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Fast-Track Regulation Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC30-21-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Clarification of endorsement requirements
Date this document prepared	2/26/18

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

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Proposed amendments clarify that an audiologist or speech-language pathologist who has been licensed in another state must apply for licensure by endorsement and that the license in any other state must either be current and unrestricted or if lapsed, eligible for reinstatement. There is also a proposed amendment to allow an applicant who has already received a provisional license to pay only the difference between the provisional licensure fee and the application licensure fee.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. 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

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 taking the action; and 3) the title of the regulation.

On February 13, 2018, the Board of Audiology & Speech-Language Pathology amended 18VAC30-21-10 et seq., Regulations Governing the Practice of Audiology & Speech-Language Pathology.

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.

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 (§ [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 and for licensure of professions under the Board is found in Chapter 26 of Title 54.1 and specifically:

§ 54.1-2603. License required.

- A. *In order to practice audiology or speech pathology, it shall be necessary to hold a valid license.*
- B. *Notwithstanding the provisions of subdivision 2 of § [54.1-2601](#), the Board of Audiology and Speech-Language Pathology may license as school speech-language pathologists any person who holds a master's degree in speech-language pathology. The Board of Audiology and Speech-Language Pathology shall issue licenses to such persons without examination, upon review of*

credentials and payment of an application fee in accordance with regulations of the Board for school speech-language pathologists.

Persons holding such licenses as school speech-language pathologists, without examination, shall practice solely in public school divisions; holding a license as a school speech-language pathologist pursuant to this section shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Audiology and Speech-Language Pathology to offer to the public the services defined in § 54.1-2600.

The Board shall issue any person licensed as a school speech-language pathologist a license that notes the limitations on practice set forth in this subsection.

Persons who hold licenses issued by the Board of Audiology and Speech-Language Pathology without these limitations shall be exempt from the requirements of this subsection.

§ 54.1-2604. Provisional license in audiology or speech-language pathology.

The Board may issue a provisional license to an applicant for licensure in audiology or speech-language pathology who has met the educational and examination requirements for licensure, to allow for the applicant to obtain clinical experience as specified in the Board's regulations.

However, a person practicing with a provisional license in audiology shall practice only under the supervision of a licensed audiologist and a person practicing with a provisional license in speech-language pathology shall practice only under the supervision of a licensed speech-language pathologist in accordance with regulations established by the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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 purpose of the amended regulation is to clarify that licensure by endorsement is intended for applicants who have already been licensed in another state, so the Board is assured of current competency and has information about whether disciplinary action has been imposed by the other state. Evidence of competency (continuing education hours and active practice or practice with a provisional license) is necessary to ensure that the licensee can practice audiology or speech-language pathology in a manner to protect the health and welfare of their clients or patients. Licensure by examination is intended for recent graduates whose competency has been demonstrated by passage of the licensure examination and attainment of the certification of competency.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The proposed amendments clarify the intent of the regulations for licensure by endorsement. In the case of the application amendment in section 50, the result will be a reduced fee for applicants who have had a provisional license and are applying for full licensure.

Substance

Please 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.

Proposed amendments clarify that an audiologist or speech-language pathologist who has been licensed in another state must apply for licensure by endorsement and that the license in the other state must either be current and unrestricted or if lapsed, eligible for reinstatement. There is also a proposed amendment to allow an applicant who has already received a provisional license to pay only the difference between the provisional licensure fee and the application licensure fee when he applies for full licensure.

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 advantage to the public is more assurance that a licensee coming from another state has current competency as evidenced by hours of CE and that he has either been actively practicing in the other state or will practice in Virginia on a provisional license before full licensure is granted. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 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 “*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.*” There is no restraint on competition as a result of promulgating this regulation; the Board has clarified the intent of applying for licensure by endorsement.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods; to clarify current regulations or reduce an application fee, a regulatory action is required.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures. Audiologists and speech-language pathologists are potentially affected, but the regulation is permissive.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Audiologists and school speech-language pathologists who are licensed in another state.</p>

<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>In the year 2017, there were 30 new licenses issued for audiologists and 381 for speech-language pathologists. It is unknown how many were or should have been licensed by endorsement. It is also unknown how many would be considered small businesses. Most speech-language pathologists work in local school systems or health care institutions, but some audiologists and speech-language pathologists have independent practices.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>None; there is a cost savings of \$50 for an applicant who already has a provisional license.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Clarity for applicants who have been licensed in another state about the pathway for licensure in Virginia and more information about such an applicant to be sure they have current competency and no unresolved disciplinary action.</p>

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.

There are no alternative regulatory methods; to clarify current regulations or reduce a fee, a regulatory action is required.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
50	Sets out the requirements for an application for licensure	An amendment will allow an applicant who has been granted a provisional license (fee of \$50) to pay only the difference between that fee and the application fee (\$135) when he applies for full licensure.
80	Sets out the qualifications necessary for licensure by endorsement	Currently, the language in section 80 states that an applicant <i>may</i> apply for licensure by endorsement if he has been licensed in another jurisdiction. In order to have assurance that the applicant has maintained current competency in knowledge and skills relating to his profession, the Board needs to have such an applicant apply for licensure by endorsement which requires evidence of CE or current certification by an accrediting body. The applicant must also have active practice for one of the past three years or practice for six months with a provisional license. To protect patients or clients in Virginia (many of whom are children), the Board must also have evidence that the license in the other state is current and unrestricted (or eligible for reinstatement) and that there is no disciplinary action pending or unresolved. Applicants from other states are currently told to apply for licensure by endorsement, but the regulation appears to give them an option – which is not the Board's intent and does not adequately protect the public.