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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC80-20
VAC Chapter title(s)	Hearing Aid Specialists Regulations
Action title	Expanding training options for applicants
Date this document prepared	4/1/2021

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Hearing Aid Specialists and Opticians (“the Board”) seeks to amend its current Hearing Aid Specialist regulations (“regulations”) regarding entry into the profession to ensure that they are as least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public. The Board will consider creating an additional method of qualifying for the license. It also seeks several revisions to its temporary permit rules to improve the success rate of that training method.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” means the Board for Hearing Aid Specialists and Opticians.

“Department” and “DPOR” means the Department of Professional and Occupational Regulation.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

On August 12, 2020, upon the recommendation of the Hearing Aid Specialist Training Committee, the Board voted to initiate regulatory changes around their training requirements. The Board created the Hearing Aid Specialist Training Committee to examine the causes of the substantially low pass rates of the Board’s licensing exam, and the committee identified several areas of the training program that could be improved upon, including expanding training options and changing the temporary permit training requirements.

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.

Code of Virginia § 54.1-201 gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.”

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Hearing Aid Specialist Training Committee spent several months analyzing the cause of the Board’s low pass rate on the hearing aid specialist exam. Much of the lower pass rate could be tied to individuals obtaining the training permit, then immediately signing up for the licensing exam. This enabled individuals to take the exam with as little as two months of training in the profession. In examining the data, the committee found a direct correlation between the lengths of training under the temporary permit and pass rates on the exam. Individuals with nine months of training or less had below a 30% pass rate and the pass rate for those with six months of training was below 20%. In addition to addressing this flaw in the temporary permit training program, the Board also wanted to allow individuals to utilize the newly created U.S. Department of Labor approved hearing aid dispensing apprenticeship program.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board will create a new Registered Apprenticeship training option as an additional training option for qualifying for the license. The Board will also increase the length of the current training temporary permit from 12 months to 18 months, and incorporate a provision that requires at least nine months of training before a temporary permit holder takes the exam.

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.

No viable alternatives for achieving the purpose of the proposed regulatory action could be determined. The Board has utilized the same training requirements since the inception of the regulatory program in 1992. With a general exam pass rate of 50%, and a lower pass rate for those utilizing the temporary permit training method, the Board considered several alternatives to improve the ability of candidates to achieve minimum competency. The Board could have rejected adding the registered apprenticeship training option, but that would have resulted in a more limited, restricted pathway into the program. The Board also considered reducing requirements around the temporary permit training method, however, since this method is the source of the exam’s low pass rate, it could not lower these requirements without jeopardizing the safety of the public. The Board determined that encouraging temporary permit holders to train for a longer period of time, by extending the length of the permit, and requiring at least nine months of training prior to testing, was the least restrictive way to improve this training method. The Board rejected a 12 month testing waiting period for the exam as too restrictive, but also rejected a six month waiting period as the data showed only an 18% pass rate for those testing with six months of training.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

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

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 Stephen Kirschner, Executive Director, Board for Hearing Aid Specialists and Opticians, (804) 367-8590 phone, (866) 245-9693 fax, hasopt@dpor.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.