The meeting of the State Board of Embalmers and Funeral Directors was called to order by Gary Fraker, chairman, at 8:02 a.m. (The board was scheduled to meet April 25-26, 2018 but only met on April 25, 2018.)

Roll Call
Board Members Present
Gary Fraker, Chairman
Scott Meierhoffer, Vice Chairman
James Reinhard, Secretary
Kenneth McGhee, Board Member
Jerald Dickey, Board Member – Left at 2:20p.m.

Staff Present
Sandy Sebastian, Executive Director
Teri Forck, Administrative Assistant
Lori Hayes, Inspector
Lisa Wildhaber, Examiner Supervisor
Gary Lorts, Examiner
Randall Jennings, Examiner
Sarah Ledgerwood, Division Legal Counsel

Gary Fraker expressed his appreciation to Kenneth McGhee for his past service as chairman and stated it was a pleasure to serve with him.

Gary Fraker asked Lori Hayes to read the mission statement for the financial examinations and followed by asking Kenneth McGhee to open with an invocation.

Approval of Amended Agenda
A motion was made by James Reinhard and seconded by Jerald Dickey to approve the agenda. Motion carried with Scott Meierhoffer, Kenneth McGhee and Gary Fraker voting in favor with no votes in opposition.

Gary Fraker asked that Sandy introduce the examination team present and asked the public to introduce themselves.

Executive Director Report
No report.

Discussion and Review of Proposed Financial Examination Process submitted by William Stalter (Attachment A)
Gary Fraker asked William Stalter to discuss the proposal for the financial examination process that he had submitted. Mr. Stalter presented his proposal to the board. The discussion also included the Board Directives for Preneed Seller Financial Examinations, beginning in 2016 that was adopted by the board January 6, 2016 and the Financial Examination Procedure Handbook (August 2016).
Review of Regulations for the Purpose of Section 536.175 RSMo and Executive Order 17-03/Red Tape Reduction (Attachment B)
The board reviewed draft regulations that included red tape changes previously approved at a prior meeting and consensus of the board for staff to make any other appropriate in consultation with counsel. Public comments received during the process established in Executive Order 17-03 were considered when reviewing the regulations and draft regulations.

20 CSR 2120.2005 General Rules – Applicable to all Licensees and Registrants (proposed number)
Sandy shared that following the March 15, 2018 meeting where a draft was approved there was discussion with counsel and the staff was seeking further conversation with the board regarding posting all entities (establishments, sellers and providers) or the establishment only with a sign notifying public that all licenses for individuals issued pursuant to chapter 333 are available upon request and for inspection at this location”. A motion was made by Gary Fraker and seconded by James Reinhard to require that only funeral establishment licenses be posted and the remainder be available for viewing upon request by the public, inspectors and board staff if the sign is posted. Motion carried with Kenneth McGhee and Scott Meierhoffer voting in favor with Jerald Dickey voting in opposition.

20 CSR 2120-3.010 Preneed Seller
A motion was made by Scott Meierhoffer and seconded by James Reinhard to approve with the following changes: in (1)(A) change “certificate of good standing” to “proof of good standing”; in (G) delete “and address” and add “license number”; in (H) delete signature and add license number; delete (K); reword (2) to read “an applicant that does not meet the requirements of the board for licensure within ninety (90) days from the date the application is filed with the board and still desires to seek licensure shall file a new application and pay applicable fees”; change 15 to 30 in (3); in (4) delete the language restricting a single DBA; (4)(A) change the language to reference a majority of the ownership rather and one or more owners, change “fifteen (15) days after change” to “thirty (30) days prior to change, and delete the last sentence that reads, “This form shall…..current information.” Motion carried with Kenneth McGhee, Gary Fraker and Jerald Dickey voting in favor with no votes in opposition.

20 CSR 2120-3.020 Preneed Provider
A motion was made by Scott Meierhoffer and seconded by James Reinhard to approve with the following changes: in (1)(A) change “certificate of good standing” to “proof of good standing”; delete (1)(F); reword (3) to read “an applicant that does not meet the requirements of the board for licensure within ninety (90) days from the date the application is filed with the board and still desires to seek licensure shall file a new application and pay applicable fees”; in (4) delete the language restricting a single DBA and delete the sentence that reads, “The license issued…..at that location.”; in (4)(A) change the language to reference a majority of the ownership rather and one or more owners, change “fifteen (15) days after change” to “thirty (30) days prior to change, and delete the last sentence that reads, “This form shall…..current information.” Motion carried with Kenneth McGhee, Gary Fraker and Jerald Dickey voting in favor with no votes in opposition.

20 CSR 2120-3.030 Notification of Intent to Sell Assets or Cease Doing Business (Seller or Provider)
A motion was made by James Reinhard and seconded by Scott Meierhoffer to approve the draft with the deletion in (3) with text that reads, “and shall provide the board with valid rationale……of the active preneed contracts.” Motion carried with Kenneth McGhee, Gary Fraker, and Jerald Dickey voting in favor with no votes in opposition.
20 CSR 2120-3.105 Filing of Annual Reports
A motion was made by Scott Meierhoffer to keep the renewal period as it is. Motion died for lack of second. A motion was made by James Reinhard and seconded by Scott Meierhoffer to delete “the same or” from (1)(C)(2); keep (G); in (3) delete “or annuity beneficiary or assignment”; add language to allow a seller to request one thirty day extension each renewal cycle to renew/file annual report for no cause; a second extension request would require review by the board. Motion carried with Gary Fraker, Jerald Dickey and Kenneth McGhee voting in favor with no votes in opposition.

20 CSR 2120-3.115 Contact Information
This is a non-action item. Motion previously made to approve the draft rescission.

20 CSR 2120-3.120 Display of License
A motion was made by Scott Meierhoffer and seconded by James Reinhard to rescind the regulation based on other discussions relating to display of licenses. Motion carried with Kenneth McGhee and Gary Fraker with Jerald Dickey voting in opposition.

20 CSR 2120-3.125 Corporate Ownership of a License
A motion was made by Scott Meierhoffer and seconded by James Reinhard to rescind the regulation. Motion carried with Kenneth McGhee, Gary Fraker and Jerald Dickey voting in favor with no votes in opposition.

20 CSR 2120-3.200 Seller Obligations
A motion was made by Scott Meierhoffer and seconded by James Reinhard to rescind the regulation and combine the language with 20 CSR 2120-3.010 proposal as appropriate; including changing (1)(C) to fifteen (15) days. Motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

20 CSR 2120-3.205 Mandatory Consumer Disclosures (proposed number)
A motion was made by Scott Meierhoffer and seconded by Kenneth McGhee to not pursue the regulation. Motion carried with James Reinhard and Gary Fraker voting in favor with Jerald Dickey voting in opposition.

20 CSR 2120-3.210 Formation Of An Insurance Funded Preneed Contract (proposed number)
A motion was made by James Reinhard and seconded by Scott Meierhoffer to not pursue the regulation and to clarify that an insurance assignment is not a preneed contract. Motion carried with Gary Fraker voting in favor and Kenneth McGhee and Jerald Dickey voting in opposition. (Note because there was no regulation to include the clarification statement that specific language was incorporated into 20 CSR 2120-3.505 proposed amendment based a motion.)

20 CSR 2120-3.300 Provider Includes Funeral Establishment
A motion was made by Kenneth McGhee and seconded by James Reinhard to rescind the regulation and combine the language with 20 CSR 2120-3.020. Motion carried with Kenneth McGhee, Gary Fraker and Jerald Dickey voting in favor with no votes in opposition.

20 CSR 2120-3.305 Funeral Director Agent Registration
This is a non-action item. Motion previously made to approve the draft rescission.

20 CSR 2120-3.310 Change in Seller Affiliation
A motion was made by James Reinhard and seconded by Kenneth McGhee to rescind the regulation and move the language to 20 CSR 2120-3.020 changing the language in (1)(C) to remove “and signature” and add “license number”. Motion carried with Scott Meierhoffer, Gary Fraker and Jerald Dickey voting in favor with no votes in opposition.
20 CSR 2120-3.400 Preneed Agents – Requirements of Agent’s Seller
A motion was made by Scott Meierhoffer and seconded by James Reinhard to rescind the regulation and move the language to 20 CSR 2120-3.405. Motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

20 CSR 2120-3.405 Preneed Agent Registration
A motion was made by Scott Meierhoffer and seconded by James Reinhard to rescind the regulation and move the language to 20 CSR 2120-3.405. Motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

20 CSR 2120-3.410 Preneed Agent’s Seller Must Be Licensed
This is a non-action item. Motion previously made to approve the draft rescission.

20 CSR 2120-3.505 Types of Financing; Other Financing Still Preneed
A motion was made by Scott Meierhoffer and seconded by James Reinhard to approve the draft as proposed and add as new “(1) Insurance assignments are not a preneed contract.” Motion carried with Gary Fraker, Kenneth McGhee and Jerald Dickey voting in favor with no votes in opposition.

20 CSR 2120-3.515 Single Premium Annuity Contracts
This is a non-action item. Motion previously made to approve the draft rescission.

20 CSR 2120-3.525 Independent Financial Advisor is Agent of Trustee
A motion was made by Scott Meierhoffer and seconded by James Reinhard to approve the draft. Motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

20 CSR 2120-3.530 Confidentiality of Preneed Records Obtained by the Board Through Financial Examination, Audit or Investigation (proposed number)
A motion was made by James Reinhard and seconded by Scott Meierhoffer to approve the draft with the deletion of (2) and (4). Motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

20 CSR 2120-3.535 Financial Examination Committee (proposed number)
A motion was made by Scott Meierhoffer and seconded by James Reinhard to not pursue the regulation. Motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

20 CSR 2120-3.540 Financial Examination-Audit Process and Procedures (proposed number)
A motion was made by Kenneth McGhee and seconded by James Reinhard to accept the draft with the following changes: in (1) delete the second sentence that reads, “The board shall……financial examination”; delete (3), in (4) delete “periodically”; delete (7) and (8). Motion carried with Scott Meierhoffer, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

Motion was made by Kenneth McGhee and seconded by James Reinhard to modify (9) to read to allow the seller opportunity to respond to the financial examination or audit report. Motion carried with Scott Meierhoffer, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.
20 CSR 2120-3.530 Seller Fees and Charges on Preneed Contracts (proposed draft)
A motion was made by James Reinhard and seconded by Scott Meierhoffer to approve the draft. Motion carried with Kenneth McGhee and Gary Fraker voting in favor with Jerald Dickey voting in opposition.

What Constitutes Adequate Records for a Seller
A motion was made by Kenneth McGhee and seconded by Jerald Dickey to not approve the draft and replace with language that Kenneth McGhee proposed, which reads, "Adequate records means that the seller must maintain an accounting sufficient enough to show and reconcile any and all financial transactions related to the history of records, files, books, logs or other documents on a preneed contract, including any and all credits, debits, interest, payments, disbursements, fees, or cancellation and or fulfillment of the preneed contract between the seller and purchaser." Motion carried with Gary Fraker and Scott Meierhoffer voting in favor and James Reinhard voting in opposition.

Preneed Handbook
There was a public comment relating to the legality of the handbook and it being an un-promulgated rule. It was discussed that there are legal cases to support that handbooks are not un-promulgated rules. There was no motion made and no further action taken on this item.

Financial Examination Scope Discussion
Following completion of the review of the regulations Scott Meierhoffer asked if the board could revisit the topic of the scope. There was general discussion relating to the examination process and the taking of photographs relating to noted exceptions as a part of the financial examination process. Following discussion a motion was made by Kenneth McGhee and seconded by Scott Meierhoffer to table the scope of the financial examination to a future meeting. Motion carried with Jerald Dickey, James Reinhard and Gary Fraker voting in favor with no votes in opposition.

Move to Closed
A motion was made by James Reinhard and seconded by Scott Meierhoffer to move into closed pursuant to numbers 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the attached motions to close. Motion carried with Gary Fraker, Jerald Dickey and Kenneth McGhee voting in favor with no votes in opposition.

Adjourn
The meeting adjourned at 2:45 p.m.

Executive Director

Approved by the board on June 13, 2018
MOTIONS TO GO INTO CLOSED SESSION

1. **DISCIPLINE**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline.

2. **LEGAL ACTIONS/LITIGATIONS/PRIVILEGED COMMUNICATIONS**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

3. **PROMOTING/HIRING/DISCIPLINING/FIRING EMPLOYEES**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency.

4. **DIAGNOSIS/TREATMENT OF DISCIPLINED LICENSEES**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (5) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees.

5. **EXAMINATION MATERIALS**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (7) RSMo for reviewing testing and examination materials.

6. **EMPLOYEE PERFORMANCE RATINGS**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (13) RSMo for making performance ratings pertaining to individual employees.

7. **APPLICATIONS**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

8. **CLOSED MINUTES**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and 324.017 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

9. **COMPLAINTS/INVESTIGATIVE REPORTS/AUDITS**
   I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 324.001.8 and 324.017 RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant.

Revised 2018-01
Refocus the Examination Process:

Determining that Consumer Funds Being Remitted on Time

Problems with the current process:

- The current examination procedures are document/record based, and rely upon license discipline for enforcement.
- Too much emphasis is placed on contract compliance, and provider related issues.
- Past exams have proven time consuming and without measurable consumer protections.
- When the examination found the seller to have a funding deficiency, the Board lacked a plan for how to deal with the situation.
- The staff seemed opposed to using Section 436.485 to refer even the most egregious sellers to the local prosecutor.

The examination process should emphasize a goal that licensees can’t dispute: ensuring that sellers are complying with SB1’s fund handling requirements: Trust deposits within 60 days, joint account deposits within 10 days, and insurance deposits within 30 days.

The examination process will have three levels of review:

1. Level 1 will be used for sellers with no prior exam exceptions, or minor exceptions related to documentation issues. The Level 1 exam is primarily a desk audit conducted at the Division’s offices, with a half day on site review of pre-identified serviced/canceled files.
2. Level 2 will be used for sellers with minor exceptions related to consumer funds handling, or multiple exceptions related to contract compliance, recordkeeping, [insert]
3. Level 3 will be used for sellers with multiple exceptions related to consumer funds handling, major exceptions for Chapter 436 compliance.

Sellers would be required to file a short quarterly form that reports aggregate contracts sales, consumer funds received, deposits made to trusts, banks and insurance within the 60/10/30 requirements, and deposits made outside of the required periods.

Failure to timely file two quarterly reports in any one year will elevate the seller from a level one exam to a level two exam.

