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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Funeral Directors and Embalmers, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC65-40-10 et seq.
<b>Regulation title(s)</b>	Regulations for the Funeral Service Intern Program
<b>Action title</b>	Periodic review
<b>Date this document prepared</b>	1/30/19

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

The Board of Funeral Directors and Embalmers has adopted a recommendation of the Ad Hoc Committee on Funeral Interns that a Notice of Intended Regulatory Action be initiated 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.

### 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*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 mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. The comment period on the periodic review began on May 14, 2018 and ended on June 13, 2018.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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'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 the proposed regulatory action 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 to provide clear, enforceable regulations for the supervision and practice of interns, so that interns and funeral homes are not misleading the public about their status and that they are being appropriately supervised to protect the public health and safety in the handling of human remains.

### 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.*

The Board intends to make the changes to regulations that were identified in the NOIRA published on August 6, 2018 and incorporated into this NOIRA. The changes include: 1) amendment to 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) requirement for 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) addition of a regulation requiring that interns be identified to the public as interns in titles, correspondence, and communications with the public.

In addition, the Ad Hoc Committee convened to conduct a periodic review of intern regulations recommended edits to several sections and the following changes:

***18VAC65-40-90: Renewal of Registration***

Clarification that a notice of renewal also can be transmitted electronically, consistent with legislation that became effective on July 1, 2018

***18VAC65-40-130: Funeral Service Internship***

Consider a reduction in the number of required hours for an internship; the Board will review requirements in other states in comparison with hours required in Virginia

***18VAC65-40-250: Requirements for Supervision***

Specify that supervision must be provided under a funeral service licensee with an unrestricted license and also consider approval of approval of supervisors with previous board action within the previous three years on a case-by-case basis.

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

Consider removal of language related to deduction of credit hours for late intern reports in 18VAC65-40-320(B)(2).

***18VAC65-40-330: Failure to submit a training report***

Change language to clarify that an intern may not receive credit for training if they fail to submit a training report, rather than forfeiting partial credit for training.

***18VAC65-40-640: Disciplinary action***

Clarify that disciplinary action may be imposed for failure to comply with *the statutes* or regulations of the Board of Funeral Directors and Embalmers.

## 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.*

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.

## 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. This NOIRA is the result of a periodic review announced on May 14, 2018.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal 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 regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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 (<http://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 Board has already used an Ad Hoc Committee on Internships to develop the recommendation for amendments to Chapter 40. The Ad Hoc Committee will convene again after comments on the NOIRA to draft any additional amendments that may be recommended.