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Proposed Regulation 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	3/28/2022 (revised July 17, 2023)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 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 create an additional method of qualifying for the license: registered apprenticeship. 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 used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

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

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

“DOLI” means the Virginia Department of Labor and Industry.

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 the ORM procedures, “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 December 15, 2021, the Board voted to approve the proposed regulatory changes to the 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

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 is intended to solve.

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%. The Board is extending the length of the apprenticeship to 18 months and imposing a minimum training length to address these concerns. 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, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

18 VAC 80-20-30. Basic Qualifications for Licensure. Adds a requirement that temporary permit holders cannot take the licensing exam until they have six months of experience under the permit. Also adds a new training option of registered apprenticeship.

18 VAC 80-20-40. Temporary Permit. Changes the temporary permit length from 12 months to 18 months and a requirement for sponsors that they cannot refer permit holders to the exam until the permit holder reaches six months of experience.

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.

One primary advantages of this action is that individuals seeking to enter this profession have a new training options of registered apprenticeship. Registered apprenticeships offer several advantages over traditional training programs, including that they are paid, on-the-job training, recognized by the Federal government and transferrable to any other state with a registered apprenticeship program. There is no disadvantage of this change, since this will merely be an additional option for those that desire it, not a requirement. Another advantage of this action is that individuals learning under a temporary permit will now receive a longer training period, including a minimum amount of training that will increase the likelihood of passing the licensing exam and successfully entering the profession. The disadvantage of this change to the temporary permit requirement is that individuals who may wish to have tested prior to six months will be prohibited from doing so. The pass rate for temporary permit holders at six months is around 20%, while less than six months drops about 10% for every three months less of experience. While one or two individuals per year may be able to pass the exam with less than six months, the vast majority will fail and incur a financial loss (exam fee) and the emotional toll of having failed a state licensing exam.

The advantages to the Commonwealth of the registered apprenticeship is that it will have decreased barriers to entry into the profession by providing additional qualifying methods and increasing the likelihood of success on the licensing exam. Additionally, DOLI may see an increase in hearing aid specialist apprentices. There is no disadvantage to the commonwealth.

There are no other pertinent matters of interest to the regulated community, government officials, and the public.

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, or no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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

DOLI administers registered apprenticeships in Virginia and would have primary oversight of these training programs. DOLI participated in Board's Training Committee's initial discussions about this registered apprenticeship option. The overall number of annual applicants for this profession is around 70, and it is anticipated that once the apprenticeship is implemented, there may be 5-10 registered apprentices every year.

Localities Particularly Affected

No localities will be particularly affected.

Other Entities Particularly Affected

No other entities will be particularly affected.

Economic Impact

Consistent with § 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 the proposed change versus the status quo.

Board for Hearing Aid Specialists and Opticians Economic and Fiscal Impact of Proposed Regulation

Summary:

The proposed change will provide a new training option with the Department of Labor and Industry in the Hearing Aid Specialists regulations under the Board for Hearing Aid Specialists and Opticians. The new registered apprenticeship program under the Department of Labor and Industry (DOLI) provides a training alternative for temporary permit holders. The proposed change will also increase the length of the temporary permit from 12 to 18 months and will require temporary permit holders to have at least six months of experience under their permit before becoming exam eligible. The changes address the low pass rate through the minimum required training. There is no economic or fiscal impact to state agencies or businesses.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For DPOR:</i> 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</p>	<p>DPOR does not anticipate any increase in costs or revenue. Revenue from the exam may be delayed as candidates who might have tested within a few months of obtaining a temporary permit will now have to wait at least six months before taking the exam. A minimal reduction in staff workload may occur due to the reduction in the number of temporary permit extension requests.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The primary benefits of the regulatory change to DPOR are to increase the pass rate of individuals taking the hearing aid specialist exam and to provide another method for individuals to gain experience and training by using the DOLI approved hearing aid dispensing apprenticeship program.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None.</p>

Impact on Other Entities

<p>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.</p>	<p>The regulatory change will affect all temporary permit holders that work in hearing aid businesses. No other individual, businesses or other entities are affected.</p>
<p>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;</p>	<p>As of 3/1/2022, there are 48 temporary permit holders. On average there are approximately 47 temporary permit holder applicants annually.</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>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.</p>	<p>By not needing to retake the exam due to an expected increase in the exam pass rate, candidates could experience a cost savings. No other costs to individuals are expected from this change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>An increase in the exam pass rate is expected due to extending the length of the temporary permit and requiring temporary permit holders to have six months of experience before becoming exam eligible. It will allow permit holders to extend training up to eighteen months. The addition of the Department of Labor and Industry approved hearing aid dispensing apprenticeship program will provide another option for obtaining training and experience.</p>

