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VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION

Sunrise Application Review

Speech-Language Pathology Assistants
Preliminary Assessment on Request for Licensure
Summary of Testimony and Evidence

Background

The Vermont Speech-Language Hearing Association submitted an Application for Preliminary Sunrise Review Assessment (hereinafter referred to as the “Application”) asking that the State of Vermont regulate through licensure speech-language pathology assistants (“SLPAs”) in the state. Vermont currently licenses speech-language pathologists (“SLPs”) pursuant to Chapter 87 of Title 26. Pursuant to Chapter 87, licensed SLPs study, diagnose and treat disorders of speech, language and swallowing. The Application requests that SLPs be fully responsible for, and supervise, SLPAs in all tasks delegated to ensure the quality of care provided.

State Policy on Regulation of Professions

Chapter 57 of Title 26 of the Vermont Statutes states in pertinent part:

It is the policy of the state of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The legislature believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the state shall be the least restrictive form of regulation necessary to protect the public interest.

26 V.S.A. § 3101.

Pursuant to 26 V.S.A. § 3105(a), a profession or occupation shall be regulated by the state only when:



- (1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;
- (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- (3) the public cannot be effectively protected by other means.

The Legislature delegates responsibility for a preliminary assessment of requests for regulation to the Office of Professional Regulation (“OPR”). “Prior to review under this chapter and consideration by the Legislature of any bill to regulate a profession or occupation, the office of professional regulation shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The office shall report its preliminary assessment to the appropriate house or senate committee on government operations.” 26 V.S.A. § 3105(d). Pursuant to that mandate, OPR has reviewed the Application.

Regulation Sought

The Application includes a proposal to revise Chapter 87 of Title 26 for the licensing of SLPAs who, following academic coursework, fieldwork, and on-the-job training, may act as support personnel and perform tasks prescribed, directed, and supervised by SLPs. SLPs are currently licensed in Vermont, along with audiologists, pursuant to Chapter 87. The proposed statute would bar those not licensed from practicing or attempting to practice as an SLPA in Vermont.

To be eligible for licensure under the proposed amended version of Chapter 87 an SLPA applicant must provide evidence that he/she has completed:

- (1) an associate degree or a bachelor degree in a speech-language pathologist assistant or communications disorders program; or
- (2) an associate’s degree or bachelor degree in other fields with an additional 21 credits in a speech-language pathology assistant program; and
- (3) a minimum of 100 hours of fieldwork experience supervised by a licensed speech-language pathologist.

It is not clear to OPR whether the bill’s intent would be to require licensure by examination.

The proposed statute leaves to the proposed state regulatory agency the task of designating by rule the specific criteria for renewals including, if any, continuing education.

OPR Process and Outreach

In response to the Application, OPR posted a copy of the Application on its web site along with a link permitting easy comment. OPR next sent a letter to all licensed SLPs summarizing the Application and directing them specifically to OPR’s web site to review the Application and provide comment on the proposal. Although OPR has *disciplinary* jurisdiction

over SLPs and audiologists, all *licensing* for SLPs and audiologists currently takes place at the Agency of Education. Accordingly, OPR provided notice to the Agency of Education of the Application and sought its input.

The University of Vermont provides specific educational programs for individuals seeking to become SLPAs through the University's Communication Sciences and Disorders Department. OPR sought the University's input. The University, through the Chair of the Department, responded and provided comment to the request to license SLPAs.

Prior to making and filing this assessment, OPR sent notices and requests for comment to all members of the Vermont Speech-Language Hearing Association.

Finally, OPR noticed and held a public hearing on November 1, 2013 to receive additional comments on the Application.

Overview of the Profession

Presently, SLPs and audiologists are primarily regulated by the Vermont Agency of Education, due to the fact that some SLPs and, to a much lesser extent, audiologists provide certain diagnosis and treatment services to supervisory unions, public school districts, and independent schools approved for special education purposes. 26 V.S.A. §4451(14).

