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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) Chapter citation(s)	18VAC30-21
VAC Chapter title(s)	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Periodic review
Date this document prepared	10/25/21

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 has completed a periodic review of regulations for Chapter 21 and is proposing amendments to: 1) reorganize and clarify certain provisions for ease of understanding and compliance; 2) eliminate unnecessary provisions such as posting of a license in every location; 3) add a pathway for licensure in audiology based on one's graduate degree and passage of the examination; and 4) add a requirement for a report from the National Practitioner Data Bank for applicants for initial licensure and reactivation or reinstatement of a license that has been inactive or lapsed for five or more years.

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.

ABA = American Board of Audiology
ASHA = American Speech-Language and Hearing Association
NPDB = National Practitioner Data Bank

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 19, 2021, the Board of Audiology & Speech-Language Pathology amended 18VAC30-21-10 et seq., Regulations Governing the Practice of Audiology & Speech-Language Pathology.

Mandate and Impetus

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, or board decision). 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."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The impetus for this action was the periodic review conducted in accordance with § 2.2-4017 and Executive Order 14 (2018).
This action is appropriate for the fast-track process because it is primarily clarification of current requirements plus an additional pathway in audiology to facilitate licensure. It will not be controversial because the requirement for a report from NPDB is consistent with other professions licensed by boards at the Department, the costs is minimal, and there has never been a comment in opposition to such a requirement.

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.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6), which 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. …

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.

An NPDB report is being requested for all applicants for health profession licensure in order to be sure there are no indications that an applicant might present a risk to public health and safety and no grounds for denial of licensure.

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 has completed a periodic review of regulations for Chapter 21 and is proposing amendments to: 1) reorganize and clarify certain provisions for ease of understanding and compliance; 2) eliminate unnecessary provisions such as posting of a license in every location; 3) add a pathway for licensure in audiology based on one's graduate degree and passage of the examination; and 4) add a requirement for a report from the National Practitioner Data Bank for applicants for initial licensure and reactivation or reinstatement of a license that has been inactive or lapsed for five or more years.

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 greater clarity in the wording of the regulation for ease of compliance. There are no disadvantages.
2) There are no advantages or disadvantages to the Commonwealth.
3) The Director of the Department of Health Professions has reviewed the regulation and performed a competitive impact analysis. The Board is authorized under 54.1-2400 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.*" Any restraint on competition that results from this regulation is in accord with the General Assembly's policy as articulated in § 54.1-100.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - none

Localities Particularly Affected - none

Other Entities Particularly Affected - none

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	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.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
For all agencies: Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Audiologists, Speech-Language Pathologists, and School Speech-Language Pathologists
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	There are 528 licensed audiologists; 4,272 licensed speech-language pathologists; and 318 school speech-language pathologists.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The only projected cost resulting from this regulatory change would be $4.00 for an applicant to request his NPDB report.
Benefits the regulatory change is designed to produce.	The benefit is clearer regulation, elimination of a few unnecessary requirements for posting or notification, and a pathway to licensure in audiology that will expedite things for a few applicants.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives considered; in order to clarify current regulations and create a new pathway for licensure, amendments must be promulgated. The periodic review of Chapter 21 was conducted by the Regulatory Committee at its meeting on April 19, 2021.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no alternative regulatory methods consistent with the Board's statutory responsibility to license speech-language pathologists and audiologists.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Audiology and Speech-Language Pathology is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the

regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233, Phone (804) 367-4688; Fax (804) 527-4434; elaine.yeatts@dhp.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
21-10	Sets out definitions for words and terms used in the chapter	The acronym “ABA” is defined since it is used several times in the chapter. The term “contact hour” is deleted in order to allow an approved CE provider to determine the number of hours awarded for a course or activity. Sometimes a one-hour course includes a 10 minute break, so the hour is actually 50 minutes rather than 60.
21-20	Requires a licensee to post his license in a place conspicuous to the public in each facility in which the licensee is employed and holds himself out to practice.	The requirement for posting is deleted because it is no longer meaningful. Licensees are issued an initial license but verification of currency must be on-line, so a posted license does not indicate whether it is current. Additionally, most licensees work in multiple locations within one facility or school, so the posting was not practical. Licensees are still required to provide a copy of their licenses upon request.
21-30	Sets out requirements for licensees to maintain accurate information with the Board	In subsection C, the word “registrant” is deleted because the Board does not register anyone.
21-40	Sets the fees required for applicants and licensees	Subsection C is deleted because it refers to a fee reduction for the renewal year 2018.
21-50	Sets out the general application requirements for all categories of licensure	Subsection A is amended to: Specify that verification of licensure status from every U.S. jurisdiction in which a license is or ever has been held is required; and

