

# Comments of the Independent Regulatory Review Commission



## State Board of Funeral Directors Regulation #16A-4824 (IRRC #3293)

### Child Abuse Reporting Requirements

May 12, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the March 13, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Funeral Directors (Board) to respond to all comments received from us or any other source.

#### **1. Implementation procedures.**

The proposed rulemaking does not address funeral directors from reciprocal states who hold limited licenses under Section 13.77 (relating to limited license). Under 23 Pa.C.S. § 6311(a)(2) (relating to persons required to report suspected child abuse), funeral directors are mandated reporters. We ask the Board to explain how the child abuse recognition and reporting training and continuing education requirements in 23 Pa.C.S. § 6383(b)(3)(i) and (ii) (relating to education and training) will be implemented for these funeral directors. Further, we ask the Board to consider clarifying requirements for limited license funeral directors in a future rulemaking or explain why it is not necessary to do so.

#### **2. Section 13.301. Definitions relating to child abuse reporting requirements. – Clarity and lack of ambiguity.**

##### *Perpetrator*

Subparagraphs (i)(D) and (ii)(D) of the definition of “perpetrator” limit this term to individuals of certain ages who are responsible for a child’s welfare. However, the specifically-defined term “person responsible for the child's welfare” is not used. To improve clarity, we ask the Board to revise the definition of “perpetrator” to use the term defined in this section.

#### **3. Section 13.302. Suspected child abuse – mandated reporting requirements. – Protection of the public health, safety and welfare; Clarity and lack of ambiguity.**

Subsection (a) requires a funeral director to report suspected child abuse when there is “reasonable cause to suspect that a child is a victim of child abuse” under a set of circumstances derived from 23 Pa.C.S. § 6311(b)(1). This subsection does not include the responsibilities in

23 Pa.C.S. § 6311(b)(2) and (3) to report suspected child abuse when certain information is not known. To protect the public health, safety and welfare, the Board should add the omitted statutory provisions or explain why it is unnecessary to do so.

**4. Section 13.303. Photographs, medical tests and X-rays of child subject to report. – Clarity and lack of ambiguity.**

Under this section, a funeral director is required to send “[m]edical summaries or reports of the photographs, X-rays and relevant medical tests taken” to the county children and youth social service agency after the written or electronic report is made. Under 23 Pa.C.S. § 6314 (relating to photographs, medical tests and X-rays of child subject to report), these materials “shall be made available to law enforcement officials in the course of investigating cases.” For consistency, the Board should add the statutory requirement to make these materials available to law enforcement officials or explain why it is not necessary to do so.

**5. Section 13.306. Confidentiality – waived. – Protection of the public health, safety and welfare; Clarity and lack of ambiguity.**

This section is included in the proposed rulemaking without amendments. This section is not amended to include the requirements in 23 Pa.C.S. § 6311.1 (relating to privileged communications) stating that privileged communication between a mandated reporter and a client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. We ask the Board to explain why the statutory requirement is not included in this regulation. The Board should consider adding privileged communication in a future rulemaking to protect the public health, safety and welfare, or explain why it is not necessary to do so. Further, this section should not be published in the final-form regulation as it is not being amended.

**6. Section 13.308. Child abuse recognition and reporting – mandatory training requirement. – Implementation procedures; Clarity and lack of ambiguity.**

*Subsection (a)*

Subsection (a) requires an individual applying for initial licensure as a funeral director to complete at least three hours of training in child abuse recognition and reporting requirements and to “submit proof of completion.” Section 13.309(b)(13) (relating to child abuse recognition and reporting course approval process) requires approved course providers to electronically report attendance to the Bureau of Professional and Occupational Affairs. We ask the Board to revise this subsection to include the implementation procedures for submission of proof of training.

*Subsection (c)*

Under subsection (c), an applicant or licensee may apply for an exemption from subsection (a) or (b). Paragraph (3) directs an applicant or licensee to submit documentation demonstrating that the individual “should not be subject to the training or continuing education requirement.” A

request for exemption is “considered on a case-by-case basis.” We have three concerns. First, the standards for documentation and evaluation are vague. Second, this subsection does not specify if the exemption is limited to one biennial renewal period. Third, the process for notification of approval or denial is not stated. We ask the Board to explain the standards for sufficient documentation and the evaluation process for reviewing a request for exemption, including if there is a time frame for completion of training prior to applying for an exemption. We also ask the Board to considering clarifying this subsection to state the time period of the exemption and the process for notifying applicants and licensees.

## **7. Miscellaneous clarity.**

- In Section 13.307(b)(4) (relating to noncompliance), the phrase “convicted of a prior offense under § 6319” should be revised to cross-reference 23 Pa.C.S. § 6319.
- In Section 13.308(c) (relating to child abuse recognition and reporting – mandatory training requirement), “licensee holder” should be corrected to “licensee.”
- We identified the following clarity issues in the RAF:
  - The citation to the Child Protective Services Law in Question # 7 should be updated to 23 Pa.C.S. §§ 6301 – 6387.
  - The number of limited license funeral directors should be included in responses to Questions # 15, 16 and 19.