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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) citation(s)	18VAC65-40-10 et seq.
Regulation title(s)	Regulations Governing Funeral Service Interns
Action title	Reduction in training hours
Date this document prepared	4/17/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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).

The Board intends to amend its regulations governing funeral service interns to reduce the required hours of internship from 3,000 to 2,000.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

N/A

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this action is a report from the Ad Hoc Committee on Internships. In his report from the Committee to the Board on January 24, 2019, the Chair of the Ad Hoc requested additional discussion from the Board on the number of internship hours at the April 2019 Board meeting pending additional research of other jurisdictions. The results of the research were presented to the Board, which led to its decision to initiate rulemaking.

Legal Basis

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

18VAC65-40-10 et seq. Regulations for the Funeral Service Intern Program are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board with authority to promulgate regulations to administer the regulatory system:

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

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

...

6. *To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title.*

Authority for the Board to take disciplinary action for failure to adequately supervise funeral service interns is found in:

§ 54.1-2806. Refusal, suspension, or revocation of license.

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes: ...

21. *Failure to comply with the reporting requirements as set forth in § [54.1-2817](#) for registered funeral service interns;*

22. *Failure to provide proper and adequate supervision and training instruction to registered funeral service interns as required by regulations of the Board;*

Authority to regulation funeral service interns is found in:

§ 54.1-2817. Funeral service interns.

A person desiring to become a funeral service intern shall apply on a form provided by the Board. The applicant shall attest that he holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a funeral service intern for an individual convicted of a felony, if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The Board shall not, however, approve an application to be a funeral service intern for any person convicted of embezzlement or of violating subsection B of § 18.2-126.

The Board, in its discretion, may refuse to approve an application to be a funeral service intern for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

When the Board is satisfied as to the qualifications of an applicant, it shall issue a certificate of internship. When a funeral service intern wishes to receive in-service training from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and the funeral service intern later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the funeral service intern an affidavit showing the length of time served with him. The affidavit shall be filed with the Board and made a matter of record in that office. Any funeral service intern seeking permission to continue in-service training shall submit a request to the Board.

A certificate of internship shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered funeral service intern at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time, a penalty fee shall be due in addition to the renewal fee.

The registration of any funeral service intern who is in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of his service. The Board may also waive the renewal fees for such military personnel.

All registered funeral service interns shall report to the Board on a schedule prescribed by the Board upon forms provided by the Board, showing the work which has been completed during the preceding period of internship. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.

Before such funeral service intern becomes eligible to be examined for the practice of funeral service, evidence shall be presented along with an affidavit from any licensee under whom the intern worked showing that the intern has assisted in embalming at least 25 bodies and that the

intern has assisted in conducting at least 25 funerals. In all applications of funeral service interns for licenses for the practice of funeral service, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the internship shall not entitle him to any privilege except to be examined for such license.

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.

The Board shall have power to suspend or revoke a certificate of internship for violation of any provision of this chapter.

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.

Purpose

Please 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is reduce the hours of training necessary to complete a funeral internship. The statutory requirement for the intern to assist in embalming at least 25 bodies and for the intern to assist in conducting at least 25 funerals would not be revised, so the Board believes 2,000 hours of training would be adequate and would not represent any jeopardy to public health and safety.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Section 130 of Chapter 40 currently requires a funeral service internship to consist of at least 3,000 hours of training to be completed within no less than 12 months and no more than 48 months. The Board’s intent is to reduce the total hours of training to 2,000 hours.

Alternatives

Please 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.

In order to reduce the regulatory burden, there are no viable alternatives to amending the current regulation.

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

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The Board of Funeral Directors and Embalmers is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose 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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by FAX to (804) 527-4434. 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 the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

The Ad Hoc Committee on Internships of the Board has served as the panel to review the regulations and make recommendations for amendments.