



Final Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 65-40
Regulation title	Regulations for the Funeral Service Intern Program
Action title	Greater flexibility and accountability in requirements for funeral service intern program
Document preparation date	9/12/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In order to provide more flexibility in the funeral service internship program, the Board proposes to allow the intern to complete the required hours within a fewer number of months and to combine part-time employment as an intern with part-time schooling or other employment. Other changes will add accountability for the supervision of the intern by requiring the supervisor to have at least two years of practice experience before serving as a trainer and requiring specific training in cremation. The training site must have at least 50 funerals and 50 embalmings each year, but additional training sites may be used to complete the requirements for a internship. The Board is also increasing the application fee and adding a fee for registration of supervision, but is allowing an intern to reinstate for up to one year following expiration, rather than having to reapply. The annual renewal expiration is being changed for consistency with other occupations under the Board from January to March.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 12, 2006, the Board of Funeral Directors and Embalmers adopted a final regulation for 18VAC65-40-10 et seq. to provide greater flexibility and accountability in requirements for funeral service intern program.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations, levy fees, administer a registration and renewal program, and discipline regulated professionals.

§ 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 or licensure 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 or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 9-6.14:1 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 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations...*

The legal authority to promulgate regulations for funeral service interns is found in Chapter 28 of Title 54.1, which sets forth statutory provisions for the licensure and practice of funeral establishments and funeral service licensees. Excerpts related to funeral service interns are:

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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

In its discussions over the past two years and through a review of its regulations for the funeral service intern program, the Board has identified a need to amend regulations that unnecessarily restrict the opportunities for persons interested in the funeral profession. Today, many of those are non-traditional or second career students who find it burdensome to obtain practical experience as an intern on a full-time basis. The goal of the amended regulations is to add more flexibility to the program, and at the same time, require more accountability for interns and their supervisors to ensure that they are adequately trained in all aspects of funeral service and prepared to take the national examinations. Adequate preparation and close supervision are necessary to ensure that the consuming public is protected from mismanagement, fraud or unhealthy practices in a funeral establishment.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The following are the substantive changes to existing sections:

18VAC65-40-10. Definitions.

Since the Board has eliminate the restriction on serving as a funeral service intern while attending school full-time, the definition for "Full-time school attendance" would not be necessary. That would mean that an individual attending mortuary science school, who is enrolled in 12 or more semester hours of coursework per semester, could also work part-time as an intern.

18VAC65-40-40. Fees.

The Board has examined the funeral service intern fees in relation to the overall budget of the Board. With additional reporting forms and accountability, there is a need for a modest increase in the registration and renewal fee from \$75 to \$100. The \$15 fee charged for the paperwork involved in a change of supervisor is increased to \$25, consistent with fees charged by other boards at the Department and with the staff time involved in that transaction. The Board has also amended regulations for late fees and reinstatement for consistency with the Fee Principles of the Department. Section 280 requires submission of an application to serve as a supervisor and review of documentation to determine eligibility, so the Board needs to establish a minimal fee for supervisor registration.

18VAC65-40-90. Renewal of registration.

Currently, the funeral service internship registration expires on January 31 of each calendar year. The Board intends to modify that schedule for consistency with other licenses so there is less confusion in funeral establishments about renewal schedules. Renewals concentrated in one time period is also less burdensome for board staff than having renewals spaced over several months. If the requirement is amended to March 31, as it is for other licensees, funeral service interns would be given two additional months with their current registration.

18VAC65-40-110. Reinstatement of expired registration.

The Board has amended regulations for late fees and reinstatement for consistency with the Fee Principles of the Department, so the intern would be able to renew with payment of a late fee for one year following expiration and thereafter would need to reinstate. Reinstatement would be allowed within three years of its expiration date if a internship is interrupted, but after three years, a new application for registration would need be filed and a new internship begun. The requirement for interruption and reinstatement, currently in section 300, has been modified and incorporated into section 110. The current requirement in 300 A for the intern to obtain a new supervisor if the program is interrupted is not be necessary. There are many reasons for interruption, and resumption with the previous supervisor may be more advantageous. Regulations state that if circumstances preclude resumption with the same supervisor, a new supervisor must be obtained.

18VAC65-40-130. Resident training.

