



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367- 4400
FAX (804) 527- 4475

October 12, 2016

MEMORANDUM

TO: The Honorable Stephen D. Newman
Chair, Senate Committee on Education and Health

The Honorable Delegate Robert D. Orrock, Sr.
Chair, House Committee on Health, Welfare and Institutions

FROM: Leslie L. Knachel, Executive Director *Leslie L. Knachel*
Virginia Board of Audiology and Speech-Language Pathology

RE: **Report on the Need for and Impact of Licensure or Certification of Assistant Speech-Language Pathologists**

The 2016 Session of the General Assembly passed HB252, patroned by Delegate Kory, which modified the *Code of Virginia* relating to practice of assistant speech-language pathologists by specifying that they may perform limited duties that are otherwise restricted to the practice of a speech-language pathologist under the supervision and direction of a licensed speech-language pathologist. The second enactment clause on HB252 directed:

“That the Board of Audiology and Speech-Language Pathology shall review the need for and impact of licensure or certification of assistant speech-language pathologists and report its findings to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2016.”

In accordance, the Board of Audiology and Speech-Language Pathology (“Board”) directed the Chair to appoint an Ad Hoc Committee (“Committee”) to conduct the review and report its findings for a report to the General Assembly. The Committee was comprised of two speech-language pathologists (“SLPs”) who are members of the Board, two SLPs representing the Speech-Language-Hearing Association of Virginia, the SLP

specialist for the Virginia Department of Education, and the lead SLP for a public school division.

The Committee recommended and the Board concurred that:

1. That § 54.1-2605 be amended to use the title of *speech-language pathology assistants* (SLPA); to be consistent with the term used throughout all other states.
2. That the Board continue its review of the practice and regulation of speech-language assistants following a survey of speech-language pathologists licensed in Virginia on the utilization and distribution of assistants; and
3. That the General Assembly take no additional action at this time.

A copy of the study is provided for your information. Please let us know if any additional information or assistance is needed.

Cc: The Honorable Kaye Kory

Report of the Board of Audiology and Speech-Language Pathology

Need for and Impact of Licensure or Certification of Assistant Speech-Language Pathologists

Introduction

The 2016 Session of the General Assembly passed HB252, patroned by Delegate Kory, which modified the *Code of Virginia* relating to practice of assistant speech-language pathologists by specifying that they may perform limited duties that are otherwise restricted to the practice of a speech-language pathologist under the supervision and direction of a licensed speech-language pathologist. The second enactment clause on HB252 directed:

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In accordance, the Board of Audiology and Speech-Language Pathology (“Board”) directed the Chair to appoint an Ad Hoc Committee (“Committee”) to conduct the review and report its findings for a report to the General Assembly. The Committee was comprised of two speech-language pathologists (“SLPs”) who are members of the Board, two SLPs representing the Speech-Language-Hearing Association of Virginia, the SLP specialist for the Virginia Department of Education, and the lead SLP for a public school division. The Committee met on three occasions – May 2, 2016, June 15, 2016 and August 17, 2016. At each of the meetings, the public was invited to offer comment on the subject of the review.

Current Rules for Assistant Speech-Language Pathologists in Virginia

Chapter 661 of the 2014 Acts of the Assembly added § 54.1-2605 to the Code of Virginia, specifying that: *“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.”* To implement the provisions of the Act, the Board began the process to promulgate regulations to prescribe the qualifications for and practice of assistant speech-language pathologists. The Notice of Intended Regulatory Action was submitted for Executive Branch review in September of 2014, and the final regulations became effective on July 27, 2016.

To qualify as an assistant, a person must have a bachelor’s or associate’s degree and documented training by a licensed speech-language pathologist in topics related to the client population to be served; or employment as a speech-language pathologist assistant in a U. S. jurisdiction within the last five years preceding July 27, 2016. A speech-language pathologist supervising an assistant is responsible for determining that the knowledge, skills and clinical experience of the

assistant are sufficient to ensure competency to perform any tasks to which the assistant is assigned. The speech-language pathologist is required to document competency after training and direct observation of the assistant's performance of such tasks, and a record of skills and competencies must be maintained.

