

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In the Findings of Need Form for each Rule, please complete box 2 and provide the Rule name, in addition to the citation.

Please provide additional information specific to each rule in Box 7 to assist in showing the need for shortened notice requirements. I'm particularly concerned with Rules .1101 through .1105

Please format all rules in accordance with 26 NCAC 02C .0405

Please complete the History Note for all Rules and include the effective dates.

Generally, please write Rules in active voice and say who shall do what.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** State Board of Examiners for Speech and Language Pathologists and Audiologists

2. **Rule citation & name:** 21 NCAC 64 .0108

3. **Action:** ☒ Adoption ☐ Amendment ☐ Repeal

4. **Was this an Emergency Rule:** ☒ Yes ☐ No **Effective date:** April 24, 2020

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** April 16, 2020
- b. **Proposed Temporary Rule published on the OAH website:** April 22, 2020
- c. **Public Hearing date:** May 29, 2020
- d. **Comment Period:** April 23, 2020 through May 29, 2020
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** April 16, 2020
- f. **Adoption by agency on:** May 29, 2020
- g. **Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:**
- h. **Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- ☒ **A serious and unforeseen threat to the public health, safety or welfare.**
- ☐ **The effective date of a recent act of the General Assembly or of the U.S. Congress.**
Cite:
Effective date:
- ☐ **A recent change in federal or state budgetary policy.**
Effective date of change:
- ☐ **A recent federal regulation.**
Cite:
Effective date:
- ☐ **A recent court order.**
Cite order:
- ☐ **State Medical Facilities Plan.**
- ☐ **Other:**

Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Board's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793

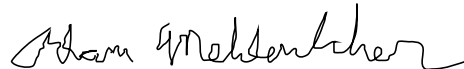
E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ **Date returned to agency:**

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .0108

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, staff recommends that the following technical changes be made:

Please note that overall, I do not have concerns for when one of your licensees requests the waiver, but I am quite uncomfortable with this Rule as written as it pertains to the Board waiving a rule upon its own initiative. I do not think this is the intent, but I read this Rule as essentially allowing an agency to circumvent the APA, resulting in a repeal of a Rule without engaging in rulemaking.

G.S. 150B-19 allows an agency to “waive or modify a requirement set in a rule” only if a rule “establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.” As written, the factors provided in Items (1) through (7) of this Rule appear to apply when the Board receives a request from an outside party and does not address how the Board will determine whether to waive a rule “on its own initiative.” Please consider breaking “The Board may also waive any rule in this Chapter that is not statutorily required upon its own initiative” into a separate Paragraph (b) and provide some parameters as to when this will apply and how the Board will determine whether it is appropriate.

Not all of the factors provided appear to pertain to the Board. Was the intent for the Board to use the same factors as your licensees? Please review and revise as necessary.

If you intend for “notice and opposition” to be a factor that the Board will use when waiving a rule on its own initiative, how will you provide this notice?

How long will the waiver last? Because this language of this Rule as currently written is so broad and isn't really tied to anything, such as a State of Emergency declared by the Governor or the pandemic, I read this as allowing the Board to change their rules without notice under any circumstances whatsoever. To address this issue, and to tie your Rule back to the Temporary Findings of Need Form, please provide some additional information on the duration of the waiver.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

A suggestion would be something like the following:

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, business or training establishment, trainee, or continuing education course provider submits a written request. ~~The Board may also waive any rule in this Chapter that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a declared state of emergency by the governor based on the factors set forth in Paragraph (a)(1), (2), (3), (5), and (6) of this Rule. If the Board determines to waive a rule, it shall provide notice by posting a link on their website and sending out notice to their interested persons mailing list.

(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall last...

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 64 .0108 is adopted under temporary procedures as follows:

21 NCAC 64 .0108 WAIVER

The Board may waive any rule in this Chapter that is not statutorily required if a licensee submits a written request.

