



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Audiology & Speech-Language Pathology/Department of Health Professions
VAC Chapter Number:	18 VAC 30-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Audiology & Speech-Language
Action Title:	Regulatory review
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Regulations are promulgated to provide educational and examination requirements for the licensure of audiologists and speech-language pathologists. Provisions also establish requirements for renewal or reinstatement of a license, fees to support the regulatory and disciplinary activities of the board, standards for supervision of unlicensed assistants, and criteria for unprofessional conduct.

The Board has proposed amendments to address certain issues related to initial licensure, supervision of unlicensed assistants, and unprofessional conduct.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

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

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 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 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The statutory authority for licensure and regulation of audiologists and speech-language pathologists is found in Chapter 26 of Title 54.1 of the Code of Virginia:
<http://leg1.state.va.us/000/1st/h3703288.HTM>

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is to revise certain prerequisites for licensure that may be unnecessarily restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure, such as the requirement that an applicant who passed the qualifying examination more than 3 years ago be engaged in active practice for the 24 months immediately preceding application. The amendments will also update the unprofessional conduct section to ensure that practitioner can use electronic communication in the follow-up with a patient or another practitioner.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The board is recommending amendments to its regulations for the licensure of audiologists and speech-language pathologists in order to update the accrediting bodies that certify competency in one of the professions, to enable the Board to license students in a doctoral program who have the equivalency of a master's degree, to allow follow-up on patients by electronic communication, and to address concerns about the adequacy of supervision for unlicensed assistants. Other amendments are recommended for greater clarity for the regulated entities.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The primary advantage to the public of implementing the amended regulations is the elimination of barriers to licensure that might discourage some persons from seeking licensure as an audiologist or speech-language pathologist. At a time when the number of persons in need of care is increasing, the Board is attempting to eliminate or reduce the regulatory burden. Amendments are intended to accept another credential for the profession of Audiology and allow an applicant who passed the examination more than 3 years ago to demonstrate competency by practice for one of the past three years, rather than the current requirement of 24 consecutive months. In addition, an amendment will enable the practitioner to communicate with or about his patient by electronic communication, whereas only written communication is presently allowed.

There are no disadvantages to the public as all amendments are intended to provide the training and education necessary to ensure that practitioners are knowledgeable and experienced in the care and treatment of consumers.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board and does not involve additional cost or staff time. There may be an advantage to the Commonwealth if the amended regulations have the intended result of encouraging more persons to seek licensure.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: 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 for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be applicants for licensure and licensed audiologists and speech-language pathologists.

Estimate of number of entities to be affected:

Currently, there are 423 licensed audiologists and 2312 licensed speech-language pathologists. It is not known how many potential applicants for licensure might be affected by amendments to the rules.

Projected costs to the affected entities:

Depending on their educational and professional background, persons seeking to become licensed may be able to do so more easily. Students of the clinical doctoral program at JMU will be able to be licensed prior to their final clinical year, rather than waiting until the degree has been conferred. Therefore, there are no costs for compliance for the affected entities.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 30-20-10. Definitions.

The Board has modified the definition of "supervision" to clarify that the responsibilities of a licensee in delegating and supervising tasks to an unlicensed person includes documentation of such supervision.

18 VAC 30-20-150. Renewal.

Since 1998, when the renewal schedule was changed from annual to biennial, the Board has been renewing licenses every even year. There has been an error in the regulation, which states that renewal occurs every odd year; a correction is necessary to make the regulation consistent with the established schedule.

18 VAC 30-20-170. Requirements for licensure.

- An additional accrediting body, the American Board of Audiology, is recognized for credentialing candidates for licensure consistent with professional standards and with the authority of the Board to approve accrediting bodies
- In subsection B, the requirement for either completion of the qualifying examination within the past three years or employment for 24 consecutive months preceding application is amended to only require active practice for one of the past three years to remove any unnecessary barrier to licensure. A similar provision in subsection A, which applies to persons who have completed their Certificate of Clinical Competency, is amended for consistency.

18 VAC 30-20-240. Supervisory responsibilities.

To ensure that an audiologist or speech-language pathologist is providing supervision for the activities of an unlicensed assistant, the amendment would add the word "documented" to supervision. That would ensure that there has been some documentation that supervision, whether by a chart review or some other means, has actually occurred.

18 VAC 30-20-280. Unprofessional conduct.

Current rules prohibit diagnosis or treatment solely by written correspondence. The intent of the rule is to prohibit a diagnosis on a patient who has not actually be examined or evaluated by the licensee. Since technology would now open the possibility of making a diagnosis solely by correspondence via the Internet, the language of the prohibition needs to be clarified to cover situations other than "written correspondence." The amended language would need to ensure that a follow-up could occur by telecommunications and that a licensee would be allowed to provide consultation on the patient of another licensee.

Alternatives

Please describe the specific 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.