The scope of practice for an assistant in Virginia, as set out in regulations, is consistent with the *Responsibilities Within the Scope for Speech-Language Pathology Assistants* published by the American Speech-Language-Hearing Association (ASHA). The duties prescribed by regulation include both the delivery of client services and administrative support for the SLP. The duties must be those planned, designed, and supervised by a licensed speech-language pathologist to include the following:

1. Assist with speech, language and hearing screenings without clinical interpretation of results.
2. Assist during assessment of a client exclusive of administration or interpretation.
3. Perform activities for each session that are routine and do not require professional judgment, in accordance with a plan developed and directed by the speech-language pathologist who retains the professional responsibility for the client.
4. Document a client's performance and report information to the supervising speech-language pathologist.
5. Assist with programming augmentative and alternative communication devices and assist the client in repetitive use of such devices.
6. Sign or initial informal treatment notes and, upon request, co-sign formal documents with the supervising speech-language pathologist.
7. Engage in the following activities:
 - a. Preparing materials;
 - b. Scheduling of appointments and activities;
 - c. Preparing charts, records, graphs and other clerical duties;
 - d. Performing checks and maintenance of equipment; and
 - e. Assisting a client with transitioning to and from therapy sessions.
8. Perform duties not otherwise restricted to the practice of speech-language pathology.

Likewise, the limitations on an assistant's scope of practice in Virginia are consistent with the *Responsibilities Outside the Scope for Speech-Language Pathology Assistants* published by ASHA. A speech-language pathologist assistant is not allowed to do the following:

1. Represent himself as a speech-language pathologist.
2. Perform standardized or non-standardized diagnostic tests or any formal or informal evaluations.
3. Perform procedures that require a professional level of clinical acumen and technical skill.
4. Tabulate or interpret results and observations of feeding and swallowing evaluations or screenings performed by a speech-language pathologist.
5. Participate in formal conferences or meetings without the presence of the supervising speech-language pathologist.
6. Provide interpretative information to the client, the family of the client or others regarding the client's status or service.
7. Write, develop, or modify a client's treatment plan.
8. Assist a client without following the individual treatment plan or access to supervision.

9. Sign any formal documents in lieu of the supervising speech-language pathologist.
10. Select a client for service or discharge a client from service.
11. Make a decision on the need for additional services or make referrals for service.
12. Disclose clinical or confidential information either orally or in writing to anyone other than the supervising speech-language pathologist, unless mandated by law or authorized by the supervising speech-language pathologist.
13. Develop or determine the swallowing or feeding strategies or precautions for a client or provide feeding or swallowing treatment.

Supervision of an assistant is the responsibility of a speech-language pathologist who retains full legal and ethical responsibility for the client. Therefore, a speech-language pathologist cannot be assigned to supervise an assistant without the speech-language pathologist's knowledge and consent by the assistant and the licensee documented prior to assumption of supervisory responsibilities.

A speech-language pathologist is allowed to supervise the equivalent of two full-time assistants, which is the standard recommended by ASHA. The frequency in which the speech-language pathologist personally delivers treatment or services to a client who is receiving some services from an assistant is up to the professional judgment of the speech-language pathologist and has to be determined by the treatment needs of the client, the type of services being provided, and the setting in which the client is being served, but it must occur not less than every 30 days. The speech-language pathologist must provide the level of supervision to the assistant necessary to ensure quality of care. It must include on-site supervision of at least two client sessions for each assistant being supervised every 30 days to directly observe and evaluate the performance of the assistant, as documented in the client record.

Criteria for Regulation and Previous Study by the Board of Health Professions

Directed by §54.1-2409.2 of the *Code of Virginia*, the Board of Health Professions has adopted *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions* to inform interested parties concerning that board's authority to investigate the need for state regulation of health care providers and its approach in conducting such investigations. While this review was conducted by the Board of Audiology and Speech-Language Pathology rather than by the Board of Health Professions, the Committee reviewed the Criteria for evaluating the need for regulation of a health care profession.

Criterion One: Risk for Harm to the Consumer. *The unregulated practice of the health occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of health services, or (d) from any combination of these factors.*

Criterion Two: Specialized Skills and Training. *The practice of the health occupation requires specialized education and training, and the public needs to have benefits by assurance of initial and continuing occupational competence. Included would be the educational requirements for entry and whether those*

programs are accredited. Also included is whether there are national, regional, and/or state examinations available to assess entry-level competency.

Criterion Three: *The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.*

Criterion Four: *The scope of practice is distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties, methods of examination, instrumentation, or therapeutic modalities.*

Criterion Five: *The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioner, and the cost of operation of regulatory boards and agencies.*

Criterion Six: *There are no alternatives to State regulation of the occupation which adequately protect the public.*

In 2000, the Board of Health Professions (“BHP”) was directed by the General Assembly to study the Need to Regulate Speech-Language Pathology Assistants. In its study, BHP conducted a policy literature review that described what speech-language pathologists and their assistants are known to do, the established guidelines for supervision, information about the types and prevalence of communication disorders, and information about the education programs for assistive personnel in the United States.

Current relevant federal and state laws and regulations were examined, and disciplinary information was obtained from states regulating speech-language pathology assistive personnel. Relevant, available malpractice insurance coverage information was obtained as was court case history for malpractice of speech-language pathology assistants.

