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Periodic Review Report of Findings

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 Funeral Service Intern Program
Date this document prepared	2/4/19

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 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. 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

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.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There is a statutory mandate for registration of funeral service interns. The Board published a NOIRA on August 6, 2018 and identified several amendments necessary to provide greater oversight of the funeral internship program. At the same time, the Board initiated periodic reviews for all chapters of regulations, so it was determined that the recommended amendments from the earlier NOIRA and the changes recommended from the overall review should be combined.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

There was a 30-day comment period from 5/14/18 to 6/13/18; there was one comment on Townhall. The commenter requested consideration of reducing the hours for funeral service internships, noting that neighboring states have fewer than 3,000 hours required in Virginia.

The Board of Funeral Directors and Embalmers has utilized an Ad Hoc Committee on Funeral Interns to review regulations and make recommendations on amendments.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

In addition to the issues identified in the August, 2018 NOIRA, the Ad Hoc Committee developed further recommendations for amendments for clarifications to the regulations and for consideration of a reduction in the number of internships hours currently required.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

In 2018, the Board of Funeral Directors and Embalmers adopted a recommendation of the Ad Hoc Committee on Funeral Interns to initiate a Notice of Intended Regulatory Action to do the following: 1) amend 18VAC65-40-130 (A) to indicate training should be completed within not less than 18 months nor more than 60 months, and that the Board would only consider extensions

for extenuating circumstances; 2) require supervisors to register for supervision of each funeral service intern with an expiration for the registration of 60 months or at the completion of the intern's training, whichever occurs first in order to allow the Board to track active supervisors and make sure supervisors are in good standing; and 3) add a regulation requiring that interns be identified to the public as interns in titles, correspondence, and communications with the public. Subsequent to publication of a Notice of Periodic Review, the Ad Hoc Committee developed further recommendations for amendments for clarifications to the regulations and for consideration of a reduction in the number of internships hours currently required.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

- (1) The regulation is necessary for public protection since the Board has a statutory mandate to adopt regulations for funeral service interns in § 54.1-2817.
- (2) There have been no complaints; the comment on regulation is noted in the public comment section above.
- (3) The regulation was reviewed and amended in 2013 for clarity and amended for ease of understanding. Some additional clarifications were recommended in 2018.
- (4) There are no applicable federal rules.
- (5) Amendments to this chapter have been promulgated two times in the last 10 years to update or eliminate unnecessary requirements. The Board does not intend to increase the regulatory burden on small businesses, and it may reduce the hours in an internship that a person must complete which will facilitate entry into the profession.