According to American Speech-Language-Hearing Association (ASHA), 53.9% of SLPs nationally are employed in educational settings at the primary and secondary levels. *American Speech-Language-Hearing Association. (2012). Highlights and Trends: Member and Affiliate Counts, Year-End 2012.* According to the University of Vermont, only 3 out of the 15 graduates of the University's 2012 master's program in speech-language pathology are now employed in Vermont school settings. The remainder are currently employed in health care settings. Among 2013 graduates, only 6 out of 13 are employed in school settings, with the remainder employed in health care settings.

Although OPR currently has jurisdiction over SLPs in all investigations and adjudications related to alleged misconduct, all licensing of SLPs is provided through the Agency of Education pursuant to Chapter 87 of Title 26.

ASHA is the one nationally recognized private organization that provides certification for SLPs. This organization provides education, a code of ethics, practice standards, a credentialing examination, and certification for their SLP members. Support personnel have been used and regulated by many states since the 1970s. Unlicensed SLP support personnel are referred to by many names such as assistants, paraeducators, paraprofessionals and aides. ASHA has had guidelines for the use of support personnel since 1969. Attention to the use of support personnel has increased as professionals seek mechanisms for expanding services and containing costs. ASHA, however, does not currently certify or register SLPAs and does not approve SLPA technical training programs. ASHA does have a recommended curriculum for SLPA training programs and a checklist for supervisors of SLPAs. In addition, in 2013, ASHA published a new SLPA Scope of Practice.

In order to understand the role of an SLPA, it is necessary to first review the scope of practice of an SLP. SLPs study, diagnose and treat disorders of speech, language and swallowing. These disorders can be congenital, or the result of traumatic brain injury, stroke or

other conditions. SLPs are health care providers who provide professional services in public and private schools, hospitals, rehabilitation centers, short-term and long-term nursing care facilities and in colleges and universities. Treatment will vary depending on the nature and severity of the problem, the age of the individual, and the individual's awareness of the problem. SLPs provide the following professional services:

- (1) assist individuals with articulation disorders to learn how to say speech sounds correctly;
- (2) assist individuals with voice disorders to develop proper control of the vocal and respiratory systems for correct voice production;
- (3) assist individuals who stutter to increase their fluency; help children with language disorders to improve language comprehension and production (e.g., grammar, vocabulary, and conversation, and story-telling skills);
- (4) assist individuals with aphasia to improve comprehension of speech and reading and production of spoken and written language;
- (5) assist individuals with severe communication disorders with the use of augmentative and alternative communication systems, including speech-generating devices; and
- (6) assist individuals with speech and language disorders and their communication partners understand the disorders to achieve more effective communication in educational, social, and vocational settings.

American Speech-Language-Hearing Association. (2013). Speech-language pathologist scope of practice.

In addition to working with children and adults with speech and language disorders, SLPs also assess and treat swallowing disorders, cognitive-communication disorders, auditory processing disorders, and accent modification for individuals without communication disorders.

According to ASHA standards of practice, the supervising SLP retains full legal and ethical responsibility for the students, patients, and clients he or she serves but may delegate specific tasks to the SLPA. The SLPA may execute specific components of a speech and language program as specified in treatment plans developed by the SLP. Goals and objectives listed on the treatment plan and implemented by the SLPA are only those within their scope of responsibilities and are tasks the SLP has determined the SLPA has the training and skill to perform. The SLP must provide at least the minimum specified level of supervision to ensure quality of care to all persons served. The amount of supervision may vary and must depend on the complexity of the case and the experience of the assistant. Under no circumstances should use of the ASHA Code of Ethics or the quality of services provided be diluted or circumvented by the use of an SLPA. An SLPA should be used only when appropriate.