Findings of the 2000 BHP study were:

- Based upon information obtained, the occupation, referred to as "speech-language pathology assistant," itself, appears to lack standard definition. Although assistants are regulated in a number of other states under the direction of speech-language pathologists, there are no national private credentialing standards (as is routinely the case for groups seeking regulation) to define entry level competencies and no professionally validated job analyses to help define exactly what they do.
- There is insufficient information concerning the number of practitioners and their actual duties in Virginia practice settings (including the schools). Currently, there are no SLPA education programs in Virginia, and although such programs exist in some other states, there are no accreditation standards. The American Speech-Language-Hearing Association is considering development of such standards; however, the Board was informed by the Speech-Language-Hearing Association of Virginia that they are at least two years in the offing.
- Disciplinary information from other states licensing speech-language pathology assistants indicates that problems have been minimal to nonexistent. There are no known malpractice cases or liability insurance claims made as a result of the work of speech-language pathology assistants in Virginia or the nation.

- In their deliberations, the Board members held that they did not have adequate, objective insight into who (and how many) are doing what to whom and at what level of competency in Virginia. Further, they had no knowledge of any specific harm occurring in Virginia. With no empirical basis to render a rational decision, they chose to take no position on the issue of the need to regulate speech-language pathology assistants.

Information from the American Speech-Language-Hearing Association (ASHA)

To inform its review, the Committee studied documents obtained from ASHA including the *Speech-Language Pathology Assistant Scope of Practice*. As noted above, the Committee found that current regulations for assistants in Virginia were consistent with the responsibilities within the scope of practice and those that are considered to be outside the scope of practice for assistants. Additionally, the supervisory role, the guidelines for a ratio of SLP/assistant, and the minimum requirements for the frequency and amount of supervision were consistent with the ASHA document.

The ASHA recommendation for qualifications on an assistant exceed the requirement in Virginia in that it would require an “approved course of academic study, field work under the supervision of an ASHA-certified and/or licensed SLP, and on-the-job training specific to SLPA responsibilities and workplace behaviors.” ASHA specifies that the academic course of study must include an associate’s degree in an SLPA program or a bachelor’s degree in a speech-language pathology or communication disorders program and successful completion of at least 100 hours of supervised field work and demonstration of competency in the skills required of an assistant. The Committee obtained from ASHA a listing of training programs in the U.S., but qualified the listing as “not been reviewed or evaluated in any way” by ASHA. There were no training programs listed in Virginia nor were any listed for neighboring states with the exception of North Carolina that has two associate’s degree programs developed specific to their regulations.

The Committee also reviewed a state-by-state chart of “Support Personnel” both in school settings and in non-school work settings. There appeared to be a wide range of job titles, educational and training requirements, regulatory schemes, supervisory ratios, and continuing education. There were eight (8) states listed as licensing speech-language pathology assistants.

Information from Other States on the Regulation of Assistants

To further inform its review, the Committee looked at laws and regulations from North Carolina, Tennessee, Maryland, Kentucky, Minnesota, Utah, and Oregon, as well as a sunrise review currently being conducted in Vermont. In North Carolina and Tennessee, an assistant is registered to work under the supervision of a licensed SLP; in Maryland, an assistant may be licensed but has a limited scope of practice under supervision. In Kentucky, an assistant may be licensed but only for employment in the school systems. Minnesota and Utah regulate the qualifications and scope of practice for assistants similar to requirements in Virginia. Oregon certifies assistants with a similar scope of practice and supervisory expectations. Vermont has not yet concluded its review.

Regardless of the level of regulation, other states appear to have adopted similar rules for the duties that may be assigned to an assistant, the limitations on practice, and requirements for supervision.

Public comment

The Committee convened a public hearing on August 17, 2016 to receive comment on the “need for and impact of licensure or certification of assistant speech-language pathologists.” There were no comments given at the hearing, but one person provided written comment which was discussed by the Committee:

Lora Nalberczinski wrote in support of licensure or certification and provided information about an apprenticeship program she has introduced at The Speech & Language Center in Harrisonburg.

Following the Committee’s recommendation to the full Board for adoption, the draft report was posted under General Notices on the Virginia Regulatory Town Hall and sent to the interested parties on the Public Participation Guidelines mailing list for the Board with a request for comment by August 29, 2016.

There were no public comments on the draft report adopted by the Ad Hoc Committee.