Currently, the internship program consist of at least 18 months of training and an individual may hold an active internship registration for a maximum of 48 months from the date of initial registration for the program. The board, in its discretion, may grant an extension of the internship registration.

The Board proposes to substitute the equivalent number of hours in a funeral service internship (18 months = 3,000 hours) and set a minimum of 12 months and a maximum of 48 months in which to complete those hours. To ensure some continuity in the training and availability of the intern for the establishment, the Board has set a minimum number of 20 hours per week and a maximum of 60 hours per week. Currently the intern is required to work a full-time schedule at least 40 hours each week in order to obtain credit. The proposed regulation will offer the opportunity for an intern to set a schedule for gaining practical experience that meets his/her and the funeral establishment's need. By not requiring a 40-hour week schedule, smaller funeral homes that do not have enough business to justify hiring a full-time intern may be able to serve as training sites for interns who want part-time training in combination with school or while holding another job. Likewise, interns who are seeking licensure as a second career may wish to attend school and work to complete all requirements in a shorter period of time.

The restriction stating that a funeral service intern cannot attend school full time while serving his internship has been eliminated.

Regulations provide authority for the Board to waive any limitation that presents an unreasonable hardship in its enforcement and also to extend the internship consistent with the limitations set in § 54.1-2817 of the Code.

18VAC65-40-220. Qualifications of training site.

Currently, the board can approve an establishment or two combined establishments to serve as the training site or sites that have 35 or more funerals and 35 or more bodies for embalming over a 12-month period for each person to be trained. That number is considered minimal to allow the intern to meet the statutory and regulatory requirement to perform a minimum of 25 funerals and 25 embalmings under direct supervision. Since amended regulations would allow the intern to only work part-time, the Board has determined that the minimum number should be increased to 50 funerals and 50 bodies for embalming. That would give the intern adequate opportunity to be personally involved in funeral planning and directing and in embalming a variety of bodies. The Board would retain the regulation that allows the intern to get approval for an additional training site if the establishment in which he is doing his internship cannot meet the required number of funerals or embalmings.

18VAC65-40-250. Requirements for supervision.

The Board has specified that it will approve only funeral service licensees, licensed funeral directors, or licensed embalmers with two or more years of experience to provide training to ensure that the licensee is sufficiently experienced to have encountered a variety of cases and has the knowledge and maturity to provide adequate instruction and supervision. However, the Board will modify the requirement for the supervisor to be employed full-time in the establishment where the training occurs. For example, many funeral establishments now use contract embalmers; those individuals specialize in embalming procedures and may be the best persons to instruct and supervise an intern in embalming. The current requirement that a supervisor must be employed full-time in the establishment eliminates the possibility of such a person serving as the supervisor for embalming. The current requirement in 300 A for the intern to obtain a new supervisor if the program is interrupted is not necessary. There are many reasons for interruption, and resumption with the previous supervisor may be more advantageous. Regulations should state that if circumstances preclude resumption with the same supervisor, a new supervisor must be obtained.

18VAC65-40-320. Reports to the board: six-month report; partial report.

Since the training requirement will be expressed in hours rather than in months, the Board has modified the regulation on reporting. In 2006, § 54.1-2817 was amended to require funeral service interns to report on a schedule determined by the Board. Regulations are amended to require an evaluation of knowledge and proficiency after 1,000 hours of the internship has been completed and a full accounting of the intern's activity at the conclusion of the program.

18VAC65-40-340. Supervisors' responsibilities.

Currently, regulations require the supervisor to provide the intern with instruction in all aspects of funeral services and to allow the intern under direct supervision to conduct all necessary arrangements for a minimum of 25 funerals. The supervisor must also provide the intern with instruction in making preneed funeral arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures. The embalming supervisor must provide instruction on all necessary precautions, embalming functions, and reporting forms and allow the intern under direct supervision to perform a minimum of 25 embalmings. With an increasing

number of people choosing cremation for their final disposition, the Board believes the intern should receive specific instruction on the laws, regulations and arrangements pertaining to cremation. It has been clarified that any establishment serving as a training site that does not offer preneed funeral planning or cremation should arrange for such training with another licensed facility that does.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