A finding that two or more quarterly reports were prepared inaccurately will elevate the seller’s exam to level two.

Level 1 Examination:

- A desk review of ten randomly picked contracts for compliance. (Desk)
Draft for Discussion

- A review/reconciliation of a quarterly report from each year to the monthly payment/deposit record. (Desk)
- A reconciliation of bank transaction report (filtered for deposits) to quarterly reports (Desk)
- A reconciliation of insurance report to quarterly reports (Desk)
- A review of the trust’s asset listing at the end of each year, and the trust report provided with audit document request. (Desk)
- Review of a Level 1 sampling of performed/canceled contract files (on site)
- Review contract files based on any irregularities noted through the desk audit (on site)
- Exit interview to discuss exceptions noted, files not found.

Level 2 Examination:

- A desk review of 10 randomly picked contracts for compliance. (Desk)
- A review/reconciliation of all quarterly reports to the monthly payment/deposit record. (Desk)
- A reconciliation of bank transaction report (filtered for deposits) to quarterly reports (Desk)
- A reconciliation of insurance report to quarterly reports (Desk)
- A review of the trust’s asset listing at the end of each year, and the trust report provided with audit document request. (Desk)
- An on-site review of 20 randomly picked contracts for compliance (on site)
- Review of a Level 2 sampling of performed/canceled contract files with disbursement records from trust/bank/insurance (on site)
- Review contract files based on any irregularities noted through the desk audit (on site)
- Exit interview to discuss exceptions noted, files not found.

Level 3 Examination:

- A desk review of Seller’s contract form for compliance. (Desk)
- A review/reconciliation of all quarterly reports to the monthly payment/deposit record. (Desk)
- A reconciliation of bank transaction report (filtered for deposits) to quarterly reports (Desk)
- A reconciliation of insurance report to quarterly reports (Desk)
- A review of the trust’s asset listing at the end of each year, and the trust report provided with audit document request. (Desk)
- An on-site review of all contracts sold since last exam for compliance (on site)
- Review of a Level 3 review of performed/canceled contract files with disbursement records from trust/bank/insurance (on site)
- Review contract files based on any irregularities noted through the desk audit (on site)
Draft for Discussion

- Meetings with seller and funding agent representatives (on site)
- Exit interview to discuss exceptions noted, files not found.

Corrective Actions

For minor exceptions, offer corrective options without license discipline. The examination can be left open to permit a follow up visit to ensure the correction option has been implemented.

For significant funding issues, offer an agreement to defer discipline proceedings if agreed upon remedial steps are implemented and maintained for one year. (Increasing the trusting percentage; reducing distributions and applying excess funds to the deficiency, ------)

For sellers that obstruct the Board’s efforts, or refuse to provide reports or documents, Section 436.485 can provide the Board a more effective tool for obtaining cooperation. The quarterly report system sets up the worst offenders for referral to local prosecutors. This will require the Board staff to coordinate with prosecutors, and educate them. Typically, the prosecutor will perceive preneed fraud as theft committed by the funeral director against the consumer when he fails to provide funeral at the time death. SB1 makes it a class D felony when the seller intentionally disregards the time requirements for remitting consumer funds on time. The quarterly reporting system is meant to create the evidence a prosecutor would need to file charges.

Guidelines are needed for the referral of criminal matters to a local prosecutor. Such situations dictate that the Board be an active partner to the prosecutor, seeking an outcome that best ensures the cooperation of the seller.
PROPOSED RULE

20 CSR 2120-2.005 General Rules – Applicable to all Licensees and Registrants (proposed rule number)

Purpose: This rule provides information and requirements applicable to all licensees and registrants.

(1) All funeral establishment, preneed seller, and preneed provider licenses shall be displayed, at all times, in a conspicuous location accessible to the public. All licenses and registrations for individuals issued pursuant to Chapter 333, RSMo, shall either be displayed at all times in a conspicuous location accessible to the public at funeral establishment and preneed seller locations unless the entity has posted a sign in a conspicuous location accessible to the public that reads, “All licenses for individuals issued pursuant to Chapter 333, RSMo, are available upon request and for inspection at this location.”

(2) The licensee's failure to receive the renewal notice shall not relieve the licensee of the duty to pay the renewal fee and renew his/her license.

(3) The Missouri Law exam covers knowledge of Chapter 333, RSMo, and the rules governing the practice of embalming, funeral directing, and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition, and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo, relating to preneed statutes and Chapters 193 and 194, RSMo, relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations requirements as they apply to Missouri licensees.

(4) Each Missouri licensed embalmer or funeral director shall keep the board notified of each address change of the Missouri licensed funeral establishment at which he/she is practicing. The embalmer or funeral director shall notify the board within thirty (30) days of any termination and prior to beginning as an embalmer or funeral director with a Missouri licensed funeral establishment.

(5) Each Missouri registered preneed agent shall keep the board notified of each preneed seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for or on behalf of.

(6) Each Missouri embalmer, funeral director, preneed seller, preneed provider, and preneed agent shall keep the board notified of their current address, telephone number, facsimile number, and email address, as applicable, at all times; and shall notify the board prior to any address change by submitting written notice with the new information.

(7) A Missouri licensed funeral director, embalmer, and preneed agent has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, whether or not sentence was imposed for any and all criminal matters for which discipline is authorized in Section 333.330.2(2), RSMo. This information shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(8) All licensees may be represented before the board by an attorney. If the licensee desires to be represented by an attorney, the attorney shall be licensed to practice law in Missouri or meet the requirements of the Supreme Court with respect to nonresident attorneys.

(9) All documents filed with the board shall become a part of its permanent files.

20 CSR 2120-3.010 Preneed Seller License [Registration]

Purpose: The purpose of the amendment is to update terminology and requirements for licensure of preneed sellers as provided in chapter 436.

[PURPOSE: Under Chapter 436, RSMo, the State Board of Embalmers and Funeral Directors is directed to register persons as preneed sellers. Under section 333.111.1., RSMo, the State Board of Embalmers and Funeral Directors is directed to promulgate rules. . . “for the transaction of its business. . .” This rule complies with the statutory directive that the board promulgate rules for the transaction of its business in registering persons as preneed sellers.

(1) Whenever used in this rule, the word person means any individual, partnership, corporation, cooperative, association or other entity.

(2) Applications for registration as preneed sellers [must] are to [be] accompanied by the applicable preneed seller registration fee.

(3) The board office will contact persons who have submitted applications for registration as preneed sellers whenever it appears that a slight change or modification on the form is necessary to accomplish registration. No such change or modification will be made without the consent of the person submitting the application. If telephone contact is impossible, the application form and the tendered seller registration fee will be returned to the applicant with instructions for completing the form properly.

(4) The board office will accept seller registration applications even though certain information is not provided, if the application is accompanied by a statement that the information will be provided as soon as it is known to the applicant. If the information is not provided in a timely fashion, the registration will be cancelled.

(5) Each person seeking registration as a preneed seller will be [required] to submit a partial annual report at the time of registration, containing—1) the name and address of the financial institution in Missouri in which it will maintain the trust accounts [required under] pursuant to Chapter 436, RSMo and the account numbers of those trust accounts, 2) a consent authorizing the state board to order an examination and, if necessary, an audit by the staff of the Division of Professional Registration who are not connected with the state board, of the trust account designated by depository and account number and 3) a consent authorizing the state board to order an examination and, if necessary, an audit by the staff of the Division of Professional Registration who are not connected with the state board, of its books and records relating to the sale of preneed contracts and name and address of the person designated by the seller as custodian of those books and records.

(6) The board will acknowledge receipt of each application for registration as a preneed seller if the application is completed properly and is accompanied by the preneed registration fee. A registration number will be assigned.
(7) Application forms for registration as preneed contract sellers will be provided to any person upon request.


*Original authority: 333.111.1, RSMo 1965, amended 1981.]

Purpose: This rule outlines the procedures to be used to secure a preneed seller license.

(1) Applications for a preneed seller license shall be made on the forms provided by the board and must be accompanied by the applicable fees. At a minimum an applicant shall submit with the application:

(A) Evidence of being an individual resident of Missouri who is eighteen years of age or older, or if a business entity, a Certificate of Good Standing and, if applicable, a current Registration of Fictitious Name, from the Missouri secretary of state;

(B) Evidence if the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;

(C) The name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;

(D) The name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained;

(E) The name and address of each insurance company that may be utilized for insurance funded preneed contracts;

(F) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;

(G) The name and address of an individual designated to serve as manager in charge of the seller’s business.

(H) The name(s), addresses(s) and signature(s) of each preneed agent who is authorized to sell, negotiate, or solicit preneed contracts on behalf of their behalf;

(I) The name(s) and address(s) of each preneed provider with whom the licensee will have a contractual agreement to be designated as a preneed provider;

(J) A written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller;

(K) A business license if required by city or county;

(L) A certificate of no tax due from the Missouri Department of Revenue, if applicable; and

(M) A Missouri Highway Patrol fee for each person that is an officer or who has at least a 10% interest in the business.

(2) An applicant shall meet the requirements of the board for licensure within ninety (90) days from the date filed with the board office. If the applicant fails to meet the requirements of the board within the required time and still desires to seek licensure, a new application and applicable fees shall be filed with the board.

(3) If the manager in charge changes, the seller shall provide written notice to the board within fifteen (15) days of the change.
The seller license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) “doing business as” name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership or name of the Missouri licensed seller changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new seller license. However, a new application for a seller license form shall be filed as an amended application within fifteen (15) day after change of ownership. This form shall be filled out completely with correct, current information.

(B) If a corporation owns a Missouri licensed seller, it is not necessary to obtain a new seller license or to file an amended application for a seller license if the owners of the stock change.

(C) However, as a separate person, if a corporation begins ownership of a Missouri licensed seller or ceases ownership of a Missouri licensed seller, a new seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

AUTHORITY: Original authority: 333.320 RSMo 2009
On draft regulations red bolds note additions/red brackets note deletions -
Any comments received from public regarding the regulation in effect today follow the draft
(RED TAPE CHANGES ALREADY APPROVED IN YELLOW - OTHERS IN BLUE)

Date Received: 9/17/2017 10:48:00 AM
Rule: 20 CSR 2120 2070 Funeral Establishments
Comments Filed on Behalf of: Self
Name: Stalter Legal Services
Comments: This comment concerns the following language from subparagraph (9): Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained. Over the course of the past two years, clients have sought to amend their establishment license applications to add an ä?osä? to ä?ohomeä? , or to add reference to a town their establishment name, or in one instance, to remove the periods fromä? L.L.C.ä? . The Board advised that these constitute name changes under the above cited regulation, and that new licenses must be obtained. This represents a literal interpretation of the regulation that is burdensome to the licensee without any perceivable benefit to the consumer. I find nothing in Chapter 333 to support the Boardä?Ts strict application of the regulation. The same comment is made with regard to 20 CSR 2120-3.010 and 20 CSR 2120-3.020.
Email Address: wastal@swbell.net
Address:
License #:
Sandy Sebastian  
Missouri State Board of Embalmers and Funeral Directors  
3605 Missouri Boulevard  
PO Box 423  
Jefferson City, MO 65102-0423

Re: Executive Order No. 17-03  
20 CSR 2120-2.070(9)

Dear Sandy:

Pursuant to Executive Order No. 17-03, I am offering the following comments regarding 20 CSR 2120-2.070(9). Specifically, my comments regard the following sentence of that paragraph:

Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained.

Over the course of the past two years, clients have sought to amend their establishment license applications to add an “s” to “home”, or to add reference to a town their establishment name, or in one instance, to remove the periods from” L.L.C.”. The Board advised that these constitute name changes subject to the above cited regulation, and that new licenses must be obtained. This represents a literal interpretation of the regulation that is burdensome to the licensee without any perceivable benefit to the consumer. I find nothing in Chapter 333 to support the Board’s strict application of the regulation. The same comment is made with regard to 20 CSR 2120-3.010 and 20 CSR 2120-3.020.

Thank you for the State Board’s consideration of this issue.

Sincerely,

William Stalter
Date Received: 8/8/2017 11:17:02 AM
Rule: 20 CSR 2120 2070 Funeral Establishments
Comments Filed on Behalf of: Self
Name: Stalter Legal Services
Comments: I appreciate that R.S.Mo. Â§ 417.200 requires licensees to file a fictitious name registration with the Secretary of State when doing business under a name other than their true name. Several of my clients operate multiple funeral establishments and an active preneed program. The clients would like to use one DBA when marketing for at need services and a different DBA when marketing preneed arrangements. As you are aware, the State Board interprets CSR 2120-2.070(9) to limit a Chapter 333 licensee to the use of a single DBA. When I have raised this issue before the State Board during public sessions, no explanation was offered as to how or why a single DBA is essential to health, safety, or welfare of consumers. The regulation is unduly burdensome, and should be revised to eliminate any restrictions on the number of DBAs. It may be appropriate to require that each such DBA be registered with the Secretary of State pursuant to R.S.Mo. Â§ 417.200.
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(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) “doing business as” name.  

I appreciate that R.S.Mo. § 417.200 requires licensees to file a fictitious name registration with the Secretary of State when doing business under a name other than their true name. Several of my clients operate multiple funeral establishments and an active preneed program. The clients would like to use one DBA when marketing for at need services and a different DBA when marketing preneed arrangements. As you are aware, the State Board interprets CSR 2120-2.070(9) to limit a Chapter 333 licensee to the use of a single DBA. When I have raised this issue before the State Board during public sessions, no explanation was offered as to how or why a single DBA is essential to health, safety, or welfare of consumers.  

The regulation is unduly burdensome, and should be revised to eliminate any restrictions on the number of DBAs. It may be appropriate to require that each such DBA be registered with the Secretary of State pursuant to R.S.Mo. § 417.200.  

Thank you for the State Board’s consideration of this issue.  

Sincerely,  

William Stalter
Title 20-DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120-State Board of Embalmers and Funeral Directors
Chapter 3 – Preneed

PROPOSED AMENDMENT

20 CSR 2120-3.020 Preneed Provider License [Registration]

Purpose: The purpose of the amendment is to update terminology and requirements for licensure of preneed providers as provided in chapter 436.

[PURPOSE: Under Chapter 436, RSMo, the State Board of Embalmers and Funeral Directors is directed to register persons as preneed providers. Under section 333.111.1., RSMo, the State Board of Embalmers and Funeral Directors is directed to promulgate rules. . . “for the transaction of its business. . .” This rule complies with the statutory directive that the board promulgate rules for the transaction of its business in registering persons as preneed providers.

