

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISIONS 13.3 and 13.4
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD

INITIAL STATEMENT OF REASONS

Hearing Date

No public hearing has been scheduled for this proposed regulatory action.

Subject Matter of Proposed Regulations

Notice to Consumers

Sections Affected

Section 1399.129 of Article 5 of Division 13.3 and section 1399.157.1 of Article 8 of Division 13.4 of Title 16 of the California Code of Regulations (CCR).¹

Problem Being Addressed

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is a state agency vested with the authority to regulate the practices of speech-language pathology, audiology, and hearing aid dispensing in accordance with Business and Professions Code (BPC) section 2530.1. The Board's mandate and its mission is to protect the public (BPC section 2531.02). The Board regulates approximately 32,000 licenses for speech-language pathologists, speech-language pathologist temporary licenses, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiologist temporary licenses, audiology aides, required professional experience (RPE) temporary licensees, hearing aid dispensers, hearing aid temporary licensees, and hearing aid dispenser trainees. The Board protects consumers through its licensing and enforcement functions. As such, the Board has the authority to require licensees to abide by all applicable statutes and regulations or risk losing their license to practice. However, the law does not give the Board statutory authority to establish an inspection program. Therefore, the Board relies on complaints from consumers regarding violations by individuals licensed by the Board.

Existing law, under BPC sections 2531.06 and 2531.95, authorizes the Board to adopt,

¹ All CCR references are to Title 16 unless otherwise noted

amend, or repeal regulations that may be necessary to execute any provisions of the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act. The Board intends to use its authority to amend regulations to implement, interpret, and make specific the provisions of BPC section 138 by adopting new Title 16, CCR sections 1399.139 and 1399.157.1.

There is no existing federal regulation or statute comparable to this proposed regulation.

Public protection is the highest priority of the Board and it is enhanced when consumers and other interested parties are made aware of the Board's existence at the time and place of service. This proposed regulation will require licensees of the Board to provide notice to consumers of the Board's name and contact information. Some consumers and other interested parties may be aware that their speech-language pathologist, audiologist, or hearing aid dispenser is licensed by a state regulatory board and that they can verify if their practitioner's license is active and current and if their practitioner has been or is currently being disciplined. This also includes speech-language pathology assistants, RPE temporary licensees, speech-language pathology and audiology aides, and trainees engaged in the practices of speech-language pathology, audiology, or hearing aid dispensing. The Board has a consumer complaint process where consumers can file a complaint against a licensee. Although this information is available, there may be consumers and other interested parties who are not aware of it. To increase consumer protection, the Legislature enacted BPC section 138 which mandates that individuals regulated by this Board notify their consumers that they are licensed by the State of California. It also mandates that this Board implement, interpret, and make specific the provisions of BPC section 138 through the rulemaking process to begin on or before June 30, 1999.

Due to governance structure changes, which culminated in 2010, and limited staff resources, adopting the provisions of BPC section 138 into regulations has been delayed. In its 2016-2020 Strategic Plan, the Board identified as one of its outreach objectives to: "require practitioners to display a consumer notice at the practitioner's point of service regarding the roles and responsibilities of the Board." At the end of its May 2017 meeting, the Board expressed its desire to promulgate regulations that require its licensees to give notice to consumers regarding the Board's oversight of its licensees. The Board adopted proposed regulatory language at its August 2017 meeting and amended the language at its February 2018 meeting.

On January 24, 2021, Board staff submitted revisions of the adopted proposed text to the Department of Consumer Affairs (DCA) Legal Affairs Division for review. Board staff and DCA Legal counsel identified changes to the regulatory language for review and discussion by the Board. The Board approved the revised regulatory language at its February 2022 Board meeting.

