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; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC30-20-10 set seq.
Regulation title	Regulations Governing the Practice of Audiology & Speech-Language Pathology
Action title	Practice of FEES by SLP's
Date this document prepared	10/25/10

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.

The purpose of the planned action is to establish rules for the training, supervision and practice of speech-language pathologists (SLP) in the performance of fiberoptic endoscopic evaluation of swallowing (FEES). There is a need for regulation because the Board's policy statement (guidance document) states that an SLP who performs FEES must be "specially trained" and work under the supervision of a physician provided there are protocols in place for emergency response.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. …*

In addition, the Board has general authority to promulgate regulations specifying additional training as necessary.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.
A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

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.

While the Board's guidance document is helpful to the practitioner community, it is not enforceable and does not set forth regulations delineating the meaning of "specially trained." Therefore, SLP's do not have a clear standard for their training and practice, and the Board would have difficulty sanctioning an SLP for inadequate training and supervision. There is concern that patient safety and appropriate treatment could be compromised if SLP's perform FEES improperly and without necessary physician supervision and guidance. Proposed regulations will establish specific regulations to address those concerns.

Substance

Please detail any changes that will be proposed. 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.

Specific regulations have not yet been developed but will be written in consultation with interested parties – namely, the Speech-Language-Hearing Association of Virginia (SHAV) and the Virginia Society of Otolaryngology-Head and Neck Surgery (VSO).

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 discussion of whether it is within the scope of practice for a speech-language pathologist to use endoscopes, the VSO has suggested that the Tennessee law adopted in 2007 would be a model for regulations in Virginia. The Tennessee law provides:

> *(B) The practice of speech language pathology shall include the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing for the purpose of functional assessment and rehabilitation planning. A speech language pathologist who uses an endoscope shall meet all of the following conditions:*
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> *(i) A speech language pathologist must obtain written verification from a board certified otolaryngologist that the speech language pathologist is competent in the proper and safe use of an endoscope. The otolaryngologist's determination of competency shall be based upon the speech language pathologist's training in the proper use of endoscopes, the successful completion of a university course or other educational program of at least fifteen (15) hours on endoscopy, and the successful performance of at least twenty-five (25) endoscopic procedures under the supervision of an otolaryngologist or another speech language pathologist who has successfully performed at least fifty (50) endoscopic procedures and has been approved in writing by a board-certified otolaryngologist to provide such supervision. The speech language pathologist shall maintain this written verification on file at all times at the primary practice location of the speech language pathologist.*
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> *(ii) A speech language pathologist shall not perform a procedure utilizing an endoscope unless the patient has been referred to the speech language pathologist by an otolaryngologist or other qualified physician for the performance of such procedure.*
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> *(iii) A speech language pathologist shall perform only non-operative procedures with an endoscope.*
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> *(iv) In every setting in which a speech language pathologist performs a procedure using an endoscope, there must be protocols in place for emergency medical backup. If the procedure is performed in a community setting such as a physician's office, a physician must be on the premises and provide on-site supervision. If the procedure is performed in an institutional setting such as a hospital or nursing home, a physician must provide*

general supervision and be readily available in the event of an emergency, including but not limited to physical presence at the institution or availability by telephone.

(v) In all cases the speech language pathologist shall send to the referring physician in a timely manner a report and visual recording of each endoscopic procedure performed upon referral of that physician. If the referring physician is not an otolaryngologist, the speech language pathologist shall also provide a visual recording of the endoscopic procedure to an otolaryngologist if directed to do so by the referring physician.

The Tennessee law and the policy statements on FEES from the American Speech-Language-Hearing Association (ASHA) will be reviewed and considered in the development of regulations.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or to elaine.yeatts@dhp.virginia.gov .Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held after proposed regulations have been adopted and approved for publication. Notice of the hearing will be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and will be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

The Board will be using the participatory approach by developing regulations in consultation with the Speech-Language-Hearing Association of Virginia (SHAV) and the Virginia Society of

Otolaryngology-Head and Neck Surgery (VSO). Each group will provide suggested language and will consult with each other and with board members and staff on draft regulations to be presented to the board for adoption. There has already been a significant amount of public comment and involvement in this issue at the June board meeting and subsequently at the August meeting called to specifically address and revise the FEES guidance document.

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.