(1) Whenever used in this rule, the word person means any individual, partnership, corporation, cooperative, association or other entity.

(2) Applications for registration as preneed providers [must] are to be made on the forms provided by the board and [must] be accompanied by the applicable preneed provider registration fee.

(3) The board office will contact persons who have submitted applications for registration as preneed providers whenever it appears that a slight change or modification on the form is necessary to accomplish registration. No such change or modification will be made without the consent of the person submitting the application. If telephone contact is impossible, the application form and the tendered provider registration fee will be returned to the applicant with instructions for completing the form properly.

(4) The board office will accept provider registration applications even though certain information is not provided, if the application is accompanied by a statement that the information will be provided as soon as it is known to the applicant. If the information is not provided in a timely fashion, the provider registration will be cancelled.

(5) Each establishment which is licensed separately by the state board as a funeral establishment [must] register separately as a preneed provider, if the establishment will perform or agree to perform the obligations of, or be designated as, the provider under a preneed contract. Nothing in this rule will require registration of funeral establishments as preneed providers if the establishment will not perform or agree to perform the obligations of, or be designated as, the provider under a preneed contract.

(6) The board will acknowledge receipt of each application for registration as a preneed provider, if the application is completed properly and is accompanied by the preneed provider registration fee. A registration number will be assigned.

(7) Application forms for registration as preneed providers will be provided to any person upon request.

*Original authority: 333.111.1, RSMo 1965, amended 1981.]

Purpose: This rule outlines the procedures to be used to secure a preneed provider license.

(1) Applications for licensure as preneed providers must be made on the forms provided by the board and must be accompanied by the applicable fees. At a minimum an applicant shall submit with the application:

(A) Evidence, if a business entity, a Certificate of Good Standing and, if applicable, a current Registration of Fictitious Name, from the Missouri secretary of state;

(B) Evidence if applicant is a corporation, each officer, director, manager, or controlling shareholder shall be eligible for licensure if they were applying for licensure as an individual;

(C) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(D) The name(s) and address(s) of each seller authorized by the provider to sell preneed contracts in which the provider is designated or obligated as the provider;

(E) A written consent authorizing the state board to inspect or order an investigation, examination, or audit of the provider's books and records which contain information concerning preneed contracts sold for or on behalf of a seller or in which the applicant is named as a provider;

(F) A business license if required by city or county;

(G) A certificate of no tax due from the Missouri Department of Revenue, if applicable; and

(H) A Missouri Highway Patrol fee for each person that is an officer or who has at least a 10% interest in the business.

(3) An applicant shall meet the requirements of the board for licensure within ninety (90) days from the date filed with the board office. If the applicant fails to meet the requirements of the board within the required time and still desires to seek licensure, a new application and applicable fees shall be filed with the board.

(4) The provider license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) “doing business as” name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership or name of the Missouri licensed provider changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new provider license. However, a new application for a provider license form shall be filed as an amended application within fifteen (15) day after change of ownership. This form shall be filled out completely with correct, current information.

(B) If a corporation owns a Missouri licensed provider, it is not necessary to obtain a new provider license or to file an amended application for a provider license if the owners of the stock change.

(C) However, as a separate person, if a corporation begins ownership of a Missouri licensed provider or ceases ownership of a Missouri licensed provider, a new provider license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

AUTHORITY: Original authority 333.315 RSMo 2009
Sebastian, Sandy

From: embalm@pr.mo.gov
Sent: Sunday, September 17, 2017 10:48 AM
To: Embalmers, PR; Sebastian, Sandy
Subject: 2017 Rule Review

Date Received: 9/17/2017 10:48:00 AM
Rule: 20 CSR 2120 2070 Funeral Establishments
Comments Filed on Behalf of: Self
Name: Stalter Legal Services
Comments: This comment concerns the following language from subparagraph (9): Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained. Over the course of the past two years, clients have sought to amend their establishment license applications to add an "osabal" or to add reference to a town their establishment name, or in one instance, to remove the periods from "L.L.C.". The Board advised that these constitute name changes under the above cited regulation, and that new licenses must be obtained. This represents a literal interpretation of the regulation that is burdensome to the licensee without any perceivable benefit to the consumer. I find nothing in Chapter 333 to support the Board's strict application of the regulation. The same comment is made with regard to 20 CSR 2120-3.010 and 20 CSR 2120-3.020.
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Address:
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Thank you for the State Board’s consideration of this issue.  

Sincerely,  

William Stalter
On draft regulations red bolds note additions/red brackets note deletions - 
Any comments received from public regarding the regulation in effect today follow the draft 
(RED TAPE CHANGES ALREADY APPROVED IN YELLOW - OTHERS IN BLUE)

Sebastian, Sandy

From: embalm@pr.mo.gov
Sent: Tuesday, August 08, 2017 11:17 AM
To: Embalmers, PR; Sebastian, Sandy
Subject: 2017 Rule Review

Date Received: 8/8/2017 11:17:02 AM
Rule: 20 CSR 2120 2070 Funeral Establishments
Comments Filed on Behalf of: Self
Name: Stalter Legal Services

Comments: I appreciate that R.S.Mo. Â§ 417.200 requires licensees to file a fictitious name registration with
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Email Address: wastal@swbell.net
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License #:
August 8, 2017

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Missouri State Board of Embalmers and Funeral Directors  
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Thank you for the State Board’s consideration of this issue.

Sincerely,

William Stalter

ATTACHMENT B
Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following…”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for.
simply because the license renewal had not yet processed, was late, or was under “automatic”
suspension pending the satisfaction of the staff that the report was “complete.” This regulation also
purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay
a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's
obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale,
performance, agreement, or designation, such person is licensed by the board as a seller and authorized
and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added].
333.315 has a substantially similar provision regarding provider licenses

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says
“unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual
obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact
that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers
to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able
to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they
have the right to request and more. This also puts Providers and Sellers in an untenable legal position
where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented
from meeting their contractual obligations because of this regulation. Would this regulation be a
defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine
an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book
of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the
Provider and Seller on contracts that were entered into when the license was in good standing MUST
continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or
agreements could be entered into, but contracts that were valid when the consumer paid the money
should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff -
perform a funeral that was fully paid for under a preneed contract, even though it has a funeral
establishment license in good standing, if their preneed provider license has not been renewed or is
under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite
burdensome publicly displaying all of the individual licenses as currently required. This is even more
so for preneed agents that might work at many locations and locations that might have many preneed
agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply
be kept in a location where the public can view them – such as a 3-ring binder in the office – with a
notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505

Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540

In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
PROPOSED AMENDMENT

20 CSR 2120-3.030 Notification of Intent to Sell Assets or Cease Doing Business (Seller or Provider)

Purpose: The purpose of the amendment is to outline the procedures for ceasing licenses of preneed sellers and preneed providers as provided in chapter 436.

PURPOSE: [Under Chapter 436, RSMo, the State Board of Embalmers and Funeral Directors is directed to accept notification of intent to sell assets or cease doing business from persons registered as preneed sellers or preneed providers, or both. Under section 333.111.1., RSMo, the State Board of Embalmers and Funeral Directors is directed to promulgate rules. . . “for the transaction of its business. . .” This rule complies with the statutory directive that the board promulgate rules for the transaction of its business in accepting notifications of intent to sell assets or cease doing business from registered preneed sellers or providers, or both.] This rule outlines the procedures for preneed sellers and preneed providers to notify the board when selling or disposing of all or a majority of its business assets or its stock, or ceasing to do business.

[(1) Whenever used in this rule, the word person means any individual, partnership, corporation, cooperative, association or other entity.

(2) Notification of intent to sell assets or cease doing business [must] are to be made on the forms provided by the board.

(3) As part of the notification, each registered seller must inform the board of the actions it has taken or will take to ensure that the trust assets of the seller will be set aside and used to serve outstanding preneed contracts sold by the seller and each registered provider must inform the board of the actions it has taken or will take to ensure that the provider's obligations under preneed contracts will be satisfied.

(4) In its discretion, the board may take reasonable and necessary actions to ensure that the provider's obligations under preneed contracts will be satisfied or that the trust assets of the seller will be set aside and used to service outstanding preneed contracts sold by the seller.

(5) Failure of the board to take action regarding any sale or termination of business within thirty (30) days of receipt of notification for providers and within sixty (60) days of receipt of notification for sellers will constitute a waiver of the board's authority under Chapter 436, RSMo.

(6) Forms for submitting notifications of intent to sell assets or cease doing business will be provided upon request.


*Original authority: 333.111.1, RSMo 1965, amended 1981.]
(1) Notification of intent to sell assets or cease doing business must be made on the forms provided by the board.

(2) As part of the notification, each licensed seller must inform the board of the actions it has taken or will take to ensure that the assets of the seller will be set aside and used to serve outstanding preneed contracts sold by the seller and each licensed provider must inform the board of the actions it has taken or will take to ensure that the provider’s obligations under preneed contracts will be satisfied.

(3) If a seller ceases business, the seller shall assign all active preneed contracts to another licensed seller and transfer the funds held either in trust or in joint accounts to that licensed seller. In that assignment, the receiving seller shall agree to assume all obligations under the preneed contracts or in lieu of such complete assumption, the assignment shall set forth the obligations that the new seller is assuming and shall provide the board with valid rational as to why all obligations are not assumed and how the assignment protects the public and the purchasers and beneficiaries of the active preneed contracts. Except in extraordinary circumstances, as approved the board, no person or entity shall hold funds of preneed contracts unless that person is a licensed seller and has received an assignment of the active preneed contracts.

Original Authority: 436.490, 436.500, RSMo 2009
COMMENTS ON PRENEED REGULATIONS
MISSOURI FUNERAL TRUST
4-20-2018

Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D) that the licensee “shall not act as a preneed [provider or seller] in any capacity...” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for...
simply because the license renewal had not yet processed, was late, or was under “automatic”
suspension pending the satisfaction of the staff that the report was “complete.” This regulation also
purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay
a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's
obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale,
performance, agreement, or designation, such person is licensed by the board as a seller and authorized
and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added].
333.315 has a substantially similar provision regarding provider licenses

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says
“unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual
obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact
that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers
to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able
to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they
have the right to request and more. This also puts Providers and Sellers in an untenable legal position
where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented
from meeting their contractual obligations because of this regulation. Would this regulation be a
defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine
an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book
of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the
Provider and Seller on contracts that were entered into when the license was in good standing MUST
continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or
agreements could be entered into, but contracts that were valid when the consumer paid the money
should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff -
perform a funeral that was fully paid for under a preneed contract, even though it has a funeral
establishment license in good standing, if their preneed provider license has not been renewed or is
under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite
burdensome publicly displaying all of the individual licenses as currently required. This is even more
so for preneed agents that might work at many locations and locations that might have many preneed
agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply
be kept in a location where the public can view them – such as a 3-ring binder in the office – with a
notice to that effect.
20 CSR 2120-3.125  
(1) Not needed, restates the statutes.  
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200  
As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505  
Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525  
Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535  
MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540  
In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“The Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
20 CSR 2120-3.105 Filing of Annual Reports

Purpose: The purpose of the amendment is to outline the procedures for filing of annual reports for preneed sellers and preneed providers as amended when chapter 436 was revised in 2009.

PURPOSE: This rule prescribes the board’s process for the filing of annual reports under the revised sections of Chapters 333 and 436, RSMo.

[(1) For sellers:
   (A) For the annual report due on October 31, 2009, sellers registered with the board prior to August 28, 2009, in lieu of filing the annual report required by section 436.460, RSMo, may file an annual report, on the form provided by the board, containing all the information required by section 436.021.2, RSMo 2000. This report shall report all preneed contracts executed since the reporting period the seller reported in its report due on October 31, 2008, through August 27, 2009. This annual report shall be accompanied by a fee of two dollars ($2) per preneed contract sold for the reporting period; and
   (B) For the annual report due on October 31, 2010, sellers shall report all contracts executed from August 28, 2009, through August 31, 2010. Thereafter, the annual report shall report all contracts sold between September 1 of the year preceding the annual report through August 31 of the reporting year. Each annual report filed for reporting years ending October 31, 2010, and thereafter shall also be accompanied by the annual fee as established in 20 CSR 2120-2.100.

(2) For providers:
   (A) For the annual report due as set out below, providers shall file an annual report as provided by section 333.315.3(4), RSMo, covering the reporting period as set out below:
      1. For report due October 31, 2009, the reporting period shall be from the date of the provider’s last annual report though August 27, 2009. No annual fee shall be required for this reporting period;
      2. For report due October 31, 2010, the reporting period shall be August 28, 2009, through August 31, 2010, and accompanied by the renewal fee in 20 CSR 2120-2.100; and
      3. For reports due successive years, reporting period shall be September 1 through August 31 and shall be accompanied by the renewal fee established in 20 CSR 2120-2.100.


(1) For sellers:

(A) Each preneed seller shall file a completed renewal on or by October 31st each year. If the license is not renewed by this date the license shall expire.

(B) Each preneed seller shall file a completed annual report by October 31st each year. If this is not filed the license shall be automatically suspended until the time the completed annual report is filed and all applicable fees have been paid.

(C) In completing the seller annual report the following is applicable:

1. The number of preneed contracts sold in the reporting year (including those written that were cancelled, fulfilled, transferred or serviced in the same reporting year);

2. If a consumer has more than one preneed contract with the same or different preneed sellers the contract should be identified on the annual report and the per contract fee is required for each preneed contract;

3. If a consumer has one (1) preneed contract with multiple funding sources the contract should be identified on the annual report and one (1) per contract fee is to be submitted.

(D) For the seller annual report, if the seller is unable to validate the status and face value of the insurance policy and unable to obtain the certification from the insurance company, the following information shall meet the requirements of Section 436.460.4 for the reporting requirements for insurance funded preneed contracts:

1. The name and address of the company issuing the policy or annuity funding the preneed;

2. The amount of the policy or balance on account at the time the preneed contract was sold, and;

3. An attestation from the seller that since these accounts are funded by insurance or annuity beneficiary or assignment, the seller has no ability to confirm the existence or amount of the policies or accounts.

(E) If the license is suspended the applicant must file the annual report and renewal and pay the delinquent fee established by the board before the license is issued.

(F) If the licensee fails to file the renewal from every reporting period and pay the renewal and delinquent fee within two (2) years from date of expiration the license shall become void and the licensee will have to reapply.

(G) If the license is not current the licensee shall not act as a preneed seller in any capacity, such as maintaining an active trust account or paying providers for fulfilled preneed contracts.

