



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers; Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC65-40-10 et seq.
VAC Chapter title(s)	Regulations for the Funeral Service Intern Program
Action title	Periodic Review
Date this document prepared	10-13-21

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board of Funeral Directors and Embalmers has adopted proposed regulations to: 1) amend 18VAC65-40-130 (A) to reduce the number of hours required for an internship from 3,000 to 2,000; 2) require supervisors to register for supervision of each funeral service intern with an expiration for the registration of 48 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.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Statement of Final Agency Action

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 October 12, 2021, the Board of Funeral Directors and Embalmers amended 18VAC65-40-10 et seq., Regulations for the Funeral Service Intern Program.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. There are no changes to previously reported information.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency 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 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 or send electronically 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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

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.

The Board of Funeral Directors and Embalmers has adopted proposed regulations to: 1) amend 18VAC65-40-130 (A) to reduce the number of hours required for an internship from 3,000 to 2,000 and specify that an extension beyond 48 months for completion of an internship will only be granted for extenuated circumstances; 2) require supervisors to register for supervision of each funeral service intern with an expiration for the registration of 48 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.

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

18VAC65-40-250: Requirements for Supervision

Specify that supervision must be provided under a funeral service licensee with an unrestricted license and also restrict approval of supervisors with previous board action within the previous two years.

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.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

-
- 1) The primary advantage to the public is more clarity in oversight of funeral interns and assurance that the persons supervising their practice hold appropriate licensure that is in good standing. All amendments are intended to provide additional consumer protection. There are no disadvantages to the public.
 - 2) There are no advantages or disadvantages to the Commonwealth, except more clarity in regulation will assist the Board in interpretation of the law.
 - 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 which are reasonable and necessary to administer effectively the regulatory system.*”

The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth and to enforce the Code of Virginia.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

There was a 60-day comment period from 5/10/21 to 7/9/21; a public hearing was conducted on 6/9/21. There was no public comment.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
65-40-250	In subsections C, D, and G, the phrase “funeral service” was deleted so the requirements relating to supervision are applicable to all types of interns – funeral service, funeral directing, and embalming.	Pursuant to Chapter 943 of the 2020 Acts of the Assembly, emergency regulations were adopted to establish requirements for separate licenses for funeral service licensees, funeral directors, and funeral embalmers. In each category, there are requirements for practical experience as an intern. Final regulations are amended in section 250 for consistency with the three categories of internship to ensure that the regulations are applicable to each.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
90	Sets out requirements for renewal of registration as a funeral service intern	The amendment notes that renewal notices may be sent by mail or electronic, consistent with legislation passed in 2018.
110	Sets out requirements for late renewal or reinstatement of registration	Renewal within one renewal cycle does not require “reinstatement” but is a late renewal. The term in subsection A is amended for consistent use of terminology.
130	Establishes requirements for funeral service internships	Subsection A is amended to reduce the minimum number of hours from 3,000 to 2,000. <i>As noted in Board response to comment above, Virginia appears to be out of line with almost every other state. A commenter on the periodic review noted that a Funeral Service Provider Workforce Study showed that funeral service licensees are retiring or leaving the profession at a higher rate than licensees coming into the profession. The current 3,000 hour internship requirement is a factor in being able to continually have a pool of qualified funeral service licensees. The statutory requirement of assisting in 25 embalmings and 25 funerals remains, so the minimum number of hours does not alter the core requirements for training.</i> Currently, the allowance to grant an extension of time for completion of an internship is for “good

		<p>cause shown.” The amended language says “only for extenuating circumstances” to more clearly state the condition under which an extension would be granted.</p> <p>Subsection D is added to specify that a person must be identified as a “funeral service intern” on nametags and in all communications and interactions with the public. <i>The intent of the additional language is protection for consumers, so they understand that a person is receiving training in a funeral home and is not a licensed funeral service provider.</i></p>
220	Sets out the qualifications for a training site for an internship	Subsection B is amended to replace old terminology of a “resident trainee” with the current term of “intern.”
250	Establishes requirements for supervision	<p>Subsection B is amended to clarify that the requirement for two years of practice is practice as a funeral service licensee, a funeral director, or an embalmer. The regulation is further amended by specifying that a licensee who has been the subject of disciplinary action within the most recent two years will not be approved to provide supervision.</p> <p><i>Currently, it is required that a supervisor have a full and unrestricted license, but the amendment will prohibit someone who has been disciplined within the past two years from supervising an intern. Since the professionalism, skills, and integrity of the supervisor is critical to training of an intern for competency in the profession, the Board would be concerned about a licensee serving as a supervisor if he/she has recently been disciplined by the Board.</i></p> <p>Subsection C is amended to clarify that the supervisor is responsible for making sure that an intern is receiving training under the direct supervision of a licensee who has a current license in good standing.</p> <p>Subsection D is added to require a supervision to register with the Board for each intern for whom he/she is providing supervision. That registration then expires in 48 months (the maximum time allowed for an internship) or at completion of the intern’s hours, whichever occurs first. If the internship is extended for extenuating circumstances, the supervisor’s registration is similarly extended. <i>The intent of the rule is to ensure that the Board is aware of who is currently supervising interns, so there is greater</i></p>

		<p><i>accountability and consistency. Currently, there are 567 persons registered as supervisors, but only 186 interns, so it is apparent that the majority of those registered are not actively serving as supervisors of interns. (Each supervisor may have two interns).</i></p> <p>Subsection G is added to reiterate the limitation of two interns per supervisor at any one time, as is provided in § 54.1-2817.</p>
280	States the requirements for a supervisor application package	Subsection A is amended to clarify that the application for registration of supervision is for each intern to be supervised.
320	Sets out the requirements for reports to the Board	Subsections A and B are amended to eliminate the provisions to authorize the Board to add time to the internship for submission of late reports or to deduct credit for late reports. <i>Since there are no specific standards for such additions or deductions, application of the rule could be arbitrary and subjective. Additionally, late reports may be the responsibility of the supervisor, but deduction of credit or additional hours penalized the intern.</i>
340	Sets out supervisors' responsibilities	Subsection C is amended to be consistent with the language in § 54.1-2817, which refers to an intern "assisting" in conducting a minimum of 25 funerals, rather than arranging 25 funerals. Subsection D is amended to be consistent with the language in § 54.1-2817, which refers to an intern "assisting" in the performance of 25 embalmings, rather than "performing" the embalmings.
640	Sets out the authority of the Board to take disciplinary action	Failure to comply with regulations of the Board provides grounds for disciplinary action, but failure to comply with statutory provisions related to funeral service also provides grounds. The section is amended to clarify and specify that "laws" as well as regulations must be followed.