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## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Hearing Aid Specialists and Opticians
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC 80-20
<b>VAC Chapter title(s)</b>	Hearing Aid Specialists Regulations
<b>Action title</b>	Amendment to expand training options for applicants
<b>Date this document prepared</b>	August 21, 2024

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”) is amending 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 is amending its regulations to (i) revise its temporary permit rules to improve the success rate of that training method; and (ii) create an additional pathway for individuals to qualify for the hearing aid specialist exam through completion of a registered apprenticeship.

### 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.*

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

“VDWDA” means the Virginia Department of Workforce Development and Advancement (formerly known as Department of Labor and Industry, DOLI).

### 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.*

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On March 13, 2024, the Board for Hearing Aid Specialists and Opticians voted to approve the final amendment to the Hearing Aid Specialists Regulations.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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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.*

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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.” Section 54.1-201 also gives the Board the authority to “...establish the qualifications of applicants for certification or licensure...provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.”

### 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.*

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This regulatory change is intended to address a problem of substantially low pass rates of the Board's licensing exam. As detailed in the "Mandate and Impetus" section, the Board convened a committee to examine the causes of the low pass rate.

The 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 temporary permit, then immediately applying 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 temporary permit to 18 months and imposing a minimum training length to address these concerns. Mandating a six-month sponsorship period for temporary permit holders would provide essential on-the-job training, thereby upholding standards for public health and safety while improving their chances of passing the necessary exam.

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.*

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18 VAC 80-20-30. Basic Qualifications for Licensure. Adds a requirement that temporary permit holders must have at least six months of experience under the permit. Also adds a new option to allow completion of a registered apprenticeship as a training option for license applicants.

18 VAC 80-20-40. Temporary Permit. Replaces the current 12-month temporary permit with an optional six-month extension to an 18-month non-extendable permit. Adds a provision to recognize registered apprenticeships under VDWD as a temporary permit. Adds a provision that requires a licensed sponsor of a temporary permit holder to certify that the sponsor will not refer the permit holder for testing until the permit holder has completed six months of training under the permit.

## 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.*

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One primary advantage of this action is that individuals seeking to enter this profession have a new training option 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 test 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.

During the public comment phase of the NOIRA, the Board received a public comment regarding the temporary permit amendment, specifically requesting an exemption from the six-month training requirement before being eligible for the exam for audiology students trained in colleges and universities. Exam statistics presented to the Board on August 18, 2021, indicated that 26 out of 27 students with college and university training passed the required examinations. The Board determined college and university-trained students should be able to apply for the examination before the six-month mark because they are under the supervision of an instructor within their audiology program. Audiology students currently enrolled in post-secondary programs can take the exam before completing six months of training, provided they have completed the required core subjects. Permitting these students to sit for the exam earlier is not expected to negatively impact the pass rates for hearing aid specialist examinations.

The advantages to the Commonwealth of the registered apprenticeship are 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, VDWD 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**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information, except the change in name from DOLI to VDWD.

**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.*

No public comment was received following publication of the previous stage.

Commenter	Comment	Agency response
N/A	N/A	N/A

### Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
20-30	N/A	An apprenticeship completion form from the Virginia Department of Labor and Industry reflecting completion of a registered apprenticeship is acceptable documentation to verify an applicant's completion of the training and experience requirements to qualify for the license examination.	A technical change to replace the name Virginia Department of Labor and Industry with VDWDA is made.	The agency responsible for managing apprenticeship programs is no longer named the Virginia Department of Labor and Industry. The current name is the Virginia Department of Workforce Development and Advancement.
20-40	N/A	N/A	*Added a new subsection which provides that a registered apprenticeship under the VDWDA is held to be a board-approved temporary permit.  A stylistic change is made.	A registered apprenticeship option is an additional qualifying method to apply for licensure. Individuals completing a registered apprenticeship must obtain a temporary permit to provide hearing aid specialists services to the public.

20-9998	N/A	N/A	Application forms are updated to reflect the changes in temporary permit provisions in the regulation.  The forms do not impose any new requirements.	The forms have been changed to reflect the changes in temporary permit provisions in the regulation.
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**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current requirements in VAC</b>	<b>Change, intent, rationale, and likely impact of updated requirements</b>
20-30	N/A	<p>This section provides for the basic qualifications for licensure as a hearing aid specialist. These include training and experience requirements.</p> <p>An applicant must provide one of the following to documents to verify completion of the required training and experience:</p> <ul style="list-style-type: none"> <li>• A statement on a Board-provided form signed by the applicant’s licensed sponsor certifying the requirements have been met; or</li> <li>• A certified true copy of a transcript of courses completed at an accredited college or university; or other notarized documentation of completion of the required experience and training.</li> </ul>	<p>*Subdivision A.4.a is amended to add a requirement that temporary permit holders must complete at least six (6) months of experience under the permit before becoming eligible for the exam.</p> <p>This requirement is being added to address the low exam pass rate, which indicates inadequate training for periods of less than six months.</p> <p>Currently, pass rates for temporary permit applicants are around 10% at three months of training, 20% at six months of training, and 30% for nine months of 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> <p>*New subdivision A.4.c is added creating a registered apprenticeship training option to become exam eligible. This method is meant to</p>

			<p>provide additional pathways to entry into the profession.</p> <p>*An applicant may provide an apprenticeship completion form from the VDWDVA that reflects completion of a registered apprenticeship, including all required related instruction, or an equivalent out-of-state registered apprenticeship.</p> <p>Registered apprenticeships provide a widely respected and accepted method of training to this profession.</p>
20-40	N/A	<p>This section provides for temporary permits and the requirements for temporary permit holders and their licensed sponsors.</p> <p>Individuals may apply for a temporary permit from the Board which may only be used for the purpose of gaining training and experience necessary to qualify for licensure as a hearing aid specialist.</p> <p>The section provides for the period of a temporary permit. A temporary permit is issued for an initial term of 12 months, which may be extended for an additional six (6) months. After 18 months, a temporary permit may no longer be extended and the individual holding the permit must sit for the license examination.</p> <p>The application for a temporary permit must identify a licensed sponsor.</p> <p>The sponsor must certify on the temporary permit application that the sponsor:</p> <ul style="list-style-type: none"> <li>Assumes full responsibility for the competence and proper conduct of the permit holder for all acts while acquiring training and experience in the fitting and dealing of hearing aids;</li> </ul>	<p>*The section is amended to replace the current 12-month permit and optional six-month extension with an 18-month permit. Under this change, a single non-extendable permit will be issued to eligible individuals. This will reduce the need for individuals to request a permit extension when one is needed to continue their training.</p> <p>*The section is revised to provide that a registered apprenticeship under VDWDVA is held to be a temporary permit.</p> <p>*The certification requirements for a licensed sponsor are revised to require temporary permit sponsors to certify 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> <p>Minor stylistic changes to remove gender references are made.</p>

		<ul style="list-style-type: none"> <li>• Will not assign the permit holder to carry out independent field work without on-site direct supervision by the sponsor until the permit holder is adequately trained for such activity;</li> <li>• Will personally provide and make available to the Board upon request documentation showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; and</li> <li>• Will return the temporary permit to DPOR should the training program be discontinued for any reason.</li> </ul>	
20-9998	N/A	N/A	<p>Application forms are updated to reflect the changes in temporary permit provisions in the regulation.</p> <p>The forms do not impose any new requirements.</p>