The Board may also waive any rule in 21 NCAC 64 that is not statutorily required upon its own initiative. Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

History Note: Authority G.S. 90-304; 150B-19(6)



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** State Board of Examiners for Speech and Language Pathologists and Audiologists

2. **Rule citation & name:** 21 NCAC 64 .0219

3. **Action:** ☐ Adoption ☒ Amendment ☐ Repeal

4. **Was this an Emergency Rule:** ☒ Yes ☐ No **Effective date:** March 27, 2020

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** March 19, 2020
- b. **Proposed Temporary Rule published on the OAH website:** March 23, 2020
- c. **Public Hearing date:** April 10, 2020
- d. **Comment Period:** March 26, 2020 through April 17, 2020
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** March 18, 2020
- f. **Adoption by agency on:** May 29, 2020
- g. **Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:**
- h. **Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- ☒ **A serious and unforeseen threat to the public health, safety or welfare.**
- ☐ **The effective date of a recent act of the General Assembly or of the U.S. Congress.**
Cite:
Effective date:
- ☐ **A recent change in federal or state budgetary policy.**
Effective date of change:
- ☐ **A recent federal regulation.**
Cite:
Effective date:
- ☐ **A recent court order.**
Cite order:
- ☐ **State Medical Facilities Plan.**
- ☐ **Other:**

Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793

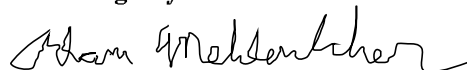
E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .0219

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, staff recommends that the following technical changes be made:

I'm a bit confused by the intent of this Rule. Based upon your rules, it is my understanding that assistants can only engage in those patient services set forth in .1104 (and .1004. Please see my notes on these competing rules.) I read the definition of "telepractice in (b)(4) to include those services. (f) also speaks to "staff" participating in telepractice. So, I'm not sure what the aim of this rule is. Is the intent that assistants can do anything? I'm assuming not. Please review and revise for clarity.

In (a), please check the cross-reference to .1003 in light of your newly adopted .1103. If .1003 is correct, please add a comma after (1) and (2).

In (c), what is "a manner sufficient to ensure patient confidentiality"?

In (d), what is meant by "Telepractice is the responsibility of the licensee and shall not be delegated"? How does this go with (a)? Please review and revise for clarity.

What is the intent of (e)? Is this intended to get to licensing in other states? Is the intent here that if a Audiologists has a patient in Virginia, but is located in North Carolina, then he or she has to be licensed in both states? If so, could you combine (e) with (h) for clarity?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

21 NCAC 64 .0219 is amended under temporary procedures as follows:

21 NCAC 64 .0219 TELEPRACTICE

(a) The Board shall temporarily waive the requirement for licensure for telepractice in order to allow speech and language pathologists to delegate telepractice to speech and language pathology-assistants under the same level of direct supervision as required by 21 NCAC 64 .1003(e)(1)(2) and (6). This temporary waiver of licensure shall apply only to speech and language pathology-assistants and shall continue for the duration of the declared emergency as set forth in Executive Order No. 116 issued March 10, 2020.

(b) For purposes of this Rule the following words shall have the following meanings:

(1) "Patient site" means the patient's physical location at the time of the receipt of the telepractice services.

(2) "Provider" means a licensed speech and language pathologist or audiologist who provides telepractice services.

(3) "Provider site" means the licensee's physical location at the time of the provision of the telepractice services.

(4) "Telepractice" means the use of telecommunications and information technologies for the exchange of encrypted patient data, obtained through real-time interaction, from patient site to provider site for the provision of speech and language pathology and audiology services to patients through hardwire or internet connection. Telepractice also includes the interpretation of patient information provided to the licensee via store and forward techniques.

(c) Telepractice shall be obtained in real time and in a manner sufficient to ensure patient confidentiality.

(d) Telepractice is subject to the same standard of practice stated in Rules .0205 and .0216 of this Chapter as if the person being treated were physically present with the licensee. Telepractice is the responsibility of the licensee and shall not be delegated.

(e) Providers must hold a license in the state of the provider site and shall be in compliance with the statutory and regulatory requirements of the patient site.

(f) Licensees and staff involved in telepractice must be trained in the use of telepractice equipment.

(g) Notification of telepractice services shall be provided to the patient and guardian if the patient is a minor. The notification shall include the right to refuse telepractice services and options for alternate service delivery.

(h) Telepractice constitutes the practice of Speech and Language Pathology and Audiology in both the patient site and provider site.