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- 1) The primary advantage to the consumers of funeral services could be an increase in the number of individuals who would become funeral service interns and eventually funeral service licensees because of the flexibility of “part-time” training or the ability to complete the program within a shorter time frame. In addition, specific requirements for training in cremation and preneed will benefit consumers who are seeking those services from funeral establishments. There are no disadvantages to consumers.
 - 2) There are no advantages or disadvantages to the Commonwealth.
 - 3) There is no other pertinent matter of interest related to this action.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

In Chapter 56 of the 2006 Acts of the Assembly, the terminology used in the resident traineeship program was changed to an internship in funeral services. Chapter 40 governing the funeral service intern program was amended under an exemption from the requirements of the Administrative Process Act to conform the regulations to changes in the law. Accordingly, all such terms used in the proposed regulations were amended in the final action to reflect the current terms.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published in the Virginia Register of Regulations on June 26, 2006. Public comment was requested for a 60-day period ending August 25, 2006. There was no written comment received.

A Public Hearing before the Board of Funeral Directors and Embalmers was held on July 18, 2006. Mr. Barry Robinson, representing the Virginia Morticians Association, commented that the increase in the number of funerals and bodies for embalming from 35 to 50 for establishments serving as training sites for funeral interns could cause a hardship for small establishments.

Board response:

The Board has recognized the needs of small establishments in serving as training sites for funeral service interns. For example, the amended regulation will offer the opportunity for an intern to set a schedule for gaining practical experience that meets his/her and the funeral establishment’s need. By not requiring a 40-hour week schedule, smaller funeral homes that do not have enough business to justify hiring a full-time intern may be able to serve as training sites for interns who want part-time training in combination with school or while holding another job.

The current number of required 35 funerals and 35 embalmings is considered too few to allow the intern to meet the statutory and regulatory requirement to perform a minimum of 25 funerals and 25 embalmings under direct supervision. Since amended regulations would allow the intern to only work part-time, the Board has determined that the minimum number should be increased to 50 funerals and 50 bodies for embalming. That would give the intern adequate opportunity to be personally involved in funeral planning and directing and in embalming a variety of bodies. However, the intern would be able to get approval for an additional training site if the establishment in which he is doing his internship cannot meet the required number of funerals or embalmings, so small establishments could combine with other establishments for the employment of an intern and for meeting the required number of funerals and embalmings.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Requires a person attending mortuary school to attend full-time or take at least 12 semester hours per semester.	Since the Board has eliminated the restriction on serving as a funeral service intern while attending school full-time, the definition for "Full-time school attendance" is not necessary. That means that an individual attending mortuary science school, who is enrolled in 12 or more semester hours of coursework per semester, could also work part-time as an intern or an individual could take a couple of classes while continuing to work at a job that supports his/her family.

40	n/a	Sets the fees for registration	In keeping with the overall budget of the Board, there is a need for a modest increase in the registration and renewal fee from \$75 to \$100. The \$15 fee charged for the paperwork involved in registration of supervision or for a change of supervisor is set at \$25, consistent with fees charged by other boards at the Department and with the staff time involved in that transaction. Section 280 requires submission of an application to serve as a supervisor and review of documentation to determine eligibility, so the Board needed to establish a minimal fee for supervisor registration. The Board has also amended regulations for late fees and reinstatement for consistency with the Fee Principles of the Department.
90	n/a	Sets the deadline for renewal at January 31 st each year	The Board has modified the renewal schedule for consistency with other licenses so there is less confusion in funeral establishments about renewal schedules. Renewals concentrated in one time period is also less burdensome for board staff than having renewals spaced over several months. With the schedule amended to March 31, as it is for other licensees, interns would be given two additional months with their current registration.
110	n/a	Currently, any late renewal after 30 days past expiration requires reinstatement of the registration and payment of all applicable fees (including all past renewal fees).	The Board needs to amend regulations for late fees and reinstatement for consistency with the Fee Principles of the Department, so the intern may be able to renew with payment of a late fee for one year following expiration and thereafter would need to reinstate. Reinstatement could be allowed within three years of its expiration date if a internship is interrupted, but after three years, a new application for registration would need be filed and a new training program begun. The requirement for interruption and reinstatement, currently in section 300, has been modified and incorporated into section 110 or section 250.
130	n/a	Currently, the intern program consist of at least 18 months of training and an individual may hold an active internship registration for a maximum of 48 months from the date of initial registration for the internship program.	The Board proposes to substitute the equivalent number of hours in an internship (18 months = 3,000 hours) and set a minimum of 12 months and a maximum of 48 months in which to complete those hours. For good cause shown, the Board would be allowed to waive the limitations. To ensure some continuity in the training and availability of the intern for the establishment, the Board set a minimum number of hours per week (20 hours/week) and a maximum of hours per week (60 hours/week). Currently the intern is required to work a full-time schedule at least 40 hours each week in order to obtain credit. (Section 160) The amended regulation will offer the opportunity for an intern to set a schedule for gaining practical experience that meets his/her and the funeral establishment's need. By not requiring a 40-hour week schedule, smaller funeral homes that do not have enough business to justify hiring a full-time intern may be able to serve as training sites for interns who want part-time training in combination with school or while holding another job. Likewise, interns who are seeking licensure as a second career may wish to attend school and work to complete all requirements in a shorter period of time. The restriction stating that an intern cannot attend school

