



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 30-20
Regulation title	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Requirements for provisional licensure
Document preparation date	5/19/06

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

The adoption of an “emergency” regulation by the Board of Audiology & Speech-Language Pathology is required to comply with amendments to Chapter 26 of Title 54.1 and the second enactment clause of HB354 passed by the 2006 General Assembly, which requires: “***That the Board of Audiology & Speech-Language Pathology shall promulgate regulations to***

implement provisions of this act within 280 days of its enactment..” Chapter 97 was enacted on March 23, 2006, the day HB354 was signed by the Governor. Emergency regulations must be in effect by December 28, 2006.

The amended regulations will: 1) establish requirements for provisional licensure in audiology for applicants who have met the educational and examination qualifications in order to complete their clinical fellowship year, and 2) set out the requirements for supervision of persons practicing with a provisional license.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC30-20-10 et seq. Regulations Governing the Practice of Audiology & Speech-Language Pathology 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 of Audiology & Speech-Language Pathology the 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 (§ 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 legal authority to license and regulate audiologists may be found in the amended Chapter 26 of Title 54.1 of the Code of Virginia.

<http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0097>

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

By the year 2007, all graduate programs in audiology will be transformed into doctoral programs, as the master's degree programs fade. Currently, graduate programs in Audiology are transitioning into the doctoral program in which a student graduates with a Bachelor of Arts or Bachelor of Science degree and proceeds to a doctoral program. Formerly, the student would

first obtain a master’s degree before proceeding to a doctoral degree. The new transitional program requires a supervised post-graduate clinical experience. It is the general requirement within the profession to have all the students work under supervision during the post-graduate clinical experience. Our neighboring states- North Carolina, West Virginia, Maryland, and Kentucky provide some type of temporary, limited or provisional licensure for these students. The establishment of a provisional license allows students who have completed all of the requirements of a master’s degree or an equivalent number of hours to practice audiology, yet they are supervised to ensure the needed training by a licensed audiologist to protect the consuming public prior to the issuance of the doctoral or terminal degree. The intent of the regulatory action is to comply with the requirements of Chapter 97 to implement provisional licensure in audiology.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Current section number	Current requirement	Proposed change and rationale
80	Establishes the fees for applications and renewal	<p>Addition of a \$50 fee for an application for provisional licensure in audiology and a \$25 fee for renewal of the license.</p> <p><i>Review of credentials, processing and issuing a license will be functions required for this new activity. Board staff may need to consult with a committee of the board to determine eligibility if there are questions about credentials, especially the educational equivalency of a master’s degree. Therefore, the \$50 fee is considered minimal for a licensure application. Likewise, the \$25 fee for renewal is necessary to cover the ongoing costs for provisional licensees.</i></p>
170	Sets the requirements for licensure for audiologists, speech-language pathologists, and school speech-language pathologists	<p>Subsection B currently allows an applicant to obtain a license in audiology by having a master’s degree or its equivalent and passing the examination. With the passage of HB 354, the Board now has authority to issue provisional licenses to persons seeking licensure in audiology who have met the educational and examination requirements and need a license in order to practice in a clinical fellowship. Therefore, subsection B will only apply to persons seeking licensure in speech-language pathology. Persons seeking full licensure in audiology will apply with credentials set out in subsection A, which includes a professional certification acquired after completion of a clinical fellowship year.</p> <p><i>With authorization to issue a provisional license, the Board is able to resolve a long-standing problem. Other states do not</i></p>

		<p><i>issue full, unrestricted licenses to audiologists without at least a year of supervised, clinical experience, but in order to engage in practice, audiology students in Virginia need some legal authorization or license. Accordingly, the Board has had to issue full licenses prior to the clinical fellowship without any assurance that the applicant has any period of supervised practice and is competent to treat patients as an independent practitioner. With provisional licensure, audiology students can engage in their professional under supervision with greater protection for public health and safety by oversight and, if necessary, intervention by a supervisor.</i></p>
<p>New 171</p>	<p>n/a</p>	<p>Subsection A sets out the requirements for a provisional license to include:</p> <p>A completed application and fee, and documentation that the applicant:</p> <ol style="list-style-type: none"> 1. Holds a master's degree or its equivalent as determined by the board or a doctoral degree from a college or university whose audiology program is regionally accredited by the American Speech-Language-Hearing Association or an equivalent accrediting body; and 2. Has passed a qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for provisional licensure in Virginia. <p><i>The requirements for a provisional license are the same as for a full license minus the clinical practicum that the student will complete under supervision. If a student holding a provisional license later applies for full licensure, he will only need to submit evidence of his credential issued by ASHA or ABA, indicating that he has completed his clinical fellowship year (CFY).</i></p> <p>Subsection B sets the duration of the license at one year, which is the amount of time required for a professional credential.</p> <p><i>Completion of the CFY and actually take 12 to 18 months, so the provisional license can automatically be renewed for an additional 12 months. Renewal beyond that will necessitate an appeal to a committee of the board and evidence that the applicant has good cause for needing additional time to complete the clinical fellowship. The Board wants to ensure that individuals do not become “permanent fellows” working indefinitely with a provisional license.</i></p> <p>Subsection C sets out the responsibility of the provisional licensee to only practice under the supervision of a licensed audiologist in order to obtain the clinical experience required</p>

		<p>for licensure and to be responsible and accountable for the safe performance of those direct patient care tasks to which he has been assigned.</p> <p><i>This provision is necessary to clearly state that a provisional licensee is accountable for his actions in patient care and can only practice with supervision. A provisional licensee practices under this chapter in which the Board has the authority in section 280 to refuse to issue a license or to take disciplinary action for a variety of conduct considered unprofessional – such as inability to practice with skill and safety or incompetence or negligence in the practice of the profession</i></p> <p>Subsection D sets out the responsibilities of licensed audiologists who are providing supervision to include:</p> <ol style="list-style-type: none"> 1. Documenting the frequency and nature of the supervision of provisional licensees; 2. Being responsible and accountable for the assignment of patients and tasks based on their assessment and evaluation of the provisional licensee’s knowledge and skills; and 3. Monitoring clinical performance and intervening if necessary for the safety and protection of the patients. <p><i>While subsection C establishes that the provisional licensee is responsible for the direct patient care tasks to which he has been assigned, the supervisor is responsible for evaluating the knowledge and skills of the provisional person and assigning tasks accordingly. The supervisor must also document the supervision, monitor patient care and, if necessary, intervene for the protection of patients. Responsibilities for a supervisor are consistent with standards set by the credentials bodies and with those in other professions, such as nursing.</i></p> <p>Subsection E specifies that the identity of a provisional licensee shall be disclosed to the client prior to treatment and shall be made a part of the client's file.</p> <p><i>It is important for the health and safety of patients that they know that the licensure of their treating practitioner. Disclosure can be accomplished by a variety of means – verbally by the supervisor or provisional licensee, by use of a title on a name tag or by a consent form the patient signs.. Misrepresentation of one's professional credentials could be grounds for disciplinary action or for refusal to issue a full license.</i></p>
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no alternatives to the adoption of regulations; it is required by the second enactment clause of HB354. The alternative to provisional licensure would be to grant a full license prior to completion of the doctoral program to allow students to obtain clinical experience, but that is opposed by the educational programs and is not in the best interest of patient safety since those individuals would have full licensure for independent practice without any period of supervised experience.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

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