

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

FINDING OF EMERGENCY

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board ("Board") finds that the adoption of regulations on an emergency basis is necessary to conform existing regulations governing the practice of audiology and hearing aid dispensing in California. The Board specifically finds that these emergency regulations are necessary for the immediate preservation of the public health and safety, and general welfare of the citizens of California, and that AB 1535, Chapter 309 Statutes of 2009, requires the Board to adopt regulations immediately in order to implement the merger provisions of the bill, which includes the regulation of licensed audiologists authorized to dispense hearing aids in the state and provisions for securing a sufficient funding source for the administration of such oversight.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

AB 1535, effective January 1, 2010, merged the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau to create one oversight body that is responsible for regulating the professions of speech-language pathology, audiology, and hearing aid dispensing. The bill also significantly amended existing provisions governing the practice of audiology in the state. These legislative changes required the promulgation of implementing regulations in order to establish new renewal requirements for licensed audiologists authorized to dispense hearing aids as provided for in the bill. It was the intent of the Board, to begin the regulatory process in early February 2010, and propose the new regulation language to the Board for adoption. However, since the provisions of AB 1535, required constituting a new board and the appointment of new governing board members, it wasn't until late February 2010, that such appointments were made. The first Board meeting of the newly merged Board was not held until March 24-25, 2010. It was then that the need for regulatory amendments were discussed, however, agreement of the actual proposed language occurred over the course of two Board meetings, March 24-25, 2010 and the subsequent meeting of May 26-27, 2010. It was also critical for the Board to analyze the end of the fiscal year's June 2010 fund condition for the Hearing Aid Dispensers Fund in order to ensure that the fees paid to support the Board in its regulation of licensed audiologists who sell hearing aids and hearing dispensers are fairly appropriated and are sufficient to support the administration of the Board. Section 55 of AB 1535 specifically called for such fiscal scrutiny. More specifically, this section requires the Board to review existing fees, by January 1, 2011, to ensure that adequate revenue is being generated to support Board operations as they relate to audiologists who dispense hearing aids and hearing aid dispensers. This regulatory proposal fulfills the Board's directive by implementing a necessary restructuring of the dispensing audiologists (DAU's) application fee, renewal fee cycle, and renewal fee amount as fund projections demonstrate the immediate need for greater revenue in order to support the administrative oversight of the dispensing practitioners.

The proposed emergency regulations are necessary to preserve the public's health and safety as without the necessary revenue generated by the fees (established in AB 1535 and proposed in the emergency regulations) from dispensing audiologists, the Board is unable to fund its licensing, enforcement, and examination programs and meet its mandate to regulate the practice of dispensing practitioners.

Audiologists are regulated by licensure or registration in all 50 States. In 35 of those states, audiologists are currently able to dispense hearing aids and hearing assistive technology under their audiology license. These states recognize that the education and training of audiologists ensures consumer protection in the evaluation, selection, fitting, selling, and provision of counseling and follow-up care, without requiring a separate license, by virtue of the rigorous nature of the curriculum of graduate programs in audiology. This training and experience assures that consumers have access to rigorous audiologic diagnostic and treatment services, including the provision of personal hearing instruments, provided by audiologists under their licenses. The Board's licensing functions are imperative as they serve to verify that the minimum qualifications for entry-level licensure, as established by law for dispensing audiologists, in both their education and training have been met. In addition, the Board administers both a written and practical examination in hearing aid dispensing which assesses an individual's competency in the dispensing and delivery of hearing amplification. Without adequate funding and revenue as proposed in the emergency regulations, the Board would not be able to continue to support these necessary programs and would be unable to fulfill its mission to appropriately evaluate and examine applicants for licensure.

In addition, the Board's enforcement program serves to investigate consumer complaints and prosecute practitioners found to be negligent, incompetent, or guilty of defrauding consumers. The Board's enforcement program is solely funded by its licensing fees and, therefore, without adequate resources, the Board would be unable to seek appropriate administrative discipline for those guilty of unprofessional/incompetent acts.

Failure to adequately regulate dispensing audiologists would lead to public harm as the hearing impaired population may be treated by individuals who are incompetent in the diagnosis and treatment of hearing disorders, and further may be provided inappropriate hearing amplification devices. Without access to qualified dispensing audiologists, a hearing impaired person's quality of life is dramatically diminished.

AUTHORITY AND REFERENCE CITATIONS

Authority Cited: Sections 2531.95, 2532.25, 2532.6, 2539.1, and 2534.2, Business and Professions Code. Reference: Sections 2539.1(a), 2532.2(a), 2532.6(a) and 2534.2(a)(2), Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amends Sections 1399.157, 1399.160.3, and 1399.160.6 of Division 13.4 of Title 16 of the California Code of Regulations

The Speech-Language Pathology & Audiology (SLPA) & Hearing Aid Dispensers (HAD) Board (“Board”) is authorized by Business and Professions Code Section 2531.95 to adopt regulations necessary to implement the Speech-Language Pathology and Audiology Licensure Act. Section 2539.1 sets forth new provisions for licensed audiologists to dispense hearing aids under the audiology license provided all specified licensing qualifications have been met. Section 2532.6 mandates that licensed audiologists engage in continuing professional development (CPD) and learning as related to the licensed profession. In addition, Section 2534.2 establishes the associated application fees and renewal fees for “dispensing audiologists.” These Sections provide the Board the authority to establish CPD renewal requirements and fees for the dispensing audiology license.

Section 1399.157(b): Adds the application fee for an individual applying for the DAU license.

Section 1399.157(d): Adds the new renewal fee and establishes the annual renewal cycle for a DAU.