			full time while serving his internship would be eliminated. Regulations will provide authority for the Board to waive any limitation that presents an unreasonable hardship in its enforcement and also to extend the internship consistent with the limitations set in § 54.1-2817 of the Code.
160	n/a	Requires full-time employment of at least 40 hours a week and training in all areas of funeral service.	This section was repealed. Full-time employment would not be required, and the minimum and maximum number of hours and requirement for training in all areas of practice placed in section 130.
220	n/a	Current regulations allow the board to approve an establishment or two combined establishments to serve as the training site or sites that have 35 or more funerals and 35 or more bodies for embalming over a 12-month period for each person to be trained.	That number of required funerals and embalmings is considered too few to allow the intern to meet the statutory and regulatory requirement to perform a minimum of 25 funerals and 25 embalmings under direct supervision. Since amended regulations would allow the intern to only work part-time, the Board has determined that the minimum number should be increased to 50 funerals and 50 bodies for embalming. That would give the intern adequate opportunity to be personally involved in funeral planning and directing and in embalming a variety of bodies. The Board would retain the regulation that allows the intern to get approval for an additional training site if the establishment in which he is doing his internship cannot meet the required number of funerals or embalmings.
250	n/a	Sets the requirements for who can serve as a supervisor and for the supervision of an intern.	Amended regulations will allow the Board to approve only funeral service licensees, licensed funeral directors, or licensed embalmers with two or more years of experience to provide training to ensure that the licensee is sufficiently experienced to have encountered a variety of cases and has the knowledge and maturity to provide adequate instruction and supervision. Other professions, such as nursing home administrators, that use preceptors or supervisors to train students require from 2 to 5 years of experience, so the proposal is consistent with the experiential requirements for other boards. However, the Board will modify the requirement for the supervisor to be employed full-time in the establishment where the training occurs. For example, many funeral establishments now use contract embalmers; those individuals specialize in embalming procedures and may be the best persons to instruct and supervise an intern in embalming. The current requirement that a supervisor must be employed full-time in the establishment eliminates the possibility of such a person serving as the supervisor for embalming. The current requirement in 300 A for the intern to obtain a new supervisor if the program is interrupted is not necessary. There are many reasons for interruption, and resumption with the previous supervisor may be more advantageous. Regulations state that if circumstances preclude resumption with the same supervisor, a new supervisor must be obtained.
300	n/a	Establishes current requirements for interruption and reinstatement of supervision.	This section has been repealed. The rule stating that credit is only allowed for training under direct supervision and that credit resumes when a supervision has been approved by the Board are restated in section 250

320	n/a	Specifies the timing and content of reports that must be filed with the Board during a resident internship.	Since the internship requirement will be expressed in hours rather than in months, the Board has modified the regulation on reporting. Regulations are amended to require an evaluation of knowledge and proficiency after 1,000 hours of the internship has been completed and a full accounting of the intern's activity at the conclusion of the program.
340	n/a	Sets out the specific responsibilities of supervisors for training in all aspects of funeral service and embalming.	Subsection F is added to require the supervisor to provide instruction on cremation and on the laws and regulations pertaining to cremation. Subsection G specifies that if a training site does not offer preneed funeral planning or cremation services, the supervisor is responsible for arranging such training at another licensed funeral establishment that does.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.