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Fast-Track Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC65-20-10 et seq.
Regulation title(s)	Regulations of the Board of Funeral Directors and Embalmers
Action title	Students assisting in embalming
Date this document prepared	7/16/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Chapter 186 of the 2018 General Assembly requires the Board of Funeral Directors and Embalmers to promulgate regulations governing mortuary school students assisting with embalming in licensed funeral establishments.

The Board has adopted proposed regulations to require: 1) the establishment participating in training to have a current, unrestricted license; 2) the establishment and the licensee to meet certain accreditation standards for training; 3) specific instruction in embalming for students in the context of an embalming laboratory course; 4) a limitation on the number of students who

may be supervised and a requirement that the supervisor be physically present with the student who is assisting with embalming tasks; 5) information on the embalming authorization form noting participation of students in the establishment; and 6) the name of the student and supervisor on the embalming report.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

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 July 12, 2018, the Board of Funeral Directors and Embalmers adopted amendments to 18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 and a specific mandate of Chapter 82 of the 2016 General Assembly:

§ 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 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...

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 Code section authorizing students assisting in embalming in funeral establishments and authorizes the Board to promulgate regulations in found in:

§ 54.1-2805. Engaging in the practice of funeral services or the business of preneed funeral planning or acting as a funeral director or embalmer without a license.

A. It shall be unlawful for any person to engage in or hold himself out as engaging in the practice of funeral services or the business of preneed funeral planning, to operate a funeral service establishment, or to act as a funeral director or embalmer or hold himself out as such unless he is licensed by the Board. Engaging in the practice of funeral services, preneed funeral planning, operating a funeral service establishment, or acting as a funeral director or embalmer shall be recognized as that of a health profession.

B. Notwithstanding the provisions of subsection A, a person who is duly enrolled in a mortuary education program in the Commonwealth may assist in embalming while under the immediate supervision of a funeral service licensee or embalmer with an active, unrestricted license issued by the Board, provided that such embalming occurs in a funeral service establishment licensed by the Board and in accordance with regulations promulgated by the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

The purpose of the amended regulation is compliance with the legislation passed by the General Assembly authorizing mortuary school students to assist with embalming in licensed funeral establishment, but only in accordance with regulations promulgated by the Board. The regulations are necessary to ensure a safe environment for such training, appropriate instruction in embalming, and awareness by consumers that training is occurring in the establishment. Regulations will protect not only the students and instructors but will further protect the safety and welfare of the public by having future licensees become more proficient embalmers.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Legislation passed by the General Assembly authorizes “a person who is duly enrolled in a mortuary education program in the Commonwealth may assist in embalming while under the immediate supervision of a funeral service licensee or embalmer with an active, unrestricted license issued by the Board, provided that such embalming occurs in a funeral service establishment licensed by the Board and in accordance with regulations promulgated by the Board.” The regulations promulgated by the Board are intended to facilitate such practice while protecting consumers of funeral services. They were developed in conjunction with the mortuary science programs, are consistent with their accrediting standards, and unanimously adopted by board members. Therefore, they should not be controversial.

Substance

Please 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.

To comply with the legislation of the 2018 General Assembly, the Board has adopted proposed regulations to require: 1) the establishment participating in training to have a current, unrestricted license; 2) the establishment and the licensee to meet certain accreditation standards for training; 3) specific instruction in embalming for students in the context of an embalming laboratory course; 4) a limitation on the number of students who may be supervised and a requirement that the supervisor be physically present with the student who is assisting with embalming tasks; 5) information on the embalming authorization form noting participation of students in the establishment; and 6) the name of the student and supervisor on the embalming report.

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.