Purpose, Rationale, and Benefit(s) of Regulatory Action

***Adopt Section 1399.129 of Article 5 of Division 13.3 of Title 16 of the CCR
(Hearing Aid Dispenser Regulations)***

Purpose: Section 1399.129 is being adopted to specify the statement and method of the notice to consumers required within the practice of hearing aid dispensing. The title of repealed former section 1399.129 is being amended and replaced with a new title that matches the content of the new regulation section. Subsection (a) is being added to specify the statement that should be used in the notice to consumers within the practice of hearing aid dispensing. This exact statement must be used:

NOTICE TO CONSUMERS
Hearing Aid Dispensers, Hearing Aid Temporary Licensees,
Hearing Aid Trainees, and Dispensing Audiologists
are licensed and regulated by the
Speech-Language Pathology & Audiology &
Hearing Aid Dispensers Board
(916) 287-7915
www.speechandhearing.ca.gov

Anticipated Benefit/Rationale: This regulatory language is intended to bring the Board in compliance with BPC section 138, which requires all boards within the DCA to adopt regulations requiring licensees to provide notification to their consumers that they are licensed by the State and information on how to contact their licensing Board. The regulatory language also requires all licensees to use the same statement which includes the Board’s name, telephone number, and website address for the purpose of uniformity in the information given to the public. The vast majority of enforcement and disciplinary actions are the result of consumer complaints; therefore, providing consumers with the Board’s contact information assists the Board in its mandate and mission to protect the public within the practice of hearing aid dispensing. The regulatory language furthers protects the public by making consumers aware of the Board and that the licensee in the practice of hearing aid dispensing is licensed and regulated by the Board and how to contact the Board. Through the website or by phone, consumers can make informed decisions about a hearing aid dispenser or dispensing audiologist they choose to receive services from by using the license search database to check on their practitioner’s licensing status and disciplinary history. This also includes any trainees the hearing aid dispenser or dispensing audiologist may have.

Purpose: Subsection (b) is added to specify three methods for how the notice could be provided to consumers within the practice of hearing aid dispensing.

Anticipated Benefit/Rationale: Providing options for licensees gives them the flexibility as to how the notice is provided to their clients or patients while ensuring that the notice has been provided in a consistent manner. Adoption of this proposed language will facilitate communication between the public and the Board. It will also promote governmental and professional transparency by making information regarding the Board’s responsibility to regulate the profession more easily accessible to the public.

Purpose: Subsection (b)(1) is added to specify the first method for how the notice could be provided to consumers. The regulatory language states that the notice can be in the form of a posted sign at each of the places where the licensee practices. The notice must be in at least 48-point type Arial font, and must be visible to patients and clients.

Anticipated Benefit/Rationale: This language is intended to bring the Board in compliance with BPC section 138. The Board chose 48-point type font so that it would be large enough for the consumer to read the sign with ease. The Board chose Arial font because it is easy to read and commonly used font for published government documents. The majority of consumers that licensees in the practice of dispensing hearing aids serve are elderly and therefore may need notices to be in a large font that is simple and recognizable to read. Additionally, licensees can practice in several locations, so it is important that the regulatory language makes clear that the notice must be at each of the locations the licensee practices, not just the licensee’s primary location, so that all consumers, regardless of service location, are made aware through the posting of the notice.

Purpose: Subsection (b)(2) is added to specify the second method for how the notice could be provided to consumers. The regulatory language states that the notice can be in the form of a written statement given to the client or patient, or the client’s or patient’s representative. In addition, it would require that a separate acknowledgement be signed and dated by the client or patient, or the client’s or patient’s representative, and kept by the licensee in the client’s or patient’s record.

Anticipated Benefit/Rationale: This regulatory language is intended to bring the Board in compliance with BPC section 138 and provide another option for the distribution of the notice. A written notice that is provided to the client or patient, or the client’s or patient’s representative, allows them access to the Board’s information by taking that information with them when they leave the service location. By requiring the licensee to have the client or patient, or the client’s or patient’s representative, sign and date an acknowledgement and thereafter keep it in the client’s or patient’s record as proof the licensee provided the notice will assist the Board in ensuring compliance with this notice requirement. The client’s or patient’s representatives are included in the language due to the large majority of consumers that licensees in the practice of dispensing hearing aids

serve are elderly and may have a representative assisting them at the time of service. Furthermore, ensuring that the notice is in at least a 12-point font guarantees the notice will be large enough for most consumers to read with ease.

