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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 80-30
VAC Chapter title(s)	Opticians Regulations
Date this document prepared	November 1, 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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"DPOR" means the Department of Professional and Occupational Regulation.

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 or 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 promulgating agency is the Board for Hearing Aid Specialists and Opticians ("the Board").

Code of Virginia § 54.1-201(A)(1) gives the Board the power and duty 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.”

Code of Virginia § 54.1-201(A)(5) gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “[t]o 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.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No alternatives were considered as part of this periodic review. The regulation enables the Board to fulfill the statutory requirements established in Chapters 2 and 15 of Title 54.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost-effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
CommentID: 217812 Judith Canty	<p>The commenter is a territory manager in Virginia for an optical laboratory.</p> <p>The current Optician Regulations should remain in effect with the following changes:</p> <p>§ 54.1-1507 – businesses are holding their employees out to the general public as being qualified by virtue of the use of a title restricted to those who hold a license issued by the Commonwealth of Virginia. Citizens of the Commonwealth are therefore unable to determine if they are being cared for by a properly trained and licensed individual.</p>	<p>Thank you for your comments regarding the periodic review of the optician regulations.</p> <p>Practicing or offering to practice as an optician in Virginia without a license is a crime in the Commonwealth. The Board does not allow criminal unlicensed activity and can assist local law enforcement in investigating this type of criminal conduct. If you know of instances of unlicensed activity, we encourage a complaint be filed with the Department of Professional and Occupational Regulations, which administers investigations for the Board. You can find instructions on how to file a complaint against an unlicensed individual practicing or offering to practice as an optician at: https://www.dpor.virginia.gov/Report-Licensee/. Currently all investigations are in response to written complaints and the Board continues to look at way to improve the process.</p>

	<p>The Commonwealth has been unable or unwilling to address the use of this protected title and this lack of action raises the cost of prescription eyewear due to errors made by unlicensed individuals.</p> <p>There is a marked difference in the quality and service citizens have a right to expect when there is an absence of licensed and regulated opticians. Remakes are the leading cause of higher prices to the public. Remakes are orders placed to correct an initial order through improper communication or through lack of professional knowledge. The costs of remakes are reflected in higher costs to lens and frame manufacturers, and wholesale laboratories. Ultimately, consumers bear these costs in the form of higher prices.</p> <p>DPOR must institute an effective mechanism for addressing the use of the protected title of Optician and institute a requirement for continuing education for all regulants.</p>	<p>The purpose of the Board is to ensure the public is safe when receiving optician services through ensuring practitioners are minimally competent. There has not been a continuing education requirement and there is no evidence that practitioners are losing or diminishing in competency due to a lack of continuing education. The Board will take your comments under advisement but will have to demonstrate with evidence that current practitioners are unsafe, and that continuing education is the least restrictive means to reduce the risk of harm.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set forth in the Office of Regulatory Management procedures. The regulation contains the requirements for obtaining a license, renewal and reinstatement of licenses, and standards of professional conduct, to ensure competence and integrity of all licensees, and administer the regulatory program in accordance with Chapters 2 and 15 of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

On August 16, 2023, the Board voted to retain the regulation “as is” without any change, as explained further in the “Small Business Impact” section. In accordance with the Governor’s Executive Directive Number One (2022), the Board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Code of Virginia §§ 54.1-201(A)(1) and 54.1-201(A)(5) mandate the Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive an optician license. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Based on the comments received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. The Optician Regulations are clearly written, easily understandable, and do not overlap, duplicate or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2019. Currently, the Board is conducting a comprehensive review of the regulation.