The two major issues facing the Board in the regulation of audiologists and speech-language pathologists and the alternatives to dealing with those issues are discussed below:

1. Requirements for licensure that are consistent with current practice and provide assurance to the public:

- The American Speech-Language-Hearing Association (ASHA) is currently the only credentialing body recognized by the Board for licensure of applicants. For audiologists, the American Board of Audiology is equally valid in credentialing of persons who are competent to practice audiology. Therefore, the Board has amended regulations to recognize that body and add language to include any equivalent accrediting body approved by the Board.
- Educators from James Madison University served on a Task Force to study the entry criteria to licensure and explained the structure of the clinical doctoral program in Audiology at that institution. They have eliminated the Master's program and now have students enrolled in a four-year didactic and clinical program culminating with a doctoral degree. The doctoral degree (and passage of an examination) would qualify a person for licensure, but students typically need to have licensure in order to complete their clinical fellowship or practice. After completion of three years of study, they have earned 70 credit hours, which exceeded any master's program. However, without a degree, they do not meet the qualifications set forth in board regulations. To remedy the situation, the Board is proposing to accept the equivalency of a master's degree as the educational standard for licensure.
- Current regulations in subsection B require either passage of the qualifying examination within three years preceding the date of licensure or active practice for 24 consecutive months preceding application. The Board proposes to make that requirement less restrictive by requiring active practice for one of the past three years. Subsection A is amended to eliminate the option of employment two of the past five years and make it consistent with subsection B.
- As an alternative to licensing persons who have completed their Certificate of Clinical Competence and are credentialed by ASHA, the current regulations allow the Board to issue a license to an applicant who has completed his education and examination but has not completed any hours of supervised clinical practice. Virginia is the only state in the U.S. in

which an audiologist or speech-language pathologist can be fully licensed without any clinical hours. The Board has heard testimony from licensees about the inadequacy of that requirement and the potential for harm to the public from persons who are licensed for independent practice but have not had supervised clinical training. To address the issue Board has recommended the issuance of a temporary license for 12 months to cover that period in which clinical practice under supervision is being obtained (typically called the CFY or clinical fellowship year). To accommodate circumstances that could delay completion of the clinical experience, the Board would permit the temporary license to be renewed for one additional year. To determine whether that could be accomplished through regulation, the Board sought an opinion from the Assistant Attorney General who provides counsel. In his opinion, the practice act for these professions (Chapter 26 of Title 54.1) does not grant the Board authority to issue such a license, so the only alternative is to seek a statutory change in the 2004 General Assembly.

2. Supervision of unlicensed persons to ensure compliance with law and regulation and provide for public protection:

The most troublesome issue facing the Board in the regulation of speech-language pathologists and audiologists is the appropriate use of unlicensed assistants in practice. The Code of Virginia permits such use but also restricts the practice of audiology and speech-language pathology as defined in § 54.1-2600 to persons who hold a license from the Board. Licensees often have a dilemma about what tasks constitute practice and what tasks may be appropriately delegated. The Board currently has several cases under investigation involving accusations of inappropriate delegation and fostering unlicensed practice.

To address issues related to the use of unlicensed persons in practice, the Board has considered a variety of possible actions. It has considered the possibility of legislative actions to regulate assistants, so there would be some measure of their competency and recourse for their actions. A study by the Board of Health Professions concluded that there was insufficient evidence of risk of harm to warrant licensure of these persons, provided they are appropriately supervised in the performance of delegated tasks which are commensurate with their training. Therefore, the Board is not recommending regulation of assistants but rather clarification of its regulation.

The Board reviewed the regulations of the Board of Nursing for delegation of certain tasks to unlicensed persons, but the nursing regulations are more extensive than is required for this Board. Likewise, the Board considered incorporation of language similar to that governing the use of unlicensed persons by licensees in the medical profession in § 54.1-2901 of the Code of Virginia. Under exceptions to the practice of medicine, the Code permits delegation of activities or functions that are non-discretionary and do not require the exercise of professional judgment and are normally and customarily delegated by practitioners of the healing arts. Such a standard might serve to provide clarity to the issue of delegation and practice of unlicensed persons in these professions.

In the end, the Board concluded that it was difficult to write rules that would be applicable to every practice setting and that the least burdensome alternative was to amend its regulations to

ensure that supervision does actually occur by requiring documentation of such supervision. The timing and nature of the documented supervision is left to the licensee, who remains responsible for the activities and performance of an unlicensed assistant.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. The public comment period was from 4/8/02 through 5/8/02. During the 30-day comment period, no comments were received from members of the public.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Members of the Board met in open session to work on draft regulations, and the public has been invited to comment during the course of those meetings. In addition, persons involved in educational programs and other aspects of practice served on a task force to share their expertise with the Board during the process. No comments have been received regarding the need for clarity in the proposed amendments. The Assistant Attorney General who provides counsel to the Board and the Agency Regulatory Coordinator have been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations governing the practice of audiology and speech-language pathology will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.