(2) For providers:

(A) Each preneed provider shall file a completed annual report on or by October 31st each year. If the license is not renewed by this date the license shall expire.

(B) If the license expires the applicant must file the annual report pay the renewal and delinquent fee established by the board before the license is issued.

(C) If the licensee fails to file the annual report from every reporting period and pay the delinquent fee within two (2) years from date of expiration the license shall become void and the licensee will have to reapply.

(D) If the license is not current the licensee shall not act as a preneed provider in any capacity, such as servicing preneed contracts or being named as a provider on such.

Authority: 333.315, 333.320, and 436.460 RSMo 2009
Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) on page 16 of the amended material

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following...”

The regulations change this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D) that the licensee “shall not act as a preneed [provider or seller] in any capacity...” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for.
simply because the license renewal had not yet processed, was late, or was under “automatic” suspension pending the satisfaction of the staff that the report was “complete.” This regulation also purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

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The statute in 333.320 clearly says “unless” in 333.315 there is even cleaner language which also says “unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they have the right to request and more. This also puts Providers and Sellers in an untenable legal position where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented from meeting their contractual obligations because of this regulation. Would this regulation be a defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the Provider and Seller on contracts that were entered into when the license was in good standing MUST continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or agreements could be entered into, but contracts that were valid when the consumer paid the money should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff - perform a funeral that was fully paid for under a preneed contract, even though it has a funeral establishment license in good standing, if their preneed provider license has not been renewed or is under “automatic” suspension.

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As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite burdensome publicly displaying all of the individual licenses as currently required. This is even more so for preneed agents that might work at many locations and locations that might have many preneed agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply be kept in a location where the public can view them – such as a 3-ring binder in the office – with a notice to that effect.
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(1) Not needed, restates the statutes.
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As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

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6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

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In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

**Proposed Rule on “Adequate Records” (page 50)**

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
Purpose: The proposed rescission is being filed because the content of this regulation has been rewritten into other regulations as appropriate.

[20 CSR 2120-3.115 Contact Information]

Purpose: The purpose of the amendment is to outline the procedures for filing of annual reports for preneed sellers and preneed providers as amended when chapter 436 was revised in 2009.

PURPOSE: This rule details the requirements for preneed providers, sellers, and agents for providing the board with current contact information.

(1) Preneed providers, sellers, and agents shall keep the board notified of their current address, telephone number, facsimile number, and email address, as applicable, at all times.

(2) Preneed providers, sellers, and agents shall notify the board within thirty (30) days of any such change by submitting written notice with the new information prior to beginning as a preneed provider or preneed seller at the new address. The written notice shall comply with the board’s rules regarding written notice.


*Original authority: 333.320, RSMo 2009; 333.340, RSMo 2009; and 436.520, RSMo 2009.]
20 CSR 2120-3.120 Display of License

PURPOSE: This rule states that preneed sellers, providers, and preneed agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.

(2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.

(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to section 333.330, RSMo, for failure of a licensee or registrant to display his or her license or registration as required by section 333.091, RSMo, and this regulation.


COMMENTS ON PRENEED REGULATIONS
MISSOURI FUNERAL TRUST
4-20-2018

Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot
direct the examiners to do anything or require of Sellers do or produce anything that is not specifically
required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking
without a rule.”

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MFT agrees with the comments of others that there is no logical or public purpose behind requirements
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requirement is not needed for Funeral Establishments.

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Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a
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This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and
333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board
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The regulations changes this to a “completed annual report.” This may sound innocent at first, but in
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It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of
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The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation
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The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says “unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they have the right to request and more. This also puts Providers and Sellers in an untenable legal position where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented from meeting their contractual obligations because of this regulation. Would this regulation be a defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book of bad preneed business.

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20 CSR 2120-3.120

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20 CSR 2120-3.125

(1) Not needed, restates the statutes.
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20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

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Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

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In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Britain, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
20 CSR 2120-3.125 Corporate Ownership of a Licensee

**Purpose:** The purpose of the proposed amendment is to update the authority section.

**PURPOSE:** This rule prescribes the requirements regarding corporation applications for a preneed provider or seller’s license.

(1) A corporate applicant for either a seller or provider license shall certify to the board that each of its officers, directors, managers, and controlling shareholders would be eligible for licensure under section 333.330, RSMo, if he or she applied for licensure as an individual.

(2) In any proceeding, the applicant will have the burden to demonstrate to the board that its officers, directors, managers, and controlling shareholders would be eligible for licensure under section 333.330, RSMo.


Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot
direct the examiners to do anything or require of Sellers do or produce anything that is not specifically
required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking
without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements
that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a
requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a
licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and
333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board
that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in
practice it has given the staff the unfettered discretion to decide when a report is considered
“completed,” thereby giving the staff effective power to suspend a license without Board action, until
the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of
the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended
by the statute automatically should no report be filed, but to give the staff the power to decide what is
and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of
of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in
violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation
of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a
preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being
sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for
simply because the license renewal had not yet processed, was late, or was under “automatic”
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purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay
a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's
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performance, agreement, or designation, such person is licensed by the board as a seller and authorized
and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added].
333.315 has a substantially similar provision regarding provider licenses

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says
“unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual
obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact
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Not only does this regulation not benefit consumers, this regulation harms consumers who are not able
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20 CSR 2120-3.200

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Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

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Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

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**Proposed Rule on “Adequate Records” (page 50)**

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

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The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

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20 CSR 2120-3.200 Seller Obligations

Purpose: The proposed amendment updates the statutory reference and modifies the timeframe in which a preneed seller is to notify the board of a change in manager.

PURPOSE: This rule clarifies the duties of the seller of a preneed contract.

(1) Except as otherwise provided in sections 436.400 to 436.525[0], RSMo, and any rules validly promulgated pursuant to those sections—
   (A) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
   (B) A purchaser may make payments on any preneed contract by making the payment directly to the trustee, the insurance company, or the financial institution where the joint account is held, as applicable, in lieu of paying the seller; and
   (C) All sellers shall designate an individual to serve as manager in charge of the seller’s business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the board within [thirty (30)] seven (7) days of the change.


Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

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This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D) that the licensee “shall not act as a preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for.
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Not only does this regulation not benefit consumers, this regulation harms consumers who are not able to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they have the right to request and more. This also puts Providers and Sellers in an untenable legal position where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented from meeting their contractual obligations because of this regulation. Would this regulation be a defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book of bad preneed business.

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Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
20 CSR 2120-3.205 Mandatory Consumer Disclosures (rule number is proposed number)

Purpose: The purpose of this rule is to outline the requirements relating to mandatory consumers disclosures as it relates preneed contracts.

PURPOSE: This rule sets forth the mandatory consumer disclosures that must be provided to each purchaser of a preneed contract.

(1) Each purchaser of a preneed contract shall be provided the following written mandatory consumer disclosures at or before the time the consumer signs the contract unless otherwise provided by rule:

(A) This Contract is a Legally Binding Document
   1. Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

(B) Right to Receive a Copy of this Contract
   1. You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

(C) Right to Change Providers
   1. The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers requires the agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

(D) Qualifying for Public Assistance
   1. If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this contract irrevocable as part of your qualification for public assistance, you still may change providers at any time and make changes to the goods and services at any time. However, you cannot cancel this contract and cannot receive any refund.

(E) Your Right to Cancel this Contract
   1. You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

   2. If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the principal in the account within fifteen (15) days of your request. Interest will be distributed as provided in this contract.

   3. If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance company to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.
4. If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within fifteen (15) days.

(F) Seller’s Right to Cancel This Contract
1. For a trust funded or joint account funded preneed contract, the seller may cancel this contract if you fail to make any installment payment within sixty (60) days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within thirty (30) days of notice. If you don’t pay the balance within thirty (30) days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you eighty-five percent (85%) of your contract payments made.

(G) What Happens if I Die Before My Contract is Paid in Full?
1. If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider’s current prices.
2. If your preneed contract is funded through an insurance policy, you should consult your insurance policy.

Via E-Mail & U.S. Mail  
February 1, 2018

Sandy Sebastian, Executive Director  
MO State Board of Embalmers & Funeral Directors  
3605 Missouri Boulevard  
P. O. Box 423  
Jefferson City, MO 65102

RE: Proposed Amendments to Rules and New Rules

Dear Ms. Sebastian:

I am submitting this letter on behalf of the Missouri Preneed Coalition concerning the proposed amendments to the current regulations and also regarding certain of the proposed new rules. We would ask the board to consider and adopt the following comments when approving the final language of the rules:

1. Proposed Rule 20 CSR 2120-3.205 Mandatory Consumer Disclosures (new rule)

   A. Under the Right to Change Providers, the consumer would be required to complete a change of assignment for an insurance funded preneed contract, not just notify the seller and provider of who they want the new provider to be. Only the policy owner can change an assignment on a policy and a majority of insurance companies do not allow funeral homes to be the owner or beneficiary of an insurance policy. Language should be added to the disclosure to make it clear that in an insurance funded preneed contract, the policy owner must contact the insurance company to determine what paperwork must be completed to move the funding to the new provider.

   B. In addition, must the new “Mandatory Consumer Disclosures” be incorporated into the body of the preneed contract or may they be furnished in a separate disclosure document? The proposed disclosures are written as if they are to be

ATTACHMENT B
included in the preneed contract which would mean all of the form preneed contracts will need to be updated.

C. Under “Qualifying for Public Assistance”, this language is misleading since just making the preneed contract irrevocable will not qualify the person for public assistance. The funding mechanism must be made irrevocable. Language should be added to the disclosure that makes it clear that the funding mechanism must be made irrevocable.

2. Proposed Rule 20 CSR 2120-3.210

As the coalition has pointed out before on numerous occasions, subsection (1) would eliminate the ability for a consumer to plan through, for example, a final expense worksheet. In addition, as we have noted in the past, attempts to regulate insurance funded preneed in this manner appear to violate section 436.450.1(5).


2(C) The language of this section appears to require the seller to keep a log of all payments made on a policy to an insurance company. However, this information cannot be provided to a seller from an insurer due to privacy and confidentiality concerns.

Along these same lines, in subsections D, E and F the information requested in sections D(1)b, D(1)c, D(4)a, D(4)b, E(2), F(6), F(8), F(9), and H represents information that is not provided by insurers to funeral homes or agents due to privacy laws. We therefore request that the rule be modified to remove these sections.


Under (1), it appears that finance charges on installment contracts and a separate charge for guaranteeing the price under a preneed contract may be permissible as long as such charges appear on the General Price List and are described in the preneed contract. Under (2), it appears that all such optional fees or charges (with the exception of credit life premiums) must be placed in trust. Since finance charges and charges for guaranteeing the price are not charges for goods and/or services but for services delivered by the seller prior to death, it would appear that such charges should not be subject to trusting.
Sandy Sebastian, Executive Director  
February 1, 2018  
Page 3

Should you have any questions or require additional information, please do not hesitate to contact me.

Yours very truly,

Mark G. R. Warren
MGRW:kh
Title 20-DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120-State Board of Embalmers and Funeral Directors
Chapter 3 – Preneed

PROPOSED RULE

20 CSR 2120-3.210 Formation Of An Insurance Funded Preneed Contract (rule number is proposed number)

Purpose: The purpose of the proposed rule is to provide clarification of an insurance funded preneed contract.

Purpose:

(1) A preneed contract is required when a funeral home agrees to accept proceeds from a life insurance policy and use those proceeds to pay for funeral goods and services when those goods and services are not immediately required.

(2) Whenever an insurance funded preneed contract is formed, that agreement must be documented by a written agreement between a purchaser and a seller in compliance with the provision of Chapters 333 and 436.

(3) An insurance funded preneed contract may be guaranteed or non-guaranteed and shall clearly state on the contract whether the prices quoted are guaranteed.

(4) Any life insurance policy or annuity may be used as a funding source for a preneed contract regardless of when or from whom it was purchased including insurance policies marketed as a “final expense policy” or “burial policy.”

(5) A preneed contract funded by insurance may provide, as a term of the contract, that the contract is deemed cancelled if the insurance policy is cancelled or if the beneficiary or assignment is changed to another seller as such act shall be considered as a cancellation of the preneed contract by the purchaser.

(6) An insurance funded preneed contract may contain agreements between the seller and the purchaser of the impact of the insurance policy being cancelled, lapsed, being reduced paid up, a reduced face amount or any other contingency that results in the insurance amount paid out being less than anticipated at the time of entry into the preneed contract.

AUTHORITY: Sections 436.405.1(3), (4), (7), (8), 436.425, 436.450, 436.465, 436.520, RSMo.
Via E-Mail & U.S. Mail  
February 1, 2018

Sandy Sebastian, Executive Director  
MO State Board of Embalmers & Funeral Directors  
3605 Missouri Boulevard  
P. O. Box 423  
Jefferson City, MO 65102

RE: Proposed Amendments to Rules and New Rules

Dear Ms. Sebastian:

I am submitting this letter on behalf of the Missouri Preneed Coalition concerning the proposed amendments to the current regulations and also regarding certain of the proposed new rules. We would ask the board to consider and adopt the following comments when approving the final language of the rules:

1. Proposed Rule 20 CSR 2120-3.205 Mandatory Consumer Disclosures (new rule)

   A. Under the Right to Change Providers, the consumer would be required to complete a change of assignment for an insurance funded preneed contract, not just notify the seller and provider of whom they want the new provider to be. Only the policy owner can change an assignment on a policy and a majority of insurance companies do not allow funeral homes to be the owner or beneficiary of an insurance policy. Language should be added to the disclosure to make it clear that in an insurance funded preneed contract, the policy owner must contact the insurance company to determine what paperwork must be completed to move the funding to the new provider.

   B. In addition, must the new “Mandatory Consumer Disclosures” be incorporated into the body of the preneed contract or may they be furnished in a separate disclosure document? The proposed disclosures are written as if they are to be
included in the preneed contract which would mean all of the form preneed contracts will need to be updated.

C. Under “Qualifying for Public Assistance”, this language is misleading since just making the preneed contract irrevocable will not qualify the person for public assistance. The funding mechanism must be made irrevocable. Language should be added to the disclosure that makes it clear that the funding mechanism must be made irrevocable.

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As the coalition has pointed out before on numerous occasions, subsection (1) would eliminate the ability for a consumer to plan through, for example, a final expense worksheet. In addition, as we have noted in the past, attempts to regulate insurance funded preneed in this manner appear to violate section 436.450.1(5).


2(C) The language of this section appears to require the seller to keep a log of all payments made on a policy to an insurance company. However, this information cannot be provided to a seller from an insurer due to privacy and confidentiality concerns.

