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Final Regulation Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) citation(s)	18 VAC 80-20
Regulation title(s)	Hearing Aid Specialists Regulations
Action title	General Review
Date this document prepared	May 23, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed changes in the regulations will eliminate the examination fee cap in order to consider more modernized testing methods the Board for Hearing Aid Specialists and Opticians (the Board).

The proposed changes in the regulations will make clarifying changes, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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

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

Statement of final agency action

Please 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.

At its meeting of April 20, 2016, the Board for Hearing Aid Specialists and Opticians adopted as final these regulations that amend the Hearing Aid Specialist Regulations (18 VAC 80-20).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible, in order to assist in providing an environment with unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, to ensure regulations are clearly written and easily understandable, and are representative of the current advancements and standards of the industries.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

18 VAC 80-20-10. Definitions. The definitions of hearing aid specialist and licensee have been modified to bring them in line with the statutory definition found in *Code of Virginia* §54.1-1500.

18 VAC 80-20-30. Basic qualifications for licensure. The proposed amendments modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10.

18 VAC 80-20-40. Qualifications for a temporary permit. The proposed amendments modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10. The requirement that correspondence be sent to both the permit holder and sponsor is updated to expressly exempt correspondence protected by law.

18 VAC 80-20-50. Fees. The proposed amendments remove specific examination fees from regulation and replaced with language authorizing the fees to be set in accordance with the *Code of Virginia* §2.2-4300 (Virginia Procurement Act) and §54.1-201.4. Fees for wall certificates are removed and the licensure fee for reciprocity is consolidated with the initial license fee.

18 VAC 80-20-220. Purchase agreement. The proposed amendments require disclosure of non-refundable fees in accordance with the *Code of Virginia* and prohibit them from being a percentage of the purchase price of the hearing aid.

18 VAC 80-20-230. Fitting and sale of hearing aids for children. The proposed amendments modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10.

18 VAC 80-20-250. Testing procedures. The proposed regulations expand the standard testing frequencies to 6000 – 8000 hertz.

18 VAC 80-20-270. Grounds for discipline. The proposed amendments expand the scope of discipline to include probation, refusal to renew, and to cover temporary permits as well as licensees. The proposed amendments also modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10.

18 VAC 80-20-280. Accountability of licensee. The proposed amendments repeal this section.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

1) The primary advantage of the proposed amendments to the public is the Board will continue to approve applicants and license professionals with safeguards in place to ensure proper competency and standards of conduct. The change of scope of prohibited acts to include permit holders will reduce fraud and better ensure the regulant population is minimally competent. Further, regulants and applicants within these professions will be able to read the Board's requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a

better understanding of the Board's requirements which will also allow them to conduct their business with greater efficiency.

2) The primary advantage to the Commonwealth will be the continued successful regulation of hearing aid specialists who meet the minimum entry standards. The proposed amendments strengthen the Department's ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

- 1) The proposed regulations will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed regulations should encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents through a simplified and clarified regulatory environment. The proposed amendments should make entering and engaging in the regulated professions more easily understood for individuals and businesses.
- 3) The proposed regulations will have no impact on marital commitment.
- 4) The proposed regulations should have minimal impact on disposable family income.



Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes have been made since the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments from the public were received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 80-20-10		Establishes definitions of terms used throughout the chapter.	<p>“Hearing aid specialist” is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500. This change brings the regulations in line with the statute, and should have no impact on the regulants.</p> <p>“Licensee” is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p>
18 VAC 80-20-30		Establishes the general qualifications for hearing aid specialist licensure.	Subsection A.5 is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.
18 VAC 80-20-40		Establishes the general qualifications for hearing aid	Subsection A.3 is amended, replacing the language “fitting and dealing in hearing

		specialist temporary permit.	<p>aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p> <p>Subsection B.1 is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p> <p>Subsection E is amended to add “not otherwise exempt from disclosure” the requirement that all correspondence be sent to both permit holder and sponsor. This change makes explicit the current Board practice that it will not disclose information that may be protected from disclosure by law, and will not result in a change of practice or impact regulants.</p>
18 VAC 80-20-70		Establishes the licensing and renewal fees.	<p>Subsection C is amended to remove references to examination and duplicate wall certificate fees, and consolidate the reciprocity fee into the new application fee. The latter change will result in more clear, succinct regulations. The board will no longer charge for duplicate wall certificates. The examination fee requirements are being replaced by Subsection D.</p> <p>New Subsection D states that the examination fees shall be established according to requirements of the Virginia Public Procurement Act. The exam fee changes in Subsection C and new Subsection D are necessary to allow the Board flexibility in exam selection and administration.</p>
18 VAC 80-20-220		Establishes requirements for hearing aid purchase agreements.	<p>Subsection A.6 is amended to reference the Code of Virginia section requiring disclosure of non-refundable fees and states that non-refundable fees shall not be a percentage of the purchase price. This amendment will add greater clarity to regulation and provide greater protection for hearing aid purchasers.</p>
18 VAC 80-20-230		Establishes requirements for fitting and sale of hearing aids for children.	<p>The section title and Subsection 1 are amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p>
18 VAC 80-20-250		Establishes testing procedures for hearing aid fittings.	<p>Subsection 1 is amended to expand the standard frequencies to include 6000 and 8000 hertz. This amendment addresses changing standards in the industry and</p>

			enables the Board to ensure that it is licensing individuals who are minimally competent to engage in the profession.
18 VAC 80-20- 270		Establishes the grounds for discipline.	<p>The scope of this section is amended to include temporary permit holders and to provide for probation and refusal to renew. This change is meant to clarify that permit holders are subject to its requirements.</p> <p>Subsection 1.h is amended to read with better clarity.</p> <p>Subsection 6 is amended to include licensees and temporary permit holders. It also is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p>
18 VAC 80-20- 280		Establishes that licensees are responsible for the actions of staff.	This section is repealed to provide greater clarity to the regulations.