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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC65-20-10 et seq. 18VAC65-30-10 et seq. 18VAC65-40-10 et seq.
VAC Chapter title(s)	Regulations for the Board of Funeral Directors and Embalmers Regulations for Preneed Funeral Planning Regulations for the Funeral Service Intern Program
Action title	Licenses for funeral directors and embalmers
Date this document prepared	10/19/20

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

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Pursuant to Chapter 943 of the 2020 Acts of the Assembly, this regulatory action establishes the education, examination, and experience required to be issued a license as a funeral director or an embalmer. Applicants will be required to obtain an associate's degree in an accredited mortuary science program or complete a program approved by the Board. Coursework in embalming will not be required for the funeral director license, and coursework in funeral directing and preneed financing will not be required for the embalmer license. All funeral interns will be required to

complete 2,000 hours of supervised experience in the area or areas of funeral practice for which they are seeking licensure. Amendments are also necessary to insert the three types of licenses and scopes of practice, as applicable, throughout Chapters 20, 30, and 40.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

Adoption of amendments to regulations by emergency action is required to comply with the second enactment clause of Chapter 943 of the 2020 Acts of the General Assembly. The Board of Funeral Directors and Embalmers is mandated to promulgate regulations to implement the requirement for separate licenses for funeral directors and embalmers.

2. That the Board of Funeral Directors and Embalmers shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

The issues to be addressed are the education, examination, and experience requirements necessary for a funeral director and embalmers to be qualified for licensure in Virginia.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Funeral Directors and Embalmers the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.)...*

The specific statutory authority for this action is found in:

- § 1. That the Board of Funeral Directors and Embalmers shall promulgate regulations that establish the requirements of licensure for funeral directors and embalmers as defined in § 54.1-2800.*
- 2. That the Board of Funeral Directors and Embalmers shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the regulatory action is to establish requirements for education, examination, and experience that will ensure licensed funeral directors and licensed embalmers have adequate training and knowledge to perform their duties with competency in order to protect public health, safety, and welfare in the handling of human remains, conducting funeral services, and arranging finances for funerals and disposition of the deceased.

Substance

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

Pursuant to Chapter 943 of the 2020 Acts of the Assembly, this regulatory action establishes the education, examination, and experience required to be issued a license as a funeral director or an embalmer. Applicants will be required to obtain an associate's degree in an accredited mortuary science program or complete a program approved by the Board. Coursework in embalming will not be required for the funeral director license, and coursework in funeral directing and preneed financing will not be required for the embalmer license. All funeral interns will be required to complete 2,000 hours of supervised experience in the area or areas of funeral practice for which they are seeking licensure. Amendments are also necessary to insert the three types of licenses and scopes of practice, as applicable, throughout Chapters 20, 30, and 40.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) The advantage to the public will be the potential for more individuals to come into the profession to ensure a supply of funeral directors and embalmers to serve the needs of citizens in the future. The recent workforce survey showed that over 47% of the current licensees are over 55 years of age, and growth in the profession has been very modest. There are no disadvantages; licensees will be adequately educated and trained to perform the duties without their scope of practice.
- 2) There are no advantages or disadvantages to this agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) This proposal is consistent with the agency's statutory responsibility to protect public health and safety in the Commonwealth.

Alternatives to Regulation

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

The second enactment of Chapter 943 requires the promulgation of regulations to implement amended provision of § 54.1-3304.1 of the Code of Virginia. There are no alternatives to the adoption of regulations by the Board.

To develop the emergency regulations, the Board appointed a Regulatory Advisory Panel with representatives of the three funeral/mortuary associations, the Board, and other interested parties. The RAP met on August 14, 2020 and September 1, 2020. Among other agenda items, it heard a presentation from the patron of the legislation, Senator Jeremy McPike and from Imam Ammar Amonette on the funerary practices of the Muslim community. The RAP also reviewed information from the International Conference of Funeral Service Examining Boards about the requirements in other jurisdictions that offer separate licensure in funeral directing and embalming. There are 31 jurisdictions in the U.S. and Canada have a license in funeral directing and 25 offer an embalming license. The recommendations of the RAP were the basis for adoption of emergency regulations.