Along these same lines, in subsections D, E and F the information requested in sections D(1)b, D(1)c, D(4)a, D(4)b, E(2), F(6), F(8), F(9), and H represents information that is not provided by insurers to funeral homes or agents due to privacy laws. We therefore request that the rule be modified to remove these sections.


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Sandy Sebastian, Executive Director  
February 1, 2018  
Page 3

Should you have any questions or require additional information, please do not hesitate to contact me.

Yours very truly,

Mark G. R. Warren  
MGRW:kh
**PROPOSED AMENDMENT**

**20 CSR 2120-3.300 Provider Includes Funeral Establishment**

*Purpose: The purpose of this amendment is to update the statutory references.*

*PURPOSE: This rule establishes that a provider in a preneed contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a preneed contract under relevant sections of Chapter 436[.400 to 436.520], RSMo, relating to preneed.*

(1) As defined by section 333.011(10), RSMo, the provider of services under any preneed contract pursuant to sections 436.400 to 436.525[0], RSMo, shall include any licensed funeral establishment that has agreed to undertake the obligations of a preneed contract pursuant to sections 436.400 to 436.525[0], RSMo.

(2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a preneed contract pursuant to sections 436.400 to 436.525[0], RSMo, must meet all requirements of both a licensed funeral establishment and a preneed provider pursuant to Chapter 333, RSMo, and sections 436.400 to 436.525[0], RSMo.


[20 CSR 2120-3.305 Funeral Director Agent Registration

PURPOSE: This rule establishes the reporting requirement for any funeral directors serving as preneed agents.

(1) Any funeral director acting as a preneed agent shall report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit preneed contracts to the board on a form prescribed by the board.

(2) Any funeral director shall also identify himself or herself as acting as a preneed agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.


*Original authority: 333.325, RSMo 2009; 333.340, RSMo 2009; and 436.520, RSMo 2009.]
20 CSR 2120-3.310 Change in Seller Affiliation

Purpose: The purpose of this amendment is to amend the requirements relating to the a change in seller affiliation relating to an existing preneed contract.

PURPOSE: This rule explains the provider’s obligation for a change in seller affiliation under a preneed contract.

(1) After initial application, if there is a change in seller affiliation, the provider shall provide written notice to the board, pursuant to section 436.420.3, RSMo, that the provider has authorized a new seller to designate the provider on the seller’s preneed contracts. This notice shall be provided to the board within fifteen (15) days after the provider authorizes the seller to act, and the notice shall contain, at least:
   (A) Name and address of the provider;
   (B) License number of the provider;
   (C) Name, [and] address and signature of the seller; and
   (D) Effective date of the authorization or agreement.

(2) This notice may be provided to the board electronically [but the original signed document shall be provided to the board by mail or hand delivery].


20 CSR 2120-3.400 Preneed Agents—Requirements of Agent’s Seller

PURPOSE: This rule explains that any licensed preneed agent in the state of Missouri must be authorized to selling preneed contracts on behalf of a seller who is licensed in the state of Missouri.

(1) Any preneed agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a preneed contract for or on behalf of a seller must be the agent of a seller who is licensed to sell preneed contracts by the State Board of Embalmers and Funeral Directors.


Purpose: The amendment is intended to make modifications to clarify the processes necessary to pursue an agent registration and adds the requirements for an agent funeral director.

PURPOSE: This rule [prescribes] establishes the process [for certifying preneed seller] to secure an agent[s to take the Missouri Law exam as a requirement for] registration.

(1) All preneed agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam.

(2) Successful completion of the Missouri Law exam shall be a prerequisite to registration.

(3) This exam may be taken any time after filing the Notice of Intent to Apply.

(4) Preneed agent applicants must successfully complete the Missouri Law exam on or before March 31, 2010, prior to the expiration of the Notice of Intent to Apply.

(5) The Missouri Law exam covers the following:
   (A) Knowledge of Chapter 333, RSMo;
   (B) Rules governing the practice of embalming, funeral directing, and funeral home licensing along with government benefits, statutes, and rules governing the care, custody, shelter, disposition, and transportation of dead human bodies;
   (C) Knowledge of sections 436.400 to 436.520, RSMo, relating to preneed statutes;
   (D) Knowledge of Chapters 193 and 194, RSMo, relating to the Missouri Department of Health and Senior Services statutes; and
   (E) Questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees.

(6) Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

(1) Any individual who desires to be registered as a preneed agent shall:
   A. Make application with the board on the forms provided by the board and pay applicable fees;
   B. Provide the name, address and signature of each preneed seller who has authorized the applicant to sell, negotiate, or solicit preneed contracts on their behalf; and
   C. Achieve a grade of seventy-five (75) or greater on the Missouri Law examination.

(2) Any individual that is currently licensed by the board as a funeral director and desires to be registered as a preneed agent shall:
   A. Make application with the board on the forms provided by the board.
   B. Provide the name, address and signature of each preneed seller who has authorized the applicant to sell, negotiate, or solicit preneed contracts on their behalf;
(3) An applicant shall meet the requirements of the board for registration within one (1) year after his/her application has been filed with the State Board of Embalmers and Funeral Directors. If the applicant fails to meet the requirements of the board within the required time and still desires to seek registration, a new application and applicable fees will be required.

(4) After initial application, if there is a change in a preneed seller that an agent is authorized to sell, negotiate, or solicit preneed contracts, the agent shall notify the board, on the form provided by the board, the name, address and signature of the new seller prior to the agent beginning to sell, negotiate, or solicit preneed contracts on behalf of that seller.


[20 CSR 2120-3.410 Preneed Agent's Seller Must Be Licensed

PURPOSE: This rule explains that any licensed preneed agent in the state of Missouri must be selling preneed contracts on behalf of a seller who is licensed in the state of Missouri.

(1) Any preneed agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a preneed contract for or on behalf of a seller must be the agent of a seller who is licensed to sell preneed contracts by the Missouri State Board of Embalmers and Funeral Directors.


20 CSR 2120-3.505 Types of Financing; Other Financing Still Preneed

Purpose: The purpose of the proposed amendment is to simplify the language relating to acceptable funding mechanisms for preneed contracts.

PURPOSE: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Preneed contracts shall only be funded by:
(A) A preneed trust as defined by section 436.405.1(8), RSMo;
(B) An insurance policy or single premium annuity contract as defined by section 436.405.1(3), RSMo; or
(C) A joint account as defined by section 436.405.1(4), RSMo.

(2) Preneed contracts funded by any other mechanism not provided for in Chapter 436 shall be non-compliant with the requirements of sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the board under sections 436.400 to 436.520, RSMo.


Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot
direct the examiners to do anything or require of Sellers do or produce anything that is not specifically
required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking
without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements
that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a
requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a
licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and
333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board
that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in
practice it has given the staff the unfettered discretion to decide when a report is considered
“completed,” thereby giving the staff effective power to suspend a license without Board action, until
the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of
the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended
by the statute automatically should no report be filed, but to give the staff the power to decide what is
and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of
of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in
violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation
of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a
preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being
sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for
simply because the license renewal had not yet processed, was late, or was under “automatic”
suspension pending the satisfaction of the staff that the report was “complete.” This regulation also
purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay
a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller’s
obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale,
performance, agreement, or designation, such person is licensed by the board as a seller and authorized
and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added].

333.315 has a substantially similar provision regarding provider licenses

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says
“unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual
obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact
that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers
to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able
to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they
have the right to request and more. This also puts Providers and Sellers in an untenable legal position
where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented
from meeting their contractual obligations because of this regulation. Would this regulation be a
defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine
an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book
of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the
Provider and Seller on contracts that were entered into when the license was in good standing MUST
continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or
agreements could be entered into, but contracts that were valid when the consumer paid the money
should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff -
perform a funeral that was fully paid for under a preneed contract, even though it has a funeral
establishment license in good standing, if their preneed provider license has not been renewed or is
under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite
burdensome publicly displaying all of the individual licenses as currently required. This is even more
so for preneed agents that might work at many locations and locations that might have many preneed
agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply
be kept in a location where the public can view them – such as a 3-ring binder in the office – with a
notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505

Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540

In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: ____________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
[20 CSR 2120-3.515 Single Premium Annuity Contracts

PURPOSE: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

(1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.

(2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.

(3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.

(4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, RSMo, and sections 436.400 to 436.520, RSMo, and any other requirements under state or federal law.


*Original authority: 333.340, RSMo 2009; 436.405, RSMo 2009; and 436.520, RSMo 2009.]

ATTACHMENT B
Title 20-DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 2120-State Board of Embalmers and Funeral Directors
Chapter 3 – Preneed

PROPOSED AMENDMENT

20 CSR 2120-3.525 [Independent Financial Advisor is Agent of Trustee] Authorized External Investment Advisor

PURPOSE: [This rule clarifies that an independent financial advisor is an agent of the trustee in a trust-funded preneed contract.] To set forth the qualifications and duties of an authorized external investment advisor for a preneed trust.

(1) An independent financial advisor authorized external investment advisor, as provided in section 436.440.6 and 436.445, RSMo, is an agent, as provided in section 436.440, RSMo, of the trustee.

(2) A preneed trust may utilize the services of an authorized external investment advisor as provided in Sections 436.435, .440 and .445, RSMo.

(3) Any authorized external investment advisor utilized by a preneed trustee must have a current and active federal or Missouri registration as an investment advisor at all times when he or she serves as an investment advisor for a preneed trust.

(4) Any authorized external investment advisor shall exercise his or her duties in compliance with the provisions of applicable state and federal laws including compliance with his or her fiduciary duties including the duties of loyalty and of care.

(5) Except as provided in Chapter 436, RSMo, only a preneed trustee may retain the services of an authorized external investment advisor to assist the preneed trustee with the investment of preneed trust assets.

(6) If a preneed trustee utilizes the services of authorized external investment advisor, that relationship shall be memorialized in a written agreement that discloses the scope of duties and powers delegated, the compensation to be paid to the authorized external investment advisor, any relationship or contracts between the authorized external investment advisor and the seller, any relationship or contract between the authorized external investment and advisor and any provider of any preneed contract for which funds are held in the seller’s preneed trust, and any other provisions that the trustee deems necessary to meet its fiduciary duties.

(7) Any independent financial advisor, in place before August 28, 2009 in compliance with the provisions of Section 436.440.6, RSMo, must be either a federally registered or Missouri registered independent qualified investment advisor at all times when acting as an investment advisor for a preneed trust and must meet all requirements required of an authorized external investment advisor.


Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statutes or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following…”

The regulations change this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for...
simply because the license renewal had not yet processed, was late, or was under “automatic”
suspension pending the satisfaction of the staff that the report was “complete.” This regulation also
purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay
a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's
obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale,
performance, agreement, or designation, such person is licensed by the board as a seller and authorized
and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added].
333.315 has a substantially similar provision regarding provider licenses

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says
“unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual
obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact
that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers
to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able
to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they
have the right to request and more. This also puts Providers and Sellers in an untenable legal position
where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented
from meeting their contractual obligations because of this regulation. Would this regulation be a
defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine
an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book
of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the
Provider and Seller on contracts that were entered into when the license was in good standing MUST
continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or
agreements could be entered into, but contracts that were valid when the consumer paid the money
should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff -
perform a funeral that was fully paid for under a preneed contract, even though it has a funeral
establishment license in good standing, if their preneed provider license has not been renewed or is
under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite
burdensome publicly displaying all of the individual licenses as currently required. This is even more
so for preneed agents that might work at many locations and locations that might have many preneed
agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply
be kept in a location where the public can view them – such as a 3-ring binder in the office – with a
notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505

Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540

In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“The Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.

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A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
20 CSR 2120-3.530 Confidentiality of Preneed Records Obtained by the Board Through Financial Examination, Audit or Investigation (rule number is a proposed number)

Purpose: The purpose of this rule is to provide additional clarification of section 436.525.

Purpose: The purpose of this rule is to ensure confidentiality of consumer records and confidential data of licensees and registrants.

(1) Upon completion of any financial exam, audit or investigation involving preneed records, the board members may be provided with a summary of the results of the exam, audit or investigation and any such summary shall not include information made confidential per Section 436.525, RSMo, unless such information is required for the board to evaluate whether the board should take further action.

(2) The board's executive director shall be the custodian of all records received and maintained by the board related to any financial examination, audit or investigation involving preneed records.

(3) No individual member of the board shall be given access to review the work papers of the examiners, auditors or investigator related to the examination, audit or investigation of preneed records unless such access has been specifically approved by the board, as a body. Work papers shall include any records or information obtained from any licensee, registrant or any other source that includes any information made confidential by Section 436.525, RSMo. Work papers shall also include any compilation, spreadsheet or other record prepared by the examiner, auditor or investigator from information and records obtained from the licensee, registrant or other source that contains information made confidential by Section 436.525, RSMo. Work papers shall not include any document that would otherwise be an open record under Missouri law.

(4) If the subject of any financial examination, audit or investigation is a person or entity that is a competitor either directly or indirectly within the same geographical region as an individual board member or is a person or entity with whom an individual Board member has a business interest or a past or current business relationship, then that board member shall recuse him or herself from all matters related to the board's review or action on that matter and shall have no access to the summary report or any other records from the financial examination, audit or investigation and shall not take part in any meeting or other proceeding involving that subject of exam, audit or investigation. Any recused board member under this rule may have access to any matter that would be available to any member of the public, and access, as needed, to provide evidence in any litigation or proceeding as any other fact witness would have.

Authority: Section 436.525, RSMo.
On draft regulations red bolds note additions/red brackets note deletions - Any comments received from public regarding the regulation in effect today follow the draft (RED TAPE CHANGES ALREADY APPROVED IN YELLOW - OTHERS IN BLUE)

Via E-Mail & U.S. Mail
February 1, 2018

Sandy Sebastian, Executive Director
MO State Board of Embalmers & Funeral Directors
3605 Missouri Boulevard
P. O. Box 423
Jefferson City, MO 65102

RE: Proposed Amendments to Rules and New Rules

Dear Ms. Sebastian:

I am submitting this letter on behalf of the Missouri Preneed Coalition concerning the proposed amendments to the current regulations and also regarding certain of the proposed new rules. We would ask the board to consider and adopt the following comments when approving the final language of the rules:

1. Proposed Rule 20 CSR 2120-3.205 Mandatory Consumer Disclosures (new rule)

   A. Under the Right to Change Providers, the consumer would be required to complete a change of assignment for an insurance funded preneed contract, not just notify the seller and provider of who they want the new provider to be. Only the policy owner can change an assignment on a policy and a majority of insurance companies do not allow funeral homes to be the owner or beneficiary of an insurance policy. Language should be added to the disclosure to make it clear that in an insurance funded preneed contract, the policy owner must contact the insurance company to determine what paperwork must be completed to move the funding to the new provider.

