



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 65-20 – Agency and Title August 29, 2002

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The proposed regulation establishes continuing education requirements for licensed funeral service personnel, requirements for continuing education providers, and provisions for enforcement of the above requirements. The board has proposed requiring that each licensee take five hours of continuing education provided by a board approved continuing education provider. The language of the proposal does not mandate specific content for the continuing education, only that three of the five hours emphasize ethics, standards of practice **or** laws and regulations governing the profession of funeral service in Virginia.

The procedures for approving continuing education providers depend on whether the provider is an existing not-for-profit organizations, a new not-for-profit organizations, or a for-profit organizations. All existing not-for-profits with an established record of offering continuing education in this field are automatically approved and need never provide the board with any information about their continuing education programs. New not-for-profits would, apparently, have to go through an approval process, but this is not specifically laid out in the proposed language. By contrast, for-profit programs must obtain approval from the board each

year. To obtain approval, the firm must pay an annual \$200 review fee and submit detailed information about courses and instructors, even if this information has not changed since the last review.

Estimated Economic Impact

The Board of Funeral Directors and Embalmers is required to establish continuing education requirements for its licensees. The board is authorized to require up to 5 hours of continuing education per year. Staff at the Department of Health Professions reports that most complaints concerning licensed activities involve issues related to ethics, pre-need contracts, and compliance with current federal and state laws regarding funeral practice. The board has elected to require of its licensees the maximum allowable five hours of continuing education. The proposed rule states that the hours must be taken from licensed providers and that three of the five hours must “emphasize the ethics, standards of practice, or laws and regulations governing the profession of funeral service in Virginia.”

The costs associated with this regulation include course fees, costs for travel and lodging, and lost work or leisure time. Measuring these costs is complicated by a number of factors, but some estimates are possible. This regulation affects 1,573 board licensees. Agency staff indicate that a majority of licensees already participate in some continuing education. Specific information about how many licensees do not currently take courses and how many hours are taken by those who do currently take some courses is not available. Documentation with the board’s submission of this proposal indicate that course fees will range between \$45 and \$100 for the required 5 hours. Travel costs will vary widely. Some courses are associated with meetings that would be attended whether or not courses were available. In other cases, a few hours of travel and even an overnight stay may be required. It seems reasonable to assume two hours as the average time lost to travel.¹ The U.S. Bureau of Labor Statistics reports that average wages of licensed funeral personnel range between \$17 and \$24 per hour. Given these estimates, we can estimate an annual average cost on the order of \$200 for each person not previously taking these courses. Even if only 500 licensees fall into this category, the estimated total cost will be on the order of \$100,000 per year. Additional costs will be incurred by those already taking some continuing education hours but fewer than five and those licensees who are taking

courses in other subject areas and who may need to add hours in the mandated subject areas. Thus, the \$100,000 should be taken as a lower bound on potential costs of compliance with this proposal. The increased cost of providing funeral services will be shared between three groups: consumers of the services, owners of funeral establishments, and licensees. Who actually pays the costs depends on the level of competition in local funeral service markets and the tightness of the local labor markets.

It is also possible that the increased cost of providing funeral services will result in a reduction in the supply of funeral services. This would happen if the increased costs imposed by this regulation resulted in a reduction in hours or the closing of a marginal funeral service establishment. While the \$200 annual cost per licensee may not appear to be enough to result in a reduction in supply, not enough is known about Virginia funeral service markets to draw a firm conclusion about this. In fact, at least one commentator on the funeral services industry actually points to the closing of financially marginal establishments as *an advantage* of continuing education regulations. (See Continuing Education: An Ethical Issue, *Robert W. Ninker, CAE*, available at http://www.fea.org/Funeral%20Ethics/continuing_education.htm.) This is precisely the sort of anti-competitive effect that should be avoided. Although surviving businesses in this industry would find it to their advantage if marginal firms were to close, this would result in less competition and, hence, probably a loss of economic value to consumers. Thus, it is important that the costs of continuing education regulations be kept to a minimum.

The expected benefits from these regulations arise according to the following logical sequence.² (1) Each year, approximately 65³ founded cases are brought by consumers concerning funeral service providers who failed to follow applicable ethical standards, violated applicable state or federal law, or did not follow applicable standards for arranging and financing pre-need contracts. (2) These violations impose costs on consumers and should be reduced or

¹ This cost will tend to fall as more people take on-line courses. On the other hand, the effectiveness of on-line courses relative to in person training is not known.