Provided that the training, supervision, and planning are appropriate, tasks in the following areas of focus may be delegated to an SLPA under ASHA's Scope of Practice:

a. Service Delivery

1. Assist the SLP with speech, language, and hearing screenings without clinical interpretation;

2. Assist the SLP during assessment of students, patients, and clients exclusive of administration and/or interpretation;
3. Assist the SLP with bilingual translation during screening and assessment activities exclusive of interpretation;
4. Follow documented treatment plans or protocols developed by the supervising SLP;
5. Provide guidance and treatment via telepractice to students, patients, and clients who are selected by the supervising SLP as appropriate for this service delivery model;
6. Document student, patient, and client performance (e.g., tallying data for the SLP to use; preparing charts, records, and graphs) and report this information to the supervising SLP;
7. Program and provide instruction in the use of augmentative and alternative communication devices;
8. Demonstrate or share information with patients, families, and staff regarding feeding strategies developed and directed by the SLP;
9. Serve as interpreter for patients/clients/students and families who do not speak English; and
10. Provide services under SLP supervision in another language for individuals who do not speak English and English-language learners.

b. Administrative Support

1. Assist with clerical duties, such as preparing materials and scheduling activities, as directed by the SLP;
2. Perform checks and maintenance of equipment; and
3. Assist with departmental operations (scheduling, recordkeeping, safety/maintenance of supplies and equipment).

c. Prevention and Advocacy

1. Present primary prevention information to individuals and groups known to be at risk for communication disorders and other appropriate groups;
2. Advocate for individuals and families through community awareness, health literacy, education, and training programs to promote and facilitate access to full participation in communication, including the elimination of societal, cultural, and linguistic barriers;
3. Provide information to emergency response agencies for individuals who have communication and/or swallowing disorders;
4. Advocate at the local, state, and national levels for improved public policies affecting access to services and research funding;

5. Support the supervising SLP in research projects, in-service training, public relations programs, and marketing programs; and
6. Participate actively in professional organizations.

American Speech-Language-Hearing Association. (2013). Speech-language pathology assistant scope of practice.

Analysis

The first sunrise criterion asks:

whether it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

In the case of SLPAs, the evidence of public harm is in the form of expressed concerns and frustrations about the dearth of SLPs in Vermont schools and the resulting delegation of various components of speech and language treatment plans developed by SLPs to a wide variety of unlicensed educational support personnel.

For instance, federal and state special education laws and regulations require the development and implementation of Individual Education Programs (“IEPs”), curriculum, and language/vocabulary development for special needs students. IEPs often contain speech and language treatment plans developed by SLPs. Unfortunately, the lack of available SLPs in Vermont schools oftentimes requires that IEPs be executed by unlicensed educational support personnel, such as paraeducators, paraprofessionals and aides who have not completed appropriate speech-language pathology education, fieldwork, or on-the-job training. The harm is recognizable and not remote.

The second sunrise criterion asks:

whether the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability;

A licensing program would limit speech-language support personnel to those who have demonstrated competency established in the licensing standards. Patients then utilizing the services of an SLPA would be assured of minimum qualifications before receiving those services.

The third sunrise criterion asks:

whether the public can be effectively protected by other means.

The evidence of actual harm presented to OPR does not include the type of harm that can be addressed through small claims or civil court actions to be made whole. And, of course, most licensing programs do not serve to compensate the public for damages. A licensing program may establish a statute, regulations and professional standards. A licensing program may also take disciplinary action against a licensee for violating a statute, regulation or perhaps a

professional standard. Although there are exceptions to this regulatory standard, the consumer, to recover economic damages, must generally seek a judgment in a court of law.

In the case of SLPAs, because the public harm arises from the absence of required qualifications and the lack of standards and uniformity for the support they provide to a SLP, only a licensing program that establishes professional standards will prevent the harm.

Form of Regulation

The sunrise criteria require the least amount of regulation necessary to meet the public protection need. This minimal regulation could be accomplished through registration, certification, or licensure. The sunrise statute defines each of these at 26 V.S.A. § 3101a as follows:

"Registration" means a process which requires that, prior to rendering services, all practitioners formally notify a regulatory entity of their intent to engage in the profession or occupation. Notification may include the name and address of the practitioner, the location of the activity to be performed, and a description of the service to be provided.