**Periodic Review and
Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Funeral Directors and Embalmers is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Suite 300, Richmond, VA 23233; phone (804) 367-4688; fax (804) 527-4434; Elaine.yeatts@dhp.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Even though new, separate licenses as funeral directors and embalmers have not been issued since 1973, the Board has continued to allow funeral directors and embalmers to renew their licenses. Therefore, the license types have been reflected in some current regulations. However, with the mandate to begin issuing the three separate licenses with different requirements for education, examination, and experience, amendments are needed throughout Chapters 20, 30 and 40. Most of the amendments simply clarify the usage of three types of licensure – funeral service licensee, funeral director, and embalmer – or to refer to the three types of practice. In the following sections, only those edits to denote the separate licenses have been made:

18VAC65-20-130
18VAC65-20-140
18VAC65-20-151
18VAC65-20-154
18VAC65-20-235
18VAC65-20-350
18VAC65-20-630

18VAC65-30-10
18VAC65-30-50
18VAC65-30-220

18VAC65-40-10
18VAC65-40-40
18VAC65-40-90
18VAC65-40-110
18VAC65-40-180
18VAC65-40-280
18VAC65-40-340

Other amendments related to the issuance of the three license types are found in the following:

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
N/A	18VAC65-20-321	N/A	<p>New section 231 sets out the requirements for a funeral director to be licensed by examination. Subsection A requires that an applicant:</p> <ol style="list-style-type: none"> 1. Be at least 18 years of age and hold a high school diploma or its equivalent; 2. Have completed a funeral service internship prescribed by the board in regulation; 3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated, or have completed an Associate's Degree or its equivalent, which consists of at least 60 credit hours of coursework, from a funeral directing program approved by the board; 4. Have successfully completed coursework in the area of pathology as approved by the board; 5. Have passed the National Board Examination in Arts or State Board Examination in Arts of the International Conference of Funeral Service Examining Boards; and 6. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice. <p><i>Currently, mortuary science programs in the two Community Colleges (Tidewater and John Tyler) require coursework in all phases of funeral service – directing and embalming. The requirements of this section specify graduation from an accredited program or completion of 60 hours of coursework from a funeral directing program. The regulation will allow a student to meet the requirement for a funeral directing license without having to complete coursework in the science of embalming.</i></p> <p><i>The Board does believe a course in pathology is essential for a funeral director to fully understand the nature of blood-borne pathogens and the science relating to human remains, so such a course is required. The course may be completed within a mortuary school program or may be a course approved by the board that can be taken online outside the program.</i></p> <p><i>An applicant for licensure must demonstrate competency by passage of a licensing exam – either the International Conference exam that is currently required for a funeral service license or a “State Board Examination in Arts”, which is the Arts portion of the National Examination that is offered to candidates for licensure in states where a funeral directing license is available. The applicant would</i></p>

			<p><i>not be required to take the Science portion of the national exam.</i></p> <p><i>Applicants for all types of licensure are required to pass the state examination on laws and regulations.</i></p> <p>Subsection B specifies the documentation that must be submitted with an application package to determine eligibility.</p> <p>Subsection C specifies that the Board may license someone with a felony conviction.</p> <p><i>The Code (§ 54.1-2813) has specific language for licensure for the practice of funeral service, including (i) must be at least 18 years of age; (ii) hold a high school diploma or its equivalent; (iii) have completed a funeral service internship prescribed by the Board in regulation; (iv) have graduated from a school of mortuary science or funeral service approved by the Board; and (v) have passed the examination for licensure. The Board, in its discretion, may license an individual convicted of a felony if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored.</i></p> <p><i>The Code authorizes the issuance of a funeral directing license but does not provide the specifications for that license as is found for the funeral service license. Therefore, the provisions of section 231 include similar language.</i></p>
	<p>18VAC65-20-232</p>		<p>Sets out the requirements for an embalmer license by examination.</p> <p>Subsection A requires an applicant for licensure as an embalmer to:</p> <ol style="list-style-type: none"> 1. Be at least 18 years of age and hold a high school diploma or its equivalent; 2. Have completed a funeral service internship prescribed by the board in regulation; 3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated, or have completed an embalming program approved by the board; 4. Have passed the National Board Examination in Sciences or State Board Examination in Sciences of the International Conference of Funeral Service Examining Boards; and 5. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