History Note: Authority G.S. 90-304(a)(3)



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Examiners for Speech and Language Pathologists and Audiologists	
2. Rule citation & name: 21 NCAC 64 .1101	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: April 24, 2020	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: April 16, 2020 b. Proposed Temporary Rule published on the OAH website: April 22, 2020 c. Public Hearing date: May 29, 2020 d. Comment Period: April 23, 2020 through May 29, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 16, 2020 f. Adoption by agency on: May 29, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.	

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793

E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .1101

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

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In reviewing these rules, staff recommends that the following technical changes be made:

How does this Rule go with .1001? It appears to be repetitive making this unnecessary. To the extent that it is different than .1001, it presents a clarity issue since there appear to be competing rules in place.

In (b)(1), what are the "supervision requirements and notification responsibility"? Are these set forth in the Rules of this Section"? If so, please say that.

In (b)(2), change "who may supervise" to "who supervises" to be consistent with (b)(1).

In (d), just to verify, are there specific approval standards or does a primary supervising licensee just have to register an assistant with you all? If there are specific standards that you all use in "approving" an assistant,

Please add the effective date in the History Note (including the effective date of the Emergency Rule.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

21 NCAC 64 .1101 is adopted under temporary procedures as follows:

**SECTION .1100 - REQUIREMENTS FOR THE USE OF AUDIOLOGY ASSISTANTS IN DIRECT
SERVICE DELIVERY**

21 NCAC 64 .1101 DEFINITIONS

(a) "Board" means the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(b) "Licensee" means an individual who holds a current permanent license in audiology from the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(1) "Primary Supervising Licensee" means the Licensee who supervises the majority of the Assistant's work, who is responsible for the Assistant's registration with the Board, and who bears the responsibility for all supervision requirements and notification responsibility to the Board of any changes in registration information.

(2) "Secondary Supervising Licensee" means a Licensee who may supervise the Assistant in the absence of the Primary Supervising Licensee to cover variations in work hours.

(c) "Assistant" means an Audiology Assistant who is registered by a Primary Supervising Licensee with the Board.

(d) "Registration" means the process through which an Assistant is approved by the Board to work with a Licensee to provide services to the public.

History Note: Authority G.S. 90-298.1; 90-304(a)(3)



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** State Board of Examiners for Speech and Language Pathologists and Audiologists

2. **Rule citation & name:** 21 NCAC 64 .1102

3. **Action:** ☒ Adoption ☐ Amendment ☐ Repeal

4. **Was this an Emergency Rule:** ☒ Yes ☐ No **Effective date:** April 24, 2020

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** April 16, 2020
- b. **Proposed Temporary Rule published on the OAH website:** April 22, 2020
- c. **Public Hearing date:** May 29, 2020
- d. **Comment Period:** April 23, 2020 through May 29, 2020
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** April 16, 2020
- f. **Adoption by agency on:** May 29, 2020
- g. **Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:**
- h. **Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- ☒ **A serious and unforeseen threat to the public health, safety or welfare.**
- ☐ **The effective date of a recent act of the General Assembly or of the U.S. Congress.**
Cite:
Effective date:
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Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☒ Yes

Agency submitted request for consultation on: April 16, 2020

Consultation not required. Cite authority:

☐ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793


E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

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*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .1102

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, staff recommends that the following technical changes be made:

How does this Rule go with .1002? It appears to be repetitive making this unnecessary. To the extent that it is different than .1002, it presents a clarity issue since there appear to be competing rules in place.

G.S. 90-298.1 says that "a licensed speech and language pathologist or licensed audiologist may register with the Board...", but (a) provides requirements of the assistant. Who is to submit this information to you all?

In (a)(2), what kind of evidence are you looking for here? What kind of training is required?

What is the intent of (b)? Are the approval standards provided in Rule? This Paragraph appears to be unnecessary or unclear/ambiguous, depending upon the intent. If the intent is just to say essentially that the Board has final approval authority, then it's unnecessary. If it's to say that the board must approve the curriculum or equivalent courses, how will this determination be made? Are the standards provided elsewhere in rule or statute?

In (b), what curriculum or equivalent courses? I read (a) as saying essentially to be an assistant, someone has to 1) have a high school diploma or an equivalent; and 2) be trained either by the licensee or through outside educational courses. Is (b) intended to go to (a)(2)? If so, that is not clear. If that is the case, please provide the substantive requirements of the training.