Purpose: Subsection (b)(3) is added to specify the third method for how the notice could be provided to consumers. The regulatory language states that the notice can be in the form of a written receipt where the notice is placed above the signature line in at least a 14-point font.

Anticipated Benefit/Rationale: This language is intended to bring the Board in compliance with BPC section 138 and provide another option for the distribution of the notice. Licensees in the practice of hearing aid dispensing will have the option of adding the notice to a written receipt so long as the placement and font size comply with the proposed regulation. Written receipt for the purchase of every hearing aid is required by BPC sections 2538.35 and 2539.4. Placing the notice above the signature line will allow the consumer to see the information since it will be directly above where they will be required to sign. Ensuring the font is at least 14-point will make the notice stand out against the regular, smaller size font. The majority of consumers that hearing aid dispensers serve are elderly and therefore may need notices to be in a larger font to become aware of and be able to read the information. The client's or patient's representatives are included in the language due to the fact that many consumers served by hearing aids dispensers are elderly and may have a representative assisting them at the time of service.

***Adopt Section 1399.157.1 of Article 8 or Division 13.4 of Title 16 of the CCR
(Speech-Language Pathology and Audiology Regulations)***

Purpose: Section 1399.157.1 is being adopted to specify the statement and method of the notice to consumers required within the practice of speech-language pathology and audiology. The title of repealed former section 1399.157.1 is being amended and replaced with a new title that matches the content of the new regulation section. Subsection (a) is being added to specify the statement that should be used in the notice to consumers within the practice of speech-language pathology. This exact statement must be used:

NOTICE TO CONSUMERS
Speech-Language Pathologists, Speech-Language Pathology Assistants,
Required Professional Experience Licensees, and Speech-Language Pathology Aides
are licensed and regulated by the
Speech-Language Pathology & Audiology &
Hearing Aid Dispensers Board
(916) 287-7915
www.speechandhearing.ca.gov

Anticipated Benefit/Rationale: This regulatory language is intended to bring the Board in compliance with BPC section 138, which requires all boards within the DCA to adopt regulations requiring licensees to provide notification to their consumers that they are licensed by the State and information on how to contact their licensing Board. The regulatory language also requires all licensees to use the same statement which includes the Board's name, telephone number, and website address for the purpose of uniformity in the information given to the public. The vast majority of enforcement and disciplinary actions are the result of consumer complaints; therefore, providing consumers with the Board's contact information assists the Board in its mandate and mission to protect the public within the practice of speech-language pathology. The regulatory language furthers protects the public by making consumers aware of the Board and that the licensee in the practice of speech-language pathology is licensed and regulated by the Board and how to contact the Board. Through the website or by phone, consumers can make informed decisions about a speech-language pathologist they choose to receive care and treatment from by using the license search database to check on their practitioner's licensing status and disciplinary history. This also includes any assistants, aides, or RPE temporary licensees the speech-language pathologist may have under their supervision.

Purpose: Subsection (b) is being added to specify the statement that should be used in the notice to consumers within the practice of audiology. This exact statement must be used:

NOTICE TO CONSUMERS
Audiologists, Required Professional Experience Licensees,
and Audiology Aides,
are licensed and regulated by the
Speech-Language Pathology & Audiology &
Hearing Aid Dispensers Board
(916) 287-7915
www.speechandhearing.ca.gov

Anticipated Benefit/Rationale: This regulatory language is intended to bring the Board in compliance with BPC section 138, which requires all boards within the DCA to adopt regulations requiring licensees to provide notification to their consumers that they are licensed by the State and information on how to contact their licensing Board. The regulatory language also requires all licensees to use the same statement which includes the Board's name, telephone number, and website address for the purpose of uniformity in the information given to the public. The vast majority of enforcement and disciplinary actions are the result of consumer complaints; therefore, providing consumers with the Board's contact information assists the Board in its mandate and mission to protect the public within the practice of audiology. The regulatory language furthers protects the public by making consumers aware of the Board and that the licensee in the practice of

audiology is licensed and regulated by the Board and how to contact the Board. Through the website or by phone, consumers can make informed decisions about an audiologist or dispensing audiologist they choose to receive care and treatment from by using the license verification database to check on their practitioner's licensing status and disciplinary history. This also includes any aides or RPE temporary licensees the audiologist or dispensing audiologist may have under their supervision.