		Add a requirement for a current report from the U. S. Department of Health and Human Services National Practitioner Data Bank (NPDB. *An NPDB report is being required for all applicants for health profession licensure in order to be sure there are no indications that an applicant might present a risk to public health and safety and no grounds for denial of licensure.*
21-60	Sets out the qualifications for licensure by examination	The section is reorganized to clearly delineate the requirements for each profession – audiology; speech-language pathology; and school speech-language pathology. In subsection A for audiology, there are three options specified. The ASHA and ABA certifications are currently accepted, but a third option is added that would allow an applicant who has graduated from an accredited audiology program and passed the national examination to be licensed prior to or without ASHA or ABA certification. Both types of certification require practice experience. However, audiology students in an accredited program acquire supervised practical experience within their degree program, so they can be licensed based on their degree and passage of the examination. The certification indicating practical experience is not essential for those applicants. *The additional option may facilitate licensure for some applicants in audiology without the additional cost of certification.* Subsection B sets the qualification for licensure in speech-language pathology; it is identical to the current requirement previously in subsection A. The current subsection C is deleted because it referenced an expired grandfathering provision. Subsection D is added to clarify and remind applicants that the Board is authorized to deny licensure based on grounds set forth in section 160 of this chapter.
21-70	Sets out the provisions for issuance of and practice with a provisional license	Subsection C is amended to delete the requirement that a committee of the Board must approve a request for extension. *That request to extend the provisional license can be delegated to staff; it is similar to other licensing requests so there is no need to convene a committee of the Board*. Subsection E is amended to delete the requirement that licensees notify the board electronically or in writing of the intent to provide supervision for a provisional licensee. *The Board does not maintain a record of supervisors so the notification appears to be an unnecessary step. If there is a complaint or problem, the provisional licensee would identify who has been providing supervision.*
21-80	Sets out the requirements for licensure by endorsement	Subsection A is amended to move the general requirement of active practice or provisional practice to the beginning of the subsection with the additional options to

		follow. Currently, an applicant who graduated from an accredited program in audiology or speech-language pathology within 12 months immediately preceding application may be issued a license without evidence of active practice if the applicant holds current certification. *That allowance is expanded to 24 months because some applicants who are licensed in another state following graduation may not get a job in Virginia and need a Virginia license within the first 12 months. The presumption is that experience acquired in a graduate program would be sufficient to indicate competency within 24 months following graduation.* *The three options – continuing education, ASHA certification, or ABA certification are reorganized but not changed. All applicants must currently provide evidence of passage of the national examination.* Subsection B is added to clarify and remind applicants that the Board is authorized to deny licensure based on grounds set forth in section 160 of this chapter
21-90	Sets out the requirements for renewal of licensure	Subsection A is amended to delete outdated language. Subsection B is amended to change the word from "statement" to an "attestation" which is currently requested on an online renewal application.
21-100	Sets out the continuing education requirements	Subsection A is amended to delete the allowance for a licensee to carry over up to 10 contact hours of continuing education in excess of the number required for renewal. *Board members believe that the intent of continuing education is ongoing learning, that the "carry-over" provision is confusing, and that 10 hours per year is not burdensome since there are many in-service and online opportunities for continuing education.* *Subsection H is amended to delete the mandate for a periodic audit to give the Board some flexibility (it has not audited during the past two years during the pandemic). It also deleted the requirement for a continuing education form; the submission of documentation (certificates of completion) is still required.*
21-110	Sets out requirement for reactivation of an inactive license	The requirements for reactivation of a license within 5 years of inactivity are stated in subsection B. Certification by ABA is an option that is added in this action. For a person whose license has been inactive for more than 5 years is also required by an amendment to subsection C to submit a current NPDB report. A provision in subsection D requiring the applicant to provide evidence that no disciplinary action is pending or unresolved has been stricken because some states do not share investigative information.
21-120	Sets out requirements for reinstatement of a lapsed license	Subsection A is added to inform applicants that reinstatement is not required if a license has been lapsed for one year or less; the provisions for late renewal are found in section 90. For a person whose license has been lapsed for more than 5 years is also required by an amendment to subsection C to submit a current NPDB report.

		A provision in subsection D requiring the applicant to provide evidence that no disciplinary action is pending or unresolved has been stricken because some states do not share investigative information.
New section 21-141	Sets out requirements for recordkeeping	Currently, recordkeeping requirements are set out in section 160 under unprofessional conduct. To make the regulations more apparent to licensees, the Board recommended a new section during its periodic review. The requirements are identical to current section 160 with the addition of reference to compliance with §§ 32.1-127.1:03 on patient confidentiality and disclosure of records and 54.1-2405 on notification and transfer of records.
21-160	Sets out provisions for unprofessional conduct	Number 4 on recordkeeping is deleted with provisions being inserted in new section 141.