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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Funeral Directors and Embalmers; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC65-30-10 et seq.
<b>Regulation title(s)</b>	Regulations for Preneed Funeral Planning
<b>Action title</b>	Periodic Review
<b>Date this document prepared</b>	10/11/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Board is amending its regulations governing preneed funeral planning to ensure greater protections for the public in disclosures of information about what they is and is not included in a contract, in retention of documentation, and in notification if a funeral home closes or changes ownership.

### 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

## Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

The mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. The comment period on the periodic review began on May 14, 2018 and ended on June 13, 2018; there were no comments on this chapter or subsequently on the Notice of Intended Regulatory Action.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity’s overall regulatory authority.*

**18VAC65-30-10 et seq. Regulations for Preneed Funeral Planning** 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.*

In addition, § 54.1-2803 sets out the specific powers and duties of the Board and §§ 54.1-2820, 54.1-2822, 54.-2822.1, 54.1-2824, and 54.1-2825 set out the statutory requirements for preneed contracts:

***§ 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 to:*

- 1. Establish standards of service and practice for the funeral service profession in the Commonwealth.*
- 2. Regulate and inspect funeral service establishments, their operation and licenses.*
- 3. Require licensees and funeral service interns to submit all information relevant to their practice or business.*
- 4. Enforce the relevant regulations of the Board of Health.*

5. *Enforce local ordinances relating to funeral service establishments.*
6. *Advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.*
7. *Establish, supervise, regulate and control, in accordance with the law, programs for funeral service interns.*
8. *Establish standards for and approve schools of mortuary science or funeral service.*
9. ***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.***
10. *Inspect crematories and their operations.*

**§ 54.1-2820. Requirements of preneed funeral contracts.**

*A. It shall be unlawful for any person residing or doing business within this Commonwealth, to make, either directly or indirectly by any means, a preneed funeral contract unless the contract:*

1. *Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;*
2. *Identifies the seller, seller's license number and contract buyer and the person for whom the contract is purchased if other than the contract buyer;*
3. *Contains a complete description of the supplies or services purchased;*
4. *Clearly discloses whether the price of the supplies and services purchased is guaranteed;*
5. *States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted from the interest and a statement of the buyer's responsibility for taxes owed on the interest;*
6. *Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;*
7. *Provides that any person who makes payment under the contract may terminate the agreement at any time prior to the furnishing of the services or supplies contracted for except as provided pursuant to subsection B; if the purchaser terminates the contract within 30 days of execution, the purchaser shall be refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the purchaser terminates the contract after 30 days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2822, together with any interest or income accrued thereon;*
8. *Provides that if the particular supplies and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and the representative of the deceased shall have the right to choose the supplies or services to be substituted;*
9. *Discloses any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or prearrangement guarantee; and*
10. *Complies with all disclosure requirements imposed by the Board.*

*If the contract seller will not be furnishing the supplies and services to the purchaser, the contract seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.*

*B. Subject to the requirements of § 54.1-2822, a preneed funeral contract may provide for an irrevocable trust or an amount in an irrevocable trust that is specifically identified as available exclusively for funeral or burial expenses, where:*

- 1. A person irrevocably contracts for funeral goods and services, such person funds the contract by prepaying for the goods and services, and the funeral provider residing or doing business within the Commonwealth subsequently places the funds in a trust; or*
- 2. A person establishes an irrevocable trust naming the funeral provider as the beneficiary; however, such person shall have the right to change the beneficiary to another funeral provider pursuant to § 54.1-2822.*

*C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the life insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by a factor equal to the annualized Consumer Price Index as published by the Bureau of Labor Statistics of the United States Department of Labor, or a benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest or dividends, which for the first 15 years shall be compounded annually at a rate of at least five percent. In any event, interest or dividends shall continue to be paid after 15 years. In addition, the following must also be disclosed as prescribed by the Board:*

- 1. The fact that a life insurance policy or annuity contract is involved or being used to fund the preneed contract;*
- 2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;*
- 3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract and the nature and existence of any guarantees relating to the preneed contract; and*
- 4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (ii) any penalties to be incurred by the policyholder as a result of failure to make premium payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.*

*D. When the consideration consists in whole or in part of any real estate, the contract shall be recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be recorded in the clerk's office of the circuit court of the city or county in which the real estate being conveyed is located.*

*E. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are provided, and the seller or any legal entity in which he or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of storage.*

**§ 54.1-2822. Deposit of money received pursuant to preneed funeral contract.**

*A. Within 30 days following the receipt of any money paid pursuant to any preneed funeral contract or interest or income accrued thereon, unless such amounts are paid to fund either an annuity or an insurance policy which will be used to purchase the funeral supplies or services contracted for, the person receiving such amounts shall deposit all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is not*

