Virginia Regulatory Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology
Virginia Administrative Code (VAC) citation	18VAC30-20-10 et seq.
Regulation title	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Practice of assistant speech-language pathologists
Date this document prepared	9/26/14

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Chapter 661 (HB764) of the 2014 General Assembly authorizes a person "who has met the qualifications prescribed by the Board" to practice as an assistant speech-language pathologist under the supervision of a licensed speech-language pathologist. The purpose of the proposed regulatory action is to set out the qualifications for such a person, the scope of his practice, and the responsibilities of the licensed supervisor.

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.

18VAC30-20-10 et seq. Regulations Governing the Practice of Audiology & Speech-Language Pathology are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Audiology & Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system:

> ***§ 54.1-2400 -General powers and duties of health regulatory boards***
> *The general powers and duties of health regulatory boards shall be:*
> *…*
> *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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. …*

Authority for the Board to adopt regulations for persons practicing as an assistant speech-language pathologist is found in the amendment to § 54.1-2600 in Chapter 661 of the 2014 Acts of the Assembly:

> ***§ 54.1-2605. Practice of assistant speech-language pathologists.***
> *A person who has met the qualifications prescribed by the Board may practice as an assistant speech-language pathologist and may perform duties not otherwise restricted to the practice of a speech-language pathologist under the supervision of a licensed speech-language pathologist.*

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The practice of speech-language pathology includes "facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders" (§ 54.1-2600). Unlicensed assistants may be utilized to extend but not replace the practice of a licensed SLP. The American Speech-Language-Hearing Association white paper on the scope of practice for assistants states: "The decision to shift responsibility for implementation of the more repetitive, mechanical, or routine clinical activities to SLPA's should be made only by qualified professionals and only when the quality of care and level of professionalism will not be compromised." The proposed regulatory action for the establishment of assistant competency and scope of practice is essential to ensure the quality and continuity of care under the legal and professional responsibility of a licensed SLP to protect the health and safety of clients receiving speech-language services.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Current regulations in section 240 specify that a licensed speech-language pathologist shall provide documented supervision to unlicensed assistants, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which do not constitute the practice of speech-language pathology and which are commensurate with their level of training. Further, regulations provide that the identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

Amendments to that section will set out the qualifications of an assistant speech-language pathologist to be determined by the supervising SLP after training and direct observation. Minimal competency in performance must be documented before the supervising SLP can assign tasks to the assistant. After demonstration of competency, the assistant may perform duties planned, designed and supervised by a licensed SLP. Regulations will specify which duties are appropriate to the practice of an assistant and which would constitute licensed practice of an SLP and are therefore not to be performed by an unlicensed assistant. Generally speaking, activities which require assessment and professional judgment in speech-language pathology are not appropriate for delegation to an assistant. Finally, regulations will specify the supervisory responsibilities of the licensed SLP for the activities of the assistant, the number of assistants who may be supervised, the frequency with which there must be on-site supervision of assistants, and the frequency with which the licensed SLP must personally see and evaluate the client. Ultimate responsibility for the client and the outcomes of his care remain with the licensed SLP.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

In order to utilize the expertise needed to develop regulations for assistant speech-language pathologists, the President of the Board convened a Regulatory Advisory Panel or Ad Hoc Committee. The Committee was chaired by Laura Verdun, MA, CCC-SLP, board member and included Ronald Spencer, RN, board member, Scott Rankins, SLP, Speech-Language-Hearing Association of Virginia (SHAV), Darlene Robke, SLP, SHAV, and Marie Ireland, SLP, representing the Department of Education.

At its meeting on August 5, 2014, the Committee reviewed the legislative mandate (HB764) and the statutory authority for regulation, the Speech-Language Pathology Assistant Scope of Practice document from the American Speech-Language-Hearing Association (ASHA), a SHAV survey on the use of assistants in Virginia, and regulations from the states of Maryland, North Carolina, and Pennsylvania. The Committee agreed that there was no statutory authority to issue a “license” to assistants, that the responsibility for their training and practice falls on the

supervising SLP, and that the duties to which they could be assigned cannot constitute the licensed practice of speech-language pathology. Subsequent to the Committee meeting, regulatory language was drafted and circulated for member comment. At the meeting of the full Board on September 25, 2014, the draft language and member comments were discussed. Several issues relating to the responsibilities and oversight by the supervising SLP were identified. Following comment on the Notice of Intended Regulatory Action, the Regulatory Advisory Panel will be reconvened to develop the regulations and make a recommendation to the Board for its adoption in February of 2015.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233; elaine.yeatts@dhp.virginia.gov; 804-527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (**http://www.townhall.virginia.gov**) and on the Commonwealth Calendar website (**http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi**). Both oral and written comments may be submitted at that time.

Family impact

Assess the potential impact of the proposed 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.

There is no impact on the family.