   B. In addition, must the new “Mandatory Consumer Disclosures” be incorporated into the body of the preneed contract or may they be furnished in a separate disclosure document? The proposed disclosures are written as if they are to be

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C. Under “Qualifying for Public Assistance”, this language is misleading since just making the preneed contract irrevocable will not qualify the person for public assistance. The funding mechanism must be made irrevocable. Language should be added to the disclosure that makes it clear that the funding mechanism must be made irrevocable.

2. Proposed Rule 20 CSR 2120-3.210

As the coalition has pointed out before on numerous occasions, subsection (1) would eliminate the ability for a consumer to plan through, for example, a final expense worksheet. In addition, as we have noted in the past, attempts to regulate insurance funded preneed in this manner appear to violate section 436.450.1(5).


2(C) The language of this section appears to require the seller to keep a log of all payments made on a policy to an insurance company. However, this information cannot be provided to a seller from an insurer due to privacy and confidentiality concerns.

Along these same lines, in subsections D, E and F the information requested in sections D(1)b, D(1)c, D(4)a, D(4)b, E(2), F(6), F(8), F(9), and H represents information that is not provided by insurers to funeral homes or agents due to privacy laws. We therefore request that the rule be modified to remove these sections.


Under (1), it appears that finance charges on installment contracts and a separate charge for guaranteeing the price under a preneed contract may be permissible as long as such charges appear on the General Price List and are described in the preneed contract. Under (2), it appears that all such optional fees or charges (with the exception of credit life premiums) must be placed in trust. Since finance charges and charges for guaranteeing the price are not charges for goods and/or services but for services delivered by the seller prior to death, it would appear that such charges should not be subject to trusting.
Should you have any questions or require additional information, please do not hesitate to contact me.

Yours very truly,

Mark G. R. Warren
MGRW:kh
20 CSR 2120-3.535  Financial Examination Committee (rule number is a proposed number)

Purpose: The purpose of the proposed rule is to establish the guidelines for a committee to review financial examinations.

Purpose: The purpose of this rule is establish a committee to review financial examinations.

(1) The board shall have as a standing committee a committee known as the “Financial Examination Committee.” The purpose of the Financial Examination Committee shall be to provide timely and expedited review of financial examination files as they are prepared by the board staff.

(2) The Financial Examination Committee shall meet, as needed, but at least once between each regularly scheduled board meeting.

(3) The members of the Financial Examination Committee shall be appointed by the board chair and shall be at least 2, but no more than 3, board members.

(4) The board delegates the following duties and authorities of the Financial Examination Committee:

   (A) To review completed financial examination reports along with the licensee response and take one or more of the following actions:

     (1) Direct staff to close the examination file and send a letter to licensee informing the licensee that the financial examination is being closed;

     (2) Request additional information from the licensee and request the licensee to take steps necessary to resolve any exceptions discovered during the financial examination;

     (3) Allow a licensee additional time to respond to requests for more information or time to complete steps necessary to meet requests of the Financial Examination Committee;

     (4) Request the licensee to appear before the board;

     (5) Refer the financial examination for review by the board; and

     (6) Other duties as assigned by the board and/or the board chair.

   (B) If a financial examination file reveals unresolved violations and/or reveals significant shortages of consumer funds held in trust and/or joint accounts or other significant misconduct by the licensee, as determined by the Financial Examination Committee, the committee shall refer the examination file to the board for review.

(3) Only the board may authorize action to seek legal action against a licensee.

Authority: Section 436.470, 436.520, 333.111, RSMo
COMMENTS ON PRENEED REGULATIONS
MISSOURI FUNERAL TRUST
4-20-2018

Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot
direct the examiners to do anything or require of Sellers do or produce anything that is not specifically
required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking
without a rule.”

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that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a
requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

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licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

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This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and
333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board
that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in
practice it has given the staff the unfettered discretion to decide when a report is considered
“completed,” thereby giving the staff effective power to suspend a license without Board action, until
the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of
the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended
by the statute automatically should no report be filed, but to give the staff the power to decide what is
and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of
of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in
violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation
of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a
preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being
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simply because the license renewal had not yet processed, was late, or was under “automatic” suspension pending the satisfaction of the staff that the report was “complete.” This regulation also purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added]. 333.315 has a substantially similar provision regarding provider licenses.

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says “unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they have the right to request and more. This also puts Providers and Sellers in an untenable legal position where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented from meeting their contractual obligations because of this regulation. Would this regulation be a defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the Provider and Seller on contracts that were entered into when the license was in good standing MUST continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or agreements could be entered into, but contracts that were valid when the consumer paid the money should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff - perform a funeral that was fully paid for under a preneed contract, even though it has a funeral establishment license in good standing, if their preneed provider license has not been renewed or is under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite burdensome publicly displaying all of the individual licenses as currently required. This is even more so for preneed agents that might work at many locations and locations that might have many preneed agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply be kept in a location where the public can view them – such as a 3-ring binder in the office – with a notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505

Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540

In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller’s preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

**Conclusion**

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
20 CSR 2120-3.540 Financial Examination-Audit Process and Procedures (rule number is a proposed number)

Purpose: This rule is being proposed to provide information to educate licensees and the public relating to the financial examination processes.

Purpose: This rule provides clarification of the financial examination process and procedures to assist licensees and the public.

(1) The board shall conduct a financial examination of the books and records of each seller at least once every five years, subject to available funding. The board shall take no action to reduce fees to intentionally reduce funding so as to eliminate financial examinations.

(2) The board shall conduct financial examinations or audits as a means to ensure compliance with the provisions of Missouri statutes and regulations under Chapters 333 and 436, RSMo, as those statutes relate to preneed funeral contracts.

(3) A seller may, at the board’s discretion, be subject to financial examination more frequently than once every five years.

(4) Periodically, the board shall set the scope of financial examinations.

(5) Upon determining that a financial examination or audit of a seller is to be conducted, the board shall issue a notice to the assigned examiner that will instruct the examiner as to the scope of the financial examination or audit.

(6) Before the board begins a financial examination or audit, the board may provide notice to the seller that the board will be conducting a financial examination. This notice shall contain the following:
   (A) Notice to the seller that the board will be conducting a financial examination or audit;
   (B) A request of the seller to submit to the board specified records the board will require to begin the financial examination or audit and a date by which those records are due to the board. The board may request copies of statements showing trust balances and assets, joint account statements, verification of insurance for insurance funded preneed contracts, copies of ledgers or reports detailing all active preneed contracts, copies of agreements with providers, agents, trustees, and any other records the board deems relevant to conduct the financial examination or audit.

(7) A financial examination or audit may consist of the following phases:
   (A) Phase I – The assigned examiner shall be given the notice of examination or audit assignment and shall review and analyze the records relevant to the financial examination or audit as provided;
   (B) Phase II – If instructed, the assigned examiner shall conduct an on-site visit to the seller. During this on-site visit, the seller shall provide the examiner with all books and records requested by the examiner and shall fully cooperate with the examination or audit;
   (C) Phase III – The board may conduct any additional inspections, investigations and examinations as deemed necessary to complete financial examination or audit. This may include mailing letters to purchasers, beneficiaries, financial institutions, preneed providers, persons acting on behalf of the seller, and other persons as deemed necessary to complete the financial examination or audit;
(D) Phase IV – Upon completion of Phases I through III, the examiner shall prepare a financial or audit examination report that shall summarize the findings of the financial examination or audit and shall include, at a minimum, the following information:

1. The name, address and license number of the seller;
2. The date(s) the examination was conducted;
3. The name(s) of the examiner(s) conducting the examination or audit;
4. The date(s) the financial examination or audit report was submitted to the board by the examiner;
5. The name(s) of the person(s) providing information to the examiner on behalf of the seller;
6. A listing of exceptions, if any, found during the financial examination or audit and provide sufficient detail of the exceptions to put the seller on notice as to any potential violations of law, and sufficient identifying information about the contract or funds held so that the seller will know which contracts are at issue. It shall be deemed sufficient identifying information if the examination or audit report contains, at a minimum, the initials of the purchaser or beneficiary, the number of the preneed contract, the date of the contract, the amount of the contract and the type of funding source of the preneed contract, if that information is known to the examiner;
7. A copy of the signed attestation from the seller on the form provided the board, if applicable;
8. Any exhibits that will assist in identifying and review of the exceptions;
9. Any and all other information that is directed by the board to be included or is relevant to evaluate the seller’s compliance with law.

(8) Upon submission of the financial examination or audit report by the examiner, the board shall provide a copy of the financial examination or audit report to the seller for review and comment, unless other provisions of law apply to authorize and/or mandate the board to take other action. The seller shall provide response within the timeframe provided by the board.

(9) After the time has expired for the seller to comment on the examination or audit report, the examination or audit report and any information received from the seller in response to the financial examination or audit report will be reviewed.

(10) Upon the board’s determination that all exceptions identified in a financial examination or audit have been resolved, the board will provide written notice to the seller that the financial examination or audit has been closed by the board.

Authority: Sections 333.330, 333.340, 436.470, 436.520, RSMo
Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfully incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a preneed [provider or seller] in any capacity....” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for.
simply because the license renewal had not yet processed, was late, or was under “automatic”
suspension pending the satisfaction of the staff that the report was “complete.” This regulation also
purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay
a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's
obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale,
performance, agreement, or designation, such person is licensed by the board as a seller and authorized
and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added].
333.315 has a substantially similar provision regarding provider licenses.

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says
“unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual
obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact
that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers
to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able
to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they
have the right to request and more. This also puts Providers and Sellers in an untenable legal position
where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented
from meeting their contractual obligations because of this regulation. Would this regulation be a
defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine
an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book
of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the
Provider and Seller on contracts that were entered into when the license was in good standing MUST
continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or
agreements could be entered into, but contracts that were valid when the consumer paid the money
should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff -
perform a funeral that was fully paid for under a preneed contract, even though it has a funeral
establishment license in good standing, if their preneed provider license has not been renewed or is
under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite
burdensome publicly displaying all of the individual licenses as currently required. This is even more
so for preneed agents that might work at many locations and locations that might have many preneed
agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply
be kept in a location where the public can view them – such as a 3-ring binder in the office – with a
notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

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Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

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It is submitted that the regulation should simply read that:

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The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
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**Conclusion**

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
20 CSR 2120-3.530 Seller Fees and Charges on Preneed Contracts

PURPOSE: This rule clarifies how optional fees and charges for items other than funeral services and funeral merchandise shall be shown on a preneed contract. This rule clarifies that Section 436.430.2, Section 436.450.2, and Section 436.455 allow a seller to include in a preneed contract a fee or charge that has not been determined by the Federal Trade Commission to be in violation of 16 CFR Part 453, provided the following conditions are met:

1. If as a condition to the purchase of a guaranteed contract, the seller and purchaser agree to include any optional fees or charges on a preneed contract for items other than funeral services and funeral merchandise, as those terms are defined in these rules and by provisions of Chapters 333 and 436, RSMo, the contract must include a description of each optional fee or charge as it is shown on the general price list. Examples of optional fees or charges that might be part of a preneed contract include fees for installment payments on the preneed contract, price protection or price guarantee fees. Requires any additional charge or fee for purposes of providing price protections, allowing installment payments or similar options, the seller must include a description of each such charge or fee on the seller’s general price list and offer the consumer a nonguaranteed contract that is without all such charges or fees.

2. With the exception of credit life premiums and the board’s state contract fee, as authorized by chapter 436, RSMo, all fees and charges set out in a trust-funded preneed contract or a joint account-funded all optional fees or charges shall be considered as payments on the preneed contract and preneed contract must be deposited pursuant to Chapter 436 into trust or joint account, as per the terms of the preneed contract with the financial institution administering the seller’s preneed funds. For insurance funded preneed contracts, any optional fees shall be considered as part of the preneed contract.

3. Fees or charges required for providing price protections may be included in the face value of the preneed contract for purposes of Sections 436.420.3 and 436.420.4, but all other fees and charges must be deposited and maintained in trust until the cancellation or performance of the contract.

4. When a guaranteed installment payment contract includes a fee or charge for allowing installment payments, the purchaser may prepay one or more installments and avoid the fee or charge associated with such payments.

5. If the beneficiary of a guaranteed installment payment contract dies before all installments have been paid and such preneed contract includes a fee or charge for allowing installment payments, then when computing what is owed by the purchaser, the seller shall exclude the fee or charge on those installment payments that were not yet due on the beneficiary’s death.

Title 20-DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120-State Board of Embalmers and Funeral Directors
Chapter 3 – Preneed

PROPOSED RULE

What Constitutes Adequate Records for a Seller

1. A seller shall maintain a copy of each fully executed preneed contract and all records with regard to all preneed contracts related to the receipt, the deposit, the disbursement of preneed funds, and the performance of the preneed contract and to comply with applicable statutes and regulations.

2. Adequate records for a seller to maintain shall include:
   A. For all preneed contracts:
      (1) A copy of the executed preneed contract;
      (2) A copy of all terms of the preneed contract;
      (3) A copy of any attachments, additions, or documents supplemental to the preneed contract;
      (4) Records related to the funding source for the preneed contracts, and
      (4) All other records required by law to be maintained.
   B. For trust and joint account funded preneed contracts:
      (1) Records showing the date and amount of the funds received by the seller’s agent;
      (2) Records showing the date and amount of funds received by the seller;
      (3) Records showing the date and amount of the funds deposited into any account and identifying the institution receiving the deposits and the account into which funds are deposited;
      (4) If funds for a preneed contract are paid by the consumer directly to the financial institution, the seller shall maintain, or be able to access, records from the financial institution showing the dates and amounts of each deposit and the name of the preneed contract beneficiary for each deposit made; and
      (5) Records showing any disbursement from a preneed trust or joint account for any purpose other than cancellation or fulfillment of a preneed contract with a description of the purpose for the disbursement, and the date, amount and to whom the payment was made.
   C. For insurance funded preneed contracts, if the seller or the seller’s agent receives payment from the consumer for the insurance:
      (1) Records that show the date, the name of the person paid, a description of any consumer payments received, and records showing any account into which those funds are deposited; and
      (2) Records showing the date, the name of the person or entity paid, and description of payments to any insurance company.
D. For all fulfilled preneed contracts:
   (1) Records showing seller’s performance for fulfilled preneed contracts including:
       (a) Written certificate(s) of performance for each preneed contract fulfilled;
       (b) Requests to the financial institution and/or insurance company for payment;
       (c) Evidence of the date the seller received the funds from the financial institution or
            insurance company;
       (d) The account from which the funds were paid to the seller; and
       (e) All other records showing the seller’s performance of the preneed contract.

