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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 80-20
VAC Chapter title(s)	Hearing Aid Specialists Regulations
Action title	General Review of Hearing Aid Specialists Regulations
Date this document prepared	August 25, 2023

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Hearing Aid Specialists and Opticians ("the Board") intends to undertake a general regulatory review of the Hearing Aid Specialists Regulations. The regulation provides for the licensure of Hearing Aid Specialists and Hearing Aid Specialists temporary permit holders.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation compliments current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and

4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"DPOR" means Department of Professional and Occupational Regulation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor "…to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."

This action is not the result of a mandate.

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.

The agency is Board for Hearing Aid Specialists and Opticians.

Section 54.1-201 of the Code of Virginia provides, in part:

> A. The powers and duties of regulatory boards shall be as follows:
>
> 1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
>
> 5. 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. The regulations shall not be in conflict with the

purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The General Assembly has charged the Board with the responsibility for regulating those who engage in the practice of fitting or dealing in prescription hearing aids.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

During its review of the regulation, the Board is expected to consider the following:

Part I – Definitions (18VAC80-20-10 et seq.):

Definitions (18VAC80-20-10): Removing definitions for terms that are currently defined in the Code of Virginia, and incorporating these definitions by reference. Adding a definition for “endorsement.” Removing the definition of “reciprocity.” Revising the definition of “hearing aid specialist” to make the term clearer.

Explanation of Terms (18VAC80-20-20): Repealing this section as it is not necessary.

Part II – Entry Requirements (18VAC80-20-30 et seq.):

Basic Qualifications for Licensure (18VAC80-20-30): Revising subjects for training and experience as qualification for licensure. Revising requirements for acceptable verification of training and experience. Revising requirements for disclosure of prior criminal history.

Temporary Permit (18VAC80-20-40): Revising provisions for temporary permits, including (i) extending the term of such permits to 18 months; (ii) permitting a registered apprenticeship under the Department of Labor and Industry (DOLI) to be considered a temporary permit; and (iii) permitting individuals enrolled in a post-secondary graduate program to be eligible for a three-year temporary permit.

Qualifications for Licensure by Endorsement (18VAC80-20-50): Revising provisions related to individuals licensed as a hearing aid specialist in another jurisdiction, including (i) replacing the term “reciprocity’ with the term “endorsement” to describe the licensure of such individuals; (ii)_providing that individuals who can demonstrate active engagement in the profession for the preceding five (5) years need only take the rules and regulations portion of the license examination.

Examinations (18VAC8020-80): Revising provisions related to the license examination to clarify the components of the examination.

Part III – Renewal (18VAC80-20-90 et seq.):

License Renewal Required (18VAC80-20-90): Revising provisions regarding the term of licensure to provide that licenses expire two (2) years from the effective date. Consolidating renewal provisions from 18VAC80-20-100, 18VAC80-20-110, and 18VAC80-20-120. Adding language to permit the Board to use email to send renewal notices.

Part IV – Reinstatement (18VAC80-20-140 et seq.):

Reinstatement Required (18VAC80-20-140): Revising provisions related to reinstatement of licenses, including consolidating reinstatement provisions from 18VAC80-20-150 and 18VAC8020-160.

Part V – Standards of Practice and Conduct (18VAC80-20-180 et seq.):

Measures to Take When First Contact is Established with any Purchaser or Prospective Purchaser (18VAC80-20-210): Repealing provisions requiring certain disclosures to a purchaser or prospective purchaser when first contact is established.

Purchase Agreement (18VAC80-20-220): Removing vague requirements pertaining to compliance with various federal and state statutes and regulations. Removing requirements pertaining to hearing aid containers. Removing provisions related to nonrefundable fees. Removing a requirement to disclose hearing aid warranty.

Fitting or Sale of Hearing Aids for Children (18VAC80-20-230): Removing a requirement that a hearing aid specialist ascertain whether a child has been examined by an otolaryngologist prior to fitting.

Physician Statement Regarding Adult Client’s Medical Evaluation of Hearing Loss (18VAC80-20-240): Repealing requirements that (i) a regulant recommend an adult client obtain a written statement from a licensed physician that the patient’s hearing loss has been medically evaluated; and (ii) obtain a waiver from the client in the event the client declines such recommendation.

Testing Procedures (18VAC80-20-250): Revising provisions related to testing procedure for hearing aid fitting to clarify that air conduction tests and bone conduction tests must be performed in accordance with American National Standards Institute (ANSI) standards.

Ground for Discipline (18VAC80-20-270): Revising prohibited acts to (i) remove a prohibited act relating to advertising of hearing aids; and (ii) reducing reporting requirements for criminal convictions.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current

requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board for Hearing Aid Specialists and Opticians is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov.

Comments may also be submitted by mail, email or fax to:

Kelley Smith, Executive Director
Board for Hearing Aid Specialists and Opticians
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400

Henrico, Virginia 23233

By E-MAIL to:
HASOPT@dpor.virginia.gov

By FAX to:
(866) 245-9693

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (https://townhall.virginia.gov) and on the Commonwealth Calendar website (https://commonwealthcalendar.virginia.gov/). Both oral and written comments may be submitted at that time.