			<p>Subsection B specifies the documentation that must be submitted with an application package to determine eligibility.</p> <p>Subsection C specified that the Board may license someone with a felony conviction.</p> <p><i>Licensure as an embalmer does require the coursework in embalming in a mortuary science program but would not require the applicant to have completed coursework in such areas as preneed funeral planning. The examination required would be the National Examination of the International Conference or the State Examination in Sciences, which is the Sciences portion of the national examination.</i></p> <p><i>Subsections B and C are identical to those in section 231.</i></p>
<p>18VAC20-500</p>		<p>Sets our grounds for disciplinary action</p>	<p>Number 10 is added to provide grounds for discipline if a licensee is found to be conducting activities or performing services outside the scope of one's practice or for which the licensee is not trained and individually competent.</p> <p><i>With separate licenses and scopes of practice, it is necessary for the Board to establish as grounds for discipline any practice outside the scope of one's license.</i></p>
<p>18VAC65-40-130</p>		<p>Establishes the basic requirements for an internship</p>	<p>Section 130 is amended to specify not only the general requirements for all internships in funeral practice, but to also specify the particular requirements of an internship in funeral directing or embalming.</p> <p>Subsection A amends the number of hours of training from 3,000 to 2,000 for all interns.</p> <p><i>In its regulatory action following a periodic review, the Board had already proposed to reduce the hours for a funeral service intern. The RAP and the Board discussed the hours and compared with other states – most of which require a year or the equivalent of training. There was concern that a reduced number of hours for an embalming license would not provide enough opportunity to work with a variety of human remains (autopsies, accidental deaths, etc.). It was agreed that at least 12 months of training is essential for all types of licenses to ensure competency.</i></p> <p>Subsection D is added to specify that interns in funeral directing must assist in at least 25 funerals, 25 arrangement conferences, as well as visitations and financing of funeral services.</p> <p>Subsection E is added to specify that interns in embalming must assist in at least 25 embalmings, as well as treatment, restorative art, safety and</p>

			sanitation, and organ, tissue, or anatomical donation.
	18VAC65-40-185		New section 185 specifies the requirements for an application for funeral directing or embalming licensure. <i>The requirements for a funeral service intern are specified in § 54.1-2817 of the Code and in section 180. Those requirements for an applicant in funeral directing or embalming are set out in section 185 in the amended regulation.</i>
18VAC65-40-220		Sets out qualifications for a site to be used as training of interns	Subsection A is amended by adding #4 and #5 to specify the particular qualifications for a site to be used to train a funeral directing intern or an embalming intern. The site must have 50 or more funerals over a 12-month period for a funeral directing intern, or it must have 50 or more bodies for embalming for an embalming intern. In both cases, the funeral establishment can seek approval to use additional training sites if they don't have the requisite number of funerals or embalmings.
18VAC65-40-250		Sets out requirements for supervision of a funeral intern	Subsection F is added to specify that no more than two interns can be concurrently registered by a licensed supervisor in any category of licensure and to require that the supervisor be actively employed or under contract with a funeral establishment. <i>The intent of the additional subsection is to ensure that an intern is being actively supervised rather than supervision in name only. The Code of Virginia provides the limitation of two per supervisor for <u>funeral service interns</u>, but does not specifically address a limitation for funeral directing or embalming interns. Therefore, the amendment to section 250 is necessary for consistency with the Code for all three categories.</i> § 54.1-2817: <i>No more than two funeral service interns shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered funeral service intern must be actively employed by or under contract with a funeral establishment.</i>
18VAC65-40-320		Sets out requirements for reporting to the Board on an internship	In its periodic review, the Board had already proposed the changes in subsection A and B, so they are repeated in this action. Subsection C is added to specify that an intern cannot receive credit for training on a new 1,000 report until the previous 1,000 hour report has been approved by the board. <i>The purpose is to ensure that the intern is not wasting hours in activity that is not approved for the scope of practice or that the intern is being solely utilized for activities that do not lead to licensure. For example, if a funeral directing intern has not assisted in a single arrangement meeting</i>

			<p><i>in the first 1,000 hours, it would indicate that the establishment is not providing adequate training.</i></p> <p>Subsection D is added to mirror the language in the Code for funeral service interns so it is applicable to funeral directing and embalming interns.</p> <p><i>§ 54.1-2817: Credit shall not be allowed for any period of internship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the Board may deny an additional internship. A funeral service intern may continue to practice for up to 90 days from the completion of his internship or until he has taken and received the results of all examinations required by the Board. However, the Board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the Board determines that enforcement of the limitation will create an unreasonable hardship.</i></p>
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