   (2) Documentation showing payment to the provider by the seller including the name of the
       person or entity to whom payments were made, the date and amount of each payment,
       and a description of payment to the provider;

   (3) Records showing payments made to the state of Missouri or to any other person including
       the amounts paid, the dates paid and the name of the person paid; and

   (4) If the provider receives payment from an insurance company as the named beneficiary of
       an insurance policy, then the seller shall maintain the following records:
       (a) Records showing notice received from the insurance company or the provider that the
           preneed contract has been fulfilled; and
       (b) Records of any payment from the insurance company that the insurance company
           provides to the seller or that the seller obtains from the provider or any other source.

E. For any cancelled preneed contracts:
   (1) All records providing any sort of notice to the seller of the cancellation of a preneed
       contract; and
   (2) All records showing the date, name of who is paid, the amount paid out and a description
       of the type of payment made to any purchaser or any other person upon cancellation of
       any preneed contract, and the name and address to whom the payments were made.

F. Copies of any agreements or contracts related to the practice of a preneed seller including, but
   not limited to, the following:
   (1) Preneed contracts;
   (2) Trust agreements;
   (3) trust administration agreements;
   (4) Provider agreements;
   (5) Preneed agent agreements,
   (6) Insurance agreements,
   (7) Insurance assignments;
   (8) Insurance beneficiary designations;
   (9) Investment advisors; and
   (9) Any other contracts or other agreements between purchasers, beneficiaries, providers,
       sellers, agents, financial institutions, insurance companies, investment advisors and
       trustees related to preneed contracts or the holding of preneed funds;

G. Copies of account statements for joint accounts, trust statements for trust accounts, and any
   statements received from insurance companies listing the insurance policies in effect and/or
   the status of any insurance policy that names the seller or the provider, on a preneed contract
   sold by the seller, as beneficiary or owner.
If these records are maintained in electronic format by the financial institution or insurance company, then the seller shall have the means to access those records and be able to provide the board with appropriate access to those records within the lawful bounds and authorities of the board;

H. All information obtained or possessed by the seller related to any insurance policy used to fund any preneed contract that may include, but not be limited to, a copy of the insurance policy, any assignment or beneficiary designations, and the status of any insurance policy.

Nothing in this regulation shall require the seller to affirmatively obtain records from the insurance company, but if the purchaser, beneficiary, insurance company, or any other person provides the seller with this information, the seller shall be required to maintain those records; and

I. Any written (including electronic) communications between the seller and any preneed agent, provider, trustee, investment advisor, insurance company, purchaser and/or beneficiary of the preneed contract and any other person related to preneed contracts and the funding of those preneed contracts;

3. All records required to be maintained by a seller may be maintained in paper or electronic or a combination of paper and electronic formats, but shall be maintained in a manner such that the required information may be retrieved and provided to the board in a timely manner, upon request in accordance with the statutes and regulations governing the board.

4. The standards set forth in this rule are stated only as minimum standards. Each seller may maintain any records in addition to those set forth in this rule. In addition, if the board determines that it is unable to fulfill its statutory duties from the records maintained by any seller, the board may request records in addition to those listed in this rule so as to complete its statutory duties.
Via E-Mail & U.S. Mail  
February 1, 2018

Sandy Sebastian, Executive Director  
MO State Board of Embalmers & Funeral Directors  
3605 Missouri Boulevard  
P. O. Box 423  
Jefferson City, MO 65102

RE: Proposed Amendments to Rules and New Rules

Dear Ms. Sebastian:

I am submitting this letter on behalf of the Missouri Preneed Coalition concerning the proposed amendments to the current regulations and also regarding certain of the proposed new rules. We would ask the board to consider and adopt the following comments when approving the final language of the rules:

1. Proposed Rule 20 CSR 2120-3.205 Mandatory Consumer Disclosures (new rule)

   A. Under the Right to Change Providers, the consumer would be required to complete a change of assignment for an insurance funded preneed contract, not just notify the seller and provider of who they want the new provider to be. Only the policy owner can change an assignment on a policy and a majority of insurance companies do not allow funeral homes to be the owner or beneficiary of an insurance policy. Language should be added to the disclosure to make it clear that in an insurance funded preneed contract, the policy owner must contact the insurance company to determine what paperwork must be completed to move the funding to the new provider.

   B. In addition, must the new “Mandatory Consumer Disclosures” be incorporated into the body of the preneed contract or may they be furnished in a separate disclosure document? The proposed disclosures are written as if they are to be

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included in the preneed contract which would mean all of the form preneed contracts will need to be updated.

C. Under “Qualifying for Public Assistance”, this language is misleading since just making the preneed contract irrevocable will not qualify the person for public assistance. The funding mechanism must be made irrevocable. Language should be added to the disclosure that makes it clear that the funding mechanism must be made irrevocable.

2. Proposed Rule 20 CSR 2120-3.210

As the coalition has pointed out before on numerous occasions, subsection (1) would eliminate the ability for a consumer to plan through, for example, a final expense worksheet. In addition, as we have noted in the past, attempts to regulate insurance funded preneed in this manner appear to violate section 436.450.1(5).


2(C) The language of this section appears to require the seller to keep a log of all payments made on a policy to an insurance company. However, this information cannot be provided to a seller from an insurer due to privacy and confidentiality concerns.

Along these same lines, in subsections D, E and F the information requested in sections D(1)b, D(1)c, D(4)a, D(4)b, E(2), F(6), F(8), F(9), and H represents information that is not provided by insurers to funeral homes or agents due to privacy laws. We therefore request that the rule be modified to remove these sections.


Under (1), it appears that finance charges on installment contracts and a separate charge for guaranteeing the price under a preneed contract may be permissible as long as such charges appear on the General Price List and are described in the preneed contract. Under (2), it appears that all such optional fees or charges (with the exception of credit life premiums) must be placed in trust. Since finance charges and charges for guaranteeing the price are not charges for goods and/or services but for services delivered by the seller prior to death, it would appear that such charges should not be subject to trusting.
Sandy Sebastian, Executive Director
February 1, 2018
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Should you have any questions or require additional information, please do not hesitate to contact me.

Yours very truly,

Mark G. R. Warren
MGRW:kh
Title 20-DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120-State Board of Embalmers and Funeral Directors
Chapter 3 - Preneed

PROPOSED RULE

What Constitutes Adequate Records for a Seller

Contract and Document Records

A copy of each executed preneed contract, including any attachments, additions, or documents supplemental to the preneed contract;

Copies of agreements or contracts related to each source of preneed funding used by the seller, including any of the following:

1. Trust agreements;
2. Trust administration agreements;
3. Investment advisory agreements
4. Seller/Provider agreements;
5. Preneed agent agreements,
6. Insurance broker agreements,
7. Insurance assignments;
8. Insurance beneficiary designations;

Consumer Payment Records

With regard to consumer funds received by the Seller, or the Seller’s agent, the Seller shall create and maintain a monthly consumer payment report that reflects the following:

1. The purchaser’s name;
2. The payor name if different than the purchaser;
3. The preneed contract number;
4. The date received;
5. The date the funds were submitted or forwarded to the funding agent;
6. The funding agent (if the consumer receipts journal is maintained for more than one funding agent);

In lieu of consumer payment reports, the seller may maintain individual preneed contract ledgers that reflect:

1. The purchaser’s name;
2. The preneed contract number;
3. The date and amount of each payment;
4. The current payment balance;
5. The current trust balance;
6. Any amount requested as origination fee or sales expense from a payment;

Sellers that rely on consumer payment reports for compliance with this regulation shall create a report for every month including those months in which no payments were received. The seller may, but is not required, to maintain a separate consumer receipts journal for each funding agent used.

ATTACHMENT B
The seller shall maintain a copy of each deposit form or report that reflects each consumer payment transmitted during the month. Nothing shall preclude the seller from using the consumer receipts report as its deposit form.

When accepting cash from a consumer, the seller shall provide the consumer a written receipt reflecting the amount and date received, and maintain a copy in the seller’s records.

With regard to funds paid by the consumer directly to the Seller’s trustee, the seller shall cause the trustee to provide a monthly report that reflects the following for each preneed contract receiving a payment:

1. The purchaser’s name;
2. The preneed contract number;
3. The amount deposited to trust;
4. Any amount distributed to the seller as origination fee or sales expense;
5. The ending payment balance;
6. The ending trust balance;

If the Seller uses a commercial banking account to receive and transmit funds to a trustee or insurance company (a clearing account), the seller shall maintain all statements issued with regard to such account as a record required by this regulation.

Individual ledgers and consumer payment reports may be maintained in a paper format or an Excel format.

All records described in this regulation shall be maintained for a period of one year after the seller’s most recent financial examination.

Serviced and Canceled Contracts

Copies of certificates of performance and each accompanying Statement of Goods and Services Documentation of the receipt of funds from the preneed funding agent

Consumer letters of cancellation, and documentation showing the date, name of who is paid, the amount paid out and a description of the type of payment made to any purchaser or any other person upon cancellation of any preneed contract, and the name and address to whom the payments were made.

Funding Agent Reports

Copies of account statements for joint accounts, trust statements for trust accounts, and any statements received from insurance companies listing the insurance policies in effect and/or the status of any insurance policy that names the seller or the provider, on a preneed contract sold by the seller, as beneficiary or owner.

If the bank or insurance company maintains such statements in electronic, then the seller shall access those reports and retain them for access by the board.

Communications with the funding agent regarding specific preneed contracts, or the funding of the seller’s contracts.
Financial Examiner “Handbook”

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

20 CSR 2120-3.010

MFT agrees with the comments of others that there is no logical or public purpose behind requirements that limit the “d/b/a” names of Sellers or Providers, just as it was pointed out previously that such a requirement is not needed for Funeral Establishments.

20 CSR 2120-3.030

Proposed new paragraph (3) (on page 16 of the amended material)

What are the “extraordinary circumstances” that would allow the Board to allow someone other than a licensed Seller to hold funds of a preneed contract? Would this not violate chapter 436 requirements?

20 CSR 2120-3.105

This section both parrots the statute (unnecessarily) and goes beyond the wording of 436.460 and 333.320 (unlawful).

The first problem is that Chapter 436 states that a Seller must “file an annual report with the state board that includes the following...”

The regulations changes this to a “completed annual report.” This may sound innocent at first, but in practice it has given the staff the unfettered discretion to decide when a report is considered “completed,” thereby giving the staff effective power to suspend a license without Board action, until the staff is satisfied that the report is “completed.”

It is submitted that this goes beyond the statutory authority and usurps the power and responsibility of the Board to itself to determine if a violation of Chapter 436 has occurred. Yes, the license is suspended by the statute automatically should no report be filed, but to give the staff the power to decide what is and is not a “completed filing” abrogates the responsibility of the board in determining if the terms of 436 have been violated in such a manner that warrants suspension. If the staff feels that a report is in violation of the provisions of Chapter 436, it has the power and duty to file a complaint with the Board.

The second problem is that this regulation takes an unlawfuly incorrect and over-broad interpretation of the effects of a suspension, by stating in (1)(G) and (2)(D)that the licensee “shall not act as a preneed [provider or seller] in any capacity,...” This interpretation has resulted in funeral homes being sanctioned for servicing funerals or dealing with funds on contracts that the family had pre-paid for.
simply because the license renewal had not yet processed, was late, or was under “automatic” suspension pending the satisfaction of the staff that the report was “complete.” This regulation also purports to prevent a Seller from giving a refund to a consumer that wishes to cancel a policy or to pay a provider that has met its obligations under the contracts and is entitled to payment – it says “any.”

Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added]. 333.315 has a substantially similar provision regarding provider licenses

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says “unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they have the right to request and more. This also puts Providers and Sellers in an untenable legal position where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented from meeting their contractual obligations because of this regulation. Would this regulation be a defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the Provider and Seller on contracts that were entered into when the license was in good standing MUST continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or agreements could be entered into, but contracts that were valid when the consumer paid the money should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff - perform a funeral that was fully paid for under a preneed contract, even though it has a funeral establishment license in good standing, if their preneed provider license has not been renewed or is under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite burdensome publicly displaying all of the individual licenses as currently required. This is even more so for preneed agents that might work at many locations and locations that might have many preneed agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply be kept in a location where the public can view them – such as a 3-ring binder in the office – with a notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505

Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540

In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

**Proposed Rule on “Adequate Records” (page 50)**

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.
Dear Sandy,

As the staff and board begin to contemplate the review of rules and regulations impacting the funeral profession, I’d like to make some broad comments that may or may not be helpful for the process.

To my way of thinking, the purpose of rules and regulations are to protect the consumer and provide a framework for ensuring that basic legal standards are applied to business practices. The statutes enacted by the Missouri General Assembly are adequate in most cases, and of course it is not within the board or staffs purview to make changes to the law. Therefore the task revolves around interpreting the law in a way that makes sense, with appropriate rules and regulations, that protect consumers but also reduce confusion for practitioners, all with a minimum of red tape.

Rather than address any specific rule or regulation, my comments here are twofold. First, I’d like to see the board consider rolling back any rule or regulation that has not been officially adopted and promulgated via established legal procedures, if such exist. Second, rules and regulations that focus on minutiae rather than on actual harm to a consumer should be careful considered as to whether they are truly needed. Continually asking the question, “But who was harmed?” helps focus the attention of regulatory efforts on making sure that consumers are protected without unduly burdening practitioners in their business practices.

For me, an overarching purpose of government is to protect citizens from each other, to provide a means for enforcing contracts between parties, and to ensure that wrongdoers are punished. To the extent that rules and regulations do those three things I think most would agree that our state government and regulatory board are doing right by the consumers of the state. An additional function of good rules and regulations would be to clarify or explain the statute in a way that helps avoid confusion as to how the statute is to be interpreted, implement, or followed. When rules and regulations do not meet those basic needs, then perhaps it’s time to rethink those particular directives or rework them to be more effective at providing consumer protection.

Good luck with the review process and I’m interested to see what you come up with.

All my best,
Brad

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Missouri Funeral Trust, Inc.

