



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: June 6, 2017

TO: The Honorable Members of the Delaware General Assembly

FROM: Dafne A. Carnright, Chairperson
GACEC

RE: **House Bill No. 171 (Speech/Language and Audiology Practitioner Licensing)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 171 which revises the State licensing law covering the practice of speech/language pathology, audiology and hearing aid dispensing. Council would like to share the following observations.

First, the bill (lines 9-12 and 71-73) eliminates the current requirement for regulating audiology aides and speech pathology aides. The synopsis provides the following rationale for striking the requirement:

This Bill also strikes references to audiology and speech pathology aides because the Board does not license or regulate these professions.

The Board's admission that it does not regulate audiology and speech pathology aides is disturbing. State law has contemplated such regulation for at least 44 years. See Senate Bill No. 195 from the 127th General Assembly approved in 1973. All subsequent revisions to the law have included an expectation of regulating audiology and speech pathology aides. See, e.g., Senate Bill No. 282 from 133rd General Assembly approved in 1986. Current law explicitly requires the Board to "(e)valuate the credentials of all persons applying ...to act as audiology aides or speech pathology aides, in order to determine whether such persons meet the qualifications set forth in this chapter" (lines 9-12, 71-73, and 106-108). That requirement has been in the Board's enabling law for at least 17 years. See Senate Bill No. 214 from 140th General Assembly approved in 2000.

Delaware law includes board licensing or regulation of "aides" in many comparable contexts, including the following:

- occupational therapy assistant [24 Del.C. §§2002(5) and 2006(a)(6)]

- physical therapy assistant [24 Del.C. §§2602(9) and 2605(a)]
- dental assistant and auxiliary personnel [24 Del.C. §§1101(3)(4) and 1106(a)(1)(2)]
- physician assistant [24 Del.C. §§1770A (2) and 1773].

House Bill No. 171 is highly deferential to the American Speech/Language and Hearing Association (ASHA) (lines 142-153 and 247-254). Indeed, the bill strikes all educational and clinical practice requirements for speech/language pathologists in favor of simply licensing anyone with ASHA certification (lines 142-151). ASHA guidance on regulating speech/language aides and audiology aides is instructive. ASHA adopted a model licensing bill in 2014 which explicitly requires (§1.05) not merely the regulation, but the actual licensing of audiology and speech/language aides:

(4) Any person not eligible for licensure as an audiologist or not eligible for authorization to practice as an intern, who assists in the practice of audiology under the supervision of a licensed audiologist must be licensed as an audiology assistant. No person shall practice as an audiology assistant or represent himself/herself as an audiology assistant in this state, unless such person is licensed in accordance with this Act.

(5) Any person not eligible for licensure as a speech-language pathologist or not eligible for authorization to practice as an intern, who assists in the practice of speech-language pathology under the supervision of a licensed speech-language pathologist must be licensed as a speech-language pathology assistant. No person shall practice as a speech-language pathology assistant or represent himself/herself as a speech-language pathology assistant in this state, unless such person is licensed in accordance with this Act.

ASHA also authorizes such aides/assistants to become associate members of ASHA. See ASHA overview, “Speech-Language Pathology Assistants”.

According to ASHA, thirty-three (33) states either license or register the above support personnel operating in non-school settings. See attached table, “Support Personnel Excluding School Settings”. Nineteen (19) states require them to have a Bachelor’s Degree or equivalent and eighteen (18) require them to have at least an Associate’s Degree or equivalent. Id. In school settings some states have degree or certification requirements. See attached table, “Support Personnel Requirements in School Settings”. For example, Maryland has very robust standards which require at least a college degree in a speech-language pathology assistant program from an accredited institution and an aggregate of 100 hours of clinical observation and clinical assisting hours. See ASHA summary of Maryland requirements.

If the current Delaware law requiring the regulation of audiology and speech-language pathology aides is repealed, the result is a huge void in standards. Unlike some states, the Delaware Department of Education does not have certification standards for such aides. Likewise, such aides do not meet the standards for a para-educator permit. See 14 DE Admin Code 1517.

Licensing requirements typically provide the public with several protections, including the following:

- supervision standards

- limits on the number of assistants supervised by one audiologist/speech-language pathologist
- disclosure to persons receiving services that the practitioner is an “assistant”
- background checks
- degree and clinical practicum requirements
- application of practice standards.

See, e.g., model ASHA law, §§1.04 and 4.02.

Historically, there has been a “massive shortage of speech-language pathologists” in Delaware. See March 16, 2016 UDaily article. Delaware established a new degree program to turn out local therapists and address the “dead zone of services for Delawareans”. Id. Lack of credentialing of speech-language therapy aides may exacerbate the shortage of speech-language services in Delaware since qualified aides will have an incentive to practice in states that recognize their credentials.

Second, House Bill No. 171 is internally inconsistent at lines 101-105 and 150-151. The former contemplates the Board designating the national tests “to be taken by all persons applying for licensure...”. The latter section strikes the national testing requirement for speech-language pathologists.

Third, House Bill No. 171 is internally inconsistent at lines 101-105 and lines 240-268. The former requires applicants based on reciprocity to “have achieved a passing score on all parts of the designated national examination in the applicant’s specialty”. The latter authorizes issuance of a license based on reciprocity with no testing.

Fourth, lines 180-182 categorically preclude issuance of a license for any applicant who “excessively used or abused drugs” in the past. This includes excessive use of legal substances such as alcoholic beverages (lines 17-18 and 311-312) in the distant past. There is no time limit so the use could have been 50 years ago. Indeed, lines 311-312 strikes the current requirement that the drug use be current or within the past two years in favor, in effect, of a “forever disqualification” standard. There is no authorization for a waiver akin to that applicable to criminal convictions (lines 183-199). This manifestly violates federal law. See SAMHSA overview of legal rights of individuals with past drug/alcohol problems, pp. 4, 5, and 11-12. See also Title II ADA regulation, 28 C.F.R. §35.131, which recites in pertinent part as follows:

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who -

(I) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;...

Drug or alcohol use in the distant past may have no relationship to an individual’s current ability to provide audiology and speech-language pathology services.

Fifth, there is some tension between lines 145-146 and 262-264. The former section eliminates all degree requirements for applicants for a speech-language pathologist license. The latter retains degree requirements for anyone applying for a license based on reciprocity with a degree from a foreign school even if the applicant is ASHA-certified (lines 142-144).

Sixth, the current law literally authorizes disciplinary action (including monetary penalties

described at line 343) against a licensee based on physical disability. Discipline is authorized by anyone who meets the following standard:

(10) Has a physical condition such that the performance of speech/language pathology, audiology or dispensing of hearing aids is or may be injurious or prejudicial to the public” (lines 329-330).

The justification for discipline can be based on vague and speculative grounds, i.e., performance “may be prejudicial to the public”. Indeed, discipline is authorized even if the licensee is on inactive status (line 291). This overbroad standard seemingly violates the Americans with Disabilities Act (ADA). See 28 C.F.R. §35.130.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.

CC: Beth Mineo, Center for Disabilities Studies
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