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Periodic Review Report of Findings

Agency name	Board of Funeral Directors and Embalmers; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC65-30-10 et seq.
Regulation title	Regulations for Preneed Funeral Planning
Date this document prepared	2/4/19

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*.

Acronyms and Definitions

Please define all acronyms used in this Report. 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

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:

§ 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.*

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

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

The Chair noted that the Board’s periodic review of the preneed regulations was conducted pursuant to 18VAC65-11-110 (Public Participation Guidelines) and the Governor’s Executive Order 14. He further stated that the periodic review provides the process for a Board to review and 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.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, 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. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

There was a 30-day comment period from 5/14/18 to 6/13/18; there was no comment.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Regulatory Advisory 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.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The RAP recommended amendments to ensure greater protections in disclosures about what is and is not included in a preneed contract, the retention of document and notification if a funeral home closes or changes ownership.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

(1) The regulation is necessary for public protection since the Board has a statutory mandate to *"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."*

(2) As noted in the alternative section, the Board received a petition for rulemaking from a consumer related to the loss of funds in a preneed contract when a funeral home closed without notice. Accordingly, the Board intends to amend regulations for disclosures for preneed contracts to ensure consumers receive clear information regarding the options available to consumers in the event a funeral establishment closes.

(3) The regulation was reviewed and amended in 2013 and again in 2018 for clarity and amended for ease of understanding. Some additional clarifications are recommended.

(4) The content of preneed contracts and required disclosures are consistent with rules of the Federal Trade Commission.

(5) Amendments to this chapter have been promulgated 6 times from in the last 10 years to update or eliminate unnecessary requirements. While the Board does not intend to increase the regulatory burden on small businesses, it does intend to add some additional disclosure for consumers to help them better understanding the nature of preneed funeral contracts and protection them from fraud and default.