Options Considered by the Committee

Based on the information and documentation presented and discussed, the Committee considered the following options and questions:

- 1) Licensure of SLPA.
What is the rationale for licensure?
What educational qualifications should be required?
What practical training should be required?
What should be the requirements for supervisors and for supervision?
What should be the scope of practice?
What should we anticipate to be the impact of licensure?
- 2) Certification (title protection) of SLPA.
Same questions as for licensure
- 3) Registration of SLPA.
Same questions as for licensure
- 4) No additional regulation at this time.
Factors to be considered for this option would be: Board regulations only in effect since July 27, 2016; universal licensure for school SLPs only recently implemented; on-going work by ASHA on minimal competency requirements; and BHP criteria for regulation.

Recommendations and Rationale:

Based on its review and the criteria for regulation, the Committee and the Board unanimously agreed that licensure of assistant SLPs was not appropriate. There was support for certification or registration in order to have some accountability for assistants to the Board; however it was acknowledged that regulation of assistants would not alleviate the responsibility and accountability of the SLPs who supervise their practice. Therefore, the Committee and the Board recommend the following:

1. That § 54.1-2605 be amended to use the title of *speech-language pathology assistants* (SLPA); to be consistent with the term used throughout ASHA documents and in all other states.
2. That the Board continue its review of the practice and regulation of speech-language assistants following a survey of speech-language pathologists licensed in Virginia on the utilization and distribution of assistants; and
3. That the General Assembly take no additional action at this time.

The rationale for the recommendations is as follows:

1. There are no SLPA (assistant) educational/training programs in Virginia at vocational schools or community colleges. Persons with a baccalaureate degree may either be employed as assistant speech-language pathologists or may pursue a master's degree to qualify for licensure. Licensure or certification of assistant would necessitate graduation from an approved or accredited educational program, but there is no program at the associate level. To limit assistant licensure or certification to graduates of approved or accredited programs would severely curtail the supply of persons currently qualified for employment as assistants and would have a devastating effect on speech-language services, especially in public schools.
2. There are no existing measures of competency such as a national licensing or certifying examination. Every professional regulated by DHP, whether licensed, certified, or registered, must pass a competency examination. While there is such an examination in speech-language pathology, it is designed for a master's-level graduate in preparation for licensure as an SLP. Development of a Virginia examination that is psychometrical sound and reliable at the assistant level would be an extremely costly endeavor and, since all of the health regulatory boards are self-funded, would put the cost for an assistant license out of reach.
3. The Board's regulations for qualifications, the scope of practice, and supervision of assistants have just become final and effective on July 27, 2016. Speech-language pathologists who supervise assistants and their employers, primarily public school divisions, have not had sufficient opportunity to implement the new rules and to understand their implications. Additionally, there has been an insufficient amount of experience with those regulations to determine whether they are adequate to protect the

public. The Board believes it is premature to revise rules for assistants or to add another level of regulation at this time.

4. Prior to 2015, speech-language pathologists practicing in public schools could hold a license issued by the Board of Education with an endorsement in speech-language pathology. Chapter 781 of the 2014 General Assembly mandated that, effective July 1, 2015, an individual must hold a valid school speech-language pathologist license issued by the Virginia Board of Audiology and Speech-Language Pathology in order to practice speech-language pathology in Virginia public elementary and secondary schools.

The legislation further provided that that any individual who held an active, renewable license issued by the Board of Education with a valid endorsement in speech-language pathology on June 30, 2014, shall be deemed qualified to obtain a school speech-language pathologist license from the Virginia Board of Audiology and Speech-Language Pathology until July 1, 2016, or the date of expiration of such person's license issued by the Virginia Board of Education, whichever is later. Any impact of a requirement for a school speech-language pathology license issued by the Board of Audiology and Speech-Language Pathology is not fully known until the expiration of the "grandfathering" provision. With a universal license, SLPs in public schools are now accountable to the Board for their practice and for students who receive services from assistants who they supervise.

5. Members of the Committee report that ASHA is reviewing the establishment of credentialing assistants by some means of competency evaluation, approval of educational/training programs, and/or creation of an examination for assistants. Such a credential and/or approval of programs could provide a rational basis for issuance of a license, certification, or registration by the Virginia Board.
6. The Board does not have adequate information about the utilization of assistants or para-professionals in the Commonwealth. To gather data, a survey will be sent to licensed speech-language pathologists in the Fall of 2016. The survey will focus on the geographic distribution, practice setting, use of assistants in the speech-language pathology practice setting, number of assistants (full-time or part-time), supervisory responsibility, and general duties assigned to an assistant.
7. The Board did not find that licensure or certification of assistant speech-language pathologists met any of the six criteria listed in the Board of Health Professions' *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions*. For this and other reasons as stated above, the Board does not recommend licensure, certification, or registration of assistant speech-language pathologists at this time.

Adopted by the Board of Speech-Language Pathology: September 8, 2016