Developed by Funeral Directors for Funeral Directors
Missouri Funeral Directors & Embalmers Association

VIA EMAIL AND HAND DELIVERY
April 20, 2018

Sandy Sebastian, Executive Director
Missouri State Board of Embalmer and Funeral Directors
PO Box 423
Jefferson City, MO 65101

RE: Proposed Preneed Rules

Dear Ms. Sebastian:

As I had mentioned at the last several State Board meetings, prior commitments to the National Funeral Directors Association's Legislative Day require that I be in Washington D.C. the week of April 23, so I am quite disappointed that the Board's meeting was moved to this week and that I will be unable to attend. Ironically on the 26th I have meetings with both Senator McCaskill and Senator Blunt and, usually, they always have questions about the state of prepaid funeral plans in Missouri. Therefore, please consider this letter and the attachment Missouri Funeral Trust's additional comments on the proposed regulations and responses to those that have also previously commented.

Overall, I would like to echo the sentiments of Brad Speaks who pointed out quite well that any regulations should only exist when both legally authorized and necessary to protect the consumer. We do not need regulations for regulation sake or ones that are burdensome for no valid reason. Many of the existing and proposed preneed regulations, unfortunately, fall into this latter category.

Secondly, I would ask that counsel for the Board carefully look at the number of existing and proposed regulations that simply parrot the statutes. Regulations that repeat the statutes are not only not needed, but they create future problems when the statutes may be changed. A good case in point, as pointed out at the prior Board meeting, were the regulations on the oral exam for Embalmers which became a confusing "stub" after the statutes where changed.

Lastly, as pointed out by the Chairman of the State Board not long after Senate Bill 1 was passed, the only real question should be: "Are the contract properly funded? Is the money there?" Regulations that go beyond this simple premise go beyond the statutory intent of Chapter 436 and do nothing to actually protect the consumers.

I cannot be certain what my schedule is yet on the 25th or when my appointments will be over on Thursday the 26th, but – if possible – I would greatly appreciate the opportunity to “call-in” and participate as much as possible to be by telephone. If that is possible, please send the call-in information to me at donottojr@gmail.com

Very Truly Yours,

Donald C. Otto, Jr.
Chief Operation Officer
Missouri Funeral Trust.

ATTACHMENT B

State Board of Embalmers and Funeral Directors

1757 Woodcliff Drive., Suite 202
Jefferson City, MO 65109

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Page 123
Sebastian, Sandy

From: donald otto <donottojr@gmail.com>
Sent: Friday, October 06, 2017 2:32 PM
To: Sebastian, Sandy
Subject: comments on Missouri Funeral Regulations

Comments of The Missouri Funeral Directors and Embalmers Association regarding current Rules pertaining to funeral service

1. The 75% to pass exam issue.

Throughout the current rules, it is stated that an applicant must score at least 75% to pass tests administered by the International Conference. As the Board is aware, the conference no longer gives percentage scores but a number score with some questions weighted more than others. [Example: 20 CSR 2120-2.010 (11)]

This creates a situation where an applicant could theoretically pass 75% of the questions correct on the exam, thereby meeting Missouri law, but still receive a failing grade from the Conference.

2. Oral Exams.

In several places in the Rules [Example: 20 CSR 2120-2.010 (17) and (18)] oral examinations are referenced for embalmers when those have not been done for some time now.

3. Death Certificates.

Death Certificates are regulated by the Department of Health and Senior Services and the State Registrar of Vital Records, yet, at 20 CSR 2120-2.030, (4) and (5) the State Board of Embalmers and Funeral Directors creates requirements for these death certificates. It is submitted that the State Board has no authority to issue such regulations. Further the embalmer requirements in these sections is in conflict with the statutory provisions that specifically set out what is to be on death certificates without giving any authority for the State Board to add any items. Lastly, as this embalmer information is not on the model forms approved by the states, it requires Missouri forms to be modified from the standard.


20 CSR 2120-2.060 (1)(J) says that an applicant must provide “any other information the board may require.” It is submitted that this is vague, over-broad and potentially highly burdensome and a barrier to entry into the profession without any basis in public safety.

5. Editorial Comments.

20 CSR 2120-2.060(5) contains comments not appropriate for rules and regulations.

6. Test taking

At several spots, for example, 20 CSR 2120-2.060 (10) the applicant is only allowed to take the required examinations after the completion of the apprenticeship. There is no compelling state interest or public safety requirement for requiring this. An applicant should be able to take the tests at any time after their application is
accepted. Of course the license would not be issued until all of the requirements are met, but there is no reason someone should not be allowed to take the tests while they are doing their internship. The current requirement can be a burden on applicants in getting all of the items necessary done within the mandatory time-limit without there being any reason the state needs to require this.

7. Supervision

At several spots, for example, 20 CSR 2120-2.060(15) “supervision” is mandated without that ever being defined. To further complicate the matter, sometimes the phrase “direct supervision” is set out. What do these terms mean? Without making it clear what supervision consists of the rules are unenforceably vague.

8. Cemetery attendance.

We challenge anyone to read 20 CSR 2120-2.060 (17) in its entirety and afterwards be certain what the rules are on when a funeral director needs to be present at a cemetery and when they do not. The regulation is overly long, confusing and seemingly contradictory in spots.

9. D.B.A.

Currently the Board only allows a funeral establishment to have one “Doing Business As” name. There is no state or public need for such a restriction on funeral establishments which does not apply to other businesses. See, 20 CSR 2120-2.070 (13)

10. Cremations

20 CSR 2120-2.071 (1) (21) and (24) contain very vague “definitions” of “cremation boxes” and “urns.” What is the legal difference between a box and an urn? What is “durable?” Without clearer definitions, it is impossible to be certain if you are complying with the law.

Next, 20 CSR 2120-2.071 (22) requires that when shipping, the cremation box be placed in a corrugated cardboard box. Why? What is so special about corrugated cardboard? What is the state interest in using this material?

Lastly 20 CSR 2120-2.071 (18) mandates a physical impossibility as is not possible to remove ALL residue from the cremation. That is a scientific impossibility.

11. Food and Beverages.

20 CSR 2120-2.090 (10) at one point in time it appears that the intent was to put into the Regulations, a Rule that restricted food and beverage throughout the entire funeral home. For some reason, however, this was put in the Embalming room section of the Regs. As a result, current Missouri Regulations state that you can have coffee (in single service cups) in the embalming room! This is an OSHA violation needless to say. As for banning food and beverage in other areas of the funeral home, a Federal Court has already held that there is no compelling state interest in such a restriction.

12. Preneed "handbook"

The last item is something not in the CSR. The so-called "Examiners Handbook" and procedures that the Board has been using are unlawful Rules promulgated by the board. If the board wants those requirements, it should go through the required regulatory or statutory approval process.
**COMMENTS ON PRENEED REGULATIONS**  
**MISSOURI FUNERAL TRUST**  
**4-20-2018**

**Financial Examiner “Handbook”**

On this issue, MFT notes that any “handbook” or other guideline for use by financial examiners cannot direct the examiners to do anything or require of Sellers do or produce anything that is not specifically required by the statues or lawful regulations. To do otherwise would constitute unlawful “rulemaking without a rule.”

**20 CSR 2120-3.010**

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**20 CSR 2120-3.030**

Proposed new paragraph (3) (on page 16 of the amended material)

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Chapter 333.320, however, states that the Seller shall not “sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.” [emphasis added]. 333.315 has a substantially similar provision regarding provider licenses.

The statute in 333.320 clearly says “unless” In 333.315 there is even cleaner language which also says “unless.” Both sections, then, clearly allow Providers and Sellers to continue to meet their contractual obligations so long as, at the time of the sale or agreement, the licenses were in good standing. The fact that there is a suspension of the license, does NOT eliminate the requirement of Sellers and Providers to meet the terms of contracts that were entered into while the licensee had a valid, active, license.

Not only does this regulation not benefit consumers, this regulation harms consumers who are not able to get the funeral they paid for, the refund that they are entitled to, the transfer or accounting that they have the right to request and more. This also puts Providers and Sellers in an untenable legal position where they are still businesses in good standing in Missouri and otherwise licensed, but are prevented from meeting their contractual obligations because of this regulation. Would this regulation be a defense to a lawsuit for violation the preneed contract brought by a purchaser? If so, one can imagine an unscrupulous provider or seller simply not renewing their preneed license in order to avoid a book of bad preneed business.

The regulation should make it clear that – per the statutory language – the contractual obligations of the Provider and Seller on contracts that were entered into when the license was in good standing MUST continue to be met. Of course, if a preneed license is properly suspended, then no new contracts or agreements could be entered into, but contracts that were valid when the consumer paid the money should be fulfilled. But, right now, a legally operating funeral home cannot - according to the staff - perform a funeral that was fully paid for under a preneed contract, even though it has a funeral establishment license in good standing, if their preneed provider license has not been renewed or is under “automatic” suspension.

20 CSR 2120-3.120

As was pointed out in the discussion of funeral director and embalmer licenses, it can be quite burdensome publicly displaying all of the individual licenses as currently required. This is even more so for preneed agents that might work at many locations and locations that might have many preneed agents. It is submitted that, like was suggested for funeral directors and embalmers, the licenses simply be kept in a location where the public can view them – such as a 3-ring binder in the office – with a notice to that effect.
20 CSR 2120-3.125

(1) Not needed, restates the statutes.
(2) Potentially changes the burden of proof set out elsewhere in the statutes, regulations and Missouri Constitution, especially since it says “any” proceeding. If a criminal violation is brought – does a licensee have to prove they are not guilty?

20 CSR 2120-3.200

As pointed out in the last proceeding, the many-many different time periods for reporting, responding and notifying under the statutes and regulations is mind-boggling and leads to “violations” simply because it is so difficult to keep track of all of the different requirements. As such, MFT would like to see as many time periods as possible standardized to 30 days. THIS proposed regulation would make matters worse by taking a current 30 day requirement and changing it to 7 days. No public purpose is served by this change, the legal requirements of the seller do not change because the manager changes and any action by the state board would not be hindered by the current 30 day rule.

20 CSR 2120-3.505

Again, why is this necessary? The statute speaks for itself. Secondly, this proposal appears to have an error. The definition of joint account is in 436.405.1(5) not (4). Moreover, as worded, this regulation could create confusion since it does not reference the issue of “payable on death” accounts.

20 CSR 2120-3.525

Chapter 436.440 provides as follows:

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

This proposed regulation adds requirements that are not in the statute. If, for example, an independent investment advisor was in place pursuant 436.031 as of August 28, 2009 but does not meet the requirements of this proposed regulation, will it be the position of the board that the regulation supersedes the statute?

20 CSR 2120-3.535

MFT suggests adding “, administrative, or disciplinary action” right after the word “legal” in paragraph (3)

20 CSR 2120-3.540

In general, it is submitted that the proposed examination process goes far beyond what is necessary in order to protect consumers or to ensure that preneed contracts are properly funded. It is also interesting that the proposed regulation uses the term “audit” which is not used in 436.470 and since, for years, the we have been told that the state board does not do “audits” – just “financial examinations.”
In all, the numerous references to “as the board may require” or “as necessary” without any limitation gives unlimited power to the “auditors” far beyond what was contemplated in Chapter 436.

Specifically it is noted that nothing in the statute gives any authority to conduct the “additional investigations” “as deemed necessary” as set out in Paragraph 7(C). In the past, blanket letters to purchasers and beneficiaries have only succeeded in bringing great distress to consumers, the release by the State Board of confidential information in violation of the Board's restrictions under 436.525, and confusion requiring great time and expense for sellers to deal with.

Paragraph (8) says that the seller must respond “in the timeframe provided by the board.” “Timeframe” is not generally considered proper American English usage as it is accepted that in the U.S., unlike in Great Briton, two words should be used. More importantly, what if the “timeframe” is the same afternoon the report is issued? Clearly, there needs to be a minimum time – it is suggested 30 days – in which to respond. The board, of course, could give extensions if it so chooses, but a minimum time should be provided in the rule.

Proposed Rule on “Adequate Records” (page 50)

Again, the proposed regulations go far, far, beyond what was ever contemplated or set out in chapter 436. The proposed regulation also appears to require types of documentation that may not be collected in the ordinary course of business, or are terms of art that may or may not be used by, or in the same way by, different entities. The proposal's requirements are so extensive, repetitive and overlapping, that sellers may very well be required to create documents that do not currently exist even though “adequate recorded information” is contained the other books and records that do exist. The proposal also seeks documents that have nothing to do with the proper administration of a purchaser's funds such as the contracts between the seller and investment advisor or providers. Lastly, as technology and business practices evolve, it is quite possible that new forms of documentation or procedure recording might be created that would replace those that are enumerated in the proposed regulation.

It is submitted that the regulation should simply read that:

“the Seller must maintain such adequate books and records so that the state board can determine if the seller's preneed contracts are being properly funded and that any preneed funds held are being properly maintained pursuant to the requirements of Chapter 436. Examples of documentation which may meet this requirement might include, but are not limited to, the following: __________”

The regulations could then list many of the items that are in the proposed regulation as examples of what might be adequate records.

Should, as part of its audit, the state board determine that the records of a seller are NOT adequate enough to ensure that the requirements of chapter 436 are being met, then that would be an exception which, if not corrected, would be subject to discipline. This gives both the state board and the licensee flexibility in keeping and providing adequate documentation to protect the public while not locking-in all of the parties to burdensome and potentially irrelevant and obsolete forms of record-keeping. It is noted that such a flexible regulation is very much in keeping with the Governor's mandate to reduce the burden of regulation. If not changed, with this one proposal, the Board would be expanding the burdensome, duplicative, excessive and unneeded regulations far beyond all of the positive regulation reform that was done at the Board's previous regulation review meeting.
A separate concern is proposed paragraph 2.B(5). What is this seeking? What is meant by “disbursements” in this section. All funds, other than the 5% origination and 10% additional fee, are to be held in the trust until canceled or fulfilled. This includes the interest earned. Although held in the trust, this interest does not belong to the consumer. In the event of a cancellation, the consumer does not receive this interest (436.436.3). Further, 436.430.9 states that: “All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets.” The state has no right to insert itself into these arrangements, especially those concerning legal fees and payments which are protected information. If this is what was meant by “disbursements,” it is submitted that this is an improper area for the financial examination “audit.”

Conclusion

In all its is hoped that the spirit of the previous Board meeting on regulations where many old, outdated, and burdensome regulations were simplified, clarified or eliminated - all to the benefit of both the public and the licensees - will carry over to the review of the preneed regulations.