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Fast-Track Regulation Agency Background Document

Agency name	Board of Audiology & Speech-Language Pathology, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC30-21-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Clarification of sections
Date this document prepared	9/21/16

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Proposed amendments clarify that school speech-language pathologists are included in provisions for inactive licensure, reactivation, or reinstatement, and they repeal the related, outdated section. The proposal also makes documentation of current certification by the ABA acceptable as the credential that may be used to demonstrate competency for reinstatement of a lapsed licensed by an audiologist.

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.

ABA = American Board of Audiology
ASHA = American Speech-Language-Hearing Association

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.

On September 8, 2016, the Board of Audiology & Speech-Language Pathology amended 18VAC30-21-10 et seq., Regulations Governing the Practice of Audiology & Speech-Language Pathology.

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 (§ [2.2-4000](#) 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 and for licensure of professions under the Board is found in Chapter 26 of Title 54.1 and specifically:

§ 54.1-2603. License required.

- A. *In order to practice audiology or speech pathology, it shall be necessary to hold a valid license.*
- B. *Notwithstanding the provisions of subdivision 2 of § [54.1-2601](#), the Board of Audiology and Speech-Language Pathology may license as school speech-language pathologists any person who holds a master's degree in speech-language pathology. The Board of Audiology and Speech-*

Language Pathology shall issue licenses to such persons without examination, upon review of credentials and payment of an application fee in accordance with regulations of the Board for school speech-language pathologists.

Persons holding such licenses as school speech-language pathologists, without examination, shall practice solely in public school divisions; holding a license as a school speech-language pathologist pursuant to this section shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Audiology and Speech-Language Pathology to offer to the public the services defined in § 54.1-2600.

The Board shall issue any person licensed as a school speech-language pathologist a license that notes the limitations on practice set forth in this subsection.

Persons who hold licenses issued by the Board of Audiology and Speech-Language Pathology without these limitations shall be exempt from the requirements of this subsection.

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 purpose of the amended regulation is to remove outdated language and clarify the reinstatement/reactivation requirements for school speech-language pathologists. The Code currently requires all school speech-language pathologists to hold a license issued by the Board but no longer requires endorsement by the Department of Education; regulations in section 130 retained the previous reference to such endorsement when someone is applying for reinstatement or reactivation.

Additionally, requirements for reinstatement do not include a certification issued by the American Board of Audiology, which is the credential some audiologists maintain rather than ASHA certification. Clarity in regulatory language avoids confusion and promotes compliance with license laws and regulations for the health and safety of clients who utilize speech-language services.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The proposed amendments remove outdated and confusing information, clarify requirements for reactivation or reinstatement, and include an additional credential that may be submitted for reinstatement. All changes are noncontroversial and less restrictive.

Substance

Please 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.

Proposed amendments clarify that school speech-language pathologists are included in provisions for inactive licensure, reactivation, or reinstatement, and they repeal the related, outdated section. The proposal also makes documentation of current certification by the ABA acceptable as the credential that may be used to demonstrate competency for reinstatement of a lapsed licensed by an audiologist.

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) There are no real advantages or disadvantages to the public; the amended regulations are clarifying rather than substantive.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.*" There is no restraint on competition as a result of promulgating this regulation. To the contrary, it allows submission of other professional certifications to qualify an applicant for reinstatement of a lapsed license.

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 applicable federal requirements.

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.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative regulatory methods; to eliminate or clarify current regulations, a regulatory action is required.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures. Audiologists and speech-language pathologists are potentially affected, but the regulation is permissive.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Audiologists and school speech-language pathologists are potentially affected if they allow their licenses to lapse or become inactive and wish to reinstate or reactivate licensure.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please 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; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 507 audiologists and 484 school speech-language pathologists with current licenses. It is unknown how many audiologists would be considered small businesses. All of the school speech-language pathologists work in local school systems.</p>

<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>None</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Clarify in the regulation for ease of compliance. Acceptance of the ABA credential for reinstatement is beneficial to some audiologists.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no alternative regulatory methods; to eliminate or clarify current regulations, a regulatory action is required.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
110	Sets out requirements for inactive licenses and reactivation	Adds “school speech-language pathologists” to clarify that those licensees are included in the provisions for inactive licensure.
120	Sets out requirements for reinstatement of a lapsed license	An amendment to subsection A adds: 1) school speech-language pathologists to the applicable licensure categories; 2) certification issued by the American Board of Audiology or any other accrediting body recognized by the board as a credential that may be submitted to qualify for reinstatement. <i>Audiologists may submit certification by ABA as evidence of competency for initial licensure; therefore, that credential, if it has been maintained and is current, should be acceptable for reinstatement as well. The regulation includes “any other accrediting body recognized by the board” to accommodate an alternative if presented by an applicant. To date, there is no other accrediting body so recognized.</i>
130	Sets out reactivation or reinstatement requirements for school speech-language pathologists	This section is repealed because it was applicable when school speech-language pathologists were dually licensed by this Board and the Department of Education. Licensure solely by this board became effective in August of 2014; the reorganization of Chapter 20 (which included the outdated section) became effective in August of 2016. It is no longer applicable or necessary.