



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Funeral Directors and Embalmers/Department of Health Professions
VAC Chapter Number:	18 VAC 65-40-10 et seq.
Regulation Title:	Regulations Governing the Resident Trainee Program in Funeral Services
Action Title:	Periodic review – training in preneed
Date:	12/4/02

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

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.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

To clarify that it is not necessary for a funeral service licensee to be engaged in preneed funeral planning in order to serve as a supervisor to a resident trainee, the Board amended the proposed regulation to substitute “instruction” for the word “experience”.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On December 3, 2002, the Board of Funeral Directors and Embalmers adopted final amendments to 18 VAC 65-30-10 et seq., Regulations for Resident Trainees in Funeral Service, in order to implement amendments pursuant to a periodic review of regulations.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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 amended 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 final 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 of the regulatory action's detail.

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 final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 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.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Register on August 12, 2002, and the 60-day Comment Period concluded on October 11, 2002. A public hearing was held before the Board of Pharmacy at the Department of Health Professions in Richmond on September 10, 2002. No comment was presented at that time nor was any written or electronically submitted comment received.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The change to 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 instruction in making preneed arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures. The Board changed the word "experience" in making preneed arrangements to "instruction". There was concern that

the proposed language might be interpreted as meaning that a funeral service licensee that did not make preneed arrangements could not supervise a resident trainee. The Board's intent is to make the supervisor responsible for being sure that a trainee is taught about preneed arranging and about the laws and regulations governing such arrangements. That may occur in the facility where the training occurs or arrangements made for preneed training & instruction to occur in another facility.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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.