



Virginia

Regulatory
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Final Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC 65-20-10 et seq. 18VAC65-40-20 et seq.
Regulation title	Regulations of the Board of Funeral Directors and Embalmers Regulations for the Funeral Service Intern Program
Action title	Increase in fees
Date this document prepared	August 21, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Almost all fees charged to applicants, registrants and licensees will be increased as a result of this regulatory action. Renewal fees for funeral service licensee will increase from \$175 to \$225 and for funeral establishment licensees from \$300 to \$400. Application fees, reinstatement fees, late fees will increase accordingly. The fee for initial registration of a funeral service internship will increase from \$100 to \$150, and the renewal fee will increase from \$100 to \$125.

In the adoption of final regulations, the Board added a shortfall reduction assessment to the renewal fees due in 2015 and 2016. For funeral service providers, funeral directors, embalmers, and crematories, the assessment will be \$40; for funeral establishments and continuing education

providers, the assessment will be \$75; for surface transportation and removal services and courtesy card holders, the assessment will be \$60.

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 or board taking the action, and (3) the title of the regulation.

On August 20, 2014, the Board of Funeral Directors and Embalmers amended 18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers and 18VAC65-40-10 et seq., Regulations Governing the Resident Trainee Program.

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.

18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers and 18VAC65-40-10 et seq., Regulations Governing the Resident Trainee Program are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*

The amended regulation is mandated by § 54.1-113.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall

revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

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.

The issue to be addressed is the need of the Board of Funeral Directors and Embalmers to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against licensees and facilities, adjudication of disciplinary cases, and the inspections required for public safety and security in the Commonwealth.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. By the close of the FY09 fiscal year, the Board of Funeral Directors and Embalmers had a surplus of \$19,797 and was projected to have a deficit of (\$84) by the end of FY10. Because the Board underspent its budget, it ended FY10 with a surplus of \$40,298.

However, because of extraordinary increases in information technology services, increases in health care costs, building lease payments, anticipated cost-of-living increases, and other expenditures, current revenue is projected to be insufficient for expenditures. With the current fee structure, the Board has increased its shortfall each year and will have deficits through the fiscal years going forward. The cash balance as of June 30, 2013 was (\$172,121), and the balance as of June 30, 2014 was (\$242,833). Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, adoption of a fee increase is essential. In order to avoid spiraling shortfalls and have sufficient funding for the operation of the Board, it is necessary to promulgate amendments to regulations at the earliest possible date.

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.

Almost all fees charged to applicants, registrants and licensees will be increased as a result of this regulatory action. Renewal fees for funeral service licensee will increase from \$175 to \$225 and for funeral establishment licensees from \$300 to \$400. Application fees, reinstatement fees, late fees will increase accordingly. The fee for initial registration of a funeral service internship will increase from \$100 to \$150, and the renewal fee will increase from \$100 to \$125.

In the adoption of final regulations, the Board added a shortfall reduction assessment to the renewal fees due in 2015 and 2016. For funeral service providers, funeral directors, embalmers, and crematories, the assessment will be \$40; for funeral establishments and continuing education providers, the assessment will be \$75; for surface transportation and removal services and courtesy card holders, the assessment will be \$60.

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 primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall already at (\$242,833) in FY14 and climbing, there could be significant delays in licensing, in inspections and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in renewal fees of approximately \$50 for a funeral service licensee and \$100 for an establishment should not significantly impact the cost of funeral services for Virginians. If two establishments have fewer than 85 funeral calls per year, the Code allows them to share a manager who is a funeral service licensee, so the increase in fees would result in a very minimum increase in the cost per funeral call.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, especially significant increases in IT services, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

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.

Section number	Requirement at proposed stage	What has changed	Rationale for change
70	Sets out fees for applicants and licensees	Addition of a two-time shortfall reduction assessment to be paid with the two renewals after the effective date of regulations (projected to be 2015). For funeral service providers, funeral directors, embalmers, and crematories, the assessment will be \$40; for funeral establishments and continuing	The proposed fee increase will produce sufficient revenue to cover expenditures of the Board in the next two biennia, but will not eliminate the shortfall that has accumulated over the past several biennia.

		education providers, the assessment will be \$75; for surface transportation and removal services and courtesy card holders, the assessment will be \$60.	Therefore, a two-time assessment is adopted to reduce the deficit so the proposed fees will be sufficient for future budgets of the Board.
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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.