² One point not included in this list is that, as a whole, funeral directors as a group may benefit from the public perception that they are more professionally responsible because they are subject to continuing education requirements. (This argument is made explicitly in the article cited in the previous paragraph.) That there may be benefits to the licensees from a system of professional certification does not justify a regulatory response. Generally, professional certification may be handled by private membership organizations.

³ According to the board, in FY2000 there were under 35 complaints against funeral establishments and under 45 complaints against funeral directors. Since there may be some overlap in complaints, the total number of

eliminated. (3) At least a significant proportion of these violations are due to an unfamiliarity with the applicable standards on the part of licensees. (4) Five hours of classes per year, including three that “emphasize ethics, standards of practice, **or** laws and regulations” (emphasis added) will result in fewer violations.

Taking as given the number of founded complaints, the economic cost of these complaints depends on the costs imposed on individuals by the violations. The standard measure of costs for an event is the amount consumers would be willing to pay to avoid that event. Little or no data is available to assess the willingness to pay to avoid the violations of funeral service standards that occur each year. We do know that the complaints vary significantly in the seriousness of the violation. The board applies a score between one (1) and six (6) as a measure of the seriousness of the violation; one being the most serious and six being the least serious. Assuming that the board’s scoring is reasonably related to the legitimate damages imposed on consumers, then the most cost-effective rule would be one that had a greater likelihood of reducing the more serious violations rather than the least serious. Without more information, it is not possible to know whether this proposed rule is more likely to reduce one type of violation or another. Later in this analysis, an effort will be made to calculate what level of damages would be needed to justify these regulations on the basis of generating a gain that is greater than the cost of achieving it.

The board reports that a substantial portion of the founded cases are due to licensee unfamiliarity with the applicable standards rather than to an intentional violation. Knowing the proportion of unintentional violations is important because it would be reasonable to assume that five hours of continuing education would not be effective in preventing many of the intentional violations. No information was available on the distribution of complaints according to the level of intent or negligence displayed by the licensee. For some subset of complaints, where the board determines that the violation is primarily due to inadequate management attention to compliance issues, the board will require some continuing education hours as part of any disciplinary action it may impose. When violations result from gross mismanagement or even willful disregard of the standards of practice, one may question whether any amount of continuing education requirements can have much of an effect on whether additional violations

independent violations may be smaller than the total of under 90 complaints some 70% of these were found to have

of this type will occur in the future. Thus, even if we assume that continuing education requirements *will* prevent a subset of complaints, it almost certainly *will not* prevent others. In fact, given that a majority of licensees already take some continuing education, it would seem likely that some of the violations occurring now are by licensees already taking continuing education classes.

The expected benefits of this proposed rule depend directly on the number of cases that will be prevented by this rule. If it is true that there are about 65 founded cases per year, then we can assume that the number of cases that would be prevented by this rule would be somewhat fewer than 65 per year, possibly significantly fewer. Unfortunately, there is no data readily available to allow a good estimate of the expected reduction in founded cases that would occur due to a new continuing education requirement. Also, reductions in founded cases may not measure all of the benefits of continuing education. Some improvement may occur in professional practices that would not have been the subject of a complaint. Those licensees who take continuing education classes voluntarily presumably do so because they feel that it improves the quality (and hence market value) of the services they provide.

The final step in thinking about the benefits likely to result from this proposal involves an assessment of the type and amount of coursework required. As already noted, the department reports that most complaints concerning licensed activities involve issues related to ethics, pre-need contracts, and compliance with current federal and state laws regarding funeral practice. The board's response is to require that its licensees take the maximum allowable five hours of continuing education, that the hours must be taken from licensed providers, and that three of the five hours must "emphasize the ethics, standards of practice, **or** laws and regulations governing the profession of funeral service in Virginia" (emphasis added).

Even assuming that continuing education will prevent complaints in the areas of concern, there appears to be a lack of logical connection between the nature of the complaints and the education requirements. First, the unrestricted two hours may be taken in areas completely unrelated to the areas of concern; for example, in managing the remodeling of a funeral home or in financial management or enhancing the marketability of licensee services.⁴ These hardly seem

merit. Also, the board's documentation did not indicate the relative severity of complaints.

⁴ Such courses are routinely offered by associations, schools and other continuing education providers.

to be areas in need of a regulatory response. These issues are traditionally left to businesspeople to decide for themselves. Thus, the extra two hours of training do not appear to be logically related to the concerns of the board and can be expected to have little net social benefit.