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 six 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.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

This regulatory action was initiated after a detailed analysis of alternative regulatory methods in establishing the hearing aid specialist training program, and is, in fact, meant to establish a new training alternative, registered apprenticeship. For the changes in the temporary permit training method, this change was necessary because the current less stringent oversight is failing to produce minimally competent practitioners, as indicated by the substantially low pass rate on the competency exam.

This action does not involve performance standards for small businesses and exempting small businesses from training requirements would exacerbate, not alleviate, the harm caused by the current, failing training method.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

1. There is a continued need for industry regulations. The regulatory amendments support education and training and a less burdensome process for new students entering the field. The profession is responsible for protecting the public's health, safety, and welfare. Professionals entering the hearing aid specialist field should all be required to complete a standardized training program. The addition of the registered apprenticeship option provide a new alternative training program, and the revisions to the temporary permit method provide standardization and minimum training amounts.
2. The board regularly receives complaints from individuals that are not able to pass the exam due to inadequate training under their temporary permit. Most of these individuals report that their

sponsor had pressured them to test before they felt ready. During public comment, the board received specific concerns regarding how these changes would impact audiology students who regularly use the temporary permit, and the board made changes to address those concerns.

3. This rule change reduces the complexity of the temporary permit process. The permit currently is a 12 month permit that is eligible for a six month extension. Staff frequently process requests for an extension, and this change will make that request unnecessary – the permit will automatically be 18 months.
4. The Board has no knowledge of the proposed regulations overlapping, duplicating, or conflicting with federal or state law or regulations.
5. The hearing aid specialist training program has not been reviewed since 2003.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Teresa Robinson, President of the Virginia Society of Hearing Aid Specialists	The Virginia Society of Hearing Aid Specialists supports the proposed changes to the temporary permit process and the addition of a DOLI registered apprenticeship.	The Board appreciates the support of the Virginia Society of Hearing Aid Specialists for these changes.
Danny Gnewikow, Ph.D, Audiologist, and Hearing Aid Specialist	Fully supports amending the training period for specialists to add 18 month permit and DOLI apprenticeship option. Disagrees with the nine month training requirement due to impacting a broader segment of trainees, particularly audiology students training with a hearing aid temporary permit. Also pointed out a drafting error in the proposed language.	The Board appreciates these comments and agrees with the underlying concerns about unintended negative consequences for audiology graduate students who also utilize the temporary permit as part of their graduate studies. The Board amended its proposed language to clarify that the six month limitation only applies to individuals who are applying for the exam based on the temporary permit, not based on college or university training. The Board believes this will alleviate the negative consequence Dr. Gnewikow pointed out. Additionally, the Board has noted the drafting error and made the appropriate correction.

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.

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, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of 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 **Kelley Smith, 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 this stage of this regulatory action.

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.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
30		Training and Examination requirements for the hearing aid specialist license.	Section A.4.a is amended to add a requirement that temporary permit holders must hold the permit at least six months before becoming eligible for the exam. This requirement is being added to address the low exam pass rate, which indicates inadequate training for periods less than six months. Currently, pass rates for temporary permit applicants are around 10% at three months training, 20% at six months training, and 30% for nine months training. Those that are testing with less than six months are more than likely to fail and are wasting their exam fee, time and energy. The six month minimum training requirement will ensure the public is adequately protected by increasing the rate at which applicants achieve minimum competency.

			<p>New Subsection A.4.c is added creating a registered apprenticeship training option to become exam eligible. This method is meant to provide additional pathways to entry into the profession. Registered apprenticeships provide a widely respected and accepted method of training to this profession.</p>
40		Requirement for temporary permits	<p>Section A.1 is amended to replace the current 12 month permit and optional 6 month extension with an 18 month permit. This will reduce the need for individuals to request a permit extension when one is needed to continue their training.</p> <p>New Section C.5 is added to require temporary permit sponsors ensure their permit holders reach six months of training before signing their training documents and sending them to test. This provision is needed to ensure the temporary sponsor is aware of and enforcing the minimum training requirement created by this action.</p>