In (c), are the approval standards for the certificate program provided elsewhere in rule or statute? If not, please provide how the Board will make this determination. If so, please provide the cross-reference.

In (d), please change "shall be responsible for assuring" to "shall assure" (but note my question below – I'm not sure what this is getting to.) Also, should "assure", be "ensure"?

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

What is the intent of “The primary supervising licensee shall be responsible for assuring compliance with the registration process, these rules, and with ethical standards”? Is the intent here that the responsibility be for the primary to make sure he or she complies with these for himself/herself or is the intent for the primary to ensure that his or her assistance complies with the rules? If it’s the former, why not just say “The primary supervising licensee shall comply...” If it’s the latter, perhaps something like “The primary supervising licensee shall ensure that the assistant complies...”

In (d), what is the registration process?

In (d), by “these Rules” do you mean “this Section”? If you mean “rules”, please capitalize it.

In (d), what are the “ethical standards”? Are these incorporated elsewhere in your rules?

In (d), is the secondary held to the same supervision standards as the primary? If so, please make that more clear.

In (d), is “allowing for flexibility in scheduling” necessary? Is this not addressed by the definition of a secondary in .1101?

Please revise (e) to allow for a semi-colon leaving into sub-paragraph (e)(1) and (2) and say who shall do what. A suggestion would be something like:

(e) The primary supervising licensee shall keep the Board apprised of any changes in registration information as follows:

In (e), what kind of changes is this getting to? Would it make sense to break (e)(1) and (2) out since they appear to have a different standard of review – I read (e)(1) to essentially apply to new assistants and (e)(2) to apply to changes for existing assistants.

In (e)(1), change “will” to “shall” Also, please revise this say who shall do what

In (e)(1), please change “should” to “shall”, if that’s what you mean. If you don’t care whether it’s 10 days prior, please delete this language as aspirational.

I’m a bit confused reading (e)(1) and (2) – do you all approve all changes as provided in (e)(1)? (e)(2) speaks to a change in address, I’m guessing that you don’t approve those? Please review and revise for clarity.

Please add the effective date in the History Note (including the effective date of the Emergency Rule.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

21 NCAC 64 .1102 is adopted under temporary procedures as follows:

21 NCAC 64 .1102 GENERAL REQUIREMENTS

(a) For registration, Assistants must present:

- (1) Evidence of high school diploma or equivalent; and
- (2) Evidence of training provided by a supervising audiologist or education including specific instruction and demonstration of each task the assistant is to perform.

(b) Authority to approve the curriculum or the equivalent courses for audiology assistants is vested in the Board of Examiners.

(c) Assistants who conduct pure tone audiometry under general supervision by the licensee must have completed a board approved certificate program such as Certified Occupational Hearing Conservationists (COHC).

(d) A Licensee who is employed full-time (30 hours/week or more) may register to be primary supervisor of no more than two Assistants at any one time. A Licensee who is employed part-time (less than 30 hours/week) may register to supervise no more than one Assistant at any one time. The Primary Supervising Licensee shall be responsible for assuring compliance with the registration process, these rules, and with ethical standards. Secondary Supervising Licensees in the same practice may also supervise the Assistant, allowing for flexibility in scheduling.

(e) The Primary Supervising Licensee must keep the Board apprised of any changes in registration information.

- (1) Changes of supervising licensee(s) will require prior written approval of the Board and should be requested in writing at least 10 days prior to the effective date.
- (2) Changes that do not directly relate to patient care, such as change of address, must be reported to the Board in writing within 10 business days of the effective change.

(f) The Primary Supervising Licensee shall remit to the Board an annual registration fee for the Assistant in an amount of forty dollars (\$40.00).