Second, there is no specific requirement for training on pre-need contracts in the rule, one of the key areas of concern.

Third, the language of the regulation allows a provider to *choose* from among the three categories of required courses rather than requiring some coursework in all of the problem areas. It is easy to envision a licensee taking courses in one area and committing violations in another due to ignorance about material in the area not chosen. If funeral service providers need frequent reminders about ethics in the profession in order to avoid ethical lapses, then it would seem prudent to require them to take a course in ethics periodically. The same logic goes for the other two required subject areas. Such a requirement does not exist in the current proposal.

This also raises the question of how often a given course should be required. How often do funeral providers need to be reminded about their ethical obligations? Every year? Every two years? Given that the ethical standards in the industry do not change significantly from year to year, then a short (say, two or three hours) course every two years would seem sufficient unless the board has evidence to the contrary. Any more frequent or more lengthy requirements would be unlikely to produce any additional economic benefit whatsoever. It could be that the laws and regulations in this area change so frequently that some annual coursework in this area is justified. However, that is not required in this regulation. Providers are not required to update their knowledge of laws and regulations under this proposal. They may choose to do so, if they wish. But that is already true without this rule. Again, the board has not justified either the frequency or length of training based on the expected gain to the public. As they are now written, these rules could produce a minimal amount of gain for the maximum cost allowed by statute.

One way of implementing a training requirement that stands the best chance of producing net economic benefits would be to specify the specific areas where training must be updated periodically. For each area, an hourly requirement and a frequency of training could be established based on such factors as the seriousness and frequency of violations in that area and on the frequency with which standards and practices in the area change.

Education provider certification

In addition to the costs imposed on the licensees, this proposal imposes costs on new providers of continuing education services and, in particular, on for-profit providers. Existing not-for-profit providers are granted permanent, unconditional approval without providing any documentation for review, ever. For-profit firms wishing to offer continuing education to providers must reapply every year, pay \$200, and provide extensive documentation about classes and instructors, no matter what the firm's established history in offering continuing education classes. The same requirements apply even if the provider has made *no changes* from the program it offered in the previous year. Any distinction between providers based solely on their status as a for-profit or not-for-profit organization should be subjected to strict scrutiny because it appears designed to favor existing providers at the expense of potential competitors. It tends to protect a source of income for non-profit associations by discouraging competition.

The board could provide no evidence that there is any difference between the quality of courses offered by for-profit and not-for-profit organizations. Indeed, this requirement flies in the face of the increasing availability of professional education services offered by for-profit firms. Thus, this distinction fails even a simple preponderance of evidence test much less the strict scrutiny that should be applied to rules with obvious anti-competitive effects. If the product of not-for-profits is generally superior to that of for-profits, then they should have little difficulty proving it by passing the same level of examination as for-profits. If their product is not superior, then this rule serves as an economically costly protection of existing interests with little or no benefit.

Summary

We have argued above that even under the most favorable assumptions, these education requirements will affect only some fraction of the expected 65 or so annual founded cases against funeral homes and funeral service providers. In addition, the structure of the education requirements do not appear designed in a way that would maximize their effectiveness in reducing violations of funeral service rules. A fairly optimistic assumption would be that these rules will reduce founded cases by as much as half. In addition, our estimates indicate that complying with these rules will cost on the order of \$100,000 per year or more. With an assumed reduction of 33 founded cases per year, the average cost will be at least \$3,030 per case

reduced. It would appear possible to redesign this proposal in a way that would both reduce its costs and increase its effectiveness.

Businesses and Entities Affected

The proposed rule affects approximately 1,573 licensees of the Board of Funeral Directors and Embalmers. In addition, the rules affect an unknown number of firms and associations that may provide continuing education services under this regulation.

Localities Particularly Affected

This proposal applies statewide and is not expected to have a disproportionate impact on any particular localities.

Projected Impact on Employment

The proposed rule raises the cost of maintaining a license as a funeral service provider. However, the increased cost is not likely to be enough to cause a measurable reduction in the number of funeral service providers. Thus, no measurable effect on employment is anticipated.

Effects on the Use and Value of Private Property

The proposed regulation protects the interests of existing, not-for-profit continuing education providers at the expense of potential entry by competing for-profit firms. This increases costs to the licensees and their customers and reduced the ownership value of for-profit providers of continuing services.