- 1) The advantage to the public is students who seek to become funeral service licensees will have a wider range of opportunities for embalming and training and will be more proficient after graduation. The mortuary school programs will see significant savings from a reduction in the number of cadavers they will need to purchase. There are no disadvantages; there are adequate safeguards in the regulation to ensure an embalming with student assistance will be done properly under close supervision.
- 2) There are no advantages or disadvantages to the 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.) which are reasonable and necessary to administer effectively the regulatory system.*” There is no restraint on competition as a result of promulgating this regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no alternative to the adoption of regulations as specified by the General Assembly in SB143.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Students at mortuary schools and funeral establishments in which embalming training occurs would be affected.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 437 licensed funeral establishments that could potentially serve as a training site for student embalmers. It is unknown how many may agree to participate with mortuary schools in training students in embalming, but it is estimated to be a small percentage. There is no estimate of the number of students who may participate.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no costs.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact is the opportunity for mortuary students to have a greater range of experience in embalming, thus better preparing them to practice as a funeral service licensee. All there are significant cost savings to mortuary school programs at community colleges in Virginia. One community college reported that it <i>“will cut budget costs for the practical embalming component that is required by accrediting agency. Our programs spends \$2,100 per cadaver for the cadaver, transportation and cremation which equates to about \$80,000 per academic year.”</i> Through the enabling legislation and subsequent regulations, the program estimates that those costs will be cut in half and save the Commonwealth and taxpayers money.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

In developing proposed regulations, the Ad Hoc Committee on Internships worked with representatives of the mortuary science programs – Janet Stephens from John Tyler Community College, and Frank Walton from Tidewater Community College. They provided information about the accrediting standards for embalming at off-campus instructional sites and were very supportive of adopting those standards and the proposed regulations. There are no alternatives that would be less costly or intrusive and would achieve the purpose of allowing students to assist in embalming at licensed funeral establishments in a safe environment.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

New section number	Proposed change, intent, rationale, and likely impact of proposed requirements
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<p>236</p>	<p>In accordance with § 54.1-2805 of the Code of Virginia, a student who is duly enrolled in a mortuary education program in the Commonwealth and who is not registered with the board as a funeral intern may assist in embalming in a funeral service establishment provided the following requirements are met:</p> <ol style="list-style-type: none"> 1. The funeral establishment holds a current, unrestricted license issued by the Board; 2. The funeral establishment and funeral service licensee or embalmer providing student supervision meet the accreditation standards of the American Board of Funeral Service Education and the Commission on Accreditation for off-campus embalming instruction; 3. Students shall receive instruction and shall observe embalming of a dead human body prior to assisting with an embalming in a funeral service establishment and shall assist with embalming in conjunction with an embalming laboratory course; 4. A funeral service licensee or embalmer may supervise up to three students under his immediate supervision, which shall mean the supervisor is physically and continuously present in the preparation room with the student(s) to supervise each task to be performed; 5. A funeral service establishment shall include on the form granting permission to embalm information disclosing that the establishment is a training facility for mortuary education students and that a student may be assisting the licensee with embalming; and 6. The embalming report shall include the name(s) of student(s) assisting with an embalming and shall be signed by the supervisor. <p><i>Mortuary programs have great difficulty in obtaining human remains that can be embalmed, so training in embalming is expensive and problematic. Often cadavers come from the anatomical donation program and are not adequate for embalming. Legislation was recommended by the schools and supported by this agency to alleviate the problems and expenses and to produce better results with more proficient embalmers.</i></p> <p><i>Regulations in section 236 are intended to ensure adequate supervision, a safe environment for students, and disclosure to the public of such training. These regulations do not apply to funeral service interns who are registered with the Board.</i></p> <p><i>The accreditation standards specified in #2 are the standards mortuary programs in Virginia currently follow and will apply to their use of off-campus instructional sites for embalming. The standards include instruction and orientation for preceptors used in training, a physical visit to the funeral establishment by a school representative, and an inspection to ensure that the location has a valid, current license, and all the appropriate equipment and protocols in place and functioning for student/license protection.</i></p> <p><i>Students will be required to have instruction in embalming and observe prior to assisting and participate in conjunction with a course; they will</i></p>
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	<p><i>not be allowed to assist with embalming on their own volition. To ensure appropriate supervision, board members set a limit of three students and a requirement for immediate supervision, with the supervisor physically present and continuously in the prep room when the student is assisting.</i></p> <p><i>The public will have disclosure of training, and information about student participation will be included on the embalming report.</i></p>
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