*guaranteed, or ninety percent of all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is guaranteed, in a special account in a bank or savings institution doing business in this Commonwealth.*

*B. The funds shall be deposited in separate, identifiable trust accounts setting forth the names of the depositor, the trustee for the person who is the subject of the contract, the name of the person who will render the funeral services and the name of the person who is the subject of the contract. The purchaser shall have the right to change the beneficiary and trustee of the trust at any time prior to the furnishing of the services or supplies contracted for under the preneed funeral contract. Trust account records shall be subject to examination by the Board.*

*C. No funeral director, embalmer, funeral service licensee, owner of a funeral establishment, or any person employed by or having an interest in a funeral establishment shall serve as trustee of a trust account for which any such person, or any funeral establishment owned by or employing such person or in which such person has an interest, has been named the beneficiary or designated the provider of services, unless two or more such persons are named and serve as trustees and are required to act jointly in such fiduciary capacity. Subject to the terms of this subsection, and notwithstanding any other provision of law, the trustee for any such trust account may be an incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, whose principal purpose is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses.*

**§ 54.1-2822.1. Funeral establishments to maintain preneed records.**

*Every person selling preneed funeral contracts within this Commonwealth shall keep and maintain such records of preneed transactions, including copies of preneed contracts, as may be prescribed by the Board. All such records shall be maintained on the premises of the funeral establishment providing the preneed services and supplies, except that preneed records of funeral establishments under common ownership, control, or management may be maintained at a single location within this Commonwealth.*

**§ 54.1-2824. Declaration of trust in consideration other than money.**

*Within thirty days following the receipt of any personal property other than money delivered pursuant to any preneed funeral contract, the person receiving it, if title thereto is transferred, or the person making such delivery, if title thereto is not transferred, shall execute in writing a declaration of trust setting forth all the terms, conditions and considerations upon which the personal property is delivered, which shall be acknowledged in the same manner as the contract and recorded in the clerk's office of the circuit court of the city or county in which the person delivering the personal property resides; provided, that if such terms, conditions and considerations are contained in the preneed funeral contract, the contract shall be recorded.*

**§ 54.1-2825. Person to make arrangements for funeral and disposition of remains.**

*A. Any person may designate in a signed and notarized writing, which has been accepted in writing by the person so designated, an individual who shall make arrangements and be otherwise responsible for his funeral and the disposition of his remains, including cremation, interment, entombment, or memorialization, or some combination thereof, upon his death. Such designee shall have priority over all persons otherwise entitled to make such arrangements,*

*provided that a copy of the signed and notarized writing is provided to the funeral service establishment and to the cemetery, if any, no later than 48 hours after the funeral service establishment has received the remains. Nothing in this section shall preclude any next of kin from paying any costs associated with any funeral or disposition of any remains, provided that such payment is made with the concurrence of any person designated to make arrangements. B. In cases in which a person has designated in a U.S. Department of Defense Record of Emergency Data (DD Form 93) or any successor form an individual to make arrangements for his funeral and disposition of his remains, and such person dies while serving in any branch of the United States Armed Forces as defined in 10 U.S.C. § 1481, such designee shall be responsible for making such arrangements.*

## Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

The purpose of this regulatory action is to provide clear, enforceable regulations. Both the licensees and the public need clarity on contracting preneed funeral plans, so public health and safety is not jeopardized.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

A Regulatory Advisory Panel (RAP) was convened to review all provisions of Chapter 30, and the Regulatory Committee of the Board recommended adoption of the following proposed amendments:

### **18VAC65-30-10. Definitions.**

- Removal of definition of “capper, steerer, or shill” as those terms are no longer used.

### **18VAC65-30-50. Solicitation.**

- Clarification that registered funeral service interns are not allowed to engage in funeral preneed planning and/or sales.

### **18VAC65-30-60. Records; general.**

- For consistency with record retention requirements for other funeral-related documents, change in the requirement that preneed contracts and reporting documents be maintained on the premises of the establishment for three years after the death of the contract beneficiary.

### **18VAC65-30-70. Record reporting.**

- Changes include: 1) the alphabetical or chronological listing of all preneed contracts should also include where the contract is funded (e.g. name of insurance provider), where the funds are maintained in addition to the existing requirement of how the contract is funded; and 2) requirements for notification to the board and the existing contract buyers when a contract provider discontinues operation by either closure or change in ownership.

#### **18VAC65-30-90. Disclosures.**

- Requirement for licensees to obtain acknowledgement from contract buyers that they have received the general price list and preneed disclosure questions and answers.

#### **18VAC65-30-110. Cancellation or transfer of contract.**

- Addition of reference to Virginia Code § 64.2-730.