History Note: Authority G.S. 90-298.1; 90-304(a)(3)



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** State Board of Examiners for Speech and Language Pathologists and Audiologists

2. **Rule citation & name:** 21 NCAC 64 .1103

3. **Action:** ☒ Adoption ☐ Amendment ☐ Repeal

4. **Was this an Emergency Rule:** ☒ Yes ☐ No **Effective date:** April 24, 2020

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** April 16, 2020
- b. **Proposed Temporary Rule published on the OAH website:** April 22, 2020
- c. **Public Hearing date:** May 29, 2020
- d. **Comment Period:** April 23, 2020 through May 29, 2020
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** April 16, 2020
- f. **Adoption by agency on:** May 29, 2020
- g. **Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:**
- h. **Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- ☒ **A serious and unforeseen threat to the public health, safety or welfare.**
- ☐ **The effective date of a recent act of the General Assembly or of the U.S. Congress.**
Cite:
Effective date:
- ☐ **A recent change in federal or state budgetary policy.**
Effective date of change:
- ☐ **A recent federal regulation.**
Cite:
Effective date:
- ☐ **A recent court order.**
Cite order:
- ☐ **State Medical Facilities Plan.**
- ☐ **Other:**

Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Board's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793

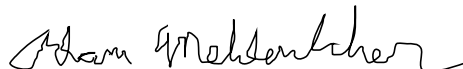
E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ **Date returned to agency:**

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .1103

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, staff recommends that the following technical changes be made:

How does this Rule go with .1003? It appears to be repetitive making this unnecessary. To the extent that it is different than .1003, it presents a clarity issue since there appear to be competing rules in place.

In (a), I don't understand the "must have held" with the "current" I assume here, you just mean something like "Licensees who register an Assistant shall be licensed in North Carolina for the previous two years prior to registered an assistant"

In (a), I assume that the licensee has to hold the "equivalent qualifications" for two years as well? If so, that's not clear.

What is the overall intent of (b)? What is the actual requirement (more questions on this below)?

In (b), how is the licensee to "demonstrate understanding of the basic elements o the registration and supervision process"? What are these basic elements?

In (b), change "should" to "shall"

In (b), delete or define "satisfactorily"

In (b), how is the licensee to demonstrate knowledge and skills?

In (b), change "registration/supervision" to "registration and supervision (assuming that's what you mean. Also, do you need this language? This appears to already be addressed in this Paragraph.

In (c), are the substantive contents of the application set forth in rule or statute? If not, please provide them in rule.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

In (d), how is the licensee to “assure that patients are informed”? Here, do you mean something like “The licensee shall inform all patients when services...” If the intent is not necessarily that the licensee inform all patients, do you mean “All patients shall be informed...”

In (e), delete “full.”

In (e), what is meant by “The standards for all patient services provided by the assistant are the full responsibility of the Supervising Licensee and cannot be delegated”? Specifically, “standards... cannot be delegated”? Here, do you mean something like “Supervising Licensee shall be responsible for all patient services performed by the Assistant”?

In (e), lines 14-16, please revise this to be in active voice and say something like “The Supervising Licensee shall determine the assignment of tasks and the amount and type of supervision to ensure quality of care considering relevant factors such as the skills of the Assistant, the needs of the patient, and the service setting.

Also in (e), how is the Supervising licensee to use the “tasks assigned” in determining what tasks to assign? Are these the previous tasks assigned?

In (e), line 17, change “must have first evaluated... and developed” to “shall evaluate... and develop”

In (f), please say who shall do what? I assume here, you mean “Any time an Assistant provides services during a patient encounter, the Supervising Licensee or Assistant shall document the Assistant’s services in the patient’s medical record. If the Assistant documents the services, the Supervising Licensee shall sign co-sign the medical record.”

In (f), delete “100% of the time.” This is redundant of “for every patient encounter”

In (f), change “has full responsibility” to “shall be responsible”

In (g), please change “its rules” to “the Rules in this Chapter” (assuming that’s what you mean.)

In (h), what is meant by “must be accessible”? Does the licensee have to be physically present in the office or can he or she be available by telephone? Is “direct supervision defined somewhere”? I’m guessing that a definition would address this issue.

In (j), what are “those activities and responsibilities reserved solely for the Supervising Licensee”? Is there a cross-reference available?

In (j), please consider saying something like “Assistants shall only engage in those activities set forth in Rules .1104 and .1105 of this Section.” Of course, please double check the cross-reference.

Please add the effective date in the History Note (including the effective date of the Emergency Rule.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

21 NCAC 64 .1103 is adopted under temporary procedures as follows:

21 NCAC 64 .1103 LICENSEE REQUIREMENTS

(a) Licensees who register an Assistant must have held a current, permanent license in North Carolina for two years or equivalent qualifications from another state. Temporary license holders shall not register Assistants.