The proposed regulation was published on June 2, 2014 with comment until August 1, 2014. A public hearing was conducted on June 17, 2014 with no public in attendance. **There have been no public comments during the comment period.**

All changes made in this regulatory action

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

Current section number	Current requirement	Proposed change, rationale, and consequences																								
70	Sets out fees charged to applicants and licensees	Subsection A sets out fees for initial licensure or registration: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding-left: 20px;">1. License to practice funeral service or as a funeral director or an embalmer</td> <td style="text-align: right; vertical-align: bottom;">\$275 <u>\$325</u></td> </tr> <tr> <td style="padding-left: 20px;">2. Funeral service establishment license</td> <td style="text-align: right; vertical-align: bottom;">\$500 <u>\$600</u></td> </tr> <tr> <td style="padding-left: 20px;">3. Surface transportation and removal service registration</td> <td style="text-align: right; vertical-align: bottom;">\$300 <u>\$325</u></td> </tr> <tr> <td style="padding-left: 20px;">4. Courtesy card</td> <td style="text-align: right; vertical-align: bottom;">\$275 <u>\$325</u></td> </tr> <tr> <td style="padding-left: 20px;">5. Crematory</td> <td style="text-align: right; vertical-align: bottom;">\$200 <u>\$250</u></td> </tr> <tr> <td style="padding-left: 20px;">6. Waiver of full-time manager requirement</td> <td style="text-align: right; vertical-align: bottom;">\$150</td> </tr> </table> Subsection B sets out fees for renewal of licensure or registration: <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding-left: 20px;">1. License to practice funeral service or as a funeral director or an embalmer</td> <td style="text-align: right; vertical-align: bottom;">\$175 <u>\$225</u></td> </tr> <tr> <td style="padding-left: 20px;">2. Funeral service establishment license</td> <td style="text-align: right; vertical-align: bottom;">\$300 <u>\$400</u></td> </tr> <tr> <td style="padding-left: 20px;">3. Surface transportation and removal service registration</td> <td style="text-align: right; vertical-align: bottom;">\$250 <u>\$300</u></td> </tr> <tr> <td style="padding-left: 20px;">4. Courtesy card</td> <td style="text-align: right; vertical-align: bottom;">\$275 <u>\$300</u></td> </tr> <tr> <td style="padding-left: 20px;">5. Crematory</td> <td style="text-align: right; vertical-align: bottom;">\$150 <u>\$200</u></td> </tr> <tr> <td style="padding-left: 20px;">6. Waiver of full-time manager requirement</td> <td style="text-align: right; vertical-align: bottom;">\$100</td> </tr> </table>	1. License to practice funeral service or as a funeral director or an embalmer	\$275 <u>\$325</u>	2. Funeral service establishment license	\$500 <u>\$600</u>	3. Surface transportation and removal service registration	\$300 <u>\$325</u>	4. Courtesy card	\$275 <u>\$325</u>	5. Crematory	\$200 <u>\$250</u>	6. Waiver of full-time manager requirement	\$150	1. License to practice funeral service or as a funeral director or an embalmer	\$175 <u>\$225</u>	2. Funeral service establishment license	\$300 <u>\$400</u>	3. Surface transportation and removal service registration	\$250 <u>\$300</u>	4. Courtesy card	\$275 <u>\$300</u>	5. Crematory	\$150 <u>\$200</u>	6. Waiver of full-time manager requirement	\$100
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		<p><i>The Board considered two options for a fee increase. Option I would adopt the proposed increase for renewal in 2012, which would result in sufficient revenue to FY15, but expenditures in 2015 would exceed revenue. That would necessitate initiation of another regulatory action to increase fees again by 2014 to avoid accumulation of a deficit. By adopting a two-step fee increase, the Board had planned to have sufficient revenue through 2016. Since the 2014 increase has been eliminated, the fees are not likely to be sufficient to avoid another regulatory action.</i></p> <p>Subsection C sets fees for late renewal of licensure or registration up to one year following expiration:</p> <table border="0"> <tr> <td>1. License to practice funeral service or as a funeral director or an embalmer</td> <td style="text-align: right;">\$60 <u>75</u></td> </tr> <tr> <td>2. Funeral service establishment license</td> <td style="text-align: right;">\$100 <u>135</u></td> </tr> <tr> <td>3. Surface transportation and removal service registration</td> <td style="text-align: right;">\$85 <u>100</u></td> </tr> <tr> <td>4. Courtesy card</td> <td style="text-align: right;">\$90 <u>100</u></td> </tr> <tr> <td>5. Crematory</td> <td style="text-align: right;">\$50 <u>75</u></td> </tr> <tr> <td>6. Waiver of full-time manager requirement</td> <td style="text-align: right;">\$35</td> </tr> </table> <p><i>Based on the Fee Principles established by the Department, fees for late renewal are approximately 1/3 the renewal fee and may be paid through one renewal cycle. After one renewal cycle, a person with a lapsed license must reinstate to an active license.