#### **18VAC65-30-180. Life insurance or annuity.**

- Change in reference to Virginia Code § 54.1-2820(C).

#### **18VAC65-30-220. Content of preneed contracts.**

- Clarification of language related to “guaranteed” prices/services/goods to avoid confusion for consumers about those items or services that are nonguaranteed or cash advance provided by a third party.
- Add reference to Virginia Funeral Service Licensee to accurately reflect the most common licensure type.

#### **18VAC65-30-230. Content of disclosure statements.**

- Clarification of content of disclosure statements for accuracy and clarity for contract buyers/consumers, as well as compliance with federal FTC regulations.
- Clarification and further explanation related to “guaranteed” prices/services/goods to avoid confusion for contract buyers/consumers.
- Addition of language to clarify what happens if a funeral home closes or changes ownership and what impact that change may have on a contract buyer’s/consumer’s choice.

### **Issues**

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

1) The primary advantage to the public is a better understanding of preneed contracts for buyers/consumers and some greater assurance that funding for goods and services will be

available at the time of need. All amendments are intended to provide additional consumer protection. There are no disadvantages to the public.

2) There are no advantages or disadvantages to the Commonwealth, except more clarity in regulation will assist the Board in interpretation of the law.

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 regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

The regulations are consistent with the Federal Trade Commission rules for disclosures to consumers of funeral services.

### Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

### Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

#### Impact on State Agencies



<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>There are no costs for implementation and enforcement. Funds for the Board of Funeral Directors and Embalmers are provided by fees charged to applicants and licensees.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no costs to other agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>None</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no costs to localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Licensed funeral establishments Branch establishments Funeral service licensees</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>There are 420 licensed funeral establishments and 79 licensed as branch establishments. The Board has no estimate of the number of small businesses affected. Individual establishments and branch establishments hold licenses but may be owned by large national companies (i.e., Woody's and Nelson's are local establishments owned by SCI). There are 1463 funeral service licensees with current, active licenses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>There should be no costs related to these amendments, which provide additional clarity and consumer protection.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Most of the proposed changes are clarification of current regulation and policy. Additional disclosures and information in the content of a</p>

	<p>preneed contract will protect consumers and help them understand what they are and are not contracting. The amendments may result in a better understanding of preneed for buyers and some greater assurance that funding for goods and services will be available at the time of need.</p>
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## Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

At its meeting on October 16, 2018, the Board considered a petition for rulemaking relating to preneed contracts. While the Board voted to take no action on the petition, it referred the petition to a Regulatory Advisory Panel (RAP) for consideration within the context of a periodic review of regulations.

The issue addressed in the petition related to the loss of funds in a preneed contract when a funeral home closed without notice. It was suggested that there should be some improvement in the disclosures for preneed contracts to ensure consumers receive clear information regarding the options available to consumers in the event a funeral establishment closes.

Subsequently, a RAP was convened on November 1, 2018 and included the following panelists:  
 Blair H. Nelsen, FSL, Panel Chair & Board member  
 Joseph Frank Walton, FSL, Board member  
 Annette Greenwood, Estate Assurance Systems, Inc.  
 Paul Harris, Regulatory Support Services  
 Bruce Keeney, Association of Independent Funeral Homes of Virginia  
 RD Monson, Homesteaders Life Company  
 James Young, CLU, CIE, State Corporation Commission

In addition to consideration of the petition, the Board also conducted a periodic review of the preneed regulations pursuant the Governor’s Executive Order 14. The periodic review offered opportunity to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance.

The panel thoroughly reviewed the regulations, noted that they are mandated by the law and necessary for public health, welfare and safety, and recommended several amendments for greater clarity and consumer protection. Following the recommendations of the RAP, the Regulatory Committee drafted proposed amendments to implement the substance of the Board’s intended regulatory action.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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The agency has not found alternative regulatory methods for clarification of regulation or public protections needed for the public engaging in preneed contracts.

### Public Comment

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

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A 30-day comment period on the NOIRA was open from May 27, 2019 to June 26, 2019; there were no comments received.