(b) Licensees who register an Assistant must demonstrate understanding of the basic elements of the registration and supervision process (scope of practice, ethics, written protocols, record keeping), and should satisfactorily complete a demonstration of knowledge and skills of tasks on the registration/supervision process.

(c) Licensees must submit the application and annual fee for registration of the Assistant to the Board.

(d) Licensees must assure that patients are informed when services are being provided by an Assistant and the Assistant must wear a badge that includes the job title: "Audiology Assistant."

(e) Tasks and duties that are within the scope of responsibilities for an Assistant are listed in Rules .1104 and .1105 of this Section. The standards for all patient services provided by the Assistant are the full responsibility of the Supervising Licensee and cannot be delegated. Therefore, the assignment of tasks and the amount and type of supervision must be determined by the Supervising Licensee to ensure quality of care considering: the skills of the Assistant, needs of the patient, the service-setting, the tasks assigned, and any other relevant factors. Before assigning treatment tasks to an Assistant, the Licensee must have first evaluated the patient files and developed a plan for the care and/or follow an established protocol.

(f) For every patient encounter (screening or treatment) in which an Assistant provides service, there must be documentation of the Assistant's services provided in the patient's medical record and co-signed by a Supervising Licensee 100% of the time. The Supervising Licensee has full responsibility for the accuracy and compliance of the documentation. These signed and dated patient encounter records must be retained as part of the patient's file for the time period specified in Rule .0209 of this Chapter and may be requested by the Board.

(g) The Board may do random audits of records to determine compliance with its rules.

(h) When patient services are being rendered by an Assistant, the Supervising Licensee must be accessible to the Assistant in order to assure that direct observation and supervision can occur when necessary.

(i) The Primary Supervising Licensee shall assess the Assistant's competencies during the initial 60 days of employment using a performance-based competency assessment. The completed assessment shall be submitted to the Board within 90 days of registration. A new competency assessment must be completed and filed within 90 days each time the Primary Supervising Licensee changes.

(j) Any attempt to engage in those activities and responsibilities reserved solely for the Supervising Licensee shall be regarded as the unlicensed practice of Audiology.

History Note: Authority G.S. 90-298.1; 90-304(a)(3)



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Examiners for Speech and Language Pathologists and Audiologists	
2. Rule citation & name: 21 NCAC 64 .1104	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: April 24, 2020	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: April 16, 2020 b. Proposed Temporary Rule published on the OAH website: April 22, 2020 c. Public Hearing date: May 29, 2020 d. Comment Period: April 23, 2020 through May 29, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 16, 2020 f. Adoption by agency on: May 29, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Board's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793

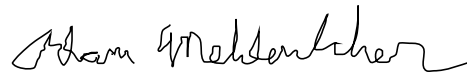
E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ **Date returned to agency:**

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .1104

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, staff recommends that the following technical changes be made:

How does this Rule go with .1004? It appears to be repetitive making this unnecessary. To the extent that it is different than .1004, it presents a clarity issue since there appear to be competing rules in place.

We read Rules without the titles since those can be changes without going through the rulemaking process. As such, please make it clear within the body of the text of the Rule to whom this applies.

Please rewrite this Rule to be in active voice and say who shall do what. In (a), do you mean something like "An audiology assistant may engage in the following direct patient service"?

Since these are not complete sentences, it appears as though (a)(1) through (7) should end with semi-colons and an "and" at the end of (a)(7). Same for (b)(1) through (b)(5).

In (a)(1), what is "partial or selected case history"? Is your regulated public familiar?

In (a)(1) change "patients/families" to "patients and families" or "patients or families", whichever is intended. I assume it's "and"

In (a)(2), change "will" to "shall"

In (a)(2), why is "diagnostic" in parenthesis? That seems important. Please consider taking it out of the parenthesis so that it reads "further diagnostic testing"

Please begin (a)(2)(A) through (D) with lower case letters and end these Subparagraphs with semi-colons. Please also add an "and" at the end of (a)(2)(C).

In (a)(2)(A), delete or define "unambiguous." Also, where are these "protocols and methods" to be found? Are these enacted by the licensee?