"Certification" means a voluntary process by which a statutory regulatory entity grants to an individual, who has met certain prerequisite qualifications, the right to assume or to use the title of the profession or occupation, or the right to assume or use the term "certified" in conjunction with the title. Use of the title or the term "certified," as the case may be, by a person who is not certified is unlawful.

"Licensing" and "licensure" mean a process by which a statutory regulatory entity grants to an individual, who has met certain prerequisite qualifications, the right to perform prescribed professional and occupational tasks and to use the title of the profession or occupation. Practice without a license is unlawful.

Due to the feedback given to OPR in its public hearing and public comment period, it is OPR's recommendation that SLPAs be regulated through licensure. Accordingly, only licensed SLPAs would be allowed to practice; all others would be barred by statute. Licensure is appropriate to eliminate substandard or unqualified support personnel from executing specific components of a speech and language program as specified in treatment plans developed by the SLP. With licensure, a period of "grandfathering" would be appropriate for existing support personnel who would not meet the licensing criteria to give them a fair opportunity to become qualified.

Conclusions

Following the criteria of 26 V.S.A. § 3105, we conclude:

(1) The evidence demonstrates that the unregulated practice of SLP support personnel harms welfare of the public. The potential for the harm is not remote and speculative.

(2) There has been a showing that the public requires a State approved assurance of initial and continuing professional ability.

(3) The best regulator of this profession is not the marketplace.

The statutory criteria for regulation of SLPAs has been met.

Recommendation

Although OPR currently has jurisdiction over SLPs in all matters related to investigations and discipline or alleged misconduct, all licensing for SLPs and audiologists currently takes place at the Agency of Education. OPR is recommending that OPR have *primary* regulatory jurisdiction *in both licensing and disciplinary matters* related to SLPs, and SLPAs if they are regulated in the future.

The current harm to the public is from the lack of available SLPs in schools and the lack of supervision of paraeducators in schools by SLPs, discussed supra. Licensing SLPAs would be a mechanism for expanding SLP services in schools. The existence of licensed SLPAs would allow SLPs to appropriately delegate specific components of a speech and language program as specified in treatment plans developed by the SLP. Licensing standards would ensure that the treatment delegated to the SLPA would be within the appropriate scope of the SLPA's education, training and experience. Regulation would also ensure that the SLP provide at least the minimum level of supervision necessary to protect the public.

SLPs are primarily health care providers similar to other professionals already regulated by OPR, especially those medical treatment professionals, such as nurses and psychologists, some of whom provide treatment services within schools. OPR regulates those professions in all aspects, except that the Agency of Education provides a special endorsement for those that choose to work in schools.

Nearly half of all SLPs work outside of an educational setting. It is unnecessary to have the Agency of Education regulate professionals that have no connection to education. For instance, the Agency of Education requires fingerprinting and criminal background checks for all applicants for the SLP and Audiologist license. The stated rationale is to help prevent the victimization of children by caregivers. *See Agency of Education, SLP License Application.* If this is the rationale, Vermont's regulation of SLPs would be more narrowly tailored to achieve its goal if the Agency of Education simply acted as the gatekeeper for those SLPs that choose to provide services in schools, as opposed to a health care setting.

Under the sunrise criteria, harm to the public must be real and recognizable, and preventable by regulation. The proponents of regulation have demonstrated harm or a need to protect the public if the profession remains unregulated. They have demonstrated that the public will benefit from regulation. Other legal protections and market forces are not sufficient to protect the public. Therefore, licensure is appropriate. The Vermont Speech-Language Hearing Association, ASHA, the University of Vermont, and the Stern Center for Language and Learning, all support OPR's recommendation that OPR have primary regulatory jurisdiction in both licensing and disciplinary matters related to SLPs, and SLPAs if they are licensed in the future.

The Office of Professional Regulation recommends that SLPAs be subject to professional regulation in the State of Vermont. OPR is further recommending that OPR have *primary* regulatory jurisdiction in both *licensing and disciplinary* matters related to SLPs, and SLPAs if they are regulated in the future.

Respectfully submitted:

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January 27, 2014