### Public Participation

*Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.*

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In addition to any other comments, the Board of Funeral Directors and Embalmers is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website

(<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	Sets out the definition of words and terms used in the chapter	Deletion of the terms "capper," "steerer," or "shill" as they are no longer used in regulation
50	Establishes rules for solicitations of preneed contracts	Subsection B is amended to state that funeral service interns cannot engage in preneed planning or sales. <i>This is not a new rule but a clarification of the current policy; it is not within the statutory authority of an intern to write a preneed contract.</i>
60	Sets out rules for retention of preneed records	Subsection B is amended to change the retention schedule from one year to three years after death of the beneficiary. <i>The three-year retention is consistent with rules for all other records, such as the embalming record.</i>
70	Sets out rules for reporting of information in a preneed record	<p>Subsection A is amended to include, in addition to how the preneed contract was funded, where it is funded and where the funds are maintained. <i>The information is essential so buyers are fully informed about where and how their funds are being invested. The additional protection for consumers will make fraudulent contracts less likely.</i></p> <p>Subsection B is amended to provide more explicit requirements in the event a contract provider discontinues operation. <i>Current regulations require notification to the Board and each contract buyer in writing if a provider discontinues operation. Amendments will specifically require the provider that discontinues by closure to: 1) provide the board a current list of preneed contracts; and 2) notify buyers that they have the right to change providers at any time prior to death.</i></p> <p><i>Amendments will further specify what must be done if the provider changes ownership. If the preneed contracts are going to be honored by the new owner, a notice in a publication of general</i></p>

		<i>circulation will suffice. If the new owner does not intend to honor the contracts, written notice must be sent to all buyers within 90 days of the sale. The notice, as with a closure, must include a statement about the buyer's right to change providers at any time prior to death.</i>
90	Sets out rules for what documents must be given to a contract buyer	Subsection B is amended to require licensee to get a written acknowledgement from the buyer that he/she has received the general price list and preneed disclosure questions and answers. <i>The rule is added for protection of both the consumer and the contract provider (funeral establishment), so there is a record of compliance with required provision of documents and disclosures.</i>
110	Sets out the requirements for cancellation of a preneed contract	<i>Subsection D is amended to include an applicable section of Code relating to trust agreements.</i>
180	Sets the rule for funding of a preneed contract with life insurance or an annuity	<i>There is a correction of a cite in Chapter 38 of Title 54.1 of the Code.</i>
220	Establishes the required content for a preneed contract	<p>Additional information is included in the section on "Supplies and Services Purchased" 1) It is clarified that there will be no additional costs for the goods and services that are <i>guaranteed</i> in a contract <u>if your contract is fully paid or funded at the time of your death.</u> <i>The additional language is necessary to inform the contract buyer that the goods and services are only guaranteed if a buyer has fully funded the contracted price prior to his death.</i></p> <p>2) Language is added in this section to explain that "nonguaranteed" goods and services included in a contract may result in additional costs as prices for these items may increase from the date of the contract to the time of need.</p> <p>3) Language is also added to explain that cash advance items are not guaranteed. A cash advance item is any item obtained from a third party by the funeral home on behalf of the person making funeral arrangements. Examples of cash advance items are given.</p> <p>In section II. Method of Funding, there are several editorial changes to make the language more readable. There is also an amendment to include a "funeral service licensee" in the section on insurance agents. While the Board continues to allow "funeral directors" to renew their licenses, most persons are now licensed as "funeral service licensees" (combination of funeral director and embalmer), so that term should be included in this section.</p>

		<p>In section III on Consumer Information, the toll free number is identified as the toll-free complaint line for the Department.</p> <p>In section IV on Disclosures, there is a new requirement for the contract seller to acknowledge that the General Price List and required disclosures have been given to the purchaser (contract buyer).</p>
230	Sets out requirements for disclosure statements in a preneed contract	<p>1) There is additional information in the answer to the question about whether there is more than one type of preneed contract. <i>Some consumers are confused about the difference between guaranteed and nonguaranteed contracts. To avoid such confusion, there is an additional explanation about what a “nonguaranteed” contract means. A contract may include guaranteed and nonguaranteed items.</i></p> <p>2) In the answer to the question about cancellation of a contract, there is an editorial addition of “revocable or irrevocable” in describing a trust and an additional section of Code referenced. The addition of “or receive a refund” is not new; it is clarifying the meaning of an irrevocable trust – which cannot be cancelled after the initial 30-day period.</p> <p>3) There is a new question added to the disclosure about what happens if the funeral home closes? <i>The answer explains a contract buyer’s right to change providers at any time prior to death and explains the responsibility of the provider to notify the buyer in writing of the funeral home is being closed or sold and the new owner does not intend to honor the contracts.</i></p> <p>4) In the answer to the question about guaranteed and nonguaranteed prices, there is additional information similar what is included in the content of a preneed contract (see section 220).</p> <p>5) In the answer to the question about embalming, it is stated more explicitly that embalming is not required by law. The answer currently offers an explanation of situations in which a body will have to be embalmed if a family chooses certain options. The language about embalming also tracks the FTC required notice.</p> <p>6) A new section is added on Records. <i>The purposed of the addition is to emphasize the need for a contract buyer to maintain a copy of the preneed contract and to make the buyer/consumer aware of the legal responsibilities of the provider to also maintain contracts and related documents for three years after the buyer’s death.</i></p>