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

In (a)(2)(B), change “which” to “that”

In (a)(2)(B), is “binary judgment” known to your regulated public?

In (a)(2)(C), what is a “specifically-elicited single response”? How is this different than your description for binary judgment in (a)(2)(B)?

In (a)(3), delete “specific”

In (a)(4), what are “direct patient services for evaluation”? Is your regulated public familiar with what this means?

In (a)(4), what is the difference between “direct supervision” and “general supervision”? Is this defined elsewhere in your rules?

In (a)(5), what is “basic hearing device repair and trouble shooting”? How is an assistant to know what he or she can and cannot do? Can you provide some examples?

(b) appears to be a shall standard. Here, do you mean something like “An audiology assistant shall: (1) respect the rights and dignity of all individuals; (2) report any workplace conduct...”

In (b)(1), what is meant by “respect the rights and dignity of all individuals”?

In (b)(2), change “which” to “that” in “which appears...”

In (b)(2), how is an assistant to know when something is “unethical or illegal”? What is considered “unethical”?

In (b)(4), what are “universal precautions and safety procedures”?

In (b)(5), what are “appropriate care-givers”?

In (b)(6), what is the “institution”? Also, what is the “Institutional Review Board and oversight committees”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 64 .1104 is adopted under temporary procedures as follows:

21 NCAC 64 .1104 AUTHORIZED TASKS OF AUDIOLOGY ASSISTANTS

(a) Direct Patient Services:

- (1) Obtaining partial or selected case history information from patients and/or families.
- (2) Administering audiologic screening protocols, as directed by the supervising audiologist. These screening procedures, including tests and checklists or parts of tests and checklists, will have the purpose of determining the need for further (diagnostic) testing by the supervising audiologist and must meet the following criteria:
 - (A) Have unambiguous administration protocols and methods.
 - (B) Consist of test items which require no more than a binary judgment (i.e., yes-no, present-absent).
 - (C) Require no more than a specifically-elicited single response.
 - (D) Require no clinical interpretation by the assistant.
- (3) Preparing or positioning patients for evaluation or treatment following specific guidelines of the supervising audiologist and of the facility.
- (4) Direct patient services for evaluation are not within the approved scope of responsibilities for assistants who are not Certified Occupational Hearing Conservationists (COHC). Audiology assistants who are not COHC may assist in the evaluation of both pediatric and adult patients, but only under the direct supervision of the supervising audiologist who is present in the room and attending to the assistant's activities 100% of the time. Audiology Assistants who are COHC may conduct unmasked pure-tone audiometry under general supervision by the licensee for adult patients. Direct patient services to children under the age of 21 years old are not within the approved scope of activities for assistants unless under the direct supervision of the supervising audiologist who is physically present in the room and attending to 100% of the assistant's activities.
- (5) Basic hearing device repair and trouble shooting.
- (6) Assistance with procedures related to the fitting and dispensing of hearing devices.
- (7) Instructing patients in care and use of devices dispensed by the supervising audiologist.
- (8) Providing services previously mentioned through telehealth to extend access to clinical care.

(b) Indirect Patient Services:

- (1) Respecting the rights and dignity of all individuals.
- (2) Reporting any workplace conduct which appears to be unethical or illegal to the supervising audiologist or to the Board of Examiners.
- (3) Requesting assistance from the supervising audiologist, as needed, in order to ensure continuous service quality.
- (4) Observing universal precautions and safety procedures.
- (5) Releasing patients only to the care of appropriate care-givers.

1 (6) Participating in research activities as approved by the institution's Institutional Review Board and
2 oversight committees.
3
4 *History Note:* *Authority G.S. 90-298.1; 90-304(a)(3)*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Examiners for Speech and Language Pathologists and Audiologists	
2. Rule citation & name: 21 NCAC 64 .1105	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: April 24, 2020	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: April 16, 2020 b. Proposed Temporary Rule published on the OAH website: April 22, 2020 c. Public Hearing date: May 29, 2020 d. Comment Period: April 23, 2020 through May 29, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 16, 2020 f. Adoption by agency on: May 29, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. Additionally, it is in the public's best interest to expand the pool of healthcare providers, especially in settings where there are high risk individuals (nursing homes, assisted living facilities, etc.) and allow audiology assistants to perform limited tasks that are generally performed by audiologists. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Board's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency. This rule alleviates access to health care concerns during the COVID-19 outbreak and promotes the public safety of patients.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nahale Freeland Kalfas