</i></p> <p>D. The following fees shall apply for reinstatement of licensure or registration:</p> <table border="0"> <tr> <td>1. License to practice funeral service or as a funeral director or an embalmer</td> <td style="text-align: right;">\$275 <u>400</u></td> </tr> <tr> <td>2. Establishment license</td> <td style="text-align: right;">\$500 <u>635</u></td> </tr> <tr> <td>3. Surface transportation and removal service registration</td> <td style="text-align: right;">\$350 <u>425</u></td> </tr> <tr> <td>4. Courtesy card</td> <td style="text-align: right;">\$275 <u>425</u></td> </tr> <tr> <td>5. Crematory</td> <td style="text-align: right;">\$225 <u>275</u></td> </tr> <tr> <td>6. Reinstatement following suspension</td> <td style="text-align: right;">\$500 <u>1,000</u></td> </tr> <tr> <td>7. Reinstatement following revocation</td> <td style="text-align: right;">\$1,000 <u>2,000</u></td> </tr> </table> <p><i>A reinstatement requires submission of a new application and review of information on competency or on a current inspection. It is typically constructed by adding the application fee to the late fee.</i></p> <p>Subsection E sets out miscellaneous fees charged for administrative functions.</p> <table border="0"> <tr> <td>1. Change of manager or establishment name</td> <td style="text-align: right;">\$75 <u>100</u></td> </tr> <tr> <td>2. Verification of license or registration to another state</td> <td style="text-align: right;">\$50</td> </tr> <tr> <td>3. Duplicate license, registration, or courtesy card</td> <td style="text-align: right;">\$45 <u>25</u></td> </tr> </table>	1. License to practice funeral service or as a funeral director or an embalmer	\$ 60 <u>75</u>	2. Funeral service establishment license	\$ 100 <u>135</u>	3. Surface transportation and removal service registration	\$ 85 <u>100</u>	4. Courtesy card	\$ 90 <u>100</u>	5. Crematory	\$ 50 <u>75</u>	6. Waiver of full-time manager requirement	\$35	1. License to practice funeral service or as a funeral director or an embalmer	\$ 275 <u>400</u>	2. Establishment license	\$ 500 <u>635</u>	3. Surface transportation and removal service registration	\$ 350 <u>425</u>	4. Courtesy card	\$ 275 <u>425</u>	5. Crematory	\$ 225 <u>275</u>	6. Reinstatement following suspension	\$ 500 <u>1,000</u>	7. Reinstatement following revocation	\$ 1,000 <u>2,000</u>	1. Change of manager or establishment name	\$ 75 <u>100</u>	2. Verification of license or registration to another state	\$50	3. Duplicate license, registration, or courtesy card	\$ 45 <u>25</u>
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		<p>4. Duplicate wall certificates \$60</p> <p>5. Change of ownership \$100</p> <p>6. Nonroutine reinspection (i.e., structural change to preparation room, change of location or ownership) \$300 <u>400</u></p> <p>Subsection F sets fees for approval of continuing education providers.</p> <p>1. Application or renewal for continuing education provider \$300 <u>400</u></p> <p>2. Late renewal of continuing education provider approval \$100</p> <p>3. Review of additional courses not included on initial or renewal application \$300</p>
154	Provides the requirements and fees for inactive licenses	<p>Subsection A is amended to increase the renewal fee for an inactive license from \$90 to \$115. The fee for late renewal up to one year following expiration of an inactive license would be \$40.</p> <p><i>According to fee principles, an active license is typically 1/2 the cost of an active license.</i></p>
Regulations for Resident Trainee Program – 18VAC65-40		
40	Sets fees for registration	<p>Subsection A is amended to establish the following fees for registration:</p> <p>1. Funeral service intern registration, reinstatement or renewal \$100 <u>150</u></p> <p><u>2. Funeral service intern renewal</u> <u>\$125</u></p> <p>2-3. Late fee for renewal up to one year after expiration \$35 <u>45</u></p> <p>3-4. Duplicate copy of intern registration \$25</p> <p>4-5. Returned check \$35</p> <p>5-6. Registration of supervisor \$25 <u>35</u></p> <p>6-7. Change of supervisor \$25 <u>35</u></p> <p>7-8. Reinstatement fee \$170 <u>195</u></p> <p><i>Currently, the fee for initial registration is the same as the renewal fee without any amount allocated for the review of an application, checking on the licensure of the supervisor, etc. In the proposed fees, there is a \$25 difference to account for costs of application processing. Other fees are increased or remain the same for consistency with other administrative fees charged by the Board.</i></p>

Change made since publication of proposed regulation:

The change to proposed regulation is the addition of a two-time shortfall reduction assessment to be paid with the two renewals after the effective date of regulations (projected to be 2015). For funeral service providers, funeral directors, embalmers, and crematories, the assessment will be \$40; for funeral establishments and continuing education providers, the assessment will be \$75;

for surface transportation and removal services and courtesy card holders, the assessment will be \$60.

The proposed fee increase will produce sufficient revenue to cover expenditures of the Board in the next two biennia, but will not eliminate the shortfall that has accumulated over the past several biennia. With the proposed regulations in effect by 2015, the projected shortfall would still be in excess of (\$190,000) by FY18. Therefore, additional revenue is required to meet the statutory obligation of the Board to have revenue sufficient to cover expenditures. The Board has adopted a two-time assessment to reduce the deficit so the proposed fees will then be sufficient for future budgets of the Board. Since current licensees have had the “benefit” of less than adequate fees over the past years, it is logical to assess those persons for the shortfall as opposed to an additional increase that would produce more revenue than needed to cover current expenditures in the near future.