statutory requirement for “at least one hour per year covering compliance with federal or state laws and regulations governing the profession,” the Board believes this would be an effective way to experience the laws and regulations governing the profession.</i></p>