Phone: 919-491-7793

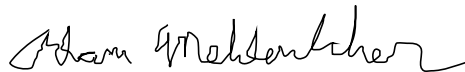
E-Mail: enkalfas@aol.com

Agency contact, if any: Denise Sherwood Brown

Phone: 336-272-1828

E-Mail: dbrown@ncboeslpa.org

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Adam Mehlenbacher, AuD

Title: Chair

E-Mail: amehlenbacher@ncboeslpa.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners for Speech and Language Pathologists and Audiologists

RULE CITATION: 21 NCAC 64 .1105

DEADLINE FOR RECEIPT: Tuesday, June 16, 2020, by noon

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, staff recommends that the following technical changes be made:

How does this Rule go with .1005? It appears to be repetitive making this unnecessary. To the extent that it is different than .1005, it presents a clarity issue since there appear to be competing rules in place.

We read Rules without the titles since those can be changes without going through the rulemaking process. As such, please make it clear within the body of the text of the Rule to whom this applies.

Overall, please review and revise this Rule for clarity. As written, I'm not sure to whom this applies. Is it the Assistant? Is it both the assistant and the licensee? Please note that I just took a guess in my suggestion so it may or may not be accurate. If you choose to use any variation of the suggestion, please ensure the accuracy.

Please rewrite this Rule to be in active voice and say who shall do what. For example, if this Rule is intended to address the training requirements, a suggestion would be something like:

~~Discussing job expectations with the supervising audiologist(s) and having mutual understanding of job scope and specific responsibilities.~~

Following registration by a supervising audiologist, a registered assistant shall:

- (1) ~~discussing~~ discuss job expectations with the supervising audiologist(a) ~~and having in order to have a mutual understanding of job scope and specific responsibilities:~~ responsibilities;
- (+) (2) ~~Participating~~ participate in a specified amount of supervised training according to a written plan for all tests and clinical equipment ~~which that~~ that will be used for assessment and ~~treatment.~~ Treatment of patients;
- (2) (3) ~~Receiving~~ receive regular, formal employment evaluations on a scheduled basis from the supervising audiologist(s) to assess ~~one's~~ the performance, strengths, and weaknesses of the assistant and to establish development goals for continuous performance ~~improvement.~~ improvement;
- (3) (4) ~~requesting~~ request assistance, additional instruction, ~~and/or~~ and additional supervision from the supervising audiologist, when ~~needed.~~ needed;

Amber May
Commission Counsel
Date submitted to agency: June 15, 2020

- (4) ~~(5)~~ ~~participating~~ participate in various types of educational activities in order to enhance skill and knowledge, as assigned by the supervising ~~needed-~~needed; and
(5) ~~(6)~~ ~~reading-read~~ information assigned by the audiologist.

In (1), change "which" to "that" in "which will"

In (1), I assume that this is the assessment and treatment of the patient?

In (2), delete or define "regular, formal"

In (2), delete "one's" and say "the assistant's"

In (3), change "and/or" to either "and" or "or."

In Item (4), what types of "educational activities"? Can you provide some examples?

Please add the effective date in the History Note (including the effective date of the Emergency Rule.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 64 .1105 is adopted under temporary procedures as follows:

21 NCAC 64 .1105 SUPERVISION AND CONTINUING COMPETENCE REQUIREMENTS

Discussing job expectations with the supervising audiologist(s) and having mutual understanding of job scope and specific responsibilities.

- (1) Participating in a specified amount of supervised training according to a written plan for all tests and clinical equipment which will be used for assessment and treatment.
- (2) Receiving regular, formal employment evaluations on a scheduled basis from the supervising audiologist(s) to assess one's performance, strengths, and weaknesses and to establish development goals for continuous performance improvement.
- (3) Requesting assistance, additional instruction, and/or additional supervision from the supervising audiologist, when needed.
- (4) Participating in various types of educational activities in order to enhance skill and knowledge, as assigned by the supervising audiologist.
- (5) Reading information assigned by the audiologist.

History Note: Authority G.S. 90-298.1; 90-304(a)(3)