Section 1399.160.3(e): Makes changes to the CPD requirements for DAU’s, which coincide with the annual renewal cycle, and includes provisions for obtaining specified coursework related to the dispensing of hearing aids as the professional service is authorized under the dispensing audiology license provided all qualifications have been met.

Section 1399.160.6: Adds provisions for the Board to review and approve courses related to hearing aid dispensing to ensure that such courses meet the proposed course content criteria of CPD and are not designed to market products or devices of a particular manufacturer or company. The proposed amendments also specify the type of information that must be submitted by a CPD provider for each course offered.

Sections 1399.160.4, 1399.160.5, and 1399.160.7 are not being modified, but are included in the proposed language to assist one in understanding the proposed changes to the affected Sections above in context.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

This proposed regulation would clarify and make specific licensing requirements for Dispensing Audiologists, CPD requirements, and course approval for providers. The CPD requirements for licensees and course approval requirements for providers are not anticipated to have fiscal implications since it is assumed the providers will pay the SPLA/HAD Board the same fees previously paid to the former HAD Bureau. Since DAU's would no longer be required to maintain a separate audiology license, the initial license fee of \$25 and the \$110 biennial fee paid to Board by licensees would no longer be collected. The \$35 application fee currently paid by audiologists to obtain the Temporary Required Professional Experience (RPE) License which authorizes applicants to obtain the professional experience required for entry level licensure (CCR Section 1399.153.2) will still be collected. As a result of the proposed regulations, the SPLA Fund (0376) would experience an annual revenue loss of \$52,931 annually or \$105,862 biennially.

All Dispensing Audiology fees paid to the former HAD Bureau will now be collected by the Board but deposited into the HAD account (0208).

Overall, the SPLA/HAD Board does not estimate any increased costs with this regulatory proposal.

Cost or Savings In Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states

There may be a minor cost to businesses to comply with this regulation as Board-approved providers must submit course materials to the Board for approval. Business and Professions Code Section 3456 (h) authorizes the Board to collect a fifty dollar (\$50) fee for each submitted course. However, all current approved hearing aid dispensing continuing education providers currently pay the established course-approval application fee and would likely be the target providers of the requisite CPD courses for dispensing audiologists.

There are approximately fifty (50) approved hearing aid dispenser continuing education providers approved by the Board and approximately two-hundred (200) approved courses as further described below:

- CE Provider assumptions:
 - 50 CE providers in California
 - 150-250 approved courses
 - \$50 fee for each submitted course. Courses valid for 12 months.
 - Providers who offer both HAD courses and audiology courses pay a \$200 renewal fee biennially.

Under this proposal, it is assumed that existing providers would offer the same courses for DAU's. No significant fiscal implications are anticipated.

AND

The following studies/relevant data were relied upon in making the above determination:
None

Impact on Jobs/New Businesses: Under current laws and regulations, continuing education providers of hearing aid courses are required to apply for course approval by the Board and pay a course approval application fee of \$50 for each course application. The proposed amendments would merely implement the provisions of AB 1535 (Jones, Chapter 309, Statutes of 2009), within the CPD regulation requirements for audiologists authorized to dispense hearing aids. As such, there is no change to the existing process for businesses which offer continuing education in hearing aid dispensing; and therefore, the Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The following provides detail regarding any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action as:

- Licensed audiologists who dispensed hearing aids under a separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay a \$75 application and a \$280 initial license fee for the hearing aid license and an additional \$60 application fee for the audiology license (\$35 application fee which is collect for the Temporary RPE License process and the \$25 initial license fee). Under the new provisions, an individual applying for a DAU license, must pay the \$35 application for the Temporary RPE License and the \$280 application fee for the DAU license. The \$25 initial license fee would no longer be collected of the DAU.
- In addition, license audiologists who dispensed hearing aids under the separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay the biennial audiology license renewal fee of \$110 and a separate hearing aid dispensers license fee of \$280 annually. Under the new

provisions, licensed audiologists who qualify as DAU's must pay only one license renewal fee for the dispensing audiology license which has been established at \$280 annually. As such, the DAU will save the \$110 biennially (\$55 annually) for the separate license fees previously paid for the audiology license.

- Existing regulations require licensed speech-language pathologists and audiologists to obtain twenty-four (24) hours of CPD course work from a Board-approved provider every two years, coinciding with the biennial license renewal cycles. Of the twenty-four (24) hours required, licensed speech-language pathologists and audiologists may obtain a maximum of four (4) hours in related or indirect client care courses and another six (6) hours in self-study. Licensed audiologists are also limited to a maximum of number of hours that may be obtained in courses where the content focuses on equipment, devices or other products of a particular manufacturer or company. The proposed amendments to Section 1399.160.3 would establish a distinct set of CPD requirements for audiologists authorized to dispense hearing aids and would require twelve (12) hours annually with fifty percent (50%) of the requisite CPD hours to be obtained through hearing aid related courses where the content does not focus on equipment, devices or other products of a particular manufacturer or company. In addition, the DA may accumulate one and one-half (1.5) hours in indirect or related client care courses and another one and one-half (1.5) hours in self-study courses. Since completion of CPD is already a mandate for licensed audiologists, licensees already pay for CPD courses. The change noted above does require licensed audiologists authorized to dispense hearing aids to complete a specified number of hours within one year, that being twelve (12) hours of CPD, which is half of the current requirement of twenty-four (24) hours required in the two-year license renewal period. As such, the Board does not believe the change in the CPD requirements results in a cost impact to the licensee.

As noted above, continuing education providers are already required to submit course approval applications and fees to the Board for any hearing aid dispenser courses offered to licensees. The proposed changes do not place additional requirements on the Board-approved providers.

Effect on Housing Costs: None