

Introduction

In June of 2014 the state legislature passed, and the Governor signed, Senate Bill 137, now known as Act 106 of 2014 which updated and expanded the licensure law for SLPs. While some of the provisions of that law took effect almost immediately, much of it is still not in effect. Why is that and what can be done to remedy that situation?

As is the case with a great many newly passed laws, Act 106 needs to have some regulations drafted and approved before it can be fully in force. Just as the state has procedures in place for the passage of laws, it has rules in place for the approval of regulations. We will describe that process below.

But first we need to define our terms. A "law" is a document that is passed by the legislature and approved by the Governor. It is the highest level of enforceable rule that can be placed on government and citizens other than the Constitution. Laws will contain language that requires some state department or agency to promulgate regulations to implement the law.

A "regulation" is a set of rules that provide more details on how the new law will be enforced. You can think of the law as a skeleton and the regulation as the flesh, blood and organs on the body of the law. As with laws, regulations are legally enforceable and any violation of them can lead to criminal or civil penalties.

There is third level of document which is "policy". Policies are statements issued by departments and agencies that really not legally enforceable, and even do not need to deal with them here.

The Process for Approval of Regulations

The approval process for regulations in Pennsylvania is spelled out in the Regulatory Review Act. It is a long and convoluted process and we will try to explain it as simply and briefly as possible below.

The first step is up to the Board of Examiners in Speech, Language, Hearing and Audiology (BOE), the licensing board for SLPs. This is the hardest and longest part of the process. The BOE must start from what is virtually a blank piece of paper since all it contains is the bare bones of the law. Everything the BOE writes must explain the law and none of it can be in conflict with the law. The BOE members work with the attorney assigned to the BOE by the Bureau of Professional and occupational Affairs (BPOA).

Once the BOE has approved the new "proposed" regulations in a public meeting they are sent to the legal office of the Department of State, the parent agency for BPOA, for legal review. That review is followed by similar reviews in the Governor's offices of General Counsel and Policy, as well as the Bureau of Consumer Protection in the Attorney General's Office.

The next step is for the proposed regulations to go three places at once. One place is publication in the Pennsylvania Bulletin, a weekly listing of all newly proposed regulations which is available online. This step is designed to enable the general public to see the regulation and to make comments. Typically the comment period is 30 days and all necessary contact information is provided with the publication.

The second place the regulation goes is to the Independent Regulatory Review Commission (IRRC). This agency is comprised of five members and its sole duty is to review, comment on and approve all proposed regulations from almost every agency in state government. At this point, all that IRRC can do is to comment on the proposed regulations within 30 days.

The third place is the standing committees of the House and Senate the deal with the issues in the regulations, in this case, professional licensure. Their role at this stage is the same as IRRC's.

Once the public, IRRC and committee comment periods are over the regulation goes back to the BOE. It must review and individually respond to each comment it received. It has the ability to make changes to reflect any or all comments or to leave the document intact. The regulations are then considered to be "final form" and they go through all the same legal reviews as before.

Finally, the regulations go back to the standing committees and to IRRC. The committees have 20 days in which to act and IRRC has 30 days. Unless one of these votes to disapprove, which virtually never happens in regulations of this type, the regulation is approved and goes into effect as soon as it is published again in the Pennsylvania Bulletin.

This is a long process, and it is reasonable to ask if there is any way to shortcut it. The answer is yes, by designating the regulation as "final form omitted". This can be used only in very limited situations and is discussed further below.

Where Things Stand Now

So how have the regulations for Act 106 fared in this process?

The first two steps of that process, BOE approval and legal review by the Department of State, took well over a year and a half. Some say that was too long. The BOE met more often than usual that time. The lobbyist for PSHA was at virtually every meeting and input from PSHA was regularly provided. At one crucial meeting most of the top PSHA officers were also there, and spoke.

The regulations, as of the end of July, are still undergoing the legal review in the General Counsel's office.

The issue that brought the PSHA officers to the BOE meeting over a year ago is the same as the one causing the most concern right now, getting the regulations in place so that the BOE can start issuing the new provisional licenses that are created by Act 106 for those doing their clinical fellowship. It was obvious to the PSHA Board early in the Spring of 2015 that if the provisions licenses were delayed it would cause problems for new graduates seeking employment in order to complete their requirements for licensure. Our request was that the BOE use the final form omitted procedure explained above to expedite just the provisional license section and then do the rest of the new regulations through the regular process.

However, the BOE attorney said that was not possible. The reason was that because the Act required that a fee be paid for the provisional license, that portion of the regulation was not able to be done through the final form omitted process. PSHA then pressed for the provisional license to be separated from the full regulation and be moved through the full process by itself

even if the rest of the regulation was not ready. Again, the BOE attorney told us that it could not be done.

Moving Forward – What Can PSHA and SLPs Do?

Many of you have asked what be done to influence this process and move it forward. That is only possible at certain points. As explained above, PSHA was actively involved when the BOE was drafting the regulations. Now that we are in the legal review stage little can be done other than urging the various offices to make their review of the SLP regulations a top priority. PSHA, through its lobbyist, is doing that. It would be inappropriate and counter-productive for us to directly contact the lawyers who are doing the review.

Once the regulations have been published asking for comments from the public, IRRC and the committees, the time periods are limited. The major potential delay after that would come when the regulations return to the BOE, due to the need for it to respond to every comment it received and possibly make changes. PSHA can and will do everything going it can to make that process move very quickly, more quickly than the initial drafting process.

One thing that can be done is that when the proposed regulations are published, it would help if as many SLPs as possible would write to the BOE and to IRRC expressing their support and urging that they be quickly approved. When that action is appropriate, PSHA will send out an email blast to all members with all of the necessary information for you to write a short email to both the BOE and IRRC.

Final action after that by the committees and IRRC is severely time limited.

PSHA knows that the inability of graduates to get the provisional license is a great hardship on many people. We are doing everything we can. But the regulatory review process, while it is beneficial because it prevents agencies from arbitrarily issuing bad regulations, is also a very cumbersome process that is slow and can be difficult to influence at times.

Please bear with us. Our goal is to have this resolved in time for next year's graduates. There is no guarantee, but we are hopeful.

We will post further notices on this as the process moves forward.