Purpose: Subsection (c) is added to specify three methods for how the notice could be provided to consumers within the practice of speech-language pathology and audiology.

Anticipated Benefit/Rationale: Providing options for licensees gives them the flexibility as to how the notice is provided to their consumer while ensuring that the notice has been provided in a consistent manner. Adoption of this proposed language will facilitate communication between the public and the Board. It will also promote governmental and professional transparency by making information regarding the Board's responsibility to regulate the profession more easily accessible to the public.

Purpose: Subsection (c)(1) is added to specify the first method for how the notice could be provided to consumers. The regulatory language states that the notice can be in the form of a posted sign at each of the locations where the licensee practices. The notice must be in at least 48-point type Arial font, and must be visible to patients and clients.

Anticipated Benefit/Rationale: This language is intended to bring the Board in compliance with BPC section 138. The Board chose 48-point type font so that it would be large enough for the consumer to read the sign with ease. The Board chose Arial font because it is easy to read and commonly used font for published government documents. Licensees in the practice of speech-language pathology and audiology may have consumers who are elderly and therefore may need notices to be in a large font that is simple and recognizable to read. Additionally, licensees can practice in several locations, so it is important that the regulatory language makes clear that the notice must be at each of the location the licensee practices, not just their primary location, so that all consumers, regardless of service location, are made aware through the posting of the notice.

Purpose: Subsection (c)(2) is added to specify the second method for how the notice could be provided to consumers. The regulatory language states that the notice can be in the form of a written statement given to the client or patient, or the client's or patient's representative. In addition, it would require that a separate acknowledgement be signed and dated by the client or patient, or the client's or patient's representative, and kept by the licensee in the client's or patient's record.

Anticipated Benefit/Rationale: This regulatory language is intended to bring the Board in compliance with BPC section 138 and provide another option for the distribution of the

notice. A written notice that is provided to the client or patient, or the client's or patient's representative, allows them access to the Board's information by taking that information with them when they leave the location. By requiring the licensee to have the client or patient, or the client's or patient's representative, sign and date an acknowledgement and thereafter keep it in the client's or patient's record as proof the licensee provided the notice will assist the Board in ensuring compliance with this notice requirement. The client's or patient's representatives are included in the language due to consumers that licensees in the practice of speech-language pathology and audiology may serve are elderly or a minor and may have a representative assisting them at the time of service or providing consent for services. Furthermore, ensuring the notice is in at least a 12-point font guarantees it will be large enough for most consumers to read.

Purpose: Subsection (c)(3) is added to specify the third method for how the notice could be provided to consumers. The regulatory language states that the notice can be in the form of a written receipt where the notice is placed above the signature line in at least a 14-point font.

Anticipated Benefit/Rationale: This language is intended to bring the Board in compliance with BPC section 138 and provide another option for the distribution of the notice. Licensees in the practice of audiology who dispense hearing aids will have the option of adding the notice to a written receipt so long as the placement and font size comply with the proposed regulation. Written receipt is a common form of documentation provided at the point of payment. Placing the notice above the signature line will allow the consumer to see the information since it will be directly above where they will be required to sign. Ensuring the font is at least 14-point font will make the notice stand out against the regular, smaller size font. Practitioners of speech-language pathology and audiology often have consumers who elderly and may need notices to be in a larger font to become aware of and be able to read the information. The client's or patient's representatives are included in the language due to the fact that many consumers served by practitioners of speech-language pathology and audiology are elderly or a minor and may have a representative assisting them at the time of service or providing the required consent for services.

Underlying Data

1. 2016-2020 Strategic Plan
2. May 2017 Board Meeting Minutes
3. August 2017 Board Meeting Agenda and relevant materials
4. August 2017 Board Meeting Minutes
5. February 2018 Board Meeting Agenda and relevant materials
6. February 2018 Board Meeting Minutes
7. February 2022 Board Meeting Agenda and relevant materials

8. February 2022 Board Meeting Minutes

Business Impact

The Board has made the initial determination that the proposed regulatory action will not have a significant adverse economic impact on businesses or jobs. This initial determination is based on the cost of printing and materials for what the Board believes may be the easiest and least expensive method of compliance, which is printing a notice on a printer and placing it on a wall within their service locations or finding space for the notice within current consent documents or receipts already provided to clients and patients. The Board anticipates licensees to be able to print and post the notification to be in compliance with the regulations within normal business operations. As a result, no additional costs are anticipated.

The proposed regulatory action will not create new businesses or jobs, nor will it expand existing businesses. The regulation will not have an impact on the elimination of businesses or jobs.

Furthermore, the Board's authority is over licensees and not over all businesses within the industries the Board regulates. The Board only maintains data on business where hearing aid dispensers and dispensing audiologists are authorized to sell hearing aids in accordance with BPC sections 2538.33 and 2538.34. The Board does not maintain data relating to the number of businesses for other license types or the types of business (e.g., private, nonprofit, public, or small business) in which licensees are employed. As a result, the Board cannot provide any estimates for the total number or types of businesses that may be impacted.

The Board is not aware of any other economic costs that may occur. The Board is also not aware of any effect the proposed regulatory action will have on housing costs or impact to local agencies or federal funding to the State.

The Board is aware of benefits that may accrue to businesses or individuals that comply with this regulation over its lifetime. The Board expects an increase in public awareness, and Board transparency and accountability as the public becomes more informed about the roles and responsibilities of the Board under which an individual practitioner is licensed. These types of benefits are unquantifiable and cannot be easily measured or estimated. Therefore, the Board cannot provide information on possible statewide benefits that may occur from this regulation over its lifetime.

Economic Impact Assessment

This regulatory proposal will have the following effects:

It will not create new businesses or jobs within the State of California because the proposed regulatory action is related to educating and informing the public about the roles and responsibilities of the Board and not enhancing industry growth within the industries the Board regulates.

It will not eliminate existing businesses or jobs because the proposed regulatory action is related to educating and informing the public about the roles and responsibilities of the Board and not inhibiting industry growth within the industries the Board regulates.

It will not expand existing businesses within the State of California because the proposed regulatory action is related to educating and informing the public about the roles and responsibilities of the Board and not enhancing industry growth within the industries the Board regulates.

It may affect the health and welfare of California residents. The proposed regulatory action may increase public awareness of the Board's roles and responsibilities to regulate the profession by making that information more accessible to California consumers.

It may not affect worker safety because the proposed regulatory action is related to educating and informing the public about the roles and responsibilities of the Board, and does not concern or impact worker safety.

It may not affect the state's environment because the proposed regulatory action is related to educating and informing the public about the roles and responsibilities of the Board, and does not concern or impact the State's environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The Board's initial determination is that there is no reasonable alternative to the proposed regulatory action which would be more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons, and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each

alternative was rejected:

1. Do not seek a regulatory change.

The Board is directed by statute to develop these regulations. Failure to adopt the proposed regulatory action prevents consumers from being better informed that the individual they are obtaining services from is licensed by the State. This would result in some consumers continuing to be unaware that they can contact the Board to check the status of their practitioner's license, disciplinary history, or file a complaint. Some consumers may also continue to be unaware that the Board also licenses assistants, aides, trainees, or RPE licensees from which the consumer may receive services. Given the Board relies upon consumer complaints for enforcement actions, failure to increase consumer awareness of the Board's roles and responsibilities reduces the Board's ability to meet its consumer protection mandate