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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	18VAC65-40-10 et seq.
Regulation title	Regulations for the Resident Trainee Program for Funeral Service
Action title	Greater flexibility and accountability in requirements for resident trainee program
Document preparation date	5/10/05

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In its discussions over the past two years and through a review of its regulations for the resident trainee program in funeral service, 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 a trainee 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 trainees and their supervisors to ensure that they are adequately trained in all aspects of funeral service and prepared to take the national examinations.

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 number(s), 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 resident trainees 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 resident trainees are:

§ 54.1-2817. Resident trainees. (Effective July 1, 2005)

A person desiring to become a resident trainee 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 resident trainee 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 resident trainee 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 resident trainee 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 resident traineeship. When a resident trainee 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 resident trainee later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the resident trainee 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 resident trainee seeking permission to continue in-service training shall submit a request to the Board.

A certificate of resident traineeship shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered resident trainee 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 resident trainee 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 resident trainees shall report to the Board at least every six months upon forms provided by the Board, showing the work which has been completed during the preceding six months of resident traineeship. 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 resident trainee 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 trainee worked showing that the trainee has assisted in embalming at least 25 bodies and that the trainee has assisted in conducting at least 25 funerals. In all applications of resident trainees 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 resident traineeship shall not entitle him to any privilege except to be examined for such license.

Credit shall not be allowed for any period of resident traineeship 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 traineeship. A resident trainee may continue to practice for up to 90 days from the completion of his traineeship 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 resident traineeship for violation of any provision of this chapter.

No more than two resident trainees shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered resident trainee must be actively employed by a funeral establishment.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Board intends to amend existing regulations in the following sections:

18VAC65-40-10. Definitions.

Since the Board may eliminate the restriction on serving as a resident trainee 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 a trainee.

18VAC65-40-40. Fees.

The Board will examine the resident trainee fees in relation to the overall budget of the Board. With additional reporting forms and accountability, there may be a need for a modest increase in the registration and renewal fee. The \$15 fee charged for the paperwork involved in a change of supervisor may be increased to \$25, consistent with fees charged by other boards at the Department and with the staff time involved in that transaction. The Board also needs to amend 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 resident trainee 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, resident trainees would be given two additional months with their current registration.

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

The Board needs to amend regulations for late fees and reinstatement for consistency with the Fee Principles of the Department, so the trainee 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 traineeship 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, should be modified

and incorporated into section 110. The current requirement in 300 A for the trainee to obtain a new supervisor if the program is interrupted may not be 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.

18VAC65-40-130. Resident training.

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

The Board proposes to substitute the equivalent number of hours in a resident traineeship (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 trainee for the establishment, the Board will set a minimum number of hours per week (probably 20 hours/week) and a maximum of hours per week (probably 60 hours/week). Currently the trainee 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 a trainee 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 trainee may be able to serve as training sites for trainees who want part-time training in combination with school or while holding another job. Likewise, trainees 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 resident trainee cannot attend school full time while serving his traineeship will 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 traineeship consistent with the limitations set in § 54.1-2817 of the Code.

18VAC65-40-160. Trainee work schedule.

Section 160 will be incorporated into section 130 – see above. The 40 hour-per-week requirement will be modified, but the trainee will still be required to receive training in all areas of funeral service.

18VAC65-40-180. Trainee application package.

No changes are recommended.

18VAC65-40-201. Failure to register.

No changes are recommended.

18VAC65-40-210. Training sites.

No changes are recommended.

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 trainee 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 trainee 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 trainee 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 resident trainee to get approval for an additional training site if the establishment in which he is doing his traineeship cannot meet the required number of funerals or embalmings.

18VAC65-40-250. Requirements for supervision.

The Board intends to specify that it will approve only funeral service licensees, licensed funeral directors, or licensed embalmers with five 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 a trainee 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.

18VAC65-40-280. Supervisor application package.

No changes are recommended at this time.

18VAC65-40-300. Interruption and reinstatement.

See section 110.

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 will need to modify the regulation on reporting. Currently, § 54.1-2817 requires resident trainees to report at least every six months, so until that section is amended, board regulations will need to require some type of six-month report. However, the substantive reporting should coincide with the completion of a portion of the hourly requirement. Regulations will be amended to require an evaluation of knowledge and proficiency after 1,000 hours of the traineeship has been completed and a full accounting of the trainee's activity at the conclusion of the program.

18VAC65-40-330. Failure to submit training report.

No change is recommended at this time.

18VAC65-40-340. Supervisors' responsibilities.

Currently, regulations require the supervisor to provide the trainee with instruction in all aspects of funeral services and to allow the trainee under direct supervision to conduct all necessary arrangements for a minimum of 25 funerals. The supervisor must also provide the trainee 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 trainee 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 trainee should receive specific instruction on the laws, regulations and arrangements pertaining to cremation. It should also be 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.

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Within the funeral profession, there is a national discussion about the education and training of future licensees and recognition of the need to balance the increasing demand for professionalism against the need for flexibility in requirements to encourage more individuals to seek funeral service as a first or second career. There is ongoing debate about whether a student should complete his/her educational program prior to, subsequent to or simultaneously with the internship or traineeship. The American Board of Funeral Service Education, the accrediting body approved by the Board, is considering and seems to be moving toward the incorporation of an internship into the educational programs. The Virginia Board has determined that its regulations do not allow enough flexibility to accommodate the needs of various students and funeral establishments that might be willing to serve as training sites. By requiring a trainee to work at least a 40-hour week in a resident traineeship and restricting school attendance while engaged in a traineeship, current regulations are not sufficiently flexible to meet the needs of many of today's students who are often working to support a family while they are in school or being trained in funeral service. Of the 31 students enrolled at John Tyler Community College in 2004, 18 were in the 25-34 age bracket. By allowing more flexibility in combining work and school, more qualified, mature individuals may seek a career in funeral service.

Along with flexibility in training, there is a need for greater accountability. The Board has discussed amendments to regulations that would require specific training for and registration of the preceptors or supervisors for resident trainers. The Board depends on those licensees to impart the practical knowledge of funeral service and to adequately supervise their work in funeral directing, embalming, preneed planning and other aspects of funeral service, but there is concern that the trainers may not have sufficient knowledge and experience to perform those duties. While a program to "train the trainers" was seriously considered, the Board determined that there were other less burdensome alternatives that should be implemented first. In addition, educational programs are having difficulty finding training sites (funeral establishments) that are willing to employ their students as resident trainees. While specific training for preceptors did not seem appropriate at this time, the Board may work with educational programs in the future to develop a training module that could be required prior to registering to supervise a resident trainee.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The Notice of Periodic Review was published in the Register on April 4, 2005 and sent to the Public Participation Guidelines list with comment requested until May 4, 2005. The Virginia Funeral Directors Association commented that its task force on licensure had expressed concern about the amount of time a person may remain a trainee without obtaining a license. While the task force did not reach consensus on licensing requirements, it did identify the key issue as a need to clarify the regulations that currently exist.

In addition, other interested parties have actively participated in the Task Force on the Resident Trainee Program. The Task Force has included board members who have experience in and knowledge about resident traineeships, other licensees who serve as supervisors for resident trainees and program directors from Norfolk State and John Tyler CC. Other interested